



MINUTES

JUNE 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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: 5/8/19, 5/22/19

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:03 a.m. on Tuesday, June 11, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the May 14, 2019, meeting were approved. The next meeting was scheduled for Tuesday, July 9, 2019, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Discussion was had regarding the most convenient date to schedule the August meeting, and Mr. Ewing was asked to solicit further input from committee members on this matter after the meeting. Mr. Ewing provided an update on outstanding rulemaking. The meeting was adjourned at 12:10 p.m.

Fiscal Overview

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

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Jennifer Steenblock

ARC 4430C (AF), HCBS Waiver Services—Consumer Choices Option, Amendments to Chapters 78 and 79

In response to questions from committee members, Ms. Freudenberg explained that the rulemaking is budget neutral, will not affect how local Medicaid providers are paid, and only affects a single credit union, the financial management services (FMS) provider, which the department has been working with to resolve concerns about the rulemaking including by putting some money in reserve for the provider. She explained that the credit union's concerns seemed to be in regard to paying large sums of money at once through the program.

Ms. Kim Fettkether made a public comment on behalf of Veridian Credit Union (VCU). She explained that VCU has worked with the department's Iowa Medicaid Enterprise (IME) to address VCU's

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).

concerns regarding IME's systems for the program, and to ensure eligibility of those receiving payment through the program, and that IME has set up an escrow account to mitigate VCU's financial risk as the FMS provider. She indicated that VCU's concern is that VCU may provide payment for services based on information from IME and then the services may later be determined to be ineligible for payment under the program. She further explained that VCU has systems in place with managed care organizations (MCOs) to ensure payment is only made for eligible services, but such safeguards are not yet in place for those receiving Medicaid directly through IME. She further explained that IME has indicated that it is working on developing such safeguards, but VCU does not know whether the safeguards will be in place before the rulemaking becomes effective, as IME has indicated that such system changes are not currently a priority. She stated that she is optimistic that VCU will be able to continue to make payments to providers under the program but will need to look into establishing processes based on the possibility that VCU will not receive payment from IME. She expressed VCU's desire to minimize any impact on providers paid by VCU, but stated that VCU must ensure that it receives payment because while VCU is considered a Medicaid provider itself, it only provides payroll under the program, not other services.

Upon further inquiry from committee members, Ms. Fekkether confirmed her uncertainty that IME will have the desired safeguards in place by the time the rulemaking will become effective. Committee members then asked if the department considers implementation of the safeguards to be a priority and when they might be implemented. Ms. Steenblock, speaking on behalf of the department, explained that implementation is a priority for the department, but she did not have a list of department priorities, so she could not speak to Ms. Fekkether's concerns. She explained that the department is continuously reviewing and updating the program. She confirmed that this issue only affects fee-for-service Medicaid members and not those covered by MCOs. Committee members asked when the safeguards would be implemented in relation to when the rulemaking would go into effect, and Ms. Steenblock stated that she would follow up with the committee about that. Committee members expressed concern that the safeguards and the rulemaking might not become effective at the same time.

Committee members discussed whether the rulemaking should be delayed by the committee and again asked the department for a timeframe for implementation of the safeguards. Ms. Freudenberg explained that the rulemaking will become effective July 1, 2019, and stated that the department could report back to the committee within the week on whether the safeguards would be in place by July 1 and if not, what kind of payment guarantee the department could make to VCU regarding the small number of individuals affected by VCU's concerns. Ms. Fekkether noted that the department had indicated that post payment under the rulemaking would not be implemented until at least September 1 for technological reasons relating to IME's service codes. Ms. Freudenberg noted that payment for services lags at least a month under the department's payment process. She explained that this would give the department enough time to get the information the committee would need to make a decision on this matter. Committee members asked Mr. Ewing if the committee could delay the rulemaking after July 1, and he explained that it could not delay a rulemaking after it becomes effective. Committee members asked Mr. Ewing if the committee could impose a session delay on the rulemaking and then lift the delay later if VCU's concerns are addressed, and he stated that the committee could do so.

Session Delay

A motion for a session delay carried on a voice vote with eight members present.

Additional Review at July meeting

Additional review is scheduled for the July 9 committee meeting to determine the department's progress toward implementation of the safeguards.

ARC 4428C (AF), Assessment Levels for Nursing Facilities, Amendments to Rules 36.6(2) and 81.6(21)"b"
No discussion on ARC 4428C.

ARC 4429C (AF), Passive Managed Care Enrollment Process, Amendments to Rules 73.1 and 73.3
No discussion on ARC 4429C.

