



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-037

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 the statutory authority and explanation of statutory authority sections, include s. 448.40 (1m), Stats., which states, “the board may promulgate rules to establish minimum standards for military medical personnel...”. Also, between the Medical Examining Board and the Department of Safety and Professional Services (DSPS), consider which agency’s administrative code is best-suited to promulgate rules outlining the program, as the Medical Examining Board authority under s. 448.40 (1m), Stats., refers to promulgation of rules by the Board to establish minimum standards for military medical personnel, while the DSPS authority under s. 440.077 (5), Stats., is more broadly related to administration of the program.

2. Form, Style and Placement in Administrative Code

a. DSPS also proposed an administrative rule, Clearinghouse Rule 23-038, to address the Military Medical Personnel Program, created by 2021 Wisconsin Act 158. Consider coordinating with DSPS to use consistent language in both proposed rules.

b. In the plain language analysis of the proposed rule, could the agency provide more detail on the content of the rule and the role of rulemaking, relative to the statutory text, in administration and oversight of the Military Medical Personnel Program?

c. Throughout the proposed rule, in cross-references to statutes, consider using the specific cross-references to subsections instead of general cross-references to chapters, when applicable. For example, in proposed s. Med 26.02 (3), consider referencing s. 441.16 (2), Stats., instead of ch. 441, Stats.

d. Throughout the proposed rule, internal cross-references should follow the style prescribed by s. 1.15 (2) (c) of the Manual.

e. In proposed s. Med 26.02, the extent of the applicability of the definitions should be clearly stated. In the proposed rule, it appears definitions are intended to apply to the newly created ch. Med 26, so the phrase “In this chapter:” could precede the existing definitions. In the case of

multiple definitions, the applicability phrase should appear in introductory material that ends with a colon. [s. 1.07 (2) (b), Manual.]

f. In proposed s. Med 26.02 (5) and (6), avoid use of semicolons and “and,” at the penultimate rule subdivision. Instead, review the drafting style described in s. 1.11 of the Manual.

g. In proposed s. Med 26.02 (9), remove and relocate the substantive requirements for a military medical personnel program participant. Substantive provisions should not be incorporated as part of a definition. A reader should look to a definition section to understand the meanings of particular terms, and not to understand the procedures, requirements, or prohibitions that apply to the agency or persons or entities affected by the rule. [s. 1.07 (1) (d), Manual.] Additionally, in this provision, and proposed s. Med 26.04 (1) (e), the existing text refers to “a reasonable timeline consistent with s. 440.077 (3) (c), Stats.”. Use of this phrase merely repeats the existing statutory text without adding any clarity as to what timeline the agency considers to be reasonable. Consider providing using the rule text to provide additional detail as to what constitutes a reasonable timeline.

h. As used throughout proposed ch. Med 26, can the agency elaborate on its use of terms “delegate”, “clinical act”, “basic patient situation”, and “complex patient situation”? In particular, 2021 Wisconsin Act 158 uses the terms “supervise” and “skilled health services” and it is unclear why the agency has adopted a delegation model versus a supervisory one, and why it uses the terms “patient situation” and “clinical act” rather than “skilled health services”. If retained, note that the substantive definitions of “basic” and “complex” patient situations are very subjective and could be revised for clarity. Additionally, is the performance of acts in complex patient situations, as considered in proposed s. Med 26.03 (5), inconsistent with proposed s. Med 26.03 (4) (intro.), which limits practice to performance of acts in basic patient situations?

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

The agency should indicate, in a note, where the form contemplated by proposed s. Med 26.04 (1) may be accessed.

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

a. In proposed s. Med 26.03, avoid use of the construction, “notwithstanding any rule or statute to the contrary”, and instead identify specific provisions that would otherwise apply.

b. In proposed s. Med 26.03 (1), replace the phrase “his or her” with the phrase “the licensed supervising practitioner’s”. When drafting new rules and revising existing rules, eliminate all terminology that is not sex neutral. Avoid the repetitious use of the phrases “he or she” and “his or her”. In most cases, a pronoun can be replaced with the noun to which it refers. [s. 1.05 (2), Manual.]

c. In proposed s. Med 26.03 (1) (b), what is intended by the phrase, “Such reasonable evidence may include...”, beyond the referenced memorandum of understanding? Additionally, how does the text of s. Med 26.03 (2) differ from that of sub. (1) (b)?

d. In proposed s. Med 26.03 (5) (a), what does it mean to “meet the standards under sub. (4)”?. Consider revising the provision to clarify.

e. In proposed s. Med 26.04 (1), consider including the military medical personnel’s scope of practice. The statute states that the memorandum of understanding must “detail the military

medical personnel's scope of practice". It may cause confusion to omit this requirement in the administrative rule that states what the memorandum of understanding must include. [s. 440.077 (2) (b), Stats.]

f. Under proposed s. Med 26.06, does the agency have any authority over a supervisor who violates the requirements of the chapter?

6. Potential Conflicts With, and Comparability to, Related Federal Regulations

Consider revising the rule summary's section regarding the summary of, and comparison with, existing or proposed federal regulations to describe any relevant federal regulation in comparison to the proposed rule. If the cited federal regulation does not have any relevant comparison to the military medical personnel program, that relationship to the federal rules can be described and explained.