

Clearinghouse Rule 21-065

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)

PROPOSED ORDER

An order of the Chiropractic Examining Board to **repeal** Chir 5.02 (1) (b) (title) and (bm) (title), (3), (4), and (6) (Note) and 5.03; to **renumber and amend** Chir 5.02 (1) (a); to **amend** Chir 5.01 (1) (a), (1g) (a), (1r) (a), (2) (b), and (3) and 5.02 (1) (intro.), (b), (bm), (c), (f), and (h) and (2) (a); and to **create** Chir 5.01 (1) (g) and (h), (1g) (c), (1r) (c), (4), and (5), 5.02 (1) (a) 1. to 4. and (cm), 5.04, and 5.05, relating to continuing education.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Sections 440.035 (2) and 446.028, Stats.

Statutory authority:

Sections 15.08 (5) (b), 446.025 (3) (b), and 446.026 (3) (b), 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 446.025 (3) (b), Stats., provides “[a] chiropractic radiological technician shall, at the time that he or she applies for renewal of a certificate . . .submit evidence satisfactory to the examining board that he or she has completed at least 12 continuing educational credit hours in programs established by rules promulgated by the examining board.”

Section 446.026 (3) (b), Stats., provides “[a] chiropractic technician shall, at the time that he or she applies for renewal of a certificate . . .submit evidence satisfactory to the examining board that he or she has completed at least 6 continuing educational credit hours in programs established by rules promulgated by the examining board.”

Related statute or rule:

Chapter Chir 3 provides the requirements for license renewal, which include the completion of continuing education.

Plain language analysis:

The Chiropractic Examining Board conducted a comprehensive review of ch. Chir 5, including 1) the requirements for approval of continuing education programs, 2) circumstances under which online continuing education may be permitted, and 3) the current process of reviewing and approving continuing education programs and how that process may be expedited. As a result of this review, the following updates have been made:

- Chiropractors, chiropractic technicians, and chiropractic radiological technicians will be able to acquire a portion of their required continuing education credit hours through participation in online continuing education programs approved by the Board.
- Continuing education hours may be counted for teaching an approved continuing education program. An instructor is eligible for continuing education hours to the same extent as a participant in the program, except continuing education hours may not be counted for subsequent presentations of the same content.
- A provision under s. Chir 5.01 (3) concerning the Board's ability to request verification of attendance at a continuing education program has been revised to reflect s. 440.035 (2), Stats., as created by 2017 Wisconsin Act 59, which specifies that, except as otherwise permitted in chs. 440 to 480, Stats., an examining board may require a credential holder to submit proof of completion of continuing education programs or courses only if a complaint is made against the credential holder.
- The American Chiropractic Association (ACA) has been removed from s. Chir 5.02 (1) (a) as an allowable continuing education program sponsor, as the ACA is not one of the allowable program sponsors enumerated in s. 446.028, Stats.
- An additional requirement has been added in order for a college of chiropractic, medicine, or osteopathy to be considered an approved continuing education program sponsor under s. Chir 5.02 (1) (a). Specifically, the college must have accreditation that is in good standing from an accrediting agency whose recognition by the United States Department of Education is current.
- The requirement under s. Chir 5.02 (1) (b) that program subject matter be generally taught at the undergraduate or postgraduate level of a chiropractic college and relate to improving the clinical skills of a chiropractor is revised. The revised requirement is that program subject matter contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice and values.
- Requirements that specifically pertain to online continuing education programs have been created under s. Chir 5.02 (1) (cm). Specifically, an online continuing education program must require two-way real-time interactive communication between the participant and the instructor, and include a written assessment instrument and means to furnish each participant with evidence of having attended the program.
- Provisions from ss. Chir 5.02 and 5.03 concerning an application for approval of a continuing education program have been removed and consolidated into a new s. Chir

5.04. Section Chir 5.04 as created reduces the lead time required for submission of an application from 75 days to 60 days.

- Section 5.05 is created to provide an expedited approval process for certain program sponsors who successfully complete a compliance review of a random sample of continuing education programs that were approved for the previous 2-year registration period.
- Other provisions throughout ch. Chir 5 have been revised to correct references to the registration period end date, provide clarity, and conform to current drafting standards.

