



# MINUTES

## FEBRUARY 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

---

### MEMBERS PRESENT

Senator Zach Whiting, Vice Chair	Representative Megan Jones, Chair
Senator Pam Jochum [by teleconference]	Representative Jon Jacobsen [by teleconference]
Senator Waylon Brown	Representative Rick L. Olson
Senator Jesse Green	Representative Mike Sexton
Senator Robert Hogg [by teleconference]	

EX OFFICIO, NONVOTING MEMBER: Michael Boal, 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 Kate O'Connor, Legal Counsel, 515.281.6329

---

### BULLETINS NEEDED FOR THIS MEETING: 1/13/21, 1/27/21

---

#### Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, February 5, 2021, in Room 103, State Capitol, Des Moines, Iowa. Mr. Ewing discussed procedures for those participating in the meeting via Zoom. The minutes of the January 8, 2021, meeting were approved. The next meeting was scheduled for February 26, 2021, at the State Capitol in Des Moines, Iowa. The ARRC voted unanimously in favor, by voice vote, of nominating Representative Jones as Chairperson, and Senator Whiting as Vice Chairperson, of the ARRC. Mr. Ewing presented the ARRC rules of procedure and the ARRC voted to adopt the rules. Mr. Ewing discussed the technical bill related to the rulemaking process that the committee sponsored last session and made several suggestions for the committee to consider for a committee-sponsored bill in the current session. One suggestion was to codify the governor's office ex officio, nonvoting member as a member of the committee, as that member currently serves based on past practice. He discussed the fact that fees established by agencies must be adopted by rule; however, not all agencies are aware of the requirement. He suggested that it may be beneficial to clarify the requirement in a technical bill. Committee members discussed whether the committee should review rulemaking each time a federal regulation is adopted by an agency. Members expressed concern that doing so might cause a delay in the agency's adoption of a regulation and cause the state to be out of compliance with a federal requirement. Other members stated that the committee should have oversight of such federal requirements. Members requested that Mr. Ewing proceed with drafting a technical bill for the committee's consideration. The meeting was adjourned at 11 a.m.

#### Fiscal Overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA fiscal report. With regard to the Department of Human Services ARC 5406C, committee members asked if the \$2,132,700 was already

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).

budgeted, and if not, where the money was coming from. Mr. Chris Ubben, fiscal analyst, stated that he would look into it and follow up with the committee.

#### **HUMAN SERVICES DEPARTMENT**

Representing the agency: Nancy Freudenberg

ARC 5406C (NOIA), Kinship Caregiver Program, Rules 156.1, 156.7, 156.8(5), 202.1, 202.4(3)“a”  
No discussion on ARC 5406C.

#### **ADMINISTRATIVE SERVICES DEPARTMENT**

Representing the agency: Tami Wiencek

ARC 5378C (NOIA), Petitions for Rulemaking, Rules 5.1, 5.4  
No discussion on ARC 5378C.

ARC 5391C (AF), Waivers, Rules 9.1, 9.4, 9.6, 9.9, 9.10, 9.13, 100.1, 117.21(1), 118.16(1)  
No discussion on ARC 5391C.

#### **ALCOHOLIC BEVERAGES DIVISION**

Representing the agency: Stephanie Strauss

ARC 5392C (AF), Administrative Actions Unit; Permit General Requirements; Contested Cases, Rule 4.2, Amendments to Ch. 10  
No discussion on ARC 5392C.

ARC 5393C (AF), Waivers, Rule 19.1  
No discussion on ARC 5393C.

#### **INSURANCE DIVISION**

Representing the agency: Tracy Swalwell

ARC 5388C (NOIA), Credit for Reinsurance, Rules 5.33, 112.7(1)“e”  
No discussion on ARC 5388C.

ARC 5389C (NOIA), Comprehensive Review of Rules, Amendments to Chs. 2, 5, 40, 41, 44 to 46, 48, 99, 100  
No discussion on ARC 5389C.

#### **PROFESSIONAL LICENSING AND REGULATION BUREAU**

Representing the agency: Lori SchraderBachar

ARC 5400C (NOIA), Waivers; Licensure; Criminal Convictions, Amend Chs. 5, 14, 15  
No discussion on ARC 5400C.

#### **CORRECTIONS DEPARTMENT**

Representing the agency: Michael Savala

ARC 5376C (NOIA), Waivers, Amendments to Chs. 7, 50, 51  
No discussion on ARC 5376C.

