



# MINUTES

## NOVEMBER 2018 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mark Chelgren, Chair  
Senator Mark Costello  
Senator Robert E. Dvorsky  
Senator Pam Jochum

Representative Dawn E. Pettengill, Vice Chair  
[by teleconference]  
Representative Steven Holt  
Representative Megan Jones  
Representative Amy Nielsen  
Representative Rick Olson

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

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### BULLETINS NEEDED FOR THIS MEETING: 10/10/18, 10/24/18

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#### Procedural Business

Senator Chelgren convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:04 a.m. on Tuesday, November 13, 2018, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the October 9 and October 25, 2018, meetings were approved. The next meeting was scheduled for Friday, December 7, 2018, at 9:00 a.m. Mr. Jack Ewing, Administrative Code Editor, welcomed new members of the committee and provided an update on outstanding notifications regarding delayed rulemaking previously received by the committee. The meeting was adjourned at 11:35 a.m.

#### Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the Legislative Services Agency (LSA) fiscal report. Committee members were reminded that they may ask questions of fiscal analysts during the fiscal overview.

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Theresa Armstrong

ARC 4044C (ANOIA), Mental Health and Disability Services Regions, Proposed Amendments to Chapter 25

In response to an inquiry from committee members, Ms. Armstrong explained that subacute facilities are licensed by the Department of Inspections and Appeals, and there are currently two licensed facilities in Dubuque and Waterloo.

No action taken on ARC 4044C.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

ARC 4052C (FEAN), Special Population Nursing Facility Criteria—Increase in Age Limit, Inclusion of Residents in an Intermediate Care Facility for Persons with Medical Complexity, Amendments to Rules 81.1 and 82.1  
No discussion on ARC 4052C.

ARC 4064C (AF), Waiver of Right to Administrative Disqualification Hearing for Alleged Intentional Food Assistance Program Violation, Amendments to Rules 7.16 and 7.21 and Paragraphs 7.8(6)“P” and 7.10(3)“b”

In response to an inquiry from committee members, Ms. Freudenberg explained that the period of time for disqualification is set by a federal regulation at 12 months for a first disqualification and 24 months for a second, with a judge making the determination based on a database of violations maintained by the department. In response to another inquiry, Ms. Freudenberg explained the process for a possible disqualification. A recipient of assistance is referred to the department’s appeals section, which results in a referral form being sent to the recipient with information about working with a referral agent and filing an appeal. If the form is not returned, then the department schedules a disqualification hearing.  
No action taken on ARC 4064C.

ARC 4065C (AF), Provider Reimbursement for Case Management and Targeted Case Management, Amendments to Subrule 79.1(2) and Paragraph 79.1(1)“d”

In response to inquiries from committee members, Ms. Freudenberg stated that she would follow up with the committee about the number of Iowans impacted by Medicaid fee-for-service and the name of and financial impact of the rulemaking on the provider described in the preamble of the rulemaking as being subject to a negligible change in rate of 40 cents. In response to another inquiry, she explained that fiscal year 2017 numbers were not used for the rate calculation because even though the fiscal year is closed out, the final numbers have not been reported yet. She stated that she would follow up with the committee regarding possible retroactivity and fiscal year 2017.  
No action taken on ARC 4065C.

ARC 4066C (AF), Adjustment of Home Health Agency Reimbursement Rates, Amendment to Subrule 79.1(2)

No discussion on ARC 4066C.

ARC 4067C (AF), Medical Assistance—Inpatient Hospital Readmission Policy, Amendment to Paragraph 79.1(5)“g”

In response to an inquiry from committee members, Ms. Freudenberg explained that this rulemaking would not apply to managed care organizations (MCOs) because MCOs set their own rates through their process of contracting with the state. She stated that she would follow up with the committee with information on the degree of the department’s oversight of MCOs setting such rates.  
No action taken on ARC 4067C.

ARC 4068C (AF), Medicaid—Pharmacy Copayment, Amendment to Paragraph 79.1(13)“a”

No discussion on ARC 4068C.

ARC 4069C (AF), Family Planning Program—Participating Providers, Distribution of Funds, Amendments to Chapter 87

No discussion on ARC 4069C.

ARC 4089C (NOIA), Medicaid—Health and Disability Waiver, Amendment to Rule 83.2

No discussion on ARC 4089C.

