



# MINUTES

## SEPTEMBER 2018 MEETING ADMINISTRATIVE RULES REVIEW COMMITTEE

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### MEMBERS PRESENT

Senator Mark Chelgren, Chair	Representative Dawn E. Pettengill, Vice Chair [by teleconference]
Senator Jim Carlin [by teleconference]	Representative Megan Jones
Senator Mark Costello	Representative Amy Nielsen
Senator Wally E. Horn	Representative Rick Olson
Senator Pam Jochum [by teleconference]	Representative Guy Vander Linden

EX OFFICIO, NONVOTING MEMBER: Sam Langholz, Administrative Rules Coordinator, Office of the Governor

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

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### BULLETINS NEEDED FOR THIS MEETING: 8/15/18, 8/29/18

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#### Procedural Business

Senator Chelgren convened the regular, statutory meeting of the Administrative Rules Review Committee (ARRC) at 9 a. m. on Tuesday, September 11, 2018, in Room 116, State Capitol, Des Moines, Iowa. The minutes of the August 14, 2018, meeting were approved. The next meeting was scheduled for October 9, 2018. The meeting was adjourned at 11:43 a.m.

#### Fiscal Overview

Mr. Adam Broich, Fiscal Legislative Analyst, presented the LSA (Legislative Services Agency) fiscal report.

#### HUMAN SERVICES DEPARTMENT

Representing the agency: Nancy Freudenberg, Carol Eaton, Rick Shults, Julie Allison

#### Courtesy Review: FEAN Special Population Nursing Facility Criteria

Ms. Freudenberg stated that the department is pursuing filed emergency after notice rulemaking to have rules in effect one month earlier than the regular rulemaking schedule. Committee members expressed support for the rulemaking, but stated that in the future the department should work with the General Assembly to enact legislation that is effective upon enactment rather than effective July 1. In response to an inquiry from committee members, Ms. Freudenberg stated that the department is serving individuals at ChildServe through an exception to policy under the director's authority. Responding to an inquiry from committee members, Ms. Freudenberg indicated individuals with medically fragile needs are not expected to live beyond age 30; if they do, the rule would need to be expanded and the department would need to come back and ask for an appropriation to provide for their care.

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).

**No action taken.**

ARC 3942C (NOIA), Mental Health and Disability Services Regions, Proposed Amendments to Chapter 25

Ms. Freudenberg indicated that during the notice period, the department received more than 50 comments and as such, the department is scheduling a public hearing. Committee members inquired whether the comments asserted the department was not following the letter of the law in the rulemaking. In response, Ms. Freudenberg said that a lot of the comments were concerned with what the enabling legislation actually entails. Mr. Shults indicated there may be a small number of areas that can easily be corrected that commenters have indicated might not be specific to the legislation, but there are probably a lot more comments about the legislation itself and that signifies a high expectation of the legislation. Mr. Shults stated that the bottom line is that this is going to be a challenging endeavor. Mr. Shults said he is going to look at every comment and make sure that the department is complying with the parameters of the legislation. Committee members encouraged the department to share concerns with the committee.

Committee members inquired how the long timeline for implementation of the legislation is affected by the rulemaking and when they can expect to see such implementation. Mr. Shults indicated that some of the work has already occurred. Mr. Shults stated that the rules envision all of the required services will be in place within three years. Mr. Shults stated that some individuals think this timeline is too long and others think it is too short. Mr. Shults stated that some of the services take time to build up which is why the department arrived on a timeline of three years. The department believes the timeline is ambitious, but reasonable.

Committee members thanked the department for the department's efforts on this matter.

**No action taken.**

ARC 3969C (NOIA), Child Care Assistance Rate Ceilings, Proposed Amendments to Rule 170.4

In response to an inquiry from committee members, Ms. Allison indicated that some providers will now be paid at close to 50 percent of the market rate and other providers will be paid at 75 percent of the market rate. Ms. Allison stated that the department appreciated this and so did the providers.

**No action taken.**

ARC 3970C (NOIA), Childcare Providers — Mandatory Prohibitions, Additional Background Checks, Proposed Amendments to Chapters 109, 110, and 120

No discussion on ARC 3970C.

