

NOTICE OF PUBLIC HEARING and COMMENT PERIOD for TITLE 248 NAC 2

NOTICE is hereby given that the Department of Motor Vehicles will hold a rulemaking repeal hearing on March 1, 2019, beginning at 9:30 AM in Room C, Lower Level of the State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

THE PURPOSE of the hearing is to take testimony and evidence concerning the repeal of: TITLE 248, Nebraska Administrative Code, Chapter 2 entitled *Rules and Regulations Governing Practices of the Nebraska Department of Motor Vehicles Health Advisory Board Pursuant to Neb. Rev. Stat. §§ 60-4,118 through 60-4,118.04.*

This rule and regulation governs the practices and procedures of the Nebraska Department of Motor Vehicles Health Advisory Board. The intent of the rule and regulation was for the Board to provide a medical opinion, to the Director upon request, concerning the physical or mental ability of an applicant for or holder of an operator's license to safely operate a motor vehicle. The statutes pertaining to the Board, Neb. Rev. Stat. §60-4,118.02 and 60-4,118.04, were repealed by Laws 2017, LB 644, § 21. This repeal of the rule and regulation reflects the elimination of the statutory authority of the DMV to issue rules and regulations regarding the Board.

THIS RULE MAKING HEARING is being conducted under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. § 84-907, et. seq. Draft copies of the proposed regulations are available for public examination at the Department of Motor Vehicles, Legal Division, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509-4699 and at the office of the Secretary of State, Room 1305, State Capitol, Lincoln, Nebraska 68509-4608. A copy of the proposed rule will also be available at www.sos.ne.gov.

There is no new FISCAL IMPACT upon the state or political subdivisions from these rules and regulations.

ALL INTERESTED PERSONS are invited to attend and testify at the hearing. Interested persons may prefer to submit written comments during the PUBLIC COMMENT PERIOD. The public comment period begins with the publication of this notice and will close at the time of the public hearing. Any written comment received prior to or at the public hearing shall be made part of the hearing record at the time of the hearing. Written comments should be addressed to Legal Division, Department of Motor Vehicles, State Office Building, 301 Centennial Mall South, Lincoln, NE 68509-4699 (fax 402-471-4828). Written comments may also be submitted on-line at www.sos.ne.gov. If auxiliary aids or reasonable accommodations are needed to review the drafts or participate in this process, please call the above at (402) 471-9593.

Rhonda Lahm, Director
Department of Motor Vehicles
State of Nebraska

**Nebraska Administrative Regulation
Fiscal Impact Statement**

Agency: Department of Motor Vehicles

Title: 248

Chapter: 2

Name: **RULES AND REGULATIONS**

GOVERNING THE DEPARTMENT OF MOTOR VEHICLES

PRACTICES OF THE NEBRASKA DEPARTMENT OF

MOTOR VEHICLES HEALTH ADVISORY BOARD PURSUANT

TO NEB.REV.STAT. 60-4,118 THROUGH 60-4,118.04

Prepared By:

Bart Moore

Date Prepared:

8/16/2018

Phone:

471-3902

Statement Status:

Draft

Final

Type of Fiscal Impact:

	State Agency	Political Subdivision	Regulated Public
No Fiscal Impact	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Increase Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Decrease Costs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Description of Impact:

NONE

~~TITLE 248, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2~~

~~NEBRASKA DEPARTMENT OF MOTOR VEHICLES~~

~~RULES AND REGULATIONS GOVERNING PRACTICES
OF THE NEBRASKA DEPARTMENT OF MOTOR VEHICLES
HEALTH ADVISORY BOARD PURSUANT TO
NEB.REV.STAT. §§ 60-4,118 THROUGH 60-4,118.04.~~

Title 248 Nebraska Department of Motor Vehicles

~~Chapter 2 RULES AND REGULATIONS GOVERNING PRACTICES OF THE NEBRASKA DEPARTMENT OF MOTOR VEHICLES HEALTH ADVISORY BOARD PURSUANT TO NEB.REV.STAT. §§ 60-4,118 through 60-4,118.04.~~