ARC 4438C (NOT), Health Insurance Premium Payment (HIPP) Program, Proposed Amendments to Rule 75.21

Committee members expressed appreciation for the department terminating this rulemaking, noting they received many comments from the public on it. Committee members acknowledged that the department sought to prevent Medicaid members from circumventing coverage requirements for the program, but expressed hope that the department could find a different way to accomplish that goal.

No action taken on ARC 4438C.

ARC 4439C (NOIA), Family Investment Program (FIP); Electronic Benefits Transfer Cards, Proposed Amendments to Rules 40.28 and 65.4

No discussion on ARC 4439C.

ARC 4440C (NOIA), Resolution of Legal Settlement Disputes; Mental Health and Disability Services Redesign Transition Fund; Community Mental Health Center Waiver Request, Proposed Rescission of Chapters 15 and 23 and Chapter 25, Division IV

No discussion on ARC 4440C.

ARC 4441C (NOIA), Child Support Recovery Forms, Proposed Amendments to Rules 97.6(5), 98.121, and 99.63(1)

No discussion on ARC 4441C.

ARC 4442C (NOIA), Medicaid for Employed People with Disabilities Program — Premium Amounts, Proposed Amendment to Rule 75.1(39)“b”

Committee members thanked the department for working with Mr. Ewing to return the chart of the premium amounts to the text of the rule.

No action taken on ARC 4442C.

ARC 4443C (NOIA), Medicaid Eligibility—Removal of Statewide Average Costs and Charges and Maximum Medicaid Rates from Rule, Proposed Amendments to Rules 75.23(3) and 75.24(3)“b”

No discussion on ARC 4443C.

ARC 4444C (NOIA), Customized Wheelchairs—Definition for Medicaid Members and Providers, Proposed Amendments to Chapter 78

Committee members inquired how this rulemaking is going to affect children on Medicaid who need specialized wheelchairs. In response, Ms. Freudenberg stated that if a person requests a specialized wheelchair, the department will scrutinize the definitions of standard wheelchair and customized wheelchair to determine which category the person’s needs fall into and determine which add-ons a person needs. In response to an inquiry from committee members, Ms. Freudenberg stated that the department has always required and will continue to require prior authorization for customized wheelchairs.

Committee members expressed concern that an Iowa company was having difficulty receiving approval for add-ons for customized wheelchairs since MCOs began administering the program. Committee members shared their experience with MCOs not having the computer capacity to process add-ons to customized wheelchairs for companies producing such products. Committee members expressed concern that the rulemaking could make the situation worse, rather than better. Committee members sought data on the number of persons who have customized wheelchairs in the Medicaid program. Ms. Freudenberg confirmed that committee members’ additional question was whether MCOs will “be able to handle this change”? Ms. Freudenberg stated that the intent of the rule was to match Medicare’s guidelines, and as such she hoped that the rulemaking would address committee members’ concerns.

Committee members stated that children of constituents are being denied wheelchairs because they have outgrown their wheelchair and outlived their life expectancy. Committee members stated they were hoping that this rulemaking would remedy that problem.

Committee members asked Ms. Freudenberg to explain the difference between the current effect of the administrative rules versus the effect of the proposed rulemaking. Ms. Freudenberg stated that the process is still the same, but the guidelines that are applied will be changed. Committee members inquired if the problems raised will be addressed. Ms. Freudenberg said she would report back to committee members.

No action taken on ARC 4444C.

UTILITIES DIVISION

Representing the agency: Cecil Wright

ARC 4416C (NOIA), Assessments, Proposed Amendments to Rules 17.1 - 17.11

No discussion on ARC 4416C.

ARC 4417C (NOIA), Electric Vehicle Charging Service, Proposed Adoption of Rule 20.20

Mr. Denny Puckett made a public comment on behalf of the Iowa Association of Electric Cooperatives (IAEC). He explained that IAEC supports the expansion of electric vehicle charging infrastructure so long as laws protecting utility service territory are followed, that the rulemaking makes clear that the owner of an electric charging station may bill customers in whatever manner they choose, and that the rulemaking is unclear on the role of the local electric utility in such transactions. He stated that the local electric utility is who should sell the electricity to the charging station owner. He expressed opposition to charging station owners being able to generate their own electricity or purchase electricity from elsewhere than the local electric utility and stated that such concerns had been brought to the board by interested stakeholders. He stated that the rulemaking attempts to address the concern but fails to do so adequately because the statute cited for this purpose in the rulemaking only prohibits electric utilities from serving in each others' service territories, which would not apply to charging stations that are not utilities. He explained that IAEC has proposed a solution in their comments to the board, which would provide that a charging station purchasing electricity from the electric utility in their area would not be considered a utility. He recognized that the rulemaking process is not yet complete, expressed hope that the board will accept IAEC's proposed solution, and stated that he was not seeking any action from the committee as of yet. He noted that the rulemaking would be subject to further review by the committee. He explained that comments from stakeholders on the rulemaking are available in the board's electronic filing system, and he would be happy to provide copies of them to the committee.

