



State of Wisconsin
2011 - 2012 LEGISLATURE



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2011 SENATE BILL 532

February 29, 2012 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to
Committee on Health.

1 **AN ACT** *to amend* 48.983 (title), 48.983 (4) (a) 4m., 48.983 (4) (b), 48.983 (6) (a)
2 (intro.), 48.983 (6) (a) 1., 48.983 (6) (a) 2., 48.983 (6) (a) 3., 48.983 (6) (a) 4.,
3 48.983 (6) (a) 4m., 48.983 (6) (a) 6., 48.983 (6) (a) 6m., 48.983 (6) (b) 1., 48.983
4 (6) (c), 48.983 (6g) (a) and (b), 48.983 (6m), 48.983 (6r), 48.983 (7) (title) and (a)
5 (intro.), 48.983 (7) (ag), 48.983 (7) (ar), 48.983 (7) (b), 48.983 (7) (c), 48.983 (8),
6 253.15 (2), 253.15 (6), 253.15 (7) (e), 441.15 (3) (c) and 448.02 (3) (a); and **to**
7 **create** 48.983 (9), 69.02 (2) (c), 69.14 (1) (i), 441.15 (1) (am), 441.15 (4m), 448.35
8 and 448.40 (2) (am) of the statutes; **relating to:** evidence-based home
9 visitation program services for persons who are at risk of poor birth outcomes
10 or of abusing or neglecting their children; designating race and ethnicity on
11 birth certificates; requiring informed consent for performance of certain

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- 1 elective procedures prior to the full gestational term of a fetus; and granting
2 rule-making authority.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Special Committee on Infant Mortality.

Under current law, an infant's race or ethnicity is not required to appear on the infant's birth certificate. This bill specifies that a birth certificate must include the race and ethnicity of the infant, as reported by the infant's mother.

The bill also requires the Department of Health Services to promulgate administrative rules to establish the designations of race and ethnicity to be used on birth certificates and procedures to be followed to ensure that the designation recorded on a birth certificate is that directly reported by an infant's mother. The designations of race and ethnicity must be sufficiently detailed to enable data collection on births and birth outcomes among all significant racial and ethnic populations in the state and to assist in the development and evaluation of the efficacy of programs and policies designed to improve birth outcomes.

The bill specifies that home visitation services provided by a county, private agency, or Indian tribe to a person who is at risk of poor birth outcomes or of abusing or neglecting his or her child under a child abuse and neglect prevention grant from the Department of Children and Families (DCF) must be evidence-based.

The bill also requires DCF to enter into a memorandum of understanding with the Department of Health Services that provides for collaboration between these departments in carrying out home visitation program services.

Under current law, any physician who treats a patient must inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments. A physician who violates this requirement is subject to discipline by the Medical Examining Board (MEB) for unprofessional conduct. If the MEB finds that the physician has engaged in unprofessional conduct, the MEB may warn or reprimand the physician, or limit, suspend, or revoke any license, certificate, or limited permit granted to the physician. The statutes direct the MEB to promulgate rules implementing this requirement. Those rules are found at Chapter Med. 18 of the Wisconsin Administrative Code.

Under current law, there is no requirement that a mother be specifically informed about possible negative effects to her infant of inducing labor or performing a Caesarean section prior to full gestational term.

This bill prohibits a physician from performing an elective Caesarean section or an elective procedure intended to induce labor in a woman before the completion of a gestational period of 39 weeks unless the physician has first obtained the informed consent of the woman. The bill specifies that a woman's consent is informed only if she receives timely information orally and in person from the physician regarding potential negative effects to the child of early delivery, including long-term learning and behavioral problems.

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Under the bill, persons who violate the newly created prohibition are subject to the same penalties and discipline as persons who violate the duty to provide information on alternate modes of treatment. Specifically, the MEB may warn or reprimand the physician, or limit, suspend, or revoke any license, certificate, or limited permit granted by the MEB to the physician.

The bill directs the MEB to promulgate rules implementing the provisions of the newly created prohibition and to define "elective" for purposes of the prohibition.