~~001 SCOPE. These rules govern the practices and procedures of the Nebraska Department of Motor Vehicles Health Advisory Board pursuant to Neb.Rev.Stat. §§ 60-4,118 through 60-4,118.04.~~

002 INTENT.

~~002.01 MEDICAL REVIEW AND EVALUATION FOR PUBLIC SAFETY. The Legislature finds and declares that: (a) the operation of a motor vehicle on the highways of this state is a privilege and that no person should operate a motor vehicle on the highways of this state if not physically or mentally capable of safely doing so; (b) the approval or denial of an application for an operator's license or the revocation of an operator's license may provide or prevent an opportunity for the applicant or licensee to obtain or maintain gainful employment; and (c) under certain circumstances, careful medical review and evaluation of an applicant for an operator's license or of a licensee is necessary to protect the interest of the applicant or licensee and the health, safety, and welfare of the public.~~

~~002.02 AVAILABILITY. The Health Advisory Board shall be available whenever the Director requests the medical opinion of the Board concerning the physical or mental ability of an applicant for or holder of an operator's license to safely operate a motor vehicle as provided in sections 60-4,114 and 60-4,118.~~

003 DEFINITIONS.

~~003.01 Appeal means appeal pursuant to Neb.Rev.Stat. 60-4,105 of the Director's written finding that an applicant or problem driver lacks the physical or mental capacity to safely operate a motor vehicle.~~

~~003.02 Applicant means any person who applies for a new operator's permit or who applies for a renewal of his or her operator's permit.~~

~~003.03 Cancellation means the annulment or termination by formal action of the Department of Motor Vehicles of a person's license because of some error or defect in such license or because the licensee is no longer entitled to such license, and without prejudice to application for a new license which may be made at any time after such cancellation.~~

~~003.04 Consult~~ means the Director's decision to request the medical opinion of any or all of the members of the Health Advisory Board pursuant to Neb.Rev.Stat. 60-4,118.03 concerning the physical or mental ability of an applicant or medically impaired driver to safely operate a motor vehicle.

~~003.05 Denial~~ means a final order from the Director denying an application for a new or renewed operator's permit or operator's license. The Director may deny a license without consulting the Health Advisory Board pursuant to Rules and Regulations of the Department of Motor Vehicles or Nebraska statutes. A denial may be appealed pursuant to sections 004.10 or 005.08.

~~003.06 Department~~ means the Nebraska Department of Motor Vehicles.

~~003.07 Director~~ means the Director of the Nebraska Department of Motor Vehicles or his or her designee.

~~003.08 Examiner~~ means individual employed by the Nebraska Department of Motor Vehicles authorized to examine persons for motor vehicle operator's permits and/or to authorize issuance of such permits in any county in the state of Nebraska.

~~003.09 License~~ means an operator's or driver's license or any license or permit to operate a motor vehicle, except a commercial motor vehicle, issued under the laws of this state, including:

~~003.09A~~ any replacement or duplicate license or instruction permit;

~~003.09B~~ the privilege of any person to drive a motor vehicle whether such person holds a valid license;

~~003.09C~~ any nonresident's operating privilege which shall mean the privilege conferred upon a nonresident by the laws of this state pertaining to the operation of a motor vehicle in this state by such person or the use in this state of a vehicle owned by such person;

~~003.09D~~ an employment driving permit issued as provided by sections 60-4,129 and 60-4,130; and

~~003.09E~~ a medical hardship driving permit issued as provided by sections 60-4,130.01 and 60-4,130.02.

~~003.10 Licensee~~ means a person who is the holder of a motor vehicle operator's license which may be subject to recall, denial or cancellation.

~~003.11 Manager of Driver Examiners~~ means the administrative director of the Examining Division of the Department of Motor Vehicles.

