



MINUTES

SEPTEMBER 2020 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair	Representative Megan Jones, Vice Chair
Senator Mark Costello	Representative Steven Holt [by teleconference]
Senator Robert Hogg [by teleconference]	Representative Joe Mitchell
Senator Pam Jochum [by teleconference]	Representative Amy Nielsen [by teleconference]
	Representative Rick L. Olson

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

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

BULLETINS NEEDED FOR THIS MEETING: 8/12/20, 8/26/20

Procedural Business

Chairperson Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, September 8, 2020, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the August 11, 2020, meeting were approved. The next meeting was scheduled for October 13, 2020, at the State Capitol in Des Moines, Iowa. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. The meeting was adjourned at 10:25 a.m.

Fiscal Overview

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

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Janee Harvey

ARC 5130C (NOIA), Foster Care Placement and Services—Definition of “Case Permanency Plan,” Rule 202.1

Committee members asked if this rulemaking is a new practice or a change to an existing practice. Ms. Freudenberg responded that it is a change to an existing practice to ensure that an individual’s medical needs and medical providers are documented in their case permanency plan and are available during foster care placement.

No action taken on ARC 5130C.

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).

ARC 5131C (NOIA), Family-Centered Services, Chs. 80, 133, 172, 175, 186

Committee members noted that the rulemaking states that effective August 1, 2019, paper claims from case management providers are no longer accepted and asked if the department has been accepting paper claims since that date. Ms. Freudenberg stated that the rulemaking is necessary to conform with federal legislation and that she believes the department has been accepting paper claims after August 1, 2019. Ms. Harvey explained that the new contracts became effective July 1, 2020, and that the rulemaking had been initiated far in advance of that date. Ms. Harvey confirmed that the department has been accepting paper claims after August 1, 2019, from family-centered service providers and processing payments without concern. Committee members asked if this practice meets federal requirements. Ms. Harvey stated that because the official start date of family-first is October 1, 2020, the department had to get the contracts in place so that the department is operating at maximum capacity by that date. Ms. Harvey also explained that the department has submitted the state's plan amendment to the department's Title IV-E plan and that the department is in alignment with federal expectations. Committee members asked if it may cause confusion to have rulemaking stating that paper claims are not accepted after August 1, 2019, as paper claims have been accepted after that date. Ms. Freudenberg agreed that this could cause a problem during a state audit and stated that she will look into an appropriate date for the rulemaking.

Committee members asked for confirmation, as noted in the fiscal update, that the federal government has not completed its guidance on the services that meet the eligibility criteria for matching federal money. Ms. Harvey confirmed that the guidance is not complete and that the federal government is behind its own deadline for completing the review of all models. Ms. Harvey stated that the federal government is setting up an evidence-based clearinghouse and reviewing various models in groups of ten. Ms. Harvey stated that Iowa has selected, and is investing in, two models — SafeCare and Solution Based Casework. The federal review of SafeCare has been completed and it is a supported evidence-based intervention model eligible for a 50 percent federal match. Ms. Harvey explained that there will not be a federal evaluation of Solution Based Casework until the department is able to provide enough research to meet the federal threshold for the model to be considered for the clearinghouse. Ms. Harvey noted that may not occur as there may be new models developed that are proven to be effective and that already have adequate research supporting them.

No action taken on ARC 5131C.

ARC 5141C (AF), Removal of Healthy and Well Kids in Iowa Third-Party Administrator, Ch. 86

No discussion on ARC 5141C.

ARC 5142C (AF), Dependent Adult Abuse—Personal Degradation, Rules 176.1, 176.3

No discussion on ARC 5142C.

INSURANCE DIVISION

Representing the agency: Tracy Swalwell

ARC 5129C (NOIA), Licensing — Producers, Viatical Settlement Brokers, Viatical Settlement Providers, Public Adjusters, Chs. 10, 48, 55, 58

No discussion on ARC 5129C.

ARC 5162C (ANOIA), Licensing — Producers, Viatical Settlement Brokers, Viatical Settlement Providers, Public Adjusters, Chs. 10, 48, 55, 58

No discussion on ARC 5162C.

