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**TITLE 460 DIVISION OF DISABILITY, AGING, AND
REHABILITATIVE SERVICES**

LSA Document #05-119

To: The Honorable Michael Murphy, Chairperson
c/o Ms. Sarah Burkman
The Administrative Rules Oversight Committee

From: Kevin Wild, Staff Attorney
Office of General Counsel
Family and Social Services Administration

Re: LSA #05-119, Home and Community Based Provider Standards Rule

Date: February 3, 2006

Cc: Steve Barnes, LSA
John Davis, General Counsel, FSSA
Peter Bisbecos, Director, DDRS
Steven Smith, Director, Division of Aging

On behalf of the Family and Social Services Administration, Division of Disability, Aging and Rehabilitative Services, 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 June 1, 2005 (28 IR 2757). This rule is a rewrite of the original 460 IAC 1.1, which was voided by legislation. The statutory requirements for this new rule are greater than those for a typical rule, including, among other things, the allowance of 90 days for review by the CHOICE Board, public hearings and input from interested parties, and additional review of modifications by the CHOICE Board all before the proposed rule can even be filed. Changing of key personnel and reorganization within FSSA have also contributed to the complexity of an already complex rule, necessitating additional research and discussion within the agency. In order to comply with all of the statutory requirements and to complete the necessary development of the rule, the agency will likely need additional time.

In addition, any rule adopted by the agency must be approved by the Family and Social Services Committee (see IC 12-8-3), a committee that meets only once per month. It is possible, as has happened on occasions in the past, that a monthly meeting could occur without a quorum and therefore without any action being taken on an adopted rule. This would mean delayed approval until the next monthly meeting of the committee and presence of a quorum. 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. For these reasons, it may not be possible for the rule to 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 September 1, 2006.

This notice setting forth the expected date of approval of LSA #05-119 as September 1, 2006, is being submitted in a timely manner. February 6, 2006 is the two hundred fiftieth day after the date of publication of the notice of intent to adopt a rule.