



MINUTES

FEBRUARY 2024 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mike Klimesh, Chair
Senator Nate Boulton
Senator Mike Bousselot
Senator Waylon Brown
Senator Cindy Winckler

Representative Rick L. Olson
Representative Michael V. Sexton
Representative David E. Young

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, Division Editor/Supervisor, 515.281.6329

BULLETINS NEEDED FOR THIS MEETING: 1/10/24, 1/24/24

Procedural Business

Senator Klimesh convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 3:15 p.m. on Monday, February 5, 2024, in Room 116, State Capitol, Des Moines, Iowa. Chairperson Klimesh explained that due to the volume of rulemaking resulting from Executive Order 10, the committee would only review rule filings at the meeting for which a committee member or a member of the general public requested a review. [Rule filings for which this was not the case are not listed in these minutes.] He explained that this practice would likely continue for the duration of Executive Order 10. Agencies would still need to attend the committee meetings in case a review of any of the agency's rulemaking documents is requested. Mr. Ewing noted the minutes of the January 8 meeting would be delayed until the March meeting. The next meeting was scheduled for Monday, March 4, 2024, following the conclusion of committee meetings in both chambers. Mr. Ewing requested that members and staff return the binders used for copies of large bulletins at the end of each meeting going forward. At the conclusion of the meeting, Mr. Ristow stated that the review of rules resulting from Executive Order 10 gives the General Assembly an opportunity to reexamine the authority given to state agencies. He addressed the amount of hours of continuing education that professional licensing boards require of licensees and specified certain boards that had reduced the hours required, boards that had used data to justify the current hours required, and boards that had neither reduced the hours required nor justified the current hours required. Members discussed ways to continue to make meetings run more efficiently going forward while ensuring the public has an opportunity to comment on rule filings. The meeting was adjourned at 4:45 p.m.

Fiscal Overview

Mr. Chris Ubben, Division Editor/Supervisor, presented the LSA fiscal report.

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).

TRANSPORTATION DEPARTMENT

Representing the agency: Kathleen Meredith Eyers

ARC 7491C (NOIA), Special Permits; Commercial Driver’s Licenses; Commercial Learner’s Permits, Chs. 511, 607

No discussion on ARC 7491C.

STATE PUBLIC DEFENDER

Representing the agency: Kurt Swaim

ARC 7571C (AF), Claims for Indigent Defense Services—Rate of Compensation, Travel Time, Rules 12.4(1), 12.5(4)

Committee members asked when the increased compensation for contract attorneys had taken effect. Mr. Swaim responded that the increase had taken effect July 1, 2023. Members asked if the increase was necessary because the judicial branch was reluctant to use technology to conduct remote proceedings. He responded that paying for “windshield time” was to encourage contract attorneys to take cases that required travel. He explained that for uncontested hearings the attorney is required to request a remote hearing, and if the hearing was denied, the state public defender would collect the fees for the attorney’s travel time from the judicial branch. Members asked if the number of contract attorneys had increased. He replied that there are currently 513, which is not enough to meet the state’s constitutional duties; however, the public defender was hoping to stop that number from declining. Members stated that technology would solve the issue. Members asked for confirmation that the public defender would not be reimbursed by the judicial branch for the cost of an attorney filing for a remote hearing. He responded that was correct. Members stated that the members would work together to look further into this issue.

No action taken on ARC 7571C.

INSURANCE DIVISION

Representing the agency: Angela Burke Boston

ARC 7351C (NOIA), Property and Casualty Insurance, Ch. 20

No discussion on ARC 7351C.

ARC 7352C (NOIA), Requirements for Surplus Lines, Risk Retention Groups and Purchasing Groups, Ch. 21

No discussion on ARC 7352C.

ARC 7353C (NOIA), Military Sales Practices, Ch. 25

No discussion on ARC 7353C.

ARC 7355C (NOIA), Workers’ Compensation Insurance Rate Filing Procedures, Ch. 60

No discussion on ARC 7355C.

REVENUE DEPARTMENT

Representing the agency: Tyler Ackerson, Brad Hopkins

ARC 7502C (AF), Retirement Income Exclusion, Rules 301.1, 301.5, 302.47, 302.80, 307.1, 307.3(5)

Committee members asked if this rulemaking implemented retirement exclusions. Mr. Ackerson said that it does and that the retirement exclusions would not apply to nonqualified plans. Members explained that employees of Perishable Distributors of Iowa (PDI), a wholly owned subsidiary of Hy-Vee, who are awarded Hy-Vee stock in their plan would not be eligible for the capital gain exclusion upon retirement because the plan is a nonqualified plan. Members stated the same would be true for groups formed as S corporations and that the goal of the legislation was to keep retirees’ wealth in the state.

No action taken on ARC 7502C.

ARC 7490C (NOIA), Property Assessment Appeal Board, Ch. 115
No discussion on ARC 7490C.

