

By
MONDAY
10/29

D-NOTE

Forgot to
RM RM

2001 ASSEMBLY BILL

providing an exemption from emergency rule procedures, and granting rule-making authority

Ken. Col.

1 AN ACT to renumber and amend 441.15 (1); to amend 441.15 (2) (intro.),
2 441.15 (2) (a), 441.15 (2) (b), 441.15 (3) (b) and 441.15 (4); and to create 441.15
3 (1) (a) of the statutes; relating to: the practice of nurse-midwifery.

Analysis by the Legislative Reference Bureau

Under current law, no person may practice as a nurse-midwife unless he or she is issued a license by the board of nursing (board). "Nurse-midwifery" is defined as: 1) managing the care of a woman in normal childbirth; 2) providing prenatal, intrapartal, postpartal, and nonsurgical contraceptive methods; and 3) caring for a mother and newborn. Current law also requires a nurse-midwife to practice in a health care facility approved by the board and under the general supervision of a physician with training in obstetrics. Also, there must be a formal written agreement between the nurse-midwife and supervising physician. In addition, if a nurse-midwife discovers evidence of a complication that jeopardizes the health or life of a mother or newborn, a nurse-midwife must immediately refer the patient to the supervising physician or, if he or she is not available, to another physician.

This bill creates a new definition of "nurse-midwifery." Under the bill, "nurse-midwifery" means managing ~~primary care for women's health throughout the life span, including~~ postpartum care for newborns. As under current law, the bill prohibits a person from acting as a nurse-midwife without a license issued by the board. In addition, as under current law, a nurse-midwife must practice in an approved health care facility.

However, under the bill, a nurse-midwife must practice in collaboration with a physician, not under a physician's general supervision. The bill defines

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1A

INSERT 1B

family planning,
and gynecological
services

care related to pregnancy, childbirth

ASSEMBLY BILL

Also,

"collaboration" as a process that involves two or more health care professionals working together and, when necessary, in each other's presence. Additionally, "collaboration" is defined as a process in which each health care professional contributes his or her expertise to provide more comprehensive care than one health care professional alone can offer. The bill also requires a written agreement between the collaborating physician and nurse-midwife. ~~Finally, if a nurse-midwife discovers evidence of a complication, the nurse-midwife must consult with the collaborating physician, rather than immediately refer the patient to a physician.~~

INSERT 2A

or the physician's designee, or make a referral as specified in the written agreement.

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

INSERT 2-1

1 SECTION 1. 441.15 (1) of the statutes is renumbered 441.15 (1) (intro.) and
2 amended to read:

3 441.15 (1) (intro.) In this section, "the practice:

4

(b) "Practice of nurse-midwifery" means the management of care of a woman
5 in normal childbirth and the provision of prenatal, intrapartal, postpartal and
6 nonsurgical contraceptive methods and care for the mother and the newborn
7 primary care for women's health throughout the life span, including postpartum care

8 for newborns.

INSERT 2-8

9 SECTION 2. 441.15 (1) (a) of the statutes is created to read:

10 441.15 (1) (a) "Collaboration" means a process that involves 2 or more health
11 care professionals working together and, when necessary, in each other's presence,
12 and in which each health care professional contributes his or her expertise to provide
13 more comprehensive care than one health care professional alone can offer.

14 SECTION 3. 441.15 (2) (intro.) of the statutes is amended to read:

15 441.15 (2) (intro.) No person may engage in the practice of nurse-midwifery
16 unless each of the following conditions is satisfied:

17 SECTION 4. 441.15 (2) (a) of the statutes is amended to read:

ASSEMBLY BILL

INSERT 3-7

1 441.15 (2) (a) ~~Without a certificate issued~~ The person is issued a license by the
2 board under sub. (3) (a).

3 SECTION 5. 441.15 (2) (b) of the statutes is amended to read:

4 441.15 (2) (b) ~~Unless such~~ The practice occurs in a health care facility approved
5 by the board by rule under sub. (3) (c), under the general supervision of in
6 collaboration with a physician with training in obstetrics, and pursuant to a formal
7 written agreement with that physician.

postgraduate

8 SECTION 6. 441.15 (3) (b) of the statutes is amended to read:

9 441.15 (3) (b) On or before the applicable renewal date specified under s. 440.08
10 (2) (a), a person issued a ~~certificate~~ license under par. (a) and practicing
11 nurse-midwifery shall submit to the board on furnished blanks a statement giving
12 his or her name, residence, and other information as that the board requires by rule,
13 with the applicable renewal fee specified under s. 440.08 (2) (a).

