



MINUTES

JANUARY 2023 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

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| Senator Waylon Brown, Chair | Representative Megan Jones, Vice Chair [by teleconference] |
| Senator Julian B. Garrett | Representative Mike Bousset |
| Senator Jesse Green | Representative Amy Nielsen |
| Senator Robert Hogg [by teleconference] | Representative Rick L. Olson |
| Senator Pam Jochum [by teleconference] | Representative Mike Sexton [by teleconference] |

EX OFFICIO, NONVOTING MEMBER: Nate Ristow, Administrative Rules Coordinator, Office of the Governor

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Administrative Code Editor, 515.281.6048, and Kate O'Connor, Legal Counsel, 515.281.6329

BULLETINS NEEDED FOR THIS MEETING: 12/14/22, 12/28/22

Procedural Business

Senator Brown convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a.m. on Friday, January 6, 2023, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the December 12, 2022, meeting were approved. The next meeting was scheduled for Monday, February 13, 2023, at 9 a.m. Mr. Ewing provided an updated list of agencies that had not yet submitted their summaries of their five-year reviews of rules pursuant to Iowa Code section 17A.7(2) to the committee. He noted two of the agencies seemed to no longer exist. Committee members asked if the two agencies should be repealed in the legislation being considered for sponsorship by the committee. He was unsure if the two agencies may still have outstanding financial obligations that might complicate a repeal. Members indicated this should not be included in the legislation. He then reviewed a draft of a bill concerning updates and clarifications regarding the rulemaking process for consideration and possible sponsorship by the committee and solicited feedback from members. Members suggested adding a January 1, 2024, effective date. Members voted to approve the draft for sponsorship and filing with the addition of the effective date. The meeting was adjourned at 1 p.m.

Fiscal Overview

Mr. Chris Ubben, Fiscal Legislative Analyst, presented the LSA fiscal report.

Rulemaking type is indicated in parentheses following the ARC number. The acronyms have the following meanings: Notice of Intended Action (NOIA), Amended Notice of Intended Action (ANOIA), Notice of Termination (NOT), Adopted and Filed Emergency (AFE), Filed Emergency After Notice (FEAN), and Adopted and Filed (AF).

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg

ARC 6736C (NOIA), Provider Reimbursement Rates; Fee Schedules, Rules 78.27(10)“f,” 78.34(9)“g,” 78.41(2)“i,” 78.43, 78.46, 79.1(2), 83.2(2)“b,” 83.42(2)“b,” 83.102(2)“b,” 83.122(6)“b”, also Filed Emergency ARC 6735C

No discussion on ARC 6736C or ARC 6735C.

ARC 6765C (NOIA), Iowa Health and Wellness Plan, Ch. 74

No discussion on ARC 6765C.

ARC 6766C (NOIA), Non-State Government Owned Nursing Facilities — Quality Incentive Payment Program, Ch. 81

Committee members asked if the department has identified how many facilities will qualify for the program. Ms. Freudenberg stated the department had not. She explained that the department was working with the federal Centers for Medicare and Medicaid Services to establish criteria for amendments to the state plan, and it was too early to know the number of eligible facilities. Members told her to let the committee know when the amendments to the state plan are approved and follow up with the number of eligible facilities.

No action taken on ARC 6766C.

ARC 6767C (NOIA), Nursing Facilities—Major Renovations, Medicaid Utilization Rates, Rules 81.1, 81.6(16)“h”

No discussion on ARC 6767C.

ARC 6768C (NOIA), Family-Centered Services, Rules 172.1, 172.2

No discussion on ARC 6768C.

ARC 6773C (AF), Application for Assistance—Definitions, Forms, Cross-References, Rules 50.1-50.5

No discussion on ARC 6773C.

ARC 6774C (AF), State Supplementary Assistance Eligibility—Five-Year Review of Rules, Rules 51.3, 51.6, 51.9(1)

No discussion on ARC 6774C.

ARC 6775C (AF), Payment—Assistance Standards, Rule 52.1

No discussion on ARC 6775C.

ARC 6776C (AF), Intermediate Care Facilities for Persons with an Intellectual Disability—Five-Year Review of Rules, Rules 82.1-82.3, 82.5, 82.7, 82.8, 82.13(1), 82.14, 82.15(1), 82.17(2)

No discussion on ARC 6776C.