REAL ESTATE APPRAISER EXAMINING BOARD

Representing the agency: Brandy March

ARC 5126C (NOIA), Comprehensive Review of Rules, Chs. 1, 4-7, 9-12, 15, 17

No discussion on ARC 5126C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 5153C (NOIA), Inspection and Maintenance Plans—Annual Report, Rule 25.3(2)
No discussion on ARC 5153C.

CORRECTIONS DEPARTMENT

Representing the agency: Michael Savala

ARC 5145C (NOIA), Community-Based Corrections; OWI Program, Rules 40.1, 40.2, 47.1(4), 47.2(3)
No discussion on ARC 5145C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 5138C (AF), Welcome Center Program, Ch. 34
No discussion on ARC 5138C.

ARC 5139C (AF), Workforce Housing Tax Incentives Program, Rules 48.4(1), 48.5 to 48.7
No discussion on ARC 5139C.

ARC 5140C (AF), Renewable Chemical Production Tax Credit Program—Definition of “Building Block Chemical,” Rule 81.2
No discussion on ARC 5140C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes, David Tilly

ARC 5146C (NOIA), Corporal Punishment, Physical Restraint, Seclusion, and Other Physical Contact With Students, Ch. 103

Committee members asked about the origin of the rulemaking. Mr. Mayes explained that the rulemaking was commenced in response to a petition for rulemaking submitted by a coalition of interested stakeholders. Members asked if the department considered using “serious physical injury” rather than “bodily injury” for the standard for when physical restraint or seclusion of a student is reasonable and necessary. Mr. Mayes noted that the current rule uses “injury” with no modifier and that this issue was a key reason the State Board of Education decided not to adopt prior noticed rulemaking on this subject, and he discussed how the board sought to balance the needs for protecting students and protecting school staff. Members asked for information about how family counseling services would be provided, particularly in rural areas. Mr. Mayes said he would investigate, but that area education agencies provide such services in rural areas. Members suggested that the department take an inventory of seclusion rooms that do not currently meet the size requirements provided in the rulemaking, and Mr. Mayes said the department would consider doing so.

Members asked for clarification of language providing that “[r]easonable requests or requirements of a student engaged in activities associated with physical education class or extracurricular athletics” are not considered corporal punishment. Mr. Mayes explained that this language was taken from current rules and no concerns had been raised about it. In a scenario such as student athletes being required to run laps during an athletic practice, he explained that the department would consider the particular facts and circumstances at issue and give deference to coaches and athletic directors. Members asked for a list of states that have banned seclusion rooms and information on what alternatives such states use. Mr. Mayes explained that when the option of seclusion rooms is taken away, a larger number of affected students are placed in state facilities, and schools rely more on law enforcement to resolve such situations. He said the department would provide a list of states. Mr. Tilly noted that the department did consider procedures used by other states when formulating these rules.

No action taken on ARC 5146C.

ARC 5147C (NOIA), School Leadership Standards for Administrators, Rule 83.10
No discussion on ARC 5147C.

ARC 5148C (NOIA), Educator Preparation Program Standards, Rules 79.2, 79.14(7)“a,” 79.15(2), 79.16,
79.17, 79.21(2)
No discussion on ARC 5148C.

ARC 5149C (NOIA), General Accreditation Standards, Rule 12.10(8)
No discussion on ARC 5149C.

ARC 5150C (NOIA), Funding for Children Residing in State Institutions or Mental Health Institutes —
Removal of Reference to Iowa Juvenile Home, Rules 34.1, 34.2, 34.4(2), 34.6(3)“d”
No discussion on ARC 5150C.

ARC 5151C (NOIA), Special Education—Clearing Classrooms, Rule 41.320(7)
No discussion on ARC 5151C.

COLLEGE STUDENT AID COMMISSION

Representing the agency: Todd Brown

ARC 5123C (NOIA), Rural Veterinarian Loan Repayment Program, Ch. 27
No discussion on ARC 5123C.

ARC 5124C (NOIA), Loan Repayment Programs—Refinancing Eligible Loans, Loan Repayment Awards,
Rules 14.2(4), 24.2, 26.2
No discussion on ARC 5124C.

ARC 5125C (NOIA), Future Ready Iowa Skilled Workforce Last-Dollar Scholarship Program — Student
Eligibility, Continuous Enrollment Waiver, Receipt of Award in Semester of Credential Completion,
Rules 15.2, 15.3(1), 15.5(1)
No discussion on ARC 5125C.

