



MINUTES

APRIL 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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

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

BULLETINS NEEDED FOR THIS MEETING: 1/30/19, 3/13/19, 3/27/19

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:02 a.m. on Friday, April 5, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the March 8, 2019, meeting were approved. The next meeting was scheduled for Tuesday, May 14, 2019, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Mr. Ewing provided an update on outstanding rulemaking. The meeting was adjourned at 11:10 a.m.

Fiscal Overview

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

VETERANS AFFAIRS, IOWA DEPARTMENT OF

Representing the agency: Timon M. Oujiri

ARC 4370C (NOIA), Iowa Veterans Home—County of Residence Upon Discharge, Proposed Amendment to Rule 10.41

No discussion on ARC 4370C.

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).

REGENTS BOARD

Representing the agency: Aimee Claeys

ARC 4351C (NOIA), Parking and Vehicle Registration at Universities, Proposed Amendments to Rule 4.71

Committee members expressed disapproval of the rulemaking. Specifically, committee members expressed the opinion that \$50 was a sufficiently high fine for a parking ticket. Ms. Claeys indicated that the fine is intended to ensure compliance with parking regulations, not generate revenue. Committee members encouraged the board to reconsider the rulemaking. Committee members contended that an increase in fines will not ensure compliance and will only increase revenue.

Committee members shared their experience at a private college where ticketing was only available to students with vehicles registered with the college and inquired whether the same system was utilized at Regent universities. Ms. Claeys indicated she would inquire into the issue.

No action taken on ARC 4351C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Marissa Eyanson

ARC 4336C (AF), State Supplementary Assistance — Assistance Standards Definition, Cost-of-Living Adjustments, Amendments to Rules 51.4(1), 51.7, and 52.1

No discussion on ARC 4336C.

ARC 4367C (NOIA), Child Care Assistance—Fee Schedule, Change Reporting, Proposed Amendments to Rules 170.2(4) and 170.4

No discussion on ARC 4367C.

ARC 4368C (NOIA), Health Insurance Premium Payment (HIPP) Program, Proposed Amendments to Rule 75.21

Ms. Freudenberg indicated that when a person comes into Medicaid with private insurance, the department conducts a test to determine if it is cost-effective for the person to remain on private insurance with the department paying for the private insurance. Ms. Freudenberg stated that previously, the guideline was that if the cost of the program was at least \$60 cost-effective, the person could remain on private insurance. The proposed rulemaking allows the person to remain on private insurance if the private insurance is \$1,200 cost-effective.

Committee members questioned the authority on which the rulemaking is based. Ms. Freudenberg indicated the rulemaking is based on the Director's authority. Committee members inquired how many families are being impacted by this rulemaking and what the projected savings are estimated to be. Ms. Eyanson indicated she did not have an immediate answer but would respond to committee members with the information. Ms. Eyanson stated that with the change to managed care, the paradigm has shifted in that the department no longer pays claims for the bulk of the population; now the department pays a per-member, per-month capitation price. Ms. Eyanson stated that this means the calculation for HIPP no longer works to generate cost-effectiveness. Ms. Eyanson stated that the department needs to reinvestigate cost-effectiveness to preserve the program. Committee members confirmed that the efficiency test is no longer a \$60, but rather a \$1,200 test. Committee members inquired how the department is notifying families that their child with a disability is no longer in the HIPP Program but will now be in a managed care organization. Specifically, committee members inquired about time frames for notification. Ms. Eyanson stated that if the department were to make these changes to the HIPP Program, the department's plan is to notify families as the families come up on annual evaluations over the course of the year, individual-by-individual. Ms. Eyanson stated that the department does not currently know which families those are because the department needs to do a financial investigation of each family. Ms. Eyanson stated that the department will work with each individual family to transition if the family no longer qualifies. Committee members referred to the fiscal impact which stated that 140 cases and 210 members would no longer qualify for the HIPP Program. Ms. Eyanson indicated that the department does have estimates but that the assessments would be individualized. Committee members stated they were registering their opposition to the rulemaking. Ms. Freudenberg stated that there would be no fiscal impact because of the number of individuals that would come off of the program due to the department raising the cost-effectiveness test. Committee members inquired why the department would be putting families through this process if there are not substantial savings to the state.
No action taken on ARC 4368C.

