

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

LSA Document #16-216

September 22, 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 with that specified time frame.

The specific authority for the portion of this rulemaking that relates to the state-funded adoption subsidy program is contained in [IC 31-19-26.5-12](#), which specifies subjects to be addressed in the agency rules regarding implementation of that program. That statute was enacted in P.L.146-2008, effective January 1, 2009. The authority for the other portions of this rulemaking, relating to federally supported adoption assistance and kinship guardianship assistance programs authorized in the provision of Title IV-E of the Social Security Act codified at 42 U.S. Code Section 673, and the related state-funded guardianship assistance program that replaced the previous program funded through Title IV-A of the Social Security Act, is the general authority in [IC 31-25-2-18](#) for DCS to "adopt rules under [IC 4-22-2](#) necessary to carry out the department's . . . duties under this article." That general provision was added or recodified in P.L. 145-2006, effective July 1, 2006.

The Department's "duties under this article" are partially listed in [IC 31-25-2-7\(a\)](#), including "administering adoption and guardianship services" (subdivision (10)) and "providing and administering child services" (subdivision (3)). The term "child services" is defined in [IC 31-9-2-17.8](#), which was added in P.L.146-2008, SEC. 537, effective January 1, 2009. That definition currently includes in subdivision (1)(E) adoption or kinship guardianship assistance under Title IV-E (clause (i)); adoption subsidies or assistance under [IC 31-19-26.5](#) (clause (ii)); assisted guardianships under Title IV-A (clause (iii)); and "other financial assistance for the benefit of a child. . . including a legal guardianship established to implement a permanency plan. . . if [IC 29-3-8-9](#) applies and the assistance is approved under a rule or published policy of the department" (clause (iv)). The programs for kinship guardianship assistance in clause (i) and other financial assistance in clause (iv) were added to this definition by P.L.229-2011, SEC. 255, effective July 1, 2011.

In addition to these program amendments in the state laws applicable to DCS, the development of the rules included in this rulemaking was further delayed due to changes in the applicable federal laws that occurred after DCS was given responsibility for implementing and operating these programs. In particular, federal P.L.110-351 was enacted in October 2008, after enactment of Indiana P.L.146-2008 that transferred all funding of child welfare services from county property tax levies to state appropriations, but before the effective date of that statute. The new federal law made numerous changes in the provisions of Title IV-E that affected both eligibility of children and their families for adoption assistance and the funding needed to provide that assistance. That law also included new options for services benefitting older youth that did not become effective until October 2010 and required states to elect whether to opt into those programs. Also, although [IC 31-19-26.5-10](#) establishes an adoption assistance account for the purpose of funding both state adoption subsidy payments and the state's share of payments under the federal program, no funds have been specifically appropriated for that account. Therefore, DCS was required to locate funds available in its general child welfare services appropriations in order to allocate funding for eligible state adoption subsidy children in addition to paying the state's share of the IV-E entitlement program and continuing payments for county adoption subsidy beneficiaries as ordered under the provisions of repealed [IC 31-19-26](#). DCS decided to opt into the federal guardianship assistance program effective July 1, 2012, replacing the former program funded through Title IV-A. Because of the uncertainties regarding the number of children who would be eligible for the different assistance programs, the time during which funded assistance agreements would need to continue, and the need to fund other mandatory child welfare services from available appropriations, DCS decided not to initiate periodic payments for new state adoption subsidy agreements. Approved agreements were placed on a waiting list to be activated only when current and future funding could be committed based on experience in operating these related programs.

Instead of proceeding with rulemaking for these assistance programs, DCS has been implementing them through policies adopted in its child welfare manual, following up administrative letter guidance and instructions originally issued in December 2008. Several of those policies have been amended and updated during the last four years. Further, in 2014 to resolve disputes over whether funding was or could be made available to implement state subsidy agreements on the waiting list, additional funds were made available to DCS to commence payments under those agreements, requiring negotiated periodic payment amounts to be determined for each agreement.

That decision also required substantial revisions in the draft rules that had been developed and were awaiting experience with the programs being implemented through the federal and DCS policy manual provisions and applicable statutes.

Since January 2013 Executive Order 13-03 has required DCS to obtain authorization from the Office of Management and Budget (OMB) for an exception to the moratorium on new rulemaking. Upon completion of the revised draft of the proposed rules based on experience with the programs as outlined above, the draft rules were submitted to the OMB for purposes of review under the provisions of the Executive Order, before a Notice of Intent could be submitted under [IC 4-22-2-23](#) for publication in the Indiana Register. The moratorium exception was approved and the Notice of Intent was posted in the Register on May 25, 2016 (DIN: [20160525-IR-465160216NIA](#)). The Proposed Rule and related documents were then submitted to the State Budget Agency for approval, as provided in Executive Order 2-89 and FMC 2010-4. Approval was received and the Proposed Rule submitted to the Register on September 15, 2016, together with a Notice of Public Hearing scheduled on October 26, 2016. DCS intends to proceed as quickly as feasible to complete the required rulemaking process as provided in the applicable provisions of [IC 4-22-2](#).

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