~~003.12 Medical report or medical reports means evaluations by health professionals requested by the Department, including the Statement of Vision and/or Statement of Physician completed by a health professional of the applicant's or licensee's choice and/or any such additional evaluations submitted voluntarily by an applicant or licensee.~~

~~003.13 Medically impaired driver means a holder of an operator's license who the Director has reason to believe may be or may have become physically or mentally unable to safely operate a motor vehicle pursuant to 60-4,118(4).~~

~~003.14 Scheduled meeting means a meeting called by the Director to obtain the medical opinion necessary to make a decision as to whether or not a person is mentally and/or physically capable of safely operating a motor vehicle.~~

~~003.15 Statement of Physician means a form approved by the Department for the purpose of recording the results of a physical examination and medical history by doctors of medicine, doctors of osteopathy, physician assistants, advance practice nurses, and doctors of chiropractic on the condition of the applicant or licensee for a license or permit. The statement shall be valid for ninety (90) days from the date of the physical examination.~~

~~003.16 Statement of Vision means a form approved by the Department for the purpose of recording the results of an examination and history by an optometrist or ophthalmologist on the condition of the applicant's or licensee's vision. The statement shall be valid for ninety (90) days from the date of the eye examination.~~

~~004 REFERRAL TO HEALTH ADVISORY BOARD FOR APPLICANTS FOR NEW LICENSE OR LICENSE RENEWAL.~~

~~004.01 REFERRAL TO MANAGER OF DRIVER EXAMINERS. When any person makes an application for a new license or to renew a license, if an examiner suspects that the applicant has a mental, vision, or physical problem that may interfere with the applicant's ability to safely operate a motor vehicle, the examiner will not issue the license but will refer the application to the Manager of Driver Examiners.~~

~~004.02 STATUS OF LICENSE DURING REFERRAL TO MANAGER.~~

~~004.02A NO LICENSE ISSUED UNTIL AUTHORIZED BY DIRECTOR. An applicant for a new license who is referred to the Manager of Driver Examiners will not be issued a license until authorized by the Manager of Driver Examiners or the Director pursuant to these Rules and Regulations.~~

~~004.02B LICENSE VALID UNTIL EXPIRATION DATE. Applicant for a renewed~~

~~license may keep a valid license until it expires. A consultation with the Health Advisory Board may or may not be completed prior to the expiration of the existing license, and the renewal is subject to authorization by the Director, pursuant to these Rules and Regulations.~~

~~004.02C EARLY RENEWAL. Applicants for early renewal of a license pursuant to any applicable Nebraska statute shall be subject to these Rules and Regulations.~~

~~004.03 ACTION BY MANAGER. Upon receiving a report from an examiner, the Manager of Driver Examiners reviews the application and medical reports and may:~~

~~004.03A authorize the issuance or renewal of the license; or~~

~~004.03B refer the application and medical reports to the Director for the advice of the Health Advisory Board and shall send a letter to the applicant indicating that the issuance or renewal of the license is pending upon consultation with the Health Advisory Board.~~

~~004.04 CONSULTATION WITH HEALTH ADVISORY BOARD. The Director or his or her designee reviews the application and medical reports and may consult with member/s of the Health Advisory Board. Upon this initial consultation, the Director may deny a license pursuant to the Rules and Regulations of this Department, or may authorize the issuance or renewal of the license, with or without restrictions, subject to the applicant's successful completion of any required examinations.~~

~~004.05 MEETING WITH HEALTH ADVISORY BOARD TO OBTAIN MEDICAL OPINION. If the Director does not authorize the issuance or renewal of the license or deny the license upon the initial consultation, the Director shall schedule the applicant's case to be discussed at a meeting of the Health Advisory Board to obtain medical opinion. The Director shall notify the applicant of the time and place of the meeting. The applicant shall be required to submit a Statement of Vision and/or Statement of Physician. The applicant may submit any additional medical report/s from a health professional/s.~~

~~004.06 FORTY FIVE DAYS. If the Director requests the medical opinion of the Health Advisory Board on the matter, the Director shall have up to forty five days from the day a medical or vision problem is referred to him or her to consult with members of the Board to obtain the medical opinion necessary to make a decision.~~

~~004.07 APPLICANT MAY ATTEND. At the scheduled meeting, the Health Advisory Board may discuss the case and/or offer medical opinion to the Director or his or her designated representative. The applicant may attend the meeting, but is not required to attend.~~