PUBLIC HEALTH DEPARTMENT

Representing the agency: Ashleigh Hackel, Joe Campos

ARC 7360C (NOIA), Medical Cannabidiol Program, Ch. 154

Mr. Dane Schumann, speaking on behalf of MedPharm Iowa, stated that MedPharm had not submitted public comments but had met with the Department of Health and Human Services (department). He explained that several medical conditions added by the Medical Cannabidiol Advisory Board (board) had been inadvertently left out of the rulemaking. He also explained that there was an issue with company succession planning as the licenses for dispensaries and manufacturers were not transferable. He stated that there was also an issue with label requirements for serving size as it is difficult for MedPharm to identify the serving size for some of its products. Members asked if the department was aware of MedPharm's concerns. He responded that MedPharm had met with the department a few weeks ago. Members asked about the medical conditions that were omitted from the rulemaking. He responded that it was possible that the only medical conditions added to the new rulemaking were the conditions that were codified, and not the medical conditions approved by the board and added via rulemaking. Members asked if there was concern that someone currently approved for medical cannabidiol would be denied if the individual's medical condition was not added to the rulemaking. He replied that was a major concern.

No action taken on ARC 7360C.

ARC 7372C (NOIA), Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers or Institutions of Higher Education, Ch. 7

Committee members asked if there was a reason that the notary requirement was eliminated. Mr. Campos replied that the red tape review process was intended to eliminate burdensome requirements and that there was disparate access to notaries in Iowa. He explained that the notary requirements were intended to prevent fraud and the department had determined that the requirements were not necessary for fraud prevention for immunization exemptions. Members stated that public safety was an issue and an outbreak could occur due to not requiring notarized signatures for immunization exemptions. Members also noted that this was a significant shift in policy that was not flagged by the department in the background materials provided by the department.

No action taken on ARC 7372C.

ARC 7508C (NOIA), State-Funded Family Medicine Obstetrics Fellowship Program, Ch. 106

Mr. Steve Johnson, speaking on behalf of Broadlawns Medical Center, stated that one fellow had completed the program and was practicing in northwest Iowa. He stated that Broadlawns opposed the requirement that the hospital was required to pay back a prorated amount of the \$140,000 provided by the program if a fellow failed to complete five years of practice in rural Iowa. He explained that many things that are out of the hospital's control could cause a fellow to leave prior to completion of the five-year commitment. He further explained that financially the hospital cannot necessarily afford to pay back a prorated amount, and that was not the intent of the legislation that created the program. He stated that Broadlawns, the University of Iowa, and the Iowa Hospital Association had all provided public comments to that effect to the department.

Members asked about imposing a session delay on the rulemaking. Members stated that the rulemaking is noticed, not filed, and the department would have the opportunity to take the feedback and revise the rulemaking. When the rules are filed, the committee would have the opportunity to consider options such as a session delay.

Committee members asked what Mr. Johnson suggested as the answer to the issue. He suggested that a fellow be required to sign an agreement with the department that provides for a penalty if the fellow failed to fulfill the five-year commitment. Members agreed that applying the clawback to the hospital rather than to the fellow seemed misplaced. Members asked if Broadlawns could enter into a contract with a fellow to put the burden of repayment on the fellow, rather than on Broadlawns. He replied that he would need to speak with the hospital's attorney about that.

No action taken on ARC 7508C.

ARC 7287C (NOIA), Impaired Practitioner Review Committee, Ch. 193

Committee members asked how the program provided for confidentiality. Ms. Hackel replied that the rulemaking provided for confidentiality.

No action taken on ARC 7287C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Emily DeRonde

ARC 7293C (NOIA), Behavioral Scientists—Licensure of Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, and Assistant Behavior Analysts, Ch. 31

Ms. Emily Piper, speaking on behalf of the Iowa Mental Health Counselors Association (IMHCA) and the American Association of Marriage and Family Therapy (AAMFT), stated that both IMHCA and AAMFT were supportive of the rulemaking; however, the rules on licensing by endorsement for people moving into the state referenced back to the licensure rules for individuals seeking initial licensure, and those rules require that an individual's transcript be sent directly from the institution from which the individual graduated. She explained that while that is easy to accomplish as a new graduate, it may be more difficult later in an individual's career. She requested that the rulemaking allow for an individual coming from another state to provide the transcript directly as those individuals' transcripts would be on file with the licensing board of the state they were coming from.

No action taken on ARC 7293C.

ARC 7538C (NOIA), Barbers and Cosmetologists—Licensure of Establishments and Schools of Barbering and Cosmetology Arts and Sciences, Ch. 61

Mr. Nick Laning, speaking on behalf of the Iowa Cosmetology School Association (ISCA), stated that ISCA would like to see the rules related to shared spaces for cosmetology and barbering schools clarified so that an instructor at a school could also rent out a chair without obtaining an establishment license in addition to the school license. He stated that schools had higher standards than establishments, and schools were already serving as establishments when members of the public obtain haircuts and other services at a school.

No action taken on ARC 7538C.