



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 SENATE BILL 13

January 29, 2015 – Introduced by Senators FARROW, MOULTON, GUDEX, HARRIS DODD and LEMAHIEU, cosponsored by Representatives KOYENGA, ROHRKASTE, KULP, SPIROS and MURPHY. Referred to Committee on Health and Human Services.

1 **AN ACT to amend** 450.03 (1) (e), 450.08 (2) (b) and 450.11 (3); and **to create**
2 440.08 (2) (a) 38h. and 450.076 of the statutes; **relating to:** licensure of home
3 medical oxygen providers, providing an exemption from emergency rule
4 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, oxygen intended for medical use is a prescription drug that may generally be dispensed to a patient only by a pharmacist licensed by the Pharmacy Examining Board (board) or by a physician or other authorized practitioner. This bill establishes a licensure program to be administered by the board for persons that dispense medical oxygen directly to patients. Under the bill, such a person, if licensed by the board, is exempt from pharmacist licensing requirements for activities that fall within the scope of the license.

Under the bill, subject to certain exceptions, any person that provides home medical oxygen directly to patients must be licensed by the board. The bill requires the board to grant a home medical oxygen provider license to a person applying for the license that pays the applicable initial licensure fee and meets any other requirements established by the board by rule.

The bill requires the board to adopt rules implementing the bill's provisions, including rules governing the professional conduct of licensed home medical oxygen providers and their employees and agents. The bill authorizes emergency rule making.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 440.08 (2) (a) 38h. of the statutes is created to read:

2 440.08 (2) (a) 38h. Home medical oxygen provider: June 1 of each
3 even-numbered year.

4 **SECTION 2.** 450.03 (1) (e) of the statutes is amended to read:

5 450.03 (1) (e) Any person lawfully practicing within the scope of a license,
6 permit, registration, certificate, or certification granted to provide home medical
7 oxygen under s. 450.076, to practice professional or practical nursing or
8 nurse-midwifery under ch. 441, to practice dentistry or dental hygiene under ch.
9 447, to practice medicine and surgery under ch. 448, to practice optometry under ch.
10 449 or to practice veterinary medicine under ch. 453, or as otherwise provided by
11 statute.

12 **SECTION 3.** 450.076 of the statutes is created to read:

13 **450.076 Home medical oxygen providers; licensure. (1) DEFINITIONS.** In
14 this section:

15 (a) “Home medical oxygen provider” means a person that provides medical
16 oxygen directly to a consumer or patient in this state for that consumer’s or patient’s
17 own use.

18 (b) “Licensed provider” means a home medical oxygen provider licensed under
19 this section.

20 (c) “Medical oxygen” means oxygen that is a prescription drug.

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1 **(2) LICENSE REQUIRED.** (a) Except as provided in par. (b), no person may operate
2 as a home medical oxygen provider, use the title “home medical oxygen provider” or
3 any similar title, or hold itself out as a home medical oxygen provider unless the
4 person is a licensed provider.

5 (b) No license under this section is required for any of the following:

6 1. A person that holds a current credential, as defined in s. 440.01 (2) (a), and
7 is acting within the scope of that credential.

8 2. A hospital, excluding any home medical oxygen provider that is owned or
9 operated by a hospital.

10 3. An employee or agent of a licensed provider acting within the scope of his or
11 her employment or agency.

12 **(3) LICENSURE.** The board may grant a license to act as a home medical oxygen
13 provider to a person that does all of the following:

14 (a) Submits an application for licensure on a form provided by the board.

15 (b) Pays the fee specified in s. 440.05 (1).

16 (c) Satisfies any other requirements established by the board by rule.

17 **(4) RULES.** The board shall promulgate rules implementing this section. The
18 rules shall include rules governing the professional conduct of licensed providers and
19 their employees and agents.

20 **SECTION 4.** 450.08 (2) (b) of the statutes is amended to read:

21 450.08 **(2) (b)** A pharmacy, manufacturer’s ~~or~~, distributor’s, or home medical
22 oxygen provider’s license may be renewed by paying the applicable fee determined
23 by the department under s. 440.03 (9) (a) on or before the applicable renewal date
24 specified under s. 440.08 (2) (a).

25 **SECTION 5.** 450.11 (3) of the statutes is amended to read:

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1 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. Except as provided in sub. (1i)
2 (b) and s. 450.076, no person other than a pharmacist or practitioner or their agents
3 and employees as directed, supervised, and inspected by the pharmacist or
4 practitioner may prepare, compound, dispense, or prepare for delivery for a patient
5 any prescription drug.

SECTION 6. Nonstatutory provisions.

7 (1) EMERGENCY RULES. The pharmacy examining board may promulgate
8 emergency rules under section 227.24 of the statutes implementing section 450.076
9 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2)
10 of the statutes, emergency rules promulgated under this subsection remain in effect
11 until June 30, 2017, or the date on which permanent rules take effect, whichever is
12 sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the board is
13 not required to provide evidence that promulgating a rule under this subsection as
14 an emergency rule is necessary for the preservation of the public peace, health,
15 safety, or welfare and is not required to provide a finding of emergency for a rule
16 promulgated under this subsection.

17 (2) REGULATION OF HOME MEDICAL OXYGEN PROVIDERS. The pharmacy examining
18 board shall administer section 450.076 of the statutes, as created by this act, on a
19 case-by-case basis prior to the effective date of the rules promulgated under section
20 450.076 (4) of the statutes.

SECTION 7. Effective date.

22 (1) The treatment of section 450.076 (2) (a) of the statutes takes effect on May
23 1, 2015, or on the day after publication, whichever is later.

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(END)