ARC 4369C (NOIA), Aftercare Services Program, Proposed Amendment to Chapter 187
No discussion on ARC 4369C.

ATTORNEY GENERAL

Representing the agency: Robert Hamill

ARC 4350C (NOIA), Victim Assistance Program, Proposed Amendments to Chapter 9
No discussion on ARC 4350C.

CREDIT UNION DIVISION

Representing the agency: Jessica Pollmeier

ARC 4331C (NOIA), Board of Directors Meetings; Branch Applications, Proposed Amendments to Rules 2.8 and 2.9, and Proposed Adoption of Rule 6.1

Committee members inquired about Item 2 of the rulemaking, which amends subrule 6.1 (2), specifically asking whether the last sentence is based in Code. That sentence states: “[h]owever, the superintendent may waive the application requirement when in the superintendent’s opinion the waiver is necessary or desirable.” Ms. Pollmeier responded that the application requirement is in Code, but the extension to a credit union service organization is not in Code but is a natural advancement based on the changes to the credit union landscape. Ms. Pollmeier explained that credit union service organizations can have sole ownership or partial ownership. She continued by saying that the waiver component is for a credit union service organization that is a national credit union service organization where an Iowa credit union has a small, negligible ownership share where the application would not be advisable or a natural outgrowth. Committee members responded that they did not think the sentence refers to the credit union service organization. Ms. Pollmeier provided additional background information and conveyed that the application requirement for a credit union service organization is not in Code but is solely in rule, therefore it is waivable by rule pursuant to the standard waiver/variance process. She stated that the availability of a waiver came at the request of the industry.

No action taken on ARC 4331C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston

ARC 4326C (NOIA), Unfair Trade Practices—Standards for Annuity Illustrations, Proposed Amendments to Rule 15.66

No discussion on ARC 4326C.

ARC 4332C (FEAN), Short-Term Limited-Duration Health Insurance Policies, Amendment to Rule 35.23 and Adoption of Rules 36.4(17), 36.6(11), and 36.7(13)

No discussion on ARC 4332C.

PAROLE BOARD

Representing the agency: Steven Clarke

ARC 4349C (NOIA), Revocation of Parole—Conviction in Another State or Foreign Country, Proposed Amendment to Rule 11.12

No discussion on ARC 4349C.

HISTORICAL DIVISION

Representing the agency: Susan Kloewer

ARC 4330C (NOIA), State Historical Society Award Programs, Proposed Amendments to Rules 21.2 and 21.3

No discussion on ARC 4330C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Jennifer Klein, Kristin Hanks-Bents

ARC 4329C (NOIA), Community Attraction and Tourism Programs, Proposed Amendments to Chapters 211 and 213

No discussion on ARC 4329C.

ARC 4353C (NOIA), Workforce Housing Tax Incentives Program—Housing Project Completion Deadline, Proposed Amendment to Rule 48.5(3)“c”
No discussion on ARC 4353C.

ARC 4354C (NOIA), Regional Sports Authority Districts, Proposed Amendments to Rules 38.3(1)“b” and 38.4(1)“a”
No discussion on ARC 4354C.

ARC 4355C (NOIA), Targeted Jobs Withholding Tax Credit Program, Tax Credits for Investments in Certified Innovation Funds—Extension of Sunset Dates, Proposed Amendments to Chapters 71 and 116
No discussion on ARC 4355C.

ARC 4375C (AF), Iowa Export Trade Assistance Program, Amendments to Chapter 72
No discussion on ARC 4375C.

IOWA FINANCE AUTHORITY

Representing the agency: Terri Rosonke, Lori Beary

ARC 4371C (NOIA), Local Housing Trust Fund Program Allocation Plan—Proposed Adoption by Reference of Rule 19.1
No discussion on ARC 4371C.

ARC 4372C (NOIA), Water Quality Financing Program, Proposed Adoption of Chapter 46
Committee members inquired regarding the type of projects for which the authority anticipates receiving applications. Ms. Beary responded that this program is for cooperative projects—a group of entities. She stated for example a project that is a combination of a city and soil and water conservation district and a drainage district in a watershed. She explained that the way the legislation was written, the more partners a project has, the more points a project gets.
No action taken on ARC 4372C.

