

**STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD**

**IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 18-105
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 proposed rules make the following changes to reflect the provisions of 2017 Wisconsin Act 180, relating to a chiropractor's authority to delegate adjunctive services and x-ray services to certain health care professionals:

- Adds the definition of "health care professional" under s. 446.01 (1v), Stats., to the definitions in ch. Chir 1.
- Revises ss. Chir 4.04 (3) and 10.03 to reflect s. 446.025 (1) (a), Stats., which provides no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct supervision of a chiropractor licensed under ch. 446, Stats.
- Creates s. Chir 10.023 to, as required under s. 446.02 (7) (c), Stats., establish standards and procedures a chiropractor must use to verify a health care professional has adequate education, training, and experience to perform a delegated adjunctive service safely.
- As use of the term "health care professionals" in s. Chir 11.02 (4) is no longer appropriate based on its statutory definition, the proposed rules replace it with the term "healthcare providers."

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 April 4, 2019. Steven Conway, representing the Chiropractic Society of Wisconsin, registered neither for nor

against the proposed rules, but to provide information to the Board. Mr. Conway asked the Board to consider the following:

- The number of hours of the course of study required for certification as a chiropractic technician. As this subject matter is outside the scope of the rulemaking project, the Board could not address this issue in the proposed rules.
- The number of health care professionals to whom a chiropractor may delegate services at any given time. The Board discussed this issue at its June 27, 2019 meeting, and determined changes to the proposed rules are not necessary.
- The extent a health care professional could be held responsible for services performed that are delegated by a chiropractor. The Board discussed this issue at its June 27, 2019 meeting, and determined changes to the proposed rules are not necessary.

The Board also received written comments from the Wisconsin Society of Radiologic Technologists in support of the proposed rules.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 1:

Although under s. 446.02 (7) (d), Stats., a chiropractor may delegate x-ray services to a health care professional, s. 446.025 (1) (a), Stats., prohibits the health care professional from performing the x-ray services unless the health care professional is a chiropractic radiological technician. Under these circumstances, the Board believes specifying a health care professional may be delegated x-ray services would add confusion to the proposed rules.

Comment 5.b:

The intended meaning of the term “healthcare providers” in s. Chir 11.02 (4) is clear from the context and is not more specific than the generally recognized meaning. Therefore, a definition of the term is not necessary.

All other Legislative Council recommendations have been incorporated into the proposed rules.

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

N/A

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 18-105)

PROPOSED ORDER

An order of the Chiropractic Examining Board to repeal Chir 10.03 (Note); to amend Chir 1.02 (3), 4.04 (3), ch. Chir 10 (title), 10.015 (1) (a) (intro.), 10.02 (intro.) and (4), 10.03, and 11.02 (4); and to create Chir 1.02 (4) and 10.023, relating to delegation of services to health care professionals.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 446.02 (7), 446.025 (1) (a), and 446.026 (1) (a), Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2) (a), 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.”

Related statute or rule:

None.

Plain language analysis:

The proposed rules make the following changes to reflect the provisions of 2017 Wisconsin Act 180, relating to a chiropractor’s authority to delegate adjunctive services and x-ray services to certain health care professionals:

- Revises the term “direct supervision” to “direct, on-premises supervision” in ss. Chir 1.02 (3) and 10.02 (4) to align with statutory requirements for supervision.

- Adds the definition of “health care professional” under s. 446.01 (1v), Stats., to the definitions in ch. Chir 1.
- Revises ss. Chir 4.04 (3) and 10.03 to reflect s. 446.025 (1) (a), Stats., which provides no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats.
- Creates s. Chir 10.023 to, as required under s. 446.02 (7) (c), Stats., establish standards and procedures a chiropractor must use to verify a health care professional has adequate education, training, and experience to perform a delegated adjunctive service safely.
- As use of the term “health care professionals” in s. Chir 11.02 (4) is no longer appropriate based on its statutory definition, the proposed rules replace it with the term “healthcare providers.”

