

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:

2019-140 LR

Title of proposed rule set:

Nursing Home Administrators - 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 nursing home administrators, so there are no federal rules or standards set by a national or state agency that the proposed rules can be compared to.

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

MCL 333.16145 requires the board to promulgate rules to specify the requirements for licensure, renewals, examination, and required passing scores.

MCL 333.16287 requires the department, in consultation with the board, to promulgate rules to implement telehealth services.

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 Michigan Public Health Code, and the rules are largely consistent with the requirements of other states in the Great Lakes region. Every state in the Great Lakes region provides for the regulation of this profession.

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

Overall, the standards in the proposed rules do not exceed those of the other states in the Great Lakes region.

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 rule.

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.

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, 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.

MCL 24.232(9) does not apply.

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

Part 1 General Provisions: A new telehealth rule will be added, as required by MCL 333.16287. The proposed rules advise a licensee of his or her duties when rendering telehealth services.

Part 2 Education: The current rules pertain to the standards for educational programs approved and adopted by reference. The proposed rules will provide up-to-date information regarding the standards for educational programs.

Part 3 Licensure: The current rules pertain to the requirements for licensure, licensure by endorsement, and relicensure. In the proposed rules, the requirements will be clarified. The training standards for identifying victims of human trafficking will be clarified to advise a licensee or applicant of the date by which he or she must have completed the training. The rule establishing a minimum English language standard will be rescinded. The minimum English language standard for licensure will be included in the Public Health Code – General Rules, so the requirement will be removed from this ruleset.

Part 4 Continuing Education: The current rules pertain to the requirements and limitations on the accumulation of continuing education. They also identify the programs that have been preapproved by the board for obtaining continuing education and the process for obtaining board approval of other continuing education programs.

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

The frequency of use is not expected to change.

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

Part 1 General Provisions: Currently, there is no telehealth rule. A new telehealth rule will be added, as required by MCL 333.16287. The proposed rule is intended to advise a licensee of his or her duties when rendering telehealth services, so he or she can comply with the requirements.

Part 2 Education: The current rules pertain to the standards for educational programs approved and adopted by reference. The proposed rules are intended to provide up-to-date information regarding the approved standards for educational programs.

Part 3 Licensure: The current rules pertain to the requirements for licensure, licensure by endorsement, and relicensure. The proposed rules are intended to clarify the requirements for licensure. The proposed rules will also remove the rule pertaining to the English language standard for licensure, as this requirement is being added to the Public Health Code – General Rules.

Part 4 Continuing Education: The current rules pertain to the requirements and limitations on the accumulation of continuing education. They also identify the programs that have been preapproved by the board and provide a process for obtaining board approval of other continuing education programs. The proposed rules are intended to update and clarify the requirements and limitations, the pre-approved programs, and the process for obtaining board approval of other continuing education programs.

C. What is the desired outcome?

R 339.14003: This rule pertains to telehealth services. The proposed change would add a telehealth rule to inform the licensee of his or her duties when providing a telehealth service and to comply with the statutory requirements of MCL 333.16287.

R 339.14005: This rule pertains to accreditation standards. The proposed changes update the educational program standards adopted by reference to assist an applicant in meeting licensing requirements.

R 339.14008: This rule pertains to nursing home administrator licensure by examination. The proposed rule clarifies the requirements for licensure to assist the applicant in meeting the licensing requirements.

R 339.14012: This rule pertains to the identifying victims of human trafficking training requirements. The proposed changes to this rule would provide clarity to assist a licensee or applicant in meeting the renewal or licensing requirements.

R 339.14013: This rule pertains to the minimum English language standard. The proposed rule will remove the requirement that an applicant have a working knowledge of the English language for licensure, as this requirement is being added to the Public Health Code – General Rules.

R 339.14020: This rule pertains to relicensure. The proposed rules clarify the requirements to assist the applicant for relicensure in meeting the requirements.

R 339.14020a: This rule pertains to licensure by endorsement. The proposed changes clarify the requirements to assist the applicant for licensure by endorsement in meeting the requirements.

