

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kevyn Radcliffe, Administrative Rules Coordinator		2) Date when request submitted: March 19, 2021 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Psychology Examining Board			
4) Meeting Date: March 31, 2021	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? 1. Public Hearing on Clearinghouse Rule 21-014 for Psy 2 relating to reciprocal credentials for service members, former service members, and their spouses. 2. Public Hearing on Clearinghouse Rule 21-003 for Psy 2 - relating to discrimination based on arrest or conviction record. 3. Public Hearing on Emergency Rule EmR 2101 – Psy 4 – relating to renewal and reinstatement. 4. Public Hearing on Clearinghouse Rule 21-015 – Psy 4 – relating to renewal and reinstatement. 5. Public Hearing on Clearinghouse Rule 21-016 – Psy 5 – relating to telehealth.	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: All public hearings are noticed for 9:00 am.			
11) Authorization <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> <i>Kevyn Radcliffe</i> Signature of person making this request </div> <div style="width: 35%; text-align: right;"> March 19, 2021 Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Supervisor (if required) </div> <div style="width: 35%; text-align: right;"> Date </div> </div> <hr/> <div style="display: flex; justify-content: space-between;"> <div style="width: 60%;"> Executive Director signature (indicates approval to add post agenda deadline item to agenda) </div> <div style="width: 35%; text-align: right;"> Date </div> </div>			
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Psychology Examining Board to renumber and amend Psy 2.013 (intro.); and to create Psy 2.013(2), relating to reciprocal credentials for service members, former service members and their spouses.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 440.09, Stats.

Statutory authority: Sections 15.08 (5) (b) and 440.09 (5), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 440.09 (5), Stats. provides that “[t]he department or credentialing board, as appropriate, may promulgate rules necessary to implement this section.”

Related statute or rule:

Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

Plain language analysis:

The proposed rule creates a provision to implement s. 440.09, Stats., as created by 2019 Wisconsin Act 143. Section 440.09, Stats., specifies the requirements for issuing reciprocal credentials to service members, former service members, and the spouses of service members and former service members.

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

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary hearing on scope for SS 006-19, revising Psy 2, was held at the July 24, 2019 meeting of the Psychology Examining Board. No comments were received.

Comparison with rules in adjacent states:

Illinois:

The Illinois Statutes provide for the expedited licensure of service members and their spouses (20 ILCS 5/5-715). “Service member” includes a person whose active duty service concluded within the 2 years preceding application for licensure. A license issued to a service member or the spouse of a service member may be renewed.

Iowa:

Rules of the Professional Licensure Division of the Iowa Department of Public Health provide for the expedited reciprocal licensure of a veteran or a spouse of an active duty service member (645 IAC 645.20.3). A reciprocal license issued to a veteran or a spouse of an active duty service member may be renewed.

Michigan:

The Michigan Statutes provide for temporary licensure of the spouse of an active duty service member (MCL 339.213). A temporary license is valid for 6 months and may be renewed for one additional 6-month term if it is determined the licensee continues to meet the requirements for temporary licensure and needs additional time to fulfill the requirements for initial licensure.

Minnesota:

The Minnesota Statutes provide for temporary licensure of an individual who is an active duty military member, the spouse of an active duty military member, or a veteran who has left service in the 2 years preceding the date of license application (2019 Minnesota Statutes, Section 197.4552). A temporary license allows a qualified individual to perform regulated professional services for a limited length of time as determined by the applicable licensing board. During the temporary license period, the individual must complete the full application procedure as required by applicable law.

Summary of factual data and analytical methodologies:

The proposed rule was developed by reviewing the provisions of s. 440.09, Stats., as created by 2019 Wisconsin Act 143, and obtaining input and feedback from the Psychology Examining Board.

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

The rule will be posted for 14 days on the department’s website to solicit input on possible economic impact.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon its completion.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 **TBD** to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Psy 2.013 (intro.) is renumbered Psy 2.013 (1m) (intro.) and amended to read:

Psy 2.013 (1m) (intro.) GENERAL. An applicant who holds an active license in another state, territory, foreign country or province whose license standards are deemed by the board to be equivalent to the standards in this state may apply for license by submitting all of the following:

SECTION 2. Psy 2.013 (2) is created to read:

Psy 2.013 (2) SERVICE MEMBERS, FORMER SERVICE MEMBERS, AND THEIR SPOUSES.

(a) In this subsection:

1. “Former service member” has the meaning given in s. 440.09(1)(a), Stats.
2. “Service member” has the meaning given in s. 440.09(1)(b), Stats.
3. “Spouse” has the meaning given in s. 440.09(1)(c), Stats.