INSERT 3-13

14 SECTION 7. 441.15 (4) of the statutes is amended to read:

15 441.15 (4) A nurse-midwife who discovers evidence that any aspect of care
16 involves any complication which jeopardizes the health or life of ~~the a~~ a newborn or
17 mother shall ~~immediately refer the patient to the supervising~~ consult with the
18 collaborating physician under sub. (2) (b) or, if that physician is unavailable, to
19 another physician.

INSERT 3-19

20 (END)

INSERT 3-20

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2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/4ins
MDK:.....

1

INSERT 1A: ✓

The bill also allows the board to promulgate rules that define the scope of practice of nurse-midwifery only if the rules are consistent with the standards of the American College of Nurse-Midwives or its successor.

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INSERT 1B: ✓

Also, the bill requires the physician's training in obstetrics to be postgraduate training.

3

INSERT 2A: ✓

Finally, the bill requires the board to consult with the commissioner of insurance and promulgate rules establishing the minimum amount of malpractice liability insurance that a nurse-midwife must have in effect. The rules must include requirements and procedures for waiving the rules for any period of time for which the commissioner of insurance determines that such insurance is not reasonably available. The following are not required to have the insurance: 1) federal, state, county, city, village, and town employees who practice nurse-midwifery within the scope of their employment; 2) certain health center employees who are immune from liability under federal law; and 3) employees who are covered by their employers' insurance in at least the minimum amount required under the rules. Also, a person who does not have the insurance may practice nurse-midwifery, but only if he or she notifies his or her patients that he or she does not have the insurance or that he or she has insurance in an amount that is less than the amount specified in the rules. If applicable, an applicant for a license or for renewal of a license must submit proof of the insurance to the board.

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

4

INSERT 2-1: ✓

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SECTION 1. 253.13 (1) of the statutes is amended to read:

6

253.13 (1) BLOOD TESTS. The attending physician or nurse ~~certified~~ licensed under s. 441.15 shall cause every infant born in each hospital or maternity home, prior to its discharge therefrom, to be subjected to blood tests for congenital and metabolic disorders, as specified in rules promulgated by the department. If the infant is born elsewhere than in a hospital or maternity home, the attending physician, nurse ~~certified~~ licensed under s. 441.15 or birth attendant who attended

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11

1 the birth shall cause the infant, within one week of birth, to be subjected to these
2 blood tests.

3 History: 1977 c. 160; 1983 a. 157; 1985 a. 255; 1987 a. 27; 1989 a. 31; 1991 a. 39, 177; 1993 a. 27 s. 316; Stats. 1993 s. 253.13; 1995 a. 27 s. 9126 (19).

INSERT 2-8:

4 women's health care related to pregnancy, childbirth, postpartum care for newborns,
5 family planning, and gynecological services

INSERT 3-7:

7 SECTION 2. 441.15 (2) (c) of the statutes is created to read:

8 441.15 (2) (c) Except as provided in sub. (5) (a), the person has in effect the
9 malpractice liability insurance required under the rules promulgated under sub. (5)
10 (b).

11 SECTION 3. 441.15 (3) (a) of the statutes is renumbered 441.15 (3) (a) (intro.)
12 and amended to read:

13 441.15 (3) (a) (intro.) The board shall grant a license to engage in the practice
14 of nurse-midwifery to any person licensed as a registered nurse under this
15 subchapter or in a party state, as defined in s. 441.50 (2) (j), who ~~meets~~ does all of the
16 following:

17 1. Submits evidence satisfactory to the board that he or she meets the
18 educational and training prerequisites established by the board for the practice of
19 nurse-midwifery ~~and who pays.~~

20 2. Pays the fee specified under s. 440.05 (1).

21 History: 1979 c. 317; 1983 a. 273; 1987 a. 264; 1991 a. 39; 1999 a. 22.

22 SECTION 4. 441.15 (3) (a) 3. of the statutes is created to read:

23 441.15 (3) (a) 3. If applicable, submits evidence satisfactory to the board that
24 he or she has in effect the malpractice liability insurance required under the rules
promulgated under sub. (5) (b).

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INSERT 3-13:

If applicable, the person shall also submit evidence satisfactory to the board that he or she has in effect the malpractice liability insurance required under the rules promulgated under sub. (5) (b).

INSERT 3-14:

SECTION 5. 441.15 (3) (c) of the statutes is amended to read:

441.15 (3) (c) The board shall promulgate rules necessary to administer this section, including the establishment of appropriate limitations on the scope of the practice of nurse-midwifery, the facilities in which such practice may occur and the granting of temporary permits to practice nurse-midwifery pending qualification for certification. The board may promulgate rules under this paragraph regarding scope of practice only if the rules are consistent with the standards of the American College of Nurse-Midwives or its successor.

