



# MINUTES

## MARCH 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Waylon Brown, Vice Chair  
Senator Pam Jochum  
Senator Mark Costello  
Senator Robert Hogg

Representative Megan Jones, Chair  
Representative Steven Holt  
Representative Joe Mitchell  
Representative Amy Nielsen  
Representative Rick L. 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: 2/13/19, 2/27/19

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:00 a.m. on Friday, March 8, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the February 8, 2019, meeting were approved. The next meeting was scheduled for April 5, 2019. Mr. Jack Ewing, Administrative Code Editor, provided a rule tracking update. He explained that all agencies included in the LSA's rule tracking report had responded to his inquiries regarding the report. The meeting was adjourned at 11:15 a.m.

#### Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report.

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Marissa Eyanson

ARC 4287C (NOIA), Assessment Levels for Nursing Facilities, Proposed Amendments to Rules 36.6(2) and 81.6(21)“b”

In response to questions from committee members, Ms. Freudenberg explained that nursing homes had agreed to the increased assessment levels and that the Centers for Medicare and Medicaid Services had not yet approved this increase but approval is expected shortly ahead of a July 1 deadline. She stated that she did not know the rebasing cost for the increase but would follow up with the committee.

No action taken on ARC 4287C.

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 4288C (NOIA), HCBS Waiver Services — Consumer Choices Option, Proposed Amendments to Chapters 78 and 79

In response to a question from committee members, Ms. Freudenberg explained that the rulemaking will result in the department making payments to providers under the waiver by reimbursement rather than by payment up front.

Committee members expressed concern that payment by reimbursement might be a hardship for providers given other issues that have arisen regarding reimbursement by managed care organizations (MCOs). Ms. Eyanson explained that this rulemaking would bring the consumer choice option into line with all other MCO models and stated that MCOs have worked through prior reimbursement issues and reimbursement should not be a problem going forward.

Committee members asked what public comments the department had received on the rulemaking, and Ms. Eyanson explained that the department had received 10 comments that had not been reviewed yet but would be summarized in the adopted rule filing.

Ms. Kim Fettkether made a public comment on behalf of Veridian Credit Union (VCU) and circulated written comments. She explained that VCU provides financial management services for Medicaid recipients under the consumer choices option (CCO). She explained that the change from prepayment to reimbursement would increase the financial risk borne by VCU if incorrect payments are made to recipients. She urged the department to include specific safeguards in the rulemaking that would reduce the financial risk. She explained that VCU is not opposed to the rulemaking if the requested safeguards are added, but also expressed concern regarding the timeline for implementation of the rulemaking and urged inclusion of a transition period for respite services under the rulemaking.

Committee members asked how much money in payroll is provided through VCU and how the requested safeguards would work. Ms. Fettkether explained that VCU covers all payroll under the CCO, which amounts to \$650,000 per month and that VCU had provided specific suggestions to the department on how the VCU's financial risk could be mitigated. Committee members asked how far in advance VCU provides payments currently, and she explained that VCU pays monthly, but does not make payments until funds are received from Department of Human Services (DHS). Committee members asked for more information about the financial risk that would be borne by VCU under the rulemaking. She explained that the risk might result from payment for unauthorized services, incorrect assignments, or computer system incompatibility relating to submission of claims. She explained that VCU would take a loss for any incorrect payments made under the rulemaking and that VCU holds back about \$40,000 in payments per month due to eligibility concerns, which constitutes VCU's current financial risk.

No action taken on ARC 4288C.

ARC 4289C (NOIA), Passive Managed Care Enrollment Process, Proposed Amendments to Rules 73.1 and 73.3

No discussion on ARC 4289C.

## **NATURAL RESOURCES DEPARTMENT**

Representing the agency: Kelli Book

ARC 4279C (NOIA), Oil, Gas, and Metallic Minerals, Proposed Adoption of Chapter 17

Committee members asked if the department had consulted the floor manager of the underlying legislation regarding this rulemaking. Ms. Book said she was unsure, but she would look into it.

No action taken on ARC 4279C.

## **ENERGY AND GEOLOGICAL RESOURCES DIVISION**

Representing the agency: Kelli Book

ARC 4278C (NOIA), General; Oil, Gas, and Metallic Minerals, Proposed Rescission of Chapters 50 and 51

No discussion on ARC 4278C.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Representing the agency: Kelli Book

ARC 4277C (NOIA), References to State Geologist and Geological Survey; Animal Unit for Small Fish; Reimbursement Cap Increase for Land Recycling Program, Proposed Amendments to Chapters 50 - 53, 65, 72, 82, and 137

Committee members asked the commission to consult the floor manager of the underlying legislation regarding this rulemaking, and Ms. Book agreed.

