

**DENTAL BOARD[650]**

**Adopted and Filed**

**Rule making related to licensure**

The Dental Board hereby amends Chapter 7, “Rules,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 147.76 and 2020 Iowa Acts, House File 2389.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, 2020 Iowa Acts, House File 2389.

*Purpose and Summary*

These amendments implement 2020 Iowa Acts, House File 2389, and provide updates to the requirements for petitions for rule making and waivers and reporting requirements related to the disposition thereof.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on February 24, 2021, as **ARC 5441C**. No public comments were received. One technical change from the Notice has been made: Subrules 7.4(11) to 7.4(16) have been renumbered to maintain the sequential order of the subrules in the rule.

*Adoption of Rule Making*

This rule making was adopted by the Board on April 2, 2021.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, there is no impact on jobs since the legislation affects requests for rule waivers and does not directly affect requirements for licensure or the ability to practice dentistry.

*Waivers*

The rule making updates the requirements for a petition of a rule waiver and is not subject to requests for waiver under normal circumstances.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on August 4, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule 650—7.1(17A,147,153) as follows:

**650—7.1(17A,147,153) Petition for rule making.**

**7.1(1)** and **7.1(2)** No change.

**7.1(3)** The petition is filed when it is received by the board. Within 14 days after the filing of a petition is received, the board shall submit a copy of the petition and any accompanying brief to the administrative rules coordinator and to the administrative rules review committee (ARRC).

**7.1(4)** Upon receipt of the petition, the board shall take the petition under advisement. The board may request additional information from the petitioner or the board office. Upon request by the petitioner, the board shall schedule a brief and informal meeting between the petitioner and the board, a member of the board, or a member of board staff to discuss the petition. The board may also solicit comments from any person on the substance of the petition. Any person may submit to the board comments on the substance of the petition.

**7.1(5)** No change.

**7.1(6)** The board shall deny the petition or initiate rule-making procedures within 60 days after filing of the petition. In the case of a denial, the board shall state in writing its reasons for the denial. The petitioner and the ARRC shall be notified by mail in writing of the board action taken.

This rule is intended to implement Iowa Code sections 17A.3(1) and 17A.7.

ITEM 2. Amend rule 650—7.4(17A,147,153) as follows:

**650—7.4(17A,147,153) Waivers.**

**7.4(1) Definition.** For purposes of this rule, “a waiver ~~or variance~~” means action by the board that suspends, in whole or in part, the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. ~~For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”~~

**7.4(2)** and **7.4(3)** No change.

**7.4(4) Criteria for waiver.** In response to a petition ~~completed pursuant to subrule 7.4(6)~~, the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

*a. to d.* No change.

**7.4(5) Filing of petition.** A petition for a waiver must be submitted in writing to the board as follows:

*a. to c.* No change.

*d.* A petition is deemed filed when it is received at the board’s office. A petition ~~should be sent~~ may be filed using the online form, emailed to IDB@iowa.gov, or mailed to the Iowa Dental Board of Dental Examiners, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. The petition must be typewritten or legibly handwritten in ink and substantially conform to the form include the content specified in 650—7.5(17A,147,153) subrule 7.4(6).

**7.4(6) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

*a.* The name, address, email address, and telephone number of the person for whom a waiver is being requested and a reference to any related contested case. Also, the name, address, email address, and telephone number of the petitioner’s legal representative, if applicable, and a statement indicating the person to whom communications concerning the petition should be directed.

*b. and c.* No change.

*d.* The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.4(4). ~~This statement shall include a signed statement from the~~ The

petitioner attesting shall attest to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver.

~~e.~~—A history of any prior contacts between the board and the petitioner relating to the regulated activity, license, registration, certification, or permit affected by the proposed waiver, including a description of each affected license, registration, certification, or permit held by the requester, any formal charges filed, any notices of violation, contested case hearings, or investigations relating to the regulated activity, license, registration, certification or permit.

~~f.~~—Any information known to the requester regarding the board's action in similar circumstances.

~~g.~~—The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the grant of a waiver.

~~h.~~—The name, address, and telephone number of any person who would be adversely affected by the grant of the petition.

~~i. e.~~ The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

~~j.~~—Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

**7.4(7) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's executive director, a committee of the board, or a quorum of the board.

**7.4(8) Notice.** The board shall acknowledge a petition upon receipt. Except where otherwise provided by law, every petition shall be served by the petitioner upon each of the parties of record of the proceeding, and on all other persons identified in the petition for waiver as affected by the petition, simultaneously with the filing. The petitioner shall serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided. In addition, the board may give notice to other persons. The board shall provide public notice by including any petitions for waiver on the agenda of the board meeting during which the petition for waiver will be discussed.

**7.4(9) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case. A person who objects to a denial of a waiver in proceedings other than a contested case hearing may make an informal appearance before the board to request reconsideration.

**7.4(10) 7.4(9) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

a. and b. No change.

c. Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

~~d.~~ Administrative deadlines. When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

~~e. d.~~ Conditions. The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

~~f. e.~~ Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

~~g. f.~~ Time for ruling. The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than

the time at which the final decision in that contested case is issued. The board may issue a waiver in conjunction with an application that remains in place in perpetuity.

~~h. g.~~ *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

~~i. h.~~ *Service of order.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains, ~~and to any other person entitled to such notice by any provision of law.~~

~~i.~~ *Delegation.* The board may authorize staff to administratively approve additional petitions for waiver under the same parameters as an approved petition.

~~7.4(11)~~ **7.4(10)** *Public availability.* All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

~~7.4(12)~~ **7.4(11)** *Summary reports Submission of waiver information.* Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee. Within 60 days of granting or denying a waiver, the board shall make a submission on the Internet site established pursuant to Iowa Code section 17A.9A for the submission of waiver information. The submission shall identify the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, and a citation to the statutory provisions implemented by these rules. The submission shall include a general summary of the reasons justifying the board's action on waiver requests. If practical, the submission shall detail the extent to which the granting of a waiver has established a precedent for additional waivers and the extent to which the granting of waiver has affected the general applicability of the rule itself.

~~7.4(13)~~ **7.4(12)** *Cancellation of a waiver.* A waiver issued by the board pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

*a. and b.* No change.

*c.* The subject of the waiver order has failed to comply with all conditions contained in the order;  
or

*d.* The rule cited in the waiver has been amended since the waiver was issued.

~~7.4(14)~~ **7.4(13)** *Violations.* A violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

~~7.4(15)~~ **7.4(14)** *Defense.* After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

~~7.4(16)~~ **7.4(15)** *Judicial review.* Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapters 17A, 147, and 153.

ITEM 3. Rescind and reserve rule **650—7.5(17A,147,153)**.

[Filed 6/1/21, effective 8/4/21]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/30/21.