

STATE OF WISCONSIN
CHIROPRACTIC EXAMINING BOARD

IN THE MATTER OF RULEMAKING	:	PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE	:	CHIROPRACTIC EXAMINING
CHIROPRACTIC EXAMINING	:	BOARD
BOARD	:	ADOPTING RULES
	:	(CLEARINGHOUSE RULE 18-105)

PROPOSED ORDER

An order of the Chiropractic Examining Board to repeal Chir 10.03 (Note); to amend Chir 1.02 (3), 4.04 (3), ch. Chir 10 (title), 10.015 (1) (a) (intro.), 10.02 (intro.) and (4), 10.03, and 11.02 (4); and to create Chir 1.02 (4) and 10.023, relating to delegation of services to health care professionals.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 446.02 (7), 446.025 (1) (a), and 446.026 (1) (a), Stats.

Statutory authority:

Sections 15.08 (5) (b) and 227.11 (2) (a), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that examining boards, such as the Chiropractic Examining Board, “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains . . .”

Section 227.11 (2) (a), Stats., sets forth the parameters of an agency’s rule-making authority, stating an agency “may promulgate rules interpreting provisions of any statute enforced or administered by the agency. . .but a rule is not valid if the rule exceeds the bounds of correct interpretation.”

Related statute or rule:

None.

Plain language analysis:

The proposed rules make the following changes to reflect the provisions of 2017 Wisconsin Act 180, relating to a chiropractor’s authority to delegate adjunctive services and x-ray services to certain health care professionals:

- Revises the term “direct supervision” to “direct, on-premises supervision” in ss. Chir 1.02 (3) and 10.02 (4) to align with statutory requirements for supervision.

- Adds the definition of “health care professional” under s. 446.01 (1v), Stats., to the definitions in ch. Chir 1.
- Revises ss. Chir 4.04 (3) and 10.03 to reflect s. 446.025 (1) (a), Stats., which provides no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats.
- Creates s. Chir 10.023 to, as required under s. 446.02 (7) (c), Stats., establish standards and procedures a chiropractor must use to verify a health care professional has adequate education, training, and experience to perform a delegated adjunctive service safely.
- As use of the term “health care professionals” in s. Chir 11.02 (4) is no longer appropriate based on its statutory definition, the proposed rules replace it with the term “healthcare providers.”

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

None.

Comparison with rules in adjacent states:

Illinois: Illinois statutes (Section 54.2, Medical Practice Act) allow physicians, including chiropractic physicians, to delegate authority to certain individuals:

- Physicians may delegate patient care tasks to a physician assistant, licensed practical nurse, registered professional nurse, advanced practice nurse, or other licensed person practicing within the scope of their license.
- In an office or practice setting and within a physician-patient relationship, a physician may delegate patient care tasks or duties to an unlicensed person who possesses appropriate training and experience provided a health care professional practicing within the scope of their license is on site to provide assistance.
- A physician may not delegate any patient care task or duty that is statutorily or by rule mandated to be performed by a physician.

Iowa: Rules of the Iowa Board of Chiropractic address the delegation of chiropractic services to a chiropractic assistant (645 IAC 43.12):

- A supervising chiropractic physician must ensure at all times that a chiropractic assistant has the necessary training and skills to competently perform a delegated service.
- A supervising chiropractic physician may delegate services to a chiropractic assistant that are within the scope of practice of the chiropractic physician.
- A chiropractic physician may not delegate any of the following services:
 - Services outside the chiropractic physician’s scope of practice.
 - Initiation, alteration, or termination of chiropractic treatment programs.

- Chiropractic manipulation and adjustments.
- Diagnosis of a condition.
- A supervising chiropractic physician must ensure a chiropractic assistant is informed of the supervisor and chiropractic assistant relationship and is responsible for all services performed by the chiropractic assistant.

Michigan: Michigan statutes allow a chiropractor to delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the chiropractor's profession and will be performed under the chiropractor's supervision. A chiropractor may not delegate an act, task, or function if the act, task, or function, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of the chiropractor (Section 333.16215, Public Health Code).

Minnesota: Minnesota statutes specify grounds for the Board of Chiropractic Examiners to refuse to grant or revoke, suspend, condition, limit, restrict, or qualify a license to practice chiropractic. These provisions permit a doctor of chiropractic to employ, supervise, or delegate functions to a qualified person who may or may not be required to obtain a license or registration to provide health services if that person is practicing within the scope of the license or registration or delegated authority (Section 148.10, Subdivision 1, Chiropractic Practice Act).

