

2005 Senate Bill 477

Date of enactment: **April 10, 2006**  
Date of publication\*: **April 20, 2006**

## 2005 WISCONSIN ACT 292

AN ACT *to amend* 440.042 (1), 441.15 (2) (intro.) and 448.03 (2) (a); and *to create* 440.08 (2) (a) 46w., subchapter XI of chapter 440 [precedes 440.980] and 441.15 (2m) of the statutes; **relating to:** licensing midwives, granting rule-making authority, and providing a penalty.

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

**SECTION 1.** 440.042 (1) of the statutes is amended to read:

440.042 (1) The secretary may appoint persons or advisory committees to advise the department and the boards, examining boards, and affiliated credentialing boards in the department on matters relating to the regulation of credential holders. The secretary shall appoint an advisory committee to advise the department on matters relating to ~~carrying out the duties specified in s. 440.982 and~~ making investigations, conducting hearings, and taking disciplinary action under s. 440.986. A person or an advisory committee member appointed under this subsection shall serve without compensation, but may be reimbursed for his or her actual and necessary expenses incurred in the performance of his or her duties.

**SECTION 1m.** 440.08 (2) (a) 46w. of the statutes is created to read:

440.08 (2) (a) 46w. Midwife, licensed: July 1 of each even-numbered year; \$56.

**SECTION 2.** Subchapter XI of chapter 440 [precedes 440.980] of the statutes is created to read:

### CHAPTER 440 SUBCHAPTER XI LICENSED MIDWIVES

**440.980 Definitions.** In this subchapter:

(1) “Health care provider” means a health care provider, as defined in s. 146.81 (1), a person licensed or issued a training permit as an emergency medical technician under s. 146.50, or a person certified as a first responder under s. 146.50 (8).

(2) “Licensed midwife” means a person who has been granted a license under this subchapter to engage in the practice of midwifery.

(3) “Practice of midwifery” means providing maternity care during the antepartum, intrapartum, and postpartum periods.

**440.981 Use of title; penalty.** (1) No person may use the title “licensed midwife,” describe or imply that he or she is a licensed midwife, or represent himself or herself as a licensed midwife unless the person is granted a license under this subchapter or is licensed as a nurse-midwife under s. 441.15.

(2) Any person who violates sub. (1) may be fined not more than \$250, imprisoned not more than 3 months, or both.

**440.982 Licensure.** (1) No person may engage in the practice of midwifery unless the person is granted a license under this subchapter, is granted a temporary permit pursuant to a rule promulgated under s. 440.984 (2m), or is licensed as a nurse-midwife under s. 441.15.

\* Section 991.11, WISCONSIN STATUTES 2003-04 : Effective date of acts. “Every act and every portion of an act enacted by the legislature over the governor’s partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated” by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(1m) Except as provided in sub. (2), the department may grant a license to a person under this subchapter if all of the following apply:

(a) The person submits an application for the license to the department on a form provided by the department.

(b) The person pays the fee specified in s. 440.05 (1).

(c) The person submits evidence satisfactory to the department of one of the following:

1. The person holds a valid certified professional midwife credential granted by the North American Registry of Midwives or a successor organization.

2. The person holds a valid certified nurse-midwife credential granted by the American College of Nurse Midwives or a successor organization.

(2) The department may not grant a license under this subchapter to any person who has been convicted of an offense under s. 940.22, 940.225, 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

**440.983 Renewal of licensure.** (1) The renewal date for licenses granted under this subchapter is specified in s. 440.08 (2) (a). Renewal applications shall be submitted to the department on a form provided by the department and shall include the renewal fee specified in s. 440.08 (2) (a).

(2) A licensed midwife shall, at the time that he or she applies for renewal of a license under sub. (1), submit proof satisfactory to the department that he or she holds a valid certified professional midwife credential from the North American Registry of Midwives or a successor organization or a valid certified nurse-midwife credential from the American College of Nurse Midwives or a successor organization.

**440.984 Rule making.** (1) The department shall promulgate rules necessary to administer this subchapter. Except as provided in subs. (2), (2m), and (3), any rules regarding the practice of midwifery shall be consistent with standards regarding the practice of midwifery established by the National Association of Certified Professional Midwives or a successor organization.

(2) The rules shall allow a licensed midwife to administer oxygen during the practice of midwifery.

(2m) The rules shall provide for the granting of temporary permits to practice midwifery pending qualification for licensure.

