



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 23-040

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. The caption for the proposed rule should be revised to identify the creation of s. Opt 8.02 (1s).

b. In the plain language analysis for the proposed rule, could the agency provide more detail on the content of the proposed rule?

c. The rule summary’s description of the analysis and supporting documents used to determine the effect on small business and the description of the fiscal estimate and economic impact analysis should be updated to reflect the completion of those requirements.

d. The rule summary’s listing of the deadline to submit comments on the proposed rule should be revised to list a specific date or identify how a person could locate the deadline, rather than stating only that it will be a date “to be determined”.

e. SECTIONS 1 and 2 of the proposed rule should be separated into three SECTIONS to treat the affected provisions in numerical sequence as follows:

Amend s. Opt 8.02 (1) and (1m).

Create s. Opt 8.02 (1s).

Amend s. Opt 8.02 (3s).

f. In s. Opt 8.02 (1s), the reference to “s. Opt 8.02 (1m)” should be revised to appear as “sub. (1m)”. The reference is within the same section of the rule. [s. 1.15 (2) (c) (Examples), Manual.]

3. Conflict With or Duplication of Existing Rules

As specified under current s. Opt. 8.02 (1), a licensee must complete 30 hours of approved continuing education in each biennial registration period, and a minimum of 20 of the 30 hours must relate to “ocular health, conditions, or disease management”.

Also, for licensees who **are** allowed to use diagnostic and therapeutic pharmaceutical agents, a minimum of 20 of the 30 hours of the approved continuing education hours referred to above must relate to “ocular health, conditions, or disease management, or the removal of superficial foreign bodies from an eye or from an appendage to the eye”, as specified under current s. Opt. 8.02 (2).

Also, for licensees who are **not** allowed to use diagnostic and therapeutic pharmaceutical agents, a minimum of 20 of the 30 hours of the approved continuing education hours referred to above must relate to “ocular health, conditions, or disease management”, as specified under current s. Opt. 8.02 (3).

Therefore, it appears that every licensee is subject to sub. (1), and that every licensee either is subject to sub. (2) or sub. (3), depending on whether or not they are allowed to use diagnostic and therapeutic pharmaceutical agents. For those licensees who are subject to both subs. (1) and (3), this does not create a conflict, because both require that “a minimum of 20 of the 30 hours must relate to ocular health, conditions, or disease management”.

However, for those licensees who are subject to both subs. (1) and (2), there appears to be a conflict between the provisions. That is because sub. (2) contains the same language as sub. (1), plus it also refers to “removal of superficial foreign bodies” which is effectively redundant or superfluous language. That language is missing from sub. (1), which is nonetheless a standalone requirement (and when it is satisfied, sub. (2) also will be satisfied).

Consider removing the language stating that “a minimum of 20 of the 30 hours must relate to ocular health, conditions, or disease management” in sub. (1). If this language is removed from sub. (1), then there will be no conflict. In other words, the main requirement under sub. (1) would remain in place specifying that a licensee must complete 30 hours of approved continuing education in each biennial registration period. The “minimum of 20” standard would no longer be referred to in sub. (1). Each licensee would be subject to a single version of the “minimum of 20” standard under either sub. (2) or sub. (3), as applicable.

4. Adequacy of References to Related Statutes, Rules and Forms

In s. Opt. 8.02 (1m), as revised in the proposed rule, after the phrase “Each biennium”, and prior to the word “unless”, consider inserting the text: “except as provided in sub. (1s), and” or similar language. This is because the provision creates an impression that a hardship waiver under sub. (3m) is the only exception to the requirement in sub. (1m). In fact, the proposed rule will create a second exception, under sub. (1s). Therefore, this should also be referenced in sub. (1m).

5. Clarity, Grammar, Punctuation and Use of Plain Language

In s. Opt 8.02 (3s), consider revising the word “must” to “shall”, if the provision is intended to be mandatory. [s. 1.08 (1) (b), Manual.]