



MINUTES

OCTOBER 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]
Senator Zach Whiting [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: 9/9/20, 9/23/20

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, October 13, 2020, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the September 8, 2020, meeting were approved. The next meeting was scheduled for November 10, 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 11:35 a.m.

Fiscal Overview

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

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 5165C (NOIA), Nursing Facilities—Quality Assurance Assessment, Rule 36.6(2)
No discussion on ARC 5165C.

ARC 5166C (NOIA), Day Habilitation Services, Rules 77.25(7), 77.37(27), 78.27(8), 78.41(14)
Committee members expressed their appreciation for the work that Ms. Freudenberg and the department have done on this rulemaking.
No action taken on ARC 5166C.

ARC 5167C (NOIA), Medical and Remedial Services, Rules 9.12(1)“a,” 78.12, 78.19(1)“a,” 78.27, 78.34, 78.41(9), 78.43(14), 78.52(4)“b,” 79.1, 81.13(14)“b,” 153.55(2)“d”
No discussion on ARC 5167C.

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 5174C (AF), Medicaid for Employed People With Disabilities Program—Premium Amounts, Rule 75.1 (39)“b”

No discussion on ARC 5174C.

ARC 5175C (AF), Statewide Pharmacy Protocols, Rules 77.57, 78.2, 78.42, 79.1

Casey Fisek, representing the Iowa Pharmacy Association, stated that the association supports the department allowing pharmacists to enroll as providers in Medicaid. The association has concerns, however, with transitioning from billing under the pharmacy benefit where a pharmacist receives \$10.07 for a dispensing fee, to medical billing where a pharmacist will receive \$5.00. Mr. Fisek stated that the association understands that the department wants billing to be consistent across providers; however, unlike other providers, pharmacists do not have the option to bill any other codes or services. Mr. Fisek stated that the association wants to continue to work with the department before the rulemaking takes effect as there is concern that the fee change may result in a loss of access to immunizations and vaccines as some pharmacists may choose not to participate as providers.

Committee members asked for confirmation that the rulemaking reduces pharmacists’ reimbursement for administering a vaccine. Mr. Fisek confirmed that by enrolling as a provider under Medicaid, a pharmacist will be considered the prescriber of a vaccine and only be eligible for an administration fee of about \$5.00. Mr. Fisek stated that the potentially significant decrease in reimbursement has some pharmacists concerned that they will no longer be able to provide those services to Medicaid members. No action taken on ARC 5175C.

CHIEF INFORMATION OFFICER, OFFICE OF THE

Representing the agency: Matt Behrens

ARC 5173C (AF), Broadband—Targeted Service Areas, Project Certification, Grants Program, Rules 20.1–20.6, 21.2, 21.3, 21.6, 21.7, 22.1, 22.2, 22.4–22.6, 22.8

No discussion on ARC 5173C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 5185C (NOIA), Reinvestment Districts Program, Amendments to Ch. 200

No discussion on ARC 5185C.

NATURAL RESOURCE COMMISSION

Representing the agency: Deborah Vitko

ARC 5176C (AF), Designation of “No Anchoring” and “No Boating” Zoned Areas on Rathbun Lake, Rule 40.5

Committee members asked what “no boating” means. Ms. Vitko stated that it refers to an area that boats are prohibited from entering. Ms. Vitko explained that the local petition that the commission received specifically requested that the area around the Rathbun marina and boat docks be “no boating” to protect the shoreline where water lines, electric lines, and dock anchors are located. Ms. Vitko noted that depending on the water level, sometimes the lines and anchors are submerged. The “no boating” designation prevents propellers from pulling up a line. Committee members asked if Ms. Vitko’s reference to “propellers” means that the rulemaking does not apply to canoes or kayaks. Ms. Vitko responded that the rulemaking applies to all boats, including canoes and kayaks. Committee members asked for confirmation that by definition “boat” includes canoes and kayaks. Ms. Vitko confirmed that is accurate.