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

None.

Summary of public comments and feedback on the statement of scope and the Board's responses:

The Board held a public comment period and conducted a public hearing on April 2, 2020. The Board received testimony concerning the statement of scope from the following individuals:

- Dr. Steven Conway, representing the Chiropractic Society of Wisconsin – Dr. Conway expressed support for the objective of conducting a comprehensive review and update of the current process of reviewing and approving continuing education programs, and opposition to online continuing education for chiropractors.
- Dr. Paul Powers, representing ChiroCredit.com – Dr. Powers expressed strong support for online continuing education for chiropractors.

After consideration of the testimony provided, the Board approved the scope statement for implementation without modification.

Comparison with rules in adjacent states:

Illinois: Rules of the Illinois Department of Financial and Professional Regulation regulate continuing medical education (CME) for chiropractic physicians practicing in Illinois [68 Ill. Adm. Code 1285.110]. The rules address CME hours requirements, acceptable CME programs and activities, requirements for CME sponsors and formal CME programs, certification of compliance with CME requirements, CME earned in other jurisdictions, and the waiver of CME requirements.

The Illinois Emergency Management Agency accredits chiropractic radiographers, who are defined as persons other than a licensed practitioner who perform medical radiation procedures and apply x-radiation to the human body for diagnostic evaluation of skeletal anatomy, while under the general supervision of a licensed chiropractor [32 Ill. Adm. Code 401.20]. The rules of the Agency address continuing education requirements for renewal of accreditation as a chiropractic radiographer [32 Ill. Adm. Code 401.140 b)].

Illinois does not have an equivalent license classification for chiropractic technicians.

Iowa: Rules of the Iowa Board of Chiropractic regulate continuing education (CE) for chiropractors practicing in Iowa [645 IAC 44]. The rules address required CE hours, standards for CE activities, and exemptions from CE requirements.

Iowa does not have an equivalent license classification for chiropractic radiological technicians or chiropractic technicians.

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs regulate continuing education (CE) for chiropractors practicing in Michigan [Mich Admin Code, R 338.12037 to R 338.12042]. The rules address required CE hours, acceptable CE programs and activities, and approval of CE programs.

Michigan does not have an equivalent license classification for chiropractic radiological technicians or chiropractic technicians.

Minnesota: Rules of the Minnesota Board of Chiropractic Examiners regulate continuing education (CE) for chiropractors practicing in Minnesota [Minnesota Rules, parts 2500.1200 to 2500.2000]. The rules address required CE hours, CE program approval and approval criteria, approval of CE sponsors, and the waiver or deferment of CE requirements.

The Minnesota Department of Health registers chiropractic radiologic technologists [Minn. R. 4732.0570 to 4732.0585]. There are no continuing education requirements for maintaining registration.

Minnesota does not have an equivalent license classification for chiropractic technicians.

Summary of factual data and analytical methodologies:

The rules were developed by reviewing the provisions of ch. Chir 5 to ensure the rules are consistent with current practices and applicable Wisconsin statutes, and that the Board's review and approval of continuing education programs is completed as efficiently as possible.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules will be 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.

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:

Nilajah Hardin, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison,

Wisconsin 53708-8306; telephone 608-267-7139; email at
DSPAAdminRules@wisconsin.gov.

TEXT OF RULE

SECTION 1. Chir 5.01 (1) (a) is amended to read:

Chir 5.01 (1) (a) Every chiropractor shall complete at least 40 continuing education credit hours in approved continuing education programs during each 2-year license registration period ending on December ~~14~~ 15 of each even-numbered year, except as specified in s. Chir 3.02 (1) (c). Completion of course work and teaching or presenting courses or programs may be counted toward the requirement under this paragraph as provided under pars. (d), (f), and (h).

(d) Course work completed in pursuit of the educational requirements of ch. Chir 12 may be counted on an hour-for-hour basis as continuing education credit hours.

(e) Of the 40 continuing education credit hours in par.(a), a chiropractor holding a nutritional counseling certificate issued under ch. Chir 12 shall complete at least 4 continuing education credit hours in approved continuing education programs relating to nutrition.

