

Michigan Office of Administrative Hearings and Rules

Administrative Rules Division (ARD)

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**REGULATORY IMPACT STATEMENT
and COST-BENEFIT ANALYSIS (RIS)**

Agency Information:

Department name:

Licensing and Regulatory Affairs

Bureau name:

Bureau of Professional Licensing

Name of person filling out RIS:

Dena Marks

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Rule Set Information:

ARD assigned rule set number:

2019-135 LR

Title of proposed rule set:

Public Health Code--General Rules

Comparison of Rule(s) to Federal/State/Association Standard:

1. Compare the proposed rules to parallel federal rules or standards set by a state or national licensing agency or accreditation association, if any exist.

Each state establishes its own requirements with respect to license and registration renewal and English proficiency requirements for licensure or registration. Consequently, there are no federal rules or standards set by a national or state agency to which the proposed rules can be compared.

A. Are these rules required by state law or federal mandate?

MCL 333.16194 requires that the department prescribe the expiration dates for licenses and registrations for health professions.

MCL 333.16174 requires the department to establish the minimum standards for determining if an applicant for licensure or registration has a working knowledge of the English language.

The rules are not required by federal mandate.

B. If these rules exceed a federal standard, please identify the federal standard or citation, describe why it is necessary that the proposed rules exceed the federal standard or law, and specify the costs and benefits arising out of the deviation.

The rules do not exceed a federal standard.

2. Compare the proposed rules to standards in similarly situated states, based on geographic location, topography, natural resources, commonalities, or economic similarities.

The proposed rules are consistent with the standards required by the Public Health Code and are largely consistent with the requirements of other states in the Great Lakes region. Every state in the Great Lakes region provides for the length of a license or registration cycle and license or registration renewal dates.

The states in the Great Lakes region differ in their requirements for demonstrating a working knowledge of the English language for licensure or registration, but all states in the Great Lakes region require testing to demonstrate a working knowledge of the English language for some professions. Most commonly, the professions requiring this testing for licensure are nursing and physical therapy.

A. If the rules exceed standards in those states, please explain why and specify the costs and benefits arising out of the deviation.

The rules requiring an applicant for licensure or registration to demonstrate a working knowledge of the English language vary from state to state within the Great Lakes region. Michigan requires an applicant for licensure or registration under the Public Health Code to demonstrate a working knowledge of the English language, MCL 333.16174. This requirement benefits Michigan citizens by ensuring that a licensee or registrant is able to communicate effectively with his or her patients or clients.

3. Identify any laws, rules, and other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

There are no other laws, rules, or other legal requirements that may duplicate, overlap, or conflict with the proposed rules.

A. Explain how the rules have been coordinated, to the extent practicable, with other federal, state, and local laws applicable to the same activity or subject matter. This section should include a discussion of the efforts undertaken by the agency to avoid or minimize duplication.

No coordination is needed because there are no other applicable federal, state, or local laws that regulate the areas addressed in the proposed rules.

4. If MCL 24.232(8) applies and the proposed rules are more stringent than the applicable federally mandated standard, a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

There is no applicable federally mandated standard.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, either the statute that specifically authorizes the more stringent rules or a statement of the specific facts that establish the clear and convincing need to adopt the more stringent rules and an explanation of the exceptional circumstances that necessitate the more stringent standards is required.

There is no applicable federal standard.

6. Identify the behavior and frequency of behavior that the proposed rules are designed to alter.

The intended purpose of the proposed rules is set forth below:

R 338.7001 This rule provides definitions used in this rule set. New definitions will be added for “issue date” and “limitation,” and the definition of “code” will be amended. The additions and amendment are designed to increase the reader’s understanding of terms as they are used in the rule set.

R 338.7001a This rule provides for biennial license and registration renewal. Amendments will be made to clarify when a license or registration must be renewed, and the renewal date for optometry, pharmacy, and physician’s assistants will be changed to the date of the year when the licensee’s initial license was issued. The proposed rule will add midwifery and advise that the renewal date will be the date of the year when the licensee’s initial license was issued. The rule is designed to advise a licensee or registrant of the renewal date for his or her biennial license or registration.

