

To: Chairperson Jennifer Jarrett
Members, Physician Assistant Affiliated Credentialing Board

From: Jamie Silkey, PA-C, President, Wisconsin Academy of Physician Assistants
Ann Zenk, RN, BSN, MHA, Senior Vice President, Workforce and Clinical Practice,
Wisconsin Hospital Association

Date: February 22, 2022

Re: PA 1 to 5, Relating to Physician Assistants

On behalf of the Wisconsin Academy of Physician Assistants (WAPA) and the Wisconsin Hospital Association (WHA), thank you for the hard work you and other members of the Physician Assistant Affiliated Credentialing Board have performed on behalf of the nearly 3,000 physician assistants practicing in Wisconsin.

WAPA and WHA have been closely monitoring initial rulemaking of PA 1 to 5, relating to physician assistants. Under 2021 Wisconsin Act 23, Wis. Admin. Code § MED 8, administrative rules currently governing physician assistants, are slated to be repealed April 1, 2022.

2021 Wisconsin Act 23¹ was drafted with a partially delayed effective date and special emergency rulemaking authority granted to the Physician Assistant Affiliated Credentialing Board, to help ensure an orderly transition of physician assistants practicing under the MED 8 physician supervision rules to, starting April 1, practicing under the new licensure requirements and practice authorities specified in the Act. The Act, authorizes, but does not require, the Physician Assistant Affiliated Credentialing board to promulgate initial rules as emergency rules to allow for the licensure, discipline, and practice of physician assistants.

In your initial emergency rulemaking, we respectfully urge you to focus on rules necessary for the Board to license and discipline physician assistants and urge you to *not* promulgate emergency rules which go beyond these fundamental initial matters necessary for the Board to function, grant licenses, and discipline licensees. For example, rules relating to title protection, reciprocal credentials for service members, and providing volunteer care at camps, are all important matters, but they do not need to be addressed in emergency rules that do not have the same process for public review and input. Many of these additional matters are adequately addressed by statute and, if necessary, can be addressed in subsequent, permanent rulemaking with full public review and input. Attempting to address such matters in the initial emergency rules could lead to a delay in the promulgation of initial rules necessary for licensure, discipline, and board operation that must be in place by April 1. 2021 Wisconsin Act 23 intentionally created this framework, that is, the promulgation of initial rules for initial, critical matters and subsequent rules regarding other matters.

Since the enactment of 2021 Wisconsin Act 23 in March 2021, physician assistants and the hospitals and clinics in which they work, have been preparing to practice based on the clear standards set out in Act 23 statutory language. To ensure a seamless transition between practice under Med 8 and the practice authorizations under Act 21 on April 1, physician assistants and their employers have, based

¹ <https://docs.legis.wisconsin.gov/2021/related/acts/23.pdf>

on the clear statutory standards in Act 23, been reviewing and creating new policies and practice models, and determining whether to utilize the “direction and management” practice standard in s. 448.975(2)(a)(1)a. or the written collaborative agreement practice standard in 448.975(2)(a)(1)b. That preparatory work has been based on the reasonable expectation that the practice standards on April 1 would be the standards stated in the statutory language in Act 23 and not something different.

We are concerned that some of the emergency rules as drafted, particularly PA 3.01, 3.06, and 3.07, create *new* standards not specified in the statutory language, and will disrupt care delivery transitions for April 1 already established based on the clear standards in statute. At a minimum, should the Board desire to include emergency rules effective April 1 regarding the topics of PA 3.01, 3.06 and 3.07, we ask you to simply restate the standards as provided in the statute. If the Board wishes to consider standards different from the standards stated in the statute, we ask you to defer rulemaking for such language for permanent rulemaking to occur after April 1, which includes the full public review and comment processes provided by the permanent rulemaking process.

As stated by Wisconsin Legislative Council² Senior Staff Attorney Margit Kelly in her Act Memo³ to the Legislature and public, 2021 Wisconsin Act 23 “specifies that a physician assistant may either work under the overall management and direction of a physician in an employment relationship, or work in collaborative agreement with a physician. If using a collaborative agreement, the agreement must be in writing, and must specify the arrangements for the physician’s reasonable availability for collaboration with the physician assistant and for consultation with a patient.” In particular, we urge you to not promulgate PA 3.01 as currently drafted, which deviates from those two clear practice options carefully and intentionally drafted in Act 23 – one a general supervision standard and one that is a collaborative agreement standard.

Moreover, 2021 Wisconsin Act 23 reserves to the entity employing or having a relationship with a physician assistant, such as an employer or hospital, the right to establish additional requirements – such as tiering – as a condition of employment or relationship. Rigid tiering is not needed in the rules, is not part of the 2021 Wisconsin Act 23, and ignores the inherent, intentional flexibility of the law for such decisions to be made at the practice level.

Overall, if initial rules are not ready for implementation by when Wis. Admin. Code § MED 8 is repealed, a simple statement from the Physician Assistant Affiliated Credentialing Board should suffice that the statutes solely govern the licensure, discipline, and practice of physician assistants. This would provide guidance to physician assistants and their employers that the initial rulemaking is ongoing and to look to the statutes.

Again, in closing, thank you for your service on the Physician Assistant Affiliated Credentialing Board. We stand ready to work with you as physician assistants begin to practice under the historic reforms of 2021 Wisconsin Act 23.

² The Wisconsin Legislative Council is the nonpartisan legislative service agency of the Wisconsin legislature and assists the Legislature by providing legal and policy analysis to the Legislature.

<https://legis.wisconsin.gov/lc/about-us/>

³ <https://docs.legis.wisconsin.gov/2021/related/lcactmemo/act023.pdf>