



---

# Wisconsin Legislative Council

## RULES CLEARINGHOUSE

---

**Scott Grosz**  
Clearinghouse Director

**Anne Sappenfield**  
Legislative Council Director

**Margit Kelley**  
Clearinghouse Assistant Director

## CLEARINGHOUSE RULE 24-050

### 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 rule summary’s listing of statutory authority, consider citing s. 227.11 (2) (a) (intro.), Stats., as additional statutory authority, for consistency with the authority cited in the current text of ss. OT 1.01, 2.01, and 5.01. Alternatively, the current text of ss. OT 1.01, 2.01, and 5.01 could be amended to strike the respective citations to s. 227.11 (2), Stats., as the other citations in those provisions provide sufficient rulemaking authority for the subject matter addressed in the rules.

#### 2. Form, Style and Placement in Administrative Code

a. The following comments apply in the introductory clause’s list of affected provisions for the proposed rule:

- (1) Remove the “(1)” after “OT 1.01”.
- (2) Delete “2.02 (9)” because this provision does not exist and does not appear to be referring to any other provision that is amended in the proposed rule.
- (3) Add “(11m)” in the list following “create 1.02”.

b. In s. OT 1.01, the citation to s. 448.965 is shown with underscoring. Accordingly, it appears as if s. 448.965, Stats., is being added to s. OT 1.01 although it already exists in the current text of that provision. The underscoring should be removed. [s. 1.04 (4) (a), Manual.]

c. In s. OT 5.02 (6), the first instance of the phrase “or compact privilege” should be shown with underscoring. Also, the full text of the current provision should be shown. In the proposed rule, the second sentence of the current text is not included, but should be shown. [s. 1.04 (4) (a), Manual.]

d. In the introductory clause for the proposed rule, the list of affected provisions should be updated to reflect any changes made in response to these comments.

### **3. Conflict With or Duplication of Existing Rules**

a. Consider the relationship between how “health care provider” is defined in proposed s. OT 1.02 (11m) with how the term is used in the current text of s. OT 2.03 (2) (e). Is it the intent of s. OT 2.03 (2) (e) that an applicant would be considered to have practiced occupational therapy if the applicant performed service in administrative positions for other licensed providers (which is what the s. OT 1.02 (11m) definition suggests)? Or, more likely, is it the intent of s. OT 2.03 (2) (e) that the applicant had performed service in an administrative position for a health care entity? In s. OT 2.03 (e), the term “health care provider” is used in a way that suggests it is intended to mean a health care entity because it is used in the same phrase and as an alternative to “governmental bodies”. If so, the term “health care providers”, as used in s. OT 2.03 (2) (e), should be revised to reflect that the applicant had performed service in administrative positions for health care entities, rather than as a “health care provider” as defined in proposed s. OT 1.02 (11m).

b. Consider whether the term “health care professionals” used in the current text of s. OT 4.03 (2), (3) (f) and (g), and (4) (d) should be revised to the newly defined term “health care provider” or “health care providers”.

c. Consider how the definition of “supervisor” proposed in s. OT 1.02 (27) interacts with how “supervisor” is described in the definition of “supervision” in the current text of s. OT 1.02 (26). For instance, in s. OT 1.02 (26), a supervisor is defined in relation to the person that is being supervised by indicating that the supervisor possesses “skill, competence, experience, education, credentials, or authority in excess of those possessed” by the supervisee. However, the proposed definition of “supervisor” in s. OT 1.02 (27) defines a supervisor as possessing a certain level of competence without specifically referencing the competence or other qualities of the supervisee. Consider whether the discussion of what a supervisor is in s. OT 1.02 (26) belongs in the definition of supervisor rather than the definition of supervision.

d. Consider whether the definition of “supervisor”, proposed in s. OT 1.02 (27), should include the supervision of non-licensed personnel, which is covered in the current text of s. OT 4.05. Also, the definition, by including “another occupational therapist”, suggests that an occupational therapist may be supervised by another occupational therapist, but the rules appear to only contemplate an occupational therapist supervisor who supervises an occupational therapy assistant or non-licensed personnel.

e. Consider whether the definition of “supervisor” proposed in s. OT 1.02 (27) should include an occupational therapy assistant. The current text of s. OT 4.05 permits an occupational therapy assistant to supervise non-licensed personnel.

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

a. In the board’s summary for the proposed rule, consider including s. OT 2.03 in the “Related statute or rule” section, because it satisfies the condition set out in s. 448.9875 (3), Stats. That provision allows the examining board to require an individual seeking a compact privilege to meet a jurisprudence requirement.

b. In s. OT 1.01, the general citation to subch. XII of ch. 448, Stats., should be revised to more specifically cite s. 448.9875 (3), Stats.

- c. The following comments apply in s. OT 1.02 (27), defining the term “supervisor”:
  - (1) Consider spelling out what is meant by “regular license”. For example, consider referencing the statute under which a person was granted the license, likely s. 448.963 (2), Stats.
  - (2) Consider referencing the statute under which a person obtains a compact privilege.
  - (3) Consider specifically referencing s. OT 2.07 in the final sentence, rather than generally referencing ch. OT 2.
- d. The proposed rule should be revised to amend the current text of s. OT 2.01, in order to add a specific reference to s. 448.9875 (3), Stats.
- e. In s. OT 2.09 (2), the statute cited does not relate to fees. Consider editing the proposed rule to reference “448.987 (3) (c)” or “448.9875 (2)”.
- f. In s. OT 2.09 (3), consider specifying which exam is referenced from s. OT 2.03 (1). Section OT 2.03 (1) addresses both a certification examination and a statutes and rules examination. It appears that the intent is to require the statutes and rules examination; if so, that should be specified.

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

- a. In the board’s summary for the proposed rule, under the “Plain language analysis” section, the description should be revised to specify that the definition of “supervisor” was created, rather than amended. Also, in the health care provider bullet point, there appears to be a missing “who” between “ch. 448” and “holds”, and the reference to the subchapter should be changed to “subch. XII”.
- b. In s. OT 2.09 (1), consider whether the phrase “provided by the board” is necessary, especially if the form is obtained from the department.