Ms. Pam Mackey Taylor made a public comment on behalf of the Sierra Club. She expressed support for the rulemaking as written. She stated that it makes sense for electric charging stations to be able to charge customers by the kilowatt hour and agreed that electric charging stations are not utilities because they are not monopolies. She stated that it is important to support electric charging of vehicles and stated that electric charging stations should be able to generate their own power, whether by solar or wind energy.

Mr. Bob Rafferty made a public comment on behalf of Truckstops of Iowa and the Iowa 80 Truck Stop. He explained that his clients had brought this issue to the board's attention. He explained that some truck stops were planning to set up electric charging stations and discovered that the tariff for Alliant Energy prohibited them from charging customers by the kilowatt hour. He stated that is the only workable business model for providing electric charging, and prohibiting it would be akin to prohibiting charging for gas and diesel by the gallon. He stated that these rules would provide surety to those installing electric charging stations and questioned the value of delaying the rulemaking. He explained that the DOT has found that 85 percent of vehicle charging will occur at the user's home, and thus the remaining 15 percent would not significantly impinge on the existing market for electricity. He suggested that a small percentage of electric charging stations would generate their own power, and that would not happen for perhaps 10 years. He explained that this small percentage, perhaps 2 percent, of the 15 percent of charging that occurs away from the home would have a minimal effect on utilities' market for electricity at that point, and the rulemaking should not be delayed due to that possibility. He urged that the rulemaking move forward to provide clarity for businesses looking to invest in electric charging stations.

Committee members asked if Alliant Energy is the only utility that imposes a tariff that would limit electric charging stations, and Mr. Rafferty stated that he thought so, but was not sure. Committee members asked if an electric charging station that does not generate enough power on its own must buy electricity from its local utility or if it can shop around for other sources. Mr. Wright explained that under current law, an entity cannot sell electricity in an electric utility's territory, but the rulemaking does not address the question of whether an electric charging station can generate their own electricity, a situation which he said was perhaps 10 years away. Mr. Rafferty said it would not be practical for an electric charging station to generate its own electricity today due to technological limitations.
No action taken on ARC 4417C.

ARC 4419C (NOIA), Regulation of Telecommunications Service, Proposed Amendment to Chapter 22
No discussion on ARC 4419C.

ARC 4420C (NOIA), Annual Reports, Proposed Amendments to Rules 23.1 - 23.3
No discussion on ARC 4420C.

ARC 4465C (AF), Approval of Appraiser for Municipal Utilities, Adoption of Rule 32.10
No discussion on ARC 4465C.

IOWA FINANCE AUTHORITY

Representing the agency: Carolann Jensen, Terri Rosonke

ARC 4452C (AF), Local Housing Trust Fund Program Allocation Plan—Adoption by Reference, Amendment to Rule 19.1
No discussion on ARC 4452C.

ARC 4453C (AF), Water Quality Financing Program, Adoption of Chapter 46
No discussion on ARC 4453C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Deborah Svec-Carstens

ARC 4431C (AF), Subacute Mental Health Care Facilities, Amendments to Chapter 71
No discussion on ARC 4431C.

MANAGEMENT DEPARTMENT

Representing the agency: Joel Lunde

ARC 4433C (AF), Calculating Net General Fund Revenues, Chapter 15
Committee members asked what legislation authorized this rulemaking, and Mr. Lunde stated it was 2018 Acts, Senate File 2417.
No action taken on ARC 4433C.

NATURAL RESOURCES DEPARTMENT

Representing the agency: Kelli Book

ARC 4434C (AF), Oil, Gas, and Metallic Minerals, Adoption of Chapter 17
No discussion on ARC 4434C.

ENERGY AND GEOLOGICAL RESOURCES DIVISION

Representing the agency: Kelli Book

ARC 4425C (AF), General; Oil, Gas, and Metallic Minerals, Rescission of Chapters 50 and 51
No discussion on ARC 4425C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Kelli Book, Wendy Hieb

ARC 4426C (AF), References to State Geologist and Geological Survey; Animal Unit for Small Fish; Reimbursement Cap Increase for Land Recycling Program, Amendments to Chapters 50 - 53, 65, 72, 82, and 137
No discussion on ARC 4426C.

