Regulatory Analysis

Notice of Intended Action to be published: 653—Chapter 1
"Administrative and Regulatory Authority"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 17A and 147
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 147

Public Hearing

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

November 5, 2024 9 a.m.	6200 Park Avenue Des Moines, Iowa Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Emily DeRonde
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Email: emily.deronde@dia.iowa.gov

Purpose and Summary

This proposed rulemaking provides the public with information relating to the mission of the Board of Medicine. The rules describe the organization of the Board and its statutory authority to oversee the practice of medicine and enforce the minimum standards in the practice of medicine.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs to the public to comply with this rulemaking. The agency incurs costs in the form of staff to support the work of the Board. Staff salaries 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. There are costs paid to the Board members to attend regular Board business in the form of a $50 per diem for each Board member's travel expenses.

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

The public benefits from the rulemaking. The Board's work serves to protect public health and safety. This rulemaking provides an overview of the work the Board regularly engages in. Additionally, the rulemaking sets guidelines for the meetings and structure of the Board. The open-session meetings provide an opportunity for the public to participate in the discussion of matters of public concern.

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 licenses and regulates over 15,000 medical licenses. In order to regulate the profession as directed in the Iowa Code, administrative processes are needed to properly issue licenses, investigate complaints, and run audits on compliance with Board rules.

- Qualitative description of impact:

Iowa statutes require the regulation and licensing of medical professionals to ensure the health and safety of members of the public who are receiving services and care from the licensed professionals. This rulemaking provides the administrative and regulatory authority for the Board to ensure rules are being utilized and complied with by licensees.

3. Costs to the State:

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

There are no costs to the public to comply with this rulemaking. The agency incurs costs in the form of staff to support the work of the Board. Staff salaries are covered by the fund. Licensing fees go to the fund to cover the operations of the regulated professional licensing boards. There are costs paid to the Board members to attend regular Board business in the form of a $50 per diem for each Board member's travel expenses.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues.

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

Costs related to this rulemaking are not generally incurred by the public. Licensees may incur costs related to initial and renewal licensing fees; duplicate certificates; or completing a physical, mental, substance abuse, or clinical competency examination as ordered by a board. The benefit of the rulemaking is achieved since Board administrative processes and expectations of licensees are established within the rulemaking in accordance with statute.

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

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

6. Alternative methods considered by the agency:

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

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

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

The Department's Licensing Division continues to assess and implement opportunities to increase efficiencies and standardize board processes across all professional licensing boards. The Department has not identified any less costly or less intrusive methods for achieving the purpose of this rulemaking.

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?

These rules publicly outline administrative processes of the professional licensing boards. The rules apply equally to all businesses. If a small business identifies a rule that is overly burdensome and the goals of which could be achieved in a manner that would reduce the impact on the small business, it may utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 653—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
ADMINISTRATIVE AND REGULATORY AUTHORITY

653—1.1(17A,147) Definitions. The following definitions are applicable to the rules of the board of medicine:

"Acupuncture" means a form of health care developed from traditional and modern oriental medical concepts that employs oriental medical diagnosis and treatment, and adjunctive therapies and diagnostic techniques, for the promotion, maintenance, and restoration of health and the prevention of disease.

"Acupuncturist" means a person licensed to practice acupuncture in this state.

"Alternate member" means a person who is qualified under Iowa Code section 148.2A to substitute for a board member who is disqualified or becomes unavailable for a contested case hearing. An alternate board member is deemed a member of the board only for the hearing panel(s) for which the alternate board member serves.

"Board" means the board of medicine of the state of Iowa.

"Department" means the Iowa department of inspections, appeals, and licensing.

"Director" means the director of the department.

"Disciplinary proceeding" means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"License" means a certificate issued to a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

"Licensee" means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, or acupuncture under the laws of the state of Iowa.

"Licensee discipline" or *"discipline"* means any sanction the board may impose upon its licensees for conduct that threatens or denies citizens of this state a high standard of professional care.

"Malpractice" means any error or omission, unreasonable lack of skill, or failure to maintain a reasonable standard of care by a physician in the practice of the physician's profession.

"Medical practice Acts" refers to Iowa Code chapters 147 and 148.

"Order" means a requirement, procedure or standard of specific or limited application adopted by the board relating to any matter the board is authorized to act upon, including the professional conduct of licensees and the examination for licensure and licensure of any person under the laws of this state.

"Peer review" means evaluation of professional services rendered by a professional practitioner.

"Peer reviewer(s)" means one or more persons acting in a peer review capacity who have been appointed by the board for such purpose.

"Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery under the laws of this state.