MANAGEMENT DEPARTMENT

Representing the agency: Joel Lunde

ARC 4327C (NOIA), Calculating Net General Fund Revenues, Proposed Adoption of Chapter 15
No discussion on ARC 4327C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Randy Mayer

ARC 4360C (NOIA), Oral and Health Delivery System Bureau; Office of Minority and Multicultural Health, Proposed Amendments to Rule 170.7(6)
No discussion on ARC 4360C.

ARC 4361C (NOIA), Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), Proposed Amendments to Chapter 73
No discussion on ARC 4361C.

ARC 4362C (NOIA), Local Public Health Services, Proposed Amendments to Rules 80.2 and 80.3
No discussion on ARC 4362C.

Committee members asked what might trigger a recall of a cannabidiol product. Mr. Mayer explained that the department researched approaches used by other states such as California and Colorado and that the department's concern is the health and safety of patients and whether removing a product from sale needs to occur quickly. He stated that a product being brought into a poison control center might be one indicator.

Committee members asked why the department would need access to the standard operating procedures (SOPs) of manufacturers, what the department would do with the documents, and how the department would keep the documents secure, given their significant value to manufacturers. Mr. Mayer explained that physical copies of the SOPs will not be provided to the department, but the documents would be electronically shared with the department through Google Drive or similar means. He explained that the department is concerned about the confidentiality of such documents, particularly in regard to public information requests to the department. He explained that the department wants to require the sharing of SOPs before a department inspection of a manufacturer. He explained that changes in SOPs can have safety implications and that the department wants to be able to key its testing of manufacturers to SOPs over time so that the amount of testing can be reduced.

Committee members asked if there were concerns regarding conflicts of interest within the department relating to the protocols. Mr. Mayer explained that the department has hired employees with experience in the cannabidiol industry, including one employee currently also doing work in the industry in Colorado, but an assistant attorney general has reviewed the situation and determined there is no conflict because the employee's duties in Iowa do not overlap with the employee's duties in Colorado. Committee members suggested that a lower standard, the appearance of impropriety, would be more appropriate for such situations, and the employee in question perhaps should not have access to SOPs. Committee members suggested that perhaps the SOPs should not be shared electronically, but instead printed out, reviewed in the manufacturer's office, and then shredded.

Committee members suggested that language regarding manufacturers accepting unused cannabidiol products and the return of such products to manufacturers should be made more consistent.

Committee members asked what protocols were in place to ensure that a department employee did not review intellectual property of a cannabidiol manufacturer and then take a job elsewhere in the industry. Mr. Mayer said there were none, but former employees cannot take any material with them when they leave the department. Committee members asked if employees could take pictures of documents with their phones. Mr. Mayer explained that the rulemaking would not entail the department having hard copies of the documents, and electronic copies could be designated as read only. Committee members suggested that language be added to the rulemaking to prohibit employees from taking pictures of SOP documents with their phones and to require that electronic copies of the documents be programmed such that they are immediately deleted after they are reviewed.

Committee members asked why the department needs access to the SOPs, and Mr. Mayer explained that the department wants to ensure that manufacturers are following the procedures that the department originally authorized. Committee members expressed hope that the department will ensure that intellectual property of manufacturers is not removed from the department.

Committee members questioned whether the department has the statutory authority to waive the requirement that a patient have a registration card for the program. Mr. Mayer explained that some patients are unwell enough that they cannot get to a Department of Transportation office to obtain a card, and the waiver process will allow such patients to still have access to cannabidiol through a designated caregiver who would have a card. He explained that most such patients do not leave their homes or facilities. Committee members suggested that this matter should be handled legislatively, but noted that they did not disagree with the department's intent.

Committee members asked if the department acquired access to the SOPs when the manufacturers initially set up and if so, what the process was for review of the SOPs at that time. Mr. Mayer explained that there was an initial review process for the SOPs, and reviewers were asked to review paper copies of the SOPs, destroy them afterward, and notify the department that they had done so, although there were no guidelines on how they should be destroyed.

Mr. Lucas Nelson made a public comment on behalf of MedPharm. He expressed grave concern about the requirements of the rulemaking relating to SOPs. He explained that the SOP is the backbone of

MedPharm's operation, is of significant financial interest to others, and could be accessed in various ways if given to the department. He expressed concern about what might happen to the SOPs if MedPharm shares access to them. He explained that MedPharm does not allow employees to print SOPs out unless working on them, after which they must be destroyed. He noted that employees also cannot take SOPs home.

