

60 Day Requirement ([IC 4-22-2-19](#))

LSA Document #16-55

July 15, 2016

On behalf of the Indiana Department of Child Services (DCS) I am submitting this notice in compliance with [IC 4-22-2-19\(c\)](#), which requires an agency to begin the rulemaking process not later than 60 days after the effective date of the statute that authorizes the rule, unless a notice is filed with the Publisher stating the reasons for the agency's noncompliance.

The specific authority for this rulemaking is contained in [IC 31-28-5.8-9](#). That chapter provides authorization for DCS to initiate and operate a program for older youth (age 18 and 19) receiving foster care immediately before becoming age 18, which provides services with court approval for transitioning to independent living, described as "collaborative care". It was enacted by P.L.48-2012 SEC. 34, effective July 1, 2012. That statute also repealed and replaced an earlier program, contained in [IC 31-28-5.7](#), described as "older youth foster care". Both programs include the creation and approval of transitional services plans for the eligible youth, described in [IC 31-25-2-21](#) and implementing rules contained in [465 IAC 2-14](#). The additional services provided to those youth require a voluntary agreement between the eligible youth and DCS. Neither the statute nor its implementing policies or rules regulate the conduct of the affected youth beyond the provisions of the voluntary agreement. However, the collaborative care program conforms to the provisions in current federal law concerning eligibility of the cost of providing those services, for the benefit of older youth transitioning from foster care to independent living, for federal financial assistance under Title IV-E of the Social Security Act. That federal law provision was enacted after Indiana's enactment of [IC 31-28-5.7](#).

At the time [IC 31-28-5.8](#) became effective DCS was continuing to provide assistance under the previous program to some youth, in accordance with the terms of the repealed statute and the rule codified at [465 IAC 2-15](#). Section 10 of the statute, which expired June 30, 2015, provided that youth receiving services under the older youth foster care program before July 1, 2012, could either transfer to the new collaborative care program by September 1, 2012, or continue to receive services under the repealed program agreement. DCS adopted policies for implementation of the new statutory procedures, and has been operating the program under those policies pending adoption of rules as contemplated in the statute.

The following circumstances and considerations account for the delay in adoption of the rules for this program beyond the 60 day time specified in [IC 4-22-2-19\(c\)](#):

1. Experience with implementation of the procedures for administration of this program through the DCS policies adopted to begin the program indicated the need for some statutory amendments. Amendments to the definitions of "older youth" in section 4 and "host home" in section 3 were enacted in 2013 and 2014, respectively. In 2015 amendments were enacted to section 5, relating to eligibility and court petitions, and section 7, relating to court periodic reviews and orders, and section 5.5 was added, relating to criminal history checks for each person residing with an older youth in a host home or supervised independent living arrangement. Those amendments required DCS to review and rewrite parts of its draft rule before it was ready to be submitted as a proposed rule.
2. DCS required additional time and experience with operating the new program in collaboration with the youth beneficiaries, to determine the needs of the eligible youth and tailor its policies and resulting rule to best meet those needs, before adopting a new rule that would be legally binding on both DCS staff and the program beneficiaries.
3. In January 2013 Executive Order 13-03 was issued, requiring agencies to obtain approval of the Office of Management and Budget (OMB) for an exception to the otherwise applicable moratorium on adoption of new rules. DCS submitted its draft proposed rule to the OMB on August 3, 2015, and received a letter from OMB dated December 15, 2015, authorizing DCS to commence the rulemaking procedure for this rule. DCS then prepared and submitted its required family impact statement, fiscal impact statement, and cost-benefit analysis applicable to the proposed rule, and sent its Notice of Intent to the Register to begin the rulemaking procedure.
4. Since beginning the operation of this program in 2012, DCS has found it challenging to fit young adults into procedures intended for children, and to modify its wardship and supervision procedures in a rule that both ensures state employee safety and meets the needs of the transitioning youth, while also allowing enough flexibility to operate the program without the need for frequent amendment. DCS believes the current proposed rule meets those criteria.

Indiana Register

The proposed rule, which also includes conforming amendments and updates to provisions of the current rule on transitional services plans in [465 IAC 2-14](#), was submitted to the Indiana Register, following receipt of the required approval letter from the State Budget Agency under Executive Order 2-89 and FMC 2010-4, and posted on June 22, 2016, together with a Notice of Public Hearing scheduled on July 21, 2016. At this time DCS has not received any comments or questions in response to those postings, and expects to proceed with adoption of a final rule as quickly as feasible following the public hearing.

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