



# MINUTES

## FEBRUARY 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

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

Representative Megan Jones, Vice Chair  
Representative Steven Holt  
Representative Rick L. Olson

EX OFFICIO, NONVOTING MEMBER: Michael Boal, Deputy Legal Counsel, Office of the Governor

LSA CONTACTS: Organizational staffing provided by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329. Minutes prepared by Jack Ewing, Administrative Code Editor

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### BULLETINS NEEDED FOR THIS MEETING: 5/8/19, 1/15/20, 1/29/20

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#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Friday, February 7, 2020, in Room 116, State Capitol, Des Moines, Iowa. The ARRC voted unanimously in favor, by voice vote, of nominating Senator Brown as Chairperson of the ARRC. The ARRC voted unanimously in favor, by voice vote, of nominating Representative Jones as Vice-Chairperson of the ARRC. The minutes of the January 10, 2020, meeting were approved. The next meeting was scheduled for Friday, March 6, at 9:00 a.m. at the State Capitol in Des Moines, Iowa. Mr. Ewing provided a summary of the updated 2019 rules analysis report. The meeting was adjourned at 12:10 p.m.

#### Fiscal Overview

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

#### LAW ENFORCEMENT ACADEMY

Representing the agency: Russell Rigdon, Judy Bradshaw

ARC 4866C (NOIA), Council Quorum; Definitions; Law Enforcement Officer Qualifications, Certification and Training; Decertification; Reserve Peace Officers; Public Records and Fair Information Practices, Chs. 1-3, 6-8, 10

No discussion on ARC 4866C.

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 4888C (NOIA), In-Home Health-Related Care, Rules 177.4, 177.5(2), 177.6(3), 177.9(3), 177.11  
No discussion on ARC 4888C.

ARC 4889C (NOIA), Aftercare Services Program—Postservices Allowance, Rule 187.3(7)  
No discussion on ARC 4889C.

ARC 4430C (AF), HCBS Waiver Services—Consumer Choices Option, Chs. 78, 79

Ms. Eyanson explained that the department is targeting July 1, 2020, as an implementation date for transitioning the consumer choices option from a prepayment framework to a postpayment framework. She explained that the department needed to establish an escrow account to carry that out, which necessitated a variance from the Department of Administrative Services among other requirements. She explained that additional programming was also still needed for the transition. She stated that Veridian Credit Union, the financial management services provider for the consumer choices option, agrees with the department's approach.

Committee members thanked the department for its work on implementing the rulemaking and expressed hope that the rulemaking would be implemented by July 1, 2020.  
No action taken on ARC 4430C.

ARC 4575C (AF), Customized Wheelchairs—Definition for Medicaid Members and Providers, Ch. 78

Ms. Eyanson explained that the department pursued the rulemaking to resolve prior disagreements over which wheelchairs were eligible for Medicaid coverage. She explained that the department has been monitoring the effects of the rulemaking and has detected no changes in the rates of coverage denials, appeals, or other matters.

Committee members noted issues that constituents had regarding obtaining Medicaid coverage for specialized wheelchairs from managed care organizations and expressed hope that the department would continue to monitor the issue. Committee members asked the department to provide data on the rate of denial of coverage for customizable wheelchairs before and after the rulemaking.  
No action taken on ARC 4575C.

## **AGING, DEPARTMENT ON**

Representing the agency: Angela Van Pelt

ARC 4874C (AF), Definitions, Rule 1.5

Committee members asked why it had taken the department so long to begin this rulemaking, which was based on legislation from 2018. Ms. Van Pelt explained that she only recently began employment with the department and was unsure.  
No action taken on ARC 4874C.

ARC 4875C (AF), Complaint and Appeal Procedures—Inclusion of Senior Community Service Employment Program (SCSEP) Subgrantees, Rule 2.9  
No discussion on ARC 4875C.

ARC 4876C (AF), Area Agencies on Aging—Qualifications to Serve, Rule 4.4  
No discussion on ARC 4876C.

ARC 4877C (AF), Contracts and Subgrants, Rules 6.9(2)“c,” 6.10(4), 6.11  
No discussion on ARC 4877C.

ARC 4878C (AF), Managed Care Ombudsman Program, Ch. 8

Committee members asked why it had taken the department so long to begin this rulemaking, which was based on legislation from 2016. Ms. Van Pelt again explained that she only recently began employment with the department and noted that there was a period where the department had no staff working on rulemaking. She apologized for the lateness of the rulemaking and stated that the department will try to do better in the future.

No action taken on ARC 4878C.

ARC 4879C (AF), Older American Community Service Employment Program, Ch. 10

No discussion on ARC 4879C.

