



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 17-048

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 December 2014.]

2. Form, Style and Placement in Administrative Code

- a. In the rule summary’s listing of statutes interpreted by the proposed rule, a citation to s. 445.06, Stats., should be added. This provision describes the continuing education (CE) requirements for funeral directors.
- b. In the rule summary’s plain language analysis, consider providing a brief description of the current CE requirements and how the proposed rule changes those requirements.
- c. In the rule summary, an entry should be inserted for the description of the analysis and documents used to determine the rule’s effect on small businesses or in preparation of the economic impact analysis. [s. 1.02 (2) (a) 9., Manual.]
- d. In the rule summary, consider revising the summary of factual data and analytical methodologies to provide an actual description of the methods and considerations. For example, what sources and standards were consulted? How were educational needs determined?
- e. It is unclear why the rule summary states that the Board is soliciting information to prepare the economic impact analysis when a complete economic impact analysis appears to have been provided, as is required by s. 227.137, Stats. The rule summary should be updated to reflect that information.
- f. As a matter of drafting style, the Board should consider removing the phrase “An internet search revealed that ...” from its summary of the comparison with rules in adjacent states, and from the fiscal estimate. Also, consider adding citations for the information provided.

g. A specific date should be given for the deadline to submit comments on the proposed rule. [s. 1.02 (2) (a) 13., Manual.]

h. In s. FD 4.03 (6), the source notation “s. FD” should be inserted before the citation to “4.04 (1) (a) 1. to 4.”. [s. 1.07 (2), Manual.]

i. In s. FD 4.03 (11), the source notation “s. FD” should be inserted before the citation to “4.04 (1) (a)”.

j. In s. FD 4.03 (12), the source notation “; Stats.,” should be inserted after the citation to “s. 111.32 (12g)”.

k. The Board should consider adding a new SECTION to revise the formatting in s. FD 4.04 (1). As currently written, a program provider must satisfy pars. (a) and (b), and must also satisfy **either** pars. (c) or (d). This is not proper rule formatting, as described in s. 1.03 (3) and (4), of the Manual. The introductory material in sub. (1) could be revised to state that the form provided by the Board should include “all of the following” material. Paragraphs (c) and (d) could then be combined into one paragraph with two subdivisions, either of which must be satisfied. In addition, the Board should ensure that the subunits following the introductory material form a complete sentence when read with the introduction. Lastly, the text in s. FD 4.04 (1) (a) 4. should end with a period rather than a semicolon. [s. 1.03 (3) and (4), Manual.]

l. The Board should revise the effective date of the proposed rule to apply the new CE requirements beginning with the next biennial licensing period. [s. 1.02 (4), Manual.]

m. The listing of the affected provisions in the introductory clause for the proposed rule should be revised to appear as follows: to amend FD 4.03 (6), (7), and (8), and 4.04 (1) (d) and (6); and to create FD 4.02 (5) and (6), 4.03 (6m), (11), and (12), and 4.06. [s. 1.02 (1) (Example), Manual.] The introductory clause should also be updated as needed to reflect any treatment revisions made in accordance with other comments.

3. Conflict With or Duplication of Existing Rules

a. It appears that proposed s. FD 4.03 (11) is not consistent with the Board’s current rules. Proposed s. FD 4.03 (11) essentially states that a licensee cannot receive more than six hours of CE per biennium in programs that relate to the four subject areas listed in s. FD 4.04 (1) (a), which are: (1) grief counseling or communication; (2) professional conduct, ethics or legal aspects of the profession; (3) business management; and (4) technical or practical aspects of the profession. The Board should address the following issues:

- (1) Section FD 4.03 (4m) requires that a licensee complete at least three CE hours per biennium in **each** of the four subject areas in s. FD 4.04 (1) (a). How would it be possible for a licensee to comply with this requirement, if the licensee is prohibited under proposed s. FD 4.03 (11) from completing more than six hours of CE in programs that relate to any of these same topics?
- (2) The Board requires that all funeral director CE be obtained through an approved CE program. Unless a CE course is sponsored by a national, international, state, or other funeral directors’ association listed in s. FD 4.04 (8), the program provider must submit an application for approval to the Board under s. FD 4.04 (1). Pursuant

to s. FD 4.04 (1) (a), **all** of the programs approved under s. FD 4.04 (1) must relate to at least one of the four subject areas. Therefore, it appears that the associations referenced in s. FD 4.04 (8) are the only program providers who may provide instruction in a different subject area. Is it the intention of s. FD 4.03 (11) to require that at least nine hours of CE be completed with an organization listed in s. FD 4.04 (8)? That appears to be the result of the rule.

- (3) The four subject areas appear to cover significant aspects of the practice of a funeral director. If the Board intends to only allow a funeral director to complete six hours of CE per biennium in these subjects, consider identifying what other subjects are permissible for the remaining required credit hours.
- (4) Proposed s. FD 4.03 (12) allows up to 15 hours of CE obtained in connection with military service to satisfy the biennial CE requirements. Does the six-hour limit in proposed s. FD 4.03 (11) apply to instruction obtained in connection with military service that can count as CE under proposed s. FD 4.03 (12) and s. 440.075, Stats.?

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

a. In proposed s. FD 4.03 (6), does the Board expect that there would be a circumstance in which a teacher or presenter would receive less than two credit hours for an hour of presentation? If so, the rule could be clarified to identify the circumstances in which a presenter would receive a lower number of credits per hour. Otherwise, the rule should be revised to state that a teacher or presenter may receive two continuing education credits for each hour of presentation.

b. The rule allows CE hours to be granted for “professional activity”, which is defined in proposed s. FD 4.02 (6) to mean an activity that is “recognized by the board”. The Board should more clearly define the term “professional activity”. How does the Board plan to recognize activity? What criteria will it use? How will licensees know if activity is in compliance with the Board’s rules?

c. The Board should consider revising the definition of the term “in-service” in proposed s. FD 4.02 (5). It is not clear in whose funeral establishment the in-service must take place. Does the instructor have to be associated with the funeral establishment? Is it the intention to allow any licensed funeral director to provide CE at any licensed funeral establishment?

d. Proposed s. FD 4.06 (2) allows the Board to conduct any type of audit during an investigation, and does not require that the audit be only for the purpose of verifying CE compliance. Should s. FD 4.06 (2) be revised to specify that the Board may conduct a CE audit? What other types of activities does the Board anticipate auditing?

e. Each instance of the phrase “board approved online program” should be revised to insert a hyphen between the words “board” and “approved”.