

**STATE OF WISCONSIN
PHYSICIAN ASSISTANT AFFILIATED CREDENTIALING BOARD**

**IN THE MATTER OF RULEMAKING :
PROCEEDINGS BEFORE THE : REPORT TO THE LEGISLATURE
PHYSICIAN ASSISTANT AFFILIATED : CR 25-002
CREDENTIALING 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 rule expands unprofessional conduct to require that physician assistants either follow the policies established by their employers for the use of chaperones during physical examinations, or that physician assistants establish policies and follow them. Physician assistants will also be required to make their policy regarding the use of chaperones accessible to all patients. “Chaperone” is defined to mean an individual whom a physician assistant requests to be present during a clinical examination who can serve as a witness to the examination taking place. “Observer” is defined to mean an individual chosen by the patient to be present during an examination, and is presumed to include an adult family member, legal guardian, or legal custodian if the patient is twelve years of age or under. The distinction between the two is that a chaperone is arranged for or requested by the physician assistant on the patient’s behalf and must be able to serve as a witness, whereas an observer is directly chosen by the patient.

Nothing under this rule is intended to impose a requirement upon any person or entity that the board does not have jurisdiction over.

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

The Physician Assistant Affiliated Credentialing Board (“Board”) held a public hearing on February 20, 2025. The Board received one written comment from Amy Warmenhoven from De Pere, WI commented the following: “If intent of this rule is to force a 15 year old to have a chaperone present during her pap smear when she isn't asking for one, I think we should not invite her father into the exam room or make it mandatory if he doesn't want to chaperone. In fact, we ought to give the 15 year old the right to refuse to have a chaperone present instead of giving the nurse permission to force her to have one.”

The Board found the comment to be inconsistent with the rule project’s intent and consequently, no modifications were made to the proposed changes.

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

STATE OF WISCONSIN
PHYSICIAN ASSISTANT AFFILIATED CREDENTIALING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	PHYSICIAN ASSISTANT AFFILIATED
PHYSICIAN ASSISTANT AFFILIATED	:	CREDENTIALING BOARD
CREDENTIALING BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 25-002)

PROPOSED ORDER

An order of the Physician Assistant Affiliated Credentialing Board to create PA 4.005 and 4.01 (2) (fm), relating to Physical Examinations.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 448.973 (1) (c) 1., Stats.

Statutory authority: ss. 15.085 (5) (b) and 448.973 (1), Stats.

Explanation of agency authority:

Section 15.085 (5) (b) states that “[each affiliated credentialing board] shall promulgate rules for its own guidance and for the guidance of the trader 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 448.973 (1) states that: “

- (a) The board shall promulgate rules implementing s. 448.9785.
- (b) The board shall promulgate rules establishing continuing education requirements for physician assistants.
- (c) The board may promulgate other rules to carry out the purposes of this subchapter, including any of the following
 1. Rules defining what constitutes unprofessional conduct for physician assistants for purposes of s. 448.978 (2) (d).
 2. Rules under s. 448.977 (2).”

Related statute or rule: Med 10.03 (2) (fm).

Plain language analysis:

The proposed rule expands unprofessional conduct to require that physician assistants either follow the policies established by their employers for the use of chaperones during physical examinations, or that physician assistants establish policies and follow them. Physician assistants will also be required to make their policy regarding the use of

chaperones accessible to all patients. “Chaperone” is defined to mean an individual whom a physician assistant requests to be present during a clinical examination who can serve as a witness to the examination taking place. “Observer” is defined to mean an individual chosen by the patient to be present during an examination, and is presumed to include an adult family member, legal guardian, or legal custodian if the patient is twelve years of age or under. The distinction between the two is that a chaperone is arranged for or requested by the physician assistant on the patient’s behalf and must be able to serve as a witness, whereas an observer is directly chosen by the patient.

Nothing under this rule is intended to impose a requirement upon any person or entity that the board does not have jurisdiction over.

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.

Comparison with rules in adjacent states:

Illinois: Physician Assistants in Illinois are licensed through the Illinois Department of Financial and Professional Regulation. The Physician Assistant Practice Act of 1987 governs the practice of physician assistants in Illinois and includes statutes on licensure, collaboration, prescribing, continuing education, and grounds for disciplinary action. [225 Illinois Compiled Statutes 95]. Part 1350 of the Illinois Administrative Code further details rules for physician assistants in the areas of licensure, collaboration, and prescribing. These sections also detail scope and function, employment, approved programs, and unprofessional conduct. The rules for unprofessional conduct do not include the requirement of observers or chaperones for certain physical examinations. [Illinois Administrative Code s. 1350].

Iowa: Physician Assistants in Iowa are licensed through the Iowa Department of Public Health and the Board of Physician Assistants. Chapter 148C of the Iowa Code governs the practice of physician assistants in Iowa and includes statutes on licensure and grants administrative rulemaking authority to their Board [Iowa Code ch. 148C]. Chapters 326 through 329 of the Professional Licensure Division Section 645 of the Iowa Administrative Code further details rules for physician assistants in the areas of licensure, practice, continuing education, and discipline. The rules on grounds for discipline do not include the requirement of observers or chaperones for certain physical examinations. [645 Iowa Administrative Code chs. 326 to 329].