Mr. Lucas also expressed concern regarding the rulemaking establishing lab criteria as a separate document, the rulemaking's recall procedures, and the rulemaking requiring department approval of all crop inputs, which he described as anything that goes on a plant. He explained that the rulemaking does not outline procedures for how a recall would work and that MedPharm needs the ability to put substances on their plants quickly without prior permission from the department in situations such as bad weather. He also took issue with the rulemaking's use of the words "investor" and "financial backer" without defining them and was uncertain whether requirements for those positions would be the same as those for "owners" of a manufacturer.

Committee members asked if some of the issues with the rulemaking relate to the lack of regulation of cannabidiol by the federal Food and Drug Administration (FDA) and if Iowa has established a comparable regulatory scheme in the absence of FDA regulation. Mr. Lucas agreed and stated that it might be preferable for Iowa to mirror an FDA regulatory scheme more exactly.

No action taken on ARC 4363C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Deborah Svec-Carstens

ARC 4328C (NOIA), Subacute Mental Health Care Facilities, Proposed Amendments to Chapter 71

Committee members asked whether the language in the rulemaking relating to restraints and seclusion is similar to standards the department has for other facilities. Ms. Svec-Carstens explained that the standards in the rulemaking are similar to other standards of the department and federal standards. Committee members asked what other types of facilities have such standards, and she stated that she was unsure but would follow up with the committee.

No action taken on ARC 4328C.

DENTAL BOARD

Representing the agency: Steve Garrison

ARC 4358C (NOIA), Sedation and Nitrous Oxide, Proposed Amendments to Chapter 29

Committee members questioned whether the board has the power to authorize delegation of functions as provided in the rulemaking.

Mr. Doug Struyk made a public comment on behalf of the Iowa Association of Nurse Anesthetists (IANA) and provided a handout. He expressed appreciation for the board working with IANA on the rulemaking. He explained that IANA had concern with the use of the word "delegated" in the rulemaking, as IANA does not think dentists have the authority to delegate duties in this context. IANA would prefer a word such as "performed." He urged that the language in the rulemaking specify that there should be two patient monitors, rather than one, when deep sedation is used. He also requested that the rulemaking specify that an independent licensed sedation provider will make sedation decisions under their own scope of practice, in addition to the dentist's evaluation. He suggested that such language may have been omitted to avoid infringing on the authority of the Boards of Medicine and Nursing.

Committee members urged the board to work with affected stakeholders to resolve the issues raised and to avoid usurping the authority of anesthetists and nurses.

No action taken on ARC 4358C.

ARC 4359C (NOIA), Teledentistry, Proposed Amendments to Rules 27.12 and 27.13

No discussion on ARC 4359C.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 4339C (AF), Licensure of Genetic Counselors, Adoption of Chapter 20

Mr. Nebel explained that while the board had worked with genetic counselors for months on this rulemaking, genetic counselors had recently raised some additional concerns with the rulemaking, so the board was requesting that the committee delay the rulemaking so that the concerns could be considered.

70-Day Delay

A motion for a 70-day delay carried on a voice vote with nine members present.

Additional Review at May ARRC Meeting.

ARC 4377C (AF), Standards of Practice—Medical Cannabidiol, Amendment to Rule 13.15(1)

No discussion on ARC 4377C.

ARC 4338C (AF), Training Requirements for Chronic Pain Management and End-of-Life Care for Permanent or Special License Renewal; Definition of “Opioid,” Amendments to Rules 11.1 and 11.4(1)

No discussion on ARC 4338C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4270C (AF), Expanded Practice Standards—Statewide Protocols, Amendments to Chapter 39

Ms. Mears explained that the emergency rulemaking authorized by the committee at its February 2019 meeting to correct the use of the term “prescribe” to say “order” instead had been submitted for publication as a double-barreled rulemaking with additional clarifying language in the notice of intended action.

70-Day Delay Lifted

A motion to lift the 70-day delay carried on a voice vote with nine members present.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly

ARC 4352C (NOIA), Assessor or Deputy Assessor Continuing Education, Proposed Amendment to Rule 124.3

No discussion on ARC 4352C.

