



MINUTES

OCTOBER 2019 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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

Representative Megan Jones, Chair
Representative Steven Holt
Representative Joe Mitchell
Representative Amy Nielsen [by teleconference]

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: 6/5/19, 9/11/19, 9/25/19

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:02 a.m. on Tuesday, October 8, 2019, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the September 10, 2019, meeting were approved. The next meeting was scheduled for Tuesday, November 12, 2019, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. The meeting was adjourned at 10:40 a.m.

Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. In response to a question regarding the estimated revenue raised by 2019 Iowa Acts, chapter 142 (Senate File 619), the legislation authorizing ARC 4677C, Ms. Mechler explained that the revenue estimate was a comparison of revenue raised in fiscal years 2019 and 2020.

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).

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Marissa Eyanson

ARC 4673C (NOIA), Medical Prior Authorizations—Uniform Process for Managed Care and Fee-for-Service Payment and Delivery Systems, Proposed Amendments to Chapter 73

Ms. Susan Martin spoke on behalf of Optima Life Services. She expressed appreciation for the rulemaking, which she characterized as a step in the right direction, noting the efforts to standardize and simplify the process. She expressed hope that, moving forward, more detailed language would be included to support Iowans with severe and persistent mental illness. She distinguished the intellectual and developmental disability (ID) waiver, which includes an annual, standardized assessment that provides for a year-long authorization, from the habilitation waiver, which serves Iowans with severe and persistent mental illness and provides an authorization for between four weeks and four months based on an assessment by a managed care organization with input from integrated health home workers and sometimes providers. She stated that despite differences in their visibility, both groups need long-term support and services to be successful.

She stated she would like to see habilitation services managed more like a long-term support and services program like the ID waiver. This would include standardized assessments from a third-party contractor with longer authorizations. She stated that in order to get a healthy and safe Iowa, it must be understood that persons with severe and persistent mental illness need such long-term support and services, including an accurate assessment, longer authorization periods, and stable funding for their providers.

Committee members asked Ms. Martin to clarify what she was asking for. She explained that for the ID waiver, there is a standardized assessment that drives the level of care, whereas there is no standardized assessment for the habilitation waiver. She would like both waivers to use the same approach so both groups can get the long-term support they need. Committee members asked the department to respond to Ms. Martin's concerns. Ms. Eyanson explained that for the ID waiver there is a standardized assessment tool to derive a level of care in the waiver, whereas those receiving habilitation services are under a different sort of program similar to home- and community-based services and are assessed using a different tool that does not derive a scoring mechanism that can be used to determine a granular level of care in the waiver. She expressed openness to research aimed at deriving a new assessment tool for the habilitation waiver, which she said has been discussed but not undertaken as of yet. She stated that issue is a separate issue from prior authorization, which is the subject of this rulemaking. She stated that there are other tools the department has considered that could potentially derive a score similarly to the ID waiver assessment, but this has not yet become a top priority. Committee members asked if the department would work with Ms. Martin on this, and Ms. Eyanson agreed to do so.

No action taken on ARC 4673C.

ARC 4675C (NOIA), Timely and Adequate Notice, Proposed Adoption of Chapter 16 and Amendments to Chapters 14, 40, 41, 46, 74-76, 79, 82, 83, 86, 90, 91, 93, 95, 106, 109, 153, 170, and 187

No discussion on ARC 4675C.

ARC 4674C (NOIA), Appeals and Hearings, Proposed Amendments to Chapter 7

Committee members asked if the rulemaking includes any substantive changes regarding the denial of Medicaid coverage by managed care organizations (MCOs). Ms. Freudenberg said no, the appeal process has not changed; the language has only been simplified. She explained that those covered by an MCO first appeal to the MCO and then can appeal to the department after that.

Committee members asked if a public hearing on the rulemaking has been scheduled and how else the department might get input on the rulemaking. Ms. Freudenberg explained that a public hearing has not been scheduled and explained that the department has worked with the Attorney General's Office and sent the proposed rulemaking out to the Department of Inspections and Appeals (DIA) and Iowa Legal Aid, the latter of which represents Medicaid members the most. Only DIA had comments, which were not substantive. She expected that the biggest audience for the rulemaking would be legal groups such as Disability Rights Iowa rather than Medicaid members, although Disability Rights Iowa had not commented yet.

No action taken on ARC 4674C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston, Dennis Britson

ARC 4660C (NOIA), Agency Procedure and Organization, Proposed Adoption of Chapters 1, 2, and 4 and Amendments to Chapters 3, 10, 36, 39, 41, 55, 58, and 76

Committee members expressed appreciation that the rulemaking eliminates rules that are duplicative of statute, which they said all agencies could do better.