The bill also prohibits a person licensed by the Board of Nursing (board) to practice nurse-midwifery from performing an elective procedure intended to induce labor in a woman before the completion of a gestational period of 39 weeks unless the nurse-midwife has first obtained the informed consent of the woman. The bill specifies that a woman's consent is informed only if she receives timely information regarding potential negative effects to the child of early delivery, including long-term learning and behavioral problems. A nurse-midwife who is found to have violated the prohibition may be subject to discipline by the board, including the suspension, revocation or limiting of the nurse-midwife's license.

1 **SECTION 1.** 48.983 (title) of the statutes is amended to read:

2 **48.983 (title) Child abuse and neglect prevention and evidence-based**
3 **home visitation program.**

4 **SECTION 2.** 48.983 (4) (a) 4m. of the statutes is amended to read:

5 48.983 (4) (a) 4m. To reimburse a case management provider under s. 49.45 (25)
6 (b) for the amount of the allowable charges under the Medical Assistance program
7 that is not provided by the federal government for case management services
8 provided to a Medical Assistance beneficiary described in s. 49.45 (25) (am) 9. who
9 is a child and who is a member of a family that receives evidence-based home
10 visitation program services under par. (b) 1.

11 **SECTION 3.** 48.983 (4) (b) of the statutes is amended to read:

12 48.983 (4) (b) *Home Evidence-based home visitation program services.* 1. A
13 county, private agency, or Indian tribe that is selected to participate in the program
14 under this section shall offer all pregnant women in the county, the area in which
15 that private agency is providing services, or the reservation of the tribe who are
16 eligible for Medical Assistance under subch. IV of ch. 49 an opportunity to undergo
17 an assessment through use of a risk assessment instrument to determine whether

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1 the person assessed presents risk factors for poor birth outcomes or for perpetrating
2 child abuse or neglect. Persons who agree to be assessed shall be assessed during
3 the prenatal period. The risk assessment instrument shall be developed by the
4 department and shall be based on risk assessment instruments developed by the
5 department for similar programs that are in operation. The department need not
6 promulgate as rules under ch. 227 the risk assessment instrument developed under
7 this subdivision. A person who is assessed to be at risk of poor birth outcomes or of
8 abusing or neglecting his or her child shall be offered evidence-based home visitation
9 program services that shall be commenced during the prenatal period. ~~Home~~
10 Evidence-based home visitation program services may be provided to a family with
11 a child identified as being at risk of child abuse or neglect until the identified child
12 reaches 3 years of age. If a family has been receiving evidence-based home visitation
13 program services continuously for not less than 12 months, those services may
14 continue to be provided to the family until the identified child reaches 3 years of age,
15 regardless of whether the child continues to be eligible for Medical Assistance under
16 subch. IV of ch. 49. If risk factors for child abuse or neglect with respect to the
17 identified child continue to be present when the child reaches 3 years of age,
18 evidence-based home visitation program services may be provided until the
19 identified child reaches 5 years of age. ~~Home~~ Evidence-based home visitation
20 program services may not be provided to a person unless the person gives his or her
21 written informed consent to receiving those services or, if the person is a child, unless
22 the child's parent, guardian, or legal custodian gives his or her written informed
23 consent for the child to receive those services.

24 1m. No person who is required or permitted to report suspected or threatened
25 abuse or neglect under s. 48.981 (2) may make or threaten to make such a report

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1 based on a refusal of a person to receive or to continue receiving evidence-based
2 home visitation program services under subd. 1.

3 3. A county, private agency, or Indian tribe that is providing evidence-based
4 home visitation program services under subd. 1. shall provide to a person receiving
5 those services the information relating to shaken baby syndrome and impacted
6 babies required under s. 253.15 (6).

7 **SECTION 4.** 48.983 (6) (a) (intro.) of the statutes is amended to read:

8 48.983 (6) (a) (intro.) The part of an application, other than a renewal
9 application, submitted by a county, private agency, or Indian tribe that relates to
10 evidence-based home visitation programs shall include all of the following:

11 **SECTION 5.** 48.983 (6) (a) 1. of the statutes is amended to read:

12 48.983 (6) (a) 1. Information on how the applicant's home visitation program
13 is evidence-based, comprehensive, incorporates practice standards that have been
14 developed for home visitation programs by entities concerned with the prevention of
15 poor birth outcomes and child abuse and neglect and that are acceptable to the
16 department, and incorporates practice standards and critical elements that have
17 been developed for successful home visitation programs by a nationally recognized
18 home visitation program model and that are acceptable to the department.

