

Report From Agency

STATE OF WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULE-MAKING : REPORT TO THE LEGISLATURE
PROCEEDINGS BEFORE THE : ON CLEARINGHOUSE RULE 11-027
DEPARTMENT OF SAFETY AND : (S. 227.19 (3), Stats.)
PROFESSIONAL SERVICES :

I. THE PROPOSED RULE:

The proposed rule, including the analysis and text, is attached.

II. REFERENCES TO APPLICABLE FORMS:

The proposed rule does not require new forms. However, existing DSPS forms will be updated to include physicians in the list of professions for which applicants must submit fingerprints as part of the licensure process. For example DSPS Forms ## 2823 and 2687 will need to be updated to include applicants for physician licenses. DSPS Form # 546 will also need to be updated with instructions on the fingerprint and criminal history report process for applicants for physician licenses. Existing instructions on the fingerprint and criminal history report process on DSPS Form # 2880 can be replicated on DSPS Form # 546. All relevant forms are attached.

III. FISCAL ESTIMATES:

The department finds that this proposed rule will have no significant fiscal impact on the private sector. The department also finds that the proposed rule will have no significant fiscal impact on the State of Wisconsin or on local units of government.

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 is promulgated to advance the department's statutory goal of protecting the public by ensuring applicants for licensure satisfy the eligibility requirements, including whether applicants have an arrest or conviction record. *See* ss. 440.03(13)(a) and s. 448.05(1)(a), Stats.. Specifically, subject to ss. 111.321, 111.322 and 111.355, Stats., s. 448.05(1)(a), Stats., requires that applicants not have an arrest or conviction record to be qualified for the grant of any license by the Medical Examining Board. Section 440.03(13)(a), Stats., authorizes the department to conduct investigations to determine whether applicants have arrest or conviction records and require applicants to provide any information that is necessary for the investigation.

The proposed rule advances the above statutory goal of protecting the public by requiring all applicants for physician licenses to submit fingerprints and undergo criminal background

checks as part of the licensure process. Currently, applicants for physician licenses may be required to submit fingerprints and undergo criminal background checks if “there exists reason to believe that the applicant has failed to accurately describe his or her conviction record.”

The basis of the proposed rule is federal Public Law 92-544 (1972), 86 Stat. 1115. Public Law 92-544 empowers the FBI to conduct criminal background checks and provide the results to state agencies for non-criminal purposes if the FBI determines that there is adequate statutory authority. The FBI has determined that s. 440.03(13) Stats., is adequate statutory authority to allow the FBI to conduct background checks and provide the results with the department.

V. NOTICE OF PUBLIC HEARING:

The department held a public hearing on July 20, 2011 and accepted written comments until August 1, 2011. No interested persons from the public presented testimony at the public hearing. The department received written comments from the Board of Nursing.

SUMMARY OF PUBLIC HEARING COMMENTS AND WRITTEN COMMENTS:

The Board of Nursing’s written comments are attached. The comments support the proposed rule. The Board cites public safety and the increased ability of healthcare professionals to practice in multiple states as reasons for supporting the proposed rule. Further, the Board indicates that it intends to propose a similar rule to require background checks for applicants for nursing licenses as part of its licensure process.

DEPARTMENT RESPONSE TO PUBLIC HEARING COMMENTS AND WRITTEN COMMENTS:

The department made no changes to the proposed rule in response to comments, because there were no comments during the public hearing and the written comments from the Board of Nursing support the proposed rule.

VI. RESPONSE TO LEGISLATIVE COUNCIL STAFF RECOMMENDATIONS:

Comment 5.e & f: In SECTION 1 and SECTION 2, “persons” should be changed to “applicant’s” and “their” should be changed to “his or her.”

Response: “Persons” has been changed to “applicant” and “their” has been changed to “his or her.” The recommendation to change “persons” to “applicant’s” is not grammatically correct and does not convey the intended meaning of the rule change.

All other recommendations in the clearinghouse report were accepted and incorporated into the final draft of the proposed rule.

VII. FINAL REGULATORY FLEXIBILITY ANALYSIS:

The proposed rule will have no significant economic impact on small businesses, as defined in s. 227.114(1), Stats.