



MINUTES

OCTOBER 2021 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Zach Whiting, Vice Chair
Senator Pam Jochum
Senator Waylon Brown
Senator Jesse Green
Senator Robert Hogg [by teleconference]

Representative Megan Jones, Chair
Representative Jon Jacobsen [by teleconference]
Representative Amy Nielsen
Representative Rick L. Olson
Representative Mike Sexton

EX OFFICIO, NONVOTING MEMBER: Nick Davis, 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: 9/8/21, 9/22/21

Procedural Business

Representative Jones convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Monday, October 4, 2021, in Room 103, State Capitol, Des Moines, Iowa. The minutes of the September 14, 2021, meeting were approved. The next meeting was scheduled for November 9, 2021. Mr. Ewing discussed procedures for participating in the meeting via Zoom. Chairperson Jones stated that more effort needs to be made by members to attend the ARRC in person. Mr. Ewing reviewed the LSA rules analysis report for bills enacted in the 2020 Legislative Session and noted that all agency filings had been completed. The meeting was adjourned at 10:50 a.m.

Fiscal Overview

Mr. Adam Broich, Fiscal Legislative Analyst, presented the LSA fiscal report. With regard to the Department of Human Services ARC 5890, committee members asked how much money from the foster home insurance fund had been spent to date. Mr. Chris Ubben, fiscal analyst, responded that he will look into it and follow up with the committee.

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, Janee Harvey, Paula Motsinger

ARC 5889C (AF), Home- and Community-Based Services Habilitation Program—Eligibility Criteria, Staff Training, Scope of Services, Rules 77.25, 78.27

Ms. Shelly Chandler, speaking on behalf of the Iowa Association of Community Providers, expressed appreciation for the work done on the rulemaking, but stated that some providers are concerned about assessments being conducted by desk review rather than in person. She expressed disappointment that the department had not made the revisions requested in public comments. She stated she did not want to delay the rulemaking; however, she hoped the department would continue its efforts with the department's stakeholder workgroup.

Ms. Flora Schmidt, speaking on behalf of the Iowa Behavioral Health Association, agreed with Ms. Chandler's comments regarding the use of desk reviews. She also expressed concern that the "crosswalk" between the current comprehensive assessment and social history (CASH) tool and the Level of Care Utilization System (LOCUS) tool and Child and Adolescent Level of Care Utilization System (CALOCUS) tool had not been completed as the implementation date is November 1. She stated that providers have not been trained in the new tools and urged that the implementation date be moved back.

Members asked for clarification regarding the impact of the November 1 implementation date. Ms. Freudenberg stated that the rulemaking would probably not be implemented on November 1 and that training materials were being assembled. Ms. Motsinger explained that assessments of individuals used to complete the tools will be conducted in person, and the department is working on additional clarification for the crosswalk. She explained that the department is working on responses to questions raised by the federal Centers for Medicare and Medicaid Services (CMS), and agreed that the rulemaking would probably not be implemented by November 1. She said training would be available before November 1, and she would get back to the committee with an exact date.

Members asked what would happen if CMS denies approval of the rules and requests more information. Ms. Freudenberg explained that discussion with CMS is a regular part of the rulemaking process for Medicaid, that the rulemaking would not be implemented until approval is received, and that the rules would be withdrawn if CMS does not approve. She explained that the rulemaking describes an initial in-person review followed by ongoing desk reviews, and the concerns being raised are regarding desk reviews later in the process. She stated that the department is open to further rulemaking if needed.

Members asked if delaying the rulemaking would be helpful to the department. Ms. Freudenberg stated that the department generally tries to get CMS approval before rules are effective. She said it is the committee's right to delay the rules, and the department will pull the rules back if CMS does not approve. She noted she had discussed this process with Mr. Ewing. She expected CMS approval to be received by mid-November. Ms. Chandler responded that she understood that the initial assessments would be in person; however, the later desk reviews would be insufficient to capture changes in an individual's level of functioning. Members stated that in-person interviews are important.

Committee members asked for more information regarding the initial reviews and the crosswalk. Ms. Motsinger explained that assessments are conducted annually, and that desk reviews are currently part of the process. She explained that the only significant change would be that the CASH tool would be completed in person with initial determinations made by the Iowa Medicaid Enterprise (IME), and then sent to a managed care organization for annual reevaluations. She said the crosswalk would be a critical component, but it is not yet complete. She recommended that the department be given more time for implementation of the rulemaking.

Committee members asked if Ms. Chandler or Ms. Schmidt wanted the committee to delay the rulemaking. Ms. Chandler stated that the rulemaking should go forward given the scope of the changes to HCBS programs and the funding involved, but in the meantime she would like to see the crosswalk. Ms. Freudenberg suggested that the committee hold a special review of the rulemaking in December. She said the department would send the crosswalk to Ms. Chandler and Ms. Schmidt when it is ready. It could be determined at the December ARRC meeting whether any further action is needed. Ms. Schmidt indicated support for this approach. She expressed concern, however, that providers would be out of compliance as of November 1. She stated the rulemaking should not be delayed. She

acknowledged that the initial assessments would still be in person, but expressed concern that under the rulemaking, the subsequent LOCUS/CALOCUS tools would only be used for desk reviews.