ARC 3971C (NOIA), Children's Residential Facilities—Abuse Reporting, Proposed Adoption of New Rule 106.19

No discussion on ARC 3971C.

ARC 3972C (NOIA), Support Enforcement Services, Proposed Amendments to Chapter 98

In response to an inquiry from committee members, Ms. Freudenberg indicated that she believed this regulation was consistent across the country. Committee members inquired whether this rulemaking was copied from federal and state code. Ms. Eaton indicated that the medical support program was copied from the federal requirement and the recently updated state statute, but the income withholding section is new and is not a federal requirement. In response, committee members indicated that they do not see a purpose in copying federal code.

**No action taken.**

**ADMINISTRATIVE SERVICES DEPARTMENT**

Representing the agency: Tami Wiencek

ARC 3937C (NOIA), Update of References — Department Organization, Statutory Citations, Addresses, Proposed Amendments to Chapters 1, 4-9, 41, 42, 48, 55, 56, 58, 59, 61, 62, 64-66, 71, 100-103, and 119

No discussion on ARC 3937C.

ARC 3966C (NOIA), Procurement—Certification of Targeted Small Businesses, Proposed Amendments to Rule 117.2 and Subrule 117.5(2)  
No discussion on ARC 3966C.

### **SOIL CONSERVATION AND WATER QUALITY DIVISION**

Representing the agency: Margaret Thomson

ARC 3957C (AF), Water Quality Initiative — Eligible Practices, Cost-Share Limitation, Amendments to Chapter 16  
No discussion on ARC 3957C.

### **VETERINARY MEDICINE BOARD**

Representing the agency: Margaret Thomson, David Schmitt

ARC 3960C (AF), Veterinary Technician State Examination—Fee, Amendment to Subrule 8.3(1)  
Committee members inquired whether by striking “national” the goal was to allow local or international examinations. Dr. Schmitt responded that it would allow additional examinations at the state level at the service centers around the state. In response to an inquiry from committee members, Dr. Schmitt provided a historical overview of the processes for examinations. Most recently, last year the Veterinary Medicine Board administered a paper examination out of Ames. Committee members inquired how much the additional fee would be for an examination. Dr. Schmitt replied that he would have to get back to the committee with a response, but he indicated the department had not entered into a contract.

**No action taken.**

### **BANKING DIVISION**

Representing the agency: Zak Hingst, Rodney Reed

ARC 3947C (NOIA), Organizational Structure of the Division, Proposed Amendments to Rule 1.3  
No discussion on ARC 3947C.

ARC 3948C (NOIA), Public Records and Fair Information Practices, Proposed Amendments to Chapter 7  
No discussion on ARC 3948C.

ARC 3949C (NOIA), Application Procedures, Proposed Amendments to Chapter 2  
No discussion on ARC 3949C.

ARC 3950C (NOIA), Waivers and Variances—Update of Citations, Proposed Amendments to Chapter 12  
No discussion on ARC 3950C.

ARC 3951C (NOIA), Contested Cases, Proposed Amendments to Chapter 11  
No discussion on ARC 3951C.

ARC 3952C (NOIA), General Banking Powers, Proposed Amendments to Rules 8.8 and 8.9  
No discussion on ARC 3952C.

ARC 3953C (NOIA), Real Estate Lending; Leasing, Proposed Amendments to Rules 9.2 and 9.3  
Mr. Hingst stated that the division received a comment from the Iowa Banking Association. Committee members encouraged the division to work with stakeholders to reach an agreement on the rulemaking before returning before the committee with an adopted and filed rulemaking.

Committee members and Mr. Hingst and Mr. Reed engaged in a discussion regarding the services offered by and regulations governing state banks, federal banks, and credit unions. Mr. Hingst stated that the substantive requirements should be the same for a state bank and a credit union under Iowa law

regarding the subject of this rulemaking—specifically title opinion and title guaranty versus title insurance. Mr. Hingst stated he would need to confirm this assertion with the Credit Union Division. He indicated that the language may not be exactly the same and the Credit Union Division may not be proposing to clarify the language the same way.

Committee members inquired whether the clarification creates an additional barrier or additional paperwork for state banks. A discussion ensued amongst committee members and Mr. Hingst and Mr. Reed. Mr. Reed stated that the division is not proposing to have banks do anything beyond what they are currently required to do.