History: 1979 c. 317; 1983 a. 273; 1987 a. 264; 1991 a. 39; 1999 a. 22.

INSERT 3-19:

or the physician's designee, or make a referral as specified in a written agreement under sub. (2) (b)

INSERT 3-20:

SECTION 6. 441.15 (5) of the statutes is created to read:

441.15 (5) (a) Except for any of the following, no person may practice nurse-midwifery unless he or she has in effect malpractice liability insurance in an amount that is at least the minimum amount specified in rules promulgated under par. (b):

1. A person who does not have in effect malpractice liability insurance in such an amount, if he or she notifies patients that he or she does not have any malpractice

1 liability insurance or that he or she has malpractice liability insurance in effect in
2 an amount that is less than the amount specified in the rules.

3 2. A federal, state, county, city, village, or town employee who practices
4 nurse-midwifery within the scope of his or her employment.

5 3. A person who is ~~deemed~~ ^{now considered} to be an employee of the federal ~~Public Health~~
6 ~~Service~~ under 42 USC 233 (g).

7 4. A person whose employer has in effect malpractice liability insurance that
8 provides coverage for the person in an amount that is at least the minimum amount
9 specified in the rules.

10 (b) In consultation with the commissioner of insurance, the board shall
11 promulgate rules establishing the minimum amount of malpractice liability
12 insurance that is required for a person to practice nurse-midwifery. The rules shall
13 include requirements and procedures for waiving the rules for any period of time for
14 which the commissioner of insurance determines that such insurance is not
15 reasonably available.

16 **SECTION 7. Nonstatutory provisions.**

17 (1) Using the procedure under section 227.24 of the statutes, the board of
18 nursing may promulgate the rules required under section 441.15 (5) (b) [✓] of the
19 statutes, as created by this act, for the period before permanent rules become
20 effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
21 of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the
22 board of nursing need not provide evidence of the necessity of preservation of the
23 public peace, health, safety, [✓] or welfare in promulgating rules under this subsection.

24 **SECTION 8. Effective date.**

1 (1) This act takes effect on the first day of the 7th month beginning after
2 publication.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/4dn

MDK: King

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.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

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.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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Emery, Lynn

From: Emery, Lynn
Sent: Tuesday, October 30, 2001 1:44 PM
To: Lonergan, Sandra
Subject: LRB-2791/4 & 4dn (attached as requested)

Lynn Emery

Lynn Emery - Program Asst. (PH. 608-266-3561)
(E-Mail: lynn.emery@legis.state.wi.us) (FAX: 608-264-6948)

Legislative Reference Bureau - Legal Section - Front Office
100 N. Hamilton Street - 5th Floor
Madison, WI 53703

Practice of nurse midwifery means the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of Nurse Midwives and the education, training and experience of the nurse midwife.

5

Tomorrow
PM

O-NOTE

RM
has been
run

2001 ASSEMBLY BILL

Gen. Cat.

1 **AN ACT to renumber and amend** 441.15 (1) and 441.15 (3) (a); **to amend** 253.13
 2 (1), 441.15 (2) (intro.), 441.15 (2) (a), 441.15 (2) (b), 441.15 (3) (b), 441.15 (3) (c)
 3 and 441.15 (4); and **to create** 441.15 (1) (a), 441.15 (2) (c), 441.15 (3) (a) 3. and
 4 441.15 (5) of the statutes; **relating to:** the practice of nurse-midwifery,
 5 providing an exemption from emergency rule procedures, and granting
 6 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, no person may practice as a nurse-midwife unless he or she is issued a license by the board of nursing (board). "Nurse-midwifery" is defined as: 1) managing the care of a woman in normal childbirth; 2) providing prenatal, intrapartal, postpartal, and nonsurgical contraceptive methods; and 3) caring for a mother and newborn. Current law also requires a nurse-midwife to practice in a health care facility approved by the board and under the general supervision of a physician with training in obstetrics. Also, there must be a formal written agreement between the nurse-midwife and supervising physician. In addition, if a nurse-midwife discovers evidence of a complication that jeopardizes the health or life of a mother or newborn, a nurse-midwife must immediately refer the patient to the supervising physician or, if he or she is not available, to another physician.

