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**TITLE 405 OFFICE OF THE SECRETARY OF FAMILY AND SOCIAL SERVICES**

**Administrative Rules Oversight Committee Notice**  
**1 Year Requirement ([IC 4-22-2-25](#))**  
LSA Document #06-5

To: Honorable R. Michael Young, Chairperson  
Administrative Rules Oversight Committee  
c/o Sarah Burkman  
Indiana Legislative Services Agency  
200 W. Washington Street, Suite 301  
Indianapolis, IN 46204-2789

From: Scott Linneweber, Staff Attorney

Re: LSA #06-05, Amendments to Medicaid Dental Rule

Date: October 3, 2006

Cc: Chuck Mayfield, Legislative Services Agency  
John Davis, General Counsel, FSSA  
Jeanne M. LaBrecque, Director, Office of Medicaid Policy and Planning

On behalf of the Family and Social Services Administration, Office of Medicaid Policy and Planning, I am submitting this memo to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-25](#), because the agency has determined that the promulgation of the captioned rule may not be completed within one year after publication of the notice of intent to adopt a rule.

The agency published its notice of intent to adopt a rule for the captioned document on February 1, 2006 (29 IR 1583). The proposed rule was published on June 1, 2006, and the public hearing was held on June 22, 2006. The agency considered public comments, adopted the rule, and had the rule approved by the Family and Social Services Committee.

The Office of the Attorney General has interpreted [IC 4-22-2.1-6](#) as creating an absolute mandate that the Indiana Economic Development Corporation (IEDC) respond in writing to an agency's small business impact statement even when the IEDC has no comment on a proposed rule. The agency had timely forwarded the rule and a corresponding statement of impact on small businesses to the IEDC in accordance with [IC 4-22-2.1-5](#). IEDC did not provide written comment on the agency's small business impact statement. The agency continued with the rule promulgation process, believing a lack of written comment from the IEDC meant approval. On September 22, 2006, the Office of the Attorney General rejected the rule for failure to comply with [IC 4-22-2.1-6](#). The rule was further rejected because there was no agency response to IEDC comments. The Office of the Attorney General indicated that the agency has an affirmative duty to respond to the IEDC, even when the IEDC indicates that it has no substantive comment on the proposed rule.

The agency now must hold a new public hearing, respond to public comments, readopt the rule, and seek approval from the Family and Social Services Committee. The committee is not always able to have a quorum present at each meeting. Following approval by the FSSA committee, the rule must be submitted to the Attorney General's office. Pursuant to [IC 4-22-2-32](#), the Attorney General has forty-five days to complete his review of a rule. Whether a quorum is present at a monthly meeting of the FSSA Committee and the Attorney General's time frame for rule review are outside of the agency's control. It is anticipated that this will, at a minimum, add one hundred and thirty-five (135) days to the rule promulgation process. For these reasons, it is unlikely that the rule will be approved by the governor within one year of the date of publication of the notice of intent. The agency expects that the rule can be approved by the governor by October 3, 2007.

This notice setting forth the expected date of approval of LSA #06-5 as October 3, 2006, is being submitted in a timely manner. October 10, 2006, is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.

*Posted: 10/11/2006 by Legislative Services Agency*  
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