



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 13-113

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]

2. Form, Style and Placement in Administrative Code

- a. In SECTION 1 of the proposed rule, the following revisions should be made:
 - (1) The SECTION should be renumbered from “1” to “2”.
 - (2) In the treatment clause, the phrase “of chapter Ins 6 [follows Ins 6.90] is” should replace “and title are”.
- b. A new SECTION 1 should be added in order to create a first subchapter for ch. Ins 6. The treatment clause should state: “Subchapter I (title) of chapter Ins 6 [precedes Ins 6.01] is created to read:”.
- c. The numbering of SECTION 2 in the proposed rule, and its treatment clause, should be deleted in order to allow both the title and the new sections under subch. II to be created together in one SECTION of the proposed rule.
- d. The introductory clause for the proposed rule should be modified to accurately reflect the revisions under items a. to c. of these comments.
- e. Section Ins 6.94 should be renumbered to a subsection of s. Ins 6.95, and revised as follows:
 - (1) Subsection (1) (intro.) should be consolidated with pars. (a) and (b) of sub. (1), and could be consolidated with sub. (2), to the effect that:

“(1m) (a) A certified application counselor, under 45 C.F.R. s. 155.225, and other nonnavigator assister, are eligible to be registered by a nonnavigator assister entity if either of the following apply:”

“1. The application counselor or other nonnavigator assister is certified under 45 C.F.R. s. 155.225, as amended, to provide consumer assistance; that certification is not withdrawn; and the person has completed the training and examination requirements under ss. 628.92 (7) and 628.96 (2), Stats.”

“2. The nonnavigator assister is an agent who holds an active resident license..., and satisfactorily completes at least 4 hours of training.... An agent who meets the requirements of this subdivision is not required to complete precensing training or the navigator licensing examination under ss. 628.92 (7) and 628.96 (2), Stats.” [The reference to compliance with s. 628.96 is not included in this suggested language, because the reference is overly broad, and the specific requirement for competence and trustworthiness is addressed in sub. (3).]

- (2) The second half of sub. (2) (a) 2. should be separated into its own numbered section as follows:

“(b) The nonnavigator assister entity shall maintain records that each certified application counselor and other nonnavigator assister registered under par. (a) has completed the required annual continuing education training. The nonnavigator assister entity shall provide an attestation of compliance with such requirements to the commissioner on a prescribed form, by October 1 of each year.”

- (3) Subsection (3) should be revised as follows:

“(c) The commissioner may deny registration for a nonnavigator assister [and certified application counselor?], for any of the following:”

“1. Failure to possess requisite character, integrity, competency and trustworthiness as described in s. 628.04 (1), Stats., and s. Ins 6.92 (3).”

“2. Commission of an act that would warrant the denial, suspension, or revocation of a license or registration, including any acts described in s. Ins 6.92 (3).”

[Consider including other reasons for denial, such as an incomplete application, or insufficient training hours.]

f. In s. Ins 6.97, subs. (2) to (4) would be more logically consistent if renumbered under sub. (5) as follows:

- (1) Renumber sub. (2) to sub. (2) (b).
- (2) Renumber sub. (3) to sub. (2) (c).
- (3) Renumber sub. (4) to sub. (2) (d).
- (4) Renumber sub. (5) to sub. (2).
- (5) Renumber sub. (5) (intro.) to sub. (2) (a).
- (6) Renumber sub. (5) (a) through (e) to sub. (2) (a) 1. through 5.
- (7) Renumber sub. (6) to sub. (3), and revise the references in pars. (a) and (b) from “subs. (2) to (5)” to “sub. (2)”.
- (8) Renumber sub. (7) to sub. (4).

