



MINUTES

JUNE 2018 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

MEMBERS PRESENT

Senator Mark Chelgren, Chair
Senator Jim Carlin
Senator Mark Costello
Senator Wally E. Horn
Senator Pam Jochum

Representative Dawn E. Pettengill, Vice Chair
Representative Megan Jones
Representative Amy Nielsen
Representative Rick Olson
Representative Guy Vander Linden

LSA CONTACTS: Organizational staffing provided and minutes prepared by Jack Ewing, Senior Legal Counsel, 515.281.6048, and Amber Shanahan-Fricke, Legal Counsel, 515.725.7354

BULLETINS NEEDED FOR THIS MEETING: 5/9/18, 5/23/18

Procedural Business

Chairperson Chelgren convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9:05 a.m. on Tuesday, June 12, 2018, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the June 12, 2018, meeting were approved. The next meeting was scheduled for July 10, 2018, at 9:00 a.m. Mr. Ewing stated that the July meeting will review three bulletins; as such, the next meeting may be longer than usual. Chairperson Chelgren reported that he may be unable to attend the July meeting. Mr. Ewing announced that he will be taking paternity leave beginning at the end of June through early September. The committee congratulated Mr. Ewing on the pending arrival of his child. The meeting was adjourned at 11:42 a.m.

Fiscal overview

Ms. Christin Mechler, Fiscal Legislative Analyst, presented the LSA Fiscal Report. Mr. Jess Benson, Fiscal Legislative Analyst, also appeared. In response to a question from committee members regarding ARC 3784C (NOIA), Mr. Benson indicated that he had not received information regarding the transitional time frames between now and 2022 and whether the expenses are frontloaded or backloaded. Committee members indicated that the question would be posed to the Department of Human Services.

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).

CORRECTIONS DEPARTMENT

Representing the agency: Michael Savala, Michelle Dix

ARC 3806C (NOIA), Review and Update of Policies and Procedures, Amendments to Chs 1, 5, 10, 11, 20, 38, 40 to 45, 47, 50, and 51

Mr. Michael Savala and Ms. Michelle Dix reviewed the rulemaking. Regarding Item 41, committee members questioned why the department replaced the term “interview” for purposes of pretrial services with “assessment.” Mr. Savala and Ms. Dix stated that this change is an update to the language, that there has been no change in practice in this area, that assessments have always been carried out, and that the two terms are synonymous. Mr. Jerry Evans offered public comment on Item 41 on behalf of the Fifth Judicial District of Iowa. He explained that the district conducts both interviews and risk assessments as part of its pretrial process and stated that an interview does not help with risk assessment. Mr. Matt McKinney offered public comment on behalf of Lederman Bail Bonds. He asserted that the change from “interview” to “assessment” is substantive and that the term “interview” should not be stricken if interviews are being conducted. He handed out an interview form and an assessment form, both of which he stated are currently used in pretrial services. He asserted that this rule language should reflect current practice and noted that the term “assessment” is not defined in the rulemaking. Committee members asked if the department was aware that “interview” and “assessment” may not be considered synonymous. Ms. Dix said the department was not aware of this issue. Committee members stated that interviews and assessments are different concepts and urged the department to revise its proposed language to reflect that both interviews and assessments are conducted. Committee members, Mr. Evans, and Mr. McKinney also discussed the Polk County Public Safety Assessment (PSA). Discussion included whether the language of Item 41 implicates the PSA and whether the PSA is an appropriate and accurate risk assessment tool in comparison to an interview process.

Regarding Item 51, committee members questioned whether it is appropriate for the department to strike all specific conditions of parole from its rules, replacing them with general language regarding compliance with conditions of parole. Mr. Savala and Ms. Dix stated that the current language on specific conditions is old and that the Board of Parole has its own rules on the conditions of parole. They explained that the department has had to repeatedly update its rules on this topic to track with changes in the board’s rules and that such updating will no longer be necessary with this change. Committee members urged the department to retain the current language on specific conditions, even if further updating will be necessary in the future, to promote ease of access to this information by the public. Committee members also requested a copy of the board’s rules on this topic.