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois statutes (Section 54.2, Medical Practice Act) allow physicians, including chiropractic physicians, to delegate authority to certain individuals:

- Physicians may delegate patient care tasks to a physician assistant, licensed practical nurse, registered professional nurse, advanced practice nurse, or other licensed person practicing within the scope of their license.
- In an office or practice setting and within a physician-patient relationship, a physician may delegate patient care tasks or duties to an unlicensed person who possesses appropriate training and experience provided a health care professional practicing within the scope of their license is on site to provide assistance.
- A physician may not delegate any patient care task or duty that is statutorily or by rule mandated to be performed by a physician.

Iowa: Rules of the Iowa Board of Chiropractic address the delegation of chiropractic services to a chiropractic assistant (645 IAC 43.12):

- A supervising chiropractic physician must ensure at all times that a chiropractic assistant has the necessary training and skills to competently perform a delegated service.
- A supervising chiropractic physician may delegate services to a chiropractic assistant that are within the scope of practice of the chiropractic physician.
- A chiropractic physician may not delegate any of the following services:
 - Services outside the chiropractic physician’s scope of practice.
 - Initiation, alteration, or termination of chiropractic treatment programs.

- Chiropractic manipulation and adjustments.
- Diagnosis of a condition.
- A supervising chiropractic physician must ensure a chiropractic assistant is informed of the supervisor and chiropractic assistant relationship and is responsible for all services performed by the chiropractic assistant.

Michigan: Michigan statutes allow a chiropractor to delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the chiropractor's profession and will be performed under the chiropractor's supervision. A chiropractor may not delegate an act, task, or function if the act, task, or function, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of the chiropractor (Section 333.16215, Public Health Code).

Minnesota: Minnesota statutes specify grounds for the Board of Chiropractic Examiners to refuse to grant or revoke, suspend, condition, limit, restrict, or qualify a license to practice chiropractic. These provisions permit a doctor of chiropractic to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of the license or registration or delegated authority (Section 148.10, Subdivision 1, Chiropractic Practice Act).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of 2017 Wisconsin Act 180 in conjunction with current rules relating to chiropractic practice under chs. Chir 1 to 13 and obtaining input and feedback from the Chiropractic Examining Board.

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 document 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:

Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4472; email at DSPSAdminRules@wisconsin.gov.

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

The deadline for submitting comments was April 4, 2019.

TEXT OF RULE

SECTION 1. Chir 1.02 (3) is amended to read:

Chir 1.02 (3) “Direct, on-premises supervision” means that the treating chiropractor has ordered a specific patient care function to be performed by a specific person, and is present in the treatment facility while the patient care function is being performed, and is immediately available to exercise personal supervision of the patient care function if the person performing the function requests.

SECTION 2. Chir 1.02 (4) is created to read:

Chir 1.02 (4) “Health care professional” has the meaning given in s. 446.01 (1v), Stats.

SECTION 3. Chir 4.04 (3) is amended to read:

Chir 4.04 (3) ~~A chiropractor may delegate the operation of x-ray equipment only to a chiropractic radiological technician certified under ch. 446, Stats. A chiropractic radiological technician shall operate x-ray equipment under the direct supervision and direction of a licensee. As provided under s. 446.025 (1) (a), Stats., no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats. The A~~ chiropractor shall maintain records or ensure the chiropractor’s employer maintains records that verify the a chiropractic radiological technician delegated the performance of x-ray services is certified under ch. 446 s. 446.025, Stats.

SECTION 4. Chapter Chir 10 (title) is amended to read:

CHAPTER CHIR 10

DELEGATION TO CHIROPRACTIC TECHNICIANS, AND CHIROPRACTIC RADIOLOGICAL TECHNICIANS, AND HEALTH CARE PROFESSIONALS

SECTION 5. Chir 10.015 (1) (a) (intro.) is amended to read:

Chir 10.015 (1) (a) (intro.) The course of study shall include a prerequisite 4 ~~hour~~ 4-hour therapeutic overview course covering chiropractic technician scope of practice, anatomy, and contraindications followed by all of the following:

SECTION 6. Chir 10.02 (intro.) and (4) are amended to read:

Chir 10.02 (intro.) Delegation of adjunctive services to a chiropractic technician. A chiropractor may delegate the performance of ~~adjunctive services only to a chiropractic technician certified under ch. 446, Stats.~~ An adjunctive service may be delegated to a chiropractic technician only if all of the following conditions are met:

(4) The chiropractor exercises direct, on-premises supervision of the chiropractic technician performing the delegated service.

