

NURSING BOARD[655]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to adopt new Chapter 19, “Iowa Nurse Assistance Program,” Iowa Administrative Code.

Chapter 19 is being promulgated to provide a program to support the evaluation and monitoring of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public.

Any interested person may make written suggestions or comments on the proposed rules on or before August 25, 2015. Such written materials should be directed to the Executive Director, Iowa Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. E-mail may be sent to rules.comments@iowa.gov. Persons who wish to convey their views orally should contact the Executive Director at (515)281-3256 or at the Board office at the above address by appointment.

Also, there will be a public hearing on August 25, 2015, at 9 a.m. at the Board of Nursing office, 400 S.W. 8th Street, Suite B, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Board and advise of specific needs.

The proposed rules are subject to waiver or variance pursuant to 655—Chapter 15.

The proposed rules were approved by the Board on June 10, 2015.

After analysis and review of this rule making, a fiscal impact has been found. The fiscal impact would include the cost of one new full-time employee and the costs to recruit and hire this individual, along with the costs of new equipment for this individual’s working environment; the cost for committee member expenses, including electronic equipment, pay, and travel expenses; and miscellaneous travel and marketing expenses to educate nurses on the availability of this new program.

After analysis and review of this rule making, there may be an impact on jobs because the Iowa nurse assistance program committee (INAPC) may impose restrictions on the license to practice as a term of the initial agreement or contract until such time as the INAPC receives a report from an approved evaluator and the INAPC determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the initial agreement or contract.

These rules are intended to implement Iowa Code sections 272C.3(1)“k,” 272C.6(4) and 28E.4.

The following amendment is proposed.

Adopt the following **new** 655—Chapter 19:

CHAPTER 19
IOWA NURSE ASSISTANCE PROGRAM

655—19.1(272C) Iowa nurse assistance program committee. Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the Iowa nurse assistance program committee (INAPC), formerly known as the licensee review committee, to implement the Iowa nurse assistance program (INAP). The purpose of the INAPC is to provide a program to support the evaluation and monitoring

of licensees who are impaired as a result of alcohol or drug abuse, dependency, or addiction, or by any mental or physical disorder or disability, while protecting the health, safety and welfare of the public.

655—19.2(272C) Definitions.

“*Approved treatment provider*” means a licensed health care provider with board-approved expertise in substance use disorder or mental or physical health conditions.

“*Board*” means the Iowa board of nursing.

“*Contract*” means the written document executed by an applicant or licensee and the INAPC after the INAPC receives a report from an approved treatment provider, which establishes the terms for participation in the INAP.

“*Impairment*” means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of a diagnosed substance use disorder or any diagnosed mental or physical health condition.

“*INAPC*” or “*committee*” means the Iowa nurse assistance program committee.

“*INAP*” or “*program*” means the Iowa nurse assistance program.

“*Initial agreement*” means the written document establishing the initial terms for participation in the INAP.

“*Participant*” means an applicant or licensee who does any of the following: self-reports an impairment to the program, is referred to the program by the board, signs an initial agreement with the committee, or signs a contract with the committee.

“*Referral by the board*” means the board has determined, with or without having taken disciplinary action, that the applicant or licensee is an appropriate candidate for participation in the program.

“*Self-report*” means an applicant or licensee provides written notification to the committee that the applicant or licensee has been, is, or may be impaired. Information related to impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report.

655—19.3(272C) Organization of the committee. The board shall appoint the members of the INAPC.

19.3(1) Membership. The membership of the INAPC includes, but is not limited to:

- a. The executive director of the board or the director’s designee from the board’s staff;
- b. One board of nursing licensee who has maintained sobriety for a period of no less than two years following successful completion of a recovery program;
- c. One licensed health care provider with expertise in substance use disorders;
- d. One licensed provider with expertise in mental health; and
- e. One public member.

19.3(2) Officers. At the last meeting of each calendar year, the INAPC shall elect a chairperson and a vice chairperson, each of whom will begin serving a one-year term on January 1.

a. The chairperson is responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including guidance and direction concerning negotiation and execution of initial agreements, contracts, and program descriptions and interim restrictions on practice, on behalf of the committee. The INAPC retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

19.3(3) Terms. Committee members, except the executive director or designee, shall be appointed for three-year terms and shall serve for a maximum of three terms. Each term shall expire on December 31 of the third year of the term.

655—19.4(272C) Eligibility.

19.4(1) Self-report. An applicant or a licensee shall self-report an impairment or potential impairment directly to the program.