ARC 4421C (NOIA), NPDES General Permit No. 6 for Discharge of Wastewater Associated with Well Construction Activities, Proposed Amendment to Rule 64.15(6)
Committee members expressed appreciation that the department updated the permit ahead of time so that an expiring permit would not need to be extended.
No action taken on ARC 4421C.

NATURAL RESOURCE COMMISSION

Representing the agency: Chris Ensminger

ARC 4422C (NOIA), Antlerless Deer Hunting — January Licenses, County License Quotas, Proposed Amendment to Rule 106.6

Committee members inquired why the rulemaking was proposed. Mr. Ensminger stated that the addition of Winneshiek County to the January antlerless-deer-only season was to slow the spread of Chronic Wasting Disease. In other areas the decrease in quotas is due to the decrease in desire to hunt. In response, committee members noted that they have observed too many deer in their districts. Mr. Ensminger noted that the number of deer and the need for hunting varies across the state.

Committee members asked for an update on the status of Chronic Wasting Disease. Mr. Ensminger stated that the commission sampled roughly 7,000 deer and found low levels of the disease. Mr. Ensminger stated that Iowa is in better shape than neighboring states. He stated that a few years ago, the state saw several positive test results and the commission was anticipating exponential growth in the disease rates, but the commission has not seen that growth. Rather, the state appears to be effectively managing the disease.

Committee members asked for a description of how the commission determines that the deer population has fluctuated and how the commission develops quotas. Mr. Ensminger stated that the commission looks at the harvest (how many deer are taken), talks with depredation biologists to see how many landowners are struggling with crop loss, looks at accident reports, and collects bow hunter observation surveys. Mr. Ensminger stated the commission looks at a wildlife management unit, which is four to six counties. Mr. Ensminger said this is based on Department of Transportation data, hunter data, harvest data, and conducting a spotlight survey, which is where the commission traverses a highway and counts deer as they proceed. He stated all of these things show whether a population is going up or down. Mr. Ensminger said the commission comes up with quotas based on hunter demand and depredation. Mr. Ensminger explained the reasoning behind quotas. He stated that there are some instances where quotas are quite high. He stated that some places are having trouble coming up with a successful approach to decrease the deer population. He explained that this can be the result of landownership choices, where only one person is hunting per farm. He explained that if the commission brings the tag quota down, it may create an urgency to buy.

Committee members inquired who decides what is the desirable level of deer population. Committee members noted that a high level of human-deer interactions leads to car accidents. Committee members inquired if the General Assembly provides guidance or determines what the desirable level of deer population is. Mr. Ensminger described a deer study advisory committee that was set up in 2009. The committee was composed of representatives from the agricultural community, landowners' communities, hunters, and sportsmen. That group established population goals to maintain population targets, finding that the population which was present during the mid-to-late 1990s was optimal, and recreating it in order to minimize negative deer-human interaction and maximize recreation. Reaching those targets necessitates the harvest of 100,000 to 120,000 deer per year. Mr. Ensminger noted that last year 107,000 deer were harvested. He emphasized that these were statewide numbers. Numbers vary, he stated, based on whether landowners allow others to hunt on their land. Mr. Ensminger noted the importance of working with depredation biologists.

No action taken on ARC 4422C.

ARC 4423C (NOIA), Increased Bag Limits for Bobcats, Proposed Amendment to Rule 108.7(3)

No discussion on ARC 4423C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Angela Leek

ARC 4447C (NOIA), State Plumbing Code—Update of References to 2018 Edition of Uniform Plumbing Code, Proposed Amendments to Rules 25.1 and 25.3 - 25.5

No discussion on ARC 4447C.

ARC 4448C (NOIA), State Mechanical Code — Adoption of 2018 International Mechanical Code by Reference, Proposed Amendment to Rule 61.2

No discussion on ARC 4448C.

ARC 4446C (NOIA), Radiological Health Programs—Fees, Proposed Amendments to Rules 38.8, 42.5 - 42.10, 42.12, and 42.13

Committee members noted that an 81 percent increase is very difficult for small businesses and the hike makes committee members uncomfortable. Committee members stressed that they did not want to set the precedent for agencies to raise fees by such a stark increase and would prefer fees be updated more regularly.

