

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:

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Rule Set Information:

ARD assigned rule set number:

2022-17 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 on health care professionals with respect to licensure, registration, and renewal. 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 care 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 proposed 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.

On July 9, 2020, Governor Whitmer issued Executive Directive 2020-07 requiring the department to establish implicit bias training standards for health care professionals. The training is intended to improve equity in the delivery of health care to Michigan residents. The proposed amendment to the implicit bias training rule will clarify who must complete the training and how the training must be conducted to ensure that an applicant, licensee, or registrant completes the proper training, so Michigan residents do not encounter barriers or disparities in the access to or in the delivery of health care services.

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

Most states in the Great Lakes region do not require implicit bias training for licensure, registration, or renewal. Illinois does require a one-hour implicit bias training for health care professionals. Bills have been introduced in several other states in the Great Lakes region that would require implicit bias training for health care professionals, but they have not become law.

The cost of completing implicit bias training in Michigan will vary, depending on the program that an individual chooses to attend. For example, Mary Free Bed Hospital in Grand Rapids, as well as several other hospitals in Michigan, offer implicit bias training courses free of charge. Additionally, this rule is required pursuant to Executive Directive 2020-07.

Research indicates that there is an economic burden associated with health care inequities. As such, reducing barriers to health care access and disparities in the delivery of health care will yield social and economic benefits long term. The time investment required to obtain implicit bias training (2 hours for initial licensure or registration and 1 hour per year for renewal applicants) is relatively small when compared to the potential benefits that will be realized by Michigan residents.

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 these 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 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, provide a statement of specific facts that establish the clear and convincing need to adopt the more stringent rules.

MCL 24.232(8) does not apply.

5. If MCL 24.232(9) applies and the proposed rules are more stringent than the applicable federal standard, provide either the Michigan 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.

MCL 24.232(9) does not apply.

Purpose and Objectives of the Rule(s)

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. A new section will be added to advise that terms defined in the public health code have the same definition when used in these rules. The addition is designed to increase the reader's understanding of terms used in the rule set.

R 338.7002 This rule provides for triennial license and registration renewal. Amendments will be made to clarify when and how often a genetic counseling license must be renewed. The amended rule is designed to advise a genetic counseling licensee when the license must be renewed.

R 338.7004 This rule pertains to implicit bias training requirements for health care professionals to ensure that Michigan residents do not encounter barriers or disparities in the access to or in the delivery of health care services. The rule will be amended to clarify which applicants must have completed the training and how the requirements of the training can be satisfied.

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

The proposed rules are intended to increase awareness of health care inequities among licensees and registrants and decrease the frequency of the targeted 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 amendment to the rule will advise that terms defined in the public health code have the same meaning when used in these rules. The desired behavior is improved reader understanding of the rules.

R 338.7002 This rule provides for triennial license and registration renewal. The proposed amendments will add genetic counselors to provide renewal date information for those licensees. The desired effect is timely license renewal.

R 338.7004 This rule pertains to implicit bias training requirements for health care professionals to ensure that Michigan residents do not encounter barriers or disparities in access to or in the delivery of health care services. The amended rule will clarify which applicants must have completed the training and how the requirements of the training may be satisfied. The desired behavior is greater equity in the access to and provision of health care services by training health care professionals on how to recognize and mitigate their own implicit biases.

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

R 338.7004 This rule requires an applicant for licensure, registration, and renewal to complete implicit bias training. The desired outcome is applicant compliance, increased awareness, and greater equity in access to and the provision of health care services.

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 338.7002 This rule provides for triennial license and registration renewal. The proposed amendment to the rule is designed to inform a genetic counselor licensee of the license renewal date and to assist the licensee in completing timely renewal.

R 338.7004: This rule pertains to the required implicit bias training for licensure, registration, and renewal. The rule is intended to promote equity in access to and the provision of health care services in Michigan.

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 clarify that a term defined in the public health code has the same meaning when used in this rule set.

R 338.7002 The rationale for changing this rule is to provide license renewal information to genetic counseling licensees.

R 338.7004 The rationale for amending this rule is to clarify that only an individual licensee or registrant is subject to the requirement and to clarify the requirements for the training. This is intended to assist with compliance.

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 residents 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 338.7002 This rule provides for triennial license and registration renewal. The proposed rule will protect the health, safety, and welfare of Michigan residents by ensuring that a genetic counselor licensee renews the license on time.

R 338.7004 This rule is intended to assist an applicant for licensure, registration, or renewal in completing the required implicit bias training. The proposed amendments will protect the health, safety, and welfare of Michigan residents by ensuring equitable access to and provision of health care services.

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

No rules can be rescinded.

Fiscal Impact on the Agency

Fiscal impact is an increase or decrease in expenditures from the current level of expenditures, i.e. hiring additional staff, higher contract costs, programming costs, changes in reimbursements rates, etc. over and above what is currently expended for that function. It does not include more intangible costs for benefits, such as opportunity costs, the value of time saved or lost, etc., unless those issues result in a measurable impact on expenditures.

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 or a funding source provided because there are no 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 338.7002 This rule provides for triennial license and registration renewal. The proposed rule does not place a burden on an individual.