No action taken on ARC 5176C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon, Kelly Garcia

ARC 5196C (NOIA), Definition of “Primary Care”; Waivers, Rules 15.7, 70.11, 108.3 (5), 155.1, Amendments to Ch. 178
No discussion on ARC 5196C.

Special Review: State Medical Examiner Fees, Rule 126.3

Ms. Garcia emphasized that the Examiner is aware of the importance of the Examiner’s work to grieving families as well as to the conclusion of criminal investigations. She explained that the Examiner has experienced an increased caseload and has a limited number of clinicians and is working to resolve those issues. While the Examiner has made a job posting for another pathologist, additional, sustainable funding will be needed to fill the position.

Committee members noted that the Examiner sought a fee increase in 2017, at which time the Examiner had an eight-day backlog based on unusual circumstances. The Examiner had asserted at that time that by seeking a larger fee increase, the fee would not need to be increased as frequently. Members stated that the rationale asserted by the Examiner for another possible fee increase at the present time conflicted with statements made by the Examiner in 2017 and that it is unfortunate that this is occurring during a pandemic. Members also noted that delays in the return of bodies of the deceased due to a backlog of autopsies had been brought to legislators’ attention.

Committee members asked for more information about how the cost of transportation of bodies by counties is accounted for. Ms. Garcia explained that counties arrange transportation of bodies to funeral homes, that the cost of transportation is not a part of the Examiner’s fee structure, that transportation issues have not contributed to the Examiner’s backlog, and that the release of a body would not be delayed if transportation costs are not timely paid.

Committee members asked how many pathologists the Examiner employed in 2017 and currently, and Ms. Garcia stated that she thought there were three in 2017 but was unsure, and there are four now, with a job posting for a fifth. Members asked if the Examiner had taken steps to be more efficient with regard to funding, as directed by the committee in 2017. She was unsure of what steps had been taken prior to her becoming interim director, but explained that currently the Examiner is discussing collaboration with the University of Iowa (UI) regarding reducing their respective backlogs and recruiting clinicians to Iowa. She noted UI is also currently at capacity for autopsies. She explained that the Examiner is also discussing with Polk County the possibility of increasing the Examiner’s capacity. Members asked if the Examiner had access to out-of-state entities to perform autopsies in the event of conflicts of interest, and she was unsure, but offered to follow up, and suggested that the four pathologists on staff could resolve any particular conflict one of them might have. She noted that the Examiner has contracts with outside physicians in Iowa and is seeking similar contracts with out-of-state physicians.

Committee members asked for more information regarding the increase in the number of autopsies performed by the Examiner. Ms. Garcia explained that an increasing number of autopsies had to be performed by the Examiner instead of by county medical examiners as more counties have lost the ability to perform autopsies on their own. She cited Mason City and a number of counties surrounding Johnson County as recently no longer performing autopsies. Members asked why increased fees received by the Examiner due to the increased number of autopsies had not mitigated the Examiner’s funding shortfall, and she explained that the fee amount has not kept pace with the increasing costs of an autopsy.

Committee members asked for more information about a freezer truck obtained by the Examiner. Ms. Garcia explained that it was obtained on a temporary basis but it may become permanent if needed. She explained that the truck allowed for increased storage space for bodies. She stated that the Examiner is working to obtain better storage equipment in addition to the truck. She was unsure how much the truck had cost but explained that it had not been paid for with funds appropriated to the Examiner during the 2020 Legislative Session. She stated she would follow up with information about how that appropriation was used.

Committee members described concerns raised by constituents regarding the backlog of autopsies. Members asked why the Examiner had focused more on obtaining a freezer truck than hiring additional

personnel. Ms. Garcia stated that the Examiner is focusing on both, which are equally important. She explained that while she had authorized a job posting, there are only nine forensic pathologists in Iowa, and the Examiner employs four of them. She stated that the Examiner had not pursued increased storage in lieu of hiring, but the hiring process could take up to a year and may involve recruitment from outside of Iowa.

