

STATE OF IOWA DEPARTMENT OF
Health AND **Human**
SERVICES

Legal Overview for the Medical Assistance
Advisory Council (MAAC)

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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. MAAC is mandated by 42 CFR 431.12, based on section 1902(a)(4) of the federal Social Security Act, and is established in Iowa Code chapter 249A.4B (Code 2023).
2. The purpose of MAAC is to “Advise the Director about health and medical care services under the medical assistance program.”
3. All state boards and commissions, including this council, may only work within the authority bestowed upon it by the legislature and may not expand it. The duties of the council are found in Iowa Code chapter 249A.4B(4):
 - “4. Based upon the deliberations of the council, the council shall make recommendations to the director regarding the budget, policy, and administration of the medical assistance program.”
4. A council’s mission is always serving a public purpose. While serving on this, or any, council, you are representing Iowans. Always make decisions with that public purpose and service to Iowans in mind.

MEMBERSHIP

1. The council is comprised of ten voting members and nine non-voting members. Five voting members must be professional, or business entity members selected by the organizations listed in 249A.4B(3)(a). The remaining five must be public members, with at least one member being a recipient of medical assistance.
2. The nine non-voting members consist of:
 - a. The director’s designee overseeing public health
 - b. The long-term care ombudsman, or their designee
 - c. The dean of DMU, or their designee
 - d. The dean of the University of Iowa College of Medicine, or their designee
 - e. A member of the Hawk-i board
 - f. Two members of the State House of Representatives
 - g. Two members of the State Senate

RESPONSIBILITIES AND DUTIES

Additional duties and responsibilities of the council can be found in Iowa Administrative Code 441—79.7(3).

- a. *Recommendations.* Recommendations made by the council shall be advisory and not binding upon the department of human services or the professional and business entities represented. The director of the department of human services shall consider the recommendations in the director's preparation of medical assistance budget recommendations to the council on human services, pursuant

to [Iowa Code section 217.3](#) and implementation of medical assistance program policies.

Decision Making

1. No singular member makes decisions for the council. Decisions are made by taking votes at council meetings.
2. A “quorum” of the council is required to conduct business. Quorum for this council constitutes 50% of the current voting members, which would be five voting members.
3. If there is a quorum, a position is carried by two-thirds of the present council members.
4. There are important exceptions, however, such as councils may only go into closed session upon a public vote by two-thirds of the members or all members present.
5. The votes of all members must be public and clear during the meeting and in the minutes. Secret voting is not allowed. Additional quorum requirements and procedures are found in Iowa Administrative Code 441—79.7(4).

Open Meetings Law

1. Iowa Code chapter 21 governs all MAAC 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. Council meetings have the opportunity of participating virtually. The General Assembly enacted a requirement in 2019 requiring that all statutorily established boards, councils, and commissions under HHS’s purview have a virtual option for members. (Iowa Code § 135.12). 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.”
 - 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 – but exercise caution in giving the appearance of an illegal meeting being held.

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. Councils 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 lowans 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. A 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 counsel'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. A board or 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 public information 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.

Sunshine Law 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

GIFT LAW

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

- a. This is defined as receiving something for free or for less than it is worth.
- b. 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 lobbyists 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.