

# State of Wisconsin



1997 Senate Bill 262

Date of enactment: **April 21, 1998**

Date of publication\*: **May 5, 1998**

## 1997 WISCONSIN ACT 156

**AN ACT** to *renumber* 180.1901 (1m) (a); to *amend* 50.01 (2), 103.10 (1) (e), 146.40 (1) (d), 146.81 (1) (i) and (j), 252.10 (7), 252.15 (1) (ar) 1., 440.042 (1), 895.48 (1m) (intro.), 895.48 (1m) (b) and 908.03 (6m) (a); and to *create* 146.81 (1) (hp), 180.1901 (1m) (ag), 440.08 (2) (a) 67q. and subchapter X of chapter 440 [precedes 440.97] of the statutes; **relating to**: registration of massage therapists and bodyworkers, granting rule-making authority and providing a penalty.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** 50.01 (2) of the statutes is amended to read:

50.01 (2) "Nurse's assistant" means a person who performs routine patient care duties delegated by a registered nurse or licensed practical nurse who supervises the person, for the direct health care of a patient or resident. "Nurse's assistant" does not mean a person who is licensed, permitted, certified or registered under subch. X of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or 459 or a person whose duties primarily involve skills that are different than those taught in instructional programs for nurse's assistants.

**SECTION 2.** 103.10 (1) (e) of the statutes is amended to read:

103.10 (1) (e) "Health care provider" means a person described under s. 146.81 (1), but does not include a person described under s. 146.81 (1) (hp).

**SECTION 3.** 146.40 (1) (d) of the statutes is amended to read:

146.40 (1) (d) "Nurse's assistant" means an individual who performs routine patient care duties delegated by

a registered nurse or licensed practical nurse who supervises the individual, for the direct health care of a patient or resident. "Nurse's assistant" does not mean an individual who is licensed, permitted, certified or registered under subch. X of ch. 440 or ch. 441, 448, 449, 450, 451, 455 or 459 or an individual whose duties primarily involve skills that are different than those taught in instructional and competency evaluation programs for nurse's assistants certified under sub. (3) or evaluated by competency evaluation programs for nurse's assistants approved under sub. (3m).

**SECTION 4.** 146.81 (1) (hp) of the statutes is created to read:

146.81 (1) (hp) A massage therapist or bodyworker issued a license of registration under subch. X of ch. 440.

**SECTION 5.** 146.81 (1) (i) and (j) of the statutes are amended to read:

146.81 (1) (i) A partnership of any providers specified under pars. (a) to ~~(hm)~~ (hp).

(j) A corporation or limited liability company of any providers specified under pars. (a) to ~~(hm)~~ (hp) that provides health care services.

**SECTION 6.** 180.1901 (1m) (a) of the statutes is renumbered 180.1901 (1m) (ar).

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

**SECTION 7.** 180.1901 (1m) (ag) of the statutes is created to read:

180.1901 (1m) (ag) The department of regulation and licensing under subch. X of ch. 440.

**SECTION 8.** 252.10 (7) of the statutes, as affected by 1997 Wisconsin Act 27, is amended to read:

252.10 (7) Drugs necessary for the treatment of mycobacterium tuberculosis shall be purchased by the department from the appropriation under s. 20.435 (5) (e) and dispensed to patients through the public health dispensaries or through health care providers, as defined in s. 146.81 (1), other than massage therapists or bodyworkers issued a license of registration under subch. X of ch. 440, social workers, marriage and family therapists or professional counselors certified under ch. 457, speech-language pathologists or audiologists licensed under subch. II of ch. 459, speech and language pathologists licensed by the department of public instruction or, on or after July 1, 1995, and no later than June 30, 1999, dietitians certified under subch. IV of ch. 448.

**SECTION 9.** 252.15 (1) (ar) 1. of the statutes is amended to read:

252.15 (1) (ar) 1. A person or entity that is specified in s. 146.81 (1), but does not include a massage therapist or bodyworker issued a license of registration under subch. X of ch. 440.

**SECTION 10.** 440.042 (1) of the statutes is amended to read:

440.042 (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to carrying out the duties specified in s. 440.972 and making investigations, conducting hearings and taking disciplinary action under s. 440.976. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

**SECTION 11.** 440.08 (2) (a) 67q. of the statutes is created to read:

440.08 (2) (a) 67q. Registered massage therapist or bodyworker: March 1 of each odd-numbered year; \$41.