(b) An applicant who holds an active license in another state, territory, foreign country or province shall be granted a license to practice psychology upon a determination by the board that the applicant meets the requirements set forth in s. 440.09(2), Stats.

(c) If an applicant is unable to provide documentation that the applicant is a service member, former service member, or the spouse of a service member or former service member, the applicant may submit an affidavit to the board stating that the applicant is a service member, former service member, or the spouse of a service member or former service member.

(d) A license granted under this subsection expires on the applicable renewal date specified in s. 440.08 (2) (a) Stats., except that if the first renewal date specified in s. 440.08 (2) (a), Stats. after the date on which the license is granted is within 180 days of the date on which the license is granted, the license expires on the 2nd renewal date specified in s. 440.08 (2) (a), Stats., after the date on which the license is granted.

(e) An applicant who pays the renewal fee specified under s. 440.05 (2), Stats., and satisfies the requirements that apply for renewing that credential shall be granted a renewed reciprocal credential.

(f) The department or board shall expedite the issuance of a reciprocal credential granted under this subsection.

Note: Also see s. 440.09, Stats.

SECTION 3. 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)



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-014

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.]

3. Conflict With or Duplication of Existing Rules

The current administrative rules, in s. Psy 2.013, specify the materials that an applicant from out of state must submit to apply for licensure. As these materials are different from the information that must be submitted under the provision created in the proposed rule, in sub. (2), the current text of s. Psy 2.013 (1m), as renumbered, should be amended to add the phrase, “Except as provided in sub. (2)”.

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

a. The agency should consider revising s. Psy 2.013 (2) (b) to first identify the materials that an applicant must submit to apply for the reciprocal licensure and whether those materials are in addition to or notwithstanding the materials that an applicant must submit under sub. (1m). The agency should also use the active voice in the sentence structure, to clearly identify who must do what at what time. For example, “the board shall grant a license to an applicant who meets...”.

b. In s. Psy 2.013 (2) (f), the agency should consider explaining what the agency intends to do for an “expedited” issuance. Does this mean that an application under sub. (2) will be reviewed before any pending applications submitted under sub. (1m)? Or does it mean that the agency intends to review the application and issue a determination within a certain number of days of receiving a complete application?

DSPS Clearinghouse Report Recommendations

CR 21 – 014 Psy 2 - relating to reciprocal credentials

3. Conflict With or Duplication of Existing Rules

The current administrative rules, in s. Psy 2.013, specify the materials that an applicant from out of state must submit to apply for licensure. As these materials are different from the information that must be submitted under the provision created in the proposed rule, in sub. (2), the current text of s. Psy 2.013 (1m), as renumbered, should be amended to add the phrase, “Except as provided in sub. (2)”.

Recommendation: Accept

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

a. The agency should consider revising s. Psy 2.013 (2) (b) to first identify the materials that an applicant must submit to apply for the reciprocal licensure and whether those materials are in addition to or notwithstanding the materials that an applicant must submit under sub. (1m). The agency should also use the active voice in the sentence structure, to clearly identify who must do what at what time. For example, “the board shall grant a license to an applicant who meets...”.

Recommendation: Accept

b. In s. Psy 2.013 (2) (f), the agency should consider explaining what the agency intends to do for an “expedited” issuance. Does this mean that an application under sub. (2) will be reviewed before any pending applications submitted under sub. (1m)? Or does it mean that the agency intends to review the application and issue a determination within a certain number of days of receiving a complete application?

Recommendation: Accept

Preliminary rule markup in red; Final rule recommendations based on Clearinghouse report are in blue.

Psy 2.013 Reciprocity.

(1m) GENERAL. Except as provided in sub (2), an applicant who holds an active license in another state, territory, foreign country or province whose license standards are deemed by the board to be equivalent to the standards in this state may apply for license by submitting the following:

- (a) The properly completed and signed application form.
- (b) The application fee authorized by s. 440.05 (1), Stats.
- (c) Evidence of one of the following:
 - (1) Evidence of passing the EPPP.
 - (2) Evidence of completion of at least 40 board approved continuing education hours obtained within 2 years prior to application.
- (d) Evidence of passing the jurisprudence exam.

