

SEPTEMBER 2014 AGENDA

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, September 9, 2014, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

BULLETINS NEEDED FOR THIS MEETING: 8/6/14, 8/20/14, 9/3/14

NOTICE

Times listed for review are approximate. If you will be attending a particular review, please arrive 30 minutes before the scheduled time

Bulletin

9:00 Fiscal Overview-Adam Broich

9:10 HUMAN SERVICES DEPARTMENT[441] Nancy Freudenberg 1-8438

- Continuation of benefits pending outcome of appeal; implementation of limited benefit plan (LBP) or FIP ineligibility period; PROMISE JOBS record retention; update of references to GED, 7.9, 41.25(11), 93.2(2), 93.4(4), 93.7(1), 93.8, 93.10, 93.11(4)
Notice [ARC 1588C](#)..... 8/20/14
- Mental health and disability services—data submission to determine Medicaid offset for counties, amendments to ch 25 Notice [ARC 1591C](#)..... 8/20/14
- Appeals—definition of “aggrieved person”; appeal of proposed decision by department, 7.1, 7.16(6) Filed [ARC 1611C](#)..... 9/3/14
- Iowa health and wellness plan; accountable care organizations, 74.1, 74.2(2), 74.5, 74.6, 74.8, 74.10 to 74.12, 77.51 Notice [ARC 1618C](#)..... 9/3/14
- Prior authorization for high-technology radiology procedures, 78.28(11) Notice [ARC 1620C](#)..... 9/3/14
- Medicaid—legal representative as paid provider of funded services to members, 78.34, 78.37, 78.38, 78.41, 78.43, 78.46, 79.1(2), 79.9 Filed Emergency After Notice [ARC 1610C](#)..... 9/3/14
- Reimbursement rate increase for emergency medical service providers, 79.1(2) Filed [ARC 1609C](#)..... 9/3/14
- Reimbursement rate for primary care services, 79.1(2), 79.1(7)“c” Notice [ARC 1617C](#)..... 9/3/14
- Disproportionate share payments to hospitals, 79.1(5) Notice [ARC 1619C](#)..... 9/3/14
- Medicaid—alternative reimbursement rate methodology for community mental health centers, 79.1(25) Filed [ARC 1608C](#)..... 9/3/14
- Medical assistance program—sanctions, program integrity, 79.2, 79.3(2), 79.14(3) Notice [ARC 1621C](#)..... 9/3/14
- Minimum foster group care payment rates, 156.9 Filed [ARC 1607C](#)..... 9/3/14
- Eligibility for child care assistance, 170.1, 170.2 Filed [ARC 1606C](#)..... 9/3/14

9:45 ADMINISTRATIVE SERVICES DEPARTMENT[11] Caleb Hunter 5-2017

- Personnel records; human resources—veteran preference, compliance with statute and collective bargaining agreements, clarification of practice, amendments to chs 4, 44, 52 to 54, 57, 60, 63, 64 Filed [ARC 1568C](#)..... 8/6/14

10:00 COLLEGE STUDENT AID COMMISSION[283] Julie Leeper 242-3370

- EDUCATION DEPARTMENT[281]* “umbrella”
- Update of commission address, 5.12(5) Notice [ARC 1579C](#)..... 8/20/14
- Rural Iowa primary care loan repayment program, 24.1 to 24.3, 24.4(2), 24.5 Notice [ARC 1586C](#)..... 8/20/14

