

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Rulemaking related to model rules for licensee review committee

The Department of Inspections, Appeals, and Licensing hereby rescinds Chapter 193, “Impaired Practitioner Review Committee,” and adopts a new Chapter 193, “Model Rules for Licensee Review Committee,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 272C.3(1)“k.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 272C.3; 2023 Iowa Acts, Senate File 514; and Executive Order 10 (January 10, 2023).

Purpose and Summary

This rulemaking repromulgates Chapter 193 and implements Iowa Code section 272C.3(1)“k” and 2023 Iowa Acts, Senate File 514, in accordance with the goals of Executive Order 10. This rulemaking explains the processes of the licensee review committee, formerly the impaired practitioner review committee, and how the committee supports the recovery or rehabilitation of licensees. It includes the composition of the committee, the goal of which is to ensure the committee is well-rounded and has expertise in addiction and recovery, in addition to having members with pertinent perspectives to balance the needs of a licensee with protection of the public.

Because this program is confidential and participation is not a matter of public record, specific eligibility criteria must be met to ensure that matters that may need to be addressed by a professional licensing board are routed appropriately. Substantively, the goal of the terms of participation is to ensure that a licensee is safe to practice the profession through ongoing committee monitoring. Participants enter into a contract with the committee and agree to adhere to all terms and agreements set forth in the contract. If a contract provision is breached that poses an immediate risk to the public, the committee will refer the matter to a professional licensing board for appropriate action to protect the public. Participation does not relieve a professional licensing board or licensee of any duties or consequences related to violations of the standards of practice, nor does it divest a professional licensing board of its authority. The committee also will refer any violations of the laws or rules governing the licensee’s practice to a professional licensing board for appropriate action.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 10, 2024, as **ARC 7287C**. Public hearings were held on January 30, 2024, at 9:20 a.m. and January 31, 2024, at 9:20 a.m. at 6200 Park Avenue, Des Moines, Iowa. No one attended the public hearings. No public comments were received.

A number of editorial revisions were made from the Notice to transform this chapter from a licensee review committee chapter applicable to a single board into a model chapter that can be adopted by any board under the administrative authority of the Department. Such revisions are nonsubstantive changes from the Notice.

Substantively, composition of the licensee review committee was slightly modified to provide greater detail as to the types of health care professionals who are appropriate to serve on a licensee review committee, as well as enhance flexibility in the composition of the individual committee. The rules were

also modified to incorporate existing practices that are currently incorporated into a licensee’s contract with the committee or are current interpretations of Iowa Code chapter 272C, including:

- The determination as to whether a licensee is appropriate for participation is at the sole discretion of the committee;
- Any expenses incurred to comply with the terms imposed by the program are borne by the licensee;
- The effects of noncompliance;
- Particular confidentiality considerations; and
- Staff discretion to provide guidance and direction to participants between regularly scheduled committee meetings, including program descriptions, interim limitations on practice, and negotiation and execution of initial agreements and contracts on behalf of the committee. The committee retains authority to review all interim decisions at its discretion, and staff may consult with the committee chairperson or Medical Director as needed.

Adoption of Rulemaking

This rulemaking was adopted by the Department on March 12, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

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.

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).

Effective Date

This rulemaking will become effective on May 8, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 641—Chapter 193 and adopt the following **new** chapter in lieu thereof:

CHAPTER 193

MODEL RULES FOR LICENSEE REVIEW COMMITTEE

641—193.1(272C) Definitions. For the purpose of these rules, the following definitions apply:

“Committee” means the licensee review committee established by a licensing board pursuant to the authority of Iowa Code section 272C.3(1)“k.”

“Contract” means the written document establishing the terms for participation in the program.

“Impairment” means a condition identified in Iowa Code section 272C.3(1)“k” that renders or, if left untreated, is reasonably likely to render a licensee unable to practice the licensee’s profession with reasonable skill and safety.

“*Initial agreement*” means the written document establishing the initial terms for participation in the program.

“*Licensing board*” or “*board*” means the same as defined in Iowa Code section 272C.1(6).

“*Licensee*” means a person licensed by a licensing board.

“*Self-report*” means written notification provided by the licensee to the program that the licensee has had, has, or may have an impairment. A self-report can be made even if the applicable licensing board has received a complaint or a third party has alleged the same.

641—193.2(272C) Purpose. The committee assists and monitors the recovery or rehabilitation of practitioners who self-report potential impairments or who are referred by the board. The program is both an advocate for participant health and a means to protect the health and safety of the public.

641—193.3(272C) Composition of the committee. The division of licensing appoints the members of the committee.