(3) The rules may allow a midwife to administer, during the practice of midwifery, oxytocin (Pitocin) as a postpartum antihemorrhagic agent, intravenous fluids for stabilization, vitamin K, eye prophylactics, and other drugs or procedures as determined by the department.

(4) The rules may not do any of the following:

(a) Require a licensed midwife to have a nursing degree or diploma.

(b) Require a licensed midwife to practice midwifery under the supervision of, or in collaboration with, another health care provider.

(c) Require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider.

(d) Limit the location where a licensed midwife may practice midwifery.

(e) Permit a licensed midwife to use forceps or vacuum extraction.

**440.985 Informed consent.** A licensed midwife shall, at an initial consultation with a client, provide a copy of the rules promulgated by the department under this subchapter and disclose to the client orally and in writing all of the following:

(1) The licensed midwife's experience and training.

(2) Whether the licensed midwife has malpractice liability insurance coverage and the policy limits of any such coverage.

(3) A protocol for medical emergencies, including transportation to a hospital, particular to each client.

(4) Any other information required by department rule.

**440.986 Disciplinary proceedings and actions.** (1) Subject to the rules promulgated under s. 440.03 (1), the department may conduct investigations and hearings to determine whether a violation of this subchapter or any rule promulgated under this subchapter has occurred.

(2) Subject to the rules promulgated under s. 440.03 (1), the department may reprimand a licensed midwife or deny, limit, suspend, or revoke a license granted under this subchapter if the department finds that the applicant or the licensed midwife has done any of the following:

(a) Intentionally made a material misstatement in an application for a license or for renewal of a license.

(b) Subject to ss. 111.321, 111.322, and 111.34, practiced midwifery while his or her ability to engage in the practice was impaired by alcohol or other drugs.

(c) Advertised in a manner that is false or misleading.

(d) In the course of the practice of midwifery, made a substantial misrepresentation that was relied upon by a client.

(e) In the course of the practice of midwifery, engaged in conduct that evidences an inability to apply the principles or skills of midwifery.

(f) Obtained or attempted to obtain compensation through fraud or deceit.

(g) Allowed another person to use a license granted under this subchapter.

(h) Violated any law of this state or federal law that substantially relates to the practice of midwifery, violated this subchapter, or violated any rule promulgated under this subchapter.

(3) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke a license granted under this subchapter if the licensed midwife is convicted of any of the offenses specified in 440.982 (2).

**440.987 Advisory committee.** If the department appoints an advisory committee under s. 440.042 to advise the department on matters relating to the regulation of licensed midwives, the committee shall consist of only the following:

- (1) Two members who are licensed midwives.
- (2) One member who is licensed as a nurse–midwife under s. 441.15 and who practices in an out–of–hospital setting.
- (3) One member who is a physician specializing in obstetrics and gynecology.
- (4) One public member who has received midwifery care in an out–of–hospital setting.

**440.988 Vicarious liability.** No health care provider shall be liable for an injury resulting from an act or omission by a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife.

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

441.15 (2) (intro.) ~~Ne~~ Except as provided in sub. (2m), no person may engage in the practice of nurse–midwifery unless each of the following conditions is satisfied:

**SECTION 4.** 441.15 (2m) of the statutes is created to read:

441.15 (2m) Subsection (2) does not apply to a person granted a license to practice midwifery under subch. XI of ch. 440.

**SECTION 5.** 448.03 (2) (a) of the statutes is amended to read:

448.03 (2) (a) Any person lawfully practicing within the scope of a license, permit, registration, certificate or certification granted to practice midwifery under subch. XI of ch. 440, to practice professional or practical nursing or nurse–midwifery under ch. 441, to practice chiropractic under ch. 446, to practice dentistry or dental hygiene under ch. 447, to practice optometry under ch. 449, to practice acupuncture under ch. 451 or under any other statutory provision, or as otherwise provided by statute.

**SECTION 6. Nonstatutory provisions.**

(1) Notwithstanding section 440.987 (1) of the statutes, as created by this act, an initial member of an advisory committee appointed under section 440.987 (1) of the statutes is not required to be a licensed midwife under section 440.982 of the statutes, as created by this act, if the appointment occurs before the first day of the 13th month beginning after publication and at the time of the appointment the individual holds a valid certified professional midwife credential granted by the North American Registry of Midwives or a successor organization.

**SECTION 7. Effective dates.** This act takes effect on the first day of the 13th month beginning after publication, except as follows:

- (1) The treatment of section 440.987 of the statutes and SECTION 6 of this act take effect on the day after publication.