**SECTION 12.** Subchapter X of chapter 440 [precedes 440.97] of the statutes is created to read:

## CHAPTER 440

### SUBCHAPTER X

#### REGISTRY OF MASSAGE THERAPISTS AND BODYWORKERS

**440.97 Definitions.** In this subchapter:

(2) “Manual action” includes holding, positioning, rocking, kneading, compressing, decompressing, gliding or percussing the soft tissue of the human body and applying friction to soft tissue.

(3) “Massage therapist or bodyworker” means a person who engages in massage therapy or bodywork.

(4) “Massage therapy or bodywork”:

(a) Means the science and healing art that uses manual actions to palpate and manipulate the soft tissue of the human body and includes determining whether massage therapy or bodywork is appropriate or contraindicated, or whether a referral to another health care practitioner is appropriate.

(b) Does not include any of the following:

1. Making a medical diagnosis.
2. Instructing in or prescribing rehabilitative strengthening or conditioning exercises that are within the practice of physical therapy, as defined in s. 448.50 (4).

(5) “Registrant” means a person who is issued a license of registration under this subchapter.

**440.9705 Applicability.** This subchapter does not apply to a person holding a license, permit, registration or certification granted by this state or the federal government who engages in the practice of massage therapy or bodywork within the scope of his or her license, permit, registration or certification and who does not use any title or description that implies that he or she is registered under this subchapter or represent himself or herself to be registered under this subchapter.

**440.971 Use of title.** (1) No person may use the title “Wisconsin registered massage therapist and bodyworker”, “Wisconsin registered massage therapist”, “Wisconsin registered bodyworker”, “registered massage therapist and bodyworker”, “registered massage therapist”, “registered bodyworker”, “massage therapist and bodyworker”, “massage therapist” or “bodyworker”, use any title or description that implies that he or she is registered under this subchapter or represent himself or herself to be registered under this subchapter unless the person has been issued a license of registration as a massage therapist or bodyworker under this subchapter.

(2) This subchapter does not prohibit a person who is not a registrant from engaging in the practice of massage therapy or bodywork.

**440.972 Duties of department.** (1) The department shall do all of the following:

(a) Promulgate rules establishing requirements and standards for the practice of massage therapy or bodywork by a registrant, including a code of ethics that governs a registrant’s practice of massage therapy or bodywork.

(b) Promulgate rules establishing the education, training or competency requirements that an applicant for a license must satisfy in order to be issued a license of registration under this subchapter. The rules shall require an applicant to complete at least 500 classroom hours of study in a course of instruction at a school of massage therapy or bodywork approved under s. 39.51 and the rules may require an applicant to pass an

examination, administered or approved by the department, to determine fitness to practice massage therapy or bodywork.

(c) Establish and update on at least a bimonthly basis a registry of persons who are issued a license of registration under this subchapter. The department shall make the registry available for public inspection and copying and in any other manner that, as determined by the department, facilitates public access to the registry.

(2) The department may promulgate rules that establish continuing education requirements that a person must satisfy to be eligible to renew a license of registration that is issued under this subchapter.

**440.973 Registration requirements.** The department shall issue a license of registration as a massage therapist or bodyworker to a person who does all of the following:

(1) Submits an application for the license to the department on a form provided by the department.

(2) Pays the fee specified in s. 440.05 (1).

(3) Subject to ss. 111.321, 111.322 and 111.335, submits evidence satisfactory to the department that he or she does not have an arrest or conviction record.

(4) Submits evidence satisfactory to the department that he or she satisfies the requirements established in rules promulgated under s. 440.972 (1) (b).

(5) Submits evidence satisfactory to the department that he or she has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

**440.974 Reciprocal registration.** Upon application and payment of the fee specified in s. 440.05 (2), the department may issue a license of registration as a massage therapist or bodyworker to a person who has been issued a similar license, registration or certificate by another state or territory of the United States or another country if all of the following apply:

(1) The person is not currently under investigation for a matter related to his or her practice of massage therapy or bodywork in the other state, territory or country.

(2) The person has never been disciplined for a matter related to his or her practice of massage therapy or bodywork in the other state, territory or country.

(3) Subject to ss. 111.321, 111.322 and 111.335, the person does not have an arrest or conviction record.

(4) The person is not currently a party in pending litigation in which it is alleged that he or she is liable for damages for acts committed in the course of the practice of massage therapy or bodywork.

(5) The person has never been found liable for damages for acts committed in the course of the practice of massage therapy or bodywork which evidenced a lack of ability or fitness to practice massage therapy or bodywork.