~~004.08 DECISION BY DIRECTOR. After reviewing the medical opinion and advice of the Health Advisory Board, the Director shall render a prompt finding determining whether or not the applicant lacks the physical or mental ability to operate a motor vehicle and is physically or mentally capable of~~

safely of operation a motor vehicle on the highways of this state pursuant to Neb.Rev.Stat. §§ 60-4,114 and 60-4,118.01. The Director shall notify the applicant in writing and shall inform the applicant of the reason/s for the ruling and that his or her license:

004.08A is denied;

004.08B is cancelled; or

004.08C may be issued, subject to the applicant's successful completion of any required examinations. Such license may be issued with or without restrictions or conditions.

004.09 TEN DAYS. The Director shall render a prompt finding not later than ten days following the receipt of the medical opinion.

004.10 APPEAL TO DISTRICT COURT. If the applicant is aggrieved by the Director's decision, the applicant may appeal to the District Court pursuant to 60-4,105.

005 RECALL OF A MEDICALLY IMPAIRED DRIVER'S OPERATOR'S LICENSE.

005.01 RECALL REQUEST. If a medically impaired driver is reported to the Director and there is reason to believe that the licensed driver may be visually, physically, or mentally incompetent to safely operate a motor vehicle, the Director, through a recall request, may order the licensee to appear before an examiner to demonstrate that he or she is capable of safely operating a motor vehicle.

005.01A ISSUANCE OF LICENSE. If a licensee so notified appears before an examiner and demonstrates that he or she is capable of safely operating a motor vehicle, the examiner shall return the license, with or without restrictions.

005.01B REFERRAL TO MANAGER OF DRIVER EXAMINERS. If the licensee appears before an examiner but is unable to demonstrate that he or she is capable of safely operating a motor vehicle, or if the examiner has questions about the licensee's mental or physical ability to safely operate a motor vehicle whether or not a written or driving test has been conducted, the examiner may refer the matter to the Manager of Driver Examiners for review.

005.02 REFERRAL TO DIRECTOR. The Manager of Driver Examiners may authorize the examiner to return or reissue the license, with or without restrictions, after reviewing the examiner's report. The return or reissue of the license is subject to the applicant's successful completion of any required examinations. The Manager may refer the matter to the Director for determination or consultation with the Health Advisory Board. The Manager of Driver Examiners shall notify the

licensee that his or her license will be held pending the Director's determination and/or consultation with the Health Advisory Board.

~~005.03 CONSULTATION WITH HEALTH ADVISORY BOARD.~~ The Director or his or her designee may consult with member/s of the Health Advisory Board to obtain medical opinion. Upon this initial consultation, the Director may:

~~005.03A~~ authorize further examination and testing for the return of the license, with or without restrictions;

~~005.03B~~ schedule a meeting of the Health Advisory Board for medical opinion; or

~~005.03C~~ recall the license pursuant to Department of Motor Vehicles Rules and Regulations.

~~005.04 MEETING WITH HEALTH ADVISORY BOARD TO OBTAIN MEDICAL OPINION.~~ If the licensee's case is scheduled to be discussed at a meeting of the Health Advisory Board to obtain medical opinion, the Director shall notify the licensee of the time and place of the meeting. The licensee shall be required to submit a Statement of Vision and/or a Statement of Physician. The licensee may submit any additional medical reports from a health professional/s.

~~005.05 APPEARANCE BEFORE THE HEALTH ADVISORY BOARD.~~ At the scheduled meeting, the Health Advisory Board may review and discuss any medical reports on the licensee's condition and the members shall offer medical opinion to Director or his or her designated representative. The licensee may be required to appear before the Health Advisory Board or its designee.

~~005.06 DECISION BY DIRECTOR.~~ After consideration of the medical option and advice of the Health Advisory Board, the Director shall determine whether or not the licensee lacks the physical or mental ability to operate a motor vehicle and is physically or mentally capable of safe operation of a motor vehicle on the highways of this state pursuant to §§ 60-4,118 and 60-4,118.01(1). The Director shall notify the licensee in writing of the decision and inform the licensee of the reason/s for the ruling and that his or her license:

~~005.06A~~ is cancelled; or

~~005.06B~~ may be returned, subject to the licensee's successful completion of any required examination. Such license may be returned or reissued with or without restrictions or conditions.

