Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 481—Chapters 882, 887, 893, 898
"Discipline for Marital and Family Therapists, Mental Health Counselors, Behavior Analysts, Psychologists, and Social Workers"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A, 147, 154B, 154C, 154D and 272C

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A, 147, 154B, 154C, 154D and 272C

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

October 22, 2024 9 to 9:30 a.m.	6200 Park Avenue Des Moines, Iowa Via videoconference call: meet.google.com/mku-itia-ciq Or dial: 1.573.342.3106 PIN: 861 856 486#

Public Comment

Any interested person may submit written or oral comments concerning this Regulatory Analysis. Written or oral comments in response to this Regulatory Analysis must be received by the Department of Inspections, Appeals, and Licensing no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Purpose and Summary

This proposed chapter provides protection to Iowans because it publicly defines disciplinary options when a mental health counselor, marriage and family therapist, behavior analyst, psychologist, or social worker fails to provide the standard of care. This is important to both the public and the licensee because it creates a shared understanding of what is and is not appropriate for certain types of licensed individuals in the state of Iowa. When professional standards are not met, it can subject a licensee to discipline against the licensee's license. Iowans have the ability to submit a complaint to the licensing board, which can then investigate the allegation. The Board of Behavioral Health Professionals has the ability to seek discipline against the licensee for those items outlined, ensuring that the public is protected.

The 19 boards in the legacy Department of Health and Human Services (HHS) Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This chapter contains only

those disciplinary grounds that are unique to the Board and are therefore excluded from the general disciplinary chapter.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

While there are no known costs to the public, professional standards of practice are undoubtedly associated with costs to the licensed professional. The rules in this chapter are related to standards of care, so there would be a cost to the practitioner in taking the needed time to review prevailing standards of care in medical journals, etc. The Board is unable to assess a cost related to this specific requirement.

Licensees may also be required to pay a civil penalty fee to satisfy disciplinary action. Disciplinary fines are capped at $1,000.

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 1.0 full-time equivalent (FTE) position. This includes responding to questions from the public and licensees related to practice standards, continuing education, Board meeting administration, etc. The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

- Classes of persons that will benefit from the proposed rulemaking:

The intended benefit of this chapter is to ensure public safety and maintain a high level of care for Iowans. The Board receives a number of complaints and regularly issues discipline. The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. The Board initiated 27 public discipline actions during that two-year period. The Board has approximately 9,200 active licensees.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

- Qualitative description of impact:

Establishing minimum requirements and imposing discipline on licensees when requirements are not met ensures safety for the licensee and consumer. The cost of inaction would increase the potential for injury to the public and would leave the public without a method to file a complaint or seek discipline against a licensee who violates the standards of care.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

Costs to the agency are for the staff time needed to manage Board activities, which include managing complaints and conducting investigations when a licensee violates a practice standard. The time needed to manage this provision is generally in the form of responding to questions related to complaints and the act of investigating a case. An executive officer supports the full scope of work of this Board at approximately 1.0 FTE position.

Staff salaries to support the work of the Board are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the Fund to cover the operations of the regulated professional licensing boards.

- Anticipated effect on state revenues:

Costs associated with implementing this chapter are paid by individual licensees or establishments, not the State. Staff salaries to support the work of the Board are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards.

Disciplinary fees collected under this authority go to the General Fund. In 2022, $1,000 in penalties was paid into the General Fund for disciplinary fees assessed by the Board.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The Board receives a number of complaints each year. In 2021, the Board received 120 complaints, and in 2022, it received 113. The Board initiated 27 public discipline actions during that two-year period. Licensees routinely provide mental health services to Iowans. Licensees who fail to meet practice standards have the potential to inflict serious harm to vulnerable Iowans who receive their services, so the Board believes that regulation is necessary.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

The Board has not identified a less restrictive alternative to public protection. There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important in order to ensure that Iowans receive health care from competent practitioners. There has been some standardization of consideration of criminal convictions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The 19 Boards in the legacy HHS Bureau of Professional Licensure have similar disciplinary standards for all professions. For this reason, one shared disciplinary chapter has been created that applies to all professions. This proposed chapter contains only those disciplinary grounds that are unique to the mental health counselor, marriage and family therapist, behavior analyst, psychologist, and social work professions and are therefore excluded from the general disciplinary chapter. The Board has not identified any other alternatives to these discipline rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