Committee members urged the Examiner to consider creative solutions to the funding shortfall such as analyzing whether more autopsies were being performed than is legally required; seeking an appropriation to resolve any cashflow issues; working more with universities, such as by having new residencies or internships established; or investigating whether additional capacity for autopsies from western Iowa could be found in Omaha. Members asked for more information about how neighboring states with shorter wait times provide funding for autopsies, and Ms. Garcia stated she is working on gathering up-to-date information on this issue and will provide it when available. Committee members asked what the wait time is for an autopsy in a pending criminal case, and she explained that it is 15 days, and criminal cases are not prioritized; only certain autopsies of children are prioritized.

Committee members asked if hiring another pathologist would resolve the backlog or if further steps are needed. Ms. Garcia explained that, so long as caseloads do not increase, an additional pathologist would mitigate the increased caseload, which is necessary in order to maintain accreditation of the Examiner, which is particularly important in criminal cases. Accreditation can be jeopardized if pathologists have caseloads that are too high. She stated she would seek more information about how counties obtain accreditation to perform autopsies. She was unsure if additional communities might cease performing autopsies. She stated she would have a better understanding of possible changes in the Examiner's caseload in the coming weeks. She stated she was unsure if any of the localities that ceased performing autopsies would ever do so again.

Ms. Liz Markham, owner and funeral director for the Conway-Markham Funeral Home and board member of the Iowa Funeral Directors Association, expressed appreciation for Ms. Garcia's work on this matter. She explained that her significant other had recently died and that she had tried to forego an autopsy with the agreement of her local medical examiner, but the Examiner had urged her to arrange for one to ensure the decedent's insurance coverage would be paid out to his child. The autopsy resulted in a 21-day delay before a funeral could be held. She noted that due to her profession, she was able to secure a skilled embalmer before the funeral, but that not all families have access to such resources. She explained that 14 of the 21 days was wait time for the autopsy. She noted that as of the day before the meeting, the wait time for an autopsy had increased to 17 days. She stated she was advocating for all Iowa families facing such circumstances.

Committee members and Ms. Garcia agreed to work together to resolve the issues discussed.

EDUCATIONAL EXAMINERS BOARD

Representing the agency: Darcy Hathaway, Mike Cavin

ARC 5168C (NOIA), Military Exchange License Issuance—Removal of Fee, Rules 12.1, 13.17(3)“F”

No discussion on ARC 5168C.

In response to questions from committee members, Mr. Cavin confirmed that the rulemaking makes permanent changes to substitute authorizations, an individual does not need to obtain a minimum grade for the associate degree or 60 semester hours of college coursework required to qualify for a substitute authorization, and there is no limit to the period of time an individual with a substitute authorization can act as a substitute. Mr. Cavin explained that it has always been policy that a long-term substitute can serve for up to 90 days, if the district deems that to be appropriate. Mr. Cavin also explained that policy requires that for any period greater than 90 days, the district must request an extension from the board. Committee members expressed concern about the impact of the rulemaking on the quality of education. Mr. Cavin responded that the staff at the board is in constant contact with superintendents across the state and there is an ongoing need for substitutes across the state. Mr. Cavin stated that the board is “opening the door” and leaving the decisions up to local school districts. Committee members asked how frequently the board refuses a request by a district for an extension and Mr. Cavin responded that he did not have that information available. Committee members asked Mr. Cavin to follow up with the committee on the number of requests for extensions that the board has received and the number of requests it has denied. Committee members also asked if a substitute can work 89 days, sit out eight days, and then return to the school to substitute for an additional 89 days. Mr. Cavin confirmed that is the case.

Committee members suggested that data needs to be collected on individuals that substitute during a period established pursuant to the Governor’s emergency proclamation and that data should be reviewed by the Senate and House education committees during the 2021 Legislative Session. Committee members expressed concerns about permanent changes to the requirements for substitutes being implemented via rulemaking rather than by legislation. Committee members also expressed support for maintaining high standards for teachers. Committee members noted that there was bipartisan support for the substitute requirements that were implemented for the duration of the pandemic.