~~(2) SERVICE MEMBERS, FORMER SERVICE MEMBERS, AND THEIR SPOUSES.~~

~~(a) In this subsection:~~

- ~~1. "Former service member" has the meaning given in s. 440.09(1)(a), Stats.~~
- ~~2. "Service member" has the meaning given in s. 440.09(1)(b), Stats.~~
- ~~3. "Spouse" has the meaning given in s. 440.09(1)(c), Stats.~~

~~(b) An applicant who holds an active license in another state, territory, foreign country or province shall be granted a license to practice optometry upon a determination by the board that the applicant meets the requirements set forth in s. 440.09(2), Stats.~~

~~(c) If an applicant is unable to provide documentation that the applicant is a service member, former service member, or the spouse of a service member or former service member, the applicant may submit an affidavit to the board stating that the applicant is a service member, former service member, or the spouse of a service member or former service member.~~

~~(d) A license granted under this subsection expires on the applicable renewal date specified in s. 440.08 (2) (a) Stats., except that if the first renewal date specified in s. 440.08 (2) (a), Stats. after the date on which the license is granted is within 180 days of the date on which the license is granted, the license expires on the 2nd renewal date specified in s. 440.08 (2) (a) after the date on which the license is granted.~~

~~(e) An applicant who pays the renewal fee specified under s. 440.05 (2) and satisfies the requirements that apply for renewing that credential shall be granted a renewed reciprocal credential.~~

~~(f) The department or board shall expedite the issuance of a reciprocal credential granted under this section.~~

~~Note: See also s. 440.09, Stats.~~

(2) SERVICE MEMBERS, FORMER SERVICE MEMBERS, AND THEIR SPOUSES. A reciprocal license to practice psychiatry shall be granted to a service member, former service member, or the spouse of a service member or former service member who the board determines meets all of the requirements under s. 440.09 (1) and (2), Stats. Subject to s. 440.09 (2m), Stats., the board may request verification necessary to make a determination under this section.

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Psychology Examining Board to amend Psy 2.01 (8), relating to discrimination based on arrest or conviction record.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Sections 111.321, 111.322, 111.335 and 455.04 (1) (b), Stats.

Statutory authority: Section 15.08 (5) (b), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats.: Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Related statute or rule: None.

Plain language analysis:

2017 Wisconsin Act 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.

This rule project revises Psy 2 pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related to the practice and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.

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

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

A preliminary hearing on scope for SS 006-19, revising Psy 2, was held at the July 24, 2019 meeting of the Psychology Examining Board. No comments were received.

Comparison with rules in adjacent states:

Illinois: Illinois law allows the Department of Financial Regulation, which regulates psychologists, to: "...refuse to issue, refuse to renew, suspend, or revoke any license, or may place on probation, reprimand, or take other disciplinary or non-disciplinary action deemed appropriate by the Department, including the imposition of fines not to exceed \$10,000 for each violation" where a licensee or applicant has been convicted of, or entered a nolo contendere or guilty plea, any felony under the laws of the United States or any state or territory thereof or that is a misdemeanor of which an essential element is dishonesty, or any crime that is directly related to the practice of the profession (225 ILCS 15/15 (1)).

Iowa: Iowa licensed psychologists may be disciplined, including revocation or suspension of a license, if they are convicted of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred (645 IA Admin Code s. 242.2).

Michigan: A Michigan psychologist license can be denied, suspended, revoked, or limited if the psychologist exhibits a lack of good moral character, or has been convicted of the following (MCLS s. 333.16221):

“(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's or registrant's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.”

Minnesota:

Under the Minnesota Psychology Board's rules of conduct, licensed psychologists must not violate any law in which the facts giving rise to the violation involve the practice of psychology. Violations of the rules of conduct can result in disciplinary action including denial of licensure. (Minn. Admin Rules s. 7200.4500 and 7200.5500).

Summary of factual data and analytical methodologies:

The Psychology Examining Board reviewed and seeks to revise its rules to bring them into compliance with the statutory changes enacted by 2017 Wisconsin Act 278.

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

The rule was posted for 14 days on the department's website to solicit input on possible economic impact. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0717; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 at or before the public hearing to be held at 9:00 a.m. on March 31, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Psy 2.01 (8) is amended to read:

Psy 2.01 (8) For applicants who have a pending criminal charge or have been convicted of a crime, subject to ss. 111.321, 111.322, and 111.335, Stats., all related information necessary for the board to determine whether the circumstances of the pending criminal charge or conviction are substantially related to the practice of psychology.