SECTION 7. Chir 10.023 is created to read:

Chir 10.023 Delegation of adjunctive services to a health care professional. A chiropractor may delegate the performance of an adjunctive service to a health care professional if all of the following conditions are met:

(1) The performance of the adjunctive service is within the scope of the health care professional's license, registration, or certification.

(2) The chiropractor maintains records or ensures the chiropractor's employer maintains records that verify the health care professional's license, registration, or certification is current.

(3) The chiropractor exercises direct, on-premises supervision of the health care professional performing the delegated adjunctive service.

(4) The chiropractor retains ultimate responsibility for the manner and quality of the service.

SECTION 8. Chir 10.03 is amended to read:

Chir 10.03 X-ray services. ~~A chiropractor may delegate x-ray examination procedures only to a chiropractic radiological technician certified under ch. 446, Stats.~~ As provided under s. 446.025 (1) (a), Stats., no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats. The A chiropractor shall comply with s. Chir 4.04 before delegating the performance of x-ray services to a chiropractic radiological technician.

SECTION 9. Chir 10.03 (Note) is repealed.

SECTION 10. Chir 11.02 (4) is amended to read:

Chir 11.02 (4) Patient records shall be complete and sufficiently legible to be understandable to ~~health care professionals~~ healthcare providers generally familiar with chiropractic practice, procedures, and nomenclature.

SECTION 11. 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 07/03/2019

Agency Jeffrey King / C.P.
Vice Chairperson
Chiropractic Examining Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

<p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p>	<p>2. Date December 19, 2018</p>
<p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Chir 1, 4, 10, and 11</p>	
<p>4. Subject Delegation of services to health care professionals</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 The proposed rules make the following changes to reflect the provisions of 2017 Wisconsin Act 180, relating to a chiropractor's authority to delegate adjunctive services and x-ray services to certain health care professionals:</p> <ul style="list-style-type: none">• Adds the definition of "health care professional" under s. 446.01 (1v), Stats., to the definitions in ch. Chir 1.• Revises ss. Chir 4.04 (3) and 10.03 to reflect s. 446.025 (1) (a), Stats., which provides no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct supervision of a chiropractor licensed under ch. 446, Stats.• Creates s. Chir 10.023 to, as required under s. 446.02 (7) (c), Stats., establish standards and procedures a chiropractor must use to verify a health care professional has adequate education, training, and experience to perform a delegated adjunctive service safely.• As use of the term "health care professionals" in s. Chir 11.02 (4) is no longer appropriate based on its statutory definition, the proposed rules replace it with the term "healthcare providers."	
<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. 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. No local governmental units participated in the development of this EIA.</p>	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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)

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.

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

The benefit to implementing the rule is providing clarity and conformity with the Wisconsin Statutes. If the rule is not implemented, it will not reflect the provisions of 2017 Wisconsin Act 180.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is clarity, updated references, and conformity with the Wisconsin Statutes.

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 statutes (Section 54.2, Medical Practice Act) allow physicians, including chiropractic physicians, to delegate authority to certain individuals:

- Physicians may delegate patient care tasks to a physician assistant, licensed practical nurse, registered professional nurse, advanced practice nurse, or other licensed person practicing within the scope of their license.
- In an office or practice setting and within a physician-patient relationship, a physician may delegate patient care tasks or duties to an unlicensed person who possesses appropriate training and experience provided a health care professional practicing within the scope of their license is on site to provide assistance.
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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

Michigan: Michigan statutes allow a chiropractor to delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the chiropractor's profession and will be performed under the chiropractor's supervision. A chiropractor may not delegate an act, task, or function if the act, task, or function, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of the chiropractor (Section 333.16215, Public Health Code).

Minnesota: Minnesota statutes specify grounds for the Board of Chiropractic Examiners to refuse to grant or revoke, suspend, condition, limit, restrict, or qualify a license to practice chiropractic. These provisions permit a doctor of chiropractic to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of the license or registration or delegated authority (Section 148.10, Subdivision 1, Chiropractic Practice Act).

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
-