There could be a consideration of reducing or eliminating professional standards and grounds for discipline, but the Board believes that these requirements are important to ensure Iowans receive services from competent practitioners.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking relates to high-stakes public safety concerns that are present whether the business is a small business or a large organization. The chapter is meant to ensure public safety in terms of practice standards for licensees. While some licensees likely are running a small business of their own, some also work for large organizations, such as hospital systems. To exempt small businesses from adhering to this chapter would jeopardize any member of the public who sought services from that small business. The risk to the public is greater than the potential harm or cost to the small business.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 481—Chapter 882:

CHAPTER 882
DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS, MENTAL HEALTH COUNSELORS, BEHAVIOR ANALYSTS, PSYCHOLOGISTS, AND SOCIAL WORKERS

481—882.1(154D,272C) Mental health counselors, marriage and family therapists, and behavioral analysts—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of any of the following acts or offenses or those listed in 481—Chapter 504:

882.1(1) Failure to comply with the national association's code of ethics.

a. Marital and family therapists. Failure to comply with the current American Association for Marriage and Family Therapy (AAMFT) Code of Ethics revised January 2015, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the AAMFT's website.

b. Mental health counselors. Failure to comply with the current Code of Ethics of the American Counseling Association (ACA) published 2014, which is hereby adopted by reference. Copies of the Code of Ethics may be obtained from the ACA website.

c. Behavior analysts and assistant behavior analysts. Failure to comply with the current Behavior Analyst Certification Board (BACB) Professional and Ethical Compliance Code for Behavior Analysts published January 2023, which is hereby adopted by reference. Copies of the Professional and Ethical Compliance Code may be obtained from the BACB website.

882.1(2) Sexual relationships.

a. Current clients. A licensee shall not engage in sexual activities or sexual contact with a client, regardless of whether such contact is consensual or nonconsensual.

b. Former clients. A licensee shall not engage in sexual activities or sexual contact with a former client within the five years following termination of the client relationship. A licensee shall not engage in sexual activities or sexual contact with a former client, regardless of the length of time elapsed since termination of the client relationship, if the client has a history of physical, emotional, or sexual abuse or if the client has ever been diagnosed with any form of psychosis or personality disorder or if the client is likely to remain in need of therapy due to the intensity or chronicity of a problem.

c. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's spouse or significant other.

d. A licensee shall not engage in sexual activities or sexual contact with a client's or former client's relative within the second degree of consanguinity (client's parent, grandparent, child, grandchild, or sibling) when there is a risk of exploitation or potential harm to a client or former client.

e. A licensee shall not provide clinical services to an individual with whom the licensee has had prior sexual contact.

882.1(3) Physical contact. A licensee shall not engage in physical contact with a client when there is a possibility of psychological harm to the client as a result of the contact. A licensee who engages in appropriate physical contact with a client is responsible for setting clear, appropriate, and culturally and age-sensitive boundaries that govern such contact.

481—882.2(147,272C) Psychologists—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of the following offense or those listed in 481—Chapter 504: failure to comply with the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association, as published in the December 2002 edition of American Psychologist and including amendments effective January 1, 2017, hereby adopted by reference. Copies of the Ethical Principles of Psychologists and Code of Conduct may be obtained from the American Psychological Association's website at www.apa.org.

481—882.3(272C) Social workers—grounds for discipline. The board may impose any of the disciplinary sanctions provided in Iowa Code section 272C.3 when the board determines that the licensee is guilty of the following offense or those listed in 481—Chapter 504: violation of a regulation, rule, or law of this state, another state, or the United States that relates to the practice of social work, including but not limited to the rules of conduct found in rule 481—884.4(154C).

These rules are intended to implement Iowa Code chapters 147, 154B, 154C, 154D and 272C.

ITEM 2. Rescind and reserve **481—Chapter 887**.

ITEM 3. Rescind and reserve **481—Chapter 893**.

ITEM 4. Rescind and reserve **481—Chapter 898**.