

650—7.4(17A,147,153) Waivers.

7.4(1) Definition. For purposes of this rule, “a waiver” 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.

7.4(2) Scope of rule. This rule outlines generally applicable standards and a uniform process for the granting of an individual waiver from a rule adopted by the board in situations where no other more specifically applicable law provides for a waiver. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

7.4(3) Applicability of rule. The board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

7.4(4) Criteria for waiver. In response to a petition, 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. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

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

- a. Application for license, registration, certification, or permit. If the petition relates to an application for license, registration, certification, or permit, the petition shall be made in accordance with the filing requirements for the application in question.
- b. Contested cases. If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.
- c. Other. If the petition does not relate to an application or a pending contested case, the petition may be submitted to the board’s executive director.
- d. A petition is deemed filed when it is received at the board’s office. A petition may be filed using the online form, emailed to IDB@iowa.gov, or mailed to the Iowa Dental Board, 400 S.W. 8th Street, Suite D, Des Moines, Iowa 50309-4687. The petition must include the content specified in 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. A description and citation of the specific rule from which a waiver is requested.
- c. The specific waiver requested, including the precise scope and duration.
- d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 7.4(4). The petitioner 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. The name, address, email address, and telephone number of any person with knowledge of the relevant facts relating to the proposed 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.

7.4(8) Notice. 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) 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. Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

b. Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

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

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

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.

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.

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.

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.

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

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(11) Submission of waiver information. 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(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. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been insufficient; or

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(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(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(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.

[ARC 5722C, IAB 6/30/21, effective 8/4/21]