Committee members additionally discussed how incarceration fees are calculated, whether language on access to confidential records may be too broad, and how medical examinations are provided.

WORKERS’ COMPENSATION DIVISION

Representing the agency: Heather Palmer

ARC 3775C (NOIA), Payroll Tax Tables, 8.8

No questions on ARC 3775C.

HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Deb Johnson, Theresa Armstrong

ARC 3783C (NOIA), Appeals — Filing on Behalf of Medicaid Member, Withdrawal, Continuation of Assistance, 7.2(5), 7.5(2), 7.6(2), 7.8, 7.9

Ms. Nancy Freudenberg reviewed the rulemaking. In response to a question from committee members, Ms. Freudenberg stated that the department was implementing a form for providers and authorized representatives to obtain express written consent to file an appeal on behalf of a Medicaid member. Ms. Freudenberg elaborated that the department was taking such action because providers and authorized representatives were having difficulty gaining express written consent. Ms. Freudenberg indicated that the rulemaking was not taken in response to a change in state or federal regulation or code. Previously, providers and authorized representatives had been using consent to treat forms as consent to file an appeal. However, that was not the proper form of consent.

ARC 3784C (NOIA), Settings for Home and Community-Based Services (HCBS) Provision to Medicaid Members, Amendments to Chs 77, 78, and 83

Ms. Freudenberg reviewed the rulemaking. Ms. Deb Johnson also represented the department. Ms. Johnson responded to a question posed by committee members during the fiscal overview. Ms. Johnson stated that she could not provide dollar amounts, but that 82 percent of the providers currently meet the setting rules. Ms. Johnson indicated that the department is still reviewing 18 percent of the providers. In response to a question posed by committee members, Ms. Johnson stated that only one provider indicated it was going to wait until 2022 and at that time, it will close its doors rather than comply. Ms. Johnson indicated that providers waiting until 2022 was not acceptable to the department. Committee members inquired if a choice of provider in the managed care organization network is very limited, how that affects a person's choice. Ms. Johnson indicated that the issue of adequate access also occurred prior to managed care. Committee members additionally inquired whether it is a violation of individual choice if providers are not located within a reasonable distance of a person's residence or if a person is forced to change the doctor a person has had an established doctor-patient relationship with for years. Ms. Johnson indicated that this was very hard to determine. Committee members clarified with Ms. Johnson that the aforementioned persons have some level of disability.

ARC 3785C (NOIA), Quality Assurance Assessment Levels for Nursing Facilities, 36.6(2)

Ms. Freudenberg reviewed the rulemaking. Ms. Johnson also represented the department. Committee members noted that the rulemaking, which originated from 2015 Iowa Acts, ch 137 (Senate File 505) was untimely and expressed displeasure with the untimeliness of the rulemaking. Ms. Freudenberg stated that the department did not have an excuse for not completing the rulemaking in a timely manner but reiterated that providers had been informed of the statutory assessment levels by letter dated February 3, 2016. Some committee members suggested that the topic should not be the subject of rulemaking while others encouraged it to remain in rulemaking.

ARC 3787C (AF), Appeals and Hearings, 7.5(4), 7.16, 7.21(3), and 7.46

No questions on ARC 3787C.

ARC 3788C (AF), Autism Support Program Eligibility, 22.1 and 22.2(4)

Ms. Freudenberg reviewed the rulemaking. Committee members suggested that the department work with the insurance commissioner to ensure that the program does not become cost prohibitive. Ms. Theresa Armstrong stated that the department would communicate with the insurance commissioner. Ms. Armstrong indicated that she was aware of only two individuals that had left the autism support program based upon the availability of private insurance.