(f) One credit of course work completed to become proficient in the use of an automated external defibrillator as required in ss. Chir 2.02 (6) (c), 3.02 (1) (e), and 3.03 (1) (i), may be counted as a one continuing education credit hour.

SECTION 2. Chir 5.01 (1) (g) and (h) are created to read:

Chir 5.01 (1) (g) No more than 8 of the 40 continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

(h) Continuing education credit hours may be counted for teaching or presenting a course or program whose subject matter contributes to the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice. One hour of continuing education credit may be claimed for every 50 minutes of instruction or presentation, except continuing education credit hours may not be counted for subsequent presentations of the same course or program.

SECTION 3. Chir 5.01 (1g) (a) is amended to read:

Chir 5.01 (1g) (a) Every chiropractic radiological technician shall complete at least 12 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic radiological technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.

SECTION 4. Chir 5.01 (1g) (c) is created to read:

Chir 5.01 (1g) (c) No more than 2 of the 12 continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

SECTION 5. Chir 5.01 (1r) (a) is amended to read:

Chir 5.01 (1r) (a) Every chiropractic technician shall complete at least 6 continuing education credit hours in approved continuing education programs during each 2-year certificate registration period ending on December ~~14~~ 15 of each even-numbered year. A chiropractic technician who receives an initial certificate during a licensing biennium is not required to satisfy the continuing education requirement from the date of that certificate to the end of that licensing biennium.

SECTION 6. Chir 5.01 (1r) (c) is created to read:

Chir 5.01 (1r) (c) No more than 2 of the 6 continuing education credit hours required under par. (a) may be acquired through participation in online continuing education programs approved under s. Chir 5.02.

SECTION 7. Chir 5.01 (2) (b) and (3) are amended to read:

Chir 5.01 (2) (b) If the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during the period, continuing education hours acquired on or after December ~~14~~ 15 of any even-numbered year will apply to the preceding period only if the chiropractor, chiropractic radiological technician, or chiropractic technician has failed to meet the credential renewal requirement during that period, and will not apply to any other period or purpose.

(3) To obtain credit for completion of continuing education programs, a chiropractor, chiropractic radiological technician, or chiropractic technician shall certify on ~~his or her~~ the application for credential renewal that ~~he or she has completed~~ all continuing education credits have been completed as required ~~in~~ under this section ~~for the previous 2-year credential registration period. A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain for a minimum period of 4 years, and shall make available to the board or its agent upon request, certificates of attendance issued by the program sponsor for all continuing education programs for which he or she claims credit for purposes of renewal of his or her credential. Chiropractors, chiropractic radiological technicians, or chiropractic technicians attending a program for credit shall be present in the room where a program is being presented in order to claim credit. A chiropractor, chiropractic radiological technician, or chiropractic technician may claim credit hours for continuing education for which he or she was in actual attendance in the room, except for authorized break periods or to attend to personal hygiene needs.~~

SECTION 8. Chir 5.01 (4) and (5) are created to read:

Chir 5.01 (4) A chiropractor, chiropractic radiological technician, or chiropractic technician shall retain a certificate or other evidence of attendance issued by the program sponsor for a minimum of 4 years from the date of completion of a continuing education program.

(5) The board shall require any chiropractor, chiropractic radiological technician, or chiropractic technician who is under investigation by the board for alleged misconduct to submit evidence of compliance with the continuing education requirements under this section.

SECTION 9. Chir 5.02 (1) (intro.) is amended to read:

Chir 5.02 (1) (intro.) The board may approve a continuing education program ~~which~~ that meets all of the following minimum requirements:

SECTION 10. Chir 5.02 (1) (a) is renumbered Chir 5.02 (1) (a) (intro.) and amended to read:

Chir 5.02 (1) (a) (intro.) The program is sponsored by ~~the Wisconsin chiropractic association, the American chiropractic association, the international chiropractors association, a college of chiropractic approved by the board, or a college of medicine or osteopathy accredited by an agency recognized by the United States department of education.~~ one of the following:

SECTION 11. Chir 5.02 (1) (a) 1. to 4. are created to read:

Chir 5.02 (1) (a) 1. The Wisconsin Chiropractic Association.

