Publication Date: **September 10, 2008**
Effective: **September 10, 2008 through the date on which the final rules take effect**
Hearing Date: **November 26, 2008**

DEPARTMENT OF REGULATION AND LICENSING
ORDER TO ADOPT EMERGENCY RULES

An order of the Department of Regulation and Licensing to renumber and amend RL 181.01 (2) (c); and to create RL 180.02 (1m), (3m) and (11), 181.01 (1) (d) and (2) (c) 1. and 2., relating to training and proficiency in the use of automated external defibrillators for licensure as a licensed midwife.

ANALYSIS
Statutes interpreted: Sections 440.982 and 440.983, Stats., and 2007 Wisconsin Act 104.
Statutory authority: Sections 227.11 (2) and 440.984, Stats.

Explanation of agency authority: 2007 Wisconsin Act 104 amends ch. 440, Stats., which regulates the practice of midwifery. The effect of the Act requires the Department of Regulation and Licensing to amend administrative rules for application for licensure as a licensed midwife. As required by 2007 Wisconsin Act 104, this emergency rule creates the requirement for applicants and licensees to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure.

Related statutes or rules: Section 46.03 (38), Stats.

Plain language analysis: This emergency rule amends rules relating to licensed midwives to include the requirement for applicants and licensees to be proficient in the use of automatic external defibrillators (AEDs) through the completion of an approved instruction program prior to initial licensure, issuance of a temporary permit, and renewal of licensure, resulting from 2007 Wisconsin Act 104.
SECTION 1 creates definitions for "automated external defibrillator," "defibrillation" and "ventricular fibrillation."
SECTION 2 creates a provision in s. RL 181.01 (1) to require applicants to submit evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.
SECTION 3 renumbers and amends, and SECTION 4 creates, provisions to require licensees to submit, at the time of renewal, evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

Summary of, and comparison with, existing or proposed federal regulation: There is no existing or proposed federal regulation that is intended to address the activities to be regulated by the rule.

Comparison with rules in adjacent states:
Minnesota: Under 147D.17; subd. 1 (14) requires midwives to be certified in adult and infant CPR (the American Heart Association teaches AED with CPR) but there is nothing in the statutes or rules requiring specific training in the use of the defibrillator.
Iowa: Iowa does not regulate midwives.
Illinois: Illinois does not regulate midwives.
Michigan: Michigan does not regulate midwives.

Summary of factual data and analytical methodologies: 2007 Wisconsin Act 104 created a requirement for applicants for an initial credential as a midwife, issuance of a temporary permit, and as a qualification for renewal, to be proficient in the use of automated external defibrillators (AEDs) through the completion of an approved instruction program prior to

initial certification. This requirement of the Act has been set forth in the newly created rule provisions, as directed by the legislature.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact report: Training for AED certification and renewal of certification may vary. The Madison Wisconsin Chapter of the American Red Cross (Badger Chapter) offers to professionals AED/CPR initial certification for $80.00 and $52.00 for review. Both trainings are valid for one year. Based on these figures, AED certification for a licensed chiropractor could cost approximately $132.00 for the licensure biennium and less so in subsequent bienniums (initial biennium in which AED certification was achieved: $132.00 initial certification plus $52.00 for review). A price sheet obtained from the Badger Chapter of the American Red Cross for January to December of 2008 is attached.
As of July 2008, there were 35 Wisconsin licensed midwives with active licenses to practice.
Section 227.137, Stats., requires an "agency" to prepare an economic impact report before submitting the proposed rule-making order to the Wisconsin Legislative Council. The Department of Regulation and Licensing is not included as an "agency" in this section.

Anticipated costs incurred by private sector: The department finds that this rule has no significant fiscal effect on the private sector.

Fiscal estimate: The department estimates that this rule will require staff time in the Office of Legal Counsel, Division of Management Services, and the Division of Professional Credentialing. The total one-time salary and fringe costs are estimated at $2,223.

Effect on small business: This emergency rule will have no significant economic impact on a substantial number of small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at larry.martin@drl.state.wi.us, or by calling 608-266-8608.

Agency contact person: Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708; telephone 608-266-0495; email at pamela.haack@drl.state.wi.us.

Place where comments are to be submitted and deadline for submission: Comments may be submitted to Pamela Haack, Paralegal, Department of Regulation and Licensing, Office of Legal Counsel, 1400 East Washington Avenue, Room 152, P.O. Box 8935, Madison, Wisconsin 53708-8935, or by email to pamela.haack@drl.state.wi.us. Comments must be received on or before October 1, 2008, to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. RL 180.02 (1m), (3m) and (11) are created to read:

RL 180.02 **(1m)** "Automated external defibrillator" means a defibrillator device to which all of the following apply:

a. It is approved for commercial distribution by the federal food and drug administration.

b. It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.

c. After having determined that defibrillation should be performed, it is capable, either at the command of an operator or without intervention by an operator, of delivering an electrical shock to an individual.

(3m) "Defibrillation" means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia.

(11) "Ventricular fibrillation" means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart.

SECTION 2. RL 181.01 (1) (d) is created to read:

RL 181.01 (1) (d) Evidence satisfactory to the department that the applicant has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

SECTION 3. RL 181.01 (2) (c) is renumbered RL 181.01 (2) (c) (intro.) and is amended to read:

RL 181.01 (2) (c) (intro.) A licensed midwife shall, at the time that he or she applies for renewal of a license under par. (b), submit proof satisfactory to the department ~~that he or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse-midwife credential from the American College of Nurse Midwives or a successor organization.~~ of all of the following:

SECTION 4. RL 181.01 (2) (c) 1. and 2. are created to read:

RL 181.01 (2) (c) 1. He or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization, or a valid certified nurse-midwife credential from the American College of Nurse Midwives or a successor organization.

2. He or she has current proficiency in the use of an automated external defibrillator achieved through instruction provided by an individual, organization, or institution of higher education approved under s. 46.03 (38), Stats., to provide the instruction.

FINDING OF EMERGENCY

Section 41 (2) (b) of the nonstatutory provisions of 2007 Wisconsin Act 104 provides that notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department of regulation and licensing is not required to provide evidence that promulgating a rule as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated to implement 2007 Wisconsin Act 104. Notwithstanding s. 227.24 (1) (c) and (2) of the statutes, these emergency rules will remain in effect until the date on which the final rules take effect.

This emergency rule will be effective upon publication in the Wisconsin State Journal.