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- Rural Iowa advanced registered nurse practitioner and physician assistant loan
repayment program, 25.1 to 25.5 [Notice ARC 1587C](#)..... 8/20/14
- Teach Iowa scholar program, ch 28 [Filed ARC 1572C](#)..... 8/20/14
- 10:10 EDUCATIONAL EXAMINERS BOARD[282]** Kim Cunningham 1-5849
EDUCATION DEPARTMENT[281]* umbrella”
- Special education endorsements, 14.2 [Notice ARC 1602C](#)..... 9/3/14
- Native language teaching authorization, 22.6 to 22.8 [Notice ARC 1604C](#)..... 9/3/14
- Montessori authorization, 22.9 [Notice ARC 1603C](#)..... 9/3/14
- Activities administration authorization, 22.10 [Notice ARC 1605C](#)..... 9/3/14
- 10:20 EDUCATION DEPARTMENT[281]** Proesch, Nicole nicole.proesch@iowa.gov; Wise, Phil
phil.wise@iowa.gov
- Appeal procedures for federal programs, 6.23 [Filed ARC 1597C](#)..... 9/3/14
- Statewide work-based learning intermediary network, ch 48 [Notice ARC 1598C](#)..... 9/3/14
- Supplementary weighting—whole-grade sharing and operational services, 97.1, 97.5,
97.7 [Filed ARC 1596C](#)..... 9/3/14
- 10:30 CREDIT UNION DIVISION[189]** JoAnn Johnson 725-0505
COMMERCE DEPARTMENT[181]* umbrella”
- Credit union investments, 1.4, 17.2, 17.5, 17.8(2), 17.9(4), 17.14, 17.16 [Notice ARC
1580C](#)..... 8/20/14
- 10:35 BREAK**
- 10:45 ECONOMIC DEVELOPMENT AUTHORITY[261]** Tim Whipple 5-3124
- Chapters 15 and 15E economic development programs; compliance cost fees, amend chs
76, 187; rescind chs 113, 410 [Filed ARC 1573C](#)..... 8/20/14
- 10:55 ENVIRONMENTAL PROTECTION COMMISSION[567]** General contact: Marla
Gallardo 1-8678
NATURAL RESOURCES DEPARTMENT[561]* umbrella”
- Best management practices for grain vacuuming at small grain elevators; federal air
toxics standards for chemical manufacturing plants and prepared feeds
manufacturing, 22.10(3)“a,” 23.1(4) [Filed ARC 1561C](#)..... 8/6/14
- 11:00 NATURAL RESOURCE COMMISSION[571]** General contact: Marla Gallardo 1-8678
NATURAL RESOURCES DEPARTMENT[561]* umbrella”
- Removal of aquatic vegetation near boat docks and in pathways to open water, 54.5
[Notice ARC 1564C](#)..... 8/6/14
- Fishing regulations; trotlines, 81.1 to 81.3, rescind ch 85 [Notice ARC 1565C](#)..... 8/6/14
- Deer hunting licenses, 106.1, 106.2(5), 106.4(5), 106.6, 106.7, 106.10(1) [Filed ARC
1562C](#)..... 8/6/14
- State migratory waterfowl, trout and habitat stamp design contests; controlled hunting
areas, rescind chs 9, 53 [Notice ARC 1622C](#)..... 9/3/14
- Waterfowl and coot hunting seasons; special September teal season, 91.1, 91.3, 91.6
[Filed Emergency After Notice ARC 1614C](#)..... 9/3/14
- 11:20 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]** Megan Tooker 1-
3489
- Transfer of campaign funds to charitable organizations, 4.25(1)“w” [Notice ARC 1581C](#)
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- Contributions from political committees not organized in Iowa, 4.32 Notice [ARC 1578C](#) 8/20/14
- 11:25 INSPECTIONS AND APPEALS DEPARTMENT[481] Dave Werning 1-7376**
- Health care facilities and CNA training programs—verification of conviction or record of founded abuse; plan of correction, 50.9, 50.10(7) Filed [ARC 1566C](#)..... 8/6/14
- Elder group homes and adult day services programs—informal conference process to contest department’s final findings, 67.12 to 67.14 Notice [ARC 1616C](#)..... 9/3/14
- Subacute mental health care facilities, ch 71 Notice [ARC 1615C](#)..... 9/3/14
- 11:35 INSURANCE DIVISION[191] General Roseanne Mead 1-5575**
COMMERCE DEPARTMENT[181]’ umbrella”
- Notification—termination of relationship between navigator entity and individual navigator, 85.9(4) Notice [ARC 1592C](#)..... 8/20/14
- 11:45 IOWA FINANCE AUTHORITY[265] Mark Thompson 725-4937**
- Low-income housing tax credit program—qualified allocation plans, 12.1 to 12.4 Notice [ARC 1585C](#)..... 8/20/14
- Military home ownership assistance program, 27.2, 27.3 Notice [ARC 1594C](#), also Filed Emergency [ARC 1595C](#)..... 9/3/14
- 11:55 COMMITTEE BUSINESS**
- Approve Minutes
 October 14th (??) meeting
 Miscellaneous
- 12:00 LUNCH**
- 1:00 PUBLIC HEALTH DEPARTMENT[641] Barb Nervig 281-4344 James Goodrich 5-2093]**
- Newborn hearing and critical congenital heart disease screening; newborn screening data and specimens; sliding fee scale for neuromuscular and related disorders program, 4.1 to 4.3, 4.6(3), 4.8 Amended Notice [ARC 1567C](#)..... 8/6/14
- Medical cannabidiol Act registration card program, ch 154 Notice [ARC 1571C](#)..... 8/6/14
- 1:30 NURSING BOARD[655] Kathy Cornwell 1-3256**
PUBLIC HEALTH DEPARTMENT[641]’ umbrella”
- Licensure—registered nurse, licensed practical nurse, advanced registered nurse practitioner, 3.1 to 3.9 Notice [ARC 1569C](#)..... 8/6/14
- 1:40 PHARMACY BOARD[657] Teri Witkowski 1-6676**
PUBLIC HEALTH DEPARTMENT[641]’ umbrella”
- Drug product selection, 6.9(8)“b,” 6.11 Notice of Termination [ARC 1574C](#)..... 8/20/14
- Pharmacist-documented verification, 8.3(3) Filed [ARC 1576C](#)..... 8/20/14
- Controlled substances—annual inventory, change of ownership of a pharmacy, 10.35 Filed [ARC 1575C](#)..... 8/20/14