R 338.7002 This rule provides for triennial license and registration renewal. Amendments will be made to clarify when a license or registration must be renewed, and the renewal date for dentistry, medicine, osteopathic medicine and surgery, podiatric medicine and surgery, and veterinary medicine will be changed to the date of the year when the licensee’s initial license was issued. The rule is designed to advise a licensee or registrant of the renewal date for his or her triennial license or registration.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The rule will provide that the date of renewal for behavior analysts will be the date of the year when the licensee’s initial license was issued. The rule is designed to advise a licensee of the renewal date for his or her quadrennial license.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance to the minimum standard established by the department. This is a statutory requirement, MCL 333.16174. This rule is designed to inform an applicant for licensure or registration of this requirement and how to comply.

A. Estimate the change in the frequency of the targeted behavior expected from the proposed rules.

The proposed rules are not expected to change the frequency of any behavior.

B. Describe the difference between current behavior/practice and desired behavior/practice.

R 338.7001 This rule provides definitions used in this rule set. The proposed addition of new definitions and clarification of “code” is intended to improve a reader’s understanding of the rules using these terms.

R 338.7001a This rule provides for biennial license and registration renewal. The proposed amendments are intended to inform a licensee or registrant when his or her biennial license or registration must be renewed.

R 338.7002 This rule provides for triennial license and registration renewal. The proposed amendments are intended to inform a licensee or registrant when his or her triennial license or registration must be renewed.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The proposed rule is intended to inform a licensee when his or her quadrennial license must be renewed.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department.

C. What is the desired outcome?

R 338.7001 This rule provides definitions used in this rule set. The desired outcome is better reader understanding.

R 338.7001a This rule provides for biennial license and registration renewal. The desired outcome is timely renewal of a biennial license or registration.

R 338.7002 This rule provides for triennial license and registration renewal. The desired outcome is timely renewal of a triennial license or registration.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The desired outcome is timely renewal of a quadrennial license.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department. The desired outcome is applicant compliance.

7. Identify the harm resulting from the behavior that the proposed rules are designed to alter and the likelihood that the harm will occur in the absence of the rule.

R 338.7001 This rule provides definitions used in this rule set. The proposed changes are designed to avoid misunderstanding and assist an applicant, licensee, or registrant in complying with the rules.

R 338.7001a This rule provides for biennial license and registration renewal. The proposed rules are designed to inform a licensee or registrant regarding the license or registration renewal date and to assist the licensee or registrant in complying with renewal requirements.

R 338.7002 This rule provides for triennial license and registration renewal. The proposed rules are designed to inform a licensee or registrant regarding the license or registration renewal date and to assist the licensee or registrant in complying with renewal requirements.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The proposed rules are designed to inform a licensee regarding the license renewal date and to assist the licensee or registrant in complying with renewal requirements.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department. The proposed rule is designed to assist the applicant in complying with licensure or registration requirements.

A. What is the rationale for changing the rules instead of leaving them as currently written?

R 338.7001 The rationale for changing this rule is to prevent reader misunderstanding and to include new definitions for terms used in the proposed rule set.

R 338.7001a The rationale for changing this rule is to provide clarification for renewal of a biennial license or registration and advise that the renewal date for midwifery, optometry, pharmacy, and physician's assistants will be the date of the year when the licensee's initial license was issued.

R 338.7002 The rationale for changing this rule is to provide clarification for renewal of a triennial license or registration and advise that the renewal date for dentistry, medicine, osteopathic medicine and surgery, podiatric medicine and surgery, and veterinary medicine will be changed to the date of the year when the licensee's initial license was issued.

R 338.7002a The rationale for adding this rule is to provide renewal information for behavior analysts.

R 338.7002b The rationale for adding this rule is to advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department.

8. Describe how the proposed rules protect the health, safety, and welfare of Michigan citizens while promoting a regulatory environment in Michigan that is the least burdensome alternative for those required to comply.

R 338.7001 This rule provides definitions used in this rule set. The proposed changes will protect the health, safety, and welfare of Michigan citizens by ensuring that the terms used in this rule set are clearly defined, which will aid an applicant, licensee, or registrant in understanding and complying with the rules.

R 338.7001a This rule provides for biennial license and registration renewal. The proposed rule will protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee or registrant renews his or her license or registration on time.

R 338.7002 This rule provides for triennial license and registration renewal. The proposed rule will protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee or registrant renews his or her license or registration on time.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The proposed rule will protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee or registrant renews his or her license or registration on time.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department. The proposed rule will protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee or registrant can communicate effectively with his or her patient or client.