No action taken on ARC 4277C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker

ARC 4283C (NOIA), Procedures for Determining Competitiveness of a Communications Service or Facility, Proposed Amendments to Rules 5.1 - 5.5, and 5.8

No discussion on ARC 4283C.

ARC 4284C (NOIA), Electric Interconnection of Distributed Generation Facilities, Proposed Amendments to Rules 45.1, 45.5(10), and 45.6(2)

No discussion on ARC 4284C.

ARC 4315C (NOIA), Approval of Appraiser for Municipal Utilities, Proposed Adoption of Rule 32.10

Committee members asked if the board had consulted the floor manager of the underlying legislation regarding this rulemaking, and Mr. Oetker said he would ask the board's legislative liaison.

No action taken on ARC 4315C.

ARC 4285C (NOIA), Energy Efficiency and Demand Response Planning and Reporting for Natural Gas and Electric Utilities Required to be Rate-Regulated, Proposed Amendment to Chapter 35

Committee members asked when the committee would see the board's analysis of emergency efficiency plans of utilities. Mr. Oetker explained that the board has received four energy efficiency plans, has analyzed one, and still needs to act on the other three. Committee members clarified that the question was in regard to the board's annual report on energy efficiency. Mr. Oetker explained that the report due on May 1, 2020, would contain the requested information.

No action taken on ARC 4285C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Jennifer Klein

ARC 4281C (NOIA), Brownfield and Grayfield Redevelopment Tax Credit, Proposed Amendments to Rules 65.8(2)"a" and 65.11(7)"b"

No discussion on ARC 4281C.

ARC 4307C (AF), Renewable Chemical Production Tax Credit Program—Definition of "Building Block Chemical," Proposed Amendment to Rule 81.2

No discussion on ARC 4307C.

## **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT**

Representing the agency: John Benson

ARC 4314C (NOIA), Authorized Flood Project Fund Expenditures, Proposed Amendment to Rule 14.8(1)

No discussion on ARC 4314C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Tony Alden, Susan Reynolds

ARC 4275C (ANOIA), Chiropractic Physicians—Continuing Education Hours, Proposed Amendments to Rules 41.6(2) and 41.14(3)

No discussion on ARC 4275C.

ARC 4299C (AF), Physician Assistants—Opioid Prescribing Practices, Adoption of Rules 326.1, 327.6(3), 328.3(2)“d,” and 329.2(32)

No discussion on ARC 4299C.

ARC 4300C (AF), Supervision of Physician Assistants at Remote Medical Sites, Amendment to Rule 327.4(2)

No discussion on ARC 4300C.

ARC 4321C (AF), Podiatrists, Orthotists, Prosthetists, and Pedorthists — Continuing Education, Practice, Discipline, Amendments to Rules 222.3, 223.5, and 224.2(32)

No discussion on ARC 4321C.

ARC 4306C (NOIA), Funeral Directors, Funeral and Cremation Establishments — Disinterment Permits, Proposed Amendment to Rule 100.9(6)

No discussion on ARC 4306C.

### **Emergency Filing, Approval Required: Licensure of Behavior Analysts**

Committee members asked how the Board of Behavioral Science determined the amount of the fee in the rulemaking. Mr. Alden explained that the fee amount was based on an estimate of the number of licenses that would be issued and the average cost of related expenses such as support staff and software. Committee members asked if the board had any data on how the fee compares to other fees. Mr. Alden explained that fees for licenses by boards under the Department of Public Health range from \$65 to \$600 across 65 types of licenses. He explained that boards are statutorily required to review their fee amounts to determine if they are meeting the boards' costs of maintaining the licenses. He explained that fees are often higher when a license is first established due to startup costs, but are reduced over time. He noted that a pedorthist license was initially \$600, but was later reduced to \$400. Committee members requested a written analysis from the board on how they determined the fee amount in the rulemaking.

Committee members asked for information about the timeline for implementing the licensure of behavior analysts. Mr. Alden explained that the underlying statute had a January 1 deadline for implementation of the license, but rulemaking was not ready by that point. He explained that if the committee authorizes emergency rulemaking, the rulemaking will take effect after the board's March 14 meeting.

Ms. Kelly Meyers made a public comment on behalf of the Iowa Association of Behavior Analysis (IABA). She thanked the board for working with IABA on the rulemaking and stated that IABA had seen an initial draft of the rulemaking in September 2018. She stated that IABA hopes to see the rulemaking implemented quickly, particularly because DHS has already made conforming changes to its rules. She stated IABA supports the rulemaking as written. She stated that IABA was hoping for a lower fee and hopes the fee will go down in the future.