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- 1:50 PUBLIC EMPLOYMENT RELATIONS BOARD[621] Mike Cormack 1-4046**
- Electronic document management system, amend chs 1 to 3, 6, 7, 9 to 11; adopt ch 16
 Filed [ARC 1583C](#)..... 8/20/14
 Mediators; arbitrators, 1.8, chs 13, 14 Notice [ARC 1570C](#)..... 8/6/14
- 2:10 REVENUE DEPARTMENT[701] Victoria Daniels 281-5322**
- Biodiesel production refund; individual income, corporation income and franchise taxes;
 renewable energy tax credit for replacement tax, amendments to chs 12, 38, 40 to 43,
 46, 49, 52, 58, 70 Notice [ARC 1590C](#)..... 8/20/14
 Solar energy system tax credit for individual income, corporation income and franchise
 taxes, 42.48, 52.44, 58.22 Notice [ARC 1589C](#)..... 8/20/14
 Multiresidential property tax classification, 71.1, 71.12, 71.23, 71.24 Notice [ARC](#)
[1593C](#)..... 8/20/14
- 2:30 TRANSPORTATION DEPARTMENT[761] General : Tracy George 515-239-1358**
- Iowa driver’s licenses and nonoperator’s identification cards, 602.11(1), 602.12(1),
 602.13(1), 602.14, 605.2, 605.11, 605.20, 607.16, 630.2, 630.3 Notice [ARC 1601C](#)..... 9/3/14
 Driver education—teaching parent; driving test, 604.31, 634.11 Filed [ARC 1612C](#)..... 9/3/14
- 2:40 TREASURER OF STATE[781] Stefanie Devin, 1-5957**
- Required public funds custodial agreement provisions, 15.1(3), 15.2 Notice [ARC](#)
[1613C](#)..... 9/3/14
- 2:45 UTILITIES DIVISION[199] Amy Christensen 1-6326**
 COMMERCE DEPARTMENT[181]“umbrella”
- Eligibility, certification, and reporting requirements for eligible telecommunications
 carriers and related confidentiality provisions, 1.9(5)“c,” ch 39 Notice [ARC 1563C](#)..... 8/6/14
 Renewable energy tax credits—extension of time limits, 15.19(1), 15.21 Notice [ARC](#)
[1600C](#)..... 9/3/14

NO REPRESENTATIVE REQUESTED TO APPEAR

- XX:00 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**
- Elimination of ownership requirement for eligibility as Iowa-registered stallion, 62.1,
 62.10(1), 62.12(3), 62.13, 62.20(1), 62.23, 62.30(1), 62.33 Filed [ARC 1582C](#)..... 8/20/14
- XX:00 ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**
 Professional Licensing and Regulation Bureau[193]
 COMMERCE DEPARTMENT[181]“umbrella”
- Unethical or illegal conduct—business practices, 8.2(6)“a” Filed [ARC 1577C](#)..... 8/20/14
- XX:00 PROFESSIONAL LICENSURE DIVISION[645]**
 PUBLIC HEALTH DEPARTMENT[641]“umbrella”
- Barbering—licensure, mentoring program, 21.9(1), 21.12(2), 23.1, 23.2, 23.10(3), 23.16
 Notice [ARC 1584C](#)..... 8/20/14