ARC 3789C (AF), Psychiatric Bed Tracking System—Participation by State Mental Health Institutes and Certain Hospitals, 77.3(3)

No questions on ARC 3789C.

ARC 3791C (AF), Child Care Assistance—Fee Schedule, Temporary Lapse in Need for Service, Wait List Exemption for Homeless Families, 170.2 and 170.4(2)

No questions on ARC 3791C.

ARC 3790C (AF), Tiered-Rate Reimbursement Methodology for Supported Community Living, Day Habilitation and Adult Day Care Services Under Intellectual Disability Waiver, 78.41, 79.1, and 83.67 (4)“i”

Ms. Freudenberg reviewed the rulemaking. Ms. Freudenberg indicated that the department had public hearings and received public comments on this rulemaking. In response, Ms. Freudenberg indicated that the department created appeal rights and worked with providers to implement the rulemaking, making some exceptions to the applicability of the rulemaking. Committee members inquired whether the former “cookie cutter” rules had been changed to properly compensate providers who serve the most costly, high-need populations. Ms. Johnson indicated that the department is working with individual providers to compensate providers appropriately.

IOWA PUBLIC INFORMATION BOARD

Representing the agency: Margaret Johnson

ARC 3808C (NOIA), Advisory Opinion Requests; Petitions for Declaratory Orders and Rule Making, 1.2(1), 3.1, 3.3(3), and 5.1

No questions on ARC 3808C.

LAW ENFORCEMENT ACADEMY

Representing the agency: Judy Bradshaw

ARC 3809C (NOIA), Emergency Care Provider Certification Process, 1.1, 3.9(1)“b,” 4.3(2), 9.1(1), 9.3(1)“a,” and 10.10

No questions on ARC 3809C.

ENVIRONMENTAL PROTECTION COMMISSION

Representing the agency: Wendy Hieb

ARC 3786C (AF), Initial Issuance of NPDES General Permit Nos. 8 and 9, 64.3, 64.4, 64.6, 64.15, and 64.16

No questions on ARC 3786C.

NATURAL RESOURCE COMMISSION

Representing the agency: Susan Stocker, Chris Ensminger, Aaron Brees, Joli Vollers, Karen Kinkead

ARC 3782C (NOIA), Zoning of the Iowa River, Iowa Falls, Hardin County—Buoys, Speed Restrictions, 40.36

Ms. Susan Stocker reviewed the rulemaking. In response to a question from committee members, Ms. Joli Vollers indicated that there has been no opposition to the rulemaking in Iowa Falls and Hardin County.

ARC 3795C (AF), Storage of Stand-Up Paddleboards, 16.1 and 16.4(3)

Mr. Aaron Brees reviewed the rulemaking. Committee members expressed appreciation for the changes to the definition of boat. Committee members encouraged the department to continue this thought process and further narrow the definition of boat to exclude from licensure human powered vehicles, such as kayaks and canoes.

ARC 3796C (AF), Artificial and Natural Marshes; Decoys; Wildlife Refuges, 45.5, 45.6, 51.6(3), and 52.1

No questions on ARC 3796C.

ARC 3799C (AF), Bobcat Harvest Zone, 108.7(2)

No questions on ARC 3799C.

ARC 3798C (AF), Falconry, 101.1 and 101.3 to 101.7

Ms. Karen Kinkead reviewed the rulemaking. Ms. Kinkead indicated that 22 people submitted comments on the rulemaking. Ms. Kinkead noted that the most significant comment topic was the lottery system. Some commenters requested a quota system instead of the lottery system allowing all qualified falconers to attempt to capture a falcon until all five permits are filled. In its final rule, the commission did not incorporate this comment because that could result in the capture of more than five falcons and that would cause stress on the falcon population, which is presently on Iowa's list of species of special concern. Other commenters expressed that people that oppose hunting falcons could apply for permits to prevent falcon capture. The commission responded to these comments by clarifying the language in the rule to only allow master falconers with five current years of field experience to apply. Ms. Kinkead indicated she was uncertain regarding the protocol surrounding trapping a falcon at the State Capitol Building. Ms. Kinkead indicated that the falcons to be captured in Iowa are expected to be the tundra subspecies of Peregrine Falcons, which are born in Canada. Committee members indicated that they hoped that more Iowans would be able to participate in the sport of falconry in the future.