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

a. In the rule summary’s explanation of the authority to promulgate the proposed rule, the reference to “subch. V” should specify that the reference is to “subch. V of ch. 628, Stats.”. Alternatively, the statutory reference could be removed and replaced with the phrase “necessary for the regulation of navigators, nonnavigator assisters, and application counselors”.

b. In the rule summary’s comparison with federal law, a reference to “ss. 155.200 to 155.280” should replace “ch. 155”.

c. In the rule summary’s comparison with rules in Illinois, the reference to the Public Act should be corrected. Illinois Public Act “098-0541” applies to safety oversight of carnival and amusement rides. Also, the phrase “subch. V of ch. 628, Wis. Stats.” should replace “the law passed in Wisconsin”.

d. In the rule summary’s comparison with rules in Iowa, a reference to “ch. 522D” should replace “§ 522D”. Also, the phrase “subch. V of ch. 628, Wis. Stats.” should replace “the law passed in Wisconsin”.

e. In s. Ins 6.91 (1), the reference to s. 628.02, Stats., is unclear as an “agent” is not defined in that section. Is the definition for an “Agent” intended to mean an “intermediary” as generally defined in s. 628.02, Stats., or more specifically to an “insurance broker” under sub. (3) of that section or to an “insurance agent” under sub. (4) of that section?

f. In s. Ins 6.91 (5), the reference to 45 C.F.R. s. 155.225 should be repositioned in the sentence to reflect that it governs “certified application counselors”. For example, the definition could be rephrased to state that “A ‘certified application counselor’ means a person who is governed by 45 C.F.R. s. 155.225, and who is employed,...”. In its current placement, the citation appears to govern a “registered nonnavigator assister entity”, which is imprecise.

- g. In s. Ins 6.91 (8), the second “section” symbol should be deleted.
- h. In s. Ins 6.92 (1), it appears that, in order to be more complete, “628.95” should replace “628.93” in the listing of applicable statutory sections.
- i. In s. Ins 6.92 (6) (c), it appears that, in order to be more accurate, “(4)” should replace “(6)” in the reference to licensing requirements.
- j. In the Note following s. Ins 6.93 (4) (b), a reference to sub. “(4) (b)” should replace “(5)”.
- k. In s. Ins 6.95 (3), a reference to s. “628.96 (3), Stats.” should replace “628.95 (3), Stat.”.
- l. In s. Ins 6.95 (4), a reference to s. Ins “6.92 (3)” should replace “6.95 (3)”.
- m. It appears that s. Ins 6.96 could be deleted entirely as it does not list practices that are “in addition” to the list under s. 628.95 (2), Stats. The listed prohibited practices in subs. (1) to (7) generally repeat the practices listed under s. 628.95 (2) (a) to (g), Stats., and it is unclear that s. Ins 6.96 (8) is qualitatively different from s. Ins 6.96 (2).
- n. In s. Ins 6.99, a reference to “this subchapter” should replace “subch. II”. [s. 1.07 (2), Manual.]

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

- a. In the first paragraph of the rule summary’s plain language analysis, the sentence beginning “Since as navigators will have access...” is awkward and should be revised. For example, it could begin by specifying that “The proposed regulations include requirements for...”. Also, in the last sentence of the first paragraph, a comma should be inserted after “Further”.
- b. In the third paragraph of the rule summary’s plain language analysis, the phrase “and are of good character, competence, and trustworthiness” should replace “and of good character, competent and trustworthy”.
- c. In the fourth paragraph of the rule summary’s plain language analysis, the word “must” should replace the two instances of “will”.
- d. In the fifth paragraph of the rule summary’s plain language analysis, the terms that are being described should be placed in quotes. Also, in the second sentence of that paragraph, a comma should be inserted after “assisters”.
- e. In the rule summary’s comparison with federal law, the phrase “proposed rule” should replace “proposed law”. Also, the third through final sentences could be deleted, as they describe the proposed rule rather than the federal regulations, and are generally repetitive of the points already described in the plain language analysis.

f. In the rule summary's comparison with rules in Illinois, the following revisions should be made:

- (1) The word "to" should be inserted before "comply".
- (2) The word "and" should be inserted before "establish".
- (3) The word "establishes" should replace "establish".

g. In the rule summary's comparison with rules in Minnesota, the word "certification" should replace "certified".

h. In the rule summary's description of the factual data and analytical methodologies, the word "the" before "consumer" should be deleted. Also, the word "establishing" should replace "establish".

i. In the rule summary's description of the private sector fiscal analysis, the phrase "See attached." should be inserted in the text of the description, and the phrase "See the attached" should be deleted from the title of that section.