9. Describe any rules in the affected rule set that are obsolete or unnecessary and can be rescinded.

No rules can be rescinded.

10. Please provide the fiscal impact on the agency (an estimate of the cost of rule imposition or potential savings for the agency promulgating the rule).

The proposed rules are not expected to have a fiscal impact on the agency.

11. Describe whether or not an agency appropriation has been made or a funding source provided for any expenditures associated with the proposed rules.

No agency appropriation has been made nor has a funding source been provided for expenditures associated with the proposed rules.

12. Describe how the proposed rules are necessary and suitable to accomplish their purpose, in relationship to the burden(s) the rules place on individuals. Burdens may include fiscal or administrative burdens, or duplicative acts.

R 338.7001 This rule provides definitions used in this rule set. The proposed rule does not place a burden on an individual.

R 338.7001a This rule provides for biennial license and registration renewal. The proposed rule does not place a burden on an individual.

R 338.7002 This rule provides for triennial license and registration renewal. The proposed rule does not place a burden on an individual.

R 338.7002a This is a new proposed rule that will be added to provide for quadrennial license renewal. The proposed rule does not place a burden on an individual.

R 338.7002b This is a new proposed rule that will advise an applicant for licensure or registration that he or she must demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department. The burden on the individual to take an examination to demonstrate that he or she has a working knowledge of the English language is outweighed by the benefit to the citizens of Michigan because it will ensure that a licensee or registrant can communicate effectively with his or her patient or client.

A. Despite the identified burden(s), identify how the requirements in the rules are still needed and reasonable compared to the burdens.

The estimated cost to take the Test of English as a Foreign Language Internet-Based Test is \$195.00. The estimated cost to take the Michigan English Test administered by the University of Michigan is \$127.00 - \$168.00. The estimated cost to take the International English Language Testing System Academic test is \$215.00 - \$240.00. However, the cost is outweighed by the benefit of ensuring that an applicant can communicate effectively with patients, clients, and staff.

13. Estimate any increase or decrease in revenues to other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Estimate the cost increases or reductions for other state or local governmental units (i.e. cities, counties, school districts) as a result of the rule. Include the cost of equipment, supplies, labor, and increased administrative costs in both the initial imposition of the rule and any ongoing monitoring.

There are no anticipated increases or decreases in revenues to state or local governmental units as a result of the proposed rules.

14. Discuss any program, service, duty, or responsibility imposed upon any city, county, town, village, or school district by the rules.

There are no anticipated or intended programs, services, duties, or responsibilities imposed on any city, county, township, village, or school district as a result of these proposed rules.

A. Describe any actions that governmental units must take to be in compliance with the rules. This section should include items such as record keeping and reporting requirements or changing operational practices.

There are no anticipated actions that a governmental unit must take to comply with these proposed rules.

15. Describe whether or not an appropriation to state or local governmental units has been made or a funding source provided for any additional expenditures associated with the proposed rules.

No appropriations have been made to any governmental units as a result of these rules. No additional expenditures are anticipated or intended with the proposed rules.

16. In general, what impact will the rules have on rural areas?

The proposed rules are not expected to impact rural areas. The proposed rules apply to an individual licensed or registered under the Public Health Code, regardless of his or her location.

A. Describe the types of public or private interests in rural areas that will be affected by the rules.

The proposed rules are not expected to affect public or private interests in rural areas.

17. Do the proposed rules have any impact on the environment? If yes, please explain.

The proposed rules do not have an environmental impact.

18. Describe whether and how the agency considered exempting small businesses from the proposed rules.

The proposed rules impose requirements on individual licensees and registrants rather than small businesses. Even if a licensee's or registrant's workplace qualifies as a small business, the department could not exempt his or her business because it would create a disparity in the regulation of the profession.

19. If small businesses are not exempt, describe (a) the manner in which the agency reduced the economic impact of the proposed rules on small businesses, including a detailed recitation of the efforts of the agency to comply with the mandate to reduce the disproportionate impact of the rules upon small businesses as described below (in accordance with MCL 24.240(1)(a-d)), or (b) the reasons such a reduction was not lawful or feasible.

The rules cannot exempt small businesses because the rules do not directly regulate small businesses. The rules regulate individual licensees and registrants. Further, the Public Health Code requires the included professions to be licensed or registered, and the licensee or registrant may work in a small business.