SECTION 2. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date November 28, 2019</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Psy 2</p>	
<p>4. Subject Discrimination based on arrest or conviction record</p>	
<p>5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S</p>	<p>6. Chapter 20, Stats. Appropriations Affected</p>
<p>7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget</p>	
<p>8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)</p>	
<p>9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0</p>	
<p>10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>11. Policy Problem Addressed by the Rule</p> <p>2017 Wisconsin Act 278 enacted statutory changes to ch. 111, Stats., prohibiting a licensing agency from refusing to license an individual, or suspending a license, on the basis of a substantially related pending criminal charge, unless the charge is for one of certain specified crimes against a child or life and bodily security, or a violent crime against a child.</p> <p>This rule project revises Psy 2 pertaining to applications in order to clarify that applicants are required to submit documentation of their conviction record, and are only required to submit documentation of a pending charge if it is substantially related to the practice and it involves a crime against a child or life and bodily security, or a violent crime against a child, as defined in s. 111.335, Stats.</p>	
<p>12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments.</p> <p>The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received..</p>	
<p>13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.</p>	
<p>14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)</p> <p>This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.</p>	
<p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule</p> <p>The benefit of implementing the rule is that Psychology rules pertaining to discrimination based on arrest or conviction record in liscensing will be brought into compliance with staturuty requirements recently enacted by the state legislature.</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The alternative to implementing the rule is that the psychology rules pertaining to discrimination based on arrest or conviction record will be out of compliance with state statute.

16. Long Range Implications of Implementing the Rule

The long range implications of implementing the rule is that Psychology rules pertaining to discrimination based on arrest or conviction record in licensing will be brought into compliance with statutory requirements recently enacted by the state legislature.

17. Compare With Approaches Being Used by Federal Government

The Federal Government does not regulate the licensing of psychologists.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois law allows the Department of Financial Regulation, which regulates psychologists, to: "...refuse to issue, refuse to renew, suspend, or revoke any license, or may place on probation, reprimand, or take other disciplinary or non-disciplinary action deemed appropriate by the Department, including the imposition of fines not to exceed \$10,000 for each violation" where a licensee or applicant has been convicted of, or entered a nolo contendere or guilty plea, any felony under the laws of the United States or any state or territory thereof or that is a misdemeanor of which an essential element is dishonesty, or any crime that is directly related to the practice of the profession (225 ILCS 15/15 (1)).

Iowa: Iowa licensed psychologists may be disciplined, including revocation or suspension of a license, if they are convicted of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred (645 IA Admin Code s. 242.2).

Michigan: A Michigan psychologist license can be denied, suspended, revoked, or limited if the psychologist exhibits a lack of good moral character, or has been convicted of the following (MCLS s. 333.16221):

“(v) Conviction of a misdemeanor punishable by imprisonment for a maximum term of 2 years; conviction of a misdemeanor involving the illegal delivery, possession, or use of a controlled substance; or conviction of any felony other than a felony listed or described in another subparagraph of this subdivision. A certified copy of the court record is conclusive evidence of the conviction.

(vi) Lack of good moral character.

(vii) Conviction of a criminal offense under section 520e or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520e and 750.520g. A certified copy of the court record is conclusive evidence of the conviction.

(viii) Conviction of a violation of section 492a of the Michigan penal code, 1931 PA 328, MCL 750.492a. A certified copy of the court record is conclusive evidence of the conviction.

(ix) Conviction of a misdemeanor or felony involving fraud in obtaining or attempting to obtain fees related to the practice of a health profession. A certified copy of the court record is conclusive evidence of the conviction.

(x) Final adverse administrative action by a licensure, registration, disciplinary, or certification board involving the holder of, or an applicant for, a license or registration regulated by another state or a territory of the United States, by the United States military, by the federal government, or by another country. A certified copy of the record of the board is conclusive evidence of the final action.

(xi) Conviction of a misdemeanor that is reasonably related to or that adversely affects the licensee's or registrant's ability to practice in a safe and competent manner. A certified copy of the court record is conclusive evidence of the

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

conviction.

(xii) Conviction of a violation of section 430 of the Michigan penal code, 1931 PA 328, MCL 750.430. A certified copy of the court record is conclusive evidence of the conviction.

(xiii) Conviction of a criminal offense under section 83, 84, 316, 317, 321, 520b, 520c, 520d, or 520f of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.84, 750.316, 750.317, 750.321, 750.520b, 750.520c, 750.520d, and 750.520f. A certified copy of the court record is conclusive evidence of the conviction.

(xiv) Conviction of a violation of section 136 or 136a of the Michigan penal code, 1931 PA 328, MCL 750.136 and 750.136a. A certified copy of the court record is conclusive evidence of the conviction.”

Minnesota:

Under the Minnesota Psychology Board’s rules of conduct, licensed psychologists must not violate any law in which the facts giving rise to the violation involve the practice of psychology. Violations of the rules of conduct can result in disciplinary action including denial of licensure. (Minn. Admin Rules s. 7200.4500 and 7200.5500).

19. Contact Name Kevyn Radcliffe	20. Contact Phone Number 608-266-0717
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-003

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.]