(6) The person submits the evidence specified in s. 440.973 (5).

**440.975 Renewal of registration.** The renewal dates for licenses of registration issued under this subchapter are specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include all of the following:

(1) The renewal fee specified in s. 440.08 (2) (a).

(2) Evidence satisfactory to the department that the applicant has completed any continuing education requirements specified in rules promulgated under s. 440.972 (2).

(3) Evidence satisfactory to the department that the applicant has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

**440.976 Disciplinary proceedings and actions.** (1) Subject to the rules promulgated under s. 440.03 (1), the department may make investigations and conduct hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a registrant, or may deny, limit, suspend or revoke a license of registration, if an applicant or registrant has done any of the following:

(a) Made a material misstatement in an application for a license of registration or for renewal of a license of registration.

(b) Subject to ss. 111.321, 111.322 and 111.335, been convicted of an offense the circumstances of which substantially relate to the practice of massage therapy or bodywork.

(c) Been adjudicated mentally incompetent by a court of competent jurisdiction, a certified copy of the record of adjudication of incompetency to be conclusive evidence of such incompetency.

(d) Advertised in a manner that is false, deceptive or misleading.

(e) Advertised, practiced or attempted to practice massage therapy or bodywork under another's name.

(f) Subject to ss. 111.321, 111.322 and 111.34, engaged in the practice of massage therapy or bodywork while the person's ability to engage in the practice was impaired by alcohol or other drugs.

(g) Violated any standard relating to the practice of massage therapy or bodywork established by the department in the rules promulgated under s. 440.972 (1) (a).

(h) Engaged in conduct while practicing massage therapy or bodywork which jeopardizes the health, safety or welfare of a client or which evidences a lack of knowledge or ability to apply professional principles or skills.

(i) Committed a crime related to prostitution under ss. 944.30 to 944.34.

(j) Aided another person in violating this subchapter or any rule promulgated under this subchapter.

(k) Violated this subchapter or any rule promulgated under this subchapter.

**(2m)** In addition to or in lieu of a reprimand or denial, limitation, suspension or revocation of a license of registration under sub. (2), the department may assess against an applicant or registrant a forfeiture of not more than \$1,000 for each violation enumerated under sub. (2).

**(3)** In lieu of proceeding under sub. (2), the department may place, in the registry established under s. 440.972 (1) (c), a copy of a complaint received by the department against a registrant, the registrant's response to the complaint and a copy of any records of the department concerning the complaint. The department shall use the following procedure in placing information in the registry under this subsection:

(a) No later than 60 days after the date on which the department receives a complaint alleging that a registrant has engaged in conduct that is grounds for discipline under sub. (2), the department shall provide the registrant with a copy of the complaint and place a copy of the complaint and a copy of any records of the department concerning the complaint in the registry.

(b) After receiving a copy of the complaint under par. (a), the registrant who is the subject of the complaint, or his or her authorized representative, may place in the registry a statement of reasonable length describing the registrant's view of the correctness or relevance of any of the information contained in the complaint.

(c) The department shall remove all complaints against and other information concerning a registrant from the registry if, for a period of 2 years from the date of the most recent complaint filed in the registry, no further complaints have been filed against the registrant.

**(4)** The department may reissue a license of registration to any person whose certificate has been suspended or revoked under sub. (2) if the person satisfies requirements for reissuance established by the department. The department may issue a new license of registration to replace any license revoked, lost, destroyed or mutilated, subject to the rules of the department and the payment of the required fee.

**440.977 Change of name.** No registrant may practice massage therapy or bodywork in this state under any other given name or any other surname than that under which the person was originally issued a license of registration if the department, after a hearing, finds that using a title under the changed name operates to unfairly compete with another person who practices massage therapy or bodywork or to mislead the public as to identity or to otherwise result in detriment to the profession of massage therapy or bodywork or to the public. This section does

not apply to a change of name resulting from marriage or divorce.

**440.978 Penalties. (1)** Except as provided in sub. (2), a person who violates this subchapter or any rule promulgated under this subchapter shall forfeit not more than \$1,000 for each violation.

**(2)** A person who violates s. 440.971 (1) or a person presenting or attempting to use as his or her own the license of registration of another, or any person who falsely impersonates any other registrant of like or different name, or any person who attempts to use an expired or revoked license of registration, may be fined not less than \$100 nor more than \$500 or imprisoned for not more than 3 months or both.

