
LEGAL UPDATE

Legal Services Division



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ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — AUGUST 12, 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 HUMAN SERVICES, Customized Wheelchairs—Definition for Medicaid Members and Providers, 7/31/19 IAB, ARC 4575C, ADOPTED.

Background. This rulemaking provides a definition of a customized wheelchair for all Medicaid members and providers. The rulemaking also aligns Iowa's Medicaid definition of a customized wheelchair with a definition for the Medicare program provided by the federal Centers for Medicare and Medicaid Services.

Commentary. Ms. Nancy Freudenberg and Ms. Marissa Eyanson represented the department and responded to questions. Committee members asked if the phrase "medically necessary for mobility" is defined in law or rule. Ms. Eyanson explained that it is not and that there is no similar definition elsewhere in the department's rules, but that the rulemaking provides consistency across the state by defining what a customized wheelchair is based on the federal Medicare definition when the term was not previously defined for purposes of Medicaid. Members questioned whether further definition would be advisable and whether it is appropriate to allow managed care organizations to interpret for themselves the definition provided in the rulemaking without further guidance.

Members questioned if the lack of comments on the rulemaking from the public indicated a lack of awareness about the rulemaking rather than a lack of potential feedback. Ms. Eyanson explained that Medicaid providers had reviewed the rulemaking and that their lack of feedback was notable because they would be the stakeholders most impacted by the rulemaking. Ms. Freudenberg explained that a Medicaid member could not get a customized wheelchair on their own without working with their provider and doctor.

Members expressed disappointment that there had been no changes to the language of the noticed rulemaking based on previous feedback from the committee, noting that the feedback had covered complaints on behalf of Medicaid providers and members. Ms. Freudenberg noted that these rules can always be reviewed again later if additional changes are necessary. Members directed the department to work with those members who had provided feedback on the rulemaking based on constituent concerns, with additional review to be scheduled in six months to review the progress of that work.

Action Taken. Further review at the February 2020 meeting.

CIVIL RIGHTS COMMISSION, Assistance Animal as Reasonable Accommodation in Housing-Form, 7/17/19 IAB, ARC 4551C, NOTICE, also filed Emergency as ARC 4552C.

Background. The proposed rulemaking is to comply with Iowa Code section 216.8C(3) as enacted by 2019 Iowa Acts, Senate File 341, which provides requirements pertaining to a request for an assistance animal as a reasonable accommodation for a disability in housing. The legislation requires the commission to adopt a form for a health care professional, as defined by the statute, to make a written finding regarding whether a patient or client has a disability and whether the need for an assistance animal is related to the disability.

Commentary. Mr. Andrew Greenberg and Ms. Stephanie Adkisson represented the commission and responded to questions. Committee members had questions regarding whether the implementing legislation applied to condominiums. Ms. Adkisson responded that Senate File 341 applied not only to apartment buildings, but also townhome associations and condominium associations. Committee members expressed concerns regarding fraudulent claims to a right to an assistance animal. Mr. Greenberg explained that the legislation and the rulemaking may help to limit fraudulent claims by setting forth requirements for a health care professional to meet in certifying that a person has a disability and a disability-related need for an assistance animal. In response to an inquiry from committee members, Ms. Adkisson stated that Senate File 341 provides that a tenant is responsible for damage caused by an assistance animal.

Action Taken. No action taken.

IOWA LOTTERY AUTHORITY, *Vendor and Licensing Appeals, 7/31/19 IAB, ARC 4563C, NOTICE.*

Background. The proposed rulemaking updates the Iowa Lottery Authority's processes relating to the receipt and review of administrative appeals. The rulemaking provides structure for vendor appeals and removes from licensing appeals the concept of the lottery "hearing board" appointed by various lottery officials. Rather, if this rulemaking is adopted, the lottery's chief executive officer will elect either to preside over the hearing or to appoint an administrative law judge from the Administrative Hearings Division of the Iowa Department of Inspections and Appeals to serve as presiding officer and issue a proposed ruling for such appeals. The proposed rulemaking provides that all appeals from proposed decisions are submitted to the lottery's chief executive officer, who issues the final decision on behalf of the agency.

Commentary. Mr. Rob Porter represented the lottery and responded to questions. Committee members expressed concern regarding the elimination of the hearing board and the shift in power to the chief executive officer. Mr. Porter responded that such a structure was acceptable because other agencies, such as the Alcoholic Beverages Division, have similar decision-making structures and the underlying statute for the lottery provides sufficient power to enable it to do so. Committee members suggested that the rulemaking be revised with consideration of their concerns prior to the adoption of the rulemaking.

Action Taken. No action taken.

RACING AND GAMING COMMISSION, *Sports Wagering and Fantasy Sports Contests, EMERGENCY RULEMAKING, SPECIAL REVIEW.*

Background. This emergency rulemaking implements 2019 Iowa Acts, Senate File 617, which authorizes sports wagering and fantasy sports contests in Iowa. The rulemaking became effective July 31, 2019, with betting scheduled to begin at noon on August 15, 2019.

Commentary. Mr. Brian Ohorilko represented the commission and responded to questions. Committee members asked for an explanation of the concern relating to debt offsets that had been raised in relation to the rulemaking. Mr. Ohorilko explained the commission's procedure for complying with the requirements of the offset program, including the interaction between the respective reporting requirements of the offset program and federal Internal Revenue Service regulations. During this

discussion, he explained that there is not currently an offset requirement for table games such as blackjack, that there are about 200,000 lowans with debts included in the offset program, that the total amount of debt covered by the program is unknown, and that the commission does not oppose a request from industry stakeholders to suspend a portion of the rulemaking requiring that sports wagering winnings be included in the offset program.

Members expressed concern regarding the lack of recognition that the emergency rulemaking would be subject to oversight and possible action by the committee prior to the beginning of wagering on August 15.

Mr. Wes Ehrecke made a public comment on behalf of the Iowa Gaming Association. He praised the effort the commission put into the rulemaking, but urged that the language applying offset requirements to sports wagering winnings be suspended. He noted that the industry had applied the offset requirement to slot machine winnings for the last 10 years, collecting \$34 million, and stated that he would pursue bipartisan legislation addressing the offset issue more holistically if the suspension was approved.

Action Taken. A motion for a session suspension of the portion of Item 30 adopting rule 491 IAC 13.2(7)(i) carried on a 8-1 roll call vote.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, September 10, 2019, beginning at 9:00 a.m.

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