Emily Piper, representing the Iowa Association of School Boards, briefly explained the current differences between a substitute teacher license and a substitute authorization. Ms. Piper explained that a substitute teacher license requires an individual to have a teaching license and a substitute teacher can substitute in a classroom for up to 90 days. A substitute authorization requires an individual to have a bachelor’s degree; however, the individual is not required to have completed any teacher training. Ms. Piper stated that the goal of substitute authorizations is to fill short-term needs in the classroom. Ms. Piper stated that the association asked for, and supported, changes to the substitute requirements during the pandemic because the association knew it was going to be a difficult year. Ms. Piper also stated that the association agrees with the rulemaking removing the attainment of a bachelor’s degree as a qualification for a substitute authorization as that will help to fill the need in both rural and urban areas. Ms. Piper stated that the association, however, does not agree with the rulemaking not placing time limits on the length of time an individual with a substitute authorization can spend in the classroom as that allows that person to take the place of an individual who has completed teacher training. In addition, the rulemaking permits an individual with a substitute authorization to serve in the classroom for a longer period of time than an individual with a teacher license. Ms. Piper recommended that the board provide flexibility to allow short-term needs to be filled without eliminating trained teachers from the classroom on a permanent basis. Ms. Piper expressed the association’s desire and willingness to work with the department of education on these issues.

Melissa Peterson, representing the Iowa State Education Association, objected to the rulemaking making permanent changes to the requirements for substitutes. Ms. Peterson stated that while she understands the need for flexibility during the pandemic, without substantive evidence of the success of substitutes working in schools during the course of the pandemic, permanent changes to the requirements for substitutes is a disservice to students. Ms. Peterson stated that the last seven months have been a time of constant change and students having greater social, emotional, and mental health needs. Ms. Peterson expressed that an individual with 60 hours of college coursework, no training in pedagogy, and no substantive experience is not qualified to teach on a permanent basis. Ms. Peterson encouraged the committee, the board, and the House and Senate education committees to gather substantial evidence before the temporary substitute requirements are made permanent. Ms. Peterson stated that the evidence is clear that the effectiveness of a student's learning is directly tied to the effectiveness and quality of the student's teachers. Ms. Peterson stressed that more data is needed, the long-term effects need to be looked at, and the conversations need to go beyond school administrators to include instructional leaders, teaching professionals, and para-professionals.
No action taken on ARC 5169C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 5163C (NOIA), Speech Pathologists and Audiologists—Continuing Education Hours, Rule 303.3(2)“f”
No discussion on ARC 5163C.

ARC 5177C (AF), Physician Assistants—Licensure, Practice, Discipline, Rule 326.1, 326.6, 326.15, 326.18, 326.19(3)“b,” 327.1, 327.4, 327.5, 327.6, 329.2(25)
No discussion on ARC 5177C.

ARC 5189C (AF), Licensing Sanction Prohibition for Student Loan Debt Repayment Default or Delinquency; Continuing Education Exemptions for Funeral Directors, Rules 4.12(1), 4.16
No discussion on ARC 5189C.

DENTAL BOARD

Representing the agency: Jill Stuecker

ARC 5193C (NOIA), Continuing Education—Volunteer Dental Services, Rule 25.5(2), 25.6(1), 25.9(8)
No discussion on ARC 5193C.

NURSING BOARD

Representing the agency: Kathy Weinberg

ARC 5164C (NOIA), Administrative and Regulatory Authority — Hiring and Supervising of Executive Director, Rule 1.3(2)“j”
No discussion on ARC 5164C.