19 **SECTION 6.** 48.983 (6) (a) 2. of the statutes is amended to read:

20 48.983 (6) (a) 2. Documentation that the application was developed through
21 collaboration among public and private organizations that provide services to
22 children and families, especially children who are at risk of child abuse or neglect and
23 families that are at risk of poor birth outcomes, or that are otherwise interested in
24 child welfare and a description of how that collaboration effort will support a
25 comprehensive, evidence-based home visitation program.

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1 **SECTION 7.** 48.983 (6) (a) 3. of the statutes is amended to read:

2 48.983 **(6)** (a) 3. An identification of existing poor birth outcome and child abuse
3 and neglect prevention services that are available to residents of the county, the area
4 in which the private agency is providing services, or the reservation of the Indian
5 tribe and a description of how those services and any additional needed services will
6 support a comprehensive, evidence-based home visitation program.

7 **SECTION 8.** 48.983 (6) (a) 4. of the statutes is amended to read:

8 48.983 **(6)** (a) 4. An explanation of how the evidence-based home visitation
9 program will build on existing poor birth outcome and child abuse and neglect
10 prevention programs, including programs that provide support to families, and how
11 the evidence-based home visitation program will coordinate with those programs.

12 **SECTION 9.** 48.983 (6) (a) 4m. of the statutes is amended to read:

13 48.983 **(6)** (a) 4m. An explanation of how the applicant will encourage private
14 organizations to provide services under the applicant's evidence-based home
15 visitation program.

16 **SECTION 10.** 48.983 (6) (a) 6. of the statutes is amended to read:

17 48.983 **(6)** (a) 6. An identification of how the evidence-based home visitation
18 program is comprehensive and incorporates the practice standards and critical
19 elements for successful home visitation programs referred to in subd. 1., including
20 how services will vary in intensity levels depending on the needs and strengths of the
21 participating family.

22 **SECTION 11.** 48.983 (6) (a) 6m. of the statutes is amended to read:

23 48.983 **(6)** (a) 6m. An explanation of how the services to be provided under the
24 evidence-based home visitation program, including the risk assessment under sub.
25 (4) (b) 1., will be provided in a culturally competent manner.

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1 **SECTION 12.** 48.983 (6) (b) 1. of the statutes is amended to read:

2 48.983 **(6)** (b) 1. 'Flexible fund for evidence-based home visitation programs.'

3 The applicant demonstrates in the application that the applicant has established, or
4 has plans to establish, if selected, a fund from which payments totaling not less than
5 \$250 per calendar year may be made for appropriate expenses of each family that is
6 participating in the evidence-based home visitation program under sub. (4) (b) 1. or
7 that is receiving home visitation services under s. 49.45 (44). The payments shall be
8 authorized by an individual designated by the applicant. If an applicant makes a
9 payment to or on behalf of a family under this subdivision, one-half of the payment
10 shall be from grant moneys received under this section and one-half of the payment
11 shall be from moneys provided by the applicant from sources other than grant
12 moneys received under this section.

13 **SECTION 13.** 48.983 (6) (c) of the statutes is amended to read:

14 48.983 **(6)** (c) *Case management benefit.* The applicant states in the grant
15 application that it has elected, or, if selected, that it will elect, under s. 49.45 (25) (b),
16 to make the case management benefit under s. 49.45 (25) available to the category
17 of beneficiaries under s. 49.45 (25) (am) 9. who are children and who are members
18 of families receiving evidence-based home visitation program services under sub. (4)
19 (b) 1.

20 **SECTION 14.** 48.983 (6g) (a) and (b) of the statutes are amended to read:

21 48.983 **(6g)** (a) Except as permitted or required under s. 48.981 (2), no person
22 may use or disclose any information concerning any individual who is selected for an
23 assessment under sub. (4) (b), including an individual who declines to undergo the
24 assessment, or concerning any individual who is offered services under ~~a~~ an
25 evidence-based home visitation program funded under this section, including an

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1 individual who declines to receive those services, unless the use or disclosure is
2 connected with the administration of the evidence-based home visitation program
3 or the administration of the Medical Assistance program under ss. 49.43 to 49.497
4 or unless the individual has given his or her written informed consent to the use or
5 disclosure.

