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 #06-29

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 #06-29, Amendments to Medicaid Rules (Telemedicine)

Date: October 16, 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 March 1, 2006 (29 IR 1967). 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 was awaiting approval 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 Office of the Attorney General further has indicated that an 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 had timely forwarded this 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 LSA Document #06-5 for failure to comply with IC 4-22-2.1-6. That rule (#06-5) was rejected because IEDC did not provide written comment to the agency and because there was no agency response to IEDC comments. This rule (#06-29) will be similarly rejected unless the agency complies with the Office of Attorney General's interpretation of the rule promulgation process.

As such, 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 16, 2007.

This notice setting forth the expected date of approval of LSA #06-29 as October 16, 2006, is being submitted in a timely manner. November 6, 2006, is the two hundred fiftieth day after publication of the notice of intent to adopt a rule.