



# MINUTES

## MAY 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

---

### MEMBERS PRESENT

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

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: 3/13/19, 4/10/19, 4/24/19

---

#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:00 a.m. on Tuesday, May 14, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the April 5, 2019, meeting were approved. The next meeting was scheduled for Tuesday, June 11, 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 10:30 a.m.

#### Fiscal Overview

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

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 4392C (AF), Managed Care Organizations—Inclusion of Advanced Registered Nurse Practitioners and Physician Assistants as Primary Care Providers, Adoption of Rule 73.8(5)  
No discussion on ARC 4392C.

ARC 4393C (AF), Dependent Adult Abuse—Update of Forms and Information, Amendments to Rules 176.4(2), 176.6, 176.10(10), and 176.15(2)  
No discussion on ARC 4393C.

ARC 4411C (AF), Required Report for Juvenile Detention Reimbursement, Amendment to Rule 167.3(2)  
No discussion on ARC 4411C.

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).

## **INSURANCE DIVISION**

Representing the agency: Angela Burke Boston

ARC 4394C (AF), Medicare Supplement Insurance, Amendment to Chapter 37

No discussion on ARC 4394C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker

ARC 4407C (ANOIA), Electric Interconnection of Distributed Generation Facilities, Proposed Amendments to Rules 45.1, 45.5(10), and 45.6(2)

No discussion on ARC 4407C.

ARC 4414C (AF), Procedures for Determining Competitiveness of a Communications Service or Facility, Amendments to Rules 5.1 to 5.5, and 5.8

No discussion on ARC 4414C.

## **PUBLIC HEALTH DEPARTMENT**

Representing the agency: Susan Dixon, Ken Sharp

ARC 4399C (AF), Vaporizable Forms of Medical Cannabidiol, Amendment to Rule 154.14

No discussion on ARC 4399C.

ARC 4398C (AF), Vital Records—Forms, Fees, Amendments, Reporting of Non-Institution Births, Delayed Certificate of Marriage, Amendments to Rules 95.3, 95.6, 95.8, 96.7, 98.7(6), 99.6, 99.9, and 99.11

No discussion on ARC 4398C.

Special Review: Emergency Medical Services—Service Program Authorization, Chapter 132

Committee members noted that the department is currently developing rulemaking on this subject but stated that the special review would be a means of having a conversation on the subject before that rulemaking process begins.

Mr. Sharp explained that department personnel had met with Representative Louie Zumbach, who requested the special review, and his constituent, regarding their concerns with the department's rules on EMS, which he stated were mostly related to chapter 131 of the department's rules. He explained the department's current work on chapter 132, which he noted has not been updated in years. He explained that chapter 132 concerns authorization of EMS programs. He provided handouts to the committee regarding the history of chapter 132 and described the history, including multiple reviews of the department's policies from outside the department. He explained that the department has heard feedback for over five years from rural, volunteer EMS programs that struggle to provide such services. Some of those programs are struggling financially. He stated that a draft of a revised chapter 132 will be noticed later this summer. He explained that a key concept in the new draft will be affiliation agreements between smaller EMS programs that receive fewer calls. He also explained that such agreements will allow smaller programs to share rosters, particularly during the day when there are fewer calls, and consolidate administrative functions, and that some counties are already using such agreements to good effect.

Committee members asked if the department is addressing issues relating to continuing education requirements and the amount of mandatory ride time necessary to maintain licensing, which individual volunteers struggle with. Mr. Sharp explained that such issues are covered by chapter 131, as well as legislation enacted in 2019, and that the department will address those issues as it implements the legislation.

Representative Zumbach commented on chapter 132. He explained that the issues with these rules came to his attention two years ago and that he was an EMS volunteer in the past, but stopped when it became too burdensome. He noted that chapters 131 and 132 relate to similar subjects. He stated that he had a productive meeting with the department earlier in the day. He urged the department to modify

its rules to reinstate certain volunteer paramedics, return to using the prior state-based test for EMS volunteers rather than a new national test that has subjective answers and a 40 percent passage rate, and include more EMS volunteers on the department's emergency council. He stated that where a person lives should not determine whether they live or die if they have a health crisis, but it does. He stated that these issues are not just occurring in the area he is from and that funding sources for EMS are also being considered.

Committee members urged the department to listen to the concerns raised and that such concerns have also been heard across the state. Committee members stated that well-meaning state mandates relating to matters such as education requirements for EMS volunteers can be counterproductive by exacerbating the difficulty of getting enough EMS volunteers and that approaches regarding EMS volunteers that work in one area of the state may not work in another.