SECRETARY OF STATE

Representing the agency: Molly Widen

ARC 4348C (AF), Primary Election—Nominations by Write-In Votes for Certain Offices, Rescission of Rule 21.602

No discussion on ARC 4348C.

ARC 4356C (NOIA), Safe at Home Program, Proposed Amendment to Rule 6.1

A committee member offered feedback on the Safe at Home Program concerning absentee voting that was unrelated to the rulemaking. Ms. Widen stated that resolving the issue in another state had cost \$1 million, but a fix was being considered in a future rebuild for the program.

No action taken on ARC 4356C.

ARC 4357C (NOIA), Local Option Sales and Services Tax Elections in Qualified Counties, Proposed Amendment to Rule 21.804
No discussion on ARC 4357C.

TRANSPORTATION DEPARTMENT

Representing the agency: Tracy George, Cheryl Williams

ARC 4325C (NOIA), Petition Submission Methods; Oral Presentation Information; Office Name and Address Updates, Proposed Amendments to Chapters 10 - 12
No discussion on ARC 4325C.

ARC 4341C (AF), Procurement of Equipment, Materials, Supplies and Services; Exemptions from Competition with Private Enterprise, Amendments to Chapters 20 and 25
No discussion on ARC 4341C.

ARC 4342C (AF), Public Improvement Quotation Process—Retained Funds, Amendments to Chapter 180
No discussion on ARC 4342C.

ARC 4343C (AF), Motor Vehicle Dealer Licensing for Final-Stage Manufacturers; Business Records; Security Interest Notation on Certificate of Title, Amendments to Rules 400.1, 400.4, 400.8(2), 425.10 (3)“c,” and 425.11-425.13
A committee member stated that the floor manager of the underlying legislation approved of the rulemaking.
No action taken on ARC 4343C.

ARC 4344C (AF), Initial Application for Firefighter Plates, Amendment to Rule 401.9(1)
No discussion on ARC 4344C.

ARC 4345C (AF), Permitted Tandem Axle Weights, Amendment to Rule 511.13(6)
No discussion on ARC 4345C.

ARC 4346C (AF), For-Hire Intrastate Motor Carrier Authority, Amendments to Rules 524.1-524.6, 524.7(2), 524.8, 524.11, 524.12(1)“b,” 524.15, and 524.18
No discussion on ARC 4346C.

ARC 4347C (AF), Operating While Intoxicated Revocations—Issuance of Temporary Restricted License, Installation of Ignition Interlock Device, Amendment to Rule 620.3
No discussion on ARC 4347C.

RACING AND GAMING COMMISSION

Representing the agency: Brian Ohorilko

ARC 4378C (AF), Confidential Records; Licensing; Licensees’ Responsibilities; Racing; Definition of “Minus Pool”; Gambling Games; Facility Internal Controls, Amendments to Chapters 3, 5-8, and 10-12
No discussion on ARC 4378C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Amber DeSmet, Diana Machir, Jamie Van Fossen, Patrick Thomas

ARC 4365C (NOIA), Electronic Filing; Confidential Information; Public Records, Proposed Amendments to Chapters 1, 2, 6, 7, 10, 14, and 16 and Adoption of Chapter 12

Committee members asked what the board was doing to ensure that a hard copy backup of filed documents was available if the electronic filing system had a problem. Ms. DeSmet explained that the board has paper copies and CDs of filed documents, similar to the judicial branch system on which the board's system is based. Ms. Machir explained that a database of board decisions and collective bargaining agreements is posted on the board's website. Committee members noted that the judicial branch's system went down for over a week in 2017. Ms. DeSmet explained that the outage of the judicial branch's system did not affect the board's system. She explained that the board's system is sometimes taken offline for a few hours, but users are notified in advance and no information is lost. No action taken on ARC 4365C.

ARC 4364C (NOIA), State Employee Whistleblower Actions, Proposed Adoption of Chapter 17

No discussion on ARC 4364C.

ARC 4366C (NOIA), Bargaining Unit Determinations; Representative Certifications, Proposed Amendments to Chapters 4 and 5 and Adoption of Chapter 15

Committee members thanked the board for going over his questions and concerns before the meeting. No action taken on ARC 4366C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 4376C (AF), Conveyance Safety Program—Elevator Alterations, Fees, Amendments to Rules 71.10(4) and 71.16(4)

No discussion on ARC 4376C.