In response to a question from committee members, Ms. Leek indicated that approximately 4,000 licensees are expected to pay the \$900,000 increase. While this may average out to around \$225 to \$250 per licensee, Ms. Leek indicated that some licensees are seeing an increase of \$25, while others are going to pay several thousand dollars more. In response to an inquiry, Ms. Leek was unable to state whether the cost will be passed on as health care costs and reimbursed through Medicare or Medicaid.

Committee members inquired why the fees are being raised now. Ms. Leek stated that the bureau delayed raising fees as long as possible because there is never a good time to raise fees; she also stated the bureau waited too long. She stated that the bureau will place into the bureau rules that the fees will need to be reviewed on a regular basis so that the fees do not have to be raised so drastically again. Committee members noted that going under federal control would be more costly. Committee members expressed a desire to implement responsible and incremental fee increases, so that fee increases are not experienced all at once.

Members of the public spoke on the rulemaking. Ms. Erin Cubit spoke on behalf of the Iowa Hospital Association. She noted that hospitals develop their budgets far in advance and would appreciate a staggering of the increase over a few years. Committee members agreed with Ms. Cubit that the fee increase is a big increase at one time, noted that it appeared someone was "asleep at the wheel," and agreed that a staggering of the increase over a period of time should be considered.

Mr. Matt McKinney spoke on behalf of the Iowa Dental Association. He stated that the Iowa Dental Association appreciated that the fees had not been increased since 1998 and that this fee increase will eliminate the need for future increases, but indicated that this fee increase is very concerning. He stated his members are already doing private testing at their own expense at a two-year interval. He also

stated his members do not see the importance or need of the fees as currently proposed. He further stated that the Iowa Dental Association would prefer to see a gradual increase of the fees over time even to the level proposed in order to better set budgets. Ms. Dixon confirmed upon inquiry that this rulemaking would not increase the number of inspections or testing. Mr. McKinney, Ms. Leek, and committee members discussed the testing of dentists. Ms. Leek stated that the fees that dentists pay are \$39 per x-ray machine. The private testing is by a medical physicist and reviewed by a state bureau employee. Ms. Leek detailed the functions that the state bureau employee does in relation to testing of dentists.

Committee members inquired whether there was a possibility to stagger the increases over a couple of years. Ms. Leek indicated that if the bureau does nothing, the bureau will be \$700,000 short of its budget this year. Ms. Leek stated she will take a look at the budget and the public comments; she noted that the comment period would end that day. She also stated she will listen to the comments that come in at the public hearing. Committee members inquired whether the lower fees are the primary reason for the deficit or whether there are other factors. Ms. Leek indicated the bureau has not kept up over time with the increasing cost of personnel and with the cost of doing business. Additionally, Ms. Leek indicated the bureau also implemented an online licensing system to ease an administrative burden from staff. She further stated that the licensing system cost about \$1 million over four years to establish, which was spread across 16 licensing programs. Ms. Leek indicated that the licensing system is now in its maintenance phase and costs \$700,000 annually shared across 16 licensing programs. Committee members inquired again whether this was really just someone "asleep at the wheel." Ms. Leek responded by indicating the shortfall was caused by a lot of factors. She indicated she was not sure why it was over the past 10 years the fees were not raised by rulemaking. She stated she was trying to make cuts and trying to balance the budget. Committee members stated they were interested in determining why such a deficit developed so quickly.

Committee members inquired whether there is redundancy between private and public testing. Mr. McKinney reiterated his members' point of view. Ms. Leek stated that there is no redundancy. She stated bureau staff do not do the same testing as private testing for dentistry. Ms. Leek elaborated on the difference between the private testing and the review of the private testing by the medical physicist and the additional review done by the state bureau employee.

Committee members confirmed that if nothing is done, the bureau will have a \$700,000 budget shortfall this year. Ms. Leek noted that in past years she had carryover funds, which were earmarked for the licensing system but now that the licensing system has been built those moneys are no longer available. In other words, in past years there was also a shortfall but there was money to cover it. That money is no longer there. Committee members stated it was perplexing that the bureau arrived at a \$700,000 shortfall and just figured that out this year. In response, Ms. Leek said the bureau saw this coming.

In response to a committee inquiry, Ms. Leek stated that Iowa is not going above and beyond federal regulations on radiological material regulations. Ms. Leek stated that the bureau does not receive an appropriation from the general fund, but rather receives funding from fees. Ms. Leek was asked if she has had unrealistic demands expressed to not seek fee increases or something that caused this situation. Ms. Leek stated she would look into the issue. Ms. Leek stated that the bureau has not previously come before the committee, sought a fee increase, and been denied a fee increase in the past 10 years, in response to a committee inquiry.