"Practice of acupuncture" means the insertion of acupuncture needles and the application of moxibustion to specific areas of the human body based upon oriental medical diagnosis as a primary mode of therapy. Adjunctive therapies within the scope of acupuncture may include manual, mechanical, thermal, electrical, and electromagnetic treatment, and the recommendation of dietary guidelines and therapeutic exercise based on traditional oriental medical concepts.

"The practice of medicine and surgery" means holding one's self out as being able to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition and who shall either offer or undertake, by any means or methods, to diagnose, treat, operate or prescribe for any human disease, pain, injury, deformity or physical or mental condition. This rule shall not apply to licensed podiatrists, chiropractors, physical therapists, nurses, dentists, optometrists, acupuncturists, pharmacists, and other licensed health professionals who are exclusively engaged in the practice of their respective professions.

"Prescription drugs" means drugs, medicine and controlled substances that by law can only be prescribed for human use by persons authorized by law.

"Profession" means medicine and surgery, osteopathic medicine and surgery, or acupuncture.

"Respondent" means a licensee charged by the board in a complaint and statement of charges with violations of statutes or rules relating to the practice of medicine and surgery, osteopathic medicine and surgery, or acupuncture.

"Rule" means a regulation, requirement, procedure, or standard of general application prescribed by the board relating to either the administration or enforcement of Iowa Code chapters 147, 148, and 148E.

653—1.2(17A) Purpose of board. The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 147, 148, 148E, and 272C with regard to the practice of medicine and surgery, osteopathic medicine and surgery, and acupuncture.

653—1.3(17A) Organization of board.

1.3(1) The board:

a. Makes policy relative to matters involving medical and acupuncture education, licensure, practice, and discipline.

b. Conducts business according to board-approved policy.

c. Elects a chairperson, vice chairperson and a secretary from its membership at the last regular board meeting prior to May 1 or at another date in April scheduled by the board.

d. Has the authority and powers conferred in Iowa Code chapters 17A, 147, 148 and 272C and may establish committees of the board, the members of which, except for the executive committee, shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons. Committees of the board may include:

(1) Executive committee. The membership is composed of the elected officers of the board and two at-large members appointed by the chairperson. At least one public member is appointed to the executive committee. The executive committee duties may include but are not limited to:

1. Guidance and supervision of the executive director.
2. Budgetary review and recommendations to the board.
3. Review and recommendations to the board on rules and legislative proposals.
4. Study and recommendations to the board on practice issues and policy.

(2) Screening committee. The committee reviews complaints and makes recommendations to the board on appropriate action including further investigation or referral to the board for closure.

(3) Licensure committee. Its duties may include:

1. Recommending appropriate action on completed applications for licensure.
2. Conducting interviews with applicants when appropriate.
3. Reviewing licensure examination matters.
4. Reviewing and recommending to the board appropriate changes in licensure application forms.
5. Reviewing and making recommendations to the board regarding volunteer physician applicants who wish to participate in the state-indemnified volunteer physician program and who are under investigation or who have or have had disciplinary action against a license in the present or in the past.
6. Making recommendations on licensure policy issues.

(4) Monitoring committee. The committee oversees the monitoring of licensees under board orders and makes recommendations to the board on these matters.

e. Establishes, in accordance with Iowa Code section 148.2A, a pool of alternate board members.

1.3(2) A majority of the members of the board shall constitute a quorum. Official action, including filing of formal charges or imposition of discipline, requires a majority vote of members present.

653—1.4(17A) Official communications. All official communications, including submissions and requests, should be addressed to the Executive Director, Iowa Board of Medicine, 6200 Park Avenue, Suite 100, Des Moines, Iowa 50321.

653—1.5(17A) Office hours. The office of the board is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

653—1.6(17A) Meetings. The board shall meet at least six times per year. Dates and location of board meetings may be obtained from the board's office or on the board's website at www.dial.iowa.gov. Except as otherwise provided by statute, all board meetings are open, and the public is permitted to attend the meetings.

653—1.7(17A,272C) Adoption of uniform and model rules. The board hereby adopts by reference the following:

1. Uniform Rules on Agency Procedure, 481—Chapter 2, 481—Chapter 3, 481—Chapter 4, 481—Chapter 5, and 481—Chapter 6.
2. Military Service, Veteran Reciprocity, and Spouses of Active-Duty Service Members, 481—Chapter 7.
3. Licensing and Child Support Noncompliance, Student Loan Repayment Noncompliance, and Nonpayment of State Debt, 481—Chapter 8.
4. Model Rules for Use of Criminal Convictions in Eligibility Determinations and Initial Licensing Decisions, 481—Chapter 502.
5. Model Rules for Licensee Review Committee, 481—Chapter 505.
6. Model Rules for Contested Cases Before Licensing Boards, 481—Chapter 506.

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