No action taken on ARC 4660C.

ARC 4677C (AF), Residential and Motor Vehicle Services Contracts, Amendment to Chapter 103 and Rescission of Chapter 104

No discussion on ARC 4677C.

ACCOUNTANCY EXAMINING BOARD

Representing the agency: Robert Lampe

ARC 4657C (AF), CPA Examinations, Amendment to Rule 3.6(1)

No discussion on ARC 4657C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Jennifer Klein

ARC 4669C (NOIA), Renewable Chemical Production Tax Credit Program—Definition of “Building Block Chemical,” Proposed Amendment to Rule 81.2

Committee members asked if Ms. Klein could describe the five newly approved chemicals in more detail, and she did not have more information. She explained the process for approval of new chemicals. The department’s sales team determines that companies want to use new chemicals in Iowa, and the department then forwards those requests to Iowa State University for approval if the chemicals meet the statutory definition.

Committee members noted that the jobs impact statement for the rulemaking states that the rulemaking will not have any jobs impact and asked what the process is for determining the jobs impact of a rulemaking. Mr. Ewing explained that jobs impact is determined by executive branch agencies and not the LSA. Committee members asked how agencies make such determinations. Ms. Klein explained that for a program such as the renewable chemical tax credit program, chemicals are requested in advance of a project starting, so it is not known if a project will move forward or if there is to be any resulting jobs impact statement. She also stated that the addition of a new chemical may not result in staffing increases at a company.

Committee members asked if the program is subject to a legislative cap on allocations. Ms. Klein stated there is a cap of \$10 million per year with a maximum of \$1 million for a new business and \$500,000 for an existing business. She noted that this program is unusual in that the tax credit is awarded after production of the chemicals if they are produced in the agreed-to amount, rather than awarded up front.

No action taken on ARC 4669C.

ARC 4670C (NOIA), Community Attraction and Tourism (CAT) Program Marketing Assistance; Enhance Iowa Board Authority and Term of Appointments, Proposed Amendments to Rules 211.3(3), 214.2(2), and 214.3(1)

No discussion on ARC 4670C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 4665C (NOIA), Low-Income Housing Tax Credits—Qualified Allocation Plans, Proposed Amendments to Rules 12.1 and 12.2

Committee members asked if, under the terms of the low-income housing tax credits, a subcontractor can hire an independent contractor to work on a project. Committee members noted there have been issues with independent contractors being paid in cash and unemployment insurance and workers' compensation not being properly paid. Committee members asked Ms. Hanks-Bents to follow up on the question after the meeting.

No action taken on ARC 4665C.

ARC 4666C (NOIA), Home- and Community-Based Services Revolving Loan Program, Proposed Amendments to Chapter 21

Committee members expressed appreciation to the authority for getting these rules up to date.

No action taken on ARC 4666C.

IOWA PUBLIC INFORMATION BOARD

Representing the agency: Margaret Johnson

ARC 4655C (NOIA), Board Actions; Exempt Sessions, Proposed Amendments to Rules 2.2(4) and 8.3

No discussion on ARC 4655C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Sharon Dozier, Susan Reynolds

ARC 4656C (ANOIA), Funeral Directors, Funeral and Cremation Establishments — Disinterment Permits, Proposed Amendment to Rule 100.9(6)

Committee members expressed concern that a permit would not be needed for disinterment of human remains for purposes other than autopsy or reburial or for the disinterment of cremated remains. In citing their concerns with the rulemaking, some members shared personal experiences regarding cremated remains, the burial of those remains in cemeteries, and the importance of that burial not being disturbed. Upon inquiry, Ms. Reynolds confirmed that no permit would be required to disturb buried cremated remains in a cemetery. However, she stated that another purpose to disinter remains would be for relocation of a cemetery, which would be governed by the Iowa Cemetery Act. The Iowa Cemetery Act, according to Ms. Reynolds, provides a permit process for the disinterment of remains in the event of erosion, flooding, or disruption of cemetery sites. Ms. Reynolds explained that the reason the phrase “or cremated remains” was being struck from the rule was that Ms. Melissa Bird, Bureau Chief, Bureau of Health Statistics, Vital Records, Department of Public Health, interpreted Iowa Code section 97.13 (3) as not requiring a disinterment permit for cremated remains because the final disposition occurs at a crematory. As such, the bureau will not issue a permit for that purpose. Ms. Reynolds stated that this is a change in interpretation of the Iowa Code because under the prior Bureau Chief, Ms. Jill Francis, a disinterment permit was issued for a broader array of circumstances. Ms. Reynolds was not aware of a change in the Iowa Code which would explain the change in policy. Committee members did not agree with a policy which made it permissible to dig up cremated remains without a permit. Ms. Reynolds reported that the Funeral Director would state that this practice has occurred. Committee members urged the division to consult the Assistant Attorney General assigned to its agency to ensure the intent of the Iowa Code is being met and encouraged the division to reconsider the underlying policy of its rulemaking prior to adoption of the rulemaking. Committee members were also interested in knowing how this rulemaking fits into the larger administrative and civil and criminal statutory code scheme; they were concerned with unintended consequences of the proposed rulemaking that may not be accounted for by the scheme. In response to an inquiry from committee members, Ms. Reynolds indicated that cremation is on the rise. In light of the foregoing discussion, committee members concluded the review by stating that the division and the committee should discuss whether the relevant statute needs to be amended to meet the policy aims that the committee has expressed.

