



# Administrative Rulemaking

**Medicaid Advisory Committee - February 27, 2020**

**Chelsea Princell  
Staff Attorney, Office of General Counsel  
Family and Social Services Administration**

# Presentation Overview

1. What is a rule
2. What documents are required for rule promulgation
3. The 12 steps to rule promulgation
4. Other rulemaking actions



# What is an Administrative Rule?

- An agency statement that applies to classes of individuals and situations that are regulated by the agency
- Have the force and effect of law
- Used to implement, interpret, or clarify law or policy
- A rule must:
  - Be statutorily authorized;
  - Have ascertainable standards; and
  - Be promulgated properly
- Published in the Indiana Administrative Code
  - <http://www.in.gov/legislative/iac/>



# When to Adopt Rules

- An Agency may adopt rules when:
  - Agency action has an impact on an outside group
  - Authorized by state or federal law



# Rule Promulgation Process (Overview)

- Governed by IC 4-22-2
- 12 Step Process:
  1. Internal Agency Approval
  2. Approval to Proceed with Rulemaking
  3. Publication of the Notice of Intent
  4. Budget and Fiscal Approval
  5. Notice of Public Hearing
  6. Public Hearing
  7. Review and Respond to Public Comments
  8. Agency Final Adoption
  9. Attorney General Approval
  10. Governor's Approval
  11. File with Publisher
  12. Rule takes Effect



# Initiating Rulemaking

- **Contains 6 Documents:**
  1. Draft of the proposed rule
  2. Request to Proceed with Rulemaking
  3. Family Impact Statement
  4. Fiscal Impact Statement
  5. Cost-Benefit Analysis
  6. Small Business Economic Impact Statement



# 1. Internal Agency Approval

## Includes:

- FSSA Office of General Counsel
- FSSA Chief Financial Officer
- FSSA Secretary



## 2. Approval to Proceed with Rulemaking

### Office of Management and Budget (OMB)

- Documents reviewed:
  - Draft of Proposed Rule
  - Request to Proceed with Rulemaking
  - Cost-Benefit Analysis
  - Small Business Economic Impact Statement
  - Fiscal Impact Statement

### Governor's Office

- Documents Reviewed:
  - Draft of Proposed Rule
  - Family Impact Statement

**\*Rule must receive approval before proceeding to next step!**





### 3. Notice of Intent to Adopt a Rule

- Filed after Request to Proceed with Rulemaking is approved
- Posted to the Indiana Register
  - At least 28 days before publication of Proposed Rule
- Must include an overview of the intent and scope of the proposed rule and the statutory authority for the rule
- 1-year deadline begins to run

## 4. Budget and Fiscal Approval

- **State Budget Agency (SBA)**
  - Documents reviewed:
    - Fiscal Impact Statement
    - Cost-Benefit Analysis
- **Indiana Economic Development Corporation (IEDC)**
  - Documents reviewed:
    - Small Business Economic Impact Statement
  - IEDC must have comments to the agency 7 days prior to the public hearing



## 5. Notice of Public Hearing

- Published in the Indiana Register and Indy Star
- Publication of the NOPH also includes publishing the Proposed Rule on the Indiana Register
- Must be published at least 21 days before the public hearing

## 6. Public Hearing

- Held at least 21 days after NOPH
- Purpose is to accept public comments

# 7. Public Comment Review

- Agency must:
  - Fully consider all comments received on the proposed rule
  - Respond in writing to comments received
- Changes made to proposed rule after the proposed rule is published (Step 5) cannot substantially differ from the proposed rule



Internal  
Agency  
Approval

Approval to  
Proceed with  
Rulemaking

Notice of  
Intent

Budget and  
Fiscal  
Approval

Notice of  
Public  
Hearing

Public  
Hearing

Public  
Comment  
Review

Agency Final  
Adoption

Attorney  
General  
Approval

Governor's  
Approval

File with  
Publisher

Rule  
Effective

## 8. Agency Final Adoption

- Final rule must be adopted by FSSA Secretary



## 9. Attorney General Approval

- Attorney General has 45 days to review and approve the rule
- Basis for Review:
  - Form and legality
- Can disapprove only for cause
- No action for 45 days = approval

# 10. Governor's Approval

- **Governor has 15 days to review**
  - 15 day extension option, if notice is provided
- **May approve or disapprove with or without cause**
- **No action for 15 days = approval**



# 11. File with Publisher

- Submit rule to publisher for filing
- Reviews for acceptable form
- Publisher has 3 days to review

## 12. Rule Effective

- **Effective 30 days from the date the final rule is filed with the Publisher**
  - **Effective date can also be stated in the rule**

# Ability to Recall & Withdrawal a Rule

- Recalls
  - Allows agency to make changes to the rule and resubmit
- Withdrawals
  - Terminates the rulemaking action



# Other Rulemakings

1. Readoptions
  - Rules expire after 7 years
2. Agency Corrections
  - Correct clerical and typographical errors
  - Effective 45 days from filing
3. Emergency Rules
  - Must have statutory authority
  - Effective upon filing
  - Expires 90 days after the rule is accepted for filing



# Questions?

