

2005 ASSEMBLY BILL 385

1 **AN ACT to amend** 102.07 (7m), 165.25 (6) (b), 440.75 (5), 441.06 (4), 441.10 (3)
2 (c), 441.15 (2) (intro.), 447.03 (1) (intro.), 448.03 (3) (a) (intro.), 448.03 (3) (b),
3 448.03 (3) (e), 448.61, 448.66, 453.05 (1), 455.02 (1m), 455.02 (3m) and 457.04
4 (intro.); and **to create** 102.29 (10), 166.23 (2m), 250.042 (4), 441.15 (5) (a) 5.,
5 448.03 (2) (p), 450.03 (1) (h), 893.82 (2) (d) 1n. and 895.46 (5) (am) of the
6 statutes; **relating to:** designation of state agency status for certain health care
7 providers, behavioral health providers, pupil services providers, or substance
8 abuse prevention providers who provide services during a state of emergency
9 related to public health or a state of emergency declared by a city, village, or
10 town.

Analysis by the Legislative Reference Bureau

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

ASSEMBLY BILL 385**SECTION 1**

1 **SECTION 1.** 102.07 (7m) of the statutes is amended to read:

2 102.07 **(7m)** An employee, volunteer, or member of an emergency management
3 unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and
4 a member of a regional emergency response team who is acting under a contract
5 under s. 166.215 (1) is an employee of the state for purposes of this chapter as
6 provided in s. 166.215 (4), and a behavioral health provider, health care provider,
7 pupil services provider, or substance abuse prevention provider who is providing
8 volunteer, unpaid behavioral health services, health care services, pupil services, or
9 substance abuse prevention services on behalf of a health care facility during a state
10 of emergency is an employee of the state for purposes of this chapter as provided in
11 s. 250.042 (4) (b).

12 **SECTION 2.** 102.29 (10) of the statutes is created to read:

13 102.29 **(10)** No behavioral health provider, health care provider, pupil services
14 provider, or substance abuse prevention provider who, under s. 250.042 (4) (b), is
15 considered to be an employee of the state for purposes of worker's compensation
16 coverage while providing volunteer, unpaid behavioral health services, health care
17 services, pupil services, or substance abuse prevention services on behalf of a health
18 care facility during a state of emergency and who makes a claim for compensation
19 under this chapter may make a claim or bring an action in tort against the health
20 care facility that accepted those services.

21 **SECTION 3.** 165.25 (6) (b) of the statutes is amended to read:

22 165.25 **(6)** (b) Volunteer health care providers who provide services under s.
23 146.89 or 250.042 (4) and volunteer behavioral health providers, pupil services
24 providers, and substance abuse prevention providers who provide services under s.
25 250.042 (4) are, for the provision of those services, covered by this section and shall

ASSEMBLY BILL 385

1 be considered agents of the department of health and family services for purposes of
2 determining which agency head may request the attorney general to appear and
3 defend them.

4 **SECTION 3m.** 166.23 (2m) of the statutes is created to read:

5 166.23 **(2m)** If the governing body of a city, village, or town declares an
6 emergency under sub. (1) and intends to make use of behavioral health providers,
7 health care providers, pupil services providers, or substance abuse prevention
8 providers, as specified in s. 250.042 (4), the governing body or its agent shall, as soon
9 as possible, notify the department of health and family services of this intent.

10 **SECTION 4.** 250.042 (4) of the statutes is created to read:

11 250.042 **(4)** (a) In this subsection:

12 1. “Behavioral health provider” means an individual who, at any time within
13 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23,
14 has, under chapter 455, been licensed as a psychologist or has, under ch. 457, been
15 certified as a social worker or licensed as a clinical social worker, a marriage and
16 family therapist, or a professional counselor.

17 2. “Health care facility” has the meaning given in s. 150.84 (2).

18 3. “Health care provider” means an individual who, at any time within 10 years
19 before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has met
20 requirements for a nurse’s assistant under s. 146.40 (2) (a), (b), (bm), (c), (e), (em),
21 (f), or (g), has been licensed as a physician, a physician assistant, or a podiatrist
22 under ch. 448, licensed as a registered nurse, licensed practical nurse, or
23 nurse–midwife under ch. 441, licensed as a dentist under ch. 447, licensed as a
24 pharmacist under ch. 450, licensed as a veterinarian under ch. 453, or has been
25 certified as a respiratory care practitioner under ch. 448.