Committee members stated that the committee needed to keep the increase in perspective; this is not a large increase for dentists. Furthermore, it is good that the bureau used up their surplus.

Ms. Leek noted that by regulating at the state level, the bureau has saved the industry \$20 million in the past 20 years. Even with the proposed increase, the industry will still save \$5 million.

Committee members stated they remembered when the department of public health came before the committee and requested to raise the medical examiner fee, reasoning that the demand was increasing, but then subsequently the number of autopsies decreased. As such, committee members expressed skepticism of the department's fee increases. Furthermore, committee members stated that this increase may not be much to many people, but it is a lot to an entity like the University of Iowa. Committee members also requested a better justification for the deficit than the development of an online system, for which they said they did the math and it did not explain the \$700,000 deficit. Finally, committee members expressed concern the budgetary situation is such that it could put the department at neutral for several years.

No action taken on ARC 4446C.

DENTAL BOARD

Representing the agency: Jill Stuecker, Christel Braness

ARC 4424C (NOIA), Expanded Functions; Fees, Proposed Amendments to Rules 10.3, 15.4, 15.8(1), 20.4 - 20.7, and 25.10(2)“f” and Adoption of Chapter 23

Committee members commented that content such as that found in this rulemaking, specifically new licenses, is typically done by legislation. Committee members encouraged the board to be in contact with the chairs of the Senate and House State Government Committees.

Mr. Tom Cope spoke on behalf of the Iowa Dental Hygienist Association in favor of the rulemaking. He stated that the certificate educates the patient and is not a new license. He stated it is a good way to avoid scope of practice fights and provides Iowans access to more dental services. He went on to say that the association hoped the rules do not get held up too extensively.

Committee members asked Mr. Cope why he thinks this should be done administratively rather than legislatively. Mr. Cope stated that the board has high quality legal representation in the Attorney General, who makes a determination regarding statutory authority prior to rulemaking. He stated that the state dental code gives the dental board broad authority to determine what a dental hygienist can do. In response to a question from the committee, he stated he did view this rulemaking as a gap filler. The rulemaking lays out the expanding functions for level 1 and level 2, stated Mr. Cope.

Committee members stated that the committee needs to be protective of the General Assembly's authority and determine whether the rulemaking is truly gap filling or if it is more than that. Committee members stated that it is important to discuss whether this is a matter for the agency to address or a matter for the General Assembly to address.

The Committee inquired whether in the past the General Assembly has authorized expanded functions. Mr. Cope responded by stating that rules have been passed before with expanded functions; these rules are amendments to prior rules. Mr. Cope confirmed with committee members that expanded functions have been done via rulemaking for a while. Ms. Braness said the rules were created in 2005 and updated one time since then. Ms. Braness stated the board is amending its rules now to shape what is appropriate for scope of practice, but it is not creating a new profession.

Committee members said they had listened to the conversation and then asked the board if they were asking for a certificate. Ms. Braness said they were asking for something a step more formal than a certificate of completion. Ms. Braness stated that before expanding the dental hygienist's scope of practice, the board was confirming the dental hygienist met all minimum training requirements to perform services safely. Ms. Braness explained that all level 2 expanded function training would go through the University of Iowa College of Dentistry, but level 1 expanded function training may go through dental offices, licensees, community colleges, and other organizations. Committee members stated that it sounded like a lot of these entities are educators, and inquired whether they issue a diploma upon completion. Ms. Braness stated that some issue a certificate of completion, but it is not consistent. As such, Ms. Braness suggested the rulemaking's goal was to provide consistency. Committee members stated that perhaps a better solution was to make the educating entities be more consistent. Mr. Cope weighed in and stated that the rulemaking solves the problem and establishes standards. Mr. Cope stated that the certificate provides the public notification that the dental assistant has the training to conduct that function reflected on the certificate. Committee members stated that there seems to be duplication by education entities and the state both issuing certificates. Ms. Braness indicated that level 2 dental hygienists or assistants are performing these duties and are questioned by patients because they do not have certificates issued by the board. Committee members stated that they think there are a lot of problems with the rulemaking.
No action taken on ARC 4424C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 4450C (NOIA), Vaccine Administration by Pharmacists, Proposed Amendment to Rule 39.10

No discussion on ARC 4450C.

ARC 4455C (AF), Controlled Substances—Registration, Prescription Monitoring Program, Fees, Temporary Designation, Exempted Prescription Products, Disposal, Amendments to Chapter 10

No discussion on ARC 4455C.

ARC 4456C (AF), Technician Product Verification Programs, Amendments to Chapter 40

No discussion on ARC 4456C.