2. The International Chiropractors Association.

3. A college of chiropractic with accreditation that is in good standing from the Council on Chiropractic Education or another accrediting agency whose recognition by the United States department of education is current.

4. A college of medicine or osteopathy with accreditation that is in good standing from an accrediting agency whose recognition by the United States department of education is current.

SECTION 12. Chir 5.02 (1) (b) (title) is repealed.

SECTION 13. Chir 5.02 (1) (b) is amended to read:

Chir 5.02 (1) (b) ~~The~~ For a continuing education program required under s. Chir 5.01 (1) (a), the program subject matter relates contributes to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college meeting the requirements of s. Chir 2.02 (6) (b) the advancement, extension, and enhancement of the clinical skills of a chiropractor and fosters the enhancement of general or specialized practice. The board will not approve credit for continuing education regarding a technique or practice which the board has determined to be unsafe or ineffective.

SECTION 14. Chir 5.02 (1) (bm) (title) is repealed.

SECTION 15. Chir 5.02 (1) (bm) and (c) are amended to read:

Chir 5.02 (1) (bm) ~~The~~ For a continuing education program required under s. Chir 5.01 (1g) (a) or (1r) (a), the program subject matter relates to improving the clinical skills of a chiropractic radiological technician or chiropractic technician, as applicable.

(c) The program sponsor agrees to provide a responsible person to monitor and verify the attendance of each registered chiropractor, chiropractic ~~radiologic~~ radiological technician, or chiropractic technician, as applicable, at participating in the program, and the program sponsor agrees to assume responsibility for the accuracy of the continuing education credit awarded to each participant, to keep the records of attendance for 3 years

from the date of the program, and to furnish each participant with evidence of having attended the program.

SECTION 16. Chir 5.02 (1) (cm) is created to read:

Chir 5.02 (1) (cm) For an online continuing education program, the program meets all of the following requirements:

1. The program is synchronous and provides interactive communication between the participant and the instructor.
2. The program includes a written assessment instrument that is designed to ensure the chiropractor, chiropractic radiological technician, or chiropractic technician, as applicable, actively participated in the presentation of material and derived a measurable benefit from participation.
3. The program includes means to furnish each participant with evidence of having attended the program.

SECTION 17. Chir 5.02 (1) (f) and (h) and (2) (a) are amended to read:

Chir 5.02 (1) (f) ~~When~~ If a course instructor of the program is on the undergraduate or postgraduate faculty of a chiropractic college, the program sponsor has provided written verification that the course instructor has been appointed in accordance with the accreditation standards of the ~~council on chiropractic education~~ Council on Chiropractic Education, and that the chiropractic college exercises sufficient supervision over a faculty member's course content.

(h) ~~The~~ A ~~course instructor is qualified to present~~ of the program has qualifications appropriate for presenting the course.

(2) (a) Continuing education programs may include subject material ~~other than that which relates to improving the clinical skills of a chiropractor and is generally taught at the undergraduate or postgraduate level of a chiropractic college, meeting the requirements of s. Chir 2.02 (6) (b)~~ that does not meet the requirements under sub. (1) (b). However, only the parts of the program ~~which relate to improving the clinical skills of a chiropractor and are generally taught at the undergraduate or postgraduate level of a chiropractic college~~ that include subject material that meets the requirements under sub. (1) (b) are eligible for credit.

SECTION 18. Chir 5.02 (3), (4), and (6) (Note) are repealed.

SECTION 19. Chir 5.03 is repealed.

SECTION 20. Chir 5.04 and 5.05 are created to read:

Chir 5.04 Application for approval of a continuing education program.

(1) An application for approval of a continuing education program shall be on a form provided by the board and include all of the following:

- (a)** The name and address of the program sponsor and a description of how the program sponsor qualifies under s. Chir 5.02.
- (b)** A description of the time and place of the program.

(c) Evidence of the program sponsor's verification showing to the satisfaction of the board that the subject matter meets the requirements under s. Chir 5.02 (1) (b) or (bm), as applicable.

