

**STATE OF WISCONSIN
PODIATRY AFFILIATED CREDENTIALING BOARD**

IN THE MATTER OF RULEMAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : CR 20-040
PODIATRY AFFILIATED :
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:

As required under s. 448.695 (4) Stats., as created by 2017 Wisconsin Act 227, the proposed rules establish practice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4), Stats., and requirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4), Stats.

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

The Podiatry Affiliated Credentialing Board held a public hearing on October 15, 2020. The Board received written comments from Roger Lovelace, PA-C, President of the Wisconsin Academy of Physician Assistants (WAPA). Mr. Lovelace's comments are specific to the definition of "nonsurgical patient services" under s. Pod 9.02, and express concern the definition as drafted does not adequately reflect the capabilities of physician assistants. Specifically, WAPA requests the wording "accurately writing or executing orders" be replaced with "writing orders and other actions and procedures in accordance with the education, training, experience, and credentialing of the physician assistant."

In response to the above comments, the Board has revised the definition of "nonsurgical patient services" as requested by WAPA, with the addition of a reference to the scope of the practice of a physician assistant under s. Med 8.07. Specifically, the wording "accurately writing or executing orders" has been replaced with "writing orders, and other actions and procedures in accordance with s. Med 8.07 and the education, training, experience, and credentialing of the physician assistant."

VI. RESPONSE TO MEDICAL EXAMINING BOARD AND LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

The proposed rule was submitted to the Medical Examining Board on July 15, 2020. The Medical Examining Board expressed its support of the proposed rule, and had no comments for the Podiatry Affiliated Credentialing Board to consider.

The Legislative Council had the following recommendation concerning the proposed rule:

“The agency could consider removing the definition in s. Pod 9.02 and the second sentence in s. Pod 9.03. The second sentence of the proposed text for s. Pod 9.03, together with the proposed definition for ‘nonsurgical patient services’, is duplicative of the language given in s. Med 8.07 (2) (e). That section provides that: ‘[m]edical care a physician assistant may provide include[s]... [a]ssisting the supervising physician in a hospital or facility, as defined in s. 50.01 (1m), Stats., by assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries, and accurately writing or executing orders.’. That provision is already incorporated into the first sentence of s. Pod 9.03 by cross-reference. Accordingly, the second sentence, together with the definition, are duplicative of the cross-reference made in the first sentence, and could be omitted.”

The Board did not modify the proposed rule in response to this recommendation. Section 448.21 (4), Stats., limits the practice of podiatry by a physician assistant to providing “nonsurgical patient services,” a term the statutes and ch. Med 8 do not define. Section Pod 9.02 defines “nonsurgical patient services,” which clarifies the scope of a physician assistant’s practice of podiatry. In addition, s. Med 8.07 (2) (e) does not explicitly permit a physician assistant to assist a supervising podiatrist in a hospital or facility. Section Pod 9.03 clarifies this is permitted.

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

N/A

STATE OF WISCONSIN
PODIATRY AFFILIATED CREDENTIALING BOARD

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| IN THE MATTER OF RULEMAKING | : | PROPOSED ORDER OF THE |
| PROCEEDINGS BEFORE THE | : | PODIATRY AFFILIATED |
| PODIATRY AFFILIATED | : | CREDENTIALING BOARD |
| CREDENTIALING BOARD | : | ADOPTING RULES |
| | : | (CLEARINGHOUSE RULE 20-040) |

PROPOSED ORDER

An order of the Podiatry Affiliated Credentialing Board to create ch. Pod 9, relating to physician assistants.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Section 448.21 (4), Stats.

Statutory authority:

Sections 15.085 (5) (b) and 448.695 (2) and (4) (a) and (b), Stats.

Explanation of agency authority:

Section 15.085 (5) (b), Stats., provides an affiliated credentialing board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 448.695 (2), Stats., provides “[t]he affiliated credentialing board may promulgate rules to carry out the purposes of this subchapter.”

Section 448.695 (4) (a), Stats., provides the Podiatry Affiliated Credentialing Board shall promulgate rules establishing “[p]ractice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4).”

Section 448.695 (4) (b), Stats., provides the Podiatry Affiliated Credentialing Board shall promulgate rules establishing “[r]equirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4).”

Related statute or rule:

Chapter Med 8 provides practice standards for a physician assistant practicing podiatry and requirements for a podiatrist who is supervising a physician assistant.

Plain language analysis:

As required under s. 448.695 (4) Stats., as created by 2017 Wisconsin Act 227, the proposed rules establish practice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4), Stats., and requirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4), Stats.

