



# Legal Overview for the Council on Health and Human Services

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**Health and  
Human Services**

## Disclaimer

This overview incorporates portions of an outline prepared by former AAG to HHS, Heather Adams. This outline provides a general overview of laws and is not intended to cover all applicable laws or the nuances of applicable laws. This document does not constitute legal advice. Specific questions should be directed to council staff and HHS legal counsel, Jancy Nielson or Kayla Burkhiser Reynolds.

## Purpose and Authority

1. The Council on Health and Human Services (Council) is created by statute and mandated by Iowa Code chapter 217.
2. The council is established within the Department of Health and Human Services (HHS) to act as an advisory body on matters within the jurisdiction of HHS.
3. Iowa Code chapter 217.3 provides that the Council shall have the following powers and duties:
  - a. Organize annually and select a chairperson and vice chairperson.
  - b. Advise the department on conduct of the department and the implementation of all services and program administered by the department.
  - c. Report immediately to the governor any failure by the department to carry out any of the policy decisions or directives of the department.
  - d. Advise and make recommendations to the department on the budget of the department prior to submission to submission to the governor.
  - e. Make recommendations to the department to ensure that all programs administered or services rendered by the department are coordinated and void of duplication from various departments.
  - f. Recommend to the governor the names of individuals qualified for the position of director when a vacancy exists in office.
4. The council may establish and utilize ad hoc advisory committees as determined necessary to advise the council related to the subject matter under the purview of the department, including but not limited to child and family services, behavioral health, public health, and the department's interactions with the juvenile justice system. The council shall establish appointment provisions, membership terms, operating guidelines, and other operational requirements for committees established pursuant to section 217.3A.
5. Members should read – and reread – the laws governing the council.
  - a. Staff, other council members, prior minutes of meetings, recent legislation, and websites are good sources of information, but council members are staggered for a reason: new council members bring a new perspective and vitality.
  - b. HHS Council may not expand their authority beyond that granted by law.

6. A council's mission is always serving a public purpose. When serving on the Council on Health and Human Services, you are representing the citizens of Iowa; always make decisions with the council's public purpose in mind.

## Membership

1. The council shall consist of nine voting members appointed by the governor subject to confirmation by the senate.
2. Appointments are based on the interest in public affairs, good judgment, knowledge and ability in the field of health and human services.
  - a. Appointments shall be made to provide a diversity of interest and point of view in the membership without regard to religious opinions or affiliations.
3. The voting members of the council shall serve for six-year staggered terms.

## Decision Making

1. No single HHS Council member makes decisions for HHS Council.
2. A "quorum" is required for any official council decision-making via a vote. A majority of HHS Council members (5 of 9) constitutes a quorum for HHS Council.
3. The votes of all members must be clear and public both during the meeting and in the minutes – secret voting is prohibited.

## Open Meetings Law

1. Iowa Code chapter 21 governs all council meetings. Chapter 21 requires four things: (1) public notice; (2) an agenda must be posted; (3) the public must be allowed to be present; (4) minutes must be kept.
2. HHS is required to provide virtual, remote, teleconference, and other hybrid options for the members of the council.<sup>1</sup> Participating virtually or by other electronic methods constitute presence at the meeting for all legal purposes.
3. Exercise caution – the definition of "meeting" in Chapter 22 "means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body's policy-making duties."

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<sup>1</sup> See Iowa Code 21.8(1) (Code 2024).

- a. If a majority of the council is present either in person or electronically, do not discuss council business unless you are at a council meeting preceded by proper notice to the public and a posted agenda.
- b. Ministerial and social gatherings are not considered meetings so long as council business is not discussed.

## Agendas

1. Agendas aren't just an organizational tool; it is also a guiding document for public notice. You should be sure to:
  - a. Post agendas at least 24 hours in advance; and
  - b. Clearly outline all topics going to be discussed and which topics will require a vote be taken.
2. To determine whether the council's agendas are transparent and easy to understand for the public, it is a good rule of thumb to read the council's posted agendas for the previous year. If it is hard to determine what the council discussed or voted on, the council might look to include more detail in its agendas.
3. Follow the posted agenda. If a new idea or topic comes up at council, it should be placed on the next meeting's agenda, unless there is an emergency requiring immediate action.

## Transparency and the Public

1. While the public does not have the right to participate, they do have the right to observe, record, and photograph open sessions unless uses of technology obstructs the meeting.
2. HHS Council may provide opportunities for public input at meetings.

## Keeping Minutes

1. In the spirit of transparency, keeping minutes creates a permanent record of who met, when they met, discussion and decision points, and by what votes decisions were solidified.
2. Minutes are a vital tool for conducting the public's business in a transparent way. They also:
  - a. Help the council with organization; and
  - b. Allow Iowans to review public action taken on their behalf.
3. Mechanics of Minutes. Minutes must always include:
  - a. The date, time, and place of a meeting;
  - b. Members present; and
  - c. Actions taken, with sufficient information to reflect member's votes.
4. If a closed session is held:

- a. The minutes of the open session must include the legal grounds for a closed session;
  - b. The vote of each member on whether to go into closed session; and
  - c. Any final action taken.
  - d. NO FINAL VOTES MAY BE TAKEN IN CLOSED SESSION.
- 5. Alternative meeting modalities. If a meeting has to be held telephonically, not reasonably accessible to the public, or in cases of emergency, the minutes must explain the legal basis for doing so.
  - a. Emergency meetings are those with less than 24 hours notice.