R 338.7004 This rule requires an applicant for licensure, registration, or renewal to have completed implicit bias training. The cost of obtaining this training will vary, depending on the program the individual chooses. Several Michigan hospitals offer implicit bias training free of charge. This rule will impose a burden on health care professionals by requiring that they invest time in obtaining implicit bias training; however, promoting equity in access to and the provision of health care services to the residents of Michigan greatly outweighs that burden.

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

The cost to take implicit bias training will vary, depending on the program chosen. Several Michigan hospitals offer free implicit bias training. Health care professionals will need to invest their time to obtain implicit bias training, but the investment of time is outweighed by the overall benefit of ensuring greater equity in access to and the provision of health care services.

Impact on Other State or Local Governmental Units

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 reductions for other state or local governmental units as 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, town, 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 the 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 result of the proposed rules. No additional expenditures are anticipated or intended with the proposed rules.

Rural Impact

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

The proposed rules impose requirements on individual licensees or registrants, so rural areas are not impacted by the rules. Even if a licensee's or registrant's workplace is located in a rural area, the department could not exempt the licensee or registrant from these requirements because it would create a disparity in the regulation of the profession.

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

The proposed rules will not impact public or private interests in rural areas.

Environmental Impact

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

The proposed rules will not have any impact on the environment.

Small Business Impact Statement

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 the 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. The proposed rules will apply to all licensees and registrants. The rules were drafted to be the least burdensome on all affected licensees and registrants.

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 for small businesses with the proposed rules because the proposed rules do not impact 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 these rules.

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

The proposed rules do not impact small business. They impact an individual registrant or licensee. 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 affect individuals applying for licensure and renewal, regardless if they practice in a small business. There is no report required of a small business to comply with these 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 are no expected costs for equipment, supplies, labor, or administrative costs that a small business would incur in complying with the proposed rules.

The rules impact licensees and registrants and not small businesses.

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 costs for legal, consulting, or accounting services 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 impose requirements on individual licensees and registrants rather than a small business. Even if a licensee's or registrant's practice qualifies as a small business, the department could not exempt the business because it would create disparity in the regulation of the profession.

Therefore, there is no cost to the agency for administering or enforcing the rules because exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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.

The department did not involve any small businesses in the development of the proposed amended 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 amended rules.

Cost-Benefit Analysis of Rules (independent of statutory impact)

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 complete implicit bias training will vary, depending on the program chosen by the health care professional. Several Michigan hospitals offer implicit bias training free of charge.

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 implicit bias training will vary, depending on the program chosen. Several Michigan hospitals offer training free of charge.

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

All licensees, registrants, and applicants are affected by the proposed rules.

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

The estimated cost to take implicit bias training will vary, depending on the program chosen. Several Michigan hospitals offer training free of charge.

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 to 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 of the proposed rules include: 1) Ensuring that licensees and registrants will be aware of renewal timelines; 2) Ensuring that applicants for licensure, registration, or renewal will become aware of how implicit biases result in barriers and disparities in access to and the provision of health care services; and 3) Ensuring that the health care professional will be empowered to take appropriate actions to remedy those inequities.

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, job creation, or job elimination in Michigan.

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 department does not expect any individuals or businesses to be disproportionately impacted by the rules as a result of 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: <https://www.ilga.gov/commission/jcar/admincode/068/068011300E05000R.html>; 102-0004 (ilga.gov); 20 ILCS 2105/2105-15 (ilga.gov)

Indiana: <http://iga.in.gov/legislative/laws/2018/ic/titles/025#25-1> ;
<http://iga.in.gov/legislative/2020/bills/house/1250#document-026c392e>

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;
<https://www.health.state.mn.us/communities/practice/resources/equitylibrary/facebook-bias.html>

New York: <http://www.op.nysed.gov/english.htm> ;
<https://www.nysenate.gov/legislation/bills/2019/s6797#:~:text=BILL%20NUMBER%3A%20S6797%20SPONSOR%3A%20SANDERS%20TITLE%20OF%20BILL%3A,order%20to%20maintain%20their%20license%20in%20good%20standing.>

Ohio: <http://codes.ohio.gov/oac/4723-7-04v1>; <https://www.ohioafp.org/education/limiting-implicit-bias-training/>

Pennsylvania: <https://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=HTM&sessYr=2019&sessInd=0&billBody=H&billTyp=B&billNbr=2110&pn=2995>; Bill Information - House Bill 1176; Regular Session 2021-2022 - PA General Assembly (state.pa.us)

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., that demonstrate a need for the proposed rules.

Since the rules are required by statute and Executive Directive, no estimates were made.

Alternative to Regulation

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

Since the rules are required by statute and Executive Directive, there are no reasonable alternatives to the proposed rules.

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

Since the rules are required by statute, a statutory change would be needed to provide an alternative.

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 dates pertaining to the renewal of licenses and registrations regulated by the Public Health Code, MCL 333.16194(1).

Private market-based mechanisms do not provide for equity in access to or the provision of health care services.

37. Discuss all significant alternatives the agency considered during rule development and why they were not incorporated into the rules. This section should include ideas considered both during internal discussions and discussions with stakeholders, affected parties, or advisory groups.

Since the rules are specifically required by statute or Executive Directive, there are no alternatives to the proposed rules that the agency could consider. They are necessary for the administration and enforcement of the licensing process.

Additional Information

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

The instructions for compliance are included in the rules.