## **ADMINISTRATIVE SERVICES DEPARTMENT**

Representing the agency: Tami Wienczek

ARC 4045C (NOIA), Applicants for Executive Branch Positions — Disclosure Requirements, Proposed Amendments to Rules 50.1, 54.2, and 54.8

Committee members requested that Ms. Wienczek provide the committee with a copy of the public comment received by the department on this rulemaking, and she agreed.

No action taken on ARC 4045C.

ARC 4050C (NOIA), Procurement Policies and Procedures, Proposed Amendments to Chapters 103, 117, and 118

In response to an inquiry from committee members, Ms. Weincek explained that language relating to suspension of state drivers for failure to complete a driver improvement course is being changed from “will” to “may” to allow for situations in which a person fails to complete a class based on extenuating circumstances such as hospitalization. She stated that she would follow up with the committee regarding what circumstances might be considered extenuating.

No action taken on ARC 4050C.

ARC 4053C (AF), Update of References — Department Organization, Statutory Citations, Addresses, Amendments to Chapters 1, 4 to 9, 41, 42, 48, 55, 56, 58, 59, 61, 62, 64 to 66, 71, 100 to 103, and 119  
No discussion on ARC 4053C.

ARC 4084C (NOIA), Capitol Complex Operations, Proposed Amendments to Rule 100.3 and Subrule 100.4(12)

Committee members noted that the use of tobacco-vaporizing products, or “vaping,” was not included in Iowa Code chapter 142D, the Smokefree Air Act, or in Governor Branstad’s Executive Order Number 68, which were cited in the rulemaking. Ms. Weincek explained that the rulemaking updates the department’s rules on smoking to align with current department practices as outlined in the department’s employee handbook. Committee members stated that such a policy change should be made through legislation or a new executive order rather than by a rule based on a handbook. In response to further questions, Ms. Weincek explained that the employee handbook is not subject to approval by the General Assembly, as it is considered “policy,” and that the handbook only applies to state employees, not the general public. Committee members stated that the handbook should not govern the general public, that the handbook should reflect the law, not vice versa, and that this rule change is not in keeping with the intent of the law.

In response to another question, Ms. Weincek explained that the change in hours for the Capitol building was made to align with the hours for the building set by the General Assembly for the legislative session.

No action taken on ARC 4084C.

ARC 4097C (AF), Procurement—Certification of Targeted Small Businesses, Amendments to Rule 117.2 and Subrule 117.5(2)

No discussion on ARC 4097C.

#### **CHIEF INFORMATION OFFICER, OFFICE OF THE**

Representing the agency: Robert von Wolfradt

ARC 4098C (AF), Broadband Grants Program, Adoption of Chapter 22

In response to an inquiry from committee members, Mr. von Wolfradt explained that he could not assure the committee that this program would bring high-speed Internet to all parts of the state, but that this is the first time the state has allocated funds toward this purpose. He noted that while this program only covers 15 percent of the cost of a project, tax incentives offered for such projects have had tremendous success.

No action taken on ARC 4098C.

#### **BANKING DIVISION**

Representing the agency: Rodney Reed, Shauna Shields

ARC 4054C (AF), Organizational Structure of the Division, Amendment to Rule 1.3

No discussion on ARC 4054C.

ARC 4055C (AF), Application Procedures, Amendments to Chapter 2

No discussion on ARC 4055C.

ARC 4056C (AF), Public Records and Fair Information Practices, Amendments to Chapter 7  
No discussion on ARC 4056C.

ARC 4057C (AF), General Banking Powers, Amendments to Rules 8.8 and 8.9  
Committee members thanked the division for working to resolve stakeholders' concerns regarding the division's rulemaking.  
No action taken on ARC 4057C.

ARC 4058C (AF), Real Estate Lending; Leasing, Amendments to Rules 9.2 and 9.3  
No discussion on ARC 4058C.

ARC 4059C (AF), Contested Cases, Amendments to Chapter 11  
No discussion on ARC 4059C.

ARC 4060C (AF), Waivers and Variances—Update of Citations, Amendments to Chapter 12  
No discussion on ARC 4060C.

ARC 4061C (AF), Debt Management, Adoption of Chapter 20  
No discussion on ARC 4061C.

### **UTILITIES DIVISION**

Representing the agency: Cecil Wright

ARC 4046C (NOIA), Rate Cases, Tariffs, and Rate Regulation Election Practice and Procedure, Proposed Amendments to Chapter 26  
No discussion on ARC 4046C.

