

**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:**

2020-17 LR

**Title of proposed rule set:**

Respiratory Care - 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 the practice of respiratory therapy, 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 licenses, renewals, examination, and required passing scores.

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

MCL 333.18709 requires the department to promulgate rules pertaining to licensure.

**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 in 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: The current rules provide definitions and training standards for identifying victims of human trafficking.

The proposed rules will clarify and add definitions to assist the reader to better understand the terms used in the proposed rules. They will also clarify the training standards for identifying victims of human trafficking and the date that an applicant for licensure or renewal must have completed that training. These proposed rules are intended to assist a licensee or applicant in understanding the terms used in the rule set and to comply with the statutorily required training standards for identifying victims of human trafficking for renewal or initial licensure.

The proposed rules will add a new telehealth rule. By statute, a health professional must obtain consent for treatment. The proposed rule provides that a licensee must also act within the scope of his or her practice and in a manner consistent with health care services offered in-person. This will ensure public health and safety. This rule is required by MCL 333.16287.

Part 2 Licensure: The current rules pertain to licensure and licensure by endorsement. The current rules require 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.

The proposed rules will also clarify that an applicant for licensure by endorsement must hold an active license in good standing in another state immediately preceding the date of application.

Part 3 Education: The current rules pertain to accreditation standards. The information in the current rules is out-of-date. The proposed rules will include the most recent dates of the accreditation standards.

Part 4 Relicensure: The current rules pertain to relicensure. The information will be amended for clarity.

**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: The current definitions lack clarity. The proposed rules are intended to clarify and add definitions to assist the reader to better understand the terms used in the proposed rules.

The proposed rules are intended to clarify the training standards for identifying victims of human trafficking and the date that the training is required for license renewal and initial licensure. The proposed changes are intended to assist a licensee or applicant in complying with the statutorily required training, MCL 333.16148.

The proposed rules include a new rule regarding telehealth services. The rule is intended to comply with the requirements of MCL 333.16287 and to advise a licensee of his or her duties when rendering a telehealth service.

Part 2 Licensure: The current rules pertain to licensure and licensure by endorsement. The proposed rules will remove the working knowledge of the English language rule requirement. This requirement will be included in the Public Health Code – General Rules and is no longer needed in this ruleset.

The rule pertaining to licensure by endorsement will be amended for clarity

Part 3 Education: The current rules contain out-of-date information. The proposed rules will provide up-to-date information regarding accreditation.

Part 4 Relicensure: The current rule lacks clarity and will be revised.

**C. What is the desired outcome?**

R 338.2201: This rule provides the definitions for the ruleset. The proposed rule is intended to clarify the meanings of the terms used in the rule set.

R 338.2201a: This rule pertains to the training standard requirements for identifying victims of human trafficking. The proposed rule is intended to advise an applicant for licensure or renewal of the date that the training standards for identifying victims of human trafficking must be met.

R 338.2201b: This rule pertains to telehealth. This is a new proposed rule intended to meet the statutory requirements of MCL 333.16287 and to advise a licensee of his or her duties when providing a telehealth service.

R 338.2202b: This rule pertains to minimum English language requirements. This rule will be rescinded in the proposed rules because it is no longer needed. The requirement will be included in the Public Health Code –General Rules.

R 338.2205: This rule pertains to licensure by endorsement for a respiratory therapist. The proposed rule will revise the requirements for clarity.

R 338.2206: This rule pertains to accreditation standards. The proposed rule will revise and update the information regarding accreditation.

R 338.2207: This rule pertains to relicensure. It will be revised for clarity.

**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 Rules: The definitions in this section require additional information for clarity. The potential harm is that a reader may misunderstand terms used in the rule set.

The current rules lack a telehealth rule. The proposed rules add a telehealth rule to ensure compliance with statute and ensure that the standards of the profession are maintained when providing a telehealth service. This rule is required by MCL 333.16287.

Part 2 Licensure: The proposed changes are intended to clarify the requirements for licensure by endorsement to assist an applicant in complying with the requirements. Amending the rules is the only way that clarification can be achieved.

Part 3 Education: The current rules contain information that is out-of-date. Amending the rules is the only way to ensure that an applicant has up-to-date information regarding accreditation.

