



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-055

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

1. Statutory Authority

a. It appears that the proposed rule fails to incorporate the requirements for training programs that were added to ch. 460, Stats., by 2009 Wisconsin Act 355. See ss. 460.04 (2) (b) and 460.095, Stats.

b. In proposed s. MTBT 3.01 (5) (b), “may” should be changed to “shall”. See ss. 460.095 (1) and 460.05 (1) (e) 2., Stats.

2. Form, Style and Placement in Administrative Code

a. The enumeration of sections treated by the proposed rule should be updated to refer to the creation of s. MTBT 4.02 (5), currently omitted, as well as to refer to the creation of chs. MTBT 6 and 7, rather than each section of those chapters individually.

b. In the plain language analysis, defined terms, and specific terms such as “certificate” that are referenced, should be placed in quotations.

c. Provisions of the current rule that are not affected should not be repealed and re-created, and renumbering of existing rule sections should be avoided. SECTION 2 of the rule-making order should be rewritten to conform to these drafting conventions. [See ss. 1.03 (5) and 1.065, Manual.]

d. The first sentence of the “Summary of factual data and analytical methodologies” in the analysis is ungrammatical and should be rewritten.

e. The entire rule should be reviewed to ensure that all occurrences of the term “bodyworker” are replaced with the term “body work therapist”, all occurrences of “bodywork” are replaced with the term “body work therapy”, and all occurrences of the term “certificate” are replaced with the term “license”.

f. In order to conform to the definitions set forth in s. 460.01, Stats., the following changes should be made: in s. MTBT 1.02 (2) (a), the word “a” should be inserted after “enhances”; in s. MTBT 1.02 (3), the word “leads” should be changed to “lead”; and in s. MTBT 1.02 (15), “percussion” should be changed to “percussing”.

g. Several of the definitions created in the rule-making order contain substantive requirements and as such, should be placed in the text of the rule rather than the definitional section. This comment applies to s. MTBT 1.02 (7), (8), (9), (11), and (18). [See s. 1.01(7) (b), Manual.]

h. Section MTBT 1.02 (11) (a), (17) (e) and (f), and (18) (d) should end each sentence with a period.

i. In s. MTBT 1.02 (18) (a), the department uses the phrase “and all of the following occur:”. This phrase suggests further subdivision of par. (a), however no such subdivision is present. Should the phrase be deleted? Note that, as written, pars. (b) to (d) relate to sub. (18) (intro.), not par. (a).

j. In s. MTBT 1.02 (23) (b) and (c), it appears that either the term “competent” or “legitimate” should be used consistently. In addition, the first word of each paragraph following the introductory material in s. MTBT 1.02 (23) should be capitalized and the material should end with a period.

k. Section MTBT 2.01 (title) should end with a period.

l. In ss. MTBT 4.02 (5) and 7.02 (1), the phrase “between initial licensure and the first renewal period thereafter” is unnecessary and should be deleted.

m. The entire rule should be reviewed for correct use of the terms “shall” and “may”. For example, in s. MTBT 4.03, the phrase “shall not” does not conform to correct drafting style, and in s. MTBT 7.02 (2), “must” should be changed to “shall”. [See s. 1.01 (2), Manual.]

n. In the text of SECTION 11 of the rule-making order, the second occurrence of “MTBT 4.04” is unnecessary and should be deleted. [See the example in s. 1.04 (2) (a) 4., Manual.]

o. The entire rule-making order should be reviewed to ensure that proper drafting style is used when deleting and inserting material. For example, in s. MTBT 5.01 (32), existing phrases that are replaced should be stricken in their entirety and new material inserted after the stricken material. In addition, underscored language should not be stricken. [See s. 1.06 (1), Manual.]

p. In SECTION 13 of the rule-making order, the Administrative Code and statutory provisions that are referenced within the rule text should not be underscored.

q. The entire rule-making order should be reviewed to ensure that the numerical denotation of rule provisions is correctly displayed. For example, in SECTION 13 of the rule-making order, the notation “5.02” should be inserted before “(1)”.

r. The treatment clause in SECTION 14 of the rule-making order should be rewritten to read as follows: “chapter MTBT 6 is created to read:”. The treatment clause in SECTION 15 should be changed to read as follows: “chapter MTBT 7 is created to read:”.

s. In s. MTBT 6.02 (3), “department” should not be capitalized.

t. In s. MTBT 6.02 (4), the use of “and/or” does not conform to proper drafting style and should be rewritten. In addition, the use of “(s)” to refer to both the singular and plural form of a word is improper. [See s. 1.01 (9) (a) and (e), Manual.]

u. In s. MTBT 7.02 (5), “is” should be changed to “shall be”.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. MTBT 1.02 (23), the definition of “sexually oriented business” is limited to for-profit entities. Is this limitation appropriate? Should the definition instead apply to any entity that offers or provides any of the listed services for a fee?

b. In s. MTBT 6.02 (1), the introductory material does not lead into the subunits in a grammatically correct manner. These provisions should be rewritten.

c. Should s. MTBT 7.02 (3) require the licensee to identify the continuing education courses that he or she has completed?

d. To conform to the terminology used in s. 460.10 (2), Stats., in s. MTBT 7.02 (4), “similar” should be changed to “exceptional”.

e. Section MTBT 7.02 (4) should specify the standards the board will use in considering requests for waivers and a process for a licensee to appeal a denial of a waiver.

f. In s. MTBT 7.02 (6), “subsequent” is superfluous and should be deleted.