Additional Review at December ARRC Meeting

ARC 5890C (AF), Foster Home Insurance Fund—Applicability, Definitions, Payment Limits, Claims, Ch. 158

Committee members noted that the state struggles to find enough foster families and asked if the fund contains sufficient moneys to cover damages resulting from the actions of a child living in a foster home. Ms. Harvey stated the department is well under budget. She also stated that 95 percent of claims are under \$5,000 and are resolved quickly. She agreed that the fund is an important support for foster families.

No action taken on ARC 5890C.

ARC 5891C (AF), Child Care Assistance Provider Reimbursement Rates, Rule 170.4(7)“a”

No discussion on ARC 5891C.

ARC 5892C (AF), Child and Spousal Support—Obligations, Terminology, Rules 99.1, 99.2, 99.4(5), 99.69(4), 99.85(1)“d,” 99.91(1), 99.109(2)

No discussion on ARC 5892C.

ARC 5901C (FEAN), Prescribing Controlled Substances, Rule 79.17

No discussion on ARC 5901C.

ARC 5903C (NOIA), Provider Reimbursement Rates; Fee Schedules, Rules 78.27(10)“f,” 78.34(9)“g,” 78.41 (2)“i,” 78.43, 78.46, 79.1, 83.2 (2)“b,” 83.42 (2)“b,” 83.102 (2)“b,” 83.122 (6)“b,” also Filed Emergency ARC 5896C.

No discussion on ARC 5903C or ARC 5896C.

ARC 5904C (NOIA), Medical Assistance—Eligibility, Payment, Rules 75.5(3)“d,” 75.16(1), 75.25, 80.3(2)“a”

No discussion on ARC 5904C.

Emergency Filing, Review Required: Mental Health and Disability Services Region Incentive Funds, Ch. 25

No discussion on emergency filing.

PUBLIC SAFETY DEPARTMENT

Representing the agency: Catherine Lucas

ARC 5918C (ANOIA), Electrical Installations, Rule 504.1

No discussion on ARC 5918C.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA

Representing the agency: Andrew Greenberg

ARC 5888C (NOIA), Sales or Leases by Regulatory Agency Officials or Employees, Rules 1.4(9), 6.11

No discussion on ARC 5888C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Sara Throener

ARC 5895C (NOIA), Frequency of Game Nights, Rule 100.2

No discussion on ARC 5895C.

ARC 5920C (NOIA), Initial Evaluation of Tenants for Assisted Living Programs, Rule 69.22(1)
No discussion on ARC 5920C.

STATE PUBLIC DEFENDER

Representing the agency: Kurt Swaim

ARC 5919C (NOIA), Indigent Defense Services—Adoption Services, Claims, Fees, Rules 12.1(1), 12.4(1), 12.6(2)

Committee members commented that the rulemaking allows the state to deliver better services as an indigent individual may keep the same attorney throughout the entire process of adopting a child who was the subject of a termination of parental rights proceeding. Members thanked the state public defender for working with the General Assembly on 2021 Iowa Acts, House File 743.

No action taken on ARC 5919C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Christine Paulson, Jonathan Garton, Theresa Stiner, Mel Pins

ARC 5897C (AF), Mercury-Added Switch Recovery From End-of-Life Vehicles, Ch. 215

No discussion on ARC 5897C.

ARC 5898C (AF), Air Quality, Rules 20.2, 22.100, 23.1, 25.1(9)

No discussion on ARC 5898C.

ARC 5899C (AF), Dams; Water Storage Permitting, Chs. 50-52, 70-73

No discussion on ARC 5899C.

ARC 5902C (NOIA), Waste Tire Management, Rules 116.6(1), 117.7(2)

No discussion on ARC 5902C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 5907C (AF), Targeted Small Businesses, Rules 52.1, 52.2, 52.3(3), 55.2-55.7

No discussion on ARC 5907C.

ARC 5908C (NOIA), Hoover Presidential Library Tax Credit, Ch. 43

No discussion on ARC 5908C.

ARC 5909C (NOIA), Workforce Housing Tax Incentives Program, Ch. 48

No discussion on ARC 5909C.

ARC 5929C (NOIA), Broadband Forward and Telecommuter Forward Certifications, Ch. 24

No discussion on ARC 5929C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 5925C (NOIA), Iowa Get Screened: Colorectal Cancer Program, Rules 10.1-10.9

No discussion on ARC 5925C.

ARC 5926C (NOIA), Adoption Records—Noncertified Copy of Original Birth Certificate, Contact Preference Form, Medical History Form, Rules 95.6, 95.14-95.17, 99.13(3), 99.14(4)

No discussion on ARC 5926C.

ARC 5927C (NOIA), Medical Residency Training Matching Grants Program—Liability Costs, Rules 108.1, 108.3-108.6

No discussion on ARC 5927C.