### **Emergency Rulemaking Authorized**

A motion to authorize emergency rulemaking by the board in accordance with the draft provided to the committee carried on a voice vote with eight members present.

## **DENTAL BOARD**

Representing the agency: Steve Garrison

ARC 4305C (NOIA), Prescribing, Administering, and Dispensing Drugs; Continuing Education; Discipline, Proposed Amendments to Rules 16.1-16.7, 25.4, 30.4

Committee members asked if the board had received any public comments on this rulemaking, and Mr. Garrison said it had not. Committee members expressed concern that a requirement in the rulemaking to report any misdemeanor or felony conviction to the board is overbroad, given the number of misdemeanors that might be reported. Mr. Garrison expressed appreciation for the feedback. Committee members urged the board to define “conviction” in the rulemaking, with the definition including detail on matters such as deferred judgments and indictable misdemeanors.

No action taken on ARC 4305C.

## **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 4290C (NOIA), Controlled Substances — Registration, Prescription Monitoring Program, Fees, Temporary Designation, Exempted Prescription Products, Disposal, Proposed Amendments to Chapter 10

No discussion on ARC 4290C.

ARC 4291C (NOIA), Technician Product Verification Programs, Proposed Amendments to Chapter 40

No discussion on ARC 4291C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Siedsma, Brooks Glasnapp

ARC 4313C (NOIA), Nonoperator’s identification, Proposed Amendments to Rules 630.1(2) and 630.2

No discussion on ARC 4313C.

ARC 4317C (NOIA), Tourist-Oriented Directional Signing, Proposed Amendments to Rules 119.1, 119.2, 119.4(1)“a,” and 119.6 and Proposed Rescission of Rule 119.5(4)

Committee members clarified with Mr. Glasnapp that the proposed amendment is for the state to provide only one free sign per nonprofit organization. Committee members raised concerns about this policy change. Committee members expressed that the state does not currently do enough to promote tourism and that this would hinder efforts to promote nonprofit tourism.

On a separate note, committee members thanked the department for its work.

No action taken on ARC 4317C.

## **LABOR SERVICES DIVISION**

Representing the agency: Kathleen Uehling

ARC 4318C (NOIA), Occupational Safety and Health — Penalties, Reporting, Adoption by Reference, Proposed Amendment to Rule 3.11(1) and Proposed Adoption of Rule 4.3(1)“h”

No discussion on ARC 4318C.

ARC 4320C (AF), Federal Occupational Safety and Health Standards for Crane Operator Training—Adoption by Reference, Amendment to Rule 26.1

No discussion on ARC 4320C.

ARC 4303C (AF), ASME Code Cases for Regulated Objects—Adoption by Reference, Adoption of Rule 91.1(2)

No discussion on ARC 4303C.

## **WORKERS' COMPENSATION DIVISION**

Representing the agency: James Elliott

ARC 4312C (NOIA), Payroll Tax Tables, Proposed Amendment to Rule 8.8  
No discussion on ARC 4312C.

## **EDUCATION DEPARTMENT**

Representing the agency: Nicole Proesch, Thomas Mayes

ARC 4293C (FEAN), Summer College Credit Program, Adoption of Rule 22.33  
No discussion on ARC 4293C.

ARC 4294C (AF), Suicide Prevention, Identification of Adverse Childhood Experiences, Strategies to Mitigate Toxic Stress Response, Amendments to Chapter 14  
No discussion on ARC 4294C.

ARC 4295C (AF), Use of Online Learning and Telecommunications for Instruction by Schools, Amendments to Chapter 15  
No discussion on ARC 4295C.

ARC 4296C (AF), Open Enrollment — Participation in Cocurricular or Extracurricular Activities, Amendments to Chapter 17  
No discussion on ARC 4296C.

ARC 4297C (AF), Supplementary Weighting, Amendments to Chapter 97  
No discussion on ARC 4297C.

ARC 4298C (AF), Financial Management of Categorical Funding, Amendments to Chapter 98  
No discussion on ARC 4298C.

ARC 4276C (NOIA), Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact with Students, Proposed Amendments to Chapter 103