ARC 5172C (NOIA), Nursing Practice for Registered Nurses/Licensed Practical Nurses, Ch. 6

Mr. Tom Cope, on behalf of the Iowa Association of Anesthesiologists, stated that the association is commenting on the rulemaking process rather than the rulemaking content. Mr. Cope noted that both political parties have championed making the administrative rulemaking process more collaborative and transparent. Mr. Cope stated that Governor Vilsack issued Executive Order No. 9 on September 14, 1999, requiring all state agencies to prepare an annual regulatory plan that lists each regulatory action the agency expects to issue in proposed or final form in the fiscal year. Furthermore, the executive order requires each agency to publish the regulatory plan on the agency's website by August 1 of each year. Mr. Cope explained that this regulatory transparency allows a stakeholder to contact the agency if the stakeholder wants to provide input or participate in a rulemaking. Mr. Cope urged the committee to request that the Nursing Board publish its regulatory plan on the board's website to improve transparency for stakeholders. Mr. Cope noted that the Medical Board and the Dental Board publish their regulatory plans on their respective websites. Committee members asked Ms. Weinberg if it is possible for the Nursing Board to make its regulatory plan available on its website. Ms. Weinberg explained that the regulatory plan has always gone through the Iowa Department of Public Health and is posted on the department's website. She assured the committee, however, that arrangements will be made to post the regulatory plan on the Nursing Board's website.

No action taken on ARC 5172C.

ARC 5188C (AF), Iowa Nurse Assistance Program, Rules 19.1, 19.2, 19.4, 19.6

No discussion on ARC 5188C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 5171C (NOIA), Accreditation— Wholesale Distributors, Third-Party Logistics Providers, Rules 17.3 (1)“c,” 43.3(1)

No discussion on ARC 5171C.

ARC 5194C (NOIA), Nuclear Pharmacy Practice—Adoption by Reference of USP General Chapter 825, Rule 16.4(6)

No discussion on ARC 5194C.

ARC 5195C (NOIA), Temporary Designation of Controlled Substances, Rule 10.39

No discussion on ARC 5195C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 5181C (NOIA), Adoption Tax Credit—Qualified Adoption Expenses, Rule 42.52

No discussion on ARC 5181C.

ARC 5182C (NOIA), Local Assessors, Rules 7.37, 71.27, 71.28, 72.15, 72.16

Committee members asked what entity is supposed to assess property owned by an assessor or the assessor's immediate family. Ms. Wulfsen responded that an independent assessor or an assessor from another county is to be utilized to assess the property. Committee members asked whether an agreement is entered into or an assessor is appointed for that type of assessment. Ms. Wulfsen indicated that she will follow up and provide that information to the committee. Committee members expressed respect for Representative Hite's support of the rulemaking.

Committee members expressed concern that the rulemaking makes the assessor job more difficult and it will become more difficult to fill assessor positions. Committee members encouraged the department to consider any comments the department receives at the public hearing on October 13, 2020. Committee members stated that they have heard concerns from several county assessors that the rulemaking is going beyond what the legislation intended. Committee members stated that the committee will be looking into the issues.

Dave Kubik, representing the Iowa State Association of Assessors, stated the rulemaking has caused a lot of concern and discussion within the association. Mr. Kubik stated that using outside counsel for litigation dealing with assessments is common and varies by county. He noted that the cases are civil in nature and that some county attorneys may not have the necessary manpower or expertise to engage in these cases. Mr. Kubik explained that some assessment issues can be very specific, especially when high-value projects are involved. Mr. Kubik stated that the county attorneys are best suited to decide if they have the expertise for a particular case. Mr. Kubik also noted that the county attorney in his county always requires copies of all documents and information whenever outside counsel is used. Mr. Kubik stated that the rulemaking is burdensome and will require extra bookkeeping at the county auditor's office.