This bill creates a new definition of "nurse-midwifery." Under the bill, "nurse-midwifery" means ~~managing~~ women's health care ~~related to~~ pregnancy,

the management of

ASSEMBLY BILL

IN SEPT 2A

childbirth, postpartum care for newborns, family planning, and gynecological services. As under current law, the bill prohibits a person from acting as a nurse-midwife without a license issued by the board. In addition, as under current law, a nurse-midwife must practice in an approved health care facility. ~~The bill also allows the board to promulgate rules that define the scope of practice of nurse-midwifery only if the rules are consistent with the standards of the American College of Nurse-Midwives or its successor.~~

In addition,

However, under the bill, a nurse-midwife must practice in collaboration with a physician, not under a physician's general supervision. Also, the bill requires the physician's training in obstetrics to be postgraduate training. The bill defines "collaboration" as a process that involves two or more health care professionals working together and, when necessary, in each other's presence. Additionally, "collaboration" is defined as a process in which each health care professional contributes his or her expertise to provide more comprehensive care than one health care professional alone can offer. The bill also requires a written agreement between the collaborating physician and nurse-midwife. Also, if a nurse-midwife discovers evidence of a complication, the nurse-midwife must consult with the collaborating physician or the physician's designee, or make a referral as specified in the written agreement.

Finally, the bill requires the board to consult with the commissioner of insurance and promulgate rules establishing the minimum amount of malpractice liability insurance that a nurse-midwife must have in effect. The rules must include requirements and procedures for waiving the rules for any period of time for which the commissioner of insurance determines that such insurance is not reasonably available. The following are not required to have the insurance: 1) federal, state, county, city, village, and town employees who practice nurse-midwifery within the scope of their employment; 2) certain health center employees who are immune from liability under federal law; ~~and~~ 3) employees who are covered by their employers' insurance in at least the minimum amount required under the rules. Also, a person who does not have the insurance may practice nurse-midwifery, but only if he or she notifies his or her patients that he or she does not have the insurance or that he or she has insurance in an amount that is less than the amount specified in the rules. If applicable, an applicant for a license or for renewal of a license must submit proof of the insurance to the board.

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. 253.13 (1) of the statutes is amended to read:
- 2 253.13 (1) BLOOD TESTS. The attending physician or nurse certified licensed
- 3 under s. 441.15 shall cause every infant born in each hospital or maternity home,

and ~~then~~ 4) persons who do not provide care for patients

ASSEMBLY BILL

1 prior to its discharge therefrom, to be subjected to blood tests for congenital and
2 metabolic disorders, as specified in rules promulgated by the department. If the
3 infant is born elsewhere than in a hospital or maternity home, the attending
4 physician, nurse ~~certified~~ licensed under s. 441.15 or birth attendant who attended
5 the birth shall cause the infant, within one week of birth, to be subjected to these
6 blood tests.

7 SECTION 2. 441.15 (1) of the statutes is renumbered 441.15 (1) (intro.) and
8 amended to read:

9 441.15 (1) (intro.) In this section, ~~“the practice;~~

10 (b) “Practice of nurse–midwifery” means the management of care of a woman
11 in normal childbirth and the provision of prenatal, intrapartal, postpartal and
12 nonsurgical contraceptive methods and care for the mother and the newborn
13 women’s health care related to pregnancy, childbirth, postpartum care for newborns,
14 family planning, and gynecological services. INSERT 3-14

15 SECTION 3. 441.15 (1) (a) of the statutes is created to read:

16 441.15 (1) (a) “Collaboration” means a process that involves 2 or more health
17 care professionals working together and, when necessary, in each other’s presence,
18 and in which each health care professional contributes his or her expertise to provide
19 more comprehensive care than one health care professional alone can offer.

20 SECTION 4. 441.15 (2) (intro.) of the statutes is amended to read:

21 441.15 (2) (intro.) No person may engage in the practice of nurse–midwifery
22 unless each of the following conditions is satisfied:

23 SECTION 5. 441.15 (2) (a) of the statutes is amended to read:

24 441.15 (2) (a) ~~Without a certificate issued~~ The person is issued a license by the
25 board under sub. (3) (a).

ASSEMBLY BILL

1 **SECTION 6.** 441.15 (2) (b) of the statutes is amended to read:

2 441.15 (2) (b) ~~Unless such~~ The practice occurs in a health care facility approved
3 by the board by rule under sub. (3) (c), ~~under the general supervision of in~~
4 collaboration with a physician with postgraduate training in obstetrics, and
5 pursuant to a ~~formal~~ written agreement with that physician.

6 **SECTION 7.** 441.15 (2) (c) of the statutes is created to read:

7 441.15 (2) (c) Except as provided in sub. (5) (a), the person has in effect the
8 malpractice liability insurance required under the rules promulgated under sub. (5)
9 (b).

