

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

Proposing rulemaking related to plumbing and mechanical systems complaints and investigations and providing an opportunity for public comment

The Department of Inspections, Appeals, and Licensing hereby proposes to rescind Chapter 34, “Plumbing and Mechanical Systems Board—Complaints and Investigations,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 105.4 and 272C.3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 105 and 272C.

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 34 and implements Iowa Code chapters 105 and 272C in accordance with the goals of Executive Order 10 (January 10, 2023). The intended benefit of this chapter is to ensure that the public and licensees are aware of the complaint and investigation process and understand their rights and responsibilities during this process. It provides information regarding the processes for submitting a complaint; requires licensees to report malpractice, disciplinary actions, or regulatory infractions of other licensees; and describes the investigative process, including the issuance of investigatory subpoenas, peer review committees, and Plumbing and Mechanical Systems Board appearances.

No public comments were received on the published Regulatory Analysis for this chapter (IAB 11/1/23). One nonsubstantive change has been made to the proposed chapter from the Regulatory Analysis.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 31, 2024. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: ashleigh.hackel@dia.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 30, 2024 9:20 a.m.	6200 Park Avenue Des Moines, Iowa
January 31, 2024 9:20 a.m.	6200 Park Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

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

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking 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).

The following rulemaking action is proposed:

ITEM 1. Rescind 641—Chapter 34 and adopt the following **new** chapter in lieu thereof:

CHAPTER 34

PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS

641—34.1(272C) Complaints.

34.1(1) Complaints can be submitted online, in writing, or verbally and should include the name and contact information of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated by the board.

34.1(2) A person is not civilly liable for filing a complaint in good faith with the board, or for cooperating with a board investigation per Iowa Code section 272C.8.

641—34.2(272C) Report of malpractice claims or actions or disciplinary actions. The licensee will submit any judgment or settlement in a malpractice claim or any disciplinary action taken by another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

641—34.3(272C) Report of acts or omissions. A licensee having knowledge of rules violations committed by another licensee will file a report to the board. The report will include the name and contact information of the licensee and the date, time, and place of the incident.

641—34.4(272C) Investigation of complaints or reports. Board staff may request additional information, solicit a response from the licensee, subpoena records, conduct interviews, gather evidence, and perform other investigatory duties as necessary to inform the board.

641—34.5(17A,272C) Issuance of investigatory subpoenas.

34.5(1) The board executive officer or designee may, upon the written request of a board investigator or on the executive officer's own initiative, subpoena books, papers, records, and other real evidence that are necessary for the board to decide whether to initiate a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

34.5(2) Each subpoena will contain:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production or inspection and copying;
- d. The deadline for filing a motion to quash or modify the subpoena;
- e. The signature, address and telephone number of the board executive officer or designee;
- f. The date of issuance;
- g. A return of service.

34.5(3) A person can challenge the subpoena by filing a motion to quash describing the legal justification for the motion within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days.

34.5(4) Upon receipt of a timely motion to quash or modify a subpoena, an administrative law judge will issue a decision. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

34.5(5) A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving the board executive officer, either in person, by email, or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

34.5(6) If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

641—34.6(272C) Peer review.

34.6(1) A complaint may be assigned to a peer reviewer for review and report to the board.

34.6(2) The board determines what complaints or other matters are referred to a peer reviewer.

34.6(3) Peer reviewers are not liable for acts, omissions, or decisions made in connection with service made in good faith.

34.6(4) The peer reviewer shall maintain confidentiality pursuant to Iowa Code section 272C.6.

641—34.7(17A) Appearance. The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board executive officer assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.