

**2015 DRAFTING REQUEST**

**Bill**

Received: 10/21/2014 Received By: mgallagh  
Wanted: As time permits Same as LRB: -1377  
For: Paul Farrow (608) 266-9174 By/Representing: Scott  
May Contact: Drafter: mgallagh  
Subject: Occupational Reg. - prof lic Addl. Drafters:  
Extra Copies:

Submit via email: YES  
Requester's email: Sen.Farrow@legis.wisconsin.gov  
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov  
michael.duchek@legis.wisconsin.gov

---

**Pre Topic:**

No specific pre topic given

---

**Topic:**

Licensure of medical oxygen suppliers

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**Instructions:**

See attached

---

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mgallagh 10/21/2014	kfollett 10/23/2014		_____			
/P1	mgallagh 10/29/2014	wjackson 10/30/2014	rschluet 10/24/2014	_____	mbarman 10/24/2014		State
/P2	mgallagh 1/22/2015	kfollett 1/22/2015	jmurphy 1/22/2015	_____	mbarman 10/31/2014		State

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1				_____	sbasford 1/22/2015	sbasford 1/22/2015	State

FE Sent For:

*atkins*  
*1/29/15*

<END>

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/P2	mgallagh	11/6/14 1/22	rschlue 10/31/2014	_____	mbarman 10/31/2014		State

*Done 1/22*

*PLEASE  
JACKET  
MPJ*

FE Sent For:

**<END>**

**2015 DRAFTING REQUEST**

**Bill**

Received: 10/21/2014 Received By: mgallagh  
Wanted: As time permits Same as LRB:  
For: Safety and Professional Services 267-9794 By/Representing: Jeff Grothman  
May Contact: Drafter: mgallagh  
Subject: Occupational Reg. - prof lic Addl. Drafters:  
Extra Copies: MED

Submit via email: YES  
Requester's email: jeffrey.grothman@wisconsin.gov  
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov  
michael.duchek@legis.wisconsin.gov

---

**Pre Topic:**

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**Topic:**

Licensure of medical oxygen suppliers

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**Instructions:**

See attached

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<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/P1	mgallagh 10/29/2014	wjackson 10/30/2014	rschluet 10/24/2014	_____	mbarman 10/24/2014		State
/P2			rschluet	_____	mbarman		State

Vers. Drafted

Reviewed

Typed  
10/31/2014

Proofed  
\_\_\_\_\_

Submitted  
10/31/2014

Jacketed

Required

FE Sent For:

<END>



**2015 DRAFTING REQUEST**

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May Contact: Drafter: mgallagh  
Subject: Occupational Reg. - prof lic Addl. Drafters:  
Extra Copies: ~~MEB~~

Submit via email: YES  
Requester's email: jeffrey.grothman@wisconsin.gov  
Carbon copy (CC) to: michael.gallagher@legis.wisconsin.gov  
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**Pre Topic:**

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/?	mgallagh	1P/lsf 10/23	1P/lsf 10/23				

FE Sent For:

<END>

# "RESEARCH APPENDIX"

... Drafting History Reproduction Request Form ...

 **DRAFTING ATTORNEYS: PLEASE COMPLETE THIS FORM AND GIVE TO MIKE BARMAN**

(Request Made By: MP/5) (Date: 10/21/2014)

## Note:

**BOTH DRAFTS SHOULD HAVE THE SAME "REQUESTOR"**

*(exception: companion bills)*



Please transfer the drafting file for  
**2013 LRB-4539/P1** (For: Rep./Sen. DSFS)

to the drafting file for

**2015 LRB-0472/P1** (For: Rep./Sen. DSFS)

----- **OR** -----

Please copy the drafting file for  
**2015 LRB** \_\_\_\_\_ (include the version) (For: Rep. / Sen. \_\_\_\_\_)

and place it in the drafting file for

**2015 LRB** \_\_\_\_\_ (For: Rep. / Sen. \_\_\_\_\_)

Are These "Companion Bills" ?? ... Yes No

If yes, who in the initial requestor's office authorized the copy/transfer of the drafting history

("guts") from the original file: \_\_\_\_\_

In 10/21 By Fri. 10/24 Thanks!