10 **SECTION 8.** 441.15 (3) (a) of the statutes is renumbered 441.15 (3) (a) (intro.)
11 and amended to read:

12 441.15 (3) (a) (intro.) The board shall grant a license to engage in the practice
13 of nurse-midwifery to any person licensed as a registered nurse under this
14 subchapter or in a party state, as defined in s. 441.50 (2) (j), who ~~meets~~ does all of the
15 following:

16 1. Submits evidence satisfactory to the board that he or she meets the
17 educational and training prerequisites established by the board for the practice of
18 nurse-midwifery ~~and who pays.~~

19 2. Pays the fee specified under s. 440.05 (1).

20 **SECTION 9.** 441.15 (3) (a) 3. of the statutes is created to read:

21 441.15 (3) (a) 3. If applicable, submits evidence satisfactory to the board that
22 he or she has in effect the malpractice liability insurance required under the rules
23 promulgated under sub. (5) (b).

24 **SECTION 10.** 441.15 (3) (b) of the statutes is amended to read:

ASSEMBLY BILL

1 441.15 (3) (b) On or before the applicable renewal date specified under s. 440.08
2 (2) (a), a person issued a ~~certificate~~ license under par. (a) and practicing
3 nurse–midwifery shall submit to the board on furnished blanks a statement giving
4 his or her name, residence, and other information as that the board requires by rule,
5 with the applicable renewal fee specified under s. 440.08 (2) (a). If applicable, the
6 person shall also submit evidence satisfactory to the board that he or she has in effect
7 the malpractice liability insurance required under the rules promulgated under sub.
8 (5) (b).

9 **SECTION 11.** 441.15 (3) (c) of the statutes is amended to read:

10 ~~441.15 (3) (c) The board shall promulgate rules necessary to administer this~~
11 ~~section, including the establishment of appropriate limitations on the scope of the~~
12 ~~practice of nurse–midwifery, the facilities in which such practice may occur and the~~
13 ~~granting of temporary permits to practice nurse–midwifery pending qualification for~~
14 ~~certification. The board may promulgate rules under this paragraph regarding scope~~
15 ~~of practice only if the rules are consistent with the standards of the American College~~
16 ~~of Nurse–Midwives or its successor.~~

17 **SECTION 12.** 441.15 (4) of the statutes is amended to read:

18 441.15 (4) A nurse–midwife who discovers evidence that any aspect of care
19 involves any complication which jeopardizes the health or life of the a newborn or
20 mother shall ~~immediately refer the patient to the supervising~~ consult with the
21 collaborating physician under sub. (2) (b) or, if that physician is unavailable, to
22 another physician or the physician's designee, or make a referral as specified in a
23 written agreement under sub. (2) (b).

24 **SECTION 13.** 441.15 (5) of the statutes is created to read:

ASSEMBLY BILL

1 441.15 (5) (a) Except for any of the following, no person may practice
2 nurse-midwifery unless he or she has in effect malpractice liability insurance in an
3 amount that is at least the minimum amount specified in rules promulgated under
4 par. (b):

5 1. A person who does not have in effect malpractice liability insurance in such
6 an amount, if he or she notifies patients that he or she does not have any malpractice
7 liability insurance or that he or she has malpractice liability insurance in effect in
8 an amount that is less than the amount specified in the rules.

9 2. A federal, state, county, city, village, or town employee who practices
10 nurse-midwifery within the scope of his or her employment.

11 3. A person who is considered to be an employee of the federal public health
12 service under 42 USC 233 (g).

13 4. A person whose employer has in effect malpractice liability insurance that
14 provides coverage for the person in an amount that is at least the minimum amount
15 specified in the rules. INSERT 6-15

16 (b) In consultation with the commissioner of insurance, the board shall
17 promulgate rules establishing the minimum amount of malpractice liability
18 insurance that is required for a person to practice nurse-midwifery. The rules shall
19 include requirements and procedures for waiving the rules for any period of time for
20 which the commissioner of insurance determines that such insurance is not
21 reasonably available.

SECTION 14. Nonstatutory provisions.

22 (1) Using the procedure under section 227.24 of the statutes, the board of
23 nursing may promulgate the rules required under section 441.15 (5) (b) of the
24 statutes, as created by this act, for the period before permanent rules become
25

ASSEMBLY BILL

1 effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
2 of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the
3 board of nursing need not provide evidence of the necessity of preservation of the
4 public peace, health, safety, or welfare in promulgating rules under this subsection.

5 **SECTION 15. Effective date.**

6 (1) This act takes effect on the first day of the 7th month beginning after
7 publication.

8 (END)

2001-2002 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/5ins
MDK:.....

