



Wisconsin Legislative Council

RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 21-079

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Council Staff and the Legislative Reference Bureau, dated November 2020.]

2. Form, Style and Placement in Administrative Code

a. The Board’s plain language analysis states that “The Board’s primary objective is to promulgate an emergency rule that will temporarily suspend” certain requirements for a supervising physical therapist. However, this rule is a permanent rule, not an emergency rule, and it does not include any temporal limitation that would cause the rule changes to expire after a certain point. Rather, as drafted, the rule text could only be changed when treated by new rulemaking. The rule should be revised to refer to the rule as permanent, and if desired, describe the changes as temporary, but eliminate the use of the term “emergency rule”. If the proposed rule is intended to be temporary but of a duration longer than an emergency rule, and the end of such duration is known, the agency may “double draft” to both affect the administrative code and reverse that treatment in the same clearinghouse rule. This process is described in s. 1.03 (2) (e) and (4) of the Manual.

b. In s. PT 5.01 (2) (b), the period in the first sentence need not be deleted, and the underscored period may therefore be removed from the rule text. [s. 1.04 (4) (d), Manual.]

c. The word “patient” in s. PT 5.01 (2) (h) is new material and should be underlined and inserted after the stricken text.

3. Conflict With or Duplication of Existing Rules

The treatment of s. PT 5.01 (2) (h) modifies an on-site assessment and reevaluation requirement by adding language that says “This requirement may be waived when another type of contact has been approved by the Board”. It is unclear how the Board would approve such a change of contact after the promulgation of the rule. It appears the Board is attempting to indicate that the change in s. PT 5.01 (2) (b) is itself the Board’s act of approving another type of contact. Assuming that is the case, the Board should revise the material in s. PT 5.01 (2) (h) to reference par. (b) and more specifically treat the reference to “on-site” assessment and reevaluation. However, as presently treated, note that s. PT 5.01 (2) (b) does not give the Board discretion to approve the other types of contact, or revoke such approval. As discussed above, this rule is not an emergency

rule or a temporary rule. If the Board wishes to “turn back on” the on-site assessment and reevaluation requirement it wishes to “temporarily” delete here, it needs to do additional rulemaking to add that language back to the code at a later date or via double-drafted treatments in the proposed rule.

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

In s. PT 5.01 (2) (b), the agency should consider the more commonly used spelling, “fulfill”.