~~005.07 SURRENDER OF LICENSE.~~ Upon receipt of a notice of cancellation, a licensee shall

immediately surrender his or her operator's license to the Director who shall cancel the person's license.

~~005.08 APPEAL TO DISTRICT COURT.~~ Any licensee who is aggrieved by the decision of the Director to cancel his or her license may appeal to the District Court pursuant to Neb.Rev.Stat. 60-4,105.

006 GROUND FOR REVOCATION, CANCELLATION AND DENIAL OF LICENSES (60-4,118).

~~006.01 DENIAL, CANCELLATION, RESTRICTION.~~ The Director may cancel or deny or restrict a motor vehicle operator's license to any person if the Director determines (1) that the person does not meet the medical or vision requirements set forth by the Department of Motor Vehicles in its Rules and Regulations; or (2) after consultation with the Health Advisory Board that the person lacks the physical or mental ability to operate a motor vehicle safely. The Director shall notify the person in writing of the decision.

~~006.02 REFUSAL OR FAILURE OF APPLICANT OR LICENSEE.~~ Grounds for revocation, cancellation or denial shall include, but are not limited to:

~~006.02A~~ A refusal to appear before an examiner, the Board, or a designee of the Director for an examination, after notice to do so, shall result in the immediate cancellation of the person's operator's license by the Director.

~~006.02B~~ Refusal to surrender an operator's license on demand during any period when a person's operator's license is under review for mental and/or physical ability to safely operate a motor vehicle.

~~006.02C~~ Refusal or failure to submit requested medical reports to the Department.

~~006.02D~~ Failure, without good cause shown, or refusal to attend any scheduled examinations or evaluations, after notice to do so, to determine if a person has the mental or physical ability to safely operate a motor vehicle.

~~006.03 MINIMUM REQUIREMENTS.~~ Medical reports indicating that the person cannot meet the minimum medical or vision requirements as set forth by the Department of Motor Vehicles Rules and Regulations shall be grounds for denial or cancellation.

007 RECORDS AND REPORTS.

~~007.01 RECORDS AND REPORTS TO BE CONSIDERED.~~ Whenever the Director requests the medical opinion of the Health Advisory Board concerning the physical or mental ability of an applicant for or holder of an operator's license to operate a motor vehicle as provided in

~~Neb.Rev.Stat. §§ 60-4,114 and 60-4,118, the Board may formulate its medical opinion from records and reports or may cause an examination and report to be made by one or more members of the Board or any qualified person designed by the Board. The applicant or licensee may cause a written report to be forwarded to the Board by the physician of his or her choice. The Director shall give due consideration to any such report.~~

~~007.02 CONFIDENTIALITY. Reports received or made by the Board or any of its members for the purpose of assisting the Director in determining whether a person is qualified to be licensed shall be for the confidential use of the Board, the Director, and any designees of the Director and may not be divulged to any person other than the applicant or licensee or used in evidence in any legal proceeding, except that a report may be admitted in an appeal of an order of the Director based on the report.~~

~~008 PROCEDURES FOR HEALTH ADVISORY BOARD MEETING. Such meeting shall be held in compliance with the provisions of Neb.Rev.Stat. 84-1408 through 84-1414, except that considerations of confidentiality with respect to the medical histories of applicants and licensees may not be made public without the permission of the applicant or licensee or pursuant to 60-4,118.03.~~

~~008.01 NOTICE TO APPLICANT OR LICENSEE. In the event that the Director decides to schedule a meeting on an application for a license or a recall of a license with the Health Advisory Board for their medical opinion pursuant to 004.05 or 005.04 of these Rules and Regulations, the Director shall give the applicant or licensee notice of the time and place of the meeting in writing at the post office address provided by the applicant or licensee on their application or license pursuant to Neb.Rev.Stat. 60-484 and 60-4,117. Such notice shall be mailed to the applicant's or licensee's post office address not less than ten days before the scheduled meeting.~~