## Closed Sessions

1. Closed sessions are to be taken very seriously. Never ask the public to leave a meeting so that the council may discuss in private unless there is a sound legal basis to do so.
2. The council cannot go into closed session unless the council first meets in an open session with all proper notice requirements (24 hour notice and a posted agenda).
3. The council is only allowed to close an open session if clearly given authority in statute. For example, a board or council is allowed to go into closed session to discuss:
  - a. Pending litigation with counsel;
  - b. Confidential records;
  - c. Certain personnel matters; or
  - d. The decision to be issued in a contested case.
4. To be certain that there are sound legal grounds for entering a closed session, always consult with the council's assigned legal counsel. Be sure to get the advice in writing or ensure that the advice is reported in the meeting minutes.
5. After announcing the legal basis for a closed session, be sure to take a roll call vote.
  - a. Council can only enter closed session with an affirmative vote of two-thirds of the members or all members present.
6. After entering a closed session, the council must:
  - a. Record the session and retain the recording for at least a year.
  - b. Take detailed minutes.
  - c. Limit the discussion to the announced basis for the closed session.
7. Final action can only be taken in open session. When closed discussion has finished, return to open session, allow individuals back into the room, make a motion, and take a vote on any final action in open session.

## Public Records Law

1. Boards and councils are subject to Iowa Code Chapter 22 – Public Records Law.
  - a. The council's records are open to public examination unless they are specifically made confidential under law.
2. Public records can be in any form, including e-mail. Do not commingle official council business emails with your personal email. Council staff or assigned legal counsel can advise on methods to separate emails.
3. It is prudent to assume any record you create or receive as a council member is a public record that may be open to the public upon request.
4. The public records contact for your council is HHS's Open Records Compliance Officer.
  - a. Requests you receive for public records should be referred to the council's public records contact.
  - b. The public records contact is familiar with the law and can assure proper response to requests for public records.
5. Exercise caution in creating or receiving any records that may be confidential. It is rare for council members to receive confidential records, however, there may be severe penalties for releasing certain types of confidential records.
6. Examples of records that may be fully or partially confidential include, but are not limited to:
  - a. Applications containing social security numbers or credit card numbers;
  - b. Mental health or other health records;
  - c. Complaints against licensees; or
  - d. Criminal history background reports.

## Open Meetings Enforcement

1. Actions to enforce Iowa's Open Meetings and Public Records laws can be brought by any of the following:
  - a. A citizen of Iowa;
  - b. A person who pays taxes of any type to the state of Iowa;
  - c. A person individually aggrieved by a violation;
  - d. A county attorney; and
  - e. The Attorney General.
2. Actions can be brought either in court or before the Iowa Public Information Board (IPIB)
3. Complaints about alleged violations may be made directly to:
  - a. The council;
  - b. The council's staff or counsel;
  - c. The Ombudsman's Office;
  - d. The Attorney General;



- e. The Governor's Office;
  - f. The Iowa Public Information Board (IPIB); or
  - g. Elected Officials.
4. Take all violations very seriously. Remedies include removal from office upon a second violation, damages up to \$2,500 for a knowing violation, expenses and attorneys fees, and injunctive relief.
  5. Even honest mistakes can be violations of Iowa's Sunshine laws, but council members can avoid personal liability by relying upon the advice of counsel, formally given in writing or provided orally and memorialized in the meeting minutes.

## Additional Laws Governing Council Members

### New Member Training

1. HF 706, enacted on July 1, 2025 requires any newly appointed public officials to governmental bodies to complete a short 1-2 hour training on the governmental body's responsibilities under Iowa Code Chapters 21 and 22.
2. Iowa HHS's Open Records Officer will provide additional information regarding this training offered by the Iowa Public Information Board (IPIB).

### Gift Law

Council members may not accept gifts from individuals you regulate or contract with.

1. This is defined as receiving something for free or for less than it is worth.
2. Ask your assigned legal counsel, council staff, or the Ethics and Campaign Disclosure Board for guidance on gift law compliance.

### Sales or Leases of Goods or Services

If you sell or lease goods or services to those regulated by your council, ask your assigned counsel, council staff, or the Ethics and Campaign Disclosure Board for guidance on applicable laws.

### Lobbying

Iowa HHS has a designated team of registered government relations liaisons who represent the council. Individual council members should not lobby legislators on behalf of the council or the Department. Engage your assigned legal counsel if you have specific lobbying questions.

### Conflicts of Interest

Council members should avoid conflicts of interest, but how and when they arise can be unique to certain boards and councils. Iowa law often requires the appointment of at least some persons who are regulated by the Board.

Any time your objectivity may be impaired or there is an appearance of impropriety, seek advice from your assigned legal counsel.

## Judicial Review

All council action or inaction is subject to review in court on a variety of grounds including whether action is:

- a. Compliant with the United States or Iowa Constitutions, statutes, or rules.
- b. Consistent, nonarbitrary, logical, and reasonable.
- c. Supported by facts and law.

## Litigation

If the council or its individual members are sued related to council action, members acting in good faith in their official council capacity are generally defended by the Attorney General and indemnified by the State.