ASSEMBLY BILL 385**SECTION 4**

1 4. “Pupil services provider” means an individual who, at any time within 10
2 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has
3 been licensed as a school counselor, school psychologist, or school social worker under
4 ch. PI 3, 2004 Wis. Adm. Code, or s. PI 34.31, Wis. Adm. Code.

5 5. “Substance abuse prevention provider” means an individual who, at any
6 time within 10 years before a state of emergency is declared under s. 166.03 (1) (b)
7 1. or 166.23, has been certified as a counselor, supervisor, or specialist under s. HFS
8 75.02 (11) and (84), 2005 Wis. Adm. Code, or has been certified as a substance abuse
9 counselor, clinical supervisor, or prevention specialist under s. 440.75.

10 (b) A behavioral health provider, health care provider, pupil services provider,
11 or substance abuse prevention provider who, during a state of emergency declared
12 under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health services, health care
13 services, pupil services, or substance abuse prevention services for which the
14 behavioral health provider, health care provider, pupil services provider, or
15 substance abuse prevention provider has been licensed or certified or, as a nurse’s
16 assistant, has met requirements, is, for the provision of these services a state agent
17 of the department for purposes of ss. 165.25 (6), 893.82, and 895.46 and is an
18 employee of the state for purposes of worker’s compensation benefits. The behavioral
19 health services, health care services, pupil services, or substance abuse prevention
20 services shall be provided on behalf of a health care facility on a voluntary, unpaid
21 basis, except that the behavioral health provider, health care provider, pupil services
22 provider, or substance abuse prevention provider may accept reimbursement for
23 travel, lodging, and meals.

24 (c) Paragraph (b) does not apply to any of the following:

ASSEMBLY BILL 385

1 1. A physician or physician assistant whose license has been limited,
2 suspended, or revoked under s. 448.02 (3) (c).

3 2. A respiratory care practitioner whose certificate has been limited,
4 suspended, or revoked under s. 448.02 (3) (c).

5 3. A registered nurse, licensed practical nurse, or nurse–midwife whose license
6 has been revoked, limited, suspended, or denied renewal under s. 441.07 (1).

7 4. A pharmacist whose license has been revoked, limited, suspended, or denied
8 renewal under s. 450.10 (1) (b).

9 5. A podiatrist whose license has been limited, suspended, or revoked under s.
10 448.675 (1) or suspended under s. 448.675 (2).

11 6. A dentist whose license has been limited, suspended, or revoked under s.
12 447.07.

13 7. A veterinarian whose license has been limited, suspended, or revoked under
14 s. 453.07.

15 8. A social worker, advanced practice social worker, or independent social
16 worker whose certificate has been revoked, limited, suspended, or denied renewal
17 under s. 457.26, or a clinical social worker, marriage and family therapist, or
18 professional counselor whose license has been revoked, limited, suspended, or denied
19 renewal under s. 457.26.

20 9. A psychologist whose license has been revoked, limited, suspended, or denied
21 renewal under s. 455.09.

22 10. A school counselor, school psychologist, or school social worker whose
23 license has been denied or revoked under ch. PI 3, 2004 Wis. Adm. Code, or s. PI
24 34.35, Wis. Adm. Code.

ASSEMBLY BILL 385**SECTION 4**

1 11. A counselor, supervisor, or specialist whose certification has been denied or
2 revoked by the Wisconsin Certification Board, Inc., or a substance abuse counselor,
3 clinical supervisor, or prevention specialist whose certification has been revoked,
4 limited, suspended, or denied under s. 440.75 (6).

5 12. A nurse's assistant whose name is listed under s. 146.40 (4g) (a) 2.