**No action taken.**

ARC 3954C (NOIA), Debt Management, Proposed Adoption of New Chapter 20  
No discussion on ARC 3954C.

#### **ENGINEERING AND LAND SURVEYING EXAMINING BOARD**

Representing the agency: Robert Lampe

ARC 3946C (NOIA), Review of Rules—Administration, Licensure, Professional Development, Discipline, Peer Review, Surveying, Proposed Amendments to Chapters 1, 3-5, and 7-12  
No discussion on ARC 3946C.

#### **IOWA FINANCE AUTHORITY**

Representing the agency: Mark Thompson

ARC 3973C (NOIA), Manufactured Housing Program Fund, Proposed Adoption of New Chapter 45  
Mr. Joe Kelly, Executive Vice President of the Iowa Manufactured Housing Association, spoke in favor of the rulemaking and thanked the Iowa Finance Authority for working with the Iowa Manufactured Housing Association over the past three decades and on this rulemaking. Mr. Kelly stated he had some concerns with the rulemaking, but even if the concerns were not resolved he would be happy with the rulemaking and deem it valuable.

**No action taken.**

#### **EDUCATION DEPARTMENT**

Representing the agency: Thomas Mayes, Jeremy Varner

ARC 3980C (AF), Accreditation Standards—Statewide Summative Assessment, Policy Prohibiting the Aiding and Abetting of Sexual Abuse, Amendments to Subrule 12.3(14) and Paragraph 12.8(1)“h”  
No discussion on ARC 3980C.

ARC 3981C (AF), Iowa Learning Online—Provision of Distance Education to Students Receiving Private Instruction, Amendments to Rules 15.10 and 15.12-15.15  
In response to an inquiry from committee members, Mr. Mayes explained that the cost of participation in Iowa Learning Online is \$260 per student per course per semester, which covers the salary of the director of the program.

**No action taken.**

ARC 3982C (AF), Community Colleges—Career and Technical General Education Credits, Transfer Major Programs, Developmental Education, Amendments to Rules 21.2-21.4  
In response to an inquiry from committee members, Mr. Varner explained that this rulemaking is intended to increase, not decrease, access to community colleges and to promote the success of community college students.

**No action taken.**

**EDUCATIONAL EXAMINERS BOARD**

Representing the agency: Darcy Hathaway

ARC 3979C (AF), Expiration Date of Licenses, Proposed Amendments to Rules 13.6, 13.30, 18.4, 23.2, and 27.2

No discussion on ARC 3979C.

**COLLEGE STUDENT AID COMMISSION**

Representing the agency: Karen Misjak

ARC 3938C (NOIA), All Iowa Opportunity Scholarship Program, Proposed Amendments to Rule 8.2 and Subrule 8.4(2)

No discussion on ARC 3938C.

ARC 3939C (NOIA), Health Care Loan Repayment Program, Proposed Adoption of New Chapter 26

No discussion on ARC 3939C.

ARC 3940C (NOIA), Iowa National Guard Educational Assistance Program—Application Requirements, Proposed Amendment to Subrule 20.1(2)

No discussion on ARC 3940C.

ARC 3941C (NOIA), Rural Iowa Advanced Registered Nurse Practitioner and Physician Assistant Loan Repayment Program, Proposed Amendments to Chapter 25

No discussion on ARC 3941C.

**NATURAL RESOURCE COMMISSION**

Representing the agency: Rhonda Fowler

ARC 3983C (AF), Snowmobile Fee Grants, Cost-Share Programs, and Contracts, Adoption of New Rule 47.10 and Rescission of Rules 47.30-47.47

No discussion on ARC 3983C.

**PROFESSIONAL LICENSURE DIVISION**

Representing the agency: Susan Reynolds, Venus Vendoures-Walsh

ARC 3944C (NOIA), Physical Therapists and Physical Therapist Assistants—Licensure Compact, Criminal History Background Check, Proposed Amendments to Rules 200.2 and 200.3 and Subrule 200.7(1)

In response to an inquiry from committee members, Ms. Vendoures-Walsh indicated there is not a fee waiver defined in the rule for physical therapists serving in the Veterans Administration.