Summary of factual data and analytical methodologies:

The proposed rules were developed by reviewing the provisions of 2017 Wisconsin Act 180 in conjunction with current rules relating to chiropractic practice under chs. Chir 1 to 13 and obtaining input and feedback from the Chiropractic Examining Board.

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 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 document 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 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:

The deadline for submitting comments was April 4, 2019.

TEXT OF RULE

SECTION 1. Chir 1.02 (3) is amended to read:

Chir 1.02 (3) “Direct, on-premises supervision” means that the treating chiropractor has ordered a specific patient care function to be performed by a specific person, and is present in the treatment facility while the patient care function is being performed, and is immediately available to exercise personal supervision of the patient care function if the person performing the function requests.

SECTION 2. Chir 1.02 (4) is created to read:

Chir 1.02 (4) “Health care professional” has the meaning given in s. 446.01 (1v), Stats.

SECTION 3. Chir 4.04 (3) is amended to read:

Chir 4.04 (3) ~~A chiropractor may delegate the operation of x-ray equipment only to a chiropractic radiological technician certified under ch. 446, Stats. A chiropractic radiological technician shall operate x-ray equipment under the direct supervision and direction of a licensee. As provided under s. 446.025 (1) (a), Stats., no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats. The A~~ chiropractor shall maintain records or ensure the chiropractor’s employer maintains records that verify ~~the a~~ a chiropractic radiological technician delegated the performance of x-ray services is certified under ch. 446 s. 446.025, Stats.

SECTION 4. Chapter Chir 10 (title) is amended to read:

CHAPTER CHIR 10

DELEGATION TO CHIROPRACTIC TECHNICIANS, ~~AND~~ CHIROPRACTIC RADIOLOGICAL TECHNICIANS, AND HEALTH CARE PROFESSIONALS

SECTION 5. Chir 10.015 (1) (a) (intro.) is amended to read:

Chir 10.015 (1) (a) (intro.) The course of study shall include a prerequisite ~~4 hour~~ 4-hour therapeutic overview course covering chiropractic technician scope of practice, anatomy, and contraindications followed by all of the following:

SECTION 6. Chir 10.02 (intro.) and (4) are amended to read:

Chir 10.02 (intro.) Delegation of adjunctive services to a chiropractic technician. A chiropractor may delegate the performance of ~~adjunctive services only to a chiropractic technician certified under ch. 446, Stats.~~ An adjunctive service may be delegated to a chiropractic technician only if all of the following conditions are met:

(4) The chiropractor exercises direct, on-premises supervision of the chiropractic technician performing the delegated service.

SECTION 7. Chir 10.023 is created to read:

Chir 10.023 Delegation of adjunctive services to a health care professional. A chiropractor may delegate the performance of an adjunctive service to a health care professional if all of the following conditions are met:

(1) The performance of the adjunctive service is within the scope of the health care professional's license, registration, or certification.

(2) The chiropractor maintains records or ensures the chiropractor's employer maintains records that verify the health care professional's license, registration, or certification is current.

(3) The chiropractor exercises direct, on-premises supervision of the health care professional performing the delegated adjunctive service.

(4) The chiropractor retains ultimate responsibility for the manner and quality of the service.

SECTION 8. Chir 10.03 is amended to read:

Chir 10.03 X-ray services. ~~A chiropractor may delegate x-ray examination procedures only to a chiropractic radiological technician certified under ch. 446, Stats.~~ As provided under s. 446.025 (1) (a), Stats., no person may provide x-ray services on behalf of a chiropractor in connection with the practice of chiropractic unless the person is a chiropractic radiological technician and is under the direct, on-premises supervision of a chiropractor licensed under ch. 446, Stats. ~~The A~~ A chiropractor shall comply with s. Chir 4.04 before delegating the performance of x-ray services to a chiropractic radiological technician.

SECTION 9. Chir 10.03 (Note) is repealed.

SECTION 10. Chir 11.02 (4) is amended to read:

Chir 11.02 (4) Patient records shall be complete and sufficiently legible to be understandable to ~~health care professionals~~ healthcare providers generally familiar with chiropractic practice, procedures, and nomenclature.

SECTION 11. 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 Chiropractic Examining Board is approved for submission to the Governor and Legislature.

Dated _____

Agency _____

Vice Chairperson
Chiropractic Examining Board