~~008.02 NOTICE TO PUBLIC. The Director shall give reasonable advance public notice of the time and place of the meeting by a method designated by the Health Advisory Board and recorded in its minutes. Such notice shall be transmitted to all members of the Health Advisory Board and to the public. Such notice shall contain an agenda of subjects known at the time of the publicized notice or a statement that the agenda, which shall be kept continually current, shall be readily available for public inspection at the offices of the Department during normal business hours. Except for an emergency, such agenda shall not be altered later than twenty-four hours before the scheduled commencement of the meeting. The Health Advisory Board shall have the right to modify the agenda to discuss any items of an emergency nature.~~

~~008.03 TELECONFERENCE OR VIDEOCONFERENCE. Applicants and licensees may be present by teleconference at a scheduled meeting of the Health Advisory Board by prior arrangement at least one working day before the scheduled meeting. If a videoconference is desired, the licensee or applicant shall notify the Department in writing not less than seven (7) working days before the scheduled meeting so that arrangements may be attempted. Videoconference availability is subject to the requirements of NETV pursuant to 81-1120.24 and the guarantee of the applicant or licensee to be responsible for the cost of the videoconference. The guarantee to be responsible for the cost must be contained in the written request for a videoconference. Department of Motor Vehicles cannot guarantee that videoconference will be available.~~

~~008.04 OPEN MEETINGS.~~ Meetings shall be open to the public except if the Board holds a closed session pursuant to conditions of 84-1410. Prevention of needless injury to the reputation of an individual or if an individual licensee or applicant has not requested a public meeting shall be considered good cause for a closed session. Discussions of a person's mental or physical condition shall be confidential pursuant to 60-4,118.03. All discussion of an applicant's or licensee's medical condition will be considered closed unless the applicant or licensee requests an open meeting in writing at least one working day prior to the meeting. The applicant or licensee may be present for any discussion of his or her case but may not participate in the discussion. Members of the public may attend any meeting or portion of a meeting which is not closed for purposes of confidentiality, but may not otherwise participate in the meeting.

~~008.05 BOARD MINUTES.~~ The Health Advisory Board shall designate an individual to keep minutes of all meetings which shall show the time, place, members present and absent, and the substance of all matters discussed. Such minutes shall be public records except that confidential medical information or any person may be withheld pursuant to 60-4,118.03. Such minutes may be available for inspection during normal working hours of the Department within ten working days of the meeting. The minutes shall summarize the medical opinion of each Board member present for each case presented or the Board may submit a medical opinion by consensus. Meetings of the Board shall be tape recorded. Any medical records considered by the Health Advisory Board shall not be public records pursuant to 84-712.05.

~~008.06 SELECTION OF OFFICERS AND COMMITTEES.~~ The Board shall meet as necessary at the call of the Director. At the initial meeting of the Board, the Board shall select from among its members a chairperson and any other officers as it deems necessary. The Board may select officers and committees annually or as necessary to fill vacancies of committees or officers and to carry out the duties of the Board.

~~008.07 FOLLOW AGENDA; EMERGENCY.~~ At scheduled meetings, the Board shall follow the prepared agenda, except if there is a decision to take up an emergency. The decision to take up an emergency shall be by the majority of the members present and add the emergency to the agenda. The Health Advisory Board shall otherwise follow the agenda and review any medical reports and discuss the cases and offer medical opinion to the Director or his or her designee. The members may offer medical information and their opinions as to whether or not a particular licensee or applicant is able to safely operate a motor vehicle. Applicants or licensees may submit medical reports for the Health Advisory Board's review and may be present for any discussion of their individual case but shall not otherwise participate in the meeting.

~~009 MEDICAL OPINION FOR RULES AND REGULATIONS.~~ The Health Advisory Board or its members may provide the Director or his or her designee with medical opinion to aid the Department in the development or amendment of Rules and Regulations with regard to standards for licensure concerning medications, vision, physical ability, or mental or medical conditions to assure that an individual has the capacity to safely operate a vehicle on the highways of this state.