**No action taken.**

ARC 3943C (NOIA), Chiropractic Physicians—License Reactivation, Proposed Amendment to Subparagraph 41.14(3)“b”(3)

No discussion on ARC 3943C.

ARC 3956C (AF), Chiropractic Physicians—Practice, Discipline, Amendments to Rules 43.3, 43.10, and 45.2 and Subrule 43.4(2)

No discussion on ARC 3956C.

ARC 3962C (AF), Chiropractic Physicians—Colleges, Continuing Education, Amendments to Rules 42.6, 44.1, and 44.2 and Subrules 42.2(2), 42.5(1), and 44.3(2)  
No discussion on ARC 3962C.

## **DENTAL BOARD**

Representing the agency: Christel Braness, Steve Garrison

ARC 3961C (AF), Graduates of Foreign Dental Schools—Licensure, Amendment to Rule 11.4  
No discussion on ARC 3961C.

ARC 3963C (AF), Overpayment, Amendment to Rule 1.1  
No discussion on ARC 3963C.

ARC 3987C (AF), Unauthorized Practice by Dental Hygienist; Public Health Supervision; Name and Address Changes; Use of Silver Diamine Fluoride, Amendments to Rules 10.4-10.6 and Subrule 16.2(2)  
Committee members inquired why there was previously a prohibition on the use of silver diamine fluoride. Mr. Garrison explained that this is a relatively new treatment in a public health setting. A study was conducted by the University of Iowa and the University did a presentation before the board to allow use in a public health setting. Ms. Braness indicated that previously the prohibition was a limitation to only allow use under the supervision of a dentist. The new use is for a public health setting where dentists are not typically present on site.

Committee members inquired about the prohibition of ownership of a dental practice by a dental hygienist, specifically the reasoning for the prohibition in the past. Ms. Braness explained that a review of the rule revealed that this was the only prohibition on ownership in the state of Iowa. Instead of barring ownership due to profession, the board chose to focus on supervision issues, Ms. Braness explained. Committee members expressed an appreciation for lifting the prohibition.

**No action taken.**

## **PHARMACY BOARD**

Representing the agency: Andrew Funk, Sue Mears

ARC 3974C (NOIA), Wholesale Distributor Licenses, Proposed Amendments to Chapter 17  
No discussion on ARC 3974C.

ARC 3975C (NOIA), Limited Distributor Licenses, Proposed Adoption of New Chapter 42  
No discussion on ARC 3975C.

ARC 3976C (NOIA), Third-Party Logistics Provider Licenses, Proposed Adoption of New Chapter 43  
In response to an inquiry from committee members, Ms. Mears explained that this rulemaking applies to distribution networks, not shipping companies, and would not apply to the United States Postal Service.

**No action taken.**

ARC 3977C (NOIA), Board Membership and Responsibilities, Proposed Amendments to Chapter 1  
No discussion on ARC 3977C.

ARC 3978C (NOIA), Universal Practice Standards—Protection from Exposure to Hazardous Drugs, Proposed Amendment to Rule 8.5  
No discussion on ARC 3978C.

ARC 3984C (AF), Temporary Scheduling of Fentanyl-Related Products as Schedule I Controlled Substances, Amendment to Subrule 10.39(2)

In response to inquiries from committee members, Ms. Mears explained that fentanyl is a Schedule II drug and therefore fentanyl products can have some benefit. She also explained that the new classification of fentanyl-related products will last for two years, during which the General Assembly can codify the classification.

**No action taken.**

ARC 3985C (AF), Substitution of Interchangeable Biological Products; Labeling Requirements, Amendments to Subrules 18.3(4), 22.1(3), and 22.5(5)

No discussion on ARC 3985C.

## **REGENTS BOARD**

Representing the agency: Aimee Claeys

ARC 3986C (AF), PharmD Application Fee, Amendment to Rule 1.7

No discussion on ARC 3986C.

## **TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA**

Representing the agency: Phil Groner

ARC 3958C (AF), Purchasing—ICN Sole-Source Agreements, Amendments to Rule 5.1

No discussion on ARC 3958C.

ARC 3959C (AF), Authorized Use and Users—State Communications, Amendment to Rule 7.1

No discussion on ARC 3959C.

