

### ADMINISTRATIVE RULES REVIEW COMMITTEE

September 11, 2018

**Chairperson:** Senator Mark Chelgren

**Vice Chairperson:** Representative Dawn Pettengill

**EMERGENCY RULE FILING REVIEWS.** Iowa Code section 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:

- Insurance Division — Short-Term Limited-Duration Plans. EMERGENCY FILING NOT AUTHORIZED BY COMMITTEE.

### DEPARTMENT OF HUMAN SERVICES, *Mental Health and Disability Service Regions*, 8/15/18 IAB, ARC 3942C, NOTICE.

**Background.** This rulemaking implements 2018 Iowa Acts, HF 2456, which requires the mental health and disability services regions to initiate new core services, expand the core services the regions currently provide, meet new access standards for these services, and include the service changes in their services, budget planning, and reporting by a specified date. The regions must also collaborate to ensure that core services are available in minimum numbers strategically located throughout the state.

The amendments also establish new and revised service standards for providers of comprehensive crisis services, subacute mental health services, and intensive mental health services.

Finally, these amendments provide for a broader and more accessible statewide array of crisis and intensive mental health services to individuals with serious mental illness and to other individuals experiencing a mental health or substance use crisis.

**Commentary.** Ms. Nancy Freudenberg and Mr. Rick Shults represented the department and reviewed the rulemaking. 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

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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.

**Action.** No action taken.

### **BANKING DIVISION, *Real Estate Lending; Leasing, 8/15/18 IAB, ARC 3953C, NOTICE.***

**Background.** This rulemaking proposes to clarify that the title guaranty certificate issued by the guaranty division of the Iowa Finance Authority satisfies the title opinion requirement for real estate located in Iowa set forth in paragraph 9.2(4)"a." Additionally, the rulemaking proposes to clarify the paragraph previously numbered as 9.2(5)"b" to provide that for real property located outside of Iowa title insurance is required.

**Commentary.** Mr. Zak Hingst and Mr. Rodney Reed represented the division and reviewed the rulemaking. 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. Mr. Hingst stated 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.

**Action.** No action taken.

### **INSURANCE DIVISION, *Short-Term Limited-Duration Plans, Emergency Rulemaking Authorization***

**Background.** The Insurance Division sought authorization from the committee to carry out emergency rulemaking pursuant to Iowa Code section 17A.4(3). The rulemaking would set minimum standards for benefits for short-term limited-duration health insurance policies in Iowa. The rulemaking is in response to a regulation recently issued by the federal Department of Labor, which extended the permissible term periods for such policies from 3 to 12 months and allowed such policies to be renewable for a period of up to 3 years.

**Commentary.** Division representatives Ms. Andrea Seip and Ms. Jennifer Lindberg reviewed the rulemaking. They 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 distin-

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guished 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.

**Action.** No action taken.

**Next meeting.** The next committee meeting will be held in Room 116, Statehouse, on Tuesday, October 9, 2018, beginning at 9:00 a.m.

**LSA Staff:** Jack Ewing, Legal Services, 515.281.6048; Amber Shanahan-Fricke, Legal Services, 515.725.7354

Internet Site: [www.legis.iowa.gov/committees/committee?endYear=2018&groupID=705](http://www.legis.iowa.gov/committees/committee?endYear=2018&groupID=705)