Part 4 Relicensure: The current rules lack clarity. Amending the rules is the only way to clarify requirements and assist applicants to meet the requirements for relicensure.

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

Part 1 is being changed because it lacks clarity in the definitions and there is a need to add a telehealth rule to provide requirements for rendering telehealth services.

Part 2 is being changed because it lacks clarity in the rules pertaining to licensure by endorsement.

Part 3 is being changed to provide up-to-date information pertaining to accreditation.

Part 4 is being changed to clarify relicensure requirements.

**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 Rules: A new rule is being added regarding telehealth services to ensure that the health, safety, and welfare of Michigan citizens are protected when a telehealth service is rendered. A telehealth rule is required by MCL 333.16287.

Part 2 Licensure: The proposed rules in this part protect the health, safety, and welfare of Michigan citizens by ensuring that an applicant for licensure by endorsement understands and complies with licensure requirements.

Part 3 Education: The revised information pertaining to accreditation will ensure that an applicant's program complies with the most recent standards of the nationally recognized organization accrediting educational programs for respiratory therapists.

Part 4 Relicensure: The proposed changes to the rules in this part protect the health, safety, and welfare of Michigan citizens by ensuring that a licensee seeking relicensure is safe to practice. There is no less burdensome way to accomplish this goal.

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

R 338.2202b 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 Rules: The definitions in this section require additional information for clarity. The potential harm is that a reader may misunderstand terms used in the rule set. It does not impose any burden on individuals.

The current rules lack a telehealth rule. The proposed rules add a telehealth rule to ensure compliance with statute and ensure that the standards of the profession are maintained when providing a telehealth service. This rule is required by MCL 333.16287.

There is no new burden imposed on an individual.

Part 2 Licensure: The proposed rule changes are intended to clarify the requirements for licensure by endorsement to assist an applicant to meet the requirements. Amending the rules is the only way that clarification can be achieved. The proposed rules do not impose any new burden on individuals.

Part 3 Education: The current rules contain information that is out-of-date. Amending the rules is the only way to ensure that an applicant has up-to-date information regarding accreditation. The proposed rules do not impose any burden on an individual.

Part 4 Relicensure: The current rules lack clarity. Amending the rules is the only way to clarify requirements and assist applicants to meet the requirements for relicensure. The proposed rules do not impose any burden on individuals.

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

The proposed rules do not impose any identified burdens.

**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 5,335 respiratory therapists currently 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 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 impact 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 Respiratory Care in the development of the proposed rules. The Board is composed of professionals 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 set forth in the rules.

**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: <http://ilga.gov/legislation/ilcs/ilcs3.asp?ActID=1323&ChapAct=225%26nbsp%3BILCS%26nbsp%3B106%2F&ChapterID=24&ChapterName=PROFESSIONS+AND+OCCUPATIONS&ActName=Respiratory+Care+Practice+Act%2E>

<http://www.ilga.gov/commission/jcar/admincode/068/06801456sections.html>

<http://www.ilga.gov/commission/jcar/admincode/068/068014560000600R.html>

Indiana: <https://secure.in.gov/pla/2626.htm>

<http://iga.in.gov/legislative/laws/2017/ic/titles/025#25-34.5>

<http://iga.in.gov/legislative/laws/2017/ic/titles/025#25-1-8-6>

Kentucky: <https://kbrc.ky.gov/LRO/Pages/default.aspx>

Minnesota: <https://www.revisor.mn.gov/statutes/?id=147C>

<https://mn.gov/elicense/a-z/?id=1083-230890#/list/appId//filterType//filterValue//page/1/sort//order/>

Ohio: <http://www.med.ohio.gov/Respiratory-Care>

Pennsylvania: <http://www.pacodeandbulletin.gov/Display/pacode?file=/secure/pacode/data/049/chapter25/subchapKtoc.html&d=reduce>

Wisconsin: [http://docs.legis.wisconsin.gov/code/admin\\_code/med/20.pdf](http://docs.legis.wisconsin.gov/code/admin_code/med/20.pdf)

<https://docs.legis.wisconsin.gov/statutes/statutes/448.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 respiratory therapists are state functions, and states regulate respiratory therapists 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 their competency or hold them 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.