
LEGAL UPDATE

Legal Services Division



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ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — OCTOBER 8, 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, *Medical Prior Authorizations — Uniform Process for Managed Care and Fee-for-Service Payment and Delivery Systems, 9/25/19 IAB, ARC 4673C, NOTICE.*

Background. This rulemaking implements a uniform process for medical prior authorization under Medicaid for both managed care and fee-for-service.

Commentary. Ms. Susan Martin spoke on behalf of Optima Life Services. She expressed appreciation for the standardized and simplified authorization process provided in the rulemaking, which she characterized as a step in the right direction. She expressed hope that moving forward more detailed language would be included to support Iowans with severe and persistent mental illness. She distinguished the intellectual and developmental disability (ID) waiver, which includes an annual, standardized assessment that provides for a year-long authorization, from the habilitation waiver, which serves Iowans with severe and persistent mental illness, and which provides an authorization of four weeks to four months based on an assessment by a managed care organization. She stated both groups need long-term support and services to be successful. She stated she would like to see the habilitation waiver managed more like the ID waiver so persons using the habilitation waiver can have better long-term support and services. Such management would include a more accurate assessment and longer authorization periods.

In further discussion, Ms. Martin explained that she is asking that the habilitation waiver use a standardized assessment like the ID waiver does. Ms. Marissa Eyanson, speaking on behalf of the department, explained the differences between the two waivers, the needs of those covered by each waiver, and the assessments used for each waiver, particularly in relation to the differences in scoring between the two assessments. Ms. Eyanson expressed openness to researching a new assessment tool for the habilitation waiver, but stated that is a separate issue than prior authorization, which is the subject of this rulemaking.

Action. No action taken.

PROFESSIONAL LICENSURE DIVISION, *Funeral Directors, Funeral and Cremation Establishments* — *Disinterment Permits, 9/11/19 IAB, ARC 4656C, AMENDED NOTICE.*

Background. This proposed rulemaking makes a Board of Mortuary Science rule consistent with the rules and policies of the Department of Public Health that relate to the issuing of disinterment permits by no longer requiring disinterment permits for cremated remains, and also limiting the need for disinterment permits for the relocation of human remains from the original site of interment or entombment to the purposes of autopsy or reburial.

Commentary. Ms. Susan Reynolds spoke on behalf of the division and responded to inquiries. Committee members expressed concern that a permit would not be needed for disinterment of human remains for purposes other than autopsy or reburial or for the disinterment of cremated remains. In citing their concerns with the rulemaking, some members shared personal experiences regarding cremated remains, the burial of those remains in cemeteries, and the importance of that burial not being disturbed. Upon inquiry, Ms. Reynolds confirmed that no permit would be required to disturb buried cremated remains in a cemetery. However, she stated that another purpose to disinter remains would be for relocation of a cemetery, which would be governed by the Iowa Cemetery Act. The Iowa Cemetery Act, according to Ms. Reynolds, provides a permit process for the disinterment of remains in the event of erosion, flooding, or disruption of cemetery sites. Ms. Reynolds explained that the reason cremated remains was being struck from the rule was that Ms. Melissa Bird, Bureau Chief, Bureau of Health Statistics, Vital Records, interpreted Iowa Code section 97.13(3) as not requiring a disinterment permit for

cremated remains because the final disposition occurs at a crematory. As such, the bureau will not issue a permit for that purpose. Ms. Reynolds stated that this is a change in interpretation of the Iowa Code because under the prior Bureau Chief, Ms. Jill Francis, a disinterment permit was issued for a broader array of circumstances. Ms. Reynolds was not aware of a change in the Iowa Code which would explain the change in policy. Committee members did not agree with a policy which made it permissible to dig up cremated remains without a permit. Committee members urged the division to consult the Assistant Attorney General assigned to its agency to ensure the intent of the Iowa Code section is being met and encouraged the division to reconsider the underlying policy of its rulemaking prior to adoption of the rulemaking. Committee members were also interested in knowing how this rulemaking fits into the larger administrative and civil and criminal statutory code scheme; they were concerned with unintended consequences of the proposed rulemaking that may not be accounted for by the scheme.

Action. No action taken.

DEPARTMENT OF PUBLIC HEALTH, *Medical Cannabidiol Program*, 6/5/19 IAB, ARC 4489C, ADOPTED, SPECIAL REVIEW.

Background. This rulemaking includes a variety of amendments to the department's rules on the medical cannabidiol program, including regulation of product recalls, manufacturer operating documents, authorization of crop inputs, prohibited actions for health care practitioners, and other matters. Portions of the rulemaking were subject to a session delay at the July 9, 2019, Administrative Rules Review Committee meeting after a variety of concerns were raised by MedPharm, a medical cannabidiol manufacturer.

Commentary. Ms. Sarah Reisetter spoke on behalf of the department. She explained that the department had a meeting with MedPharm in September to discuss MedPharm's concerns. She reviewed the various concerns previously raised by MedPharm regarding portions of this rulemaking and explained how the department proposed to resolve them. Such proposals include seeking input from MedPharm on how the department's product recall language could be redrafted, removing a requirement that the department authorize in advance all crop inputs used by MedPharm, and allowing MedPharm to retain cannabidiol waste products for testing purposes

rather than destroying them. She stated that the Board of Health will consider further rulemaking to implement these proposals in November.

Committee members questioned whether the department has statutory authority to waive the requirement for a patient to have a medical cannabidiol registration card because of health, mobility, or other issues, as provided in the rulemaking. Ms. Reisetter explained that the department had consulted its attorney on this matter and that the statute provides that the department “may” issue such cards. She further explained that the patients at issue are generally homebound, so they cannot obtain a card on their own. Without a card, such patients are unable to utilize the affirmative defense provided by statute for possession of cannabidiol by patients participating in the program.

Mr. Lucas Nelson spoke on behalf of MedPharm. He invited committee members to tour MedPharm’s facility and concurred with Ms. Reisetter’s description of their September meeting. He reviewed some of MedPharm’s concerns regarding portions of the rulemaking and the proposed solutions it had discussed with the department. He expressed hope that rulemaking addressing these concerns would be brought forward at the Board of Health’s November meeting.

Action. No action taken.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, November 12, 2019, beginning at 9:00 a.m.

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