Committee members inquired whether there are current rules on corporal punishment. Ms. Proesch indicated that there are current rules on corporal punishment and the proposed rules are an attempt to improve the rules. Committee members inquired how much input was solicited from individual school districts. Committee members stressed that input from school districts should be sought. Ms. Proesch indicated that the rulemaking process is important and allows for school district input. Specifically, Ms. Proesch indicated that organizations represented in the original work group for the rulemaking were School Administrators of Iowa, Iowa Association of School Boards, Iowa State Education Association, Rural Advocates of Iowa, the Area Education Associations, a few other organizations, and the petitioners. Ms. Proesch indicated that the director has also brought the proposed rulemaking to the attention of the superintendent's advisory board and the department provided notice in the student leader update. Ms. Proesch stated that the department has received comments from superintendents, school district members, parents, and others. Ms. Proesch offered that she was willing to send the proposed rulemaking directly to superintendents if committee members would like the department to do so. Committee members indicated that they would like the department to send the proposed rulemaking directly to superintendents. Committee members requested that the department provide a list of major changes between the current rules and the proposed rulemaking and the justification for such changes. Ms. Proesch indicated she would provide such requested material and a redlined version of the proposed changes to the corporal punishment rules. Committee members also asked Ms. Proesch to identify the petitioners of the petition for rulemaking; she complied and was assisted by Mr. Mayes.  
No action taken on ARC 4276C.

## **REVENUE DEPARTMENT**

Representing the agency: Tim Reilly

ARC 4309C (AF), Surcharge for Enhanced 911 Service—Update of Terminology, Amendments to Rules 18.20(1)“c,” 40.3, 40.39, 224.4(7), and 224.8  
No discussion on ARC 4309C.

ARC 4323C (AF), Local Option Sales and Services Tax, Amendments to Chapter 107  
No discussion on ARC 4323C.

ARC 4324C (AF), Sourcing of Taxable Services, Tangible Personal Property, and Specified Digital Products, Amendments to Chapter 223  
No discussion on ARC 4324C.

ARC 4322C (AF), Delivery Sales of Alternative Nicotine Products or Vapor Products, Amendments to Chapter 82  
Committee members clarified with Mr. Reilly that even though the bill has not been implemented with rules until now, the bill was passed in 2017 and the department has been collecting the tax since 2017. Committee members also clarified with Mr. Reilly that vaping products are not subject to tobacco taxes.  
No action taken on ARC 4322C.

ARC 4310C (AF), Deferred Life Estates and Remainder Interest, Amendments to Rule 86.14(9)  
No discussion on ARC 4310C.

ARC 4311C (AF), Flood Mitigation Program—Use of Moneys From a Flood Mitigation Fund, Amendments to Rule 238.4  
No discussion on ARC 4311C.

ARC 4316C (NOIA), Taxable Sales — Services Treated as Sales of Tangible Personal Property, Prepaid Merchandise Cards, Photograph and Retouching Services, Proposed Amendment to Rules 16.51 and 26.17 and Proposed Rescission of Rule 16.52  
Committee members asked for clarification for the statement in the bulletin that there was no fiscal impact beyond the impact estimated for the bill. Committee members expressed a desire to have more information listed in the bulletin. Mr. Reilly did not immediately recall what the fiscal impact was for the bill, but stated he would find out the information and provide it to the committee. LSA fiscal analyst Mr. Kent Ohms stated that there was no fiscal impact for the bill.  
No action taken on ARC 4316C.

ARC 4292C (NOIA), Remote Sales and Marketplace Sales, Proposed Adoption of Chapter 215  
No discussion on ARC 4292C.

## **NURSING BOARD**

Representing the agency: Kathy Weinberg

ARC 4286C (NOIA), Licensure to Practice — Registered Nurses/Licensed Practical Nurses, Proposed Amendments to Chapter 3  
Committee members engaged in an exchange with Ms. Weinberg about the nurse refresher course. Committee members expressed concerns for nurses coming from Puerto Rico and barriers to licensing for such nurses. Ms. Weinberg indicated that nurses from Puerto Rico are categorized as foreign educated nurses and have to go through the licensing process for foreign educated nurses. Ms. Weinberg indicated that they do not necessarily go through the nurse refresher course and do not go through the out-of-state process. Committee members indicated that their concern is that workers from Puerto Rico want to come to Iowa but those workers have difficulty because the workers' spouses are nurses and encounter licensing barriers.  
No action taken on ARC 4286C.

ARC 4308C (AF), Advanced Registered Nurse Practitioners, Amendments to Chapter 7

Committee members thanked the board for working out the issues in the rulemaking. Ms. Kelly Meyers spoke on behalf of the Iowa Association of Nurse Practitioners and the Nurse Practitioner Society in support of the rulemaking and asked the committee to support the rulemaking. Ms. Meyers presented a letter authored by the president of both associations.

No action taken on ARC 4308C.

## **INSURANCE DIVISION**

Representing the agency: Angela Burke Boston

ARC 4282C (NOIA), Medicare Supplement Insurance, Proposed Amendments to Chapter 37

Committee members commented that the rulemaking is extensive and complicated.

No action taken on ARC 4282C.

### **Additional committee discussion**

Committee members asked that agency representatives describe public comments received on rulemaking for the committee when such comments have not yet been described in the Iowa administrative bulletin.