

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/4dn
MDK:kmg:rs

October 29, 2001

Representative Underheim:

This version has the following changes:

1. The definition of “practice of nurse–midwifery” is revised. Note that I did not use all of the language that was suggested. The reason is that some of the language creates logical problems. First, it isn’t logical to define the practice as the provision of care consistent with standards of the American College of Nurse–Midwives. If you used such a definition, you would prohibit people from providing care that is consistent with the standards unless they are licensed. However, you would have no authority over people who are providing care that is inconsistent with the standards. As a result, someone who is practicing nurse–midwifery poorly (i.e., in a manner inconsistent with the standards) could argue that he or she is not practicing nurse–midwifery at all under the definition and, thus, is not subject to the board’s authority. Second, I did not use the suggested language regarding practicing “consistent with the education, training, and experience” of a nurse–midwife. Different people might have different levels of education, training, or experience. As a result, the definition would have different meanings for different people. I don’t think that’s your intent.
2. This version allows the board to promulgate rules defining the scope of practice, but only if the rules are consistent with the standards of the American College of Nurse–Midwives. I made this change because I assumed that it would achieve your intent regarding the reference to such standards in the definition of the practice of nurse–midwifery. I could be wrong, and you may have been trying to do something else. For example, you may want to require nurse–midwives to comply with the college’s standards for practicing nurse–midwifery. If so, I would recommend that the board promulgate rules that are consistent with the standards. Also, you would probably have to be more specific about which standards you are referring to.
3. A collaborating physician must have postgraduate training in obstetrics.
4. The proposed amendment of s. 441.15 (4) is revised.
5. This version has various changes regarding malpractice liability insurance. Regarding your reference to the federal Tort Claims Act, I think proposed s. 441.15 (5) (a) 3. satisfies your intent. Is that provision okay? Also, because it will take the board some time to promulgate the rules, I delayed the bill by about 6 months and allowed

the board to promulgate emergency rules. (The first day of the 7th month after publication is roughly equal to 6 months.) Is that okay?

Finally, on a point related to Item 5. above, I assume that nurse-midwives are not health care providers for purposes of the patients compensation fund under ch. 655, stats. If I'm wrong, the bill might have to be revised to make sure that the insurance requirements are consistent with ch. 655.

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