6 (b) A county, private agency, or Indian tribe that is selected to participate in the
7 program under this section shall provide or shall designate an individual or entity
8 to provide an explanation of the confidentiality requirements under par. (a) to each
9 individual who is offered an assessment under sub. (4) (b) or who is offered services
10 under the evidence-based home visitation program of the county, private agency, or
11 Indian tribe.

12 **SECTION 15.** 48.983 (6m) of the statutes is amended to read:

13 48.983 (6m) NOTIFICATION OF PARENT PRIOR TO MAKING ABUSE OR NEGLECT REPORT.
14 If a person who is providing services under ~~a~~ an evidence-based home visitation
15 program under sub. (4) (b) 1. determines that he or she is required or permitted to
16 make a report under s. 48.981 (2) about a child in a family to which the person is
17 providing those services, the person shall, prior to making the report under s. 48.981
18 (2), make a reasonable effort to notify the child's parent that a report under s. 48.981
19 (2) will be made and to encourage the parent to contact a county department to
20 request assistance. The notification requirements under this subsection do not affect
21 the reporting requirements under s. 48.981 (2).

22 **SECTION 16.** 48.983 (6r) of the statutes is amended to read:

23 48.983 (6r) ~~HOME~~ EVIDENCE-BASED HOME VISITATION PROGRAM INFORMATIONAL
24 MATERIALS. Any informational materials about ~~a~~ an evidence-based home visitation
25 program under sub. (4) (b) 1. that are distributed to a person who is offered or who

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1 is receiving ~~home visitation program~~ services under that program shall state the
2 sources of funding for the program.

3 **SECTION 17.** 48.983 (7) (title) and (a) (intro.) of the statutes are amended to
4 read:

5 48.983 (7) (title) ~~HOME~~ EVIDENCE-BASED HOME VISITATION PROGRAM EVALUATION.
6 (a) (intro.) The department shall conduct or shall select an evaluator to conduct an
7 evaluation of the evidence-based home visitation program. The evaluation shall
8 measure all of the following criteria in families that have participated in ~~the home~~
9 ~~visitation~~ that program and that are selected for evaluation:

10 **SECTION 18.** 48.983 (7) (ag) of the statutes is amended to read:

11 48.983 (7) (ag) The department shall evaluate the availability of
12 evidence-based home visitation programs in the state and determine whether there
13 are gaps in home visitation services in the state. The department shall cooperate
14 with counties, private agencies, and Indian tribes providing evidence-based home
15 visitation programs to address any gaps in services identified.

16 **SECTION 19.** 48.983 (7) (ar) of the statutes is amended to read:

17 48.983 (7) (ar) Each county, private agency, and Indian tribe providing ~~a~~ an
18 evidence-based home visitation program shall collect and report data to the
19 department, as required by the department. The department shall require each
20 county, private agency, and Indian tribe providing ~~a~~ an evidence-based home
21 visitation program to collect data using forms prescribed by the department.

22 **SECTION 20.** 48.983 (7) (b) of the statutes is amended to read:

23 48.983 (7) (b) In the evaluation, the department shall determine the number
24 of families who remained in the evidence-based home visitation program for the time
25 recommended in the family's case plan.

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1 **SECTION 21.** 48.983 (7) (c) of the statutes is amended to read:

2 48.983 (7) (c) Each county, private agency, and Indian tribe providing ~~a~~ an
3 evidence-based home visitation program shall develop a plan for evaluating the
4 effectiveness of its program for approval by the department. The plan shall
5 demonstrate how the county, private agency, or Indian tribe will use the evaluation
6 of its program to improve the quality and outcomes of the program and to ensure
7 continued compliance with the ~~home visitation program~~ criteria under sub. (6) (a).
8 The plan shall demonstrate how the outcomes will be tracked and measured. Under
9 the plan, the extent to which all of the following outcomes are achieved shall be
10 tracked and measured:

11 1. Parents receiving evidence-based home visitation services acquiring
12 knowledge of early learning and child development and interacting with their
13 children in ways that enhance the children's development and early learning.