j. In the rule summary's description of the effect on small business, it appears that the comparison to the licensing requirements for an insurance agent or agency may be inconsistent with the comparison in the summary of the factual data and analytical methodologies. One section refers to "similar oversight", and the other to "less stringent" requirements. These differences could be more fully explained. Also, in the description of the effect on small business, a comma should be inserted after "Finally".

k. In the rule summary's listing of where to submit comments, it appears that the deadline should be listed as "February 7, 2014", rather than "October 11, 2013". The February date is the one given in the Notice of Rulemaking Order.

l. In s. Ins 6.91 (7), the word "includes" should replace "means". [s. 1.01 (7) (c), Manual.]

m. In s. Ins 6.91 (9), the word "an" should be inserted after "means".

n. In s. Ins 6.92 (2) (a), the following revisions should be made:

- (1) Consider using "shall include:" to replace "consists of", and using a numbered list or semicolons to separate the required application materials. For example, a numbered list is used in s. Ins 6.95 (1) of the proposed rule.
- (2) The word "and" should replace "to complete,".
- (3) The phrase "licensing examination date" should replace "test date".
- (4) The phrase "testing vendor" should replace "test service", in order to be consistent with the use of that phrase elsewhere in the proposed rule.
- (5) The phrase "payment of the fee under s. 601.31 (1) (nm), Stats.; proof of financial responsibility under sub. (7);" should be inserted after "if applicable".

o. In s. Ins 6.92 (2) (b), the phrase “and pass with a satisfactory grade a commissioner-approved written navigator examination” should be deleted as this paragraph applies to the prelicensing training rather than the examination.

p. In s. Ins 6.92 (2) (c), the following revisions should be made:

- (1) The phrase “schedule an examination with” should replace “notify”.
- (2) The comma after “testing vendor” should be deleted.
- (3) The word “must” should replace “shall”.
- (4) The word “and” should be inserted before “offered”.

q. In s. Ins 6.92 (2) (d), the following revisions should be made:

- (1) In subd. 1. (intro.), the word “demonstrates” should replace “can meet”.
- (2) In subd. 1. a., the word “Demonstrate” should be deleted, and “compliance” should be capitalized.
- (3) In subd. 1. b., the word “Demonstrate” should be deleted, and “satisfactory” should be capitalized.
- (4) In subd. 2, the following revisions should be made:
 - (a) The phrase “who is” should replace “that is”.
 - (b) A reference to “par. (a)” should replace “sub. (2) (a)”.
 - (c) The phrase “shall provide” should replace “will be required to obtain”.
 - (d) After “180 days”, the phrase “prior to” should replace “from”.
 - (e) The phrase “as described in par. (a)” should be inserted after “application”.
- (5) The Note at the end of par. (d) should be deleted, as it repeats the information given in the Note at the end of par. (a), and is more logically placed in that prior location.

r. In s. Ins 6.92 (2) (e), the following revisions should be made:

- (1) The phrase “The commissioner shall issue a navigator license to an” should replace “An”.
- (2) The phrase “for an original navigator license” should be deleted.
- (3) The phrase “has passed the commissioner-approved written examination with a satisfactory grade,” should be inserted before “and meets”.
- (4) The phrase “, shall be issued a navigator license” should be deleted.

s. In s. Ins. 6.92 (3) (intro.), it would be helpful to specify that a failure to meet the trustworthiness and competence criteria is cause for denial, suspension, or revocation of a license.

t. In s. Ins 6.92 (3) (a), the phrase “, under the law of Wisconsin or any other state, or under federal law” should replace “that is significantly related to the circumstances of holding a navigator or insurance license”.

u. In s. Ins 6.92 (3) (d), the phrase “but not limited to” should be deleted. [s. 1.01 (7) (d), Manual.]

v. Section Ins 6.92 (3) (f) should be deleted as it repeats the requirement given in s. Ins 6.92 (7), and is more logically placed in that later location.

w. In s. Ins 6.92 (4) (a), the phrase “A licensed” should replace “Each”.