ARC 3797C (AF), Waterfowl and Coot Hunting Seasons, 91.1, 91.3, 91.6

Mr. Chris Ensminger reviewed the rulemaking. Mr. Ensminger indicated that the commission received a number of public comments, a majority of which requested later Canada goose hunting season dates. Mr. Ensminger indicated that there were also many requests for later season dates and zone changes for waterfowl that were not species-specific. Mr. Ensminger indicated that the Canada goose hunting season was moved back to later dates in the zones. In response to a question from committee members, Mr. Ensminger clarified that Canada goose hunting season was not made longer. Mr. Ensminger indicated that the rule has been revised to reference the daily bag limit adopted by the United States Fish and Wildlife Service in the Federal Register.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT

Representing the agency: John Benson

ARC 3778C (NOIA), 911 Telephone Systems, 10.2, 10.4(2), 10.7, 10.9, and 10.13

No questions on ARC 3778C.

PROFESSIONAL LICENSURE DIVISION

Representing the agency: Susan Reynolds

ARC 3774C (NOIA), Chiropractic Physicians—Colleges, Continuing Education, 42.2(2), 42.5(1), 42.6, 44.1, 44.2, and 44.3(2)

No questions on ARC 3774C.

NURSING BOARD

Representing the agency: Kathy Weinberg

ARC 3801C (AF), Supervision by Licensed Practical Nurses, 6.5(1)

No questions on ARC 3801C.

ARC 3802C (AF), Nurse Licensure Compact, Rescind Ch 16

No questions on ARC 3802C.

REGENTS BOARD

Representing the agency: Aimee Claeys

ARC 3780C (NOIA), PharmD Application Fee, 1.7

Ms. Aimee Claeys reviewed the rulemaking. Committee members expressed skepticism that students are not enrolling in pharmacy school due to application costs. Additionally, committee members encouraged the Board of Regents to decrease tuition costs in an effort to increase enrollment.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA

Representing the agency: Mark Johnson

ARC 3781C (NOIA), Purchasing—ICN Sole-Source Agreements, 5.1

Mr. Mark Johnson reviewed the rulemaking. Committee members inquired whether this rulemaking would have prevented an incident last year involving inappropriate spending in connection with the procurement of trailers. Mr. Johnson indicated that the procurement of two trailers last year by the executive director happened quickly and without his knowledge. Mr. Johnson was unsure whether the rulemaking would prevent a similar incident from occurring again but asserted that it was a step in the right direction. Committee members asked for additional detail regarding the sole-source justification form. Mr. Johnson indicated that the form sets forth the purpose of the sole-source agreement. Mr. Johnson described the relatively large number of sole-source agreements entered into by the commission, which are needed in emergency situations to authorize the repair of the network. Committee members encouraged the commission to expand its rules to prevent inappropriate spending. Additionally, committee members encouraged the commission to develop and share best practices with other agencies. Mr. Johnson stated that the commission continues to look for ways to strengthen internal controls and ways to empower staff to report inappropriate spending.

WORKFORCE DEVELOPMENT DEPARTMENT

Representing the agency: David Steen

ARC 3811C (AF), Claims and Benefits, 24.1(21), 24.2(1), and 24.37(1)“d”

No questions on ARC 3811C.

ARC 3812C (AF), Claims for Benefits; Reemployment Services; Eligibility Assessment; Investigation and Recovery Unit; Administrative Penalties; Wage Verification, Amendments to Chs 24 and 25

No questions on ARC 3812C.