14 2. Children receiving evidence-based home visitation services being healthy.

15 3. Children receiving evidence-based home visitation services living in a safe
16 environment.

17 4. Families receiving evidence-based home visitation services accessing formal
18 and informal support networks.

19 5. Children receiving evidence-based home visitation services achieving
20 milestones in development and early learning.

21 6. Children receiving evidence-based home visitation services who have
22 developmental delays receiving appropriate intervention services.

23 **SECTION 22.** 48.983 (8) of the statutes is amended to read:

24 48.983 (8) **TECHNICAL ASSISTANCE AND TRAINING.** The department shall provide
25 technical assistance and training to counties, private agencies, and Indian tribes

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1 that are selected to participate in the program under this section. The training may
2 not be limited to a particular evidence-based home visitation model. The training
3 shall include training in best practices regarding basic skills, uniform
4 administration of screening and assessment tools, the issues and challenges that
5 families face, and supervision and personnel skills for program managers. The
6 training may also include training on data collection and reporting.

7 **SECTION 23.** 48.983 (9) of the statutes is created to read:

8 48.983 (9) MEMORANDUM OF UNDERSTANDING. The department shall enter into
9 a memorandum of understanding with the department of health services that
10 provides for collaboration between those departments in carrying out
11 evidence-based home visiting programs under sub. (4) (b) 1.

12 **SECTION 24.** 69.02 (2) (c) of the statutes is created to read:

13 69.02 (2) (c) The department shall promulgate rules establishing designations
14 of race and ethnicity to be used in reporting the race and ethnicity of a registrant
15 under s. 69.14 (1) (i). The designations shall be sufficiently detailed to enable
16 compilation and analysis of data related to births and birth outcomes among all
17 significant racial and ethnic populations in the state and to assist in the design and
18 evaluation of programs and policies designed to improve birth outcomes. The rules
19 shall also establish procedures designed to ensure that the racial and ethnic
20 designations included on each certificate of birth accurately reflect the race and
21 ethnicity of the registrant as directly reported by the registrant's mother.

22 **SECTION 25.** 69.14 (1) (i) of the statutes is created to read:

23 69.14 (1) (i) *Registrant's race.* A certificate of birth shall include the race and
24 ethnicity of the registrant, as reported by the mother of the registrant.

25 **SECTION 26.** 253.15 (2) of the statutes is amended to read:

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1 253.15 (2) INFORMATIONAL MATERIALS. The board shall purchase or prepare or
2 arrange with a nonprofit organization to prepare printed and audiovisual materials
3 relating to shaken baby syndrome and impacted babies. The materials shall include
4 information regarding the identification and prevention of shaken baby syndrome
5 and impacted babies, the grave effects of shaking or throwing on an infant or young
6 child, appropriate ways to manage crying, fussing, or other causes that can lead a
7 person to shake or throw an infant or young child, and a discussion of ways to reduce
8 the risks that can lead a person to shake or throw an infant or young child. The
9 materials shall be prepared in English, Spanish, and other languages spoken by a
10 significant number of state residents, as determined by the board. The board shall
11 make those written and audiovisual materials available to all hospitals, maternity
12 homes, and nurse-midwives licensed under s. 441.15 that are required to provide or
13 make available materials to parents under sub. (3) (a) 1., to the department and to
14 all county departments and nonprofit organizations that are required to provide the
15 materials to child care providers under sub. (4) (d), and to all school boards and
16 nonprofit organizations that are permitted to provide the materials to pupils in one
17 of grades 5 to 8 and in one of grades 10 to 12 under sub. (5). The board shall also make
18 those written materials available to all county departments and Indian tribes that
19 are providing evidence-based home visitation services under s. 48.983 (4) (b) 1. and
20 to all providers of prenatal, postpartum, and young child care coordination services
21 under s. 49.45 (44). The board may make available the materials required under this
22 subsection to be made available by making those materials available at no charge on
23 the board's Internet site.