ARC 4104C (AF), Evaluation of Management Efficiency of Rate-Regulated Utilities, Amendments to Chapter 29  
No discussion on ARC 4104C.

### **CORRECTIONS DEPARTMENT**

Representing the agency: Michael Savala

ARC 4062C (AF), Institutions Administration—Pornographic Materials Ban, Amendments to Rules 20.2 and 20.6  
In response to an inquiry from committee members, Mr. Savala explained that pornographic materials possessed by prisoners prior to the rulemaking becoming effective will need to be sent out of the prison prior to the effective date or will be confiscated and destroyed. He further explained that notice of this change has been posted in prisons.  
No action taken on ARC 4062C.

Emergency Filing, ARRC Authorization Required: Policies and Procedures, Amendments to Chapters 1, 38, and 42 to 45

Committee members noted that they received feedback on the rulemaking from local community-based corrections personnel and questioned Mr. Savala's assertion that the rulemaking is nonsubstantive in nature.

Mr. Jerry Evans, Director of the Fifth Judicial District Department of Correctional Services, made a public comment, stating that the 70-day delay the committee imposed on previous rulemaking on this matter had been helpful and that all of the district directors support the rulemaking.

#### **Emergency Rulemaking Authorized**

A motion to authorize emergency rulemaking by the department carried on an 8-0 roll call vote.

## **REVENUE DEPARTMENT**

Representing the agency: Tim Reilly

ARC 4042C (NOIA), Assessment/Sales Ratio Study—Supplementary Tools, Proposed Amendment to Rule 71.12

No discussion on ARC 4042C.

ARC 4083C (ANOIA), Water Service Excise Tax, Proposed Adoption of Chapter 97

No discussion on ARC 4083C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Jennifer Klein

ARC 4043C (NOIA), Renewable Chemical Production Tax Credit Program—Definition of “Building Block Chemical,” Proposed Amendment to Rule 81.2

In response to an inquiry from committee members, Ms. Klein explained that the authority does not review chemicals for addition to the program of its own accord, but only upon receiving an application. She explained that the authority received and accepted an application from a business planning to use the four chemicals included in the rulemaking.

No action taken on ARC 4043C.

ARC 4063C (AF), Iowa Energy Center, Adoption of Chapter 403

No discussion on ARC 4063C.

## **IOWA FINANCE AUTHORITY**

Representing the agency: Mark Thompson, Lori Beary

ARC 4087C (NOIA), Private Activity Bond Allocation, Proposed Amendments to Chapter 8

No discussion on ARC 4087C.

ARC 4090C (NOIA), Wastewater and Drinking Water Treatment Financial Assistance Program, Proposed Amendments to Chapter 28

Committee members inquired how the rulemaking will affect funding for wastewater treatment plants and everything else. Ms. Beary responded that this is the first portion—the grant portion—of the Water Quality Bill, 2018 Iowa Acts, Senate File 512. Ms. Beary explained that the funding for this rulemaking will come from the water excise tax. Ms. Beary also explained that the program was not funded for a number of years; and will now be funded. Additionally, Ms. Beary stated that this rulemaking adds drinking water and a number of other priorities to the wastewater financial assistance program. Finally, Ms. Beary stated that this rulemaking will allow more facilities as applicants and spreads the funding out.

No action taken on ARC 4090C.

## **EDUCATION DEPARTMENT**

Representing the agency: Thomas Mayes

ARC 4048C (NOIA), Career and Technical Education, Proposed Amendments to Rules 46.1, 46.6, 46.7, 46.9, and 46.10 and Subrule 46.11(4)

No discussion on ARC 4048C.

ARC 4049C (NOIA), Supplemental Career Information Systems for Use in Career and Academic Planning, Proposed Adoption of Subrule 49.6(4)

No discussion on ARC 4049C.

Other Committee Comments

In response to Mr. Mayes' comment that department representative Ms. Nicole Proesch was not present at the department's review because she was making a presentation on school safety, committee members inquired whether the department is tying in school safety with mental health concerns. Mr. Mayes responded that he would have that information submitted to the committee.

**COLLEGE STUDENT AID COMMISSION**

Representing the agency: Todd Brown

ARC 4080C (NOIA), Changes to Address of Commission, Proposed Amendment to Subrule 1.2(1)

No discussion on ARC 4080C.