While a licensee or registrant may work independently or as part of a small business, the law does not allow the rules to exempt these individuals from the requirements of these rules. However, the impact on a licensee or registrant who works as part of a small business is minimized in the proposed rules, as the rules are written broadly. The proposed rule changes will have minimal or no impact on a licensee or registrant. As a result, a licensee or registrant, whether in small business or not, should not be significantly impacted by the changes.

A. Identify and estimate the number of small businesses affected by the proposed rules and the probable effect on small businesses.

It is estimated that small businesses will not be affected by the proposed rules. The proposed rules affect individuals only.

B. Describe how the agency established differing compliance or reporting requirements or timetables for small businesses under the rules after projecting the required reporting, record-keeping, and other administrative costs.

The agency did not establish separate compliance or reporting requirements for small businesses.

C. Describe how the agency consolidated or simplified the compliance and reporting requirements for small businesses and identify the skills necessary to comply with the reporting requirements.

The agency did not consolidate or simplify compliance and reporting requirements with the proposed rules as the proposed rules have no impact on small businesses.

D. Describe how the agency established performance standards to replace design or operation standards required by the proposed rules.

The agency did not establish performance standards to replace design or operation standards required by the proposed rules.

20. Identify any disproportionate impact the proposed rules may have on small businesses because of their size or geographic location.

The proposed rules impact the actions of an individual licensee or registrant rather than small businesses. Therefore, there is no disproportionate impact on a small business because of its size or geographic location.

21. Identify the nature of any report and the estimated cost of its preparation by small businesses required to comply with the proposed rules.

The proposed rules affects a licensee or registrant rather than small businesses. Therefore, there is no separate cost for a small business as a result of the proposed rules.

22. Analyze the costs of compliance for all small businesses affected by the proposed rules, including costs of equipment, supplies, labor, and increased administrative costs.

There will be no increased costs of compliance for a small business concerning the costs of equipment, supplies, labor, or administrative costs.

23. Identify the nature and estimated cost of any legal, consulting, or accounting services that small businesses would incur in complying with the proposed rules.

There are no expected legal, consulting, or accounting services costs that a small business would incur in complying with the proposed rules.

24. Estimate the ability of small businesses to absorb the costs without suffering economic harm and without adversely affecting competition in the marketplace.

There are no expected costs to a small business that will cause economic harm to a small business or the marketplace as a result of the proposed rules.

25. Estimate the cost, if any, to the agency of administering or enforcing a rule that exempts or sets lesser standards for compliance by small businesses.

The proposed rules have no cost impact on a small business, so no exemption was considered.

26. Identify the impact on the public interest of exempting or setting lesser standards of compliance for small businesses.

The proposed rules have no impact on a small business, so no exemption was considered.

27. Describe whether and how the agency has involved small businesses in the development of the proposed rules.

No small businesses were involved in the development of the proposed rules.

A. If small businesses were involved in the development of the rules, please identify the business(es).

No small businesses were involved in the development of the proposed rules.

28. Estimate the actual statewide compliance costs of the rule amendments on businesses or groups.

There are no estimated compliance costs with these rule amendments on businesses or groups.

A. Identify the businesses or groups who will be directly affected by, bear the cost of, or directly benefit from the proposed rules.

No businesses or groups will be directly affected or benefitted by the proposed rules. No additional costs will be imposed on any businesses or groups.

B. What additional costs will be imposed on businesses and other groups as a result of these proposed rules (i.e. new equipment, supplies, labor, accounting, or recordkeeping)? Please identify the types and number of businesses and groups. Be sure to quantify how each entity will be affected.

The estimated cost to take the Test of English as a Foreign Language Internet-Based Test is \$195.00. The estimated cost to take the Michigan English Test administered by the University of Michigan is \$127.00 - \$168.00. The estimated cost to take the International English Language Testing System Academic test is \$215.00 - \$240.00.

29. Estimate the actual statewide compliance costs of the proposed rules on individuals (regulated individuals or the public). Include the costs of education, training, application fees, examination fees, license fees, new equipment, supplies, labor, accounting, or recordkeeping.

A cost is associated with the renewal of a license or registration, but the proposed rules do not address that cost. The proposed rules only establish license and registration renewal dates. The estimated cost to take the Test of English as a Foreign Language Internet-Based Test is \$195.00. The estimated cost to take the Michigan English Test administered by the University of Michigan is \$127.00 - \$168.00. The estimated cost to take the International English Language Testing System Academic test is \$215.00 - \$240.00.