6 **SECTION 4m.** 440.75 (5) of the statutes, as created by 2005 Wisconsin Act ...
7 (Assembly Bill 100), is amended to read:

8 440.75 (5) CERTIFICATION REQUIRED. Except as provided in sub. (3m) and s.
9 250.042 (4) (b), no person may represent himself or herself to the public as a
10 substance abuse counselor, clinical supervisor, or prevention specialist or a certified
11 substance abuse counselor, clinical supervisor, or prevention specialist or use in
12 connection with his or her name a title or description that conveys the impression
13 that he or she is a substance abuse counselor, clinical supervisor, or prevention
14 specialist or a certified substance abuse counselor, clinical supervisor, or prevention
15 specialist unless he or she is so certified under sub. (2).

16 **SECTION 5.** 441.06 (4) of the statutes is amended to read:

17 441.06 (4) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may practice
18 or attempt to practice professional nursing, nor use the title, letters, or anything else
19 to indicate that he or she is a registered or professional nurse unless he or she is
20 licensed under this section. ~~No~~ Except as provided in s. 250.042 (4) (b), no person not
21 so licensed may use in connection with his or her nursing employment or vocation
22 any title or anything else to indicate that he or she is a trained, certified or graduate
23 nurse. This subsection does not apply to any person who is licensed to practice
24 nursing by a jurisdiction, other than this state, that has adopted the nurse licensure
25 compact under s. 441.50.

ASSEMBLY BILL 385

1 **SECTION 6.** 441.10 (3) (c) of the statutes is amended to read:

2 441.10 **(3)** (c) No license is required for practical nursing, but, except as
3 provided in s. 250.042 (4) (b), no person without a license may hold himself or herself
4 out as a licensed practical nurse or licensed attendant, use the title or letters
5 “Trained Practical Nurse” or “T.P.N.”, “Licensed Practical Nurse” or “L.P.N.”,
6 “Licensed Attendant” or “L.A.”, “Trained Attendant” or “T.A.”, or otherwise seek to
7 indicate that he or she is a licensed practical nurse or licensed attendant. No licensed
8 practical nurse or licensed attendant may use the title, or otherwise seek to act as
9 a registered, licensed, graduate or professional nurse. Anyone violating this
10 subsection shall be subject to the penalties prescribed by s. 441.13. The board shall
11 grant without examination a license as a licensed practical nurse to any person who
12 was on July 1, 1949, a licensed attendant. This paragraph does not apply to any
13 person who is licensed to practice practical nursing by a jurisdiction, other than this
14 state, that has adopted the nurse licensure compact under s. 441.50.

15 **SECTION 7.** 441.15 (2) (intro.) of the statutes is amended to read:

16 441.15 **(2)** (intro.) No Except as provided in s. 250.042 (4) (b), no person may
17 engage in the practice of nurse–midwifery unless each of the following conditions is
18 satisfied:

19 **SECTION 8.** 441.15 (5) (a) 5. of the statutes is created to read:

20 441.15 **(5)** (a) 5. The provision of services by a nurse–midwife under s. 250.042
21 (4) (b).

22 **SECTION 9.** 447.03 (1) (intro.) of the statutes is amended to read:

23 447.03 **(1)** DENTISTS. (intro.) Except as provided under sub. (3) and s. 250.042
24 (4) (b), no person may do any of the following unless he or she is licensed to practice
25 dentistry under this chapter:

ASSEMBLY BILL 385**SECTION 10**

1 **SECTION 10.** 448.03 (2) (p) of the statutes is created to read:

2 448.03 (2) (p) The provision of services by a health care provider under s.
3 250.042 (4) (b).

4 **SECTION 11.** 448.03 (3) (a) (intro.) of the statutes is amended to read:

5 448.03 (3) (a) (intro.) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may
6 use or assume the title “doctor of medicine” or append to the person’s name the letters
7 “M.D.” unless one of the following applies:

8 **SECTION 12.** 448.03 (3) (b) of the statutes is amended to read:

9 448.03 (3) (b) ~~No~~ Except as provided in s. 250.042 (4) (b), no person not
10 possessing the degree of doctor of osteopathy may use or assume the title “doctor of
11 osteopathy” or append to the person’s name the letters “D.O.”.

12 **SECTION 13.** 448.03 (3) (e) of the statutes is amended to read:

13 448.03 (3) (e) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may
14 designate himself or herself as a “physician assistant” or use or assume the title
15 “physician assistant” or append to the person’s name the words or letters “physician
16 assistant” or “P.A.” or any other titles, letters or designation which represents or may
17 tend to represent the person as a physician assistant unless he or she is licensed as
18 a physician assistant by the board.

