
LEGAL UPDATE

Legal Services Division



Ground Floor, State Capitol Building

Des Moines, Iowa 50319

515.281.3566

ADMINISTRATIVE RULES REVIEW COMMITTEE MEETING — JULY 13, 2021

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

DEPARTMENT OF HUMAN SERVICES, *Child Care Assistance Provider Reimbursement Rates*, 6/30/21 IAB, ARC 5731C, FILED EMERGENCY.

Background. This rulemaking updates the department's child care assistance provider reimbursement rate ceiling tables in accordance with federal law and 2021 Iowa Acts, House File 891, section 31(11). The rate ceilings were increased. The rulemaking also updates base rates for the Quality Rating System (QRS) bonuses for providers. The use of emergency rulemaking was authorized by HF 891, sections 31(12) and 32, and the emergency filing was previously reviewed by the committee at its June 8, 2021, meeting as required by the legislation.

Commentary. Committee members asked why the rulemaking increases the rate ceiling for nonregistered child care homes in table 4 when section 31(11) of HF 891 directs the department to "set rates in a manner so as to provide incentives for a nonregistered provider to become registered by applying any increase only to registered and licensed providers." Ms. Janee Harvey, speaking for the department, explained that the department believes the statutory language is ambiguous and interprets the language to refer only to QRS bonus rates, for which nonregistered providers are ineligible. Members disagreed with the department's interpretation and asserted the reference to providing incentives to registration applied to all reimbursement rates, not only QRS bonus rates. Members questioned how the department's interpretation would incentivize registration as required by HF 891. She responded that QRS bonuses are considered "rates" as described in the legislation, that the department's child care assistance provider reimbursement rate structure inherently incentivizes registration, and that recent data showing increased registration by providers demonstrates that registration is being incentivized. She also noted that millions of dollars in recent federal COVID-19 relief funding had only been available to registered providers. Members asserted that the statutory language clearly distinguishes between QRS bonuses and reimbursement rates generally and that the rulemaking in this respect is contrary to that language.

Committee members asked why the 156 affected nonregistered providers are choosing not to register. Ms. Harvey provided an example of a woman who wanted to provide child care for a neighbor's niece and nephew, who the neighbor was fostering. The woman would not otherwise be providing child care and, despite technical assistance provided by the department, struggled to comply with the various rules and regulations applicable to registered providers, such as standards for fire extinguishers and number of exits. Ms. Harvey also noted that the reimbursement provided is a small amount of money. She was unsure how many of the 156 nonregistered providers are similarly situated. Members questioned whether such anecdotes are relevant to the interpretation of the statute.

Committee members questioned how the department came to its interpretation of HF 891. Ms. Harvey explained that the department recommends revision of the ambiguous statutory language and that the department's interpretation aligns with guidance the department received from legislative leadership regarding the intent of the language. She stated the department was told the legislative intent was for the rate ceiling increases to apply to all rates and for the language on incentivizing registration to apply only to QRS bonus rates. Members agreed that the language should be revised.

Ms. Sheila Hanson, speaking on behalf of Common Good Iowa, stated she agreed with the comments made by committee members. She asserted that the rulemaking is contrary to the statutory language and explained that recent rate increases have focused only on registered providers.

Committee members expressed support for the rulemaking other than the content of table 4 regarding nonregistered providers. After a discussion with Mr. Jack Ewing regarding what procedural options were available to the committee regarding table 4, members made a motion for a session suspension of the amendment to table 4. Members asked if such a suspension would cause affected providers to lose the rate increase already in effect, and Ms. Harvey stated it would.

Committee members disagreed with comments previously made by other members and expressed support for the rulemaking as written, asserting it reflects legislative intent and should be revised legislatively to address any ambiguity. Members asked if nonregistered providers are primarily located in rural Iowa, where lower population leads to fewer available providers. Ms. Harvey stated that is correct and summarized recent legislative action to respond to such "child care deserts." Members asked Mr. Ewing if the committee would have an opportunity to review this issue and take action as part of the rulemaking process at a future meeting, and he explained that is not clear and will depend on whether the department will seek to revise the language of the emergency rulemaking as part of the double-barreled rulemaking process.

Committee members making the motion for a session suspension concluded by asserting that the underlying issue is not the availability of child care but whether child care providers choose to register, that the legislative language is clear regarding which rate ceilings should be increased, and that the department should not adopt rules contrary to statutory language for the sake of carrying out legislative intent.

Action. A motion for a session suspension of the amendment to table 4 of ARC 5731C failed on a 2-8 roll call vote.

Next Meeting. The next committee meeting will be held in Room 103, Statehouse, on Tuesday, August 17, 2021, beginning at 9:00 a.m. Instructions for participation by videoconference can be found at the committee's Internet site below.

LSA Staff Contacts: Jack Ewing, 515.281.6048 or Jack.Ewing@legis.iowa.gov;
Kate O'Connor, 515.281.6329 or Kate.OConnor@legis.iowa.gov

Internet Site: www.legis.iowa.gov/committees/committee?groupID=705

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