Committee members asked if EMS is considered an essential service under Iowa law and what the history of the law is in that regard. Mr. Sharp explained that EMS is not an essential service and that he did not know the history behind that, although efforts to make it an essential service in the past had not been successful. Committee members thanked Mr. Sharp and Representative Zumbach for attending and stated that there is much work still to be done on this subject.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Tony Alden

ARC 4389C (NOIA), Behavior Analysts and Assistant Behavior Analysts — Licensure, Fees, Proposed Amendments to Chapters 5, 31, and 33

Mr. Alden detailed the following three primary concerns with the rulemakings that were expressed by commenters at a public hearing. The first concern was regarding the renewal process. Commenters expressed concern that the renewal process was flawed because it hinged on obtaining a wall certificate from a national certifying board and that certificate may arrive late, which may cause an Iowa license to go into inactive status. Mr. Alden assured the committee that this interpretation of the rulemaking was inaccurate; physical possession of a wall certificate is not necessary for renewal. Rather, division staff are able to verify membership with national certifying boards by going onto a website in order to confirm renewal. The second concern was with a minimum initial issuance period. Mr. Alden stated that a time frame of one year was repeatedly mentioned. Because the division initially noticed the rulemaking on this subject one year ago, Mr. Alden indicated that he did not anticipate much pushback to the rulemakings. The third concern is regarding renewal fees. Commenters interpreted the rulemakings to require a renewal fee of \$300; Mr. Alden explained that the intent of the rulemakings was to charge \$120. Mr. Alden stated that the adopted rulemaking will make the intent more clear. Remaining comments concerned a stepped licensure fee. Mr. Alden explained that the initial licensure fee is higher due to start-up costs. Commenters desired that the rulemakings be revised to state that after a date certain, the fees will be reduced commensurate with other boards to a standard lower fee. Mr. Alden stated that the Board of Public Health will consider comments at its June 13, 2019, meeting.

Ms. Kelly Meyers and Ms. Maria Valdovinos spoke on behalf of the Iowa Association for Behavior Analysis (IowaABA). Ms. Meyers thanked the division for working with the IowaABA on the rulemakings. Ms. Meyers provided a handout and stated that the IowaABA submitted three comments. First, she expressed a concern about the renewal fee and would appreciate the division making clear that the renewal fee is \$120, not \$300. She also asked for a grace period to address this because if the renewal fee is \$300, then some licensees would owe \$600 within a 12-month period if the licensee obtains an initial license now, but the licensee's recertification is due later this year, which triggers the licensee's license renewal. Ms. Valdovinos stated that she wanted to reiterate the concerns that Mr. Alden discussed. Ms. Valdovinos stated that IowaABA was concerned that the renewal fee is not commensurate with other boards. Ms. Valdovinos also stated that IowaABA is pleased to hear about changes that the division is going to make to licensure renewal costs because licensure and certification, including renewal, are costly.

Committee members stated that they wanted to reiterate the importance of addressing the renewal fee and commensurate licensure issues.

Committee members asked for clarification on the job duties of a Board Certified Behavior Analyst versus a Board Certified Assistant Behavior Analyst. Ms. Valdovinos provided an explanation. Committee members posed a question regarding the costs for fees for the two professions — specifically why the fees were the same. Ms. Valdovinos stated she was unsure other than knowing the primary concern was to facilitate Assistant Behavior Analyst licensure and to subsequently work out specific details.

No action taken on ARC 4389C.

#### **DENTAL BOARD**

Representing the agency: Jill Stuecker

ARC 4409C (AF), Prescribing, Administering, and Dispensing Drugs; Continuing Education; Discipline, Amendments to Rules 16.1 to 16.7, 25.4, and 30.4

No discussion on ARC 4409C.

#### **MEDICINE BOARD**

Representing the agency: Kent Nebel

ARC 4382C (NOIA), Standards of Practice—Appropriate Pain Management, Proposed Amendment to Rule 13.2

No discussion on ARC 4382C.

#### **70-Day Delay Lifted**

A motion to lift the delay on this rulemaking carried on a voice vote with eight members present. Mr. David Adelman spoke on behalf of the Iowa Association of Genetic Counselors in support of lifting the delay and authorizing emergency rulemaking.

Emergency Filing, Approval Required: Licensure of Genetic Counselors, Chapter 20

#### **Emergency Rulemaking Authorized**

A motion to authorize emergency rulemaking by the board relating to licensure of genetic counselors carried on a voice vote with eight members present.

#### **NURSING BOARD**

Representing the agency: Kathy Weinberg

ARC 4413C (AF), Licensure to Practice —Registered Nurses/Licensed Practical Nurses, Amendments to Chapter 3

No discussion on ARC 4413C.

