

STATE OF WISCONSIN
OPTOMETRY EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	NOTICE OF TIME PERIOD
PROCEEDINGS BEFORE THE	:	FOR COMMENTS FOR THE
OPTOMETRY EXAMINING BOARD	:	ECONOMIC IMPACT ANALYSIS

NOTICE IS HEREBY GIVEN of the time period for public comment on the economic impact of this proposed rule of the Optometry Examining Board, including how this proposed rule may affect businesses, local government units and individuals. The comments will be considered when the Department of Safety and Professional Services prepares the Economic Impact Analysis pursuant to § 227.137. Written comments may be submitted to:

Jake Pelegrin, Administrative Rules Coordinator
Division of Policy Development
Department of Safety and Professional Services
PO Box 8366
Madison, WI 53708-8935
DSPSAdminRules@wisconsin.gov

The deadline for submitting economic impact comments is October 4, 2024.

PROPOSED ORDER

An order of the Optometry Examining Board to **amend** Opt 8.02 (3e), Opt 8.02 (3m) (a), Opt 8.02 (3s), Opt 8.03 (1) (a), Opt 8.03 (2) (h), and Opt 8.03 (4); and to **create** Opt 8.01 (1m) and Opt 8.01 (5), relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 449.06 (2m), Stats.

Statutory authority: Sections 15.08 (5) (b), 227.11 (2) (a), and 449.06 (2m), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats. provides that each examining board “[s]hall 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 227.11 (2) (a), Stats. provides that “Each agency may promulgate rules interpreting the provisions of any statute enforced or administered by the agency, if the

agency considers it necessary to effectuate the purpose of the statute, but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Section 449.06 (2m), Stats. provides that “The examining board shall promulgate rules requiring a person who is issued a license to practice optometry to complete, during the 2-year period immediately preceding the renewal date specified in s. 440.08 (2) (a), not less than 30 hours of continuing education. The rules shall include requirements that apply only to optometrists who are allowed to use topical ocular diagnostic pharmaceutical agents under s. 449.17 or who are allowed to use therapeutic pharmaceutical agents or remove foreign bodies from an eye or from an appendage to the eye under s. 449.18.”

Related statute or rule:

None.

Plain language analysis:

The proposed rule clarifies the number of continuing education hours and instructional format required to renew an optometry license according to the updated standards adopted by the Association of Regulatory Boards of Optometry (ARBO) and the Council on Optometric Practitioner Education (COPE). The rule sets hour requirements for in person, synchronous virtual, and asynchronous continuing education hours required to renew an optometry license. COPE has updated definitions of synchronous and asynchronous course formats and hours to align with modern education terminology and provided new definitions to guide state regulatory boards.

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

N/A

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:

N/A

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation establish continuing education (CE) requirements for optometrists licensed in Illinois [68 Ill. Adm. Code 1320.80]. Illinois has recently updated their code to allow different course formats. Out of a total of 30 required CE hours per renewal cycle, at least 12 hours must be in person and up to 18 hours may be “completed online through live, real-time presentations

or by pre-recorded video”. In other words, these are essentially the in person, synchronous virtual, and asynchronous course formats defined by COPE.

Iowa:

Rules of the Iowa Board of Optometry establish continuing education requirements for optometrists licensed in Iowa [645 IAC 181.1 – 181.3]. Iowa has not yet included the new COPE course format definitions within these rules. However, it only allows a maximum of 10 CE hours per renewal cycle to be virtual for both of their credential levels (30 hours total and 50 hours total required).

Michigan:

Rules of the Michigan Board of Optometry establish continuing education requirements for optometrists licensed in Michigan [Mich Admin Code, R 338.331 to R 338.333]. They require a total of 40 CE hours per renewal cycle. The only provision that covers the topic of in person versus virtual CE is the following: “A minimum of 20 of the required continuing education hours must be completed in a live, synchronous learning format. The remaining hours may be completed in any other format” [R 338.331 (4)]. Since it does not specify that courses must be in person, and since “live, synchronous” fits the COPE definition of a synchronous virtual course, it is presumed to mean that at least 20 hours must be either in person courses or synchronous virtual courses. In this case, all of a licensee’s CE hours may be virtual.