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XX:00 REGENTS BOARD[681]

Monetary sanctions for parking offenses at Iowa State University, 4.31(2) Filed [ARC](#)
[1599C](#)9/3/14

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ARRC POWERS

- | | |
|--|---|
| Notice of Intended Action | <ol style="list-style-type: none">1. General Referral, 6 votes. §17A.8(7)2. Regulatory Analysis, 6 votes. §17A.4A3. Objection, 6 votes. §17A.4(6)4. 70 day suspension of further action, 7 votes. HF 586, §3 |
| Adopted | <ol style="list-style-type: none">1. General Referral, 6 votes. §17A.8(7)2. Informal Regulatory Analysis, 6 votes. No statutory authority, customary.3. Objection, 6 votes. §17A.4(6)4. 70 Day Delay, 7 votes. §17A.4 (7)5. Session Delay, 7 votes. §17A.8(9) |
| Adopted and Filed without Notice | <ol style="list-style-type: none">1. Mandatory prior approval by ARRC, 6 votes. HF 586, §12. General Referral, 6 votes. §17A.8(7)3. Regulatory Analysis, 6 votes. §17A.4A4. Objection, 6 votes. §17A.4(6)5. 180 Day Sunset Objection, 7 votes. §17A.4(3)6. Suspension of applicability until 180 sunset, 7 votes. HF 586, §1 |
| Adopted and Filed Emergency | <ol style="list-style-type: none">1. Mandatory prior approval by ARRC, 6 votes. HF 586, §12. General Referral, 6 votes. §17A.8(7)3. Regulatory Analysis, 6 votes. §17A.4A4. Objection, 6 votes. §17A.4(6)5. 180 Day Sunset Objection, 7 votes. §17A.4(3)6. Suspension of applicability until 180 sunset, 7 votes. HF 586, §17. 70 Day suspension of applicability, 7 votes. HF 586, § 28. Session suspension of applicability, 7 votes. HF 586, § 4 |
| Adopted and Filed Emergency After Notice | <ol style="list-style-type: none">1. General Referral, 6 votes. §17A.8(7)2. Regulatory Analysis, 6 votes. §17A.4A3. Objection, 6 votes. §17A.4(6)4. 70 Day suspension of applicability, 7 votes. HF 586, § 25. Session suspension of applicability, 7 votes. HF 586, § 4 |
| Notice of Termination | No Action. |
| Rules in effect (by special review) | <ol style="list-style-type: none">1. General Referral, 6 votes. §17A.8(7)2. Informal Regulatory Analysis, 6 votes. No statutory authority, customary.3. Objection, 6 votes. §17A.4(6) |
| Any rules-related matter | ARRC-approved Legislation, 6 votes, 3 from each chamber. |

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Joint Rule 19.

SUSPENSION OF NOTICE-HF 586, §3. Seven votes required. The committee, following Notice of Intended Action, may suspend further action relating to that notice for seventy days.

REGULATORY ANALYSIS-§17A.4A. Six votes required. Each regulatory analysis must include quantifications of the data and must take account of both short-term and long-term consequences. An agency must issue a regulatory analysis of a proposed rule if an appropriate request is made within thirty-two days after the notice is published. When an analysis has been requested the agency must extend the time for public comment on the proposed rule for twenty days beyond the date a summary of the analysis is published in the IAB.

INFORMAL REGULATORY ANALYSIS-No statutory authority, customary. Six votes required. The committee has on occasion informally requested an agency to conduct a regulatory analysis of a rule after the statutory period for requesting a regulatory analysis pursuant to § 17A.4A has elapsed. This may include a rule that is already in effect. While a statutory regulatory analysis will typically be extensive and take a significant amount of time to complete, an informal regulatory analysis may be more simple and concise for the purpose of conveying information to the committee in a timely manner. An agency will typically comply with such a request without issue.

GENERAL REFERRAL-§17A.8. Six votes required. The committee may refer *any* rule, whether proposed or in effect, to the General Assembly for further study. This power does not impact the enforceability or legality of the rule; it is simply a mechanism to bring a rule-making issue to the attention of the legislature. A letter is prepared summarizing the issue and sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any additional action is discretionary with the standing committee members.

