

Wisconsin Department of Safety and Professional Services  
Division of Policy Development  
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Scott Walker, Governor  
Dave Ross, Secretary

**CHIROPRACTIC EXAMINING BOARD**  
**Room 121A, 1400 E. Washington Avenue, Madison**  
**Contact: Shawn Leatherwood (608) 261-4438**  
**January 15, 2015**  
**8:35 A.M.**

Public Hearing on Administrative Rule Chir 13 relating to duty to inform patients of treatment options.

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ALL HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed in conjunction with hearings are approximate and depend on the length of discussion and testimony. In order to confirm a hearing or to request a complete copy of rules relating to this hearing, please call the listed contact person. All hearings are held at 1400 East Washington Avenue; Madison Wisconsin, unless otherwise noted. Interpreters for the hearing impaired provided upon request by contacting the Affirmative Action Officer, 608-266-2112.

STATE OF WISCONSIN  
CHIROPRACTIC EXAMINING BOARD

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IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE  
PROCEEDINGS BEFORE THE : CHIROPRACTIC EXAMINING  
CHIROPRACTIC EXAMINING BOARD :  
BOARD : ADOPTING RULES  
: (CLEARINGHOUSE RULE 14-069)

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PROPOSED ORDER

An order of the Chiropractic Examining Board to create Chir 13, relating to the duty to inform patients of treatment options.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:**

Section 446.08, Stats.

**Statutory authority:**

Sections 15.08 (5) (b), 227.11 (2) (a), 446.02 (11), Stats. and 2013 Wisconsin Act 345

**Explanation of agency authority:**

Pursuant to ss. 15.08 (5) (b) and 227.11 (2) (a), Stats., the Chiropractic Examining Board is generally empowered by the legislature to promulgate rules that will provide guidance within the profession and that interpret the statutes it enforces or administers. Section 446.02 (11), Stats., gives express authority to the Chiropractic Examining Board to promulgate rules implementing s. 446.08, Stats., concerning informed consent. The legislature granted this express rule-making provision with the passage of 2013 Wisconsin Act 345. The proposed rule seeks to carry out this legislative mandate by incorporating the new standard regarding informed consent into the current chiropractic rules.

**Related statute or rule:**

None.

**Plain language analysis:**

On April 23, 2014, the Legislature enacted 2013 Wisconsin Act 345 which granted express rule-making authority to the Chiropractic Examining Board to promulgate rules concerning chiropractors and informed consent. This proposed rule codifies what was previously a common law duty under *Hannemann v. Boyson*, 2005 WI 94. Under the common law standard, chiropractors were to advise their patients of all alternate viable medical modes of treatment. Chiropractors were held to the reasonable person standard which required chiropractors to inform their patients of information necessary for a reasonable person to make an intelligent decision with regard to treatment. 2013 Wisconsin Act 345 changed the standard for chiropractors from the reasonable person standard to the reasonable chiropractor standard which requires disclosure only of the information that a reasonable chiropractor would know and disclose under the circumstances. The proposed rule creates a new chapter codifying the new standards into the current Chiropractic rules.

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

None.

**Comparison with rules in adjacent states:**

**Illinois:** Illinois does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

**Iowa:** Iowa does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

**Michigan:** Michigan does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

**Minnesota:** Minnesota does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

**Summary of factual data and analytical methodologies:**

No factual data or analytical methodologies were used in drafting the proposed rule due to the proposed rule being prompted by the passage of 2013 Wisconsin Act 345.

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

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 [Tom.Engels@wisconsin.gov](mailto:Tom.Engels@wisconsin.gov), or by calling (608) 266-8608.

**Fiscal Estimate and Economic Impact Analysis:**

The Fiscal Estimate and Economic Impact Analysis are 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 Tom.Engels@wisconsin.gov, or by calling (608) 266-8608.

**Agency contact person:**

Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-261-4438; email at Shancethea.L Leatherwood@wisconsin.gov.