R 339.14022: This rule pertains to the continuing education required for license renewal. The proposed rule clarifies when the continuing education must be accumulated to assist the licensee in complying with the requirements.

R 339.14026: This rule pertains to the continuing education courses that are approved by the board. The proposed rule clarifies the courses approved by the board to assist the licensee in accumulating approved continuing education credits.

R 339.14026a. This rule pertains to the application for board approval of a continuing education course. The proposed rule clarifies the information that the applicant must submit to request board approval to ensure that the board receives the information necessary to determine if the program should be approved.

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.

Part 1 General Provisions: A new telehealth rule will be added, as required by MCL 333.16287. The proposed rule is intended to advise a licensee of his or her duties when rendering telehealth services and to comply with the requirements of MCL 333.16287.

Part 2 Education: The current rules pertain to the standards for educational programs approved and adopted by reference. The proposed rules are intended to provide up-to-date information regarding the approved educational programs to assist an applicant in determining if his or her educational program meets the requirements for licensure.

Part 3 Licensure: The current rules pertain to the requirements for licensure, licensure by endorsement, and relicensure. The proposed rules are intended to assist an applicant to become licensed by clarifying the requirements he or she must meet for licensure.

Part 4 Continuing Education: The current rules pertain to the requirements and limitations on the accumulation of continuing education. They also identify the programs that have been preapproved for obtaining continuing education and the process for obtaining board approval of other continuing education programs. The proposed rules are intended to update and clarify these rules to assist an applicant in accumulating the continuing education necessary for license renewal.

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

Part 1 General Provisions: A new telehealth rule will be added, as required by MCL 333.16287. The proposed new telehealth rule is needed to advise a licensee of his or her duties when rendering telehealth services and to comply with the requirements of MCL 333.16287.

Part 2 Education: The amendments to the current rules are intended to provide up-to-date information regarding the approved educational programs. This cannot be achieved without changing the rules.

Part 3 Licensure: The proposed rules are intended to assist an applicant to become licensed by clarifying the requirements he or she must meet. Clarification cannot be achieved without changing the rules.

Part 4 Continuing Education: The proposed amendments are intended to assist a renewal applicant to accumulate the required, approved continuing education credits necessary for license renewal. This cannot be achieved without changing the rules.

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.

Part 1 General Provisions: The proposed new telehealth rule will protect the health, safety, and welfare of Michigan citizens by ensuring that the licensee acts within the scope of his or her practice and provides the same standard of care applicable to a traditional health care service.

Part 2 Education: The proposed rules will protect the health, safety, and welfare of Michigan citizens by ensuring that an applicant has satisfied the approved standards in his or her educational program.

Part 3 Licensure: The proposed rules will protect the health, safety, and welfare of Michigan citizens by ensuring that an applicant for licensure has the necessary education, training, and experience to competently practice as a nursing home administrator.

Part 4 Continuing Education: The proposed rules are intended to protect the health, safety, and welfare of Michigan citizens by ensuring that the applicant for renewal has completed the necessary continuing education to stay up-to-date in his or her education and training.

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

R 338.14013 requires that an applicant demonstrate that he or she has a working knowledge of the English language, as required in MCL 333.16174. This rule will be rescinded in the proposed rules because this requirement will be included in the Public Health Code – General Rules. This rule is no longer needed in this ruleset.

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.

Part 1 General Provisions: A new proposed rule is added to this part regarding telehealth services. This rule is necessary to ensure the public health, safety, and welfare of Michigan citizens receiving telehealth services, and it is not anticipated that it will impose any additional burden on the individual licensee.

Part 2 Education: It is not anticipated that the proposed rules would add any new burden on an individual.

Part 3 Licensure: The current rules pertain to the requirements for licensure, licensure by endorsement, and relicensure. It is not anticipated that the proposed rules would add any new burden on an individual.

Part 4 Continuing Education: The current rules pertain to the requirements and limitations on the accumulation of continuing education. They also identify the programs that have been preapproved by the board for obtaining continuing education and the process for obtaining board approval of other continuing education programs. It is not anticipated that the proposed rules would add any new burden on an individual.