No action taken on ARC 4656C.

ARC 4664C (NOIA), Physician Assistant Duties—Definitions of “Administer,” “Dispense,” “Order,” and “Prescribe,” Proposed Amendment to Rule 326.1

No discussion on ARC 4664C.

ARC 4668C (NOIA), Optometrists—Prescription of Controlled Substances, Proposed Amendments to Rules 181.3(2)“c,” 182.4(3), and 183.2(31)

No discussion on ARC 4668C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 4676C (AF), Expanded Functions; Fees, Amendments to Rules 10.3, 15.8(1), 20.4–20.7, and 25.10 (2)“f,” and Adoption of Chapter 23

The committee thanked the board for taking the committee’s comments into consideration.

No action taken on ARC 4676C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Chandlor Collins, Dave Jobes

ARC 4650C (NOIA), Closed Circuit Surveillance Systems, Proposed Amendments to Rules 141.1 and 141.6

Committee members confirmed that this rulemaking adds “designated sports wagering area” to the department’s rules and asserted that some parties wanted that insertion deleted. Mr. Jobes, Assistant Director, Division of Criminal Investigations, Department of Public Safety, clarified that prior to this rulemaking, “designated sports wagering area” had not been defined in either rule or statute. He stated that the department worked with the Iowa Racing and Gaming Commission to define that phrase.

Committee members asked Mr. Jobes if this rule only addresses uncounted money. Mr. Jobes expressed agreement. Mr. Jobes stated that the issue arose with the Iowa Gaming Association regarding a money route. Mr. Jobes explained that the department interprets sports wagering funds to be counted funds. Specifically, Mr. Jobes stated that when a sports wager is made at a cage or at a counter, it will be logged into the sports wagering system and considered counted funds immediately, and will continue as such through the transportation to the count room. This is different, Mr. Jobes said, from the typical casino proceeds which are not immediately counted.

No action taken on ARC 4650C.

ARC 4651C (NOIA), Public Safety Survivor Benefits Fund, Proposed Adoption of Chapter 292

No discussion on ARC 4651C.

ARC 4652C (NOIA), State Fire Marshal Administration, Proposed Amendments to Chapter 200 and Rule 210.5(2)

Committee members commented that the preliminary review meeting discussed in 661 IAC 200.3(4) seemed like it could be a good idea but expressed concern that it could increase the cost for architectural engineers, which could be passed on to consumers. Committee members inquired which stakeholders the State Fire Marshal consulted. Mr. Collins stated that the State Fire Marshal was not present and he would have to speak to the State Fire Marshal to determine which stakeholders were consulted. Nevertheless, Mr. Collins was able to provide some context for the cost of building plans. He stated that the cost of state building plans are often significantly lower than builders expect, causing builders to wonder if the amount is correct. He provided the following example: if a building costs \$3 million to build, the city may assess a \$30,000 charge, whereas the state may assess a \$3,000 charge.

Committee members inquired about the amendment to 661 IAC 200.8(4)“c” which provides that “[i]f any deficiencies are found and the building, facility, or installation is outside the corporate limits of any city, the state fire marshal shall specifically identify such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building, facility, or installation.” The rulemaking removes the following sentence from that rule: “[s]uch notice and order shall be sent to the county attorney with a request that the notice and order be examined by the county attorney.” Committee members inquired about the significance of removing that sentence, specifically asking if it switched the burden of prosecution from the county attorney to the State Fire Marshal. Mr. Collins confirmed that the county attorney may still prosecute if the builder refuses to fix the problem.