Mr. Kubik suggested that the rulemaking needs to provide more detail as to what constitutes a charge or evidence of misconduct, nonfeasance, malfeasance, or misfeasance. Mr. Kubik voiced concern that there may be issues if an assessor relies on an attorney's opinion and a court later rules a different way. Mr. Kubik asserted that charges and allegations alone should not be sufficient to constitute misconduct, nonfeasance, malfeasance, or misfeasance. Mr. Kubik explained that assessors have two bosses — the department of revenue that oversees the assessment valuation process, and the local conference board. He asserted that the rulemaking requires an additional meeting which is unnecessary red tape and expense. Mr. Kubik explained that while assessors are the face of the taxation process and determine valuations, elected officials determine actual taxes. Mr. Kubik expressed concern with the department setting the time for the reappointment of assessors during the period when tax bills are being sent out. Mr. Kubik suggested addressing the reappointment process at a conference board meeting no more than 12 months before the end of an assessor's six-year term.

Committee members expressed concern that some county attorneys may not be involved with litigation related to assessments. Committee members stated that the county attorneys need to be engaged in the discussions concerning rulemaking on litigation related to assessments.

No action taken on ARC 5182C.

ARC 5183C (NOIA), Withholding — Electronic Filing Requirements, Deadline for Furnishing Statements, Rule 46.3(3)

No discussion on ARC 5183C.

ARC 5184C (NOIA), Transmittal of Declaration of Value Forms, Rule 79.3(3)

Nick Laning, representing the Electronic Services System, a 28E organization that administers Iowa Land Records, stated that there were initial concerns with the vague language in the rulemaking as it was interpreted as requiring both the county assessor and the county recorder to transmit the declaration of value to the department. Mr. Laning indicated that the department issued a memo on October 12, 2020, clarifying that the declaration of value is to be transmitted from the county recorder to the county assessor, and from the county assessor to the department. Mr. Laning recommended that the department provide clarity in the final rulemaking to avoid misunderstandings regarding transmission of the declaration of value to the department. Ms. Wulfsen responded that the department is open to the suggestion.

No action taken on ARC 5184C.

ARC 5190C (AF), Tax Return Preparers, Rule 7.36

No discussion on ARC 5190C.

TRANSPORTATION DEPARTMENT

Representing the agency: Tracy George, Sara Siedsma

ARC 5170C (NOIA), Abandoned Vehicles, Amendments to Ch. 480

Committee members expressed their appreciation for the department's efforts on the rulemaking.

No action taken on ARC 5170C.

ARC 5178C (AF), Electric Vehicle Fees, Rules 400.1, 400.16, 400.32, 400.44(1), 400.60, 505.1–505.4, 505.6(2)“b”

No discussion on ARC 5178C.

ARC 5179C (NOIA), Driver's License or Nonoperator's Identification Indicators—Autism Status, "Hard of Hearing," Rules 605.5(7), 605.10, 630.2(4)
No discussion on ARC 5179C.

ARC 5180C (NOIA), Removal of "Variance" in Reference to "Waiver or Variance," Rules 11.1(1), 112.12(2)"c"
No discussion on ARC 5180C.

SECRETARY OF STATE

Representing the agency: Molly Widen

Emergency filing, approval required: Notary Public Training, 43.5

Committee members expressed their appreciation for the Secretary of State's efforts on the rulemaking.

Emergency Rulemaking Authorized

A motion to authorize emergency rulemaking carried on a 10-0 record roll call vote.

ALCOHOLIC BEVERAGES DIVISION

Representing the agency: Stephanie Strauss

ARC 5191C (AF), Filling and Selling of Beer and Wine in a Container Other Than the Original Container, Rules 4.6, 4.11

Committee members asked about the status of rulemaking for to-go cocktails. Ms. Strauss stated that the emergency rulemaking for to-go cocktails had been published on October 7 and went into effect on October 1. Ms. Strauss also stated that the rulemaking for to-go cocktails was a double-barreled filing.

No action taken on ARC 5191C.

ARC 5192C (AF), Personal Importation of Alcoholic Liquor, Wine, and Beer, Rules 9.1, 9.2

No discussion on ARC 5192C.