**440.979 Local regulation.** A city, village, town or county may not enact an ordinance that regulates the practice of massage therapy or bodywork by a person who is issued a license of registration by the department under this subchapter. No provision of any ordinance enacted by a city, village, town or county that is in effect before the effective date of this section .... [revisor inserts date], and that relates to the practice of massage therapy or bodywork, may be enforced against a person who is issued a license of registration by the department under this subchapter.

**SECTION 13.** 895.48 (1m) (intro.) of the statutes is amended to read:

895.48 **(1m)** (intro.) Any physician licensed under ch. 448, chiropractor licensed under ch. 446, dentist licensed under ch. 447, emergency medical technician licensed under s. 146.50, physician assistant certified under ch. 448 ~~or~~ registered nurse licensed under ch. 441 ~~or~~ massage therapist or bodyworker issued a license of registration under subch. X of ch. 440 who renders voluntary health care to a participant in an athletic event or contest sponsored by a nonprofit corporation, as defined in s. 46.93 (1m) (c), a private school, as defined in s. 115.001 (3r), a public agency, as defined in s. 46.93 (1m) (e), or a school, as defined in s. 609.655 (1) (c), is immune from civil liability for his or her acts or omissions in rendering that care if all of the following conditions exist:

**SECTION 14.** 895.48 (1m) (b) of the statutes is amended to read:

895.48 **(1m)** (b) The physician, chiropractor, dentist, emergency medical technician, physician assistant ~~or~~ registered nurse, massage therapist or bodyworker does not receive compensation for the health care, other than reimbursement for expenses.

**SECTION 15.** 908.03 (6m) (a) of the statutes is amended to read:

908.03 **(6m)** (a) *Definition.* In this subsection, "health care provider" means a massage therapist or bodyworker issued a license of registration under subch. X of ch. 440, a chiropractor licensed under ch. 446, a dentist licensed under ch. 447, a physician assistant certified

under ch. 448 or a health care provider as defined in s. 655.001 (8).

**SECTION 16. Nonstatutory provisions.**

(1) Notwithstanding section 440.973 of the statutes, as created by this act, the department of regulation and licensing shall do each of the following:

(a) Issue a license of registration as a massage therapist or bodyworker to a person who, not later than the last day of the 12th month beginning after the effective date of this paragraph, does all of the following:

1. Submits an application to the department on a form approved by the department that describes the person's education and his or her experience in the practice of massage therapy and bodywork.

2. Passes an oral or written examination administered or approved by the department that determines fitness to practice massage therapy or bodywork, or provides evidence satisfactory to the department that he or she has passed a massage therapy or bodywork examination administered by a national organization that establishes standards for the practice of massage therapy or bodywork and that is recognized by the department.

3. Pays the fee specified in section 440.05 (1) of the statutes.

(b) Issue a license of registration as a massage therapist or bodyworker to a person who, no later than the 6th month beginning after the effective date of this paragraph, does all of the following:

1. Submits an application to the department on a form approved by the department that describes the person's education and his or her experience in the practice of massage therapy or bodywork.

2. Provides evidence satisfactory to the department that he or she satisfies each of the following:

a. Has completed at least 100 classroom hours of instruction in the practice of massage therapy or bodywork or has practiced massage therapy or bodywork for compensation for at least 2 years during the 5-year period immediately preceding the date of the application.

b. Has in effect malpractice liability insurance coverage in an amount that is not less than \$1,000,000 per occurrence and \$1,000,000 for all occurrences in one year.

3. Pays the fee specified in section 440.05 (1) of the statutes.

(2) A license of registration issued under subsection (1) (a) may be renewed under section 440.975 of the statutes, as created by this act. A license of registration issued under subsection (1) (b) is valid until 3 years after that date that it is issued and may not be renewed.

**SECTION 17. Initial applicability.**

(1) The treatment of section 146.81 (1) (hp) of the statutes first applies to contracts entered into or renewed by registered massage therapists or bodyworkers under section 635.272 (1) of the statutes on the effective date of this subsection.

(2) The treatment of section 146.81 (1) (hp) of the statutes first applies to the use of billing forms specified in section 632.725 (2) (a) of the statutes on the effective date of this subsection.

(3) The treatment of section 895.48 (1m) (intro.) and (b) of the statutes first applies to care rendered on the effective date of this subsection.

**SECTION 18. Effective date.**

(1) This act takes effect on the first day of the 9th month beginning after publication.