
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — NOVEMBER 10, 2020

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.*

HUMAN SERVICES DEPARTMENT, *Family Support Statewide Database - Departmental Use, 10/21/20 IAB, ARC 5231C, NOTICE.*

Background. This rulemaking modifies language regarding the department's use of the family support statewide database, which is maintained by the Iowa Department of Public Health (IDPH). The rulemaking authorizes the department, a covered entity under HIPAA, to release participant data contained in the database to other state agencies, including IDPH. A memorandum of understanding (MOU) between the department and IDPH is intended to address the privacy and security of participants' data, and to allow the exchange of participants' data without first obtaining individual participants' authorization for the release of any protected health information. The rulemaking also allows IDPH to access participants' data for purposes of system quality assurance.

Commentary. Ms. Nancy Freudenberg, speaking on behalf of the department, confirmed for committee members that the rulemaking is intended to render HIPAA inapplicable to participants' data. Committee members asked what safeguards are in place to protect individual's private health information. Ms. Freudenberg stated that there is a MOU between the department, IDPH, and other state agencies that use the database to ensure that private health information is not released. Ms. Freudenberg stated that if confidential information is accidentally released, the MOU will be reviewed to determine how to handle the situation. Committee members asked Ms. Freudenberg for a copy of the MOU and expressed concern that the release of private health information by an employee will simply be treated as a human resources issue. Committee members stated that Iowans do not have the option to monitor the dissemination of their health information across state agencies and a MOU that states that health information is protected is inadequate. Committee members expressed concern that the department is asserting that federal law does not apply to data contained in the family support statewide database. Ms. Freudenberg stated that she will provide the committee with a copy of the MOU.

Committee members, referencing the purpose and summary section in the preamble to the rulemaking, asked what "system quality assurance" means. Ms. Freudenberg stated that the term is vague but is intended to ensure that all data is represented, as so many databases are involved. Committee members asked if the health information that will be shared under the rulemaking will be aggregated, or shared as personally identifiable health information. Ms. Freudenberg stated that she believes the information will be aggregated; however, she will provide the committee with more information and examples of the reports that will be shared under the rulemaking.

Action. No action taken.

EDUCATIONAL EXAMINERS BOARD, *Endorsements; Authorizations, 10/07/20 IAB, ARC 5212C, NOTICE.*

Background. This rulemaking updates teacher endorsement areas, updates the administrator endorsements to align with federal standards, and removes duplicative requirements that are also contained in the Department of Transportation rules for the behind-the-wheel driving instructor authorization.

Commentary. Ms. Darcy Hathaway, speaking on behalf of the board, stated that the rulemaking was initiated by the board and not prompted by legislation. Committee members asked what the impetus was for the rulemaking. Ms. Joanne Tubbs, also speaking for the board, stated that if changes are not the result of legislation then they come from education professional organizations and stakeholder groups within the state of Iowa. Ms. Tubbs also stated that the board is made up of educators and administrators who receive input from their communities and school districts. Committee members asked why, specifically, the changes in the rulemaking were initiated. Ms. Tubbs responded that much of the rulemaking is clean-up and that the endorsement changes in the rulemaking generated the most public comments. Ms. Tubbs stated that the endorsement changes were initiated due to concerns expressed by educators and administrators. Ms. Tubbs explained that currently there are two ways to be a social studies teacher at the high school level. An individual can be a specialist such as having a degree in history and teaching American and world history, or an individual can obtain an all social sciences endorsement and be authorized to teach in seven different social sciences areas. Ms. Tubbs also explained that to obtain the endorsement, educators are required to complete 51 semester hours and complete the content for all seven social sciences subjects, even if they are never going to teach in all seven areas. Ms. Tubbs stated that the rulemaking maintains the 51 semester hours requirement; however, teachers will be allowed to select content for just the social science areas that they want to teach. Committee members asked if that means there is no actual reduction in the education requirements for the subjects in which a teacher is authorized to teach. Ms. Tubbs confirmed for committee members that a teacher must still complete 51 semester hours; however, the teacher's authority will be limited to the social sciences subjects for which they have completed the required content.

Committee members requested that for large rulemakings, the board provide the committee with the same type of side-by-side analysis of the current rules and the changes being made to the rules that the Department of Education provides to the committee for large rulemakings. Committee members expressed appreciation for the flexibility the rulemaking provides to teachers.

Action. No action taken.

EDUCATIONAL EXAMINERS BOARD, *Licensure for Out-of-State Applicants, 10/07/20 IAB, ARC 5216C, NOTICE.*

Background. This rulemaking implements changes, pursuant to 2020 Iowa Acts, House File 2627, to the requirements for granting licensure to out-of-state applicants.

