



Iowa General Assembly

Administrative Rules Review Committee

Legislative Services Agency – Legal Services Division

ADMINISTRATIVE RULES REVIEW COMMITTEE

Meeting Dates: November 14, 2017

Purpose. *This compilation of briefings on legislative interim committee meetings and other meetings and topics of interest to the Iowa General Assembly, written by the Legal Services Division staff of the nonpartisan Legislative Services Agency, describes committee activities or topics. The briefings were originally distributed in the Iowa Legislative Interim Calendar and Briefing. Official minutes, reports, and other detailed information concerning the committee or topic addressed by a briefing can be obtained from the committee's Internet page listed above, from the Iowa General Assembly's Internet page at <https://www.legis.iowa.gov/>, or from the agency connected with the meeting or topic described.*

ADMINISTRATIVE RULES REVIEW COMMITTEE

November 14, 2017

Co-chairperson: Representative Dawn Pettengill

Co-chairperson: Senator Mark Chelgren

EMERGENCY RULE FILING REVIEWS. Iowa Code §17A.4(3) provides that an agency can adopt a rule without notice only with specific statutory authority or with prior approval by the Administrative Rules Review Committee. Under this procedure, the committee reviews requests by agencies to adopt rules filed without notice at its monthly meeting or at special meetings if necessary. The committee will approve such filings if the committee finds good cause that notice and public participation would be unnecessary, impracticable, or contrary to the public interest.

The committee considered one filing:

- Department of Transportation — Planting and Harvesting Periods, Commercial Motor Vehicle Regulations. EMERGENCY FILING APPROVED BY COMMITTEE.

HUMAN SERVICES DEPARTMENT, *Elimination of Three-Month Retroactive Medicaid Coverage Benefit, 10/11/17* IAB, ARC 3355C, NOTICE, also ARC 3353C, FILED EMERGENCY.

Background. This double-barreled rulemaking eliminates three-month retroactive Medicaid coverage benefits for new applicants pursuant to 2017 Iowa Acts, HF 652, §12(15). This rulemaking was initially reviewed by the committee at its September 12 meeting as provided in 2017 Iowa Acts, HF 653, §32. The emergency portion of the rulemaking became effective October 1 and was implemented by the Department of Human Services (DHS) on November 1 after a required waiver was obtained from the federal Centers for Medicare and Medicaid Services (CMS) on October 26.

Commentary. Committee members asked what the differences are between the waiver approved by CMS and the corresponding policy set out in HF 653. DHS representative Ms. Wendy Rickman, Division Administrator of Adult Children and Family Services, explained that HF 653 did not exempt any specific populations from the retroactive coverage change, while the waiver exempted pregnant and postpartum women and infants up to one year old. Committee members questioned whether the differences in the waiver from the language of HF 653 were in keeping with the legislative intent of HF 653. Committee members also questioned whether legislators fully understood the effects of this policy change when it was enacted in the 2017 Legislative Session.

In discussion regarding the estimated fiscal impact of this policy change, Ms. Rickman stated that only the exemption for infants would have any notable impact on DHS's previous fiscal estimate. She also acknowledged that DHS made a small adjustment based on concerns raised by long-term care advocates, but stated that DHS's estimate for long-term care is still largely accurate. She suggested that some of the confusion surrounding the fiscal impact of this policy change may result from a lack of understanding by some affected persons of the difference between DHS's 90-day retroactive eligibility policy and its 90-day reconsideration period, both of which apply to Medicaid recipients.

During further questioning, Ms. Rickman stated that this policy change aligns Medicaid with the private insurance market and that nowhere else is such retroactive coverage available. She acknowledged that Medicaid providers will need to modify their

practices to comply with the new policy. When asked if the adopted rules reflect the requirements of HF 653, she asserted that they do. Additional discussion occurred regarding how a recipient's initial month of Medicaid eligibility is calculated.

