



MINUTES

AUGUST 2022 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Waylon Brown, Chair	Representative Megan Jones, Vice Chair [by teleconference]
Senator Julian B. Garrett	Representative Mike Bousset
Senator Jesse Green [by teleconference]	Representative Amy Nielsen
Senator Robert Hogg [by teleconference]	Representative Rick L. Olson
Senator Pam Jochum	

EX OFFICIO, NONVOTING MEMBER: Nate Ristow, 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: 7/13/22, 7/27/22

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, August 9, 2022, in Room 116, State Capitol, Des Moines, Iowa. Video of the meeting has been posted here: www.legis.iowa.gov/committees/meetings/meetingsListComm?groupID=705. Mr. Ewing explained that due to a system update in the Iowa Communications Network (ICN), the process for members to participate via the ICN has changed. The minutes of the July 19, 2022, meeting were approved. The next meeting was scheduled for Tuesday, September 13, at 9 a.m. The meeting was adjourned at 10:25 a.m.

Fiscal Overview

Mr. Chris Ubben, Fiscal Legislative Analyst, presented the LSA fiscal report. Committee members asked if most health insurance policies and Medicaid cover the cost of newborn screening as provided under ARC 6432C and how the cost is covered if it is not covered by insurance or Medicaid. Mr. Ubben explained that it varies whether and to what extent screening is covered by insurance, and he would investigate whether screening is covered under Medicaid. He noted that there are other programs available to help families who cannot cover the cost themselves. He also noted that the screening is voluntary.

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).

SECRETARY OF STATE

Representing the agency: Molly Widen

ARC 6414C (ANOIA), Proposed Constitutional Amendment—Right to Keep and Bear Arms, Rule 21.200(4)
Committee members asked why August 12 was selected for the public hearing. Members stated that because the date was just now being made public, it only gave the public a few days notice. Ms. Widen responded that August 12 is 30 days from the date that the summary was first published in the Iowa Administrative Bulletin and noted that the Secretary of State (SOS) is only required to provide 20 days notice. She further stated that the deadline for the SOS to certify information to the counties is approaching and that limits the SOS's flexibility. Members asked if the public could request another public hearing. Ms. Widen stated that it is her understanding that such a request is not possible. Members asked how the SOS defines strict scrutiny. Members stated that many legislators needed a lawyer to explain the term, and expressed concern that members of the public will not understand what it means, or the potential ramifications. She responded that if a constituent contacts the SOS with questions they would be encouraged to reach out to one of the advocacy groups working in the state to educate the public on the constitutional amendment. She further responded that the role of the SOS is to prepare a summary of the constitutional amendment — it is a summary and not an explanation. Members asked if it is the role of the Iowa Supreme Court to define the term. Ms. Widen reiterated that the role of the SOS is to prepare a summary of the language in the proposed amendment.

Ms. Traci Kennedy, a volunteer with Moms Demand Action for Gun Sense in America (Moms Demand Action) stated that the summary is brief, vague, broad, and is a disservice to voters. She stated that the summary is the only language that many members of the public will see related to the proposed constitutional amendment prior to voting. She stated that members of Moms Demand Action have voiced their concerns during consecutive legislative sessions, including concerns related to applying strict scrutiny to gun laws. She explained that Moms Demand Action works hard to make communities safer and the amendment limits the opportunity to exercise local democracy to solve problems. She noted that three states that have passed a similar amendment have seen an increase in gun violence, including Missouri, which has three times more gun violence than Iowa. Ms. Kennedy urged the committee to require the SOS to include additional explanation in its summary due to the complicated language in the proposed amendment. Ms. Widen responded that Iowa Code sections 49.44 and 52.25 require that every voter have access to the summary as well as to the entire language of the proposed constitutional amendment. She stated that both will be provided on the ballot if space allows, posted in the voting booth, and included with every mailed ballot.

Committee members stated that just because the SOS does not have to do something it does not mean he should not. Members stated that every month the committee receives a summary of each rule that explains the rule and is not just a copy of the text of the rule. Members stated that the SOS is not providing a service to constituents by copying and pasting the text of the proposed amendment. Members stated that they have received education on the strict scrutiny standard; however, the public has not and may not know what it means. Members stated that it is their job to make sure that the public is informed on these types of matters.

