

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 24-046
CHIROPRACTIC EXAMINING :
BOARD :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCE TO APPLICABLE FORMS:

N/A

III. FISCAL ESTIMATE AND EIA:

The Fiscal Estimate and EIA is attached.

IV. DETAILED STATEMENT EXPLAINING THE BASIS AND PURPOSE OF THE PROPOSED RULE, INCLUDING HOW THE PROPOSED RULE ADVANCES RELEVANT STATUTORY GOALS OR PURPOSES:

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- Repeal and recreate two outdated notes with current information on how to submit application through the department’s website.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.
- Remove the nutritional counseling education program application deadline.

V. SUMMARY OF PUBLIC COMMENTS AND THE BOARD’S RESPONSES, EXPLANATION OF MODIFICATIONS TO PROPOSED RULES PROMPTED BY PUBLIC COMMENTS:

The Chiropractic Examining Board held a public hearing on June 27, 2024. The Chiropractic Society of Wisconsin (CSW) testified and submitted written comments. The Chiropractic Examining Board summarizes the comments as follows:

1. Removal of Chir 12.03 (2) (a) 3. because CSW considers this provision as unnecessary for a certification course and is designed primarily for continuing education, which would require a specific date and time for the continuing education to be delivered.

2. Modification of Chir 12.03 (2) (a) 4. CSW requested to reduce the filing for a nutritional certification application timeline to zero to mirror the Chiropractic Technician and Chiropractic Radiological Technician, which does not have a time limit. The filing deadline is unnecessary for a certification program.
3. Removal of Chir 12.04 (4). because CSW considers this language to be mirroring continuing education requirements. During a 48-hour nutritional counseling certification program, questions related to specific nutrients will be asked and CSW would like to preempt any potential issues.
4. Clarification and potential removal of Chir. 12.05 (1). CSW requested examples of what kind of financial and personal conflicts the program sponsor could have by providing the program.

The Chiropractic Examining Board summarizes its response to the public comments as follows:

1. Chir 12.03 (2) (a) 3. was amended to include that the application shall identify the time and location of the program if the nutritional counseling program is also seeking approval as continuing education program.
2. Chir 12.03 (2) (a) 4. was modified to repeal the sentence that establishes a deadline for the submission of applications.
3. Chir 12.04 (4) will not be removed because the Board wants to keep the option to review outlines provided by the program sponsors that could potentially abuse the certification program to advertise their products.
4. Chir 12.05 (1). Board Counsel clarified that the provision is for revocation after the fact in case a program sponsor shows a bias to the program material. The Board will keep the provision to exercise discretion in cases where there could be abuse of the certification program to sell products associated with the program sponsor.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

All of the recommendations suggested in the Clearinghouse Report have been accepted in whole.

VII. REPORT FROM THE SBRRB AND FINAL REGULATORY FLEXIBILITY ANALYSIS:

N/A

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 03/28/2024
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chir 12	
4. Subject Nutritional Counseling Certification	
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 s.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 checked="" 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 checked="" 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 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: <ul style="list-style-type: none">• 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.	
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 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.	
13. Identify the Local Governmental Units that Participated in the Development of this EIA. None.	
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) DSPS estimates a total of \$3,900 in one-time costs for implemetning this rule.The estimated funds support the equivalent of a 0.1 limited term employee and their associated overhead for rulemaking activites and form and website updates. These one-time costs cannot be absorbed in the currently appropriated agency budget.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits of implementing this rule are that chiropractors will have more clarity in the requirements for nutritional counseling certification and the Statutes.

16. Long Range Implications of Implementing the Rule

The long range implications of implementing this rule are improved practice for Chiropractors in Wisconsin ensuring that the nutritional counseling certification program requirements are consistent with current and academic practice for Chiropractic.

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 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).

19. Contact Name	20. Contact Phone Number
Sofia Anderson, Administrative Rules Coordinator	608-261-4463

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
-

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 24-046)

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) 3. and 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) 2., Stats.

Statutory authority:

Sections 15.08 (5) (b), 227.11 (2) (a), 446.02 (2) (c) 2., 446.028 (3), 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) 2., Stats., provides “[t]he examining board shall approve under subd. 1. a program of postgraduate study in nutrition provided by a program sponsor, as defined in s. 446.028 (1), if the program of postgraduate study in nutrition satisfies all of the requirements established by the examining board by rule for such a program.”

Section 446.028 (3), Stats., provides that “[n]o program sponsor may delegate the tasks of monitoring or recording attendance, providing evidence of attendance, verifying required course content, or providing information on instructors for a continuing education program. A person who intentionally violates this subsection may be punished as provided in s. 446.07.”

Related statute or rule:

Section 446.02 (6m), Stats.

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.
- Remove the nutritional counseling education program application deadline.

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.

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) 3. and 4. are amended to read:

3. The application shall identify the time and location of the program if program is also seeking approval as a continuing education program.

~~**4.** The application shall be complete as prescribed in this subsection and filed with the board no later than 75 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.

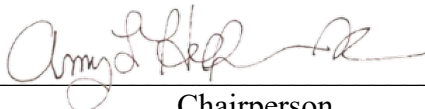
(2) Failure on the part of a program sponsor, ~~or an instructor, or a person or entity delegated or assigned a responsibility~~ to carry out a program as represented to and approved by the board or as provided in this chapter.

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)

This Proposed Order of the Chiropractic Examining Board is approved for submission to the Governor and Legislature.

Dated 08/20/2024

Agency 
Chairperson
Chiropractic Examining Board