## **ECONOMIC DEVELOPMENT AUTHORITY**

Representing the agency: Lisa Connell, Jill Lippincott

ARC 5386C (NOIA), Entrepreneur Investment Awards Program, Rules 102.3, 102.4, 102.7(1)

Members asked how the director decides who sits on the committee to review applications for the program. Ms. Lippincott responded that the director has formed such a committee before, and it will include individuals that work in various entrepreneurial ecosystems who can provide expertise and who do not have a conflict of interest. She stated that the committee will include internal and external reviewers, and the individuals selected for the committee may depend on the applications that are received for the program.

No action taken on ARC 5386C.

ARC 5387C (NOIA), Accelerated Career Education Program, Amendments to Ch. 20

Committee members asked for clarification on the definition of “260G data system.” Ms. Connell explained that it is an already existing data system created pursuant to Iowa Code section 260G, and that “260G” is how the authority and the community colleges refer to the system.

No action taken on ARC 5387C.

## **SCHOOL BUDGET REVIEW COMMITTEE**

Representing the agency: Thomas Mayes

ARC 5401C (NOIA), Applications for Modified Supplemental Amounts, Rule 6.3(3)“k”

Members asked how many comments the committee has received and why a district would be able to submit a request between January 16 and March 1, but not by January 15. Mr. Mayes stated that the comment period closes February 16 and no comments have been received to date. He explained that the most common reason that the January 15 deadline is missed is due to someone forgetting the deadline or some other type of error. Members encouraged the committee to notify the districts to take the deadline seriously so a district does not lose out on funding for important programs because an administrator made a mistake.

No action taken on ARC 5401C.

## **IOWA PUBLIC INFORMATION BOARD**

Representing the agency: Margaret Johnson, Zach Goodrich

ARC 5377C (NOIA), Delegation of Advisory Opinions, Rule 1.3(2)

No discussion on ARC 5377C.

## **NATURAL RESOURCES DEPARTMENT**

Representing the agency: Tamara McIntosh, Brian Smith

ARC 5379C (NOIA), Special Nonresident Deer and Turkey Hunting Licenses — Removal of Legislative Committee, Rules 12.2, 12.4 to 12.7, 12.10

No discussion on ARC 5379C.

ARC 5380C (NOIA), Waivers, Ch. 10

No discussion on ARC 5380C.

## **PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Steven Garrison

ARC 5383C (NOIA), Optometrists—Use of Injectables, Rules 182.5 – 182.7

No discussion on ARC 5383C.

ARC 5405C (AF), Dietitians—Licensure, Telehealth Visits, Rules 81.4, 81.5(2), 81.7, 81.17  
No discussion on ARC 5405C.

## **DENTAL BOARD**

Representing the agency: Jill Stuecker

ARC 5381C (NOIA), Expanded Functions—Placement of Sealants by Dental Assistants, Rule 23.6

Committee members asked for an explanation of the differences between level 1 expanded function training (level 1) and level 2 expanded function training (level 2). Ms. Stuecker explained that level 1 courses can be taken at any of the 12 board-approved training providers in the state; however, the University of Iowa (U of I) is the only board-approved level 2 provider in the state and the training is more expensive than level 1.

Committee members expressed concern that the U of I is the only level 2 provider and that the course costs almost \$8,000. Members asked if 2020 Iowa Acts, House File 2267, allows the board to designate placing sealants as level 2. Ms. Stuecker referred members to Iowa Code section 153.38, which states that assistants who complete expanded function training through the U of I or a Commission of Dental Accreditation (CODA) accredited program may place sealants. Members suggested the section also allows the board to designate placing sealants as level 1. Members encouraged the board to review the comments the board received opposing designation of placing sealants as level 2, particularly from dentists in rural areas. Members praised Creighton University's School of Dentistry (Creighton) and noted its close proximity to dental providers in the western part of the state.

Committee members asked if placing sealants is an invasive procedure. Dr. Monica Foley, Vice Chair of the Iowa Dental Board, explained that the procedure is simple; she has three dental hygienists (hygienists) who are qualified to place sealants, and in her practice it takes two people to perform the procedure correctly. Members asked what specifically makes the procedure level 2 versus level 1. Dr. Foley stated that as she is not an educator she can only speak to the clinical process. Ms. Stuecker stated that the procedure is level 2 because a committee and the board decided sealant placement requires a higher level of education; however, she will refer members' concerns to the board for the board's consideration.