ARC 4880C (AF), Office of Substitute Decision Maker—Change of Name to Office of Public Guardian, Services Provided, Ch. 22

No discussion on ARC 4880C.

ARC 4881C (AF), Aging and Disability Resource Center, Ch. 23

No discussion on ARC 4881C.

### **ATTORNEY GENERAL**

Representing the agency: Joe Nehring

ARC 4862C (NOIA), Annual Notification Fee, Rule 22.5(1)

Committee members noted that the rulemaking is based on legislation from 2017 and asked if the Attorney General had been collecting the increased fee despite the relevant rule not being updated. Mr. Nehring stated the increased amount had been collected. Committee members asked if the amount of the fee needed to be stated in rule, and Mr. Nehring stated that it did not, but the attorney general wanted to include it for the benefit of interested stakeholders. Committee members acknowledged the utility of having the fee amount in rule, but urged the Attorney General to pursue rulemaking in a more timely manner.

No action taken on ARC 4862C.

### **BANKING DIVISION**

Representing the agency: Zachary Hingst

ARC 4852C (NOIA), Regulated Loan Interest Rates, Rule 15.13(3)

No discussion on ARC 4852C.

### **UTILITIES DIVISION**

Representing the agency: Matthew Oetker, John Crotty

ARC 4865C (NOIA), Ratemaking Principles Proceeding, Ch. 41

Committee members asked how the board defines “alternative energy” for purposes of the rulemaking, and Mr. Crotty explained that the rulemaking includes a definition for the term. Committee members asked if the rulemaking grants the board increased authority over the siting of solar and wind farms. Mr. Crotty explained that the rulemaking does not address the board’s jurisdiction over siting.

No action taken on ARC 4865C.

ARC 4873C (AF), Water, Sanitary Sewage, and Storm Water Drainage Utilities, Ch. 21

No discussion on ARC 4873C.

ARC 4893C (AF), Practice and Procedure Before the Board, Ch. 7

No discussion on ARC 4893C.

## EDUCATIONAL EXAMINERS BOARD

Representing the agency: Darcy Hathaway, Joanne Tubbs

### ARC 4870C (NOIA), Teaching Endorsements, Rule 13.28

Committee members asked if the board had discussed the rulemaking with institutions of higher education. Ms. Tubbs explained that the board made the institutions aware of the rulemaking but did not discuss the rulemaking with them. She explained that the institutions would not need to adjust their course offerings based on the rulemaking and that rulemaking of this nature typically does not merit detailed discussion with the institutions.

Committee members asked why the board was pursuing the rulemaking. Ms. Tubbs explained that the rulemaking was prompted by significant feedback from school administrators, including data on issuance of conditional licenses. Such data show that teachers who need to obtain conditional licenses while they continue to take classes to qualify for a full license tend to have high turnover. She stated she could obtain information regarding how many school districts might be affected by the rulemaking. She stated that the board pursued the reduced credit hours instead of allowing some candidates to pass a single test in lieu of taking additional courses. She explained that the reduced credit hours were as far as the board wants to go at present, but the board may consider the testing option in the future.

Committee members asked for more information regarding a teacher shortage in Iowa. Ms. Tubbs explained that the board can look at the number of licenses compared to the number of job openings to calculate shortages. She explained that school districts are having difficulty attracting job applicants. She was unsure of the exact cause of the shortage, but stated that it can be difficult for some communities to attract young applicants for teaching positions and that teacher preparation programs are seeing fewer applicants. She explained that part of her job is to fill out forms for teachers moving to other states, and that Iowa is producing fewer teachers than in the past and losing more of them to other states. She stated that she has filled out more of those forms in the last year than in the previous seven years combined. Committee members asked how Iowa's credit hour requirements compare to other states, and she stated that Iowa's requirements are similar to Nebraska's while other surrounding states were closer to the requirements in the rulemaking.

Some committee members stated that the rulemaking could be beneficial to their local school districts and to rural school districts in general while others expressed concern about lowering the standards expected for teacher training.

Ms. Rachel Boon spoke on behalf of the Board of Regents. She stated she was unaware of any outreach to regents institutions by the board. She expressed two concerns with the rulemaking: the impact on students, particularly in rural areas, and the lack of input by stakeholders such as regents faculty who teach courses affected by the rulemaking. She acknowledged that the regents institutions would not be required to change their course offerings based on the rulemaking. She stated that teacher candidates must be well-prepared to teach and that the board should be aware of the course content that would be lost if the credit hours are reduced under the rulemaking. She expressed support for school districts having more flexibility to recruit teachers, but expressed hope that regents intuitions could be involved in discussions on that subject. In response to a question, she said the rulemaking would not have a financial impact on regents institutions.