Public comment was heard from Ms. Susan Cameron on behalf of the Iowa Health Care Association (IHCA). She acknowledged that HF 653 requires the elimination of 90-day retroactive Medicaid eligibility. She then explained that IHCA initially and incorrectly believed that the relevant language enacted in HF 653 would apply only to the Medicaid expansion population and not to all Medicaid recipients, which led IHCA to initially underestimate the fiscal impact of the policy change on IHCA's facilities. She further explained that IHCA has since then prepared new fiscal estimates using data from its facilities which suggest that the fiscal impact of this policy change will be much higher on those facilities than projected during the 2017 Legislative Session. She explained that this higher fiscal impact will negatively affect these facilities. She rejected any assertion that IHCA's estimated fiscal impact is based on a misunderstanding of the difference between the 90-day retroactive eligibility policy and the 90-day reconsideration period. She urged the General Assembly to more fully vet Medicaid cost-containment strategies such as this with affected populations prior to their enactment. She also urged the committee to suspend ARC 3353C.

Additional public comment in opposition to these rules was heard from Mr. Brent Willet, President and CEO of IHCA; Mr. Pat Stilwell for On with Life; Ms. Kimberly Murphy for the Iowa Hospital Association; and Ms. Flora Schmidt, Executive Director of the Iowa Behavioral Health Association. They explained negative impacts this policy change would have on affected facilities, providers, and patients and urged the committee to suspend ARC 3353C.

Committee members asked why the estimated fiscal impact prepared by DHS and the one prepared by IHCA differ so significantly. Committee members noted that the Fiscal Division of the Legislative Services Agency has concurred with DHS's fiscal estimate. Discussion occurred regarding the respective methodologies used by DHS and IHCA to prepare their fiscal estimates, but the source of the discrepancy was not determined. Ms. Rickman explained DHS's methodology. Public comment was heard from Mr. Jeff Steggerda for IHCA explaining IHCA's methodology. Committee members urged DHS to resolve the discrepancy between its fiscal estimate and IHCA's fiscal estimate. Ms. Rickman stated that DHS would conduct additional analysis of a sample of relevant data. Committee members also questioned whether DHS's fiscal estimate is accurate.

A motion was made for the committee to object to the use of emergency rulemaking for ARC 3353C pursuant to Iowa Code §17A.4(3)(b)(1) on the grounds that the enactment of this policy change was based on information that was either inaccurate or not fully analyzed during the 2017 Legislative Session. In subsequent discussion, some committee members stated that DHS had not acted contrary to the language of HF 653 in the adoption of ARC 3353C and that it would be inappropriate for the committee to attempt to overturn the implementation of this statute through the use of this procedure. They also expressed concern regarding the impact of shifting the legal burden of proof regarding the use of emergency rulemaking in this instance, as provided in Iowa Code §17A.4(3)(c). They expressed hope that the retroactive Medicaid eligibility issue could be addressed further in the 2018 Legislative Session. Other committee members stated it would be unwise to allow this policy change to be implemented when it is unclear the General Assembly understood the outcome of the change during the 2017 Legislative Session and that the objection would allow an opportunity for the General Assembly to provide clarity on this matter in the 2018 Legislative Session prior to implementation of the policy change. The motion failed.

Action. A motion for an emergency objection to ARC 3353C pursuant to Iowa Code §17A.4(3)(b)(1) failed on a 4-5 vote (7 votes required to pass).

WORKERS' COMPENSATION DIVISION, *Evaluation of Permanent Impairments; Vocational Training and Education; Suitable Work; Commutations, 10/25/17 IAB, ARC 3414C, NOTICE.*

Background. In accordance with 2017 Iowa Acts, HF 518, this rulemaking details the vocational training program that was developed for individuals with permanent shoulder injuries who cannot return to gainful employment.

Commentary. Deputy Workers' Compensation Commissioner Ms. Heather Palmer presented the proposed rules and responded to inquiries.