(d) A detailed course outline or syllabus describing the subject matter of the program, and the amount of time devoted to each section of the outline or syllabus.

(e) The names and a description of the qualifications of all instructors including, if applicable, whether an instructor of the program who is an undergraduate or postgraduate faculty member of a sponsoring college was appointed in accordance with accreditation standards of the Council on Chiropractic Education or by an agency approved by the United States department of education.

(f) If the program sponsor intends to assign or delegate any of its responsibilities to another person or entity, all of the following:

1. A specific description of the assignment or delegation.
2. The name and address of the person or entity who is assigned or delegated to perform the responsibility, and a description of the qualifications of that person or entity to perform the responsibility.
3. A description of the method by which the program sponsor intends to assure that the delegated or assigned responsibility is performed.

Note: Application forms are available on the department's website at dspd.wi.gov, or by request from the Department of Safety and Professional Services, P. O. Box 8935, Madison, Wisconsin 53708, or call (608) 266-2112.

(2) An application shall be complete as required under sub. (1) and filed with the board no later than 60 days prior to the program date or, for an online continuing education program, the date on which the program will first be eligible for continuing education credit. An application is not considered complete until such time as all information required to be submitted with the application is received by the board.

(3) The board may require an applicant to submit information in addition to that described in sub. (1) that is necessary to determine if the applicant meets the requirements of this chapter.

(4) The board shall grant approval of an application if the board determines the program and program sponsor materially meet the requirements under this chapter.

(5) The board shall deny approval of an application for any of the following reasons:

(a) The program or program sponsor does not meet requirements established in this chapter.

(b) The emphasis of the program is on the business, management, or insurance aspects of a chiropractic practice rather than on improving the clinical skills of the chiropractor, chiropractic radiological technician, or chiropractic technician, as applicable.

(c) The board determines the program sponsor has not provided adequate assurance that responsibilities delegated or assigned to others will be satisfactorily performed.

(d) The program sponsor, an instructor, or a person delegated or assigned a responsibility has a financial, personal or professional interest which conflicts directly with the performance of responsibilities in this chapter.

(e) Failure on the part of a program sponsor, an instructor, or a person delegated or assigned a responsibility to carry out a program as represented to and approved by the board or as provided in this chapter.

(f) The program subject matter relates to practice that is prohibited under s. Chir 4.05.

Chir 5.05 Application for expedited approval of a continuing education program. (1) A program sponsor under s. Chir 5.02 (1) (a) may submit an application for expedited approval of a continuing education program if the program sponsor had a minimum of 20 continuing education programs approved for the previous 2-year registration period and one of the following requirements is met:

(a) A review by the board of a random selection of 10 percent of the program sponsor's continuing education programs approved for the previous 2-year registration period found that all of the selected programs materially meet all of the requirements under s. Chir 5.02 (1) and (6) and awarded continuing education credit as provided under s. Chir 5.02 (2) and (5).

(b) A review by the board of a random selection of 10 percent of the program sponsor's continuing education programs approved for the previous 2-year registration period found that one or more of the selected programs do not materially meet all of the requirements under s. Chir 5.02 (1) and (6) or did not award continuing education credit as provided under s. Chir 5.02 (2) and (5), and all of the following requirements are met:

1. The program sponsor has not submitted an application under this paragraph for any previous 2-year registration period.

2. The application is submitted at least 6 months after the beginning date of the current 2-year registration period.

(2) An application for expedited approval of a continuing education program shall be on a form provided by the board and include all of the following:

(a) The name and address of the program sponsor and a description of how the program sponsor qualifies under s. Chir 5.02 (1) (a).

(b) A description of the time and place of the program.

(c) An attestation by the program sponsor that the program materially meets all of the requirements under s. Chir 5.02 (1) and (6) and will award continuing education credit as provided under s. Chir 5.02 (2) and (5).

(3) An application for expedited approval shall be filed with the board no later than 60 days prior to the program date or, for an online continuing education program, the date on which the program will first be eligible for continuing education credit.

(4) The board shall grant approval of an application that meets the requirements of this section.

SECTION 21. 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)
