

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Licensing and Regulatory Affairs

2. Bureau:

Bureau of Community and Health Systems

3. Promulgation type:

MCL 24.244 (1)

4. Title of proposed rule set:

Licensing of Health Facilities or Agencies

5. Rule numbers or rule set range of numbers:

R 325.45101 - R 325.45385

6. Estimated time frame:

3 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The purpose of these rules is to provide day-to-day guidance for the licensure of health facilities including hospitals, freestanding surgical outpatient facilities, hospice agencies, hospice residences, and nursing homes.

Effective February 13, 2024, an amendment to MCL 333.20115 (Section 20115, 2023 PA 209) eliminates a portion of the licensing oversight for freestanding surgical outpatient facilities. The rules will be amended in compliance with the statutory changes.

The following rule needs to be revised by updating to applicable rules numbers.

R 325.45101 Applicability.

(2) Rules 325.45331 to 325.45343 are only applicable to a freestanding surgical outpatient facility

Revise by changing 325.45343 to 325.45339

The following rules need to be revised to eliminate wording to comply with statutory changes.

R 325.45103 Definitions; A to F.

(t) "Freestanding surgical outpatient facility" or "FSOF" means a facility as defined in section

20104(7) of the code, MCL 333.20104, and includes, but is not limited to, a private practice office that performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services. Characteristics of a freestanding surgical outpatient facility include, but are not limited to, patient encounters with a physician, dentist, podiatrist, or other provider primarily for performing surgical procedures or related diagnosis, consultation, observation, and postoperative care, and the owner or operator may make the facility available to other physicians, dentists, podiatrists, or other providers who comprise its professional staff. This term does not include a private office of a physician, dentist, podiatrist, or other health professional whose patients are limited to those of the individual licensed professional maintaining and operating the office or the combined patients of individually licensed professionals practicing together in a legally constituted professional corporation, association, or partnership and sharing office space, if the private office is maintained and operated by a licensed health professional in accordance with usual practice patterns according to the type of practice and patient encounters in the office are for diagnosis and treatment and are not limited primarily to the performance of surgical procedures and related care.

Revise after MCL 333.20104, by striking the following language: and includes, but is not limited to, a private practice office that performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services.

R 325.45193 Surgical patient record; required information; informed consent.

Revise by Striking subsection (3)

(3) A facility that performs pregnancy terminations shall require that informed consent be obtained in compliance with sections 17015 and 17015a of the code, MCL 333.17015 and 333.17015a. In the case of an unemancipated minor, informed consent must also be obtained in compliance with the parental rights restoration act, 1990 PA 211, MCL 722.901 to 722.908.

The following rules need to be rescinded to comply with statutory changes.

R 325.45341 Counseling; referral.

Rule 341. (1) A freestanding surgical outpatient facility that performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services shall make available and offer non-directive, non-coercive counseling and referral for subsequent indicated care. These counseling and referral services may be provided by a physician, physician's assistant, nurse, social worker, counselor, or other licensed health professional under article 15.

(2) The facility shall maintain liaisons with and make indicated referrals to community counseling, family planning, or other social and health service agencies to help assure appropriate and adequate subsequent care of the patient.

(3) The individual who provides the counseling shall consult with the physician concerning results of counseling and the initiation of any referrals that seem necessary.

(4) An appropriate method for providing information to and receiving information from legitimate referral sources must be established.

R 325.45343 Waiver or modification provisions.

Rule 343. (1) In accordance with section 20115(4) of the code, MCL 333.20115, for a freestanding surgical outpatient facility that performs 120 or more surgical abortions per year and publicly advertises outpatient abortion services, the department may modify or waive 1 or more of the rules contained in part 9 of these rules.

(2) The licensee may submit to the department a written request for variance.

(3) The variance may be granted and remain in effect for as long as the facility continues to comply with the conditions of the variance, or the variance may be granted for a set period of time as designated in the variance approval.

(4) A variance that was granted pursuant to licensure before the effective date of these rules remains in effect for as long as the facility continues to comply with the conditions of the variance.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Article 17 of the Public Health Code includes 14 sections that require the department to establish a comprehensive system of licensure and certification for health facilities or agencies and to promulgate rules to administer this program. Section 20131 (MCL 333.20131) is the cornerstone; it requires the department to establish the program. Section 20171 (MCL 333.20171) requires the department to promulgate and enforce rules to implement Article 17. Only the following sections of the 14 sections establish additional requirements and limitations on the department's rule-making authority as it pertains to freestanding surgical outpatient facilities (FSOF):

1. Section 20115 (MCL 333.20115)
2. Section 20131 (MCL 333.20131)
3. Section 20132 (MCL 333.20132)
4. Section 20171 (MCL 333.20171)
5. Section 20141 (MCL 333.20141)

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

By authority conferred on the department of licensing and regulatory affairs by sections 20115, 20131, 20132, 20141, 20171, 21419, 21521, 21523, 21561, 21562, 21563, 21615, 21741, and 21795 of the public health code, 1978 PA 368, MCL 333.20115, 333.20131, 333.20132, 333.20141, 333.20171, 333.21419, 333.21521, 333.21523, 333.21561, 333.21562, 333.21563, 333.21615, 333.21741, and 333.21795, and Executive Reorganization Order Nos. 1994-1, 1996-1, 1997-4, 2003-1, 2009-20, 2011-4 and 2015-1, MCL 333.26322, 330.3101, 333.26324, 445.2011, 333.26366, 445.2030 and 400.227.

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

Article 17 of the Public Health Code includes 14 sections that mandate the department to establish a comprehensive system of licensure and certification for health facilities or agencies and to promulgate rules to administer this program. Section 20131 (MCL 333.20131) is the cornerstone; it requires the department to establish the program. Section 20171 (MCL 333.20171) requires the department to promulgate and enforce rules to implement Article 17.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

R 325.45103(t), R 325.45193 (3), R 325.45341 and R 325.45343 conflict with section 20115 of 2023 PA 209, MCL 333.20115 and need to be revised or rescinded.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The subject matter is not currently contained in any guidance, handbook, manual, instruction bulletin, form with instructions, or operational memorandum.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

The rules are not listed on the department's annual regulatory plan to be processed for the current year.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (1)

A. Explain why the rules are being promulgated under 24.244.

These proposed rule changes need to be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, as amended, being MCL 24.244, because they are required to make needed corrections to conform to recently amended statutes. Effective February 13, 2024, an amendment to MCL 333.20115 (Section 20115, 2023 PA 209) eliminates a portion of the licensing oversight for freestanding surgical outpatient facilities.

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.