



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 22-063

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.]

1. Statutory Authority

In general, the agency should more fully explain its intent regarding the responsibility of hospitals and employers of physicians to create policies regarding chaperones or other observers in patient examinations. Does the agency intend to require hospitals and employers of physicians to create policies regarding chaperones or other observers? What outcome does the agency expect if a hospital or employer of a physician does not have a policy on chaperones or observers? Do any obligations under the proposed rule, such as the posting requirement in the last sentence of s. Med 10.03 (2) (f) 4., apply to a hospital or employer of a physician in addition to a self-employed physician? If so, the agency should more fully explain its authority to impose its requirements on an entity other than a physician.

2. Form, Style and Placement in Administrative Code

a. In SECTION 2 of the proposed rule, creating s. Med 10.03 (2) (f) 4., the proposed text is placed as a subdivision of par. (f). Each subunit of a section should relate to a particular subset of subject matter within the section’s larger subject matter. Paragraph (f) relates to engaging in sexual behavior with patients, and its existing subdivisions address details of that behavior. Because the proposed provision does not specifically relate to that topic, consider placing it in a separate paragraph instead of as a subdivision of par. (f). [s. 1.09 (2) (b), Manual.] If the agency keeps the insertion as a subdivision, then the insertion of a subdivision is designated by a number followed by a period. [s. 1.10 (1) (b) 5., Manual.]

b. In SECTION 2 of the proposed rule, creating s. Med 10.03 (2) (f) 4., the incorporation by reference of standards should be reviewed for compliance with s. 1.14 of the Manual. Prospective incorporation by reference should be avoided, as it raises questions of due process and improper delegation of authority. [s. 1.14 (5), Manual.] In particular, as presently drafted, questions may arise due to the manner in which the proposed rule appears to adopt prospective changes to chaperone and observer policies without additional agency oversight or future

rulemaking. Additionally, compliance with the Attorney General's role in incorporation by reference should be documented in the rule analysis.

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

In the analysis of the proposed rule, the proposed rule states that ch. Med 21 is a related statute or rule. The agency should consider clarifying how patient health care records are related to the proposed rule.

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

a. In SECTION 1 of the proposed rule, creating s. Med 10.02 (2m), the definition of "chaperone" is unclear. Is the individual present required to have basic training, or is it only permissible that the individual have basic training? What is the minimum basic training required? Note, that in clarifying the above questions, and similar questions regarding s. Med 10.02 (4m), it may be more appropriate to do so in a new substantive provision, rather than within the definition itself. For example, the presumptions of qualifications for a chaperone or observer could be placed in the code as a separate substantive provision. [s. 1.07 (1) (d), Manual.]

b. In general, the agency should consider further dividing into subunits the text of proposed rules that address different requirements. [s. 1.09, Manual.] For example, the multiple requirements of SECTION 2 may be clarified through additional subdivision.