A. How many and what category of individuals will be affected by the rules?

An applicant for licensure or registration will be required to demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department.

B. What qualitative and quantitative impact do the proposed changes in rules have on these individuals?

The estimated cost to take the Test of English as a Foreign Language Internet-Based Test is \$195.00. The estimated cost to take the Michigan English Test administered by the University of Michigan is \$127.00 - \$168.00. The estimated cost to take the International English Language Testing System Academic test is \$215.00 - \$240.00.

30. Quantify any cost reductions to businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

There are no cost reductions for businesses, individuals, groups of individuals, or governmental units as a result of the proposed rules.

31. Estimate the primary and direct benefits and any secondary or indirect benefits of the proposed rules. Please provide both quantitative and qualitative information, as well as your assumptions.

The benefits as a result of the proposed rules include ensuring that licensees and registrants will be aware of renewal timelines and that applicants for licensure or registration will be able to communicate effectively with clients and patients.

32. Explain how the proposed rules will impact business growth and job creation (or elimination) in Michigan.

The rules are not expected to have an impact on business growth or job creation.

33. Identify any individuals or businesses who will be disproportionately affected by the rules as a result of their industrial sector, segment of the public, business size, or geographic location.

The proposed rules are not expected disproportionately affect on individuals or businesses due to their industrial sector, segment of the public, business size, or geographic location.

34. Identify the sources the agency relied upon in compiling the regulatory impact statement, including the methodology utilized in determining the existence and extent of the impact of the proposed rules and a cost-benefit analysis of the proposed rules.

Illinois: <http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1319&ChapAct=225%26nbsp%3BILCS%26nbsp%3B90%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Illinois+Physical+Therapy+Act%2E>; <http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1319&ChapAct=225%26nbsp%3BILCS%26nbsp%3B90%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Illinois+Physical+Therapy+Act%2E>

Indiana: <http://iga.in.gov/legislative/laws/2018/ic/titles/025#25-1>

Kentucky: <https://apps.legislature.ky.gov/law/statutes/statute.aspx?id=44609>

Minnesota: https://www.revisor.mn.gov/rules/6305.0400/?keyword_type=all&keyword=nurse+english

New York: <http://www.op.nysed.gov/english.htm>

Ohio: <https://otptat.ohio.gov/Portals/0/laws/Ohio%20PT%20Practice%20Act%20as%20of%20May%201%202018.pdf?ver=2018-05-02-143519-423>; <http://codes.ohio.gov/oac/4723-7-04v1>

Pennsylvania: <https://www.pacode.com/secure/data/049/chapter21/s21.23.html>

Wisconsin: http://docs.legis.wisconsin.gov/code/admin_code/pt/2/01/8/c

A. How were estimates made, and what were your assumptions? Include internal and external sources, published reports, information provided by associations or organizations, etc., which demonstrate a need for the proposed rules.

There were no estimates made because the rules impact an applicant, licensee, or registrant. No estimate could consider the setting where a licensee or registrant may use his or her license or registration. Because the rules impact all licensees and registrants in the same way, the assumption made was that no additional cost or benefit would result from the proposed rules.

35. Identify any reasonable alternatives to the proposed rules that would achieve the same or similar goals.

The rules are required by statute; there is no reasonable alternative to the proposed rules.

A. Please include any statutory amendments that may be necessary to achieve such alternatives.

There is no reasonable alternative to the proposed rules.

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

It is not feasible to establish a regulatory program similar to the proposed rules because state statute requires that the department establish the date pertaining to the renewal of licenses and registrations regulated by the Public Health Code, MCL 333.16194(1).

36. Discuss the feasibility of establishing a regulatory program similar to that proposed in the rules that would operate through private market-based mechanisms. Please include a discussion of private market-based systems utilized by other states.

The rules pertaining to the expiration dates of licenses and registrations are required by the Public Health Code, MCL 333.16194(1). Since the rules are required by statute, private market-based systems cannot serve as an alternative.

38. As required by MCL 24.245b(1)(c), please describe any instructions regarding the method of complying with the rules, if applicable.

The rules will explicitly inform licensees and registrants of renewal dates. The renewal information will be clearly listed on the website and application for renewal.

An applicant for licensure or registration should determine how he or she will demonstrate a working knowledge of the English language in accordance with the minimum standards established by the department.