ARC 4454C (AF), Universal Practice Standards—Protection from Exposure to Hazardous Drugs, Delayed Compliance, Amendments to Rules 8.5 and 20.5

No discussion on ARC 4454C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Patrick Hoye, James Bleskacek

ARC 4418C (NOIA), Ignition Interlock Devices, Proposed Amendments to Rules 158.2 - 158.9

Committee members asked how many Ignition Interlock Devices (IIDs) are used in Iowa, and Mr. Hoye stated that there are about 2,000 and explained that most are required through a court order, especially in relation to the new 24/7 program, and that some are required per rules of the DOT. In response to additional questions, Mr. Hoye explained that the cost of installing a monitoring camera would be about \$10 a month, the rulemaking will only apply to newly installed IIDs going forward, the department was pursuing these changes through rulemaking based on its existing statutory authority to regulate what IIDs are used in this state, that most neighboring states had found that cameras were the cheapest and most reliable way to monitor IID users as opposed to alternatives such as biometrics, that requiring cameras was a recommendation of a traffic safety task force, and that he was not sure how many states had required cameras on IIDs by rule rather than by statute.

Committee members expressed concern regarding the constitutional and privacy ramifications of installing cameras on IIDs as well as the lack of clear statutory authority for the department to do so and suggested that the matter should be addressed legislatively.

Committee members asked if the department trusts the accuracy of IIDs. Mr. Bleskacek explained that the department does trust the accuracy of IIDs, that Iowa was one of the first states to use IIDs, and that IID technology has improved over time, although the department did not update its technology and rules for many years. He explained the department's process for approving technological changes to IIDs and noted that Iowa has few approved vendors for IIDs. He explained that IIDs only work when people blow into the device, and cannot stop a person who is determined to drink and drive. He stated that IIDs reduce recidivism, and they work when they are effective.

Committee members stated that constituents have complained that IID technology is archaic and asked why companies that design IIDs cannot create a device that can distinguish between eating toast or breakfast pizza and drinking three beers. Mr. Bleskacek explained that even the technology used by law enforcement cannot handle that distinction, and IIDs use the same technology. He further explained that Casey's Pizza is made using a yeast that can trigger an IID, but adding camera technology could improve the situation because it would allow the department to see that a person is eating pizza rather than drinking.

Committee members asked for clarification on when the camera takes pictures and how that would mitigate eating pizza triggering an IID. Mr. Hoye and Mr. Bleskacek explained that the camera triggers when the car is started and each time a person blows, but takes a series of three pictures: prior to blowing in the device, while blowing, and after blowing. Mr. Bleskacek explained that in Missouri, cameras have picked up people eating pizza before blowing. He noted that cameras allow some time between when the device is triggered before a person must blow.

In response to additional questions, Mr. Bleskacek explained that the camera would only capture the front cabin of the vehicle, not the passenger or back seats or persons outside the vehicle; that it is up to the DOT how long pictures from the camera will be kept, and the DOT is working on a policy on IIDs; that language on maximizing camera technology is a reference to improving blurry images; that the cameras would not go into operation on July 1, 2019, as stated in the rulemaking because the rulemaking was drafted several years prior; and that someone other than the driver found to have blown into an IID or an IID lockout is reported to the DOT, while tampering is a simple misdemeanor and would be forwarded to the county attorney for possible prosecution.

In response to further questions, Mr. Hoye and Mr. Bleskacek were unsure if a company administering an IID camera would report pictures of smoking marijuana or child abuse to law enforcement, but stated they probably would not, as only IID violations are reported. Committee members stated that this would place a large burden on such companies, which might get pictures of people engaging in a variety of private conduct. Committee members asked if the companies own the pictures and can release them to whomever they wish. Mr. Hoye was unsure, but did not think so. Committee members stated that the question of who owns the pictures is significant and could affect who can access the pictures, whether by an open records request, a subpoena, or other means.

Committee members questioned whether language in the rulemaking permitting the breath volume of alcohol that triggers the device to be lowered upon request in advance should have the requirement for advance requests removed, as someone may not always know in advance that they have a medical condition that might merit such a reduction. Mr. Bleskacek explained that the National Highway Traffic Safety Administration has recommended a lower volume that would cover most such conditions, which the department may pursue.

Committee members questioned why the rulemaking permits an IID vendor to allow a one-time exception to a lockout, and Mr. Bleskacek explained that the vendors requested the language, and he suggested that it might mitigate a Casey's Pizza scenario.