Public comments opposed to the rulemaking were made by Ms. Joan Bessman Taylor speaking on behalf of teacher librarians in Iowa, Ms. Katy Kauffman on behalf of the Iowa Association of Colleges for Teacher Education, Ms. Jodi Grover on behalf of the Iowa Association of School Librarians, and Dr. Lindsay Grow on behalf of the Grand View University Education Department. They asserted that the rulemaking amounted to a lowering of standards for teacher training that would have a negative impact on students. They particularly expressed concern regarding the changes to the teacher librarian endorsement, including the removal of a required practicum. They asserted the changes would result in the loss of crucial content and knowledge for teacher librarians, whose unique training compared to other teachers is significant for promoting reading skills in students. They also questioned whether Iowa has a teacher shortage, as opposed to a lack of desirable teaching positions. They urged that the rulemaking be delayed.

Public comments in support of the rulemaking were made by Mr. David Wilkerson and Mr. Matt Carver on behalf of School Administrators of Iowa and Mr. D.T. Magee on behalf of the Norwalk Community School District. They asserted that there is a significant teacher shortage throughout Iowa

and that many school districts are struggling to hire teachers and are receiving fewer applications for teaching positions. They asserted that the rulemaking will increase flexibility for school districts in hiring and will help school districts attract teachers from out of state. In response to a question from committee members, Mr. Magee was unsure when the teacher shortage may have begun or what exactly may be causing it, although he cited as possible reasons teacher candidates returning to home states, changes in Iowa's collective bargaining laws, and lack of competitive teacher wages.

Committee members discussed the committee's options for acting on a notice of intended action with Mr. Ewing. A motion for a general referral of ARC 4870C failed on a 5-2 record roll call vote.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel, Linda Kellen

ARC 4867C (NOIA), Regulation of Elder Group Homes, Assisted Living Programs, and Adult Day Services, Chs. 67–70

Committee members asked for clarification of the meaning of service plans as described in Item 12. Ms. Kellen explained that a service plan is like a long-term care plan. She explained that such plans are used currently and are developed before a person moves in, updated within 30 days of moving in, and further updated annually or when a significant change occurs.

No action taken on ARC 4867C.

ARC 4890C (NOIA), Reporting of Dependent Adult Abuse in Programs and Facilities, Rule 52.3(3)

Committee members thanked the department for a presentation that took place in another setting regarding its plans regarding dependent adult abuse policy.

No action taken on ARC 4890C.

## **STATE PUBLIC DEFENDER**

Representing the agency: Kurt Swaim

ARC 4872C (AF), Claims for Indigent Defense and Other Professional Services, Chs. 7, 12, 13

Committee members thanked the State Public Defender for making changes to the rulemaking, particularly in regard to mileage reimbursement.

No action taken on ARC 4872C.

## **NATURAL RESOURCES DEPARTMENT**

Representing the agency: David Scott

ARC 4861C (NOIA), Process and Timeline for Appeals of Administrative Orders Issued by the Department, Rules 7.4(1), 7.17(5)“a”(2)

No discussion on ARC 4861C.

## **ENVIRONMENTAL PROTECTION COMMISSION**

Representing the agency: Kelli Book

ARC 4871C (AF), Animal Feeding Operations—Definition of “Common Ownership,” Rule 65.1

Committee members asked what the common ownership requirements are in Code chapter 459B. Ms. Book explained that Code chapter 459B defines a common ownership of an open feeding operation as a majority ownership, but does not define common ownership in that way for confined feeding operations.

No action taken on ARC 4871C.

## **NATURAL RESOURCE COMMISSION**

Representing the agency: Tamara McIntosh

ARC 4855C (NOIA), Safety Zone on Beaver Creek for Watercraft and Vehicles, Rule 40.61  
No discussion on ARC 4855C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Steven Garrison, Melissa Bird

ARC 4854C (NOIA), Optometrists—Child Abuse and Dependent Adult Abuse Mandatory Reporter Training, Rules 180.5(4), 181.3(2)  
No discussion on ARC 4854C.

ARC 4860C (NOIA), Barbers—Licensure Examination Allowed for Persons Completing Apprenticeship Training While in Custody of Department of Corrections, Rules 21.1, 21.2(1)  
No discussion on ARC 4860C.

ARC 4883C (NOIA), Podiatrists — mandatory child abuse and dependent adult abuse identification and reporting training, 220.9(4)  
No discussion on ARC 4883C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Siedsma, Brooks Glasnapp

ARC 4868C (NOIA), Outdoor Advertising, Ch. 117  
Committee members thanked the department for pursuing rulemaking that will benefit small businesses and thanked Mr. Glasnapp for including visual aids in his presentation.