ARC 6777C (AF), Early and Periodic Screening, Diagnosis, and Treatment—Five-Year Review of Rules, Ch. 84

No discussion on ARC 6777C.

ARC 6778C (AF), Collections—Five-Year Review of Rules, Ch. 95

No discussion on ARC 6778C.

ARC 6779C (AF), Information and Records—Five-Year Review of Rules, Rules 96.1(3)“a,” 96.3(2)“b”

No discussion on ARC 6779C.

ARC 6780C (AF), Collection Services Center—Five-Year Review of Rules, Rules 97.2, 97.5, 97.6

No discussion on ARC 6780C.

ARC 6781C (FEAN), Medical and Remedial Services—Acute Psychiatric Intensive Care, Rules 78.3(8), 79.1(5)“i”

No discussion on ARC 6781C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Steven Garrison

ARC 6769C (NOIA), Psychologists—Five-Year Review of Rules, Chs. 5, 240-243
No discussion on ARC 6769C.

DENTAL BOARD

Representing the agency: Christel Braness

ARC 6733C (AF), Expanded Functions, Rules 10.3(1)“e,” 23.1-23.7
No discussion on ARC 6733C.

ADMINISTRATIVE SERVICES DEPARTMENT

Representing the agency: Tami Wiencek

ARC 6752C (NOIA), Annual Comprehensive Financial Report, Rules 40.1, 110.3
No discussion on ARC 6752C.

ARC 6753C (NOIA), Physician Assistants, Rules 63.2(2)“h,” 63.19
No discussion on ARC 6753C.

ARC 6751C (NOIA), State Driver Guidelines for State Vehicle Use and Fueling, Ch. 103
No discussion on ARC 6751C.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT

Representing the agency: Colin Tadlock

ARC 6732C (AF), E-15 Access Standard, Ch. 86
No discussion on ARC 6732C.

INSURANCE DIVISION

Representing the agency: Doug Ommen

ARC 6740C (NOIA), Pharmacy Benefits Managers, Amendments to Ch. 59, also Filed Emergency ARC 6739C

Mr. Seth Brown, representing the Iowa Pharmacy Association (IPA), thanked the division for its efforts and collaboration. Mr. Brown stated that the IPA is in favor of requiring pharmacy benefits managers (PBMs) to establish internal data collection systems to analyze metrics and to analyze quarterly complaint summaries. He also stated that the IPA favors preventing direct or indirect clawbacks by PBMs claiming adjustment reconciliation, and the continued inclusion of various timing clarifications to ensure compliance by PBMs. He noted that the United States Supreme Court has ruled that states can regulate PBMs' activities.

Mr. Doug Struyk, speaking on behalf of the Pharmaceutical Care Management Association (PCMA), thanked the division for its efforts and for working with PCMA on the rulemaking. He stated that PCMA had provided both oral and written comments on the rulemaking, and the division had addressed several of PCMA's main concerns. Mr. Struyk noted that Mr. Brown repeatedly mentioned “legislative intent” and that IPA had been registered in opposition to 2022 Iowa Acts, House File 2384. He stated that IPA is now in favor of the rulemaking because IPA was able to accomplish in rules what it was unable to accomplish via legislation. He further stated that PCMA believes that the rulemaking exceeds the enabling statute, however, PCMA will continue to work with the division to address PCMA's concerns. He noted that there is additional rulemaking that has been noticed, and he reiterated PCMA's concern that rulemaking will also exceed the terms of the statute.

Mr. Peter Fjelstad, speaking on behalf of PCMA, stated that the rulemaking exceeds both the enabling statute and 2022 Iowa Acts, House File 2384, specifically, the definitions of “complaint” and “clean claim”, the language within the termination or suspension of contracts with pharmacies, the record system, the quarterly compliant summery, disclosure of payments received by PBMs, and the disclosure of a PBM's payment methodology. He stated that neither the United States Supreme Court nor the Eighth Circuit Court of Appeals have narrowed Employee Retirement Income Security Act (ERISA) preemption.

Committee members stated that it is obvious the division tried to strike a delicate balance between the interested parties and asked the division to comment on that as well as the effect the rulemaking will have on patients. Commissioner Ommen responded that the division reached out to interested parties shortly after 2022 Iowa Acts, House File 2384 was enrolled. He acknowledged that there are legal issues around the ERISA component and stated that the division is receiving legal advice from the attorney general's office. He also stated that the division must carry out the legislative intent. He noted that the division considers comments, however, the rulemaking is an important step forward. He said that consumers are impacted by the complicated relationships between PBMS, manufacturers, and pharmacies. This is a complicated area and this area is controlled by a small number of PBMs. Members stated that the intent of the legislation was patient focused, and not focused on the PBMs or insurance companies. Families are paying too much for drugs and should be at the center of this conversation. Commissioner Ommen responded that the division will continue to carry out legislative intent.