Committee members urged the department to revise language stating that vendors must recommend to IID users that they wait for 15 minutes after drinking their last alcoholic beverage before starting their car so that the requirement is stronger than a recommendation. Mr. Bleskacek noted that a vendor cannot ultimately stop someone from drinking and driving, and Mr. Hoye stated that the IID industry is trying to avoid a Casey's Pizza incident, and such incidents should be avoided if the rules are followed.

Committee members asked about the public comments received by the department, and Mr. Hoye explained that the department had received one public comment from the IID industry and had not scheduled a public hearing. Committee members urged the department to seek more public input and work further on the language of the rulemaking. Mr. Ewing explained that the July 1, 2019, date in the rulemaking may have been entered in error or may have indicated the intent of the department to pursue emergency rulemaking. Committee members suggested that this matter should be pursued legislatively rather than by rulemaking and that the DOT should be consulted as well.
No action taken on ARC 4418C.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly

ARC 4460C (AF), Taxable Sales — Services Treated as Sales of Tangible Personal Property, Prepaid Merchandise Cards, Photograph and Retouching Services, Amendments to Rules 16.51, 16.52, and 26.17

Committee members stated that these are excellent rules and elaborated to state that they had friends who were a married couple, a photographer and an accountant, and the couple reported the rules alleviated a lot of stress.

No action taken on ARC 4460C.

ARC 4466C (AF), Assessor or Deputy Assessor Continuing Education, Amendment to Rule 124.3

No discussion on ARC 4466C.

TRANSPORTATION DEPARTMENT

Representing the agency: Brooks Glasnapp, Sara Siedsma

ARC 4436C (AF), Tourist-Oriented Directional Signing, Amendments to Rules 119.1, 119.2, 119.4(1)“a,” and 119.6 and Rescind Rule 119.5(4)

No discussion on ARC 4436C.

ARC 4437C (AF), Nonoperator’s Identification, Amendments to Rules 630.1(2) and 630.2

No discussion on ARC 4437C.

TREASURER OF STATE

Representing the agency: Karen Austin

ARC 4463C (AF), Iowa Educational Savings Plan Trust, Adoption of Chapter 16

No discussion on ARC 4463C.

ARC 4464C (AF), Iowa ABLE Savings Plan Trust, Adoption of Chapter 20

No discussion on ARC 4464C.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: David Steen

ARC 4449C (NOIA), Employer Innovation Fund, Proposed Adoption of Chapter 16

No discussion on ARC 4449C.

ARC 4451C (NOIA), Unemployment Benefits Wage-Earning Limitation, Proposed Amendment to Rule 24.18
In response to an inquiry from committee members, Mr. Steen explained the formula to be applied in the rulemaking, which requires rounding to the lower multiple of \$1, rather than the nearest dollar. Mr. Steen said the goal is to not overpay to a lot of people. Mr. Steen stated that this may occur in the event of periodic or intermittent layoffs. It would be unlikely that this would apply to 26 weeks of benefits, said Mr. Steen in response to a committee inquiry.
No action taken on ARC 4451C.

VOTER REGISTRATION COMMISSION

Representing the agency: Molly Widen

Emergency Filing, Approval Required: Voter Registration Forms Produced by Electronic Poll Books, Amendments to Chapter 2

Mr. Joel Miller, Linn County Auditor, spoke on behalf of the rulemaking. He indicated that his county currently uses no ink poll pads. He stated that the rulemaking will provide for substantial savings by using electronic poll books. He indicated that he would like to test the electronic poll books at a June 25 special election before a major election in November.

Committee members clarified with Ms. Widen that there was a typographical error in the emergency filing indicating an effective date of 2018, rather than 2019. Committee members clarified with Mr. Miller that there was an Alburnett special election on June 25.

Emergency Rulemaking Authorized

ARRC authorized emergency rulemaking by a short form vote with eight members present.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 4445C (NOIA), Standards of Practice—Medical Cannabidiol, Proposed Amendment to Rule 13.15(1)
No discussion on ARC 4445C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Amber DeSmet, Diana Machir, Patrick Thomas

ARC 4457C (AF), Electronic Filing; Confidential Information; Public Records, Amendments to Chapters 1, 2, 6, 7, 10, 14, and 16 and Adoption of Chapter 12
No discussion on ARC 4457C.

ARC 4459C (AF), State Employee Whistleblower Actions, Adoption of Chapter 17
No discussion on ARC 4459C.

ARC 4458C (AF), Bargaining Unit Determinations; Representative Certifications, Amendments to Chapters 4 and 5 and Adoption of Chapter 15
No discussion on ARC 4458C.