ARC 5928C (NOIA), Emergency Medical Care Service Training—Authorized Ambulance or Nontransport Service, Rules 139.2, 139.4(1)“a”

No discussion on ARC 5928C.

TRANSPORTATION DEPARTMENT

Representing the agency: Sara Siedsma

ARC 5893C (AF), Motor Vehicles Operated by an Automated Driving System, Chs. 380, 400, 524, 540

No discussion on ARC 5893C.

ARC 5921C (NOIA), Driver Privacy Protection; Motor Vehicle Records, Chs. 4, 301, 415, 610, 611

Committee members stated that currently an individual can access the individual’s noncertified driving record and reinstatement requirements online and asked if the rulemaking would change their ability to do so. Ms. Siedsma responded that it would not. Members noted that the rulemaking protects the privacy of an individual’s social security number; however, to make a request online the requester must disclose the last five numbers of their social security number. Members asked if those five numbers are protected information. Ms. Siedsma responded that the requester is self-disclosing the information and it is used to verify the identify of the requester when they log into the online system.

No action taken on ARC 5921C.

ARC 5922C (NOIA), Parent-Taught Driver Education; Distracted Driving, Ch. 634

No discussion on ARC 5922C.

ARC 5923C (NOIA), Emergency Interstate Fleet Permit, Rules 511.1, 511.2, 511.4, 511.6-511.9, 511.12-511.20

No discussion on ARC 5923C.

ARC 5924C (NOIA), Driver’s Licenses—Application, Examination, REAL ID Documentation, Chs. 601, 604

Committee members expressed appreciation for the department’s flexibility related to court orders and an individual’s birthdate. Members stated that some agencies require specific information in a court order which may create unnecessary issues for the court system.

No action taken on ARC 5924C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock, Alan Keller

ARC 5912C (AF), Secondary Containment — Exemption for Soil Conditioners Consisting Entirely of Minimally Manipulated Manures, Rules 44.51, 44.56

Committee members asked for a description of an “impermeable container.” Mr. Keller explained that it is most commonly like a silage bag, which he described as a big plastic bag that product can be blown into and taken out of. Members asked if substances other than manure, such as compost, fall under this rulemaking. He responded that compost remains under compost regulations.

No action taken on ARC 5912C.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 5894C (AF), Hazardous Liquid Pipelines and Underground Storage, Ch. 13

No discussion on ARC 5894C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 5883C (NOIA), Order of Deduction of Tax Credits, Rules 42.44, 52.12, 58.24
No discussion on ARC 5883C.

ARC 5884C (NOIA), Nonresident and Part-Year Resident Income Tax Credit, Rule 42.5
No discussion on ARC 5884C.

ARC 5885C (NOIA), Appeals of Director's Rejection of Assessor Appointment or Reappointment, Rule 7.37
No discussion on ARC 5885C.

ARC 5886C (NOIA), Out-of-State Tax Credit, Rules 42.6, 89.8(11)
No discussion on ARC 5886C.

ARC 5887C (NOIA), Assessors and Deputy Assessors—Assessment of Own Property, Rule 71.27
No discussion on ARC 5887C.

ARC 5911C (AF), Vehicles Subject to Registration, Ch. 34
No discussion on ARC 5911C.

ARC 5915C (AF), Sales Tax Administrative Procedures, Chs. 12-15, 17, 30, 40, 53, 108, 213, 231
No discussion on ARC 5915C.

ARC 5916C (AF), Filing Tax Returns, Payment of Tax—Penalties, Waivers, Rules 10.5-10.9, 10.76, 10.79
No discussion on ARC 5916C.

ARC 5917C (AF), Tobacco Tax—Discounted Tobacco Products, Rule 83.3
No discussion on ARC 5917C.

ARC 5930C (AF), Appeals and Hearings Regarding the Director's Intent to Remove a Member of the Board of Review, Rule 7.38
No discussion on ARC 5930C.

ARC 5906C (AF), Marketable Food Products for Human Consumption, Rule 230.2(1)

Mr. Tom Sands, Iowa Taxpayer's Association (ITA), stated that the ITA, along with the Iowa Association of Business and Industry (ABI), has expressed concerns with the rulemaking at public hearings and in front of the committee. He stated that the ITA remains opposed to the rulemaking; however, the ITA and the ABI continue to work with the department on rules that will provide more clarity. He expressed that the ITA feels the issue should be addressed legislatively rather than through rulemaking, and asked the committee to consider a session delay.

Mr. JD Davis, speaking on behalf of the ABI, agreed with the statements made by Mr. Sands. He stated that the ABI sent the proposed rulemaking to its tax practitioners and the concern is that the rulemaking will lead to greater tax collections. He acknowledged that the current process to determine a taxpayer's tax liability is not effective as it may involve a cycle of audits and challenges. He stated that the rulemaking does not provide the necessary clarity and requested the committee consider a session delay.

Members asked if the department objected to a session delay. Ms. Clara Wulfsen, speaking on behalf of the department, responded that the department had no objection.

Session Delay

A motion for a session delay passed on a 10 to 0 roll call vote.