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

None.

Comparison with rules in adjacent states:**Illinois:**

The Illinois Physician Assistant Practice Act (225 ILCS 95) does not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatric physician.

Iowa:

The Iowa statutes do not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatrist (Iowa Code § 148C.4).

Michigan:

The Michigan Public Health Code allows a physician assistant to work under a practice agreement with a podiatrist (MCL 333.18047). A practice agreement may not include as a duty or responsibility of the physician assistant or podiatrist an act, task, or function that the physician assistant or podiatrist is not qualified to perform by education, training, or experience and that is not within the scope of the license held by the physician assistant or podiatrist.

Minnesota:

The Minnesota Physician Assistant Practice Act (Minnesota Statutes, Chapter 147A) does not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatrist.

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of 2017 Wisconsin Act 227 and obtaining input and feedback from the Podiatry Affiliated Credentialing Board and the Council on Physician Assistants.

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 for public comment on the economic impact of the proposed rules, 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 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:

Comments may be submitted to Dale Kleven, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 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 October 15, 2020, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. Chapter Pod 9 is created to read:

CHAPTER POD 9

PHYSICIAN ASSISTANTS

Pod 9.01 Authority and scope. The rules in this chapter are adopted by the podiatry affiliated credentialing board pursuant to the authority delegated by ss. 15.085 (5) (b) and 448.695 (2) and (4), Stats., and establish practice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4), Stats., and requirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4), Stats.

Pod 9.02 Definition. In this chapter, “nonsurgical patient services” means assisting in surgery, making patient rounds, recording patient progress notes, compiling and recording detailed narrative case summaries, writing orders, and other actions and procedures in accordance with s. Med 8.07 and the education, training, experience, and credentialing of the physician assistant.

Pod 9.03 Practice standards for a physician assistant practicing podiatry. The practice standards for a physician assistant practicing podiatry are as provided under s. 448.21, Stats., and ss. Med 8.01 (2), 8.07, 8.09, and 8.10. The medical care a physician assistant may provide when practicing podiatry includes assisting a supervising podiatrist in a hospital or facility, as defined in s. 50.01 (1m), Stats., by providing nonsurgical patient services.

Pod 9.04 Requirements for a podiatrist supervising a physician assistant. The requirements for a podiatrist who is supervising a physician assistant are as provided under s. 448.21, Stats., and ss. Med 8.01 (2), 8.07, 8.09, and 8.10.

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)

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

11/6/2020
Dated _____

Agency _____ *Jack W. Hutter* _____
Chairperson
Podiatry Affiliated Credentialing Board

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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|---|--|
| <p>1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected</p> | <p>2. Date July 2, 2020</p> |
| <p>3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) Pod 9</p> | |
| <p>4. Subject Physician assistants</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 As required under s. 448.695 (4) Stats., as created by 2017 Wisconsin Act 227, the proposed rules establish practice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4), Stats., and requirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4), 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. 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> | |
| <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) 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.</p> | |
| <p>15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The benefit to implementing the rule is, as required under 2017 Wisconsin Act 227, establishing practice standards for a physician assistant practicing podiatry as provided in s. 448.21 (4), Stats., and requirements for a podiatrist who is supervising a physician assistant as provided in s. 448.21 (4), Stats. Not implementing the rule would leave the administrative code incomplete in that there would not be established practice standards and requirements for physician assistants practicing podiatry and supervising podiatrists.</p> | |
| <p>16. Long Range Implications of Implementing the Rule The long range implication of implementing the rule is established practice standards and requirements for physician assistants practicing podiatry and supervising podiatrists.</p> | |

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 Physician Assistant Practice Act (225 ILCS 95) does not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatric physician.

Iowa:

The Iowa statutes do not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatrist (Iowa Code § 148C.4).

Michigan:

The Michigan Public Health Code allows a physician assistant to work under a practice agreement with a podiatrist (MCL 333.18047). A practice agreement may not include as a duty or responsibility of the physician assistant or podiatrist an act, task, or function that the physician assistant or podiatrist is not qualified to perform by education, training, or experience and that is not within the scope of the license held by the physician assistant or podiatrist.

Minnesota:

The Minnesota Physician Assistant Practice Act (Minnesota Statutes, Chapter 147A) does not permit a physician assistant to be supervised by or to work in a collaborative relationship with a podiatrist.

19. Contact Name

Dale Kleven

20. Contact Phone Number

(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