Mr. Mike Sinclair, speaking on behalf of the Outdoor Advertising Association, expressed support for the rulemaking. He explained the department had collaborated with the association in the rulemaking and had done a great job at communication during the rulemaking process.  
No action taken on ARC 4868C.

ARC 4869C (NOIA), Annual Raw Forest Products Permit, Ch. 511  
No discussion on ARC 4869C.

ARC 4884C (NOIA), Unlawfully passing a school bus — penalty for first offense, Rules 615.17(2)“d”(1), 615.43(1)“a”(4)  
No discussion on ARC 4884C.

## **VETERANS AFFAIRS, IOWA DEPARTMENT OF**

Representing the agency: Steven Lukan

ARC 4864C (NOIA), Veterans Trust Fund—Dental Care Payment Maximum, Rule 14.4(4)  
Committee members asked if the department is receiving sufficient funds under the current funding formula for the veterans trust fund to meet the department’s needs. Mr. Lukan stated he thinks the department has the funding it needs. He explained the department gets \$2,000,000 from the lottery, of which it can spend \$500,000 plus interest. Committee members asked about the relationship between the Medicaid dental program and dental care payment from the veterans trust fund. Mr. Lukan explained that he was unsure how costs between the two compare, but the veterans trust fund is supposed to be the funding source of last resort.  
No action taken on ARC 4864C.

## **LABOR SERVICES DIVISION**

Representing the agency: Kathleen Uehling

ARC 4863C (NOIA), Boiler and Pressure Vessel Codes—Adoption by Reference, Rules 90.6(1), 91.1  
No discussion on ARC 4863C.

ARC 4882C (NOIA), Federal Occupational Safety and Health Standards for General Industry—Adoption by Reference, Rule 10.20  
No discussion on ARC 4882C.

## **PUBLIC HEALTH DEPARTMENT**

Representing the agency: Susan Dixon

ARC 4853C (NOIA), Volunteer Health Care Provider Program, Rule 88.2-88.4, 88.6(5), 88.7, 88.11  
No discussion on ARC 4853C.

ARC 4856C (NOIA), Radiation, Chs. 37-41, 45  
In response to a question from committee members, Ms. Dixon distinguished this rulemaking from a previous rulemaking of radiological health program fees.  
No action taken on ARC 4856C.

ARC 4859C (NOIA), Healthy Families Iowa Program Administration, Rules 87.1-87.5  
No discussion on ARC 4859C.

ARC 4857C (NOIA), Emergency Medical Services—Providers, Training Programs, Chs. 131, 139  
Ms. Dixon explained that the department will wait to adopt ARC 4857C and 4858C pending the possible enactment of legislation concerning EMS during the 2020 Legislative Session.

Committee members noted that based on local feedback, state EMS standards have been making it difficult to recruit EMS volunteers in rural areas.

Public comment was received from Mr. Brian Helland, Assistant Chief at the Clive Fire Department; Mr. Matthew Imming, EMS Supervisor/Educator at the Buena Vista Regional Medical Center; and Mr. Tony Sposeto, Fire Lieutenant at the Des Moines Fire Department. They expressed support for the rulemaking, asserting that the rulemaking will benefit EMS providers by encouraging program renewal, lowering costs, allowing providers to enter into affiliation agreements, and adopting national standards for ambulances. Mr. Imming asserted that concerns raised about affiliation agreements leading to closing of EMS services or other negative effects are based on a misunderstanding of such agreements, which do not change the key characteristics of an EMS provider.  
No action taken on ARC 4857C.

ARC 4858C (NOIA), Emergency Medical Services—Service Program Authorization, Ch. 132  
Public comment was received from Ms. Kerrie Hull, Director of Calhoun County EMS; Mr. Christopher Hill, Vice Chair of the EMS Advisory Council and Medical Director at the Iowa EMS Association; Mr. Chris Perrin, Emergency Management Coordinator at Mary Greeley Medical Center; and Ms. Linda Frederiksen, Executive Director at MEDIC EMS. They expressed support for the rulemaking and appreciation for the department's work on it. They emphasized the importance of EMS programs and described challenges faced by EMS programs in certain areas as a result of past program closures when neighboring programs had to take over the affected service areas. They asserted that the rulemaking will reduce closures of smaller, rural EMS programs.

Committee members expressed appreciation for EMS programs and emergency medical technicians and the work they do saving lives.  
No action taken on ARC 4858C.