

Clearinghouse Rule 24-046

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING
CHIROPRACTIC EXAMINING : BOARD
BOARD : ADOPTING RULES
 : (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Chiropractic Examining Board to **repeal** Chir 12.03 (1) (d) and (f), 12.03 (2) (a) 7., and 12.04 (2) and (3); to **amend** Chir 12.03 (2) (a) 4. and 6., (4), and 12.05 (1) and (2); to **repeal and recreate** Chir 12.02 (1) (Note) and 12.03 (2) (a) 1. (Note); and to **create** Chir 12.01 (6), relating to nutritional counseling certification.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 446.02 (2) (c), Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), and 446.02 (2) (c), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 446.02 (2) (c), Stats., provides “[t]he examining board shall issue a certificate to a chiropractor who is licensed under this chapter, who submits satisfactory evidence that the chiropractor has completed 48 hours of postgraduate study in nutrition that is approved by the examining board, and who pays a one-time certification fee of \$25, except that no certificate fee is required under this paragraph for an individual who is eligible for the veterans fee waiver program under s. 45.44.”

Related statute or rule:

None.

Plain language analysis:

The objective of the proposed rule is to implement the statutory changes from 2021 Wisconsin Act 253. The Chiropractic Examining board recently passed a rule on Chir 12, however, further discussion on the chapter and the passage of 2021 Wisconsin Act 253 has resulted in a need for the chapter to be revised again. The Chiropractic Examining Board has reviewed the Nutritional Counseling Certification program requirements and has determined to:

- Create a definition of “program sponsor” referencing the Statutes.
- Repeal and recreate two outdated notes with current information on how to submit application through the department’s website.
- Repeal subsections in chapter 12 that were creating confusion with stakeholders.
- Reduce the nutritional counseling education program application deadline from 75 to 60 days prior to the program date.

Summary of, and comparison with, existing or proposed federal regulation:

None.

Comparison with rules in adjacent states:

Illinois: Illinois does not certify chiropractors in nutritional counseling. The statutory definition of chiropractic physician provides that a chiropractor is not prohibited from providing advice regarding the use of non-prescription products (225 ILCS 60/2).

Iowa: Iowa does not certify chiropractors in nutritional counseling. Iowa statutes provide that licensed chiropractors who make dietetic or nutritional assessments or give dietetic or nutritional advice in the normal practice of their profession are exempted from the requirement to be licensed to practice dietetics (Iowa Code 2017, section 152A.3).

Michigan: Michigan does not certify chiropractors in nutritional counseling. By statutory definition, the practice of chiropractic includes the use of nutritional advice (MCL 333.16401).

Minnesota: Minnesota does not certify chiropractors in nutritional counseling. Minnesota statutes provide no person may engage in dietetics or nutrition practice unless the person is licensed as a dietitian or nutritionist (Minnesota Statutes 2016, section 148.630).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of ch. Chir 12 to ensure the rules are consistent with current professional and academic practices and applicable Wisconsin statutes. No additional factual data or analytical methodologies were used to develop the proposed rules.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rule was posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Sofia Anderson, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before June 27, 2024, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chir 12.01 (6) is created to read:

(6) “Program sponsor” has the meaning given in s. 446.028 (1), Stats.

SECTION 2. Chir 12.02 (1) (Note) is repealed and recreated to read:

Note: Application instructions can be found on the department of safety and professional services’ website at <http://dsps.wi.gov>.

SECTION 3. Chir 12.03 (1) (d) is repealed.

SECTION 4. Chir 12.03 (1) (f) is repealed.

SECTION 5. Chir 12.03 (2) (a) 1. (Note) is repealed and recreated to read:

Note: Application instructions can be found on the department of safety and professional services’ website at <http://dsps.wi.gov>.

SECTION 6. Chir 12.03 (2) (a) 4. is amended to read:

4. The application shall be complete as prescribed in this subsection and filed with the board no later than ~~75~~60 days prior to the program date. An application is not considered complete until such time as all information required to be submitted with the application, and any supplementary information requested by the board, is received by the board.

SECTION 7. Chir 12.03 (2) (a) 6. is amended to read:

6. The application shall describe the names and qualifications of all instructors, ~~and if applicable, whether an instructor who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education.~~

SECTION 8. Chir 12.03 (2) (a) 7. is repealed.

SECTION 9. Chir 12.03 (4) is amended to read:

(4) The sponsor of an approved program shall ensure that the program is carried out and presented as represented to and approved by the board, ~~and that all responsibilities of the program sponsor, an instructor, and any person or entity delegated or assigned a responsibility relating to a program approved by the board are fulfilled.~~

SECTION 10. Chir 12.04 (2) and (3) are repealed.

SECTION 11. Chir 12.05 (1) and (2) are amended to read:

(1) The program sponsor, ~~or an instructor, or a person or entity delegated or assigned a responsibility~~ has a financial, personal, or professional interest that conflicts directly with the performance of responsibilities under this chapter.

(2) Failure on the part of a program sponsor, ~~or an instructor, or a person or entity delegated or assigned a responsibility~~ to carry out a program as represented to and approved by the board or as provided in this chapter.

SECTION 12. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)