UTILITIES DIVISION

Representing the agency: Matthew Oetker

ARC 6761C (AF), Access to Affiliate Records, Requirements for Annual Filings, and Asset and Service Transfers—Review of Rules, Rules 31.1, 31.3, 31.5(2)

No discussion on ARC 6761C.

ARC 6762C (AF), Nonutility Activities—Recordkeeping and Cost Allocations, Ch. 33

No discussion on ARC 6762C.

ECONOMIC DEVELOPMENT AUTHORITY

Representing the agency: Lisa Connell

ARC 6728C (AF), Historic Preservation Tax Credit, Ch. 49

No discussion on ARC 6728C.

ARC 6737C (NOIA), Empower Rural Iowa Initiative, Chs. 28-30, 220-222

No discussion on ARC 6737C.

ARC 6738C (NOIA), Employee Stock Ownership Plan Formation Assistance, Rules 56.2-56.4

No discussion on ARC 6738C.

IOWA FINANCE AUTHORITY

Representing the agency: Kristin Hanks-Bents

ARC 6721C (FEAN), 9 Percent Qualified Allocation Plan, Rules 12.1(2), 12.2(2)

No discussion on ARC 6721C.

COLLEGE STUDENT AID COMMISSION

Representing the agency: Todd Brown

ARC 6729C (AF), Health Care Professional Recruitment Program, Rules 14.1, 14.2(6)
No discussion on ARC 6729C.

ARC 6730C (AF), Future Ready Iowa Skilled Workforce Last-Dollar Scholarship Program — Part-Time Enrollment, Rule 15.3(1)“j”(1)
No discussion on ARC 6730C.

ARC 6731C (AF), Rural Iowa Primary Care Loan Repayment Program, Rules 24.2, 24.3, 24.5-24.8
No discussion on ARC 6731C.

ARC 6759C (NOIA), Mental Health Professional Loan Repayment Program, Ch. 31
No discussion on ARC 6759C.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: Ashleigh Hackel

ARC 6741C (NOIA), Five-Year Review of Rules, Chs. 1-5, 7, 8
No discussion on ARC 6741C.

ARC 6742C (NOIA), Governor’s Award for Quality Care, Rule 54.8
No discussion on ARC 6742C.

ARC 6743C (NOIA), Contractor Requirements, Ch. 35
No discussion on ARC 6743C.

ARC 6744C (NOIA), Hotels and Motels—Five-Year Review of Rules, Rules 30.2, 30.4(4), 30.8(4), 37.2, 37.4, 37.6-37.10
No discussion on ARC 6744C.

ARC 6745C (NOIA), Contested Cases Involving Permits to Carry Weapons and Acquire Firearms—Five-Year Review of Rules, Rules 11.2, 11.3(1), 11.6-11.8, 11.11, 11.14
No discussion on ARC 6745C.

LAW ENFORCEMENT ACADEMY

Representing the agency: Sherry Poole

ARC 6727C (AF), Certification; Training, Rules 2.1(11), 3.2, 3.4(1), 3.5(1), 4.1(1), 9.1, 9.2(2), 10.1
Committee members thanked the academy for removing the reduction to the minimum experience requirement to become a certified instructor that was included in the notice and stated it is important to ensure instructors are well trained.
No action taken on ARC 6727C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Dave Schelling, Theresa Stiner

ARC 6734C (AF), Definition of “Storm Water Discharge Associated with Industrial Activity”; NPDES General Permit Nos. 1 through 4, Rules 60.2, 64.15
No discussion on ARC 6734C.

ARC 6755C (NOIA), Solid Waste—Five-Year Review of Rules, Chs. 100, 102, 104, 114, 115, 120
No discussion on ARC 6755C.

NATURAL RESOURCE COMMISSION

Representing the agency: Joe Larschied

ARC 6754C (NOIA), Lifetime Trout Fishing License for Disabled Veterans; Annual Fishing and Hunting Licenses for Veterans, Rule 15.12(1)
No discussion on ARC 6754C.