Committee members mentioned that there is some confusion and that the SOS's explanation is not a rule. The SOS must describe, in a very limited space, what the proposed constitutional amendment does. Members stated there are advocacy groups on both sides of the issue that can speak to voters, and the SOS is doing what he is required to do by law.

No action taken on ARC 6414C.

ARC 6427C (NOIA), Fees, Chs. 30, 40

Mr. Brad Hartkopf, speaking on behalf of the Association of Business and Industry, expressed support for the rulemaking. He explained that he had worked with the secretary of state's office when the fees were initially increased in 2017 to facilitate technology modernization and it was understood at the time that the fees would be reduced once the modernization was complete.

No action taken on ARC 6427C.

ARC 6404C (AF), Use of I-Voters at Satellite Absentee Voting Stations, Rule 21.300(13)

No discussion on ARC 6404C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 6407C (NOIA), Disability Services Management, Ch. 25

No discussion on ARC 6407C.

ARC 6409C (NOIA), Debts Due from Transfers of Assets—Five-Year Review of Rules, Ch. 89

No discussion on ARC 6409C.

ARC 6410C (NOIA), Emergency Food Assistance Program—Five-Year Review of Rules, Ch. 66

No discussion on ARC 6410C.

ARC 6411C (NOIA), Medicare Drug Subsidy—Five-Year Review of Rules, Rules 91.1, 91.2(2)“a,” 91.3(2)“a,” 91.6(2), 91.7

No discussion on ARC 6411C.

ARC 6419C (NOIA), Providers of Medical and Remedial Care—Service Documentation, Rule 79.3(2)“c”(3)

No discussion on ARC 6419C.

ARC 6430C (NOIA), Child Care Assistance Eligibility—Disability of a Parent in a Two-Parent Household, Rule 170.2(2)“b”

No discussion on ARC 6430C.

ARC 6406C (NOIA), Child Care Centers—Staff Requirements, Combining Age Groups, Rules 109.8, 109.11(2)

Committee members asked why the department did not schedule a public hearing for this rulemaking. Ms. Freudenberg explained that the rulemaking was based in part on recommendations from a task force, that the department received comments during the legislative process, and that the department typically does not schedule a public hearing unless requested.

Committee members asked why the staff-to-child ratio was changed in a facility setting, but not an in-home setting. Ms. Freudenberg explained that in-home settings are based on the total number of children, not ratios.

Committee members asked why the jobs impact statement indicates that the rulemaking will have no impact on jobs given the criteria of Iowa Code section 17A.4B, when legislators were told during session that the underlying legislation was necessary as a workforce issue. Ms. Freudenberg explained that the new standards in the rulemaking are voluntary, and the department does not know how many facilities will adopt them. She stated that the LSA agreed with the department’s analysis and that the department may have more information in six months. Members stated that it would be more accurate for the department to indicate that the jobs impact could not be calculated than to assert there would be no impact. She indicated the department would make a better effort on jobs impact statements going forward. Members asked the department to report the impact of the rulemaking to the committee after six months, and she stated the department would do so.

No action taken on ARC 6406C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Susan Dixon

ARC 6420C (NOIA), Water Treatment Systems, Ch. 14

No discussion on ARC 6420C.

ARC 6432C (NOIA), Center for Congenital and Inherited Disorders, Rules 4.1(1), 4.2, 4.3, 4.11-4.14

Committee members asked if the newborn screening is covered by Medicaid and what percent of infants in Medicaid receive the screenings. Ms. Dixon stated she would follow up on both questions.

No action taken on ARC 6432C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Sue Mears

ARC 6401C (NOIA), Behavior Analysts, Assistant Behavior Analysts—Fees, Rule 5.3(3)
No discussion on ARC 6401C.

ARC 6415C (AF), Licensure of Massage Therapists, Ch. 131
No discussion on ARC 6415C.

PHARMACY BOARD

Representing the agency: Sue Mears

ARC 6416C (AF), Remote Delegation of Functions — Security, Supervision, Documentation, Patient Counseling, Rules 3.5, 3.21, 6.14
No discussion on ARC 6416C.

ARC 6417C (AF), Pharmacy License; Nonresident Pharmacy Practice, Rules 8.35, 19.1-19.3
No discussion on ARC 6417C.

ARC 6418C (AF), Precursor Substances, Rule 12.1(1)
No discussion on ARC 6418C.

