Regulatory Analysis

Notice of Intended Action to be published: 655—Chapter 12
"Registered Nurse Certifying Organizations/Utilization and Cost Control Review"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 509, 514, 514B, and 514F

State or federal law(s) implemented by the rulemaking: Iowa Code sections 509.3(1)"g," 514.7(4), 514B.1(5)"d" and 514F.1

Public Hearing

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

November 19, 2024	6200 Park Avenue
9:30 a.m.	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:

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Purpose and Summary

Iowa Code sections 509.3(1)"g," 514.7(4), and 514B.1(5)"d" all reference payment of covered services determined to be medically necessary "provided by registered nurses certified by a national certifying organization, which organization shall be identified by the Iowa board of nursing pursuant to rules adopted by the board, if the services are within the practice of the profession of a registered nurse as that practice is defined in section 152.1 . . . ." Iowa Code section 514F.1 provides that the Board of Nursing "shall establish utilization and cost control review committees of licensees under the respective chapters, selected from licensees who have practiced in Iowa for at least the previous five years, or shall accredit and designate other utilization and cost control organizations as utilization and cost control committees under this section, for the purposes of utilization review of the appropriateness of levels of treatment and of giving opinions as to the reasonableness of charges for diagnostic or treatment services of licensees," and "shall adopt rules necessary and proper for the administration of this section pursuant to chapter 17A." Iowa Code section 514F.1 further describes that "conduct of the utilization and cost control review committees authorized under this section shall be exempt from challenge under federal or state antitrust laws or other similar laws in regulation of trade or commerce." The overall intended benefit of this chapter is to identify pertinent national certifying organizations in accordance with the requirements set forth herein, provide for the establishment of a utilization and cost control review (U.C.C.R.) committee, and describe the procedures by which such a U.C.C.R. committee would operate.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

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

Iowa Code section 514F.1 provides that "the services of the utilization and cost control review committees upon the payment of a reasonable fee for the services, to be determined by the [Board of Nursing]." The fee prescribed in rules is $50 per individual patient review. Importantly, the public is not required to request the services of the U.C.C.R. committee and thus is not required to comply with this rule. Research indicates that the fee assessed is reasonable as the Arkansas Board of Chiropractic Examiners charges the same fee for peer review services of its board. Also, independent nurses providing similar utilization review services appear to often charge an hourly rate in the amount of the per-case fee assessed by the Board in this chapter.

Costs appear to primarily include the time of agency and Board personnel in convening an U.C.C.R. committee and performing the requested review. 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 benefit is being achieved in that a multitude of pertinent national certifying organizations are identified and specific procedures are set forth governing the operations of a U.C.C.R. committee. This review did, however, identify that a number of the national certifying organizations currently identified should be updated because organizational names have been modified.

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 benefit is being achieved in that a multitude of pertinent national certifying organizations are identified and specific procedures are set forth governing the operations of a U.C.C.R. committee. This review did, however, identify that a number of the national certifying organizations currently identified should be updated as organizational names have been modified.

- **Qualitative description of impact:**

The Board is statutorily required to adopt a chapter regarding this subject. The costs of convening the U.C.C.R. committee and the fee incurred by the requester appear to be within or less than industry norms for these types of services and are at the option of the requester. The procedures governing the U.C.C.R. committee are not only minimally prescriptive, but the public is not required to engage with the U.C.C.R. committee at all.

3. **Costs to the State:**

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

Costs appear to primarily include the time of agency and Board personnel in convening an U.C.C.R. committee and performing the requested review.

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.

- **Anticipated effect on state revenues:**

There is no anticipated effect on state revenues.

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.

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

The Board is statutorily required to adopt a chapter regarding this subject. The costs of convening the U.C.C.R. committee and the fee incurred by the requester appear to be within or less than industry norms for these types of services and are at the option of the requester. The procedures governing the U.C.C.R. committee are not only minimally prescriptive, but the public is not required to engage with the U.C.C.R. committee at all.

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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 this rulemaking. The procedures governing the U.C.C.R. committee are not only minimally prescriptive, but the public is not required to engage with the U.C.C.R. committee at all.

6. **Alternative methods considered by the agency:**

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

The Board has not identified a less restrictive alternative to this rulemaking. The procedures governing the U.C.C.R. committee are not only minimally prescriptive, but the public is not required to engage with the U.C.C.R. committee at all.

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

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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. To exempt small businesses from adhering to this rulemaking 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. Additionally, if a licensee subject to this chapter is a small business and has identified 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, the licensee could utilize the Department's established waiver process.

Text of Proposed Rulemaking

ITEM 1. Rescind 655—Chapter 12 and adopt the following **new** chapter in lieu thereof:

CHAPTER 12
REGISTERED NURSE CERTIFYING ORGANIZATIONS/ UTILIZATION AND COST CONTROL REVIEW

655—12.1(509,514,514B,514F) Purpose. This chapter is promulgated for the purpose of administering the provisions of Iowa Code sections 509.3, 514.7, 514B.1 and 514F.1.

655—12.2 Reserved.