24 **SECTION 27.** 253.15 (6) of the statutes is amended to read:

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1 253.15 (6) INFORMATION TO HOME VISITATION OR CARE COORDINATION SERVICES
2 RECIPIENTS. A county department or Indian tribe that is providing evidence-based
3 home visitation services under s. 48.983 (4) (b) 1. and a provider of prenatal,
4 postpartum, and young child care coordination services under s. 49.45 (44) shall
5 provide to a recipient of those services, without cost, a copy of the written materials
6 purchased or prepared under sub. (2) and an oral explanation of those materials.

7 **SECTION 28.** 253.15 (7) (e) of the statutes is amended to read:

8 253.15 (7) (e) A county department or Indian tribe that is providing
9 evidence-based home visitation services under s. 48.983 (4) (b) 1. and a provider of
10 prenatal, postpartum, and young child care coordination services under s. 49.45 (44)
11 is immune from liability for any damages resulting from any good faith act or
12 omission in providing or failing to provide the written materials and oral explanation
13 specified in sub. (6).

14 **SECTION 29.** 441.15 (1) (am) of the statutes is created to read:

15 441.15 (1) (am) “Nurse-midwife” means a person licensed under this section
16 to engage in the practice of nurse-midwifery.

17 **SECTION 30.** 441.15 (3) (c) of the statutes is amended to read:

18 441.15 (3) (c) The board shall promulgate rules necessary to administer this
19 section, including the establishment of appropriate limitations on the scope of the
20 practice of nurse-midwifery, the facilities in which such practice may occur, the
21 definition of “elective” for purposes of the prohibition in sub. (4m), and the granting
22 of temporary permits to practice nurse-midwifery pending qualification for
23 certification.

24 **SECTION 31.** 441.15 (4m) of the statutes is created to read:

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1 441.15 (4m) No nurse-midwife may perform an elective procedure intended
2 to induce labor in a pregnant woman before the completion of a gestational period
3 of 39 weeks unless the nurse-midwife has first obtained the informed consent of the
4 woman. A woman's consent is informed for purposes of this subsection only if she
5 receives timely information orally and in person from the nurse-midwife regarding
6 potential negative effects to the fetus of early delivery, including long-term learning
7 and behavioral problems.

8 **SECTION 32.** 448.02 (3) (a) of the statutes is amended to read:

9 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
10 and negligence in treatment by persons holding a license, certificate, or limited
11 permit granted by the board. An allegation that a physician has violated s. 253.10
12 (3), 448.30, 448.35, or 450.13 (2); or has failed to mail or present a medical
13 certification required under s. 69.18 (2) within 21 days after the pronouncement of
14 death of the person who is the subject of the required certificate; or that a physician
15 has failed at least 6 times within a 6-month period to mail or present a medical
16 certificate required under s. 69.18 (2) within 6 days after the pronouncement of death
17 of the person who is the subject of the required certificate is an allegation of
18 unprofessional conduct. Information contained in reports filed with the board under
19 s. 49.45 (2) (a) 12r., 50.36 (3) (b), 609.17, or 632.715, or under 42 CFR 1001.2005, shall
20 be investigated by the board. Information contained in a report filed with the board
21 under s. 655.045 (1), as created by 1985 Wisconsin Act 29, which is not a finding of
22 negligence or in a report filed with the board under s. 50.36 (3) (c) may, within the
23 discretion of the board, be used as the basis of an investigation of a person named in
24 the report. The board may require a person holding a license, certificate, or limited
25 permit to undergo, and may consider the results of, one or more physical, mental, or

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1 professional competency examinations if the board believes that the results of any
2 such examinations may be useful to the board in conducting its investigation.

3 **SECTION 33.** 448.35 of the statutes is created to read:

4 **448.35 Informed consent for certain elective procedures.** No physician
5 may perform an elective Caesarean section or an elective procedure intended to
6 induce labor in a pregnant woman before the completion of a gestational period of 39
7 weeks unless the physician has first obtained the informed consent of the woman.
8 A woman's consent is informed for purposes of this section only if she receives timely
9 information orally and in person from the physician regarding potential negative
10 effects to the fetus of early delivery, including long-term learning and behavioral
11 problems.

12 **SECTION 34.** 448.40 (2) (am) of the statutes is created to read:

13 448.40 (2) (am) Defining "elective" for purposes of s. 448.35 and implementing
14 that section.

15 (END)