No action taken on ARC 4652C.

ARC 4667C (NOIA), Vehicle Impoundment, Proposed Amendment to Chapter 6

Committee members inquired as to the impetus for the rulemaking. Mr. Collins reported that the department’s attorney reviewed the department’s rule immediately upon becoming employed with the department in June or July 2019 and at that time stated that this rulemaking was necessary.

Committee members asked whether there are exceptions in the case or the rule to search impounded vehicles in the event of an emergency, such as explosives. Mr. Collins stated that the case does not speak to that situation; he went on to explain police authority in emergency situations and privacy rights.

No action taken on ARC 4667C.

MEDICINE BOARD

Representing the agency: Kent Nebel

ARC 4653C (NOIA), Standards of Practice—Medical Cannabidiol, Proposed Amendment to Rule 13.15(1)
No discussion on ARC 4653C.

ARC 4658C (AF), Standards of Practice—Medical Cannabidiol, Amendment to Rule 13.15(1)
No discussion on ARC 4658C.

ARC 4663C (NOIA), Supervision of a Conditional Prescribing Psychologist; Collaboration with a Prescribing Psychologist; Grounds for Discipline, Proposed Amendments to Rules 19.10-19.12
No discussion on ARC 4663C.

REVENUE DEPARTMENT

Representing the agency: Tim Reilly

ARC 4678C (AF), Electronic Filing of W-2 and 1099 Forms—Tax Withheld, Filing Deadline, Amendment to Rule 46.3(3)

Upon inquiry from committee members, Mr. Reilly confirmed that the rulemaking extends the deadline for electronic submission of W2s and 1099s from January 31 to February 15 for employers who withhold wages. Committee members commented that this was good from an employer's perspective but wondered whether it was from any employee's perspective. Mr. Reilly agreed it was good from an employer's perspective and commented that it does not affect when an employer must provide the W2s and 1099s to employees.

Committee members inquired how much money the department has saved by detecting fraudulent claims. Mr. Reilly reported that the department usually saves approximately \$40 million by detecting fraudulent and error-filled claims.

Mr. Reilly stated that the impetus for the change in deadline is to reduce wait times on the helpline for the department because the prior deadline coincided with the filing deadline for fourth quarter sales tax. He said the department hopes that the new deadline will result in taxpayers calling at a later date and waiting a shorter period of time.

Committee members inquired as to how long Iowans were waiting for tax refunds. Mr. Reilly did not have the information immediately available, but stated that the target turn-around time is 30 days. Committee members stated that if the actual waiting time is 60 days for a total of \$500 million, then there is a problem.

No action taken on ARC 4678C.

ARC 4679C (AF), Resale and Processing Exemptions—Commercial Enterprises, Amendment to Rule 225.8
No discussion on ARC 4679C.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: Nicholas Olivencia

ARC 4647C (NOIA), Collecting and Recovering Overpayment Balances, Proposed Amendments to Rules 25.7(6) and 25.8(1)

Committee members asked if a credit card fee is assessed. Mr. Olivencia confirmed that a credit card fee is assessed and that notice of the assessment of the fee is provided to the claimant.

No action taken on ARC 4647C.

ARC 4648C (NOIA), Claims and Benefits—Failure to Report, Overpayment, Proposed Amendments to Rules 24.6(7)“f” and 25.8(1)

No discussion on ARC 4648C.

ARC 4649C (NOIA), Benefits; Voluntary Shared Work, Proposed Amendments to Chapters 23–25
No discussion on ARC 4649C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Sarah Reisetter

ARC 4671C (NOIA), Medical Residency Training State Matching Grants Program, Proposed Amendments to Rules 108.3(5) and 108.5

Committee members asked if this rulemaking relates to recent legislation that provided for five new psychiatric rural residences, and Ms. Dixon explained that the rulemaking relates to a different piece of legislation.

No action taken on ARC 4671C.

ARC 4672C (NOIA), Family Planning Services Funding Prioritization, Restrictions and Reporting, Proposed Adoption of Chapter 75

Committee members asked if a lawsuit by Planned Parenthood on this rulemaking was still going through the courts. Ms. Dixon stated this is a different program than the one that was the subject of the lawsuit. Committee members asked what the lawsuit was about and what the substance of the rulemaking is. Ms. Dixon was not familiar with the details of the lawsuit, but explained that the rulemaking has to do with prioritization of funds and related restrictions and reporting requirements. She noted that the department was not previously doing any of the restricted activities, so the rulemaking does not change the department's practices relating to the affected funds. Committee members expressed uncertainty as to what the rulemaking does. Ms. Dixon stated that the rulemaking does what the underlying legislation requires. Committee members confirmed this would be subject to further committee review upon adoption and asked if a public hearing has been scheduled for this rulemaking. Ms. Dixon stated there is not, and no public comments have been received yet.