1

INSERT 2A: ✓

consistent with the standards of practice of the American College of Nurse-Midwives
and the education, training, and experience of the nurse-midwife

2

INSERT 3-14: ✓

3

consistent with the standards of practice of the American College of Nurse-Midwives

4

and the education, training, and experience of the nurse-midwife

5

INSERT 6-15: ✓

6

5. A person who does not provide care for patients.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/5dn

MDK: /:....
King

Representative Underheim:

This version is identical to the previous version, except for the following:

1. The definition of "practice of nurse-midwifery" is revised. I understand that your intent is for the definition to depend on the standards of the American College of Nurse-Midwives and that you are aware that if those standards change, the definition will also change. Also, I understand your intent is for the definition to be dependent on the education, training, and experience of the individual who is practicing nurse-midwifery. The result is that an individual who does not have the education, training, or experience to perform a particular practice of nurse-midwifery may not perform that practice.
2. Section s. 441.15 (3) (c), stats., is not affected.
3. A new exception to the insurance requirement is in proposed s. 441.15 (5) (a) 5.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/5dn
MDK:kmg:jf

November 8, 2001

Representative Underheim:

This version is identical to the previous version, except for the following:

1. The definition of "practice of nurse-midwifery" is revised. I understand that your intent is for the definition to depend on the standards of the American College of Nurse-Midwives and that you are aware that if those standards change the definition will also change. Also, I understand that your intent is for the definition to be dependent on the education, training, and experience of the individual who is practicing nurse-midwifery. The result is that an individual who does not have the education, training, or experience to perform a particular practice of nurse-midwifery may not perform that practice.
2. Section s. 441.15 (3) (c), stats., is not affected.
3. A new exception to the insurance requirement is in proposed s. 441.15 (5) (a) 5.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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Kunkel, Mark

From: Lonergan, Sandra
Sent: Thursday, December 06, 2001 2:55 PM
To: Kunkel, Mark
Cc: Austin, David
Subject: Irb 2791/5

Hi Mark,

I'm beginning to think we'll never be finished with this bill! One last change please....delete the language that creates the informed consent exception for malpractice insurance. I'm sending the jacket back to you. Thank you very much. I appreciate your patience & assistance.

Sandy

6

Friday 12/7
PM

D-NOTE

RM NOT
RM

2001 ASSEMBLY BILL

Gen. Act

1 **AN ACT to renumber and amend** 441.15 (1) and 441.15 (3) (a); **to amend** 253.13
 2 (1), 441.15 (2) (intro.), 441.15 (2) (a), 441.15 (2) (b), 441.15 (3) (b) and 441.15 (4);
 3 and **to create** 441.15 (1) (a), 441.15 (2) (c), 441.15 (3) (a) 3. and 441.15 (5) of the
 4 statutes; **relating to:** the practice of nurse-midwifery, providing an exemption
 5 from emergency rule procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, no person may practice as a nurse-midwife unless he or she is issued a license by the board of nursing (board). "Nurse-midwifery" is defined as: 1) managing the care of a woman in normal childbirth; 2) providing prenatal, intrapartal, postpartal, and nonsurgical contraceptive methods; and 3) caring for a mother and newborn. Current law also requires a nurse-midwife to practice in a health care facility approved by the board and under the general supervision of a physician with training in obstetrics. Also, there must be a formal written agreement between the nurse-midwife and supervising physician. In addition, if a nurse-midwife discovers evidence of a complication that jeopardizes the health or life of a mother or newborn, a nurse-midwife must immediately refer the patient to the supervising physician or, if he or she is not available, to another physician.

This bill creates a new definition of "nurse-midwifery." Under the bill, "nurse-midwifery" means the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of

ASSEMBLY BILL

Nurse–Midwives and the education, training, and experience of the nurse–midwife. As under current law, the bill prohibits a person from acting as a nurse–midwife without a license issued by the board. In addition, as under current law, a nurse–midwife must practice in an approved health care facility.

In addition, under the bill, a nurse–midwife must practice in collaboration with a physician, not under a physician’s general supervision. Also, the bill requires the physician’s training in obstetrics to be postgraduate training. The bill defines “collaboration” as a process that involves two or more health care professionals working together and, when necessary, in each other’s presence. Additionally, “collaboration” is defined as a process in which each health care professional contributes his or her expertise to provide more comprehensive care than one health care professional alone can offer. The bill also requires a written agreement between the collaborating physician and nurse–midwife. Also, if a nurse–midwife discovers evidence of a complication, the nurse–midwife must consult with the collaborating physician or the physician’s designee, or make a referral as specified in the written agreement.