REVENUE DEPARTMENT

Representing the agency: Mike Mertens

ARC 6746C (NOIA), Pass-Through Entity Composite Returns, Chs. 302, 304, 307, 404, 405, 501, 601, 700
No discussion on ARC 6746C.

ARC 6747C (NOIA), Register of Eligible Candidates—Assessor, Deputy Assessor, Rule 103.12
No discussion on ARC 6747C.

ARC 6748C (NOIA), Contact Information—Challenges to Administrative Levies, Marijuana and Controlled Substances Tax Stamp, Rules 25.1, 262.2
No discussion on ARC 6748C.

TRANSPORTATION DEPARTMENT

Representing the agency: Stuart Anderson, Kelli Huser

ARC 6749C (NOIA), Iowa Byways Program, Rules 132.1, 132.2, 132.3(5), 132.4
No discussion on ARC 6749C.

ARC 6750C (NOIA), RISE Program, Ch. 163
No discussion on ARC 6750C.

ARC 6770C (NOIA), Foreign Certificate of Title, Rule 400.4
No discussion on ARC 6770C.

LABOR SERVICES DIVISION

Representing the agency: Lanny Zieman

ARC 6760C (AF), Physician Assistants, Chs. 155, 169, 173, 174, 176, 177
No discussion on ARC 6760C.

ARC 6764C (AF), Child Labor—Power-Driven Bakery Machines, Pizza Dough Roller Exception, Rule 32.8(10)
No discussion on ARC 6764C.

ARC 6771C (NOIA), Five-Year Review of Rules, Chs. 1, 3, 4, 9, 10, 160, 169, 176, 215-217, 220
No discussion on ARC 6771C.

VOTER REGISTRATION COMMISSION

Representing the agency: Heidi Burhans

ARC 6772C (NOIA), Five-Year Review of Rules, Rules 1.8(5)“b,” 2.14(2), 2.15(5), 2.16, 3.1-3.4, 7.2, 9.1
No discussion on ARC 6772C.

EDUCATION DEPARTMENT

Representing the agency: Thomas Mayes

ARC 6722C (AF), Preparation Programs—Teacher Interns, Practitioners, Administrators, Rules 77.11 (2), 79.13(4), 79.15(6)

No discussion on ARC 6722C.

ARC 6723C (AF), Operational Function Sharing; Supplementary Weighting, Rule 97.7

No discussion on ARC 6723C.

ARC 6724C (AF), English Learners—Terminology, Chs. 19, 23, 41, 60, 67, 68, 77, 79, 98, 120

No discussion on ARC 6724C.

ARC 6756C (NOIA), Community College Accreditation—Faculty, Rule 24.5

No discussion on ARC 6756C.

ARC 6757C (NOIA), Paraeducator Preparation Programs—Approval, Reevaluation, Rules 80.5, 80.7

No discussion on ARC 6757C.

ARC 6758C (NOIA), Work-Based Learning, Rules 49.3(1), 49.7(2)

No discussion on ARC 6758C.

ARC 6726C (AF), Open Enrollment, Chs. 6, 17, 36

Committee members asked if there is any data on the number of students who open enroll to multiple school districts in a single year. Mr. Mayes explained that the department only has anecdotal evidence and cannot track this more thoroughly because the open enrollment billing cycle is still open. He stated he could provide such data at a later time. He noted that he had heard from some school business officials of students who were on their third school district in the current school year.

Committee members asked if school districts had expressed concern about losing track of students due to multiple open enrollments within a short time period. Mr. Mayes responded that he had only heard concerns about billing, which the department sought to address in the rulemaking. He noted that open enrollment requests remain valid for one calendar year. Members asked if the department is aware of how many students open enrolled into an online program this school year. He stated that information could be obtained at a later date and would not include students who open enroll into an online program in their home district.

Committee members asked if there is any concern from school districts about financial tracking in regard to open enrollment. Mr. Mayes explained that there are concerns about the lack of a predictable timeline and that while the billing timeline remains the same, count dates differ. He further explained that the department has worked with the Iowa Association of School Business Officials to build internal procedures to maintain accurate billing. He noted that unique student identifiers will help with open enrollment billing. Members stated that any information the department can provide to school districts will be helpful.

No action taken on ARC 6726C.

ARC 6725C (AF), Charter Schools—Funding, Rules 19.11(4)“c,” 19.12

No discussion on ARC 6725C.