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

The agency should consider alternative revisions to s. Psy 2.01 (8), in order to more clearly explain the law regarding submission of information relating to pending charges and conviction record. In particular, the statutes cited by the agency delineate different disclosure requirements and legal obligations related to pending charges than those related to conviction record. The rule should be revised to recognize and explain these distinctions. Moreover, the statutes cited by the agency in the proposed rule are, generally, quite complex and it may be more useful to utilize the rulemaking process to add clarity to an applicant’s obligations and the limits placed on the agency by statute, rather than merely referring an applicant back to the applicable statutes.

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : PSYCHOLOGY EXAMINING BOARD
PSYCHOLOGY EXAMINING : ADOPTING EMERGENCY RULE

The statement of scope for this rule, SS 152 - 20, was approved by the Governor on December 4, 2020, published in Register 780A1 on December 7, 2020, and approved by the Psychology Examining Board on December 18, 2020. This emergency rule was approved by the Governor on TBD.

ORDER

An order of the Psychology Examining Board to amend Psy 4.017 (2) (b), relating to the renewal and reinstatement of licenses.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

The Psychology Examining Board finds that an emergency exists and that this rule is necessary for the immediate preservation of the public peace, health, safety, or welfare. A statement of facts constituting the emergency is:

The Psychology Board has concluded that preservation of health, safety, or welfare necessitates placing a rule into effect prior to the time it could be effective if the agency were to comply with rule making procedures. The emergency rule is required to correct a drafting error in CR 19-117 reducing the number of continuing education hours for late licensure renewal from 40 hours to 30 hours. The intent of the Psychology Board was to maintain the current 40 hour continuing education requirement whether the licensee renews at the proper time or if they renew late. CR 19-117 will go into effect on January 1, 2021. The result if this emergency rule does not go into effect is that those licensees who report on time will be penalized by having to report 10 continuing education hours more than those who are tardy. This will create an inequity in the rule and confusion among licensees. Pursuant to s. 440.08 (2) (a) 64., Stats., the next license renewal date for psychologists is October 1, 2021.

ANALYSIS

Statutes interpreted: ss. 440.035 (2) and 440.08 (3) (b), Stats.

Statutory authority: ss. 15.08 (5) (b) and 440.08 (3) (b), Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. [s. 15.08 (5) (b), Stats.]

The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety, or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed to obtain an initial credential from the department, the examining board or the affiliated credentialing board. [s. 440.08 (3) (b), Stats.]

Related statute or rule: Psy 4

Plain language analysis:

The objective of the emergency and permanent rule is to correct a drafting error in Psy 4 in CR 19-117, relating to renewal and reinstatement of licenses. CR 19-117 erroneously reduces the number of continuing education hours for late licensure renewal from 40 hours to 30 hours. The result is that licensees who renew their licenses late must report only 30 continuing education credits. Those who renew at the proper time must report 40 continuing education hours. The proposed rule will correct the error and restore equity between those who renew in a timely fashion and those who renew late.

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

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Department of Financial and Professional Regulation licenses clinical psychologists, prescribing psychologists, prescribing psychologists controlled substance, and prescribing psychologists clinical rotation program. Random audits of continuing education are performed. Additionally, Illinois offers “restoration” of an inactive license requiring verification of active practice is another jurisdiction, one year in an approved education program, six months in a supervised experience, or passing the examination.

Iowa:

The Iowa Board of Psychology is in the Bureau of Professional Licensure in the Department of Public Health. Random audits of continuing education are performed each renewal cycle. Additionally, Iowa offers “reactivation” of an inactive license, requiring an application, fee, verification of competence through a current license in another jurisdiction, and evidence of having completed 40 hours of continuing education, or, if the license has been inactive for more than five years, evidence of having completed 80 hours of continuing education.

Michigan:

The Michigan Board of Psychology is in the Department of Licensing and Regulatory Affairs. Continuing education is required for renewal starting in September 2019, and the department may audit licensees. Additionally, Michigan offers “relicensure.” If a license expired less than three years ago, the licensee is required to complete 40 hours of continuing education. If it has been more than three years, complete 40 hours of continuing education and provide evidence of a current license in another jurisdiction or, if no current license, complete the examination.

Minnesota:

The Minnesota Board of Psychology is a stand-alone agency. Random audits of continuing education are performed each month. Additionally, the Board offers “relicensure” after a voluntary or board termination if the licensee has not practiced without a license and complied with the requirements for examination and licensure in effect at the time of application for relicensure.