No action taken on ARC 4672C.

ARC 4489C (AF), Medical Cannabidiol Program, Special Review of Amendments to Chapter 154

Ms. Reisetter explained that the department had a meeting with MedPharm in September to discuss delayed items in the rulemaking, which resulted in agreement on some of the concerns previously raised by MedPharm that would hopefully resolve concerns previously raised by the committee as well.

She explained that the department has agreed to revise its previous agreement with MedPharm regarding laboratory criteria. She noted MedPharm's desire to control costs in this regard as well as the department's need to ensure adequate testing. She explained that there is not currently an independent third-party laboratory available, so only the State Hygienic Laboratory can be used for testing. She further explained that the department will continue to work with MedPharm to stabilize the cost of testing and determine what parts of the department's laboratory testing document will be codified by rule.

She explained that the department had agreed to remove language from the rulemaking regulating advertising by health care practitioners. She noted that further changes to the department's rules would need to be approved by the Board of Health at its November meeting. She explained that the department feels it is important to have language in the rulemaking providing for the department to initiate a product recall, although that was not based on any concerns about MedPharm. She stated the department asked MedPharm to provide suggested language on recalls, which the department is reviewing and anticipates including in its November rulemaking. She noted that Michigan has initiated a product recall.

She explained that the department has agreed to allow unused samples submitted to the laboratory to be returned to the manufacturer for testing rather than disposed of as waste. She explained that the department has agreed to eliminate the requirement for prior department approval of crop inputs given that the process for automatic reporting of crop input data to the department has been improved. She explained that the department is also working on a list of data elements to be required to the department, recognizing MedPharm's desire for stability and cost savings.

Committee members stated that after taking a tour of MedPharm's facility, MedPharm is acting properly as it implements this program. Committee members stated that the department should have the authority to conduct a recall to protect the public.

Committee members stated that there is no statutory authority for the department to waive the requirement for a patient to have a medical cannabidiol registration card because of health, mobility, or other issues, as provided in the rulemaking. Committee members stated the inclusion of such a waiver

process must be done legislatively, even if it is a worthy goal. Committee members asked how a law enforcement officer could know if a person is legally possessing cannabidiol if the person does not have a card.

Ms. Reisetter explained that the department has consulted its attorney on this matter and that the statute provides that the department “may” issue such cards. She explained that the problem is that without a card on their person, patients are unable to utilize the affirmative defense provided by statute for possession of cannabidiol by patients participating in the program. She further explained that the patients who would receive waivers have severe or profound disabilities and are essentially homebound. Such individuals are unlikely to ever actually be in possession of cannabidiol. She explained that the waivers would make clear to the patient and their caregiver that the patient would not be able to take advantage of the affirmative defense if they are ever found in possession of cannabidiol. She stated she would ask the board to include information on such waivers in its annual report.

Committee members expressed appreciation for the department working with MedPharm and taking their concerns into account, even if they are not all addressed. Committee members expressed appreciation in particular for the department allowing products to be returned to the manufacturer for testing to avoid product waste, as limiting waste is an important goal. Committee members encouraged the department to look for other opportunities to use manufacturer waste, such as for composting, and noted a trend in agriculture toward better use of such organic matter.

Mr. Lucas Nelson spoke on behalf of MedPharm. He thanked committee members who had toured MedPharm’s facilities and invited all committee members to do so. He expressed appreciation to the department for their September meeting and stated that great improvements to the rulemaking have been agreed to. He concurred with Ms. Reisetter’s discussion of the laboratory criteria issue and explained that MedPharm is seeking stability and predictability in that regard. He noted that the language MedPharm proposed on recalls is based on federal law and regulations applicable to the nation’s food supply, which he felt would be a good match for the program. He stated in regard to production records that MedPharm’s goals are similar to those for laboratory criteria, with clear expectations set out in the rulemaking so MedPharm would not need to engage in additional development efforts. He expressed hope that rulemaking addressing these issues would be brought forward at the board’s November meeting.

Committee members asked for clarification on the status of the rulemaking. Mr. Ewing explained that the committee was engaging in a special review of the rulemaking, some items of which were subject to a session delay by the committee and the rest of which are currently in effect.
No action taken on ARC 4489C.