## **PHARMACY BOARD**

Representing the agency: Andrew Funk, Sue Mears

ARC 4386C (NOIA), Electronic Prescription Mandate and Exemptions, Proposed Amendments to Chapters 8, 10, and 21

Committee members inquired how many exemptions to the electronic prescription mandate the Board anticipated receiving. Mr. Funk stated that the Board did not anticipate granting many exemptions on the basis of financial hardship unless the clinic or provider was operating in a low-income or a for-free clinic. Committee members inquired whether most clinics or providers would already have this technology due to electronic reporting of pseudoephedrine prescriptions. Mr. Funk responded that this is a different program. Mr. Funk stated that right now about 35 percent of prescriptions for controlled substances are electronic. Mr. Funk reported that when the legislation was debated, it was at about 10 percent. Mr. Funk stated the Board is hoping that it would be at 100 percent by 2020. Committee members and Mr. Funk and Ms. Mears discussed that the Board may incur an estimated cost of \$2,500 if the Board has to meet for up to two days to review requests for waivers. The exchange entailed the explanation that this was just an estimate, which committee members said made them feel better rather than it being a certain cost to be incurred.

No action taken on ARC 4386C.

ARC 4387C (AFE), Statewide Protocols—Update of Terminology, Amendments to Rules 39.6, 39.8, 39.9, and 39.11

No discussion on ARC 4387C.

ARC 4388C (NOIA), Statewide Protocols—Update of Terminology, Order Constitutes Prescription, Proposed Amendments to Rule 39.6, 39.8, 39.9, and 39.11

No discussion on ARC 4388C.

ARC 4391C (NOIA), Pharmacist Licensure; Pharmacist Internships, Proposed Amendments to Chapters 2, 4, 25, 31, and 32

No discussion on ARC 4391C.

ARC 4397C (AF), Iowa Prescription Monitoring Program, Amendments to Chapter 37

No discussion on ARC 4397C.

## **REVENUE DEPARTMENT**

Representing the agency: Tim Reilly

ARC 4381C (NOIA), Excise Tax Rate on Motor Fuels, Proposed Amendment to Rule 68.2(1)

Committee members observed that the public may not care about the 2/10-cent per gallon decrease at the gas pump but to lose that million-dollar decrease of revenue for road use funds is a problem because they said they are told they need more money for roads, not less. Committee members inquired why the rule and statute require the tax on gasoline to decrease when ethanol use goes down. Mr. Reilly said he could not explain the reasoning of the Code. Committee members commented that the policy should be the opposite. Committee members asked Mr. Reilly to obtain legislative history from the director of the department.

No action taken on ARC 4381C.

ARC 4406C (NOIA), Section 179 Expensing, Proposed Amendments to Rules 40.65, 53.23, and 59.24

Committee members commented that the rules were implementing 2019 Iowa Acts and stated that the timing was appreciated.

No action taken on ARC 4406C.

ARC 4408C (NOIA), Iowa Educational Savings Plan Trust; Iowa ABLE Savings Plan Trust, Proposed Amendments to Rules 40.53 and 40.81

No discussion on ARC 4408C.

**SECRETARY OF STATE**

Representing the agency: Molly Widen

ARC 4384C (NOIA), Minimum Age for Registering to Vote, Proposed Amendments to Rules 23.3 and 23.10  
No discussion on ARC 4384C.

**VOTER REGISTRATION COMMISSION**

Representing the agency: Molly Widen

ARC 4383C (NOIA), Petitions for Rulemaking; County Registration Date for Applicants Aged 17 to 18,  
Proposed Amendments to Chapters 1 and 2  
No discussion on ARC 4383C.

**TRANSPORTATION DEPARTMENT**

Representing the agency: Jan Laaser-Webb, Jim Nelson, Sara Siedsma

ARC 4385C (NOIA), Traffic Safety Improvement Program, Proposed Amendments to Chapter 164  
No discussion on ARC 4385C.

ARC 4400C (AF), Permitting of Implements of Husbandry—Manual for Bridge Evaluation, Amendment to  
Rule 181.1(2)  
No discussion on ARC 4400C.

ARC 4401C (AF), Federal Motor Carrier Safety and Hazardous Materials Regulations — Adoption by  
Reference, Amendments to Rules 520.1(1), 529.1, and 607.10(1)“c”  
No discussion on ARC 4401C.

**VETERANS AFFAIRS, IOWA DEPARTMENT OF**

Representing the agency: Steven Lukan

ARC 4405C (NOIA), Veterans Trust Fund, Proposed Rescission of Rule 14.4(12)  
No discussion on ARC 4405C.

**EDUCATION DEPARTMENT**

Representing the agency: Nicole Proesch, Tom Cooley

ARC 4402C (NOIA), General Accreditation Standards, Proposed Amendments to Rules 12.5 and 12.8  
No discussion on ARC 4402C.

ARC 4403C (NOIA), Medium of Instruction for Students of Limited English Proficiency, Proposed  
Amendment to Rule 60.3(4)  
No discussion on ARC 4403C.

ARC 4404C (NOIA), Operational Function Sharing Eligibility—Master Social Workers, Independent Social  
Workers, Removal of Supplemental Weighting Limit, Proposed Amendment to Rule 98.15  
No discussion on ARC 4404C.