

Administrative Rules Oversight Committee Notice
60 Day Requirement ([IC 4-22-2-19](#))
LSA Document #09-167

July 21, 2010

Senator R. Michael Young, Chair
Administrative Rules Oversight Committee
c/o Legislative Services Agency
200 West Washington Street, Suite 301
Indianapolis, Indiana 46204-2789
Attn: Sarah Burkman

Re: LSA Document #09-167 – Proposed Rule Regarding Independent Living Transitional Services Plans

Dear Senator Young:

On behalf of the Indiana Department of Child Services (DCS), I am submitting this notice to the Administrative Rules Oversight Committee in compliance with [IC 4-22-2-19](#), which requires an agency to begin the rulemaking process not later than sixty (60) days after the effective date of the statute that authorizes the rule, with certain exceptions that are not applicable to this notice.

[IC 31-25-2-21](#) was added by P.L.143-2008, SEC. 6, which became effective July 1, 2008. That section requires DCS to implement a program that provides a transitional services plan to certain individuals who become age eighteen (18) or are emancipated while receiving foster care, or who are receiving foster care for older youth under new [IC 31-28-5.7](#), also added by P.L.143-2008. The section further directs DCS to adopt rules necessary to implement the program.

At the time this new section of the Indiana Code became effective, legislation was pending in the United States Congress to amend several provisions of Title IV-E of the Social Security Act, 42 U.S.C. 670 et seq., which provides federal financial assistance for children in foster care under supervision of the administering state agency who meet the eligibility requirements of the federal law. Approximately fifty percent (50%) of the children placed in foster care through DCS and the juvenile courts in child in need of services (CHINS) cases are eligible for assistance under this federal entitlement program. A smaller percentage of children placed in foster care through court orders in juvenile delinquency cases, under supervision of juvenile court probation departments, are also eligible for assistance under this federal program. One of the pending amendments concerned requirements for transition plans for children aging out of foster care. For that reason DCS determined that it should await final Congressional action on the pending federal legislation in order to consider any new requirements relating to the same subject as the new Indiana law and assure the ability of DCS to comply with both laws to the extent possible, through any rule to be adopted on this subject.

On October 7, 2008, federal P.L.110-351 was signed into law, under the title "Fostering Connections to Success and Increasing Adoptions Act of 2008". Section 202 of that law added a new requirement for state plans to meet the eligibility requirements for Title IV-E funding, that is codified at 42 U.S.C. 675(5)(H), relating to the subject of this proposed rule. That provision of the new federal law contains additional requirements for both preparation of transition plans for children in foster care approaching age eighteen (18) who are eligible for foster care or independent living services funded in part through Title IV-E, and the contents of those plans. In developing the proposed rule, DCS needed to consider and include in the rule provisions necessary for compliance with both state and federal laws on the same subject.

In addition, during the time immediately following passage of both Indiana P.L.143-2008 and federal P.L.110-351, DCS central office staff, and particularly the budget and finance staff, was required to devote most of its time to preparations for implementation of the transfer of all child welfare services funding responsibilities from county family and children's funds to state appropriations administered by DCS, as required by provisions of HEA 1001 (P.L.146-2008), effective January 1, 2009. Under Executive Order 2-89 and Financial Management Circular (FMC) 2006-1, DCS is required to submit any proposed rule to the State Budget Agency for approval before submitting the proposed rule and notice of public hearing to the Indiana Register for publication. DCS must submit a fiscal impact analysis to the State Budget Agency and also prepare and submit a cost-benefit analysis (under FMC 2006-2) and small business impact statement (under [IC 4-22-2.1-5](#)) with any request for State

Budget Agency approval for filing the proposed rule. The need for DCS to give priority to implementation issues relating to P.L.146-2008 necessitated delay in beginning the rule adoption process until after January 1, 2009, when DCS fiscal staff would have the capability to prepare the fiscal documents needed for any proposed rule.

The Department of Child Services is currently providing most, if not all, of the transition plan services for youth aging out of foster care that are required by the recent state and federal laws referenced above, through policies and procedures relating to independent living services that are posted on the DCS website and that were in effect before the effective dates of the new statutory requirements. The proposed rule incorporates many of the provisions of those policies, as well as the statutory requirements.

At the time DCS received State Budget Agency approval to publish the proposed rule, the Department had in process some updates and amendments to its independent living and transitional services policies for youth transitioning out of foster care. When those policy amendments were approved, DCS again reviewed the draft proposed rule to assure its consistency with the updated policies.

On March 23, 2010, federal P.L.111-148, the Patient Protection and Affordable Care Act, was signed into law. Section 2955(a) of that law amended 42 U.S.C. 675(5)(H) by adding new requirements for the contents of transition plans for children aging out of foster care. That new federal law provision, effective October 1, 2010, requires inclusion of information about the importance of providing instructions and authority for another individual to make health care treatment decisions for an individual who becomes incapacitated, and an option for the youth to execute, as desired, an appropriate health care power of attorney or other related documents, as recognized under applicable state law. On June 7, 2010, the U.S. Department of Health and Human Services, through issuance of ACYF-CB-PI-10-10, provided guidance on the procedures and requirements to implement that new provision of federal law. Accordingly, DCS has added to the proposed rule language reflecting those requirements, which have no additional fiscal impact.

The notice of intent was posted to the Indiana Register on March 11, 2009. Subsequently, DCS staff held numerous meetings and received input from DCS local and regional offices, regarding the draft proposed rule, and made several changes and revisions in the draft before its approval by the Director for submission to the State Budget Agency with the required fiscal information. On November 3, 2009, within 250 days after posting of the notice of intent, we submitted to the AROC a letter (posted November 18, 2009) regarding the need for additional time to complete adoption of the rule. The letter requested an extension of the deadline for final rule approval until December 31, 2010. The Department expects to hold the public hearing on this proposed rule within thirty (30) days after the date of the last publication of the hearing notice, in the manner required by law, and to adopt a final rule, subject to approval by the Attorney General and the Governor as required by [IC 4-22-2](#), by October 1, 2010.

If you need additional information concerning this matter, please do not hesitate to contact me at (317) 233-6547 or by e-mail as shown below.

Sincerely,

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Cc: Indiana Register
James W. Payne, Director, DCS
Jeffrey M. Lozer, General Counsel, DCS

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