Minnesota:

Rules of the Minnesota Board of Optometry establish continuing education requirements for optometrists licensed in Minnesota [Minnesota Rules, Chapter 6500.3000]. They require a total of 40 CE hours per renewal cycle. At least 25 hours must be course formats of in person or virtual synchronous. A maximum of 15 hours may be asynchronous. In this case, all of a licensee’s CE hours may be virtual.

Summary of factual data and analytical methodologies:

The proposed rules were developed by the Board reviewing the new course format definitions, by reviewing chapter Opt 8, and deciding what changes were needed.

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

The proposed rules will be 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.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis will be attached upon 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 at Jennifer.Garrett@wisconsin.gov or (608) 266-2112.

Agency contact person:

Jake Pelegrin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jake Pelegrin, 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 the public hearing, held on a date to be determined, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Opt 8.01 (1m) is created to read:

Opt 8.01 (1m) “Asynchronous course” means an educational course in which content is created and made available for learners at a later date, and there is no real-time communication between the instructor and the learner. Examples include a recorded webinar without instructor interaction, reading an assigned journal article, or a webcast/podcast.

SECTION 2. Opt 8.01 (5) is created to read:

Opt 8.01 (5) “Synchronous virtual course” means an educational course with real time communication between the instructor and the learner, and learners can receive immediate feedback. Examples include interactive webinars in real time, videoconferences, or interactive posters with authors presenting in real time.

SECTION 3. Opt 8.02 (3e) is amended to read:

Opt 8.02 (3e) At least ~~20~~10 of the 30 hours of approved continuing education required under sub. (1) shall be completed by attending programs in person. Programs not completed in person may include synchronous virtual courses or asynchronous courses. Up to 10 of the 30 approved hours may be completed in an asynchronous course format. Any programs not completed in person shall be COPE or Joint Accreditation for

Interprofessional Continuing Education ~~approved~~ accredited programs, in accordance with s. Opt 8.03 (1) (a), or programs approved under s. Opt 8.03 (2). Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 4. Opt 8.02 (3m) (a) is amended to read:

Opt 8.02 (3m) (a) Approval of less than the ~~20~~10 hours of in person continuing education required under sub. (3e), or less than the 5 hours of in person continuing education required under sub. (3s).

SECTION 5. Opt 8.02 (3s) is amended to read:

Opt 8.02 (3s) An optometrist who by the renewal date has been licensed for one year or less from the date issued shall not be required to report continuing education for the first renewal of the license. An optometrist who by the renewal date holds a license for more than one year and less than 2 years shall be required to report 15 hours of approved continuing education for the first renewal of the license. A minimum of ~~10~~5 of the 15 approved hours shall be attended in person. Programs not completed in person may include synchronous virtual courses or asynchronous courses. Up to 5 of the 15 approved hours may be completed in an asynchronous course format. Any programs not completed in person shall be COPE or Joint Accreditation for Interprofessional Continuing Education accredited programs, in accordance with s. Opt 8.03 (1) (a), or programs approved under s. Opt 8.03 (2). Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 6. Opt 8.03 (1) (a) is amended to read:

Opt 8.03 (1) (a) Any continuing education program ~~approved~~ accredited by COPE or Joint Accreditation for Interprofessional Continuing Education. This may include course formats of in person courses, synchronous virtual courses, or asynchronous courses. Synchronous virtual courses shall include a type of attendance monitoring or post-course evaluation. Asynchronous courses shall include a post-course test requiring a minimum score of 70% to receive credit.

SECTION 7. Opt 8.03 (2) (h) is amended to read:

Opt 8.03 (2) (h) Delivery method of the program, whether in person, synchronous virtual, or asynchronous.

SECTION 8. Opt 8.03 (4) is amended to read:

Opt 8.03 (4) In cases of hardship under s. Opt 8.02 (3m), the board may waive any requirement under this section, ~~or s. Opt 8.02 (3e),~~ or s. Opt 8.02 (3s) as deemed appropriate by the board.

SECTION 9. 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)