ARC 3813C (AF), Benefits—Claims, Payments, Overpayments, 24.2(1), 24.9(1), and 25.7(6)

No questions on ARC 3813C.

LABOR SERVICES DIVISION

Representing the agency: Kathleen Uehling

ARC 3807C (NOIA), Boilers and Pressure Vessels; Water Heaters, Amend Chs 84, 90, and 91; Rescind Ch 95

Ms. Kathleen Uehling reviewed the rulemaking. In response to a question from committee members regarding Item 5, Ms. Uehling stated that smaller water heaters were struck to reflect the law change. Committee members inquired as to how many water heater and boiler violations were found last year, how many were serious, and how many would not be inspected under the new law. Ms. Uehling stated that the violations were not recorded by severity or willfulness like OSHA violations. Ms. Uehling stated that she did not know that information but would provide it to Mr. Ewing for dissemination to the committee members.

ARC 3810C (AF), Occupational Safety and Health Violations—Increased Penalties, 3.11(1)

No questions on ARC 3810C.

PUBLIC EMPLOYMENT RELATIONS BOARD

Representing the agency: Diana Machir

ARC 3803C (AF), Collective Bargaining, Amendments to Chs 2, 4 to 7, and 13

Ms. Diana Machir reviewed the rulemaking. Ms. Machir indicated that three changes were made to the rule following the Notice of Intended Action based upon a public hearing and public comments received at the April Administrative Rules Review Committee meeting. Ms. Machir stated that the changes were as follows: 1) clarifying language regarding refunds of election fees, 2) clarifying language regarding employer-provided lists, and 3) eliminating registration. Committee members thanked the Public Employment Relations Board for listening to the concerns of the people and reflecting those concerns in the changes. In response to a question from committee members, Ms. Machir indicated that Mr. Jamie Van Fossen is the Interim Chairperson of the Public Employment Relations Board.

INSPECTIONS AND APPEALS DEPARTMENT

Representing the agency: David Werning

ARC 3779C (NOIA), Economic Assistance Fraud Bureau, Rescind Ch 74

No questions on ARC 3779C.

ARC 3792C (AF), Economic Fraud Control Bureau, Ch 72

No questions on ARC 3792C.

ARC 3793C (AF), Medicaid Fraud Control Unit, Ch 73

Mr. David Werning reviewed the rulemaking. Mr. Werning stated that he received one public comment. Specifically, Mr. Werning stated that the Iowa Health Care Association thought that the rules were an overreach of the Medicaid Fraud Control Bureau's duties, responsibilities, and authority. Mr. Werning's response was that the rules reflect the federal regulations which authorize the Medicaid Fraud Control Bureau to conduct criminal investigations rather than civil investigations that might be done by the Health Facilities Division. Mr. John Hale, co-owner of the Hale Group, came forward to speak in favor of the rulemaking, and stated that the rulemaking "makes a great deal of sense" to protect and better serve vulnerable Iowans.

TRANSPORTATION DEPARTMENT

Representing the agency: Nicole Fox, Stuart Anderson

ARC 3776C (NOIA), Reimbursable Services and Supplies, 174.3(1)"a"

No questions on ARC 3776C.

ARC 3777C (NOIA), Highway Bridge Program for Cities and Counties; Swapping of Surface Transportation Block Grant Funds, Amendments to Chs 161 and 162

Mr. Stuart Anderson reviewed the rulemaking. In response to a question from committee members, Mr. Anderson stated that approximately 15 states have implemented a highway bridge program for cities and counties prior to implementation of such a program in Iowa. Mr. Anderson stated that the Federal Highway Administration has been a strong supporter of such programs, recognizing that focusing federal funds on larger and fewer projects helps to reduce the federal government's exposure and ensures federal regulations and requirements are met. Committee members requested that the department revisit the issue with the Legislature if the federal government's opinion changes.

Respectfully submitted,

APPROVED:

June 12, 2018

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Chair Mark Chelgren

Vice Chair Dawn Pettengill