ARC 5137C (AF), Loan Repayment Programs—Definition of “Service Commitment Area,” Rules 24.2, 25.2,
26.2
No discussion on ARC 5137C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Roger Bruner, Wendy Hieb, Dave Schelling

ARC 5134C (NOIA), Water Quality Certification, Rule 61.2
No discussion on ARC 5134C.

ARC 5135C (NOIA), NPDES General Permit No. 5, Rule 64.15(5)
No discussion on ARC 5135C.

ARC 5136C (NOIA), NPDES General Permit No. 7, Rule 64.15(7)

Committee members expressed confusion as to why the purpose and summary section in the administrative bulletin mentions six-hour hazardous condition notification requirements, gypsy moths, forest canopies, additional permit requirements, and the water of the United States; however, none of these items appear in the rulemaking. Ms. Hieb explained that the rulemaking cites the general permit as well as the permit's issuance and expiration dates, and that the general permit is where all of the textual changes actually occur. Committee members asked how the general public participates if they have concerns about proposed changes in the general permit. Ms. Hieb explained that the commission had a stakeholder meeting last year, a public hearing last week, had issued press releases with a link to the commission's internet site, operated a listserv, and had sent an email to approximately 100 contacts. Ms. Hieb stated that the commission had made much effort to advertise the rulemaking and to provide a link to the general permit with the proposed changes noted. Committee members asked if just the rulemaking, and not the general permit, comes before the committee, and Ms. Hieb stated that the committee can comment on the permit during the review of the rulemaking. Committee members asked what a citizen who opposes the changes to the general permit is supposed to do. Ms. Hieb explained that any citizen may comment on the rulemaking or may participate as part of the commission's stakeholder outreach.

No action taken on ARC 5136C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 5156C (NOIA), Dietitians—Licensure, Telehealth Visits, Rules 81.4, 81.7, 81.17

No discussion on ARC 5156C.

ARC 5160C (AF), Optometrists—Electronic Transmission of Prescriptions, Rule 182.4(4)

No discussion on ARC 5160C.

MEDICINE BOARD

Representing the agency: Joseph Fraioli

ARC 5132C (NOIA), Iowa Physician Health Committee and Program, Ch. 14

Committee members asked what purpose is served by changing from a co-chairperson to a vice chairperson, and having the co-chairperson responsible for providing guidance and direction to staff between committee meetings if the medical director is not available. Mr. Fraioli explained that the executive director is currently serving as the staff member who appears at the committee meetings and now that there is a full-time medical director the intent of the rulemaking is to allow the medical director to take over that responsibility. Mr. Fraioli further explained that the rulemaking anticipates if in the future the medical director is not available for any period of time the co-chairperson can step into that role.

No action taken on ARC 5132C.

ARC 5133C (NOIA), Physician Supervision of Physician Assistants, Rules 21.1, 21.4

Committee members asked how many physician assistants a physician can currently supervise. Mr. Fraioli stated that the maximum, as reflected in the rulemaking, is five.

No action taken on ARC 5133C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 5155C (NOIA), Controlled Substances, Precursor Substances, Rules 10.30 (2)“g,” 10.38 (3), 10.39, 10.42, 12.1

No discussion on ARC 5155C.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Brian Young

ARC 5152C (NOIA), Standards for Electrical Work—2020 National Electrical Code (NEC), Rule 504.1, Amend Ch. 504
No discussion on ARC 5152C.

TRANSPORTATION DEPARTMENT

Representing the agency: Cheryl Williams, Sara Siedsma

ARC 5122C (NOIA), Competition With Private Enterprise—Removal of Rest Area Sponsorship Program, Rule 25.2(8)
No discussion on ARC 5122C.

ARC 5154C (NOIA), Motorized Bicycle Rider Education, Rules 602.2(1), 636.1, 636.2, 636.4 to 636.9
No discussion on ARC 5154C.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: David Steen

ARC 5128C (NOIA), Notification of Availability of Unemployment Insurance, Rule 22.19, also Filed Emergency ARC 5127C.
No discussion on ARC 5128C or ARC 5127C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 5143C (AF), Emergency Medical Services—Providers, Training Programs, Chs. 131, 139
No discussion on ARC 5143C.

ARC 5144C (AF), Emergency Medical Services—Service Program Authorization, Ch. 132
No discussion on ARC 5144C.