



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 21-018

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

The board should consider whether SECTION 1 of the proposed rule should be included at this time. SECTION 1 repeals the board’s predetermination procedures. In the absence of Department of Safety and Professional Services (DSPS) predetermination procedures for use by the board, the board should explore whether it is required to maintain its own predetermination procedures, considering the following:

- 2017 Wisconsin Act 278 created (among other provisions) s. 111.335 (4) (f) 6., Stats. That provision *requires* the board (among other credentialing entities) to promulgate rules establishing predetermination procedures.
- That provision also *authorizes* DSPS to promulgate rules establishing uniform predetermination procedures, and specifies that those DSPS uniform predetermination procedures are to be used by the board (among other credentialing entities).
- Accordingly, if DSPS uniform predetermination procedures are in effect, the board is required to use those procedures in lieu of its own.
- DSPS submitted a proposed rule containing predetermination procedures to the Rules Clearinghouse in 2018. [See CHR 18-100.] DSPS subsequently withdrew that proposed rule, and has not resubmitted another in its place.

The board should therefore consider whether s. 111.335 (4) (f) 6., Stats., requires the board to maintain its own predetermination procedures until such time as DSPS uniform predetermination procedures are in effect.

2. Form, Style and Placement in Administrative Code

In the treatment clause for SECTION 2 of the proposed rule, the designation “(intro.)” should be inserted after “(a)”. The rule caption’s listing of treated provisions should also be modified accordingly.

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

The following comments apply only if SECTION 1 of the proposed rule is retained:

- (a) In the rule analysis, the board could consider adding a citation to s. 111.335 (4) (f) 6., Stats., either under “statutes interpreted” or “related statute or rule”. See discussion under comment 1., above.
- (b) In the rule analysis, the plain language summary states that 2017 Wisconsin Act 278 “repealed” the board’s authority to promulgate a predetermination rule. As discussed under comment 1., above, the board may want to examine whether that act repealed the board’s authority or merely provided a mechanism for DSPS to supplant the board’s authority if it promulgates a predetermination rule.