Michigan: Physician Assistants in Michigan are licensed through the Michigan Department of Licensing and Regulatory Affairs. Part 170 of The Public Health Code Act 368 governs the practice of physician assistants in Michigan. This section of the Michigan Compiled Laws includes requirements for physician assistants on licensure, practice, informed consent, continuing education, and delegation of care. The Michigan Board of

Medicine is also responsible for the regulation of Physician Assistants in Michigan. The rules for physician assistants do not include the requirement of observers or chaperones for certain physical examinations [Michigan Compiled Laws ss. 333.17001 to 333.17084].

Minnesota: Physician Assistants in Minnesota are licensed through the Minnesota Board of Medical Practice. Chapter 147A of the Minnesota Statutes includes requirements for licensure, scope of practice, grounds for disciplinary action, accountability, prescribing drugs, continuing education and responding to disaster situations [Minnesota Statutes ch. 147A]. The Minnesota Board of Medical Practice has administrative rules which also include requirements for physician assistants including licensure and registration, continuing education, emeritus registrations, professional corporation rules, hearings before the board, and fee splitting [Minnesota Administrative Rules chs. 5600, 5605, 5606, 5610, 5615, and 5620]. The statutory requirements for grounds for disciplinary action do not include the requirement of observers or chaperones for certain physical examinations [Minnesota Statutes ch. 147A s. 147A.13].

Summary of factual data and analytical methodologies:

While promulgating these rules, the Board referenced Wisconsin Administrative Code ch. Med 10, as well as the ‘Guidelines for Ethical Conduct for the PA Profession’ from the American Academy of Physician Associates, among other sources.

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.

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 Jennifer.Garrett@wisconsin.gov, or by calling (608) 266-2112.

Agency contact person:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8306; email at DSPSAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. PA 4.005 is created to read:

PA 4.005 Definitions: In this chapter:

- (1) “Chaperone” means an individual whom a physician assistant requests to be present during a clinical examination that exposes the breasts, genitals, or rectal area, and who can serve as a witness to the examination taking place should there be any misunderstanding or concern for sexual misconduct.
- (2) “Observer” means an individual chosen by the patient to be present during an examination or inspection that exposes the breasts, genitals, or rectal area. A patient’s adult family member, legal guardian, or legal custodian is presumed to be able to act as an observer if the patient is twelve years of age or under.

SECTION 2. PA 4.01 (2) (fm) is created to read:

PA 4.01 (2) (fm) 1. If a physician assistant who practices pursuant to a collaboration agreement or in an employment arrangement fails to comply with the terms of their collaboration agreement or contract of employment regarding chaperones or other observers in patient examinations, then the failure to follow such rules during an exam in which a violation of par. (f) is alleged may be considered by the board in determining whether the alleged misconduct occurred.

- 2. A physician assistant who is self-employed or in other practice settings that do not involve hospitals or employers shall establish written procedures for the use of chaperones or other observers in patient examinations and shall comply with these procedures once established.
- 3. A copy of any rules and procedures, or summary thereof, regarding the physician assistant’s use of chaperones or other observers shall be made available and accessible to all patients who are likely to receive a non-emergency examination of the breasts, genitals, or rectal area.
- 4. A physician assistant shall not be found in violation of this section because of the failure of a third party to create a policy regarding chaperones, or to allow posting or notification of any policy regarding chaperones.

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)

This Proposed Order of the Physician Assistant Affiliated Credentialing Board is approved for submission to the Governor and Legislature.



Dated 3/28/2025 Agency _____

Chairperson
Physician Assistant Affiliated
Credentialing Board

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 10/18/24
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) PA 4	
4. Subject Physical Examinations	
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) (hg)
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 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 proposed rule expands unprofessional conduct to require that physician assistants either follow the policies established by their employers for the use of chaperones during physical examinations, or that physician assistants establish policies and follow them. Physician assistants will also be required to make their policy regarding the use of chaperones accessible to all patients	
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 rules will be posted for a period of 14 days to solicit public comment on economic impact, including how the rules may affect businesses, local government units, and individuals.	
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 \$3,455 in one-time costs for implementing this rule. The one-time staff costs support 0.1 limited term employee to undertake such tasks as rulemaking activities, legal review, and updating website. The one-time costs cannot be absorbed in the currently appropriated agency budget.	
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefits of implementing this rule are The benefit to implementing the rule is to promote use of chaperones or observers during sensitive examinations and reduce incidents unprofessional conduct.	
16. Long Range Implications of Implementing the Rule The long range implications of implementing this rule are increased use of chaperones and observers during sensitive examinations.	
17. Compare With Approaches Being Used by Federal Government None.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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

Illinois: Physician Assistants in Illinois are licensed through the Illinois Department of Financial and Professional Regulation. The Physician Assistant Practice Act of 1987 governs the practice of physician assistants in Illinois and includes statutes on licensure, collaboration, prescribing, continuing education, and grounds for disciplinary action. [225 Illinois Compiled Statutes 95]. Part 1350 of the Illinois Administrative Code further details rules for physician assistants in the areas of licensure, collaboration, and prescribing. These sections also detail scope and function, employment, approved programs, and unprofessional conduct. The rules for unprofessional conduct do not include the requirement of observers or chaperones for certain physical examinations. [Illinois Administrative Code s. 1350].

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19. Contact Name

Nilajah Hardin, Administrative Rules Coordinator

20. Contact Phone Number

(608) 267-7139

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
-