Ms. Nicole Crain, on behalf of the Iowa Association of Business and Industry (ABI), offered a public comment on the rulemaking regarding the inclusion of General Education Development (GED) programs in the definition of "vocational training and education" for those who have not graduated from high school or obtained a general education diploma. ABI questioned the inclusion because it desired the maximum amount of retraining money to go to career and technical education. Deputy Commissioner Palmer responded by indicating that many of the career and technical programs at community colleges require a GED.

A committee member inquired as to why the Fiscal Division of the Legislative Services Agency stated that the rules would generate two full-time equivalent (FTE) positions when the Workers' Compensation Division stated that there would be no fiscal impact. Deputy Commissioner Palmer indicated that the Workers' Compensation Division budget has not been increased to hire two FTEs.

Action. No action taken.

PROFESSIONAL LICENSURE DIVISION, *Cosmetology Arts and Sciences* — *Licensure of Practitioners and Establishments, Continuing Education, 10/11/17 IAB, ARC 3372C, NOTICE.*

Background. This rulemaking from the Board of Cosmetology makes changes to licensure procedures for cosmetology practitioners and establishments, including changes relating to temporary permits, posting, continuing education, physical space, equipment, instructors, and attendance.

Commentary. Committee members asked how the board has made the regulated community aware of the proposed rule changes. Board representative Ms. Venus Vendoures-Walsh explained that the board has been working on these proposed rules for two years, has had a pre-notice process, has held multiple meetings with members of the regulated community, and has been gathering email addresses from members of the regulated community to engage in electronic communication about the proposed rule changes. Committee members suggested the board do a mass mailing as well, which Ms. Vendoures-Walsh said would be possible.

Committee members suggested that the board should not pursue proposed changes to make the mailing of notices optional and to track renewal applications from when they are received in the office rather than from when they are postmarked. Ms. Vendoures-Walsh asserted that mailing notices would not be necessary given the use of electronic communications and the affected community's awareness of the board's application requirements.

Committee members expressed concern that the proposed rule changes relating to required minimum floor space for cosmetology schools would lead to the closure of smaller schools unable to meet the new requirements. Ms. Vendoures-Walsh explained the history of the floor space requirements and a waiver granted from such requirements. She asserted that other rules exempting the schools in question from the physical requirements would allow such schools to remain open.

Action. No action taken.

TRANSPORTATION DEPARTMENT, *Regulations Applicable to Carriers, EMERGENCY AUTHORIZATION.*

Background. This rulemaking makes the harvesting and planting period applicable throughout the entire year to Iowa-based trucking companies in the agricultural industry. This will allow such companies to be eligible for an exemption throughout the entire year from federal motor carrier safety regulations limiting the number of hours a truck driver can drive per day.

Commentary. Ms. Melissa Spiegel, Director of the Motor Vehicle Division of the Department of Transportation (DOT), and Mr. Tom Brunn, Assistant Chief of Motor Enforcement, DOT, represented the department. Committee members expressed concern that exempting drivers from regulations limiting the number of hours truck drivers may drive per day was a public safety issue because drivers would be driving sleep deprived. The DOT responded by stating that this is an issue of competitive disadvantage. If the rule is not approved, truck drivers from other states will be driving without limitation and drivers from trucking companies based in Iowa will be limited regarding the number of hours they can work per day. Additionally, if the rule is not approved, Iowa-based agricultural trucking companies will need to buy and install an electronic monitoring system pursuant to federal motor carrier safety regulations. Committee members also expressed concern regarding the federally mandated electronic monitoring system, and questioned whether this rule needed to be made on an emergency basis or if it could have been filed earlier through the regular rulemaking process. The DOT stated that they found out about the federal rule 18 months ago, but they were unsure due to lawsuits whether the rule would go into effect until three months ago.

Action. Emergency rulemaking approved on a 6-3 vote.

Next Meeting. The next committee meeting will be held in Room 116, Statehouse, on Tuesday, December 12, 2017, beginning at 9:00 a.m.

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