x. In s. Ins 6.92 (4) (c) (intro.), the word “insurance” should be deleted, and the word “evaluate” should replace “establish”. Also, the phrase “, but not be limited to” should be deleted.

y. In s. Ins 6.92 (6) (a), the phrase “who has a” should replace “at the”. Also, a reference to “under sub. (7)” should replace “in compliance with s. 628.92 (5) (b), or evidence of an equivalent coverage alternative subject to the commissioner’s prior approval”.

z. In s. Ins 6.92 (7), the phrase “by submitting the original bond and form to the office in the form prescribed by the commissioner” could be inserted before “or provide”, in order to be consistent with the language used in s. Ins 6.93 (4) (b) of the proposed rule.

aa. In s. Ins 6.93 (1) (a), the following revisions should be made:

- (1) Consider using “shall include:” to replace “consists of”, and using a numbered list or semicolons to separate the required application materials.
- (2) The phrase “proof of financial responsibility under sub. (4) (b), and compliance with competence and trustworthiness criteria under s. Ins 6.92 (3),” should be inserted before “and any documentation”.
- (3) The last sentence should be moved to the end of par. (c), with a general statement to the effect that: “The commissioner shall accept a registration if the applicant satisfies the requirements of pars. (a) and (b), and if the applicant is designated by the exchange as a navigator entity, receives funding through a federal grant, is in compliance with s. 628.92 (2), Stats., and is in compliance with applicable federal requirements including 45 C.F.R. s. 155.215 (a) (1), as amended.”.

bb. In s. Ins 6.93 (1) (b), the phrase “is due” should be deleted.

cc. In s. Ins 6.93 (1) (c), the following revisions should be made:

- (1) The first sentence should be deleted.

(2) The phrase “, which is tolled until receipt of any additional required” should replace “including any required”.

dd. In s. Ins 6.93 (2), the word “shall” should replace “will”. Also, the phrase “under sub. (4) (b)” should replace “in compliance with s. 628.92 (5) (a), or evidence of an equivalent coverage alternative subject to the commissioner’s prior approval”.

ee. In s. Ins 6.93 (3), the following revisions should be made:

- (1) The first four lines, beginning with “A navigator entity”, through “application form”, should be deleted.
- (2) The phrase beginning with “the navigator entity” should be capitalized to begin the sentence.
- (3) The phrase “given in the application to register as a navigator entity” should be inserted after “updates to the list of navigators”.

ff. In s. Ins 6.93 (4), the word “formally” should be deleted as that word is not used in the definition of a “navigator entity”.

gg. In s. Ins 6.93, consider adding a subsection to specify that failure to comply with the requirements of the section may be cause for the commissioner to deny, revoke, or suspend the registration of a navigator entity.

hh. In s. Ins 6.95 (4), it appears that the phrase “deny, suspend, or” should be inserted before “revoke”.

ii. In s. Ins 6.96 (intro.), should navigator entities and nonnavigator assister entities be included?

jj. In s. Ins 6.96 (2), the word “upon” should be deleted.

kk. In s. Ins 6.97 (1), the comma after “601.42” should be deleted.

ll. In s. Ins 6.97 (6) (a), the phrase “of insurance” should be deleted.

mm. In s. Ins 6.97 (6) (b), it appears that the word “entity” should be inserted before “shall maintain”. Also, the phrase “of insurance” should be deleted.

nn. In s. Ins 6.97 (7), it appears that navigators should be included. If so, the phrase “A navigator, navigator entity, and nonnavigator assister entity” should replace “The navigator entities and nonnavigator assister entities”. Or, sub. (7) could be divided into paragraphs, to create a new paragraph that is applicable to a navigator’s individual records.

oo. In s. Ins 6.98 (1), the references to “an agent” or “the agent” should be revised to refer instead to “a person” or “the person”. Also, in this subsection, the scope of the last sentence is unclear. Is it intended that no person, including one who is certified, licensed, or registered, may use such a term in a professional designation, or is it intended that only a person who does not have such credentialing is prohibited from using such a term in a professional designation?

pp. In s. Ins 6.98 (2), the phrase "is subject" should replace "shall subject the violator".