Committee members asked if level 2 training can be obtained at the University of Minnesota, the University of South Dakota, or at Creighton, and if level 2 training can be separated into different components to allow sealants to be offered "a la carte." Members also asked Ms. Stuecker to identify the training requirements for placing sealants in Minnesota, Nebraska, and South Dakota, and to follow up with the committee on her findings. Ms. Stuecker responded that all three of the dental schools are accredited and can provide level 2 training. Members asked if the training is equivalent to that provided by the U of I and how much level 2 training costs at each school. She responded that she will follow up with the committee.

Ms. Sara Allen, speaking on behalf of the Iowa Dental Association (Association), expressed concern that there is only one level 2 program; it is only offered at the U of I, and it is cost prohibitive. She stated that a person has to pay \$8,000 and must complete all areas of level 2 training, which are invasive procedures. She also stated that while the Association agrees that more training is necessary to place sealants, it does not agree that it needs to be level 2.

Dr. Valerie Peckosh, a pediatric dentist in Dubuque, stated that 60 to 70 percent of her patients are on Medicaid, and she is currently booked five months in advance. She explained that she believes placing sealants should be level 1 as it is technically simple, is similar to other level 1 procedures, and level 2 procedures are much more complex. She noted that she places close to 2,000 sealants a year and that her time could be better spent on other care. She stated that if more assistants can be trained in placing sealants, it will provide greater access to dental care and that time is of the essence for children requiring sealants.

Mr. Tom Cope, speaking on behalf of the Iowa Dental Hygienists Association (Hygienists Association), stated that the rulemaking is intended to implement 2020 Iowa Acts, House File 2267, and the language is consistent with the statute. He explained that the legislation was a compromise between the Dental Board, the Association, and the Hygienist Association. He stated that it was the intent of the legislation that dental assistants be able to place sealants and that placing sealants would

be level 2. He also explained that level 2 training can be obtained at CODA-accredited programs at the U of I, Creighton, or one of five community colleges in the state. He noted that both the Association and the Hygienist Association submitted letters to the board supporting the placement of sealants at level 2. He stated that he looks forward to further discussions with the Dental Association.

Ms. Joni Miller, an assistant and an educator in an assistant program, stated that she has taught level 1 functions and placing sealants is no more invasive than other level 1 procedures. She explained that level 1 programs are taught “a la carte,” but level 2 programs are not. She explained that all assistant programs in the state are CODA-accredited and encouraged the ARRC and the board to consider the accreditation and the fact that placing sealants is not a technical procedure. She encouraged the board to consider the general health of the public and of dental patients.

Dr. Stephen Thies, a member of the Iowa Academy of General Dentistry, expressed concern with placing sealants at level 2 as the procedure is simpler, less involved, and less invasive than other level 2 procedures. He stated that the level 2 class is only offered once a year at the U of I, is a small class, extends over five weekends, costs \$7,500, and is not accessible to most assistants. In addition, an assistant must complete level 1 before taking level 2. He stated that the rulemaking is a barrier, is unworkable, is impractical, and does not achieve the goal of allowing assistants to place sealants. He encouraged the board to allow assistants to place sealants as level 1 providers. Committee members asked if community colleges in the state train level 1 assistants. He responded that he is uncertain; however, level 2 procedures have to be taught at a CODA-accredited school and there are six or seven procedures included in level 2. He explained that level 2 courses include training on invasive procedures that require multiple educators to teach. He noted that those educators are all at the U of I, and it is impractical to try to conduct that type of training at community colleges. If placing sealants is level 1, however, then the training could be available at all community colleges with assistant programs.

Committee members asked for confirmation whether 2020 Iowa Acts, House File 2267, allows the rulemaking to designate placing sealants as level 1. Ms. Stuecker stated that the legislature hesitated to include “level 1” or “level 2” terminology in the legislation and as written, the legislation permits community colleges to provide training on placing sealants. Mr. Cope explained that while it was the understanding of stakeholders that the term “level 2” should not be specifically included in the legislation, it was also the intent of the stakeholders that placing sealants would be level 2 when the legislation was implemented. Ms. Stuecker confirmed that was her understanding as well. Members stated that a current hygienist had confirmed that level 2 training is available at Iowa Central Community College.

Committee members suggested that as the rulemaking is at the notice stage, the board and members should take the opportunity to gather more information on the outstanding issues.

No action taken on ARC 5381C.

ARC 5382C (NOIA), Clinical Examinations on Manikins, Rules 11.5(2), 11.6

No discussion on ARC 5382C.

## **PHARMACY BOARD**

Representing the agency: Sue Mears

ARC 5373C (NOIA), Pharmacy Technicians, Rules 3.1, 3.3, 3.8 – 3.11, 3.21 – 3.24, 3.30, 3.31, 6.9(3)

No discussion on ARC 5373C.

