
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

ADMINISTRATIVE RULES REVIEW COMMITTEE — MAY 14, 2019

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

DEPARTMENT OF PUBLIC HEALTH, *Emergency Medical Services–Service Program Authorization*, Chapter 132, SPECIAL REVIEW.

Background. The committee scheduled a special review of the department's current rules on service program authorization for emergency medical services (EMS).

Commentary. Committee members noted that the department is currently developing rulemaking on this subject but stated that the special review would be a means of having a conversation on the subject before that rulemaking process begins.

Mr. Ken Sharp spoke on behalf of the department. He explained that department personnel had met with Representative Louie Zumbach, who requested the special review, and his constituent, regarding their concerns with the department's rules on EMS, which he stated were mostly related to chapter 131 of the department's rules. He explained the department's current work on chapter 132, which he noted has not been updated in years. He explained that chapter 132 concerns authorization of EMS programs. He provided handouts to the committee regarding the history of chapter 132 and described the history, including multiple reviews of the department's policies from outside the department. He explained that the department has heard feedback for over five years from rural, volunteer EMS programs that struggle to provide such services. Some of those programs are struggling financially. He stated that a draft of a revised chapter 132 will be noticed later this summer. He explained that a key concept in the new draft will be affiliation agreements between smaller EMS programs that receive fewer calls. He explained that such agreements will allow smaller programs to share rosters, particularly during the day when there are fewer calls, and consolidate administrative functions, and that some counties are already using such agreements to good effect.

Committee members asked if the department is addressing issues relating to continuing education requirements and the amount of mandatory ride time necessary to maintain licensing, which individual volunteers struggle with. Mr. Sharp explained that such issues are covered by chapter 131, as well as legislation enacted in 2019, and that the department will address those issues as it implements the legislation.

Representative Zumbach commented on chapter 132. He explained that the issues with these rules came to his attention two years ago and that he was an EMS volunteer in the past, but stopped when it became too burdensome. He noted that chapters 131 and 132 relate to similar subjects. He stated that he had a productive meeting with the department earlier in the day. He urged the department to modify its rules to reinstate certain volunteer paramedics, return to using the prior state-based test for EMS volunteers rather than a new national test that has subjective answers and a 40 percent passage rate,

and include more EMS volunteers on the department's emergency council. He stated that where a person lives should not determine whether they live or die if they have a health crisis, but it does. He stated that these issues are not just occurring in the area he is from and that funding sources for EMS are also being considered.

Committee members urged the department to listen to the concerns raised and that such concerns have also been heard across the state. Committee members stated that well-meaning state mandates relating to matters such as education requirements for EMS volunteers can be counterproductive by exacerbating the difficulty of getting enough EMS volunteers and that approaches regarding EMS volunteers that work in one area of the state may not work in another.

Committee members asked if EMS is considered an essential service under Iowa law and what the history of the law is in that regard. Mr. Sharp explained that EMS is not an essential service and that he did not know the history behind that, although efforts to make it an essential service in the past had not been successful. Committee members thanked Mr. Sharp and Representative Zumbach for attending and stated that there is much work still to be done on this subject.

Action. No action taken.

PROFESSIONAL LICENSURE DIVISION, *Behavioral Analysts and Assistant Behavioral Analysts*, 4/10/19 IAB, ARC 4389C, NOTICE and 4390C, FILED EMERGENCY.

Background. The rulemakings add licensing rules for two professions newly recognized under the Iowa Code: Behavior Analysts and Assistant Behavior Analysts. The rulemakings also set initial license fees at \$300 for the two new professions.

Commentary. Mr. Tony Alden represented the division. He detailed the following three primary concerns with the rulemakings that were expressed by commenters at a public hearing. The first concern was regarding the renewal process. Commenters expressed concern that the renewal process was flawed because it hinged on obtaining a wall certificate from a national certifying board and that certificate may arrive late, which may cause an Iowa license to go into inactive status. Mr. Alden assured the committee that this interpretation of the rulemaking was inaccurate; physical possession of a wall certificate is not necessary for renewal. Rather, division staff are able to verify membership with national certifying boards by going onto a website in order to confirm renewal. The second concern was with a minimum initial issuance period. Mr. Alden stated that a time frame of one year was repeatedly mentioned. Because the division initially noticed the rulemaking on this subject one year ago, Mr. Alden indicated that he did not anticipate much pushback to the rulemakings. The third concern is regarding renewal fees. Commenters interpreted the rulemakings to require a renewal fee of \$300; Mr. Alden explained that the intent of the rulemakings was to charge \$120. Mr. Alden stated that the adopted rulemaking will make the intent more clear. Remaining comments concerned a stepped licensure fee. Mr. Alden explained that the initial licensure fee is higher due to start-up costs. Commenters desired that the rulemakings be revised to state that after a date certain, the fees will be reduced commensurate with other boards to a standard lower fee. Mr. Alden stated that the Board of Public Health will consider comments at its June 13, 2019, meeting.

Ms. Kelly Meyers and Ms. Maria Valdovinos spoke on behalf of the Iowa Association for Behavior Analysis (IowaABA). Ms. Meyers thanked the division for working with the IowaABA on the rulemakings. Ms. Meyers provided a handout and stated that the IowaABA submitted three comments. First, she expressed a concern about the renewal fee and would appreciate the division making clear that the renewal fee is \$120, not \$300. She also asked for a grace period to address this because if the renewal fee is \$300, then some licensees would owe \$600 within a twelve-month period if the licensee obtains an initial license now, but the licensee's recertification is due later this year, which triggers the licensee's license renewal. Ms. Valdovinos stated that she wanted to reiterate the concerns that Mr. Alden discussed. Ms. Valdovinos stated that IowaABA was concerned that the renewal fee is not commensurate with other boards. Ms. Valdovinos also stated that IowaABA is pleased to hear about

changes that the division is going to make to licensure renewal costs because licensure and certification, including renewal, are costly.

Committee members stated that they wanted to reiterate the importance of addressing the renewal fee and commensurate licensure issues.

Committee members asked for clarification on the job duties of a Board Certified Behavior Analyst versus a Board Certified Assistant Behavior Analyst. Ms. Valdovinos provided an explanation. Committee members posed a question regarding the costs for fees for the two professions — specifically why the fees were the same. Ms. Valdovinos stated she was unsure other than knowing the primary concern was to facilitate Assistant Behavior Analyst licensure and to subsequently work out specific details.

Action. No action taken.

Next meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, June 11, 2019, beginning at 9:00 a.m.

LSA Staff: Jack Ewing, Legal Services, 515.281.6048; Amber Shanahan-Fricke, Legal Services, 515.725.7354

Internet Site: <https://www.legis.iowa.gov/committees/committee?endYear=2019&groupID=705>

1048443