655—12.3(509,514,514B) National certifying organizations. Eligibility requirements for certification are established by the individual national certifying organization. National certifying organizations identified by the board pursuant to Iowa Code sections 509.3, 514.7, 514B.1, and 514F.1 are as follows:

Addictions Nursing Certification Board
American Academy of Nurse Practitioners
American Association of Critical Care Nurses Certification Corporation
American Association for Marriage and Family Therapy
American Board of Medical Genetics
American Board of Neuroscience Nursing
American Board for Occupational Health Nurses, Inc.
American Board of Post Anesthesia Nursing Certification, Inc.
American Board of Urology
American Urological Association
American College of Nurse-Midwives
American Holistic Nurses' Credentialing Corporation
American Nurses' Credentialing Center
American Society of Plastic Surgical Nurses
Association of Perioperative Registered Nurses
Association for Professionals in Infection Control and Epidemiology
Association of Rehabilitation Nurses, Certification Board
Board of Certification for Emergency Nursing
Board of Nephrology Examiners Nursing and Technology
Certifying Council for Gastroenterology Clinicians, Inc.
Clinical Nutrition Certification Board
National Board of Certification and Recertification for Nurse Anesthetists
Dermatology Nurses Association
Enterostomal Therapy Nursing Certification Board
Association of Nurses in AIDS Care, HIV/AIDS Nursing Certification Board
International Association of Infant Massage
International Board of Lactation Consultant Examiners
International Nurses Society on Addictions
Infusion Nurses Certification Corporation
Lamaze International
National Board for Certification of School Nurses
Certification Board for Diabetes Care and Education
Pediatric Nurse Certification Board
National Certification Corporation for the Obstetric, Gynecologic and Neonatal Nursing Specialties
National Certifying Board for Ophthalmic Registered Nurses
National Association of Chemical Dependency Nurses

Oncology Nursing Certification Corporation
Orthopaedic Nurses Certification Board
Plastic Surgical Nursing Certification Board
Radiologic Nursing Certification Board
Society of Gastroenterology Nurses and Associates
Society of Otorhinolaryngology and Head-Neck Nurses
Society of Urological Nurses and Associates
Society for Vascular Nursing
Wound, Ostomy and Continence Nursing Certification Board

655—12.4(514F) Utilization and cost control review (U.C.C.R.) committee. The board may establish a U.C.C.R. committee for the purpose set forth in Iowa Code section 514F.1, including questions regarding:

1. Appropriateness of levels of nursing care.
2. Documentation of the credentials of the nurse(s) offering the service(s).
3. Documentation of the care provided.
4. Documentation of the costs of nursing services provided by credentialed nurses as requested by users and payers of such services.

655—12.5(514F) Selection and composition of the U.C.C.R. committee.

12.5(1) A U.C.C.R. committee will consist of five licensed registered nurses, three of whom shall be certified by the above. A quorum of the U.C.C.R. committee is three members. When a quorum is present, a position is carried by a majority of the committee members.

12.5(2) The chairperson of the board of nursing, upon receipt of a request for review, will appoint committee members and designate a chairperson and a secretary.

12.5(3) Members of the U.C.C.R. committee will:

a. Have been actively practicing nursing in Iowa for a period of five years immediately prior to their appointment.

b. Hold an active Iowa registered nurse license or hold a current license in another state and be recognized for licensure in Iowa pursuant to the nurse licensure compact contained in Iowa Code chapter 152E.

c. Be actively involved in nursing practice during the term of appointment.

d. Not be exempt from mandatory disclosure requirements of Iowa Code section 272C.9.

e. Not be civilly liable when functioning in their capacity of committee members in compliance with Iowa Code section 272C.8.

f. Observe the requirements of confidentiality imposed by Iowa Code section 272C.6(4).

655—12.6(514F) Scope of review.

12.6(1) Factors to determine appropriateness of nursing care deemed medically necessary may include but are not limited to:

a. Utilization of the nursing process in establishing a nursing diagnosis.

b. Development of a nursing care plan based on documentation of client needs and standards of care for that particular clinical specialty.

c. Adequate completion of recommended nursing care plan.

d. Quality of care as measured by outcome.

e. Proper referral to specialists or physicians when conditions indicate.

12.6(2) Cost review will result in an opinion as to the fairness of charges for nursing care services based on criteria including but not be limited to:

a. The nurse’s usual charge for the service.

b. The customary charge for the service based on a review of peer group charges.

c. Reasonable variance due to degree of difficulty, skill, or judgment.

655—12.7(514F) Procedures for utilization and cost control review.

12.7(1) A request for review may be made to the board by a patient, licensee, or third-party payer of health care benefits.

12.7(2) The fee for a utilization and cost control review is $50 per individual patient review, made payable to the department of inspections, appeals, and licensing.

12.7(3) A request for review may be submitted to the board by addressing the request to the Board of Nursing as provided in 481—Chapter 1 and on the website of the department of inspections, appeals, and licensing: www.dial.iowa.gov. Requests may be made on forms provided by the department. All references to identification and location of the licensee shall be deleted prior to submission.

12.7(4) The U.C.C.R. committee will present its findings and recommendations in writing to the chairperson of the board within 90 days of the committee appointment, with the parties notified of the findings thereafter.

12.7(5) If during its review the U.C.C.R. committee identifies a possible violation of Iowa Code chapter 152 or rules promulgated thereunder, the board may take further action, as appropriate.

12.7(6) Action of the U.C.C.R. committee does not constitute an action of the board.

These rules are intended to implement Iowa Code sections 509.3, 514.7, 514B.1, and 514F.1.