Summary of factual data and analytical methodologies:

The Board reviewed CR 19-117 finding that it erroneously reduces the number of continuing education hours for late licensure renewal from 40 hours to 30 hours.

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

None. Any effect on small business would have been reflected under CR 19-117.

Fiscal Estimate:

None. Any economic impact would have been reflected under CR 19-117.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 submitted by the date and time at which the public hearing on these emergency rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislature's website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. Psy 4.017 (2) (b) is amended to read:

Psy 4.017 (2) (b) Certify the completion of ~~30~~ 40 hours of continuing education during the last biennium.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)



Authorized Signature



Date

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Psychology Examining Board to amend Psy 4.017 (2) (b), relating to the renewal and reinstatement of licenses.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: ss. 440.035 (2) and 440.08 (3) (b), Stats.

Statutory authority: ss. 15.08 (5) (b) and 440.08 (3) (b), Stats.

Explanation of agency authority:

Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession. [s. 15.08 (5) (b), Stats.]

The department or the interested examining board or affiliated credentialing board, as appropriate, may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements to restore the credential, in addition to the applicable requirements for renewal established under chs. 440 to 480, that the department, examining board or affiliated credentialing board determines are necessary to protect the public health, safety, or welfare. The rules may not require the holder to complete educational requirements or pass examinations that are more extensive than the educational or examination requirements that must be completed to obtain an initial credential from the department, the examining board or the affiliated credentialing board. [s. 440.08 (3) (b), Stats.]

Related statute or rule: Psy 4

Plain language analysis:

The objective of the proposed rule is to correct a drafting error in Psy 4 in CR 19-117, relating to renewal and reinstatement of licenses. CR 19-117 erroneously reduces the number of continuing education hours for late licensure renewal from 40 hours to 30 hours. The result is that licensees who renew their licenses late must report only 30 continuing education credits. Those who renew at the proper time must report 40 continuing education hours. The proposed rule will correct the error and restore equity between those who renew in a timely fashion and those who renew late.

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

None.

Comparison with rules in adjacent states:

Illinois:

The Illinois Department of Financial and Professional Regulation licenses clinical psychologists, prescribing psychologists, prescribing psychologists controlled substance, and prescribing psychologists clinical rotation program. Random audits of continuing education are performed. Additionally, Illinois offers “restoration” of an inactive license requiring verification of active practice is another jurisdiction, one year in an approved education program, six months in a supervised experience, or passing the examination.

Iowa:

The Iowa Board of Psychology is in the Bureau of Professional Licensure in the Department of Public Health. Random audits of continuing education are performed each renewal cycle. Additionally, Iowa offers “reactivation” of an inactive license, requiring an application, fee, verification of competence through a current license in another jurisdiction, and evidence of having completed 40 hours of continuing education, or, if the license has been inactive for more than five years, evidence of having completed 80 hours of continuing education.

Michigan:

The Michigan Board of Psychology is in the Department of Licensing and Regulatory Affairs. Continuing education is required for renewal starting in September 2019, and the department may audit licensees. Additionally, Michigan offers “relicensure.” If a license expired less than three years ago, the licensee is required to complete 40 hours of continuing education. If it has been more than three years, complete 40 hours of continuing education and provide evidence of a current license in another jurisdiction or, if no current license, complete the examination.

Minnesota:

The Minnesota Board of Psychology is a stand-alone agency. Random audits of continuing education are performed each month. Additionally, the Board offers “relicensure” after a voluntary or board termination if the licensee has not practiced without a license and complied with the requirements for examination and licensure in effect at the time of application for relicensure.

Summary of factual data and analytical methodologies:

The Board reviewed CR 19-117 finding that it erroneously reduces the number of continuing education hours for late licensure renewal from 40 hours to 30 hours.

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

The proposed rules were 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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 submitted by the date and time at which the public hearing on this proposed rule is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislature’s website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. Psy 4.017 (2) (b) is amended to read:

Psy 4.017 (2) (b) Certify the completion of ~~30~~ 40 hours of continuing education during the last biennium.

SECTION 2. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date February 8, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Psy 4	
4. Subject Renewal and reinstatement of licenses	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The objective of the proposed rule is to correct a drafting error in Psy 4 in CR 19-117, relating to renewal and reinstatement of licenses. CR 19-117 erroneously reduces the number of continuing education hours for late licensure renewal from 40 hours to 30 hours. The result is that licensees who renew their licenses late must report only 30 continuing education credits. Those who renew at the proper time must report 40 continuing education hours. The proposed rule will correct the error and restore equity between those who renew in a timely fashion and those who renew late.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is equitable continuing education requirements. If the rule is not implemented, the requirements for timely renewal and late renewal will remain inequitable.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is equitable continuing education requirements.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

17. Compare With Approaches Being Used by Federal Government
None.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois:

The Illinois Department of Financial and Professional Regulation licenses clinical psychologists, prescribing psychologists, prescribing psychologists controlled substance, and prescribing psychologists clinical rotation program. Random audits of continuing education are performed. Additionally, Illinois offers “restoration” of an inactive license requiring verification of active practice is another jurisdiction, one year in an approved education program, six months in a supervised experience, or passing the examination.