## **TRANSPORTATION DEPARTMENT**

Representing the agency: Sara Siedsma

ARC 3967C (NOIA), Sanctions, Proposed Amendments to Chapter 615

In response to an inquiry from committee members, Ms. Siedsma explained that the reference to a barment in Item 15 of the rulemaking refers to barment under Iowa Code chapter 321, not chapter 321J. Committee members stated that they would follow up with the department after the meeting for additional clarification.

**No action taken.**

## **WORKFORCE DEVELOPMENT DEPARTMENT**

Representing the agency: David Steen

ARC 3945C (NOIA), Reemployment Services Eligibility Assessment Procedure; Overpayments, Proposed Amendments to Subrule 25.8(1) and Paragraph 24.6(7)“f”

No discussion on ARC 3945C.

ARC 3965C (NOIA), Benefits; Voluntary Shared Work, Proposed Amendments to Chapters 23-25

No discussion on ARC 3965C.

## **LABOR SERVICES DIVISION**

Representing the agency: Kathleen Uehling

ARC 3955C (NOIA), Federal Occupational Safety and Health Standards for Exposure to Beryllium —  
Adoption by Reference, Proposed Amendment to Rule 10.20  
No discussion on ARC 3955C.

## **INSURANCE DIVISION**

Representing the agency: Jennifer Lindberg, Andria Seip

### **Emergency Filing on Short-Term Limited-Duration Plans (Approval required)**

Ms. Seip and Ms. Lindberg noted that the division is aware that emergency rulemaking is not a preferred approach to rulemaking, but stated that it is necessary at this time because the federal regulation modifying the standards for short-term limited-duration health insurance policies take effect imminently. They explained that the federal regulation contains minimal consumer protections. The division wants to provide for such protections on the state level to prevent low-quality “junk plans” from being sold in Iowa and to provide guidance for agents selling short-term limited-duration health insurance policies. They distinguished this request for authorization for emergency rulemaking from other emergency rulemaking the division will carry out in the near future.

Committee members asked whether the minimum required benefits included in the rulemaking are included in the federal regulation, and Ms. Seip and Ms. Lindberg explained that they are not. Committee members questioned whether it is appropriate for these rules to exceed the requirements of the federal regulation and whether this would defeat the intent of the federal regulation to provide greater flexibility for consumers in the insurance market. They explained that this rulemaking provides for two kinds of plans: those lasting up to 90 days and those lasting longer. The minimum benefits are only required for plans lasting longer than 90 days. They stated that the division had communicated with several insurance carriers who supported having such standards in Iowa and worked with the carriers to develop the standards.

Some committee members questioned whether imposing such standards means the division does not trust consumers to choose the right plans on their own and suggested that the rulemaking would limit competition in the insurance market in Iowa. Other committee members rejected the assertions that the division does not trust consumers and that the rulemaking would limit competition. Ms. Seip and Ms. Lindberg responded that the division does trust consumers, but if this rulemaking does not move forward, telemarketers from out of state will begin selling plans under the federal regulation that include almost no benefits. Such telemarketers would mislead Iowans about the nature of the coverage they are buying, and consumers would find that they receive almost no return for the premiums they pay. They stated that the rulemaking would protect consumers from such behavior. Committee members suggested that if the division knows of fraudulent insurance sales, the division should pursue appropriate penalties against such sellers. They explained that the division does take action against fraud, but wants to prevent a significant increase in bad actors in Iowa’s insurance market.

Committee members did not make a motion to authorize emergency rulemaking.

**No action taken.**

## **VETERANS AFFAIRS, IOWA DEPARTMENT OF**

Representing the agency: Steven Lukan, Dan Gannon

ARC 3936C (NOIA), Veterans Trust Fund, Proposed Amendment to Rule 14.4  
No discussion on ARC 3936C.



**WORKERS' COMPENSATION DIVISION**

Representing the agency: Jim Elliot

ARC 3968C (NOIA), Electronic Filing, Proposed Amendments to Chapters 2-5, 10, and 11  
No discussion on ARC 3968C.

Respectfully submitted,

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APPROVED:

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Chair Mark Chelgren

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Vice Chair Dawn Pettengill