Finally, the bill requires the board to consult with the commissioner of insurance and promulgate rules establishing the minimum amount of malpractice liability insurance that a nurse–midwife must have in effect. The rules must include requirements and procedures for waiving the rules for any period of time for which the commissioner of insurance determines that such insurance is not reasonably available. The following are not required to have the insurance: 1) federal, state, county, city, village, and town employees who practice nurse–midwifery within the scope of their employment; 2) certain health center employees who are immune from liability under federal law; 3) employees who are covered by their employers’ insurance in at least the minimum amount required under the rules; and 4) persons who do not provide care for patients. Also, a person who does not have the insurance may practice nurse–midwifery, but only if he or she notifies his or her patients that he or she does not have the insurance or that he or she has insurance in an amount that is less than the amount specified in the rules. If applicable, an applicant for a license or for renewal of a license must submit proof of the insurance to the board.

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.** 253.13 (1) of the statutes is amended to read:
- 2 253.13 (1) **BLOOD TESTS.** The attending physician or nurse ~~certified~~ licensed
- 3 under s. 441.15 shall cause every infant born in each hospital or maternity home,
- 4 prior to its discharge therefrom, to be subjected to blood tests for congenital and

ASSEMBLY BILL

1 metabolic disorders, as specified in rules promulgated by the department. If the
2 infant is born elsewhere than in a hospital or maternity home, the attending
3 physician, nurse ~~certified~~ licensed under s. 441.15 or birth attendant who attended
4 the birth shall cause the infant, within one week of birth, to be subjected to these
5 blood tests.

6 **SECTION 2.** 441.15 (1) of the statutes is renumbered 441.15 (1) (intro.) and
7 amended to read:

8 441.15 (1) (intro.) In this section, “the practice:

9 (b) “Practice of nurse–midwifery” means the management of care of a woman
10 in normal childbirth and the provision of prenatal, intrapartal, postpartal and
11 nonsurgical contraceptive methods and care for the mother and the newborn
12 women’s health care, pregnancy, childbirth, postpartum care for newborns, family
13 planning, and gynecological services consistent with the standards of practice of the
14 American College of Nurse–Midwives and the education, training, and experience
15 of the nurse–midwife.

16 **SECTION 3.** 441.15 (1) (a) of the statutes is created to read:

17 441.15 (1) (a) “Collaboration” means a process that involves 2 or more health
18 care professionals working together and, when necessary, in each other’s presence,
19 and in which each health care professional contributes his or her expertise to provide
20 more comprehensive care than one health care professional alone can offer.

21 **SECTION 4.** 441.15 (2) (intro.) of the statutes is amended to read:

22 441.15 (2) (intro.) No person may engage in the practice of nurse–midwifery
23 unless each of the following conditions is satisfied:

24 **SECTION 5.** 441.15 (2) (a) of the statutes is amended to read:

ASSEMBLY BILL

1 441.15 (2) (a) ~~Without a certificate issued~~ The person is issued a license by the
2 board under sub. (3) (a).

3 **SECTION 6.** 441.15 (2) (b) of the statutes is amended to read:

4 441.15 (2) (b) ~~Unless such~~ The practice occurs in a health care facility approved
5 by the board by rule under sub. (3) (c), under the general supervision of in
6 collaboration with a physician with postgraduate training in obstetrics, and
7 pursuant to a ~~formal~~ written agreement with that physician.

8 **SECTION 7.** 441.15 (2) (c) of the statutes is created to read:

9 441.15 (2) (c) Except as provided in sub. (5) (a), the person has in effect the
10 malpractice liability insurance required under the rules promulgated under sub. (5)
11 (b).

12 **SECTION 8.** 441.15 (3) (a) of the statutes is renumbered 441.15 (3) (a) (intro.)
13 and amended to read:

14 441.15 (3) (a) (intro.) The board shall grant a license to engage in the practice
15 of nurse-midwifery to any person licensed as a registered nurse under this
16 subchapter or in a party state, as defined in s. 441.50 (2) (j), who ~~meets~~ does all of the
17 following:

18 1. Submits evidence satisfactory to the board that he or she meets the
19 educational and training prerequisites established by the board for the practice of
20 nurse-midwifery and who pays.

21 2. Pays the fee specified under s. 440.05 (1).

22 **SECTION 9.** 441.15 (3) (a) 3. of the statutes is created to read:

23 441.15 (3) (a) 3. If applicable, submits evidence satisfactory to the board that
24 he or she has in effect the malpractice liability insurance required under the rules
25 promulgated under sub. (5) (b).

ASSEMBLY BILL

1 SECTION 10. 441.15 (3) (b) of the statutes is amended to read:

2 441.15 (3) (b) On or before the applicable renewal date specified under s. 440.08
3 (2) (a), a person issued a ~~certificate~~ license under par. (a) and practicing
4 nurse-midwifery shall submit to the board on furnished blanks a statement giving
5 his or her name, residence, and other information as that the board requires by rule,
6 with the applicable renewal fee specified under s. 440.08 (2) (a). If applicable, the
7 person shall also submit evidence satisfactory to the board that he or she has in effect
8 the malpractice liability insurance required under the rules promulgated under sub.
9 (5) (b).