ARC 4081C (NOIA), Registered Nurse and Nurse Educator Loan Forgiveness Program, Proposed Rescission of Chapter 34

No discussion on ARC 4081C.

**NATURAL RESOURCE COMMISSION**

Representing the agency: Joe Larschied, Tammie Krausman

ARC 4072C (AF), Licenses—Fees, Amendments to Rules 15.1 and 15.12

Mr. Fred Long, a member of the public and president of the Iowa Conservation Alliance, spoke in favor of the rulemaking and cited the need for fees for the trust fund.

No action taken on ARC 4072C.

**PUBLIC HEALTH DEPARTMENT**

Representing the agency: Susan Dixon

ARC 4074C (AF), Outpatient Diabetes Education Programs, Amendments to Chapter 9

No discussion on ARC 4074C.

ARC 4075C (AF), Maternal and Child Health Program, Amendments to Chapter 76

No discussion on ARC 4075C.

ARC 4076C (AF), Center for Rural Health and Primary Care, Amendments to Chapter 110

No discussion on ARC 4076C.

ARC 4077C (AF), Iowa Law Enforcement Emergency Care Provider, Rescission of Chapter 139

No discussion on ARC 4077C.

ARC 4078C (AF), Medical Cannabidiol Program, Amendments to Rules 154.26, 154.69, 154.71 and Subrules 154.27(5), 154.28(4), 154.51(3), 154.52(4), and 154.72(1)

Committee members inquired whether there were any differences in efficacy with regard to changing the process lot stage as opposed to the product lot stage. Ms. Dixon indicated there were no differences in efficacy. In response to an inquiry from committee members, Ms. Dixon confirmed that the rule that detected concentration of cannabinoids may not vary more than 15 percent does not apply to the THC content, which must remain below 3 percent.

No action taken on ARC 4078C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Tony Alden, Venus Vendoures-Walsh

ARC 4051C (NOIA), Podiatrists, Orthotists, Prosthetists, and Pedorthists—Continuing Education, Practice, Discipline, Proposed Amendments to Rules 222.3 and 223.5 and Subrule 224.2(32)

Committee members inquired why there were not rules for the portion of 2018 Iowa Acts, House File 2377, section 22, which provides “[t]he rules established pursuant to this section shall include the option for a licensee to attest as part of the license renewal process that the licensee is not subject to the requirement to receive continuing education credits pursuant to this section, due to the fact that the licensee did not prescribe opioids to a patient during the previous licensure cycle.” Mr. Alden stated that it was the division’s opinion that this did not require rulemaking, rather it could be taken care of during the audit process.

No action taken on ARC 4051C.

ARC 4102C (AF), Physical Therapists and Physical Therapy Assistants — Licensure Compact, Criminal History Background Check, Amendments to Rules 200.2 and 200.3 and Subrule 200.7(1)

No discussion on ARC 4102C.

## **DENTAL BOARD**

Representing the agency: Jill Stuecker

ARC 4099C (AF), Advertising; Designation of Specialty, Amendment to Chapter 26 and Rescission of Chapter 28

No discussion on ARC 4099C.

## **MEDICINE BOARD**

Representing the agency: Jordan Esbrook

ARC 4082C (NOIA), Standards of Practice—Medical Cannabidiol, Proposed Amendment to Rule 13.15

In response to an inquiry from committee members, Ms. Esbrook confirmed that the Medical Cannabidiol Act allows the Medical Cannabidiol Board to recommend to the Board of Medicine to add debilitating conditions by administrative rule to the list of debilitating medical conditions set forth in the Act for which medical cannabidiol may be used.

No action taken on ARC 4082C.

ARC 4093C (NOIA), Standards of Practice for Medical Directors at Medical Spas — Delegation and Supervision of Medical Aesthetic Services Performed by Qualified Licensed or Certified Nonphysician Persons or Qualified Laser Technicians, Proposed Amendment to Rule 13.8

No discussion on ARC 4093C.

ARC 4094C (NOIA), Application and Licensure Fees — Acupuncturists, Genetic Counselors, Proposed Amendments to Rule 8.14 and Subrule 8.2(2)

No discussion on ARC 4094C.

