



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 22-059

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. In general, the agency should more fully explain its intent for the proposed rule in relation to CHR 22-050, another proposed rule recently submitted to the Clearinghouse for review. Generally, the two rules are similar in content, and it appears possible that CHR 22-059 might be characterized as a “second draft” relative to CHR 22-050. In particular, several substantive provisions of CHR 22-059 appear intended to address Clearinghouse comments to CHR 22-050. If the connection between the two Clearinghouse rules is accurate, it may be useful, as also noted below, to proceed with one rulemaking and formally cease activity on the other, using the withdrawal procedure specified in s. 227.14 (6) (b), Stats.

b. The agency should conform the style of rule treatment to that described in the Manual. In particular, repealed and recreated material need not be underscored, and “SECTION X” should be assigned an Arabic number, referenced in the enumeration of provisions treated, and reconciled in its relationship with SECTIONS 3 and 4, as described below.

4. Adequacy of References to Related Statutes, Rules and Forms

a. In SECTION 1 of the proposed rule, amending s. HAS 4.03 (1) (Note), the Note should appear only once. Also, the texts of the two Notes differ from one another. The first Note does not accurately reflect the text of the Note in the existing administrative code, and it should be removed. Additionally, the word “the” should not be capitalized, so that the entity identified in the Note is referred to as “the American National Standards Institute”.

b. Further revisions are recommended to s. HAS 6.07 (2) (a), for speech-language pathologists, and s. HAS 6.07 (2) (b), for audiologists (within the section of the proposed rule labeled “SECTION X”) as explained herein. Note that these provisions incorporate statutory requirements under s. 440.09 (2) (a) to (f) and (2m), Stats., into the proposed rule. However, not all of the requirements under s. 440.09 (2) (a) to (f) and (2m), Stats., are included.

Provisions in s. 440.09 (2) (a) to (f) and (2m), Stats.	Included in s. HAS 6.07 (2) (a) and (2) (b), and If So, Where?
Section 440.09 (2) (intro.) – “The department and each credentialing board shall grant a reciprocal credential to an individual who the department or credentialing board determines meets all of the following requirements:”.	Yes. See sub. (2) (a) (intro.) and (b) (intro.)
Section 440.09 (2) (a) – “The individual applies for a reciprocal credential under this section on a form prescribed by the department or credentialing board”.	Yes. See sub. (2) (a) 1. and (b) 1. (and Notes for each)
Section 440.09 (2) (b) – “The individual is a service member, a former service member, or the spouse of a service member or former service member and resides in this state”.	Yes. See sub. (2) (a) (intro.) and 2. to 3. and (b) (intro.) and 2. to 3.
Section 440.09 (2) (c) – “The individual holds a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board”.	No.
Section 440.09 (2) (d) – “The individual pays the fee specified under s. 440.05 (2)”.	Yes. See sub. (2) (a) (intro.) and (b) (intro.)
NOTE: there is no s. 440.09 (2) (e), Stats.	n/a
Section 440.09 (2) (f) – “The individual is in good standing with the governmental authorities in every jurisdiction outside this state that have granted the individual a license, certification, registration, or permit that qualifies the individual to perform acts authorized under the appropriate credential granted by the department or credentialing board”.	Yes. See sub. (2) (a) 4. and (b) 4.
Section 440.09 (2m) – “If an individual is unable to provide documentation that the individual is a service member, former service member, or the spouse of a service member or former service member, the individual may submit an affidavit to the department or credentialing board, as appropriate, stating that the individual is a service member, former service member, or the spouse of a service member or former service member”.	Yes. See sub. (2) (a) 3. and (b) 3.

As shown in the chart above, the statutory requirements in s. 440.09 (2) (a), (b), (d), and (f) and (2m), Stats., are all addressed in the proposed rule. Specifically, they are created as s. HAS 6.07 (2) (a) 1. to 4., with regard to speech language pathologists, and as s. HAS 6.07 (2) (b) 1. to 4., with regard to audiologists, in the section labeled "SECTION X".

However, the proposed rule fails to implement the requirement, under s. 440.09 (2) (c), Stats., that an applicant must hold "a license, certification, registration, or permit that was granted by a governmental authority in a jurisdiction outside this state that qualifies the individual to perform the acts authorized under the appropriate credential granted by the department or credentialing board". Consistent treatment of each statutory provision recommends in favor of a reference to this requirement for each credential under the rule. For example, references could be created as "s. HAS 6.07 (2) (a) 5." in relation to speech-language pathology and "s. HAS 6.07 (2) (b) 5." in relation to audiology.