ARC 6421C (NOIA), Care Facility Immunization Programs—Notification, Rule 23.14(3)
No discussion on ARC 6421C.

ARC 6422C (NOIA), Outsourcing Facilities—Inspections, Change of Ownership, Fees, Rule 41.3
No discussion on ARC 6422C.

ARC 6423C (NOIA), Records—Five-Year Review of Rules, Rules 14.1, 14.3, 14.6, 14.13(2), 14.14
No discussion on ARC 6423C.

ARC 6424C (NOIA), Precursor Substance Permits—Five-Year Review of Rules, Rule 12.7
No discussion on ARC 6424C.

ARC 6425C (NOIA), Temporary Designation of Controlled Substances, Rule 10.39(5)
No discussion on ARC 6425C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock

ARC 6426C (NOIA), Renewable Fuel Infrastructure Program, Rules 13.1, 13.2(4), 14.2, 16.1-16.5
No discussion on ARC 6426C.

ARC 6433C (NOIA), Marketing, Ch. 52
No discussion on ARC 6433C.

VETERINARY MEDICINE BOARD

Representing the agency: Colin Tadlock

ARC 6403C (NOIA), Veterinarian/Client/Patient Relationships, Rules 1.4, 12.1, also Filed Emergency ARC 6397C

Committee members asked if the definition of “premises” should be broadened by striking the phrase “operated or owned by the client.” Mr. Tadlock explained that the board is considering this issue and may revise the language to account for the word “premises” being used in multiple places in the chapter.

No action taken on ARC 6403C or ARC 6397C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston

ARC 6402C (NOIA), Travel Insurance, Ch. 10

No discussion on ARC 6402C.

ARC 6408C (NOIA), Five-Year Review of Rules, Rules 35.21, 35.40, 40.12(4), 55.20(7), 58.3(2), 58.16(3), 71.14(9), 101.1, 101.8(12), 101.9, 102.3

Committee members inquired why language providing that the insurance commissioner “shall not” review certain certificates of coverage was amended to provide that the commissioner “may not” conduct such reviews. Ms. Burke Boston explained this indicates that such reviews may or may not occur. Members asked the division to ensure that this language would not prohibit the commissioner from conducting such reviews.

No action taken on ARC 6408C.

CORRECTIONS DEPARTMENT

Representing the agency: Michael Savala

ARC 6431C (AF), Organization, Procedures, Institutions Administration—Five-Year Review of Rules, Chs. 1, 20

No discussion on ARC 6431C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Sara Throener

ARC 6412C (NOIA), Food Assistance Program—Change of Name to Supplemental Nutrition Assistance Program; Fraud Control; Debt Recovery, Chs. 22, 72, 75, 90

No discussion on ARC 6412C.

TRANSPORTATION DEPARTMENT

Representing the agency: Kelli Huser, Willy Sorenson

ARC 6405C (AF), Vehicles Transporting Overweight Loads of Fluid Milk Products—Annual Permit, Ch. 511

No discussion on ARC 6405C.

ARC 6434C (NOIA), Primary Highway Access Control, Chs. 112, 150

No discussion on ARC 6434C.

MANAGEMENT DEPARTMENT

Representing the agency: Carrie Johnson

ARC 6428C (NOIA), Suspension and Reinstatement of State Funds, Ch. 16
No discussion on ARC 6428C.

REVENUE DEPARTMENT

Representing the agency: Clara Wulfsen

ARC 6429C (NOIA), Application of Two-Tier Assessment Limitation, Rule 71.29
No discussion on ARC 6429C.

ARC 6399C (NOIA), Permits; Filing Returns; Payments of Sales and Use Taxes, Chs. 12, 13, 28, 29, 30, 42, 52, 67, 81, 97, 103, 201, 202, 215, 258, also Filed Emergency ARC 6398C
No discussion on ARC 6399C or ARC 6398C.

ARC 6400C (NOIA), Sales, Use, and Excise Tax, Chs. 4, 16, 27, 34, 67-70, 81-86, 91, 97, 103, 107-109, 120, 122, 150, 210, 212, 215, 216, 223, 226, 230, 241
No discussion on ARC 6400C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Erik Helland

ARC 6413C (NOIA), Retention and Recertification Elections—Submission of Voter Eligibility Lists, Rules 15.1, 15.2(2), 15.5
No discussion on ARC 6413C.