ARC 4095C (NOIA), Licensure of Genetic Counselors, Proposed Adoption of Chapter 20

Ms. Esbrook began by stating that the rules are consistent with the rules regulating physicians and acupuncturists. Ms. Esbrook stated that the basis for the similar rules is that the enabling legislation, 2018 Iowa Acts, Senate File 2228, cites Iowa Code chapter 147 (General Provisions, Health Related Professions) and Iowa Code chapter 148 (Medicine and Surgery and Osteopathic Medicine and Surgery). Multiple committee members expressed concern that the rulemaking exceeded the scope of the legislation; committee members asserted that the rules, by being drafted in line with rules for acupuncturists and physicians, are not narrowly tailored for genetic counseling. Multiple committee members strongly suggested that the board return to the committee with a rulemaking that better aligns with the legislation. Committee members expressed concern that the rulemaking requires applicants to fulfill requirements that only an acupuncturist or a physician would be able to fulfill, but a genetic counselor inherently would not be able to fulfill. Ms. Esbrook stated she was not aware that was an issue and stated it was not the intention, and stated she would take the concerns back to the board.

Committee members inquired about the need for applicants to report misdemeanors. Ms. Esbrook explained that was a normal requirement for medical-related licenses. She explained what the board would do with that information, including what the consequences would be.

No action taken on ARC 4095C.

**PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 4073C (AF), Correctional Pharmacy Practice, Amendment to Rules 15.4 and 15.7 and Subrules 15.5(3) and 15.8(1)

No discussion on ARC 4073C.

ARC 4086C (NOIA), Temporary Scheduling of Cannabidiol Drug Products as Schedule V Controlled Substances, Proposed Amendment to Subrule 10.39(4)

In response to an inquiry from committee members, Ms. Mears stated that the drug was primarily marketed for epilepsy.

No action taken on ARC 4086C.

ARC 4085C (AFE), Temporary Scheduling of Cannabidiol Drug Products as Schedule V Controlled Substances, Proposed Amendment to Subrule 10.39(4)

See discussion for ARC 4086C (NOIA).

ARC 4092C (NOIA), Universal Practice Standards—Licenses, Fees; Telepharmacy, Proposed Amendments to Rules 8.35 and 13.16

No discussion on ARC 4092C.

ARC 4091C (NOIA), Supervision of Pharmacist-Interns, Proposed Amendment to Rule 4.9

Committee members expressed concern about eliminating the cap on the number of interns that pharmacists can supervise. Committee members asked about the difference between technicians and interns. Ms. Mears stated that most people are one or another; most interns give up their technician registration when they become a pharmacy student. Ms. Mears stated that interns are able to provide counseling and immunizations, while technicians cannot. When asked to comment on whether there should be a limit to the number of interns/students/technicians a pharmacist can supervise, Ms. Mears stated that she thinks it is up to each individual pharmacist as to how many people they feel comfortable supervising depending on the pharmacist's environment and the pace of the pharmacy.

No action taken on ARC 4091C.

ARC 4096C (NOIA), Expanded Practice Standards—Statewide Protocols, Proposed Amendments to Chapter 39

No discussion on ARC 4096C.

**REGENTS BOARD**

Representing the agency: Jason Pontius

ARC 4079C (AF), Regent Admission Index—Change in Calculation, Amendment to Subrule 1.1(2)  
Committee members agreed with the rulemaking, citing the trend in Iowa away from utilizing class rank.  
No action taken on ARC 4079C.

**SECRETARY OF STATE**

Representing the agency: Eric Gookin

ARC 4103C (AF), Elections Technology Security, Adoption of Chapter 29  
No discussion on ARC 4103C.

**WORKFORCE DEVELOPMENT DEPARTMENT**

Representing the agency: David Steen

ARC 4047C (NOIA), Overpayment of Benefits—Repayment, Proposed Amendments to Subrules 25.7(6) and 25.8(1)  
Committee members inquired how the department would respond to being presented with a fraudulent credit card. Mr. Steen stated that he would report the case to the county attorney, just as he would do if there was a fraudulent overpayment.  
No action taken on ARC 4047C.

**LABOR SERVICES DIVISION**

Representing the agency: Kathleen Uehling

ARC 4071C (AF), Federal Occupational Safety and Health Standards for Exposure to Beryllium—Adoption by Reference, Rule 10.20  
No discussion on ARC 4071C.

ARC 4088C (NOIA), Hoistway Lighting and Conduit, Proposed Amendments to Rules 71.1 and 72.10 and Subrules 72.13(7) and 73.8(8)  
No discussion on ARC 4088C.

Respectfully submitted,

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APPROVED:

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Chair Mark Chelgren

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Vice Chair Dawn Pettengill