**Place where comments are to be submitted and deadline for submission:**

Comments may be submitted to Shawn Leatherwood, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8935, or by email to Shancethea.L Leatherwood@wisconsin.gov. Comments must be received on or before January 15, 2015 to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. Chapter Chir 13 is created to read:

CHAPTER CHIR 13  
INFORMED CONSENT

**Chir 13.01 Authority and purpose.** (1) **AUTHORITY.** The rules in this chapter are adopted pursuant to the authority delegated by ss. 15.08 (5) (b), 227.11 (2) (a), and 446.08, Stats.

(2) **PURPOSE.** The purpose of the rules is to define the obligation of a chiropractor to communicate alternate modes of treatment to a patient.

**Chir 13.02 Informed Consent.** Any chiropractor who treats a patient shall inform the patient about the availability of reasonable alternate modes of treatment and about the benefits and risks of these treatments. The reasonable chiropractor standard is the standard for informing a patient. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances.

**Chir 13.03 Exceptions to communication of alternate modes of treatment.** (1) The chiropractor's duty to inform patients of alternate modes of treatment does not require disclosure of any of the following:

(a) Detailed technical information that in all probability a patient would not understand.

(b) Risks apparent or known to the patient.

(c) Extremely remote possibilities that might falsely or detrimentally alarm the patient.

(d) Information in emergencies where failure to provide treatment would be more harmful to the patient than treatment.

(e) Information in cases where the patient is incapable of consenting.

(f) Information about alternate modes of treatment for any condition the chiropractor has not included in their diagnosis at the time the chiropractor informs the patient.

**Chir 13.04 Recordkeeping.** A chiropractor's patient record shall include documentation that he or she has communicated alternate modes of treatment to their patient and has obtained informed consent from their patient in keeping with Chir 11.02 (5).

SECTION 2. 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.

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(END OF TEXT OF RULE)  
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Dated \_\_\_\_\_

Agency \_\_\_\_\_

Board Chairperson  
Chiropractic Examining Board

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis

Original    Updated    Corrected

2. Administrative Rule Chapter, Title and Number

Chir 11

3. Subject

Duty to inform patients of treatment options

4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

9. Policy Problem Addressed by the Rule

This proposed rule is a result of recent legislation. 2013 Wisconsin Act 345 instituted a new standard regarding how chiropractors are to obtain informed consent from their patients. Before Act 345, chiropractors were held to the reasonable person standard which required chiropractors to inform their patients of information necessary for a reasonable person to make an intelligent decision with regard to treatment. As a result of Act 345, chiropractors must obtain informed consent from their patients by advising them of reasonable alternate medical modes of treatment and the benefits and risks of those treatments in a manner consistent with the reasonable chiropractor standard. The reasonable chiropractor standard requires disclosure only of information that a reasonable chiropractor would know and disclose under the circumstances. The proposed rule will incorporate this new standard into the current chiropractic rules.

10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

The proposed rule was posted on the Department and Professional Services website for 14 days in order to solicit comments from businesses, associations representing of Safety businesses, local governmental units and individuals that may be affected by the rule. No comments were received

11. Identify the local governmental units that participated in the development of this EIA.

No local governmental units participated in the development of this EIA.

12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Chiropractors will advise their patients in a manner that is consistent with current law. There is no alternative to implementing the proposed rule due to the changes being necessitated by passage of legislation.

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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14. Long Range Implications of Implementing the Rule

Chiropractors consistently advising patients of reasonable alternate medical modes of treatment options will result in chiropractors upholding their duty to inform patients in accordance with s. 446.08, Stats.

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15. Compare With Approaches Being Used by Federal Government

None.

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16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

**Illinois:** Illinois does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients.

**Iowa:** Iowa does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

**Michigan:** Michigan does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

**Minnesota:** Minnesota does not have comparable statutory requirement for chiropractors to obtain informed consent from their patients

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17. Contact Name Shawn Leatherwood	18. Contact Phone Number 608-261-4438
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