Note that the statutory requirement under s. 440.09 (2) (c), Stats., is similar to, but distinct from, that under s. 440.09 (2) (f), Stats. Under par. (f), an applicant must be in good standing with "the governmental authorities in every jurisdiction outside this state that have granted the individual" a qualifying credential. However, there may be some cases in which the applicant has been granted no credentials in any other jurisdiction. They would not fail to meet the requirement under par. (f), because there would be no jurisdictions to which it applied. In those cases, the separate requirement under par. (c) would ensure that an individual could not receive a reciprocal credential unless they actually hold a qualifying credential in another jurisdiction.

Because of the fact that the requirements under pars. (c) and (f) are distinct from one another, and they are designed to work together, as explained above, they both should be included in the proposed rule. This will be accomplished if all of the current provisions are retained in s. HAS 6.07 (2) (a) 1. to 4. and (2) (b) 1. to 4., and if provisions reflecting the requirement under s. 440.09 (2) (c), Stats., are also created (as suggested above, as "s. HAS 6.07 (2) (a) 5." in relation to speech-language pathology and as "s. HAS 6.07 (2) (b) 5." in relation to audiology).

c. The section of the proposed rule labeled "SECTION X" also repeals s. HAS 6.07 (1) (c) and recreates it to say as follows:

(c) RECIPROCAL AGREEMENTS. A license to practice speech-language pathology or audiology may be granted to applicants according to the terms of a reciprocal agreement the board has entered into with another state or territory.

Notably, there is no s. HAS 6.07 (1) (c) included in the existing administrative code. Instead, this paragraph is created in SECTION 3 of the proposed rule, as follows:

(c) A reciprocal speech-language pathology license shall be granted to service members, former service members who were discharged within the prior four years under conditions other than dishonorable, and spouses of service members or former service members to obtain a credential if the person resides in Wisconsin and are in good standing with the governmental authorities in every jurisdiction outside Wisconsin that have granted the individual a credential that qualifies the individual to perform acts authorized under the appropriate

credential granted by the department or credentialing board. The license may be renewed pursuant to s. 440.09 (3) Stats.

The SECTION X version is placed after SECTION 3 within the text of the proposed rule. If this order is correct, the SECTION 3 version would disappear as a result of the SECTION X version. In other words, only the SECTION X version of s. HAS 6.07 (1) (c) would be promulgated as a rule. The language that would be retained is the same as that in s. HAS 6.07 (3) of the existing code regarding reciprocal agreements.

With regard to the SECTION 3 version of s. HAS 6.07 (1) (c), several of the references in the text are subsequently addressed in various places within the section labeled "SECTION X" of the proposed rule. For example, the text of the SECTION 3 version of s. HAS 6.07 (1) (c) refers to several terms (service members, etc.), but these are also included as defined terms in sub. (2) (a) and (b) of the section labeled "SECTION X". Also, the SECTION 3 version of s. HAS 6.07 (1) (c) includes language implementing the requirement to be in good standing with jurisdictions, under s. 440.09 (2) (f), Stats., but this is also included in sub. (2) (a) 4. and (b) 4. of the section labeled "SECTION X".

d. However, the proposed rule should be revised to reflect the fact that the license may be renewed pursuant to s. 440.09 (3) Stats. This language is included in the SECTION 3 version of s. HAS 6.07 (1) (c), but it has not been included in the SECTION X version. Therefore, the section labeled "SECTION X" should be revised to refer to the fact that the credentials may be renewed pursuant to the specified statute, so that this will be included in the promulgated rule. If a Note similar to that created in SECTION 3 is retained, it should be revised to properly introduce the text of s. 440.09 (3), Stats. [e.g., "Section 440.09 (3), Stats., states:"]

e. After the section of the proposed rule labeled "SECTION X", the following text appears in strikethrough:

~~SECTION 4. HAS 6.07 (2) (c) is created to read:~~

~~HAS 6.07 (2) (c) A reciprocal speech language pathology license shall be granted to servicemembers, former service members who were discharged within the prior four years under conditions other than dishonorable, and spouses of service members or former service members to obtain a credential if the person resides in Wisconsin and are in good standing with the governmental authorities in every jurisdiction outside Wisconsin that have granted the individual a credential that qualifies the individual to perform acts authorized under the appropriate credential granted by the department or credentialing board. The license may be renewed indefinitely.~~

It is not clear what this means. Notably, there is no s. HAS 6.07 (2) (c) included in the existing administrative code. Instead, this paragraph appears to be attempting to abandon a provision referenced in CHR 22-050, which is still an active clearinghouse rule, in favor of the proposed rule's repeal and recreation of s. HAS 6.07 in its entirety. A more appropriate step would be to modify that proposed rule instead of attempting to address it in this proposed rule.

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

The fiscal estimate/EIA and notice of submittal for the proposed rule state that it relates to “audiometric testing and reciprocal licensure”, which appears accurate in relation to the proposed rule’s treatment of both chs. HAS 4 and 6. The relating clause for the proposed rule should be updated to refer to both topics.