Iowa:

The Iowa Board of Psychology is in the Bureau of Professional Licensure in the Department of Public Health. Random audits of continuing education are performed each renewal cycle. Additionally, Iowa offers “reactivation” of an inactive license, requiring an application, fee, verification of competence through a current license in another jurisdiction, and evidence of having completed 40 hours of continuing education, or, if the license has been inactive for more than five years, evidence of having completed 80 hours of continuing education.

Michigan:

The Michigan Board of Psychology is in the Department of Licensing and Regulatory Affairs. Continuing education is required for renewal starting in September 2019, and the department may audit licensees. Additionally, Michigan offers “relicensure.” If a license expired less than three years ago, the licensee is required to complete 40 hours of continuing education. If it has been more than three years, complete 40 hours of continuing education and provide evidence of a current license in another jurisdiction or, if no current license, complete the examination.

Minnesota:

The Minnesota Board of Psychology is a stand-alone agency. Random audits of continuing education are performed each month. Additionally, the Board offers “relicensure” after a voluntary or board termination if the licensee has not practiced without a license and complied with the requirements for examination and licensure in effect at the time of application for relicensure.

19. Contact Name	20. Contact Phone Number
Dale Kleven	(608) 261-4472

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)
 Yes No



Wisconsin Legislative Council

RULES CLEARINGHOUSE

Scott Grosz
Clearinghouse Director

Anne Sappenfield
Legislative Council Director

Margit Kelley
Clearinghouse Assistant Director

CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

CLEARINGHOUSE RULE **21-015**

AN ORDER to amend Psy 4.017 (2) (b), relating to the renewal and reinstatement of licenses.

Submitted by **PSYCHOLOGY EXAMINING BOARD**

02-08-2021 RECEIVED BY LEGISLATIVE COUNCIL.

02-24-2021 REPORT SENT TO AGENCY.

SG:SM

LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached YES NO

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached YES NO

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached YES NO

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS
[s. 227.15 (2) (e)]

Comment Attached YES NO

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached YES NO

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached YES NO

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached YES NO

STATE OF WISCONSIN
PSYCHOLOGY EXAMINING BOARD

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

PROPOSED ORDER

An order of the Psychology Examining Board to create Psy 1.02 (11) and 5.02 (1) and (2), relating to telehealth.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 455.08, Stats.

Statutory authority: Sections 15.08 (5) (b) and 455.08, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats.: Each examining board shall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.

Section 455.08, Stats.: The examining board shall adopt such rules as are necessary under this chapter and shall, by rule, establish a reasonable code of ethics governing the professional conduct of psychologists.

Related statute or rule:

None.

Plain language analysis:

The current Psychology Examining Board rules are silent on telehealth. This rule will include a definition of telehealth, and specify psychologists are to hold a Wisconsin license in order to diagnose and treat patients located in Wisconsin and are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.

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

None.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule:

None received.

Comparison with rules in adjacent states:

Illinois:

Illinois Statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Psychologists are included in the definition of “health care professionals.”

Iowa:

Iowa law defines telehealth as “...the delivery of health care services through the use of interactive audio and video.” “Telehealth” does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission. Services must comply all rules adopted by the appropriate professional licensing board, having oversight of the health care professional providing the health care services. Mental health is included in the delivery of health care services.

Michigan:

Michigan law defines “telemedicine” in their insurance code as the use of an electronic media to link patients with health care professionals in different locations. To be considered telemedicine under this section, the health care professional must be able to examine the patient via a statutorily compliant, secure interactive audio or video, or both, telecommunications system. Psychologists are included in the definition of “health care professionals.”

Minnesota:

Minnesota’s Governor issued an Executive Order authorizing and requesting “... out-of state mental healthcare providers who hold a current license, certificate, or other permit in good standing issued by a state of the United States or the District of Columbia evidencing the meeting of qualifications and competencies for licensees to render aid involving those skills in Minnesota by telehealth to meet the needs of this emergency.” Out-of-state practitioners must submit to the jurisdiction of the Minnesota health related regulatory and licensing boards. The relevant board may revoke a provider’s authorization to practice under this Executive Order at the board’s discretion. Minnesota’s telehealth law applies to physicians and is silent as to psychologists practicing telehealth.