Commentary. Committee members expressed concern that there is ambiguity in the rulemaking. Members asked if Iowa is going to accept lower requirements and grant an out-of-state applicant an Iowa endorsement if an out-of-state applicant has an endorsement that does not meet the requirements for a comparable endorsement in Iowa. Ms. Tubbs stated that the rulemaking is not addressing requirements as much as addressing situations where Iowa has an endorsement that cannot be stand-alone and has to accompany another endorsement. Ms. Tubbs provided an example of a middle school endorsement – if an individual gets a 5-8 endorsement in language arts and math, it has to be attached to a 5-12, K-6, or K-8 endorsement. Surrounding states, however, often have a stand-alone middle school endorsement. Ms. Tubbs stated that the rulemaking allows those applicants to receive a middle school endorsement like they would receive in Wisconsin or Illinois. Ms. Tubbs stated that Iowa can grant the most comparable endorsement and that the requirements for the endorsement are not necessarily different; the requirements just need to be adjusted to grant licensure to out-of-state applicants. Committee members

stated that they understood that licensure was to be granted on a temporary basis and out-of-state applicants had to apply for renewal; however, that is not reflected in the rulemaking. Ms. Tubbs responded that she will double-check, but does not believe that is required by the legislation.

Committee members noted that the rulemaking strikes the word “traditional” to describe the teacher preparation program required to be completed by an out-of-state applicant in order to be eligible for a substitute teacher license. Ms. Tubbs stated that the word “traditional” is no longer necessary as the rulemaking requires that an out-of-state applicant be eligible to hold a license in Iowa in order to be granted a substitute license. Ms. Tubbs stated that the board determined that an individual could come in to Iowa with nontraditional teacher preparation and the statute requires the board to grant the individual a substitute license. Committee members asked what Ms. Tubbs meant by “nontraditional” teacher preparation. Ms. Tubbs responded that some states allow an individual with a bachelor’s degree to begin teaching while completing the pedagogy requirements. Ms. Tubbs stated that typically an individual must fully complete the pedagogy program before being licensed in their home state. An individual, therefore, is ineligible for licensure in Iowa until they have taught for three years and have been licensed in their home state. Committee members asked if the board knows which states do not require an individual to teach three years before granting the individual a license and how the board will be certain an individual has that teaching experience before Iowa grants them a substitute license. Ms. Tubbs stated that states have different vocabulary to describe licensure, and the board will use data compiled by a national professional organization to ensure that an individual has a full license in their home state before the individual is granted a substitute license under the rulemaking.

Committee members asked if an individual may be granted a class G license if they are admitted and enrolled, but have not completed, a school counseling program. Ms. Tubbs confirmed that is correct and explained that school counseling is different than regular teacher preparation, as school counseling requires a one-year counseling internship. Ms. Tubbs explained that the rulemaking allows an individual to complete the internship while being subject to the board’s code of conduct and ethics. In order to be eligible for a class G license, an individual has to have completed all other coursework. Ms. Tubbs further explained that after an individual completes the internship, the individual is eligible for a full license. She noted that this is provided in current rules and that the rulemaking just moved those rules to a different section.

Committee members asked that the board work with individual committee members to answer their questions, as this is a large rulemaking. Committee members also recommended that the board proceed cautiously to ensure that out-of-state applicants are not allowed to teach in Iowa if they circumvent the rules or the qualifications applicable to licensure of Iowa teachers.

Action. No action taken.

REVENUE DEPARTMENT, *Sale, Transfer, or Exchange of Tangible Personal Property or Taxable Enumerated Services Between Affiliated Corporations*, 10/07/20 IAB, ARC 5201C, ADOPTED.

Background. This rulemaking conforms the department’s rules to related language in the Streamlined Sales and Use Tax Agreement. Iowa conformed its sales tax laws to the agreement in 2005. The rulemaking strikes language relating to affiliated corporations acting as a unit from rules relating to the sale, transfer, or exchange of tangible personal property or taxable enumerated services between such corporations. Such language is not included in the agreement.

Commentary. Committee members noted that affected stakeholders had expressed concerns regarding the rulemaking and stated that legislators have an interest in reviewing statutes enacted by the General Assembly as well as actions taken by agencies pursuant to such statutes. Members commended the department for its work on the rulemaking.

Mr. Ben Hammes, speaking on behalf of Master Builders of Iowa (MBI), explained that MBI pursued this matter with the department based on concerns raised by its tax attorneys and contractor members who

believe the rulemaking would lead to double taxation on equipment leased between sister companies. He noted that the department had rejected MBI's proposed changes to the language, but he complimented the department's work on the rulemaking. He stated that MBI has proposed and is working with the department on legislative changes to the underlying statutory language. He sought a session delay on the rulemaking.

Action. A motion for a session delay on ARC 5201C carried on a 9-0 record roll call vote.

Next Meeting. The next committee meeting will be held in Room 103, Statehouse, on Tuesday, December 8, 2020, beginning at 9:00 a.m. Instructions for participation by videoconference can be found at the committee's Internet Site below.

LSA Staff Contacts: Jack Ewing, 515.281.6048 or Jack.Ewing@legis.iowa.gov;
Kate O'Connor, 515.281.6329 or Kate.OConnor@legis.iowa.gov

Internet Site: www.legis.iowa.gov/committees/committee?groupID=705

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