OBJECTION-§17A.4(6)-Six votes required. An objection may be imposed on *any* rule, whether proposed or in effect. It is a document outlining the committee's opinion that a rule is "unreasonable, arbitrary, capricious or otherwise beyond the authority delegated to the agency." If that rule is subsequently challenged in court, the objection strips away the presumption of validity that is normally accorded administrative rules and forces the agency to prove the legality of the rule. If the agency fails, it must pay both the court costs and the attorney fees of the person challenging the rule.

THE "EMERGENCY" RULE APPROVAL- HF 586, §1. Six votes required. The committee must approve the filing of a rule that is either adopted and filed emergency or adopted and filed without notice, pursuant to Code §17A.4(3). To the extent practicable, these approval reviews will be scheduled during the regular monthly meeting. When necessary the committee will schedule a special telephonic conference.

THE "EMERGENCY" RULE OBJECTION-§17A.4. Seven votes required. The committee can object to the "emergency" filing of a rule and sunset the rule after 180 days. At one time *all* emergency rules were temporary, but the problem was that a large majority of these filings were appropriate and should be left in effect. The solution was to make "emergency" rules permanent; but

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in those cases where abuse occurs, the committee is empowered to transform them into temporary rules by filing the objection. This procedural objection is not necessarily an attack on the rule itself; it is an attack on the procedure used to implement the rule.

THE “EMERGENCY” RULE SUSPENSION-House File 586, §1. Seven votes required. If the committee objects to the “emergency” adoption of a rule, the committee may also suspend the applicability of the rule until the 180 sunset.

SESSION DELAY-§17A.8(9). Seven votes required. A session delay may be imposed only before the effective date of the rule has passed. It postpones the effective date of the rule, or a designated portion of a rule, until the adjournment of the next session of the General Assembly. A letter is prepared summarizing the issue and is sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any additional action is discretionary with the committee members. If the legislature takes no action, the rule automatically goes into effect upon adjournment.

EMERGENCY RULE SESSION SUSPENSION- HF 586, § 4. Seven votes required. Within thirty-five days of its effective date, an emergency rule may be suspended until the adjournment of the next session of the General Assembly. A letter is prepared summarizing the issue and is sent to the Speaker of the House and President of the Senate. Those officers then forward the material to the appropriate standing committees. Any additional action is discretionary with the committee members. If the legislature takes no action, the rule automatically goes into effect upon adjournment.

SEVENTY DAY DELAY-§17A.4(5). Seven votes required. A seventy day delay may be imposed only before the effective date of the rule has passed. It is simply a tool to buy more time to review a proposed rule. It is most frequently used to create a “cooling off” period before the committee takes more drastic action, giving interested persons an opportunity to reach compromises or solutions. At the end of the period, the committee meets again to review the filing and retains all of its original powers. This power is used frequently by the committee.

EMERGENCY RULE SEVENTY DAY SUSPENSION-HF 586, § 2. Seven votes required. Within thirty-five days of its effective date, an emergency rule may be suspended for seventy days. A seventy day delay serves a function similar to a seventy day delay.

SPECIAL REVIEW-§17A.8(6). By request. Section 17A.8(6) provides that “[t]he committee shall meet for the purpose of selectively reviewing rules, whether proposed *or in effect*.” There is no statutory procedure for how the committee reviews rules that are in effect; typically a committee member who would like the committee to review a rule that is in effect will submit the request to the chair, who will then add the request to the committee’s next agenda. Notice will be provided to the appropriate agency that the agency will be expected to have a representative present at the meeting to review the rule. So that the agency will have adequate time to prepare for such a review, it is advisable to submit a request for a special review at least a week before the committee’s monthly meeting.

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Actions the committee may take on a rule that is already in effect are limited; the committee can make a general referral, impose an objection, or request an informal regulatory analysis.

ARRC LEGISLATION-Joint Rule 19. Six votes required, majority of each house. The Committee may introduce a bill relating to rules into either house, at any time. The bill must be referred to a standing committee, which must take action on the bill within three weeks of referral, except bills referred to appropriations and ways and means committees. ARRC bills are exempt from the funnel.

WHY DO SOME COMMITTEE ACTIONS REQUIRE SEVEN VOTES? The power to delay the effective date of a rule impinges upon the constitution role of the executive branch. Article III, § 1 of the Iowa Constitution states:

“The powers of the government of Iowa shall be divided into three separate departments — the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.”

The supermajority requirement ensures that the Committee will not act precipitously in exercising these powers.