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

There is no identified burden imposed by the proposed rules.

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 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, 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 a result of the proposed 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 impose requirements on individual licensees rather than small businesses. Even if a licensee'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.

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.

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

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

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

The department did not consider exempting small businesses because they are not impacted by the proposed rules.

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.

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

There are approximately 1,230 nursing home administrators licensed in Michigan.

A licensee may work in a small business. However, no matter what type of business environment the licensee works in, he or she will have to comply with the proposed rules. The rules do not impact small business differently because the impact is to the individual licensee 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 individual licensees. The rules were drafted to be the least burdensome on all affected licensees.

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 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 separate cost to a small business.

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 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 rather than a small business. Even if a licensee's practice qualifies as a small business, the department could not exempt his or her 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 impose requirements on individual licensees rather than a small business. Even if a licensee's work 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. Therefore, exempting or setting lesser standards of compliance for a small business is not in the best interest of the public.

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

The department worked with the Michigan Board of Nursing Home Administrators in the development of the proposed rules. The Board is composed of professional and public members.

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 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.

No additional costs will be imposed on any businesses or groups.

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.

It is estimated that there will be no new compliance costs imposed on individuals as a result of the proposed rules.

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

All licensees and applicants are affected by the proposed rules.

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

There is no qualitative or quantitative impact on individuals as a result of the proposed rules.

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 proposed rules use clear, concise language, and implement the statutory requirements for licensing. The clear, concise language allows the public, applicants, and licensees to better understand the requirements for licensure and renewal.

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://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1313&ChapAct=225%20ILCS%2070&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Nursing+Home+Administrators+Licensing+and+Disciplinary+Act>;
<http://www.ilga.gov/commission/jcar/admincode/068/068013100000200R.html>; <https://www.in.gov/pla/hfa.htm>;
<https://www.in.gov/pla/2980.htm>; <https://www.in.gov/pla/2813.htm>; <https://www.in.gov/pla/2814.htm>;
<http://iga.in.gov/legislative/laws/2020/ic/titles/025#25-19>; http://www.in.gov/legislative/iac/iac_title?iact=840

Kentucky: <http://ltca.ky.gov/>; http://ltca.ky.gov/newstatic_Info.aspx?static_ID=484&menuid=147

Minnesota: <https://www.revisor.mn.gov/rules/6400.6800/>;
<https://www.revisor.mn.gov/rules/?id=6400.6000>;
<https://www.revisor.mn.gov/rules/?id=6400.6400>;
<https://www.revisor.mn.gov/rules/?id=6400.6550>

Ohio:
<http://codes.ohio.gov/orc/4751>;
<http://codes.ohio.gov/oac/4751-1>

Pennsylvania:
<https://www.dos.pa.gov/ProfessionalLicensing/BoardsCommissions/NursingHomeAdministrators/Documents/Applications%20and%20Forms/Non-Application%20Documents/NHAM%20-%20NHA%20Board%20Act.pdf>;
<http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/049/chapter39/chap39toc.html&d=>

Wisconsin:
https://docs.legis.wisconsin.gov/code/admin_code/nha/3.pdf;
https://docs.legis.wisconsin.gov/code/admin_code/nha/2.pdf;
https://docs.legis.wisconsin.gov/code/admin_code/nha/4.pdf;
<https://docs.legis.wisconsin.gov/statutes/statutes/456.pdf>

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.

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

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

Since the rules are required by statute, 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.

Since the rules are required by statute, private market-based systems cannot serve as an alternative. The licensing and regulation of nursing home administrators are state functions, and states regulate nursing home administrators by statute, regulation, or both. Private market-based systems are not used for licensing and regulation.

There are professional organizations that establish criteria for membership, but these organizations would provide the public with significantly less protection because membership in many of these organizations is voluntary. This means an individual who meets the membership requirements but does not join one of the professional organizations would be able to practice, and there would be no way to ensure his or her competency or hold him or her accountable.

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.

Since the rules are specifically required by statute, 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.

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.