10 SECTION 11. 441.15 (4) of the statutes is amended to read:

11 441.15 (4) A nurse-midwife who discovers evidence that any aspect of care
12 involves any complication which jeopardizes the health or life of ~~the~~ a newborn or
13 mother shall ~~immediately refer the patient to the supervising~~ consult with the
14 collaborating physician under sub. (2) (b) or, if that physician is unavailable, to
15 another physician or the physician's designee, or make a referral as specified in a
16 written agreement under sub. (2) (b).

17 SECTION 12. 441.15 (5) of the statutes is created to read:

18 441.15 (5) (a) Except for any of the following, no person may practice
19 nurse-midwifery unless he or she has in effect malpractice liability insurance in an
20 amount that is at least the minimum amount specified in rules promulgated under
21 par. (b):

22 1. A person who does not have in effect malpractice liability insurance in such
23 an amount, if he or she notifies patients that he or she does not have any malpractice
24 liability insurance or that he or she has malpractice liability insurance in effect in
25 an amount that is less than the amount specified in the rules.

ASSEMBLY BILL

1 ~~1.2.~~ A federal, state, county, city, village, or town employee who practices
2 nurse-midwifery within the scope of his or her employment.

3 ~~2.08.~~ A person who is considered to be an employee of the federal public health
4 service under 42 USC 233 (g).

5 ~~3.04.~~ A person whose employer has in effect malpractice liability insurance that
6 provides coverage for the person in an amount that is at least the minimum amount
7 specified in the rules.

8 ~~4.05.~~ A person who does not provide care for patients.

9 (b) In consultation with the commissioner of insurance, the board shall
10 promulgate rules establishing the minimum amount of malpractice liability
11 insurance that is required for a person to practice nurse-midwifery. The rules shall
12 include requirements and procedures for waiving the rules for any period of time for
13 which the commissioner of insurance determines that such insurance is not
14 reasonably available.

SECTION 13. Nonstatutory provisions.

15 (1) Using the procedure under section 227.24 of the statutes, the board of
16 nursing may promulgate the rules required under section 441.15 (5) (b) of the
17 statutes, as created by this act, for the period before permanent rules become
18 effective, but not to exceed the period authorized under section 227.24 (1) (c) and (2)
19 of the statutes. Notwithstanding section 227.24 (1) (a) and (2) (b) of the statutes, the
20 board of nursing need not provide evidence of the necessity of preservation of the
21 public peace, health, safety, or welfare in promulgating rules under this subsection.
22

23 **SECTION 14. Effective date.**

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/6dn

MDK:.....

King

Representative Underheim:

This version is identical to the previous version, except that it deletes the informed consent exception for malpractice liability insurance.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2791/6dn
MDK:kmg:pg

December 7, 2001

Representative Underheim:

This version is identical to the previous version, except that it deletes the informed-consent exception for malpractice liability insurance.

Mark D. Kunkel
Legislative Attorney
Phone: (608) 266-0131
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Barman, Mike

From: Uecker, Deborah
Sent: Tuesday, January 08, 2002 12:48 PM
To: Gorlen, Gary - DRL
Cc: Rep.Underheim; LRB.Legal
Subject: RE: FES Request on 01-2791

Gary, legislators can contact LRB directly to request that a fiscal estimate be prepared on a draft drafted as needing a fiscal estimate. I have copied LRB's legal section so they are aware of Rep. Underheim's request. LRB will check to see if the draft is drafted as needing a fiscal estimate and will set up a fiscal estimate request on the Fiscal Estimate System (FES) and send me the PDF file of the draft. Once I have LRB's request and the PDF file, I can send out fiscal estimate assignments through FES to agencies.

FES website:
<http://fes.doa.state.wi.us/>

Deborah A. Uecker

Executive Policy and Budget Analyst
State Budget Office
Email: deborah.uecker@doa.state.wi.us
Phone: 608-267-0371
Fax: 608-267-0372

-----Original Message-----

From: Gorlen, Gary - DRL
Sent: Tuesday, January 08, 2002 12:18 PM
To: Uecker, Deborah
Subject: FES Request

Hi Deborah. My first time through this process, so maybe a silly question.

Rep. Underheim has requested directly that we prepare a fiscal estimate on LRB 2791 in preparation for a hearing that he has scheduled for 10:00 AM, Jan. 15. I haven't gotten anything through FES....so how should I proceed?

Thanks
Gary