19.4(2) Board referral. The board may refer an applicant or licensee to the program if a complaint or investigation reveals an impairment or potential impairment and the board determines that the individual

is an appropriate candidate for review by the INAPC. The board may refer a licensee to the program in a public disciplinary order or other public order.

19.4(3) *Review by the INAPC.* The INAPC will determine on a case-by-case basis whether an applicant or licensee who self-reports or is referred by the board is an appropriate candidate for participation in the program. Several factors may lead to the INAPC's determination that an applicant or licensee is ineligible to participate in the program, including but not limited to if the committee finds sufficient evidence that the applicant or licensee:

- a. Diverted drugs for distribution to third parties or for personal profit;
- b. Adulterated, misbranded, or otherwise tampered with drugs intended for a patient;
- c. Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the INAPC;
- d. Participated in the program, or similar programs offered by other states, without success; or
- e. Fails to sign a contract when recommended by the INAPC.

19.4(4) *Discretion.* Eligibility to participate in the program is at the sole discretion of the INAPC. No person is entitled to participate in the program.

19.4(5) *Authority and jurisdiction.* Participation in the program does not divest the board of its authority or jurisdiction over the participant. A participant with an impairment or potential impairment may be eligible to participate in the program while being subject to investigation or discipline by the board for matters other than the alleged impairment.

655—19.5(272C) *Terms of participation.* A participant shall agree to comply with the INAP terms of participation established in the initial agreement and contract. Participants will be responsible for all expenses incurred to comply with the terms imposed by the program. Terms of participation specified in the contract shall include, but not be limited to:

19.5(1) *Duration.* The length of time a participant may participate in the program shall be determined by the INAPC in accordance with the following:

a. Participation in the program for participants impaired as a result of a substance use disorder is set at a minimum of three years. The INAPC may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's nurse assistance program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

b. Length of participation in the program for participants with impairments resulting from mental or physical conditions will vary depending upon the recommendations provided by an approved licensed health care professional and the determination of the INAPC following review of all relevant information.

19.5(2) *Requirements.* The INAPC shall establish terms designed to meet the specific needs of the participant. The committee shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The contract shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein. The committee may establish terms specific to a participant's impairment including, but not limited to: treatment, aftercare, worksite monitoring, chemical screening, further evaluations, structured recovery meetings, therapy, and medication management.

19.5(3) *Practice restrictions.* The INAPC may impose restrictions on the license to practice as a term of the initial agreement or contract until such time as the INAPC receives a report from an approved evaluator and the INAPC determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a licensee is required to agree to restricted practice in accordance with the terms specified in the initial agreement or contract. In the event the licensee refuses to agree to or comply with the practice restrictions, the committee shall refer the licensee to the board for appropriate action.

19.5(4) *Noncompliance.* Noncompliance is the failure to adhere to the terms of the initial agreement or contract. Participants shall promptly notify the INAPC of any instances of noncompliance, including relapse. Instances of noncompliance shall initially be reviewed by the INAP program coordinator. The INAP program coordinator may refer instances of noncompliance to the INAPC for further review of

continued participation in the program. The INAPC may refer instances of noncompliance to the board for possible disciplinary action.

655—19.6(272C) Limitations. Participation in the INAP shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. A participant who violates a statute or board administrative rule which is unrelated to impairment shall be referred to the board for appropriate action.

655—19.7(272C) Confidentiality. Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about participants in the program shall not be disclosed except as provided in this rule.

19.7(1) The INAPC is authorized, pursuant to Iowa Code section 272C.6(4), to communicate information about a current or former INAP participant to the applicable regulatory authorities or impaired licensee programs in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed or in which the participant seeks licensure. INAP participants must report their participation to the applicable nurse assistance program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

19.7(2) The INAPC is authorized to communicate information about an INAP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

19.7(3) The INAPC is authorized to communicate information about an INAP participant to the board in the event a participant does not comply with the terms of the contract as set forth in rule 655—19.5(272C). The INAPC may provide the board with a participant's INAP file in the event the participant does not comply with the terms of the contract and the INAPC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the INAP in the public disciplinary documents. The INAPC is also authorized to communicate information about a participant to the board in the event the participant is under investigation by the board.

19.7(4) The INAPC is authorized to communicate information about a current or former INAP participant to the board if reliable information held by the INAPC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include in the public disciplinary documents information about a licensee's participation if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

655—19.8(28E) Authority for 28E agreements. The INAPC may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions who self-report and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action.

These rules are intended to implement Iowa Code sections 272C.3(1) "k," 272C.6(4) and 28E.4.