ARC 5374C (NOIA), Pharmacy Support Persons, Amendments to Ch. 5

Committee members asked for clarification on whether a part-time pharmacy delivery person would be required to be registered as a pharmacy support person. Ms. Mears explained that any individual employed by a pharmacy to deliver prescriptions would be required to be registered regardless of the frequency of the deliveries.

No action taken on ARC 5374C.

## **SECRETARY OF STATE**

Representing the agency: Molly Widen

ARC 5397C (NOIA), Petitions for Rulemaking; Waivers, Amendments to Chs. 8, 10  
No discussion on ARC 5397C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Siedsma, Mike Harvey

ARC 5375C (NOIA), Definition of “Vertical Infrastructure,” Rules 180.2, 180.3  
No discussion on ARC 5375C.

ARC 5384C (NOIA), Driver’s License — Issuance, Examination, Rules 602.11 (1), 602.12 (1), 602.13 (1),  
604.50, 605.15(1), 605.26, 607.16  
No discussion on ARC 5384C.

ARC 5385C (NOIA), Sanctions, Rules 615.3, 615.15, 615.21(1), 615.26, 615.38, 615.40, 615.43 – 615.45  
No discussion on ARC 5385C.

## **REVENUE DEPARTMENT**

Representing the agency: Clara Wulfsen

ARC 5390C (FEAN), Collection of Court Debt, Ch. 155

Committee members asked if a bill related to the collection of court debt that had recently passed out of subcommittee would affect the rulemaking. Ms. Wulfsen explained that the bill contains a provision that rescinds the rulemaking and replaces the fee structure. Members asked how this situation occurred procedurally. Ms. Wulfsen explained that 2020 Iowa Acts, Senate File 457, required the department to begin collecting court debt on January 1, 2021, and allowed the department to impose a fee to offset the cost of collecting the debt. The department filed emergency rules in December to allow it to have the mechanism to impose the fee. She further explained that the bill currently moving through the legislative process requires that rather than the fee being added to the amount of court debt being collected, the fee must be taken out of the court debt being collected.

Committee members asked if the department is in a position of having to refund the fees that it has collected since January 1. Ms. Wulfsen confirmed that the department has to refund the fees that have been collected and apply the fee the department collects to the court debt that is collected.

No action taken on ARC 5390C.

ARC 5398C (NOIA), Powers of Attorney; Tax Information Disclosure Designation, Rules 5.7, 5.11, 7.6, 7.34  
No discussion on ARC 5398C.

ARC 5399C (NOIA), Broadband Infrastructure Grant Exemption, Rules 40.84, 53.28, 59.30  
No discussion on ARC 5399C.

## **UTILITIES DIVISION**

Representing the agency: Matthew Oetker

ARC 5403C (NOIA), Hazardous Liquid Pipelines and Underground Storage, Amendments to Ch. 13  
No discussion on ARC 5403C.

## **INSPECTIONS AND APPEALS DEPARTMENT**

Representing the agency: Ashleigh Hackel

### **ARC 5404C (AF), Consumable Hemp Products, Ch. 32**

Committee members stated that the rulemaking makes it more difficult for individuals to sell consumable hemp products out of their home and asked if the rulemaking addresses the separate “room” that is required for an individual to sell out of their home. Ms. Hackel responded that individuals that sell consumable hemp products from their homes also have to be in compliance with rules that address food sold out of homes, and those rules address food storage in a private residence. No action taken on ARC 5404C.

## **LAW ENFORCEMENT ACADEMY**

Representing the agency: Russell Rigdon

### **ARC 5402C (NOIA), Law Enforcement Officers and Reserve Peace Officers — Training, Emergency Care Providers, Rules 1.1, 2.1, 3.2, 3.8(4)“d,” 6.2, 8.1(6), 10.206(5), Ch. 14**

Committee members asked about fees that are included in rules 14.2 (1) and 14.2 (2). Mr. Rigdon explained that the academy council has a rules subcommittee that reviewed the rulemaking and that the fees were originally in the Department of Public Health’s rules on the same subject. He stated that the academy does not charge a separate fee for the practical examination as that is included in the tuition. He also stated that the academy does not charge a late fee for a late renewal application as long as the individual completes the required continuing education during the certification period. Mr. Rigdon explained that the fees were included in the rulemaking by mistake and will be removed when the rules are adopted.

No action taken on ARC 5402C.