19 **SECTION 14.** 448.61 of the statutes is amended to read:

20 **448.61 License required.** Except as provided in s. ~~ss.~~ 250.042 (4) (b) and
21 448.62, no person may practice podiatry, designate himself or herself as a podiatrist,
22 use or assume the title “doctor of surgical chiropody”, “doctor of podiatry” or “doctor
23 of podiatric medicine”, or append to the person’s name the words or letters “doctor”,
24 “Dr.”, “D.S.C.”, “D.P.M.”, “foot doctor”, “foot specialist” or any other title, letters or

ASSEMBLY BILL 385

1 designation which represents or may tend to represent the person as a podiatrist
2 unless the person is licensed under this subchapter.

3 **SECTION 15.** 448.66 of the statutes is amended to read:

4 **448.66 Malpractice.** A Except as provided in s. 250.042 (4) (b), a person who
5 practices podiatry without having a license under this subchapter may be liable for
6 malpractice, and his or her ignorance of a duty ordinarily performed by a licensed
7 podiatrist shall not limit his or her liability for an injury arising from his or her
8 practice of podiatry.

9 **SECTION 16.** 450.03 (1) (h) of the statutes is created to read:

10 450.03 **(1)** (h) The provision of services by a health care provider under s.
11 250.042 (4) (b).

12 **SECTION 17.** 453.05 (1) of the statutes is amended to read:

13 453.05 **(1)** Except as provided under sub. (2) and s. 250.042 (4) (b), no person
14 may offer to practice, advertise to practice or practice veterinary medicine, or use,
15 in connection with his or her name, any title or description which may convey the
16 impression that he or she is a veterinarian, without a license or temporary permit
17 from the examining board. For purposes of this subsection, a person who makes
18 extra-label use of a drug on an animal without a prescription or in any manner not
19 authorized by that prescription is considered to be practicing veterinary medicine.

20 **SECTION 17g.** 455.02 (1m) of the statutes is amended to read:

21 455.02 **(1m)** LICENSE REQUIRED TO PRACTICE. No Except as provided in s. 250.042
22 (4) (b), no person may engage in the practice of psychology or the private practice of
23 school psychology, or attempt to do so or make a representation as authorized to do
24 so, without a license issued by the examining board.

25 **SECTION 17j.** 455.02 (3m) of the statutes is amended to read:

ASSEMBLY BILL 385**SECTION 17j**

1 455.02 **(3m)** USE OF TITLES. ~~Only~~ Except as provided in s. 250.042 (4) (b), only
2 an individual licensed under s. 455.04 (1) may use the title “psychologist” or any
3 similar title or state or imply that he or she is licensed to practice psychology, and
4 only an individual licensed under s. 455.04 (4) may use the title “private practice
5 school psychologist” or any similar title or state or imply that he or she is licensed
6 to engage in the private practice of school psychology. ~~Only~~ Except as provided in s.
7 250.042 (4) (b), only an individual licensed under s. 455.04 (1) or (4) may represent
8 himself or herself to the public by any description of services incorporating the word
9 “psychological” or “psychology”.

10 **SECTION 17m.** 457.04 (intro.) of the statutes is amended to read:

11 **457.04 Prohibited practices.** (intro.) ~~Except as provided in s. ss. 250.042~~
12 (4) (b) and 457.02, no person may do any of the following:

13 **SECTION 18.** 893.82 (2) (d) 1n. of the statutes is created to read:

14 893.82 **(2)** (d) 1n. A behavioral health provider, health care provider, pupil
15 services provider, or substance abuse prevention provider who provides services
16 under s. 250.042 (4), for the provision of those services.

17 **SECTION 19.** 895.46 (5) (am) of the statutes is created to read:

18 895.46 **(5)** (am) A behavioral health provider, health care provider, pupil
19 services provider, or substance abuse prevention provider who provides services
20 under s. 250.042 (4).

21 **SECTION 19m. Effective dates.** This act takes effect on the day after
22 publication, except as follows:

23 (1) The treatment of section 440.75 (5) of the statutes takes effect on the day
24 after publication or on the date on which the treatment of subchapter VII of chapter