193.3(1) Membership. The committee may be composed of but not limited to members with the following qualifications:

a. A health care professional who has expertise in the area of substance use and addiction treatment.

b. A health care professional who has expertise in the diagnosis and treatment of mental health conditions.

c. A psychiatrist who holds a current, active Iowa license as defined in rule 653—9.1(147,148,150,150A).

d. A licensee who has maintained recovery for a period of no less than two years since successfully completing a recovery program, a board-ordered probation for substance use, or a comparable monitoring program.

e. A licensed physician, physician assistant or advanced registered nurse licensee whose specialty area is family practice, internal medicine, or emergency medicine or who has expertise in substance use disorders, mental health conditions or both.

f. A licensed psychiatric pharmacist.

g. A public member.

h. Non-voting members, which may include the board’s executive director, the bureau chief or designee, the bureau chief of monitoring, and, if requested to join the committee for consultation during a participant review, an executive officer or board member under which a participant is regulated.

193.3(2) Officers. At the last meeting of each calendar year, the committee elects co-chairpersons to serve a one-year term beginning January 1.

193.3(3) Terms. Committee members are appointed for a three-year term, for a maximum of three terms. Each term expires on December 31 of the third year of the term. Initial terms are for a period of one to three years as designated by the division to provide continuity to the committee.

641—193.4(272C) Eligibility.

193.4(1) Eligibility. To be eligible for participation in the program, a prospective participant must self-report or be referred by the board for an impairment or potential impairment. The committee will determine for each self-report or referral whether the prospective participant is an appropriate candidate for participation in the program. A prospective participant is ineligible if the committee finds sufficient evidence that the prospective participant:

a. Diverted medication for distribution to third parties or for personal profit;

b. Adulterated, misbranded, or otherwise tampered with medication intended for a patient;

c. Provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the committee; or

d. Caused injury or harm to a patient or client.

193.4(2) Board referral. The board may refer a licensee to the program privately, in a public disciplinary order, or other public order if a complaint or investigation reveals an impairment or

potential impairment or the board determines that the licensee is an appropriate candidate for review by the committee.

193.4(3) Discretion. Eligibility for participation in the program is at the sole discretion of the committee. No person is entitled to participate in the program.

193.4(4) Limitations. The committee establishes the terms and monitors a participant's compliance with the program specified in the contract. The committee is not responsible for participants who fail to comply with the terms of the program or successfully complete the program. Participation in the program shall not relieve the participant's board of any duties nor divest the board of any authority or jurisdiction otherwise provided. Any violation of the statutes or rules governing the practice of the participant's profession and unrelated to their impairment will be referred to the board for appropriate action.

641—193.5(272C) Terms of participation in the impaired practitioner recovery program. A participant is responsible for complying with the terms of participation established in the initial agreement and the contract, and for all expenses incurred to comply with the terms imposed by the program. Terms of participation specified in the contract shall include, but not be limited to:

193.5(1) Duration. Length of participation in the program may vary depending upon the review of all relevant information and the nature of the impairment.

193.5(2) Noncompliance. Participants are responsible for notifying the committee of any instance of noncompliance. Notification of noncompliance made to the committee by the participant, a monitoring provider, or another party may result in notice to the board for its consideration of disciplinary action.

a. First instance. After a first instance of significant noncompliance, including a relapse, the committee may give notice to the board identifying the participant by number, describing the relevant terms of the participant's contract and the noncompliance, and including the committee's recommendation for continued participation in the program.

b. Second instance. After a second instance of significant noncompliance, including a relapse, the committee may refer the case and the participant's identity to the board. In its referral, the committee may make recommendations as to continued participation in the program.

c. Referral at any time. The committee may make a referral to the board for noncompliance that identifies the participant by name at any time the circumstances warrant such a referral.

193.5(3) Practice limitations. The committee may impose limitations on a participant's practice as a term of the contract until such time as the committee receives a report from an approved evaluator that the licensee is capable of practicing with reasonable safety and skill. Participation in the program is conditioned upon participants agreeing to limit practice as requested by the committee and established in accordance with the terms specified in the contract. If a participant refuses to agree to or comply with the limitations established in the initial agreement or contract, the committee will refer the licensee to the board for appropriate action.

193.5(4) Staff discretion. Staff, in consultation with legal counsel, may provide guidance and direction to participants between regularly scheduled committee meetings, including program descriptions, interim limitations on practice, and negotiation and execution of initial agreements and contracts on behalf of the committee. The committee retains authority to review all interim decisions at its discretion. Staff may consult with the committee chairperson or medical director if needed.

641—193.6(272C) Confidentiality. Information in the possession of the board or the committee is subject to the confidentiality requirements of Iowa Code section 272C.6.

193.6(1) Participants must report their participation to the applicable monitoring program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

193.6(2) The committee is authorized to communicate information about a participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the initial agreement or contract.

193.6(3) The committee is authorized to communicate information about a participant to the board if a participant does not comply with the terms of the contract as set forth in rule 641—193.5(272C).

193.6(4) The committee is authorized to communicate information about a current or former participant to the board if reliable information held by the committee reasonably indicates that a significant risk to the public exists.

193.6(5) If the board initiates disciplinary or other action against a participant or former participant as a result of communication from the committee, the board may include information from the program file in the public documents.

These rules are intended to implement Iowa Code chapter 272C.

[Filed 3/15/24, effective 5/8/24]

[Published 4/3/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/3/24.