

Administrative Rules Oversight Committee Notice
60 Day Requirement ([IC 4-22-2-19](#))
LSA Document #09-168

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 #09-168 – Proposed Rule Regarding Older Youth Foster Care

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 not applicable to this notice.

[IC 31-28-5.7](#) was added by P.L.143-2008, SEC. 11, which became effective July 1, 2008. That chapter requires DCS to receive and administer requests by an individual who is age seventeen and six months (17.5), eighteen (18), nineteen (19), or twenty (20), and who was receiving, or is anticipated to be receiving, foster care under a court order during the month before the individual became or will become age eighteen (18), for foster care services during a time before the individual becomes age twenty-one (21), subject to certain eligibility conditions relating to employment or attendance in a postsecondary educational program. The services would be provided under a court order upon petition by DCS on behalf of the individual requesting the services. The chapter further directs DCS to adopt rules to implement the program.

On July 3, 2008, DCS issued administrative letter 08-09 that added a new section (chapter 11, section 16) to the DCS child welfare policy manual, effective July 1, 2008. The letter and manual section have been posted on the DCS Internet website since that date. That section establishes a policy and procedures, including an application form, for implementing the older youth foster care program enacted as [IC 31-28-5.7](#), pending adoption of a rule for inclusion in the Indiana Administrative Code. DCS delayed initiation of the formal rulemaking procedure for several reasons.

First, at the time this new chapter 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 and 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. However, the federal law did not provide financial assistance for youth continuing in foster care after attaining age eighteen (18). One of the pending amendments concerned possible extension of assistance for the benefit of older youth between the ages of 18 and 21. DCS determined that it would be advisable to await final Congressional action on the pending federal legislation in order to consider any new provisions relating to the same subject as the new Indiana law relating to foster care for older youth, and 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 201 of that law amended the definition of "child", for purposes of eligibility for federal financial assistance under Title IV-E, to include, at state option, an individual in foster care under responsibility of the state who has attained age eighteen (18) and who has not attained age nineteen (19), twenty (20), or twenty-one (21), as the state may elect, and who meets certain other conditions relating to employment or education. However, that amendment does not become effective until October 1, 2010.

Moreover, the eligibility conditions differ significantly from the eligibility requirements under the Indiana law applicable to the older youth foster care program. Also, the federal law does not cover otherwise eligible youth who are not subject to continuing care and supervision responsibility of the state Title IV-E agency (DCS), or the juvenile court probation department, through an open CHINS or delinquency case. Accordingly, DCS concluded that it would be necessary to proceed with this rule adoption under the Indiana law, independently from any decision whether to exercise the federal law option under Section 201 of P.L.110-351, after analysis of the projected fiscal impact of the federal law option. At this time, DCS has not decided whether to exercise any of the optional federal law provisions relating to foster care for older youth.

Second, at the time [IC 31-28-5.7](#) was enacted and became effective, DCS was unable to project with any confidence the number of potentially eligible youth who might apply for older youth foster care under this new statutory authorization. Since DCS would be required to pay the established foster care per diem rate for each individual receiving services under the program, DCS reasonably believed that some initial experience with the program under the procedures established by the posted DCS policy would be needed before any projection of the potential fiscal impact could be made. At the time the notice of intent for the proposed rule was filed, few applications had been received and none had been approved as meeting the policy eligibility requirements for filing with the court. As of the date of this notice, only five (5) youth have been accepted for the program, and one of those voluntarily left the program after approximately four months. Therefore, DCS now projects, for purposes of the fiscal impact statement of the proposed rule as submitted to the State Budget Agency, that the number of youth entering the program, under the terms and conditions of the statute and proposed rule, will be less than ten percent (10%) of the estimated number of 300 children annually who become age eighteen (18) while in foster care.

Third, during the time immediately following passage of both Indiana P.L.43-2008 and federal P.L.110-351, DCS central office staff, and particularly the budget and finance staff, was required to give priority and devote most of its time to preparations for implementation of the transfer of all child welfare 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. The agency must submit a fiscal impact analysis to the State Budget Agency and also prepare and submit any applicable cost-benefit analysis (under FMC 2006-2) and small business impact statement (under [IC 4-22-2.1-5](#)) with the 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 necessary fiscal documents for any proposed rule.

The notice of intent for this proposed rule 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 has 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. A notice of intent for a related rule, concerning transitional services plans for youth aging out of foster care and youth receiving older youth foster care under this program, was also posted on March 11, 2009. At the time DCS received State Budget Agency approval to publish this proposed rule, publication of the related proposed rule was being delayed for the reasons stated in the separate letter concerning that rule, enclosed with this letter.

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 subject, please do not hesitate to contact me at (317) 233-6547 or by e-mail as shown below.

Sincerely,

John Wood
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Department of Child Services

Indiana Register

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Cc: Indiana Register

James W. Payne, Director, DCS

Jeffrey M. Lozer, General Counsel, DCS

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