Summary of factual data and analytical methodologies:

The Psychology Examining Board reviewed and seeks to revise its rules to provide greater clarity for psychologists with regards to the practice of telehealth.

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

The proposed rules were 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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

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 Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Kevyn Radcliffe, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0797 email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Kevyn Radcliffe, 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 March 31, 2021, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Psy 1.02 (11) is created to read:

Psy 1.02 (11) “Telehealth” means patient care, treatment, or services are provided using technology where the psychologist and the patient are not at the same physical location for the patient care, treatment, or service.

SECTION 2. Psy 5.02 is created to read:

Psy 5.02 Telehealth

(1) The standards of practice and professional conduct under this chapter apply to a licensee regardless of whether health care service is provided in person or by telehealth.

(2) A psychologist who uses a telehealth visit to provide psychological services to a patient located in this state shall be licensed by the board.

SECTION 3. 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date February 8, 2021
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Psy 5	
4. Subject Telehealth	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.165 (1) (g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The current Psychology Examining Board rules are silent on telehealth. This rule will include a definition of telehealth, and specify psychologists are to hold a Wisconsin license in order to diagnose and treat patients located in Wisconsin and are held to the same standards of conduct regardless of whether the services are provided in person or by telehealth.	
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of this EIA.	
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) The proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units, or the state's economy as a whole. The Department estimates one-time administrative costs of \$653.03. These costs may be absorbed in the agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is established standards of conduct for providing psychological services using telehealth. If the rule is not implemented, these standards will remain unclear.	
16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is established standards of conduct for providing psychological services using telehealth.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

17. Compare With Approaches Being Used by Federal Government
None.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Illinois Statute provides that telehealth includes telemedicine and the delivery of health care services provided by way of an interactive telecommunications system. Illinois law further provides that “[a] health care professional treating a patient located in this State through telehealth must be licensed or authorized to practice in Illinois.” Practice of telehealth in Illinois is limited to the extent of the practitioner’s scope of practice as established in his or her respective licensing and consistent with the standards of care for in-person services. Psychologists are included in the definition of “health care professionals.”

Iowa: Iowa law defines telehealth as “...the delivery of health care services through the use of interactive audio and video.” “Telehealth” does not include the delivery of health care services through an audio-only telephone, electronic mail message, or facsimile transmission. Services must comply all rules adopted by the appropriate professional licensing board, having oversight of the health care professional providing the health care services. Mental health is included in the delivery of health care services.

Michigan: Michigan law defines “telemedicine” in their insurance code as the use of an electronic media to link patients with health care professionals in different locations. To be considered telemedicine under this section, the health care professional must be able to examine the patient via a statutorily compliant, secure interactive audio or video, or both, telecommunications system. Psychologists are included in the definition of “health care professionals.”

Minnesota: Minnesota’s Governor issued an Executive Order authorizing and requesting “... out-of state mental healthcare providers who hold a current license, certificate, or other permit in good standing issued by a state of the United States or the District of Columbia evidencing the meeting of qualifications and competencies for licensees to render aid involving those skills in Minnesota by telehealth to meet the needs of this emergency.” Out-of-state practitioners must submit to the jurisdiction of the Minnesota health related regulatory and licensing boards. The relevant board may revoke a provider’s authorization to practice under this Executive Order at the board’s discretion. Minnesota’s telehealth law applies to physicians and is silent as to psychologists practicing telehealth.

19. Contact Name Dale Kleven	20. Contact Phone Number (608) 261-4472
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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Legislative Council Director

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Clearinghouse Assistant Director

CLEARINGHOUSE RULE 21-016

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.]

2. Form, Style and Placement in Administrative Code

In s. Psy 5.02, a period should be inserted after the section title “Telehealth”.

3. Conflict With or Duplication of Existing Rules

By comparison to the existing definition of “telemedicine” in s. Med 24.02, it appears that the proposed definition of “telehealth” in s. Psy 1.02 (11) could be interpreted as including electronic communications that are expressly excluded from the definition in s. Med 24.02. For example, the proposed definition in s. Psy 1.02 (11) could be interpreted to include audio-only telephone or asynchronous electronic communications such as email and text messages, which are excluded from the definition in s. Med 24.02. Consider specifying whether these forms of communication are included within the scope of the proposed rule, by identifying them and either expressly including them (to clarify the contrast with s. Med 24.02), or expressly excluding them (to more closely mirror s. Med 24.02), whichever is intended.