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-539/P1

MPG:kjfrs

Ewj

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

rwf

0472/P1

providers,

Regen

1 AN ACT to amend 450.03 (1) (e) and 450.08 (2) (b); and to create 440.08 (2) (a)

2 38h. and 450.076 of the statutes; relating to: licensure of home medical oxygen

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

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

Insert A

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

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

5 440.08 (2) (a) 38h. Home medical oxygen supplier: June 1 of each  
6 even-numbered year.

\*\*\*NOTE: Do you want to add home medical oxygen suppliers to the list under 440.03 (13) (b)? Note that, as currently drafted, a licensed supplier could be either an entity or an individual because any "person" may apply for a license.

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

8 450.03 (1) (e) Any person lawfully practicing within the scope of a license,  
9 permit, registration, certificate, or certification granted to provide home medical

1 oxygen under s. 450.076, to practice professional or practical nursing or  
 2 nurse-midwifery under ch. 441, to practice dentistry or dental hygiene under ch.  
 3 447, to practice medicine and surgery under ch. 448, to practice optometry under ch.  
 4 449 or to practice veterinary medicine under ch. 453, or as otherwise provided by  
 5 statute.

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

7 **450.076 Home medical oxygen suppliers; licensure.** (1) DEFINITIONS. In

8 this section:

9 (a) "Home medical oxygen supplier" means a person that provides medical  
 10 oxygen for compensation directly to an individual where the individual resides in  
 11 this state, for the individual's own use. *provider* *providers* *stet of lab*  
*a consumer or patient*

12 (b) "Licensed supplier" means a home medical oxygen supplier licensed under  
 13 this section. *provider*

14 (c) "Medical oxygen" means oxygen that is a prescription drug.

15 (2) LICENSE REQUIRED. (a) Except as provided in par. (b), no person may operate  
 16 as a home medical oxygen supplier, use the title "home medical oxygen supplier" or  
 17 any similar title, or hold itself out as a home medical oxygen supplier unless the  
 18 person is a licensed supplier.

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

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

22 2. A hospital, excluding any home medical oxygen supplier that is owned or  
 23 operated by a hospital.

24 3. An employee or agent of a licensed supplier acting within the scope of his or  
 25 her employment or agency.

Provider

\*\*\*NOTE: Please let me know if any of these exemptions are not consistent with your intent or if you want to include additional exemptions.

1 (3) LICENSURE. The board shall grant a license to act as a home medical oxygen  
2 supplier to a person that does all of the following: MAY

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

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

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

\*\*\*NOTE: Let me know if you want to add other specific requirements for the initial application.

6 (4) RULES. The department shall adopt rules implementing this section. The  
7 rules shall include rules governing the professional conduct of licensed suppliers and  
8 their employees and agents. board promulgate Providers

\*\*\*NOTE: Let me know if you want to include any other specific rule-making requirements.

Provider's

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

10 450.08 (2) (b) A pharmacy, manufacturer's or distributor's, or home medical  
11 oxygen supplier's license may be renewed by paying the applicable fee determined  
12 by the department under s. 440.03 (9) (a) on or before the applicable renewal date  
13 specified under s. 440.08 (2) (a).

\*\*\*NOTE: As drafted, licensed suppliers would be subject to the applicable discipline and penalty provisions under ss. 450.10 and 450.17 and 450.18. Please let me know if you want to include any discipline or penalty provisions specific to home medical oxygen suppliers.

14 SECTION 5. Nonstatutory provisions.

15 (1) EMERGENCY RULES. The pharmacy examining board may promulgate  
16 emergency rules under section 227.24 of the statutes implementing section 450.076  
17 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2)  
18 of the statutes, emergency rules promulgated under this subsection remain in effect  
19 until June 30, 2017, or the date on which permanent rules take effect, whichever is

Insert 3-13

Inserts 4-5A and 4-5B

1 sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the board is  
 2 not required to provide evidence that promulgating a rule under this subsection as  
 3 an emergency rule is necessary for the preservation of the public peace, health,  
 4 safety, or welfare and is not required to provide a finding of emergency for a rule  
 5 promulgated under this subsection.

6 (2) TRANSITIONAL PROVISION; CURRENT HOME MEDICAL OXYGEN SUPPLIERS.  
 7 Notwithstanding section 450.076 (3) of the statutes, as created by this act, the  
 8 pharmacy examining board shall grant a home medical oxygen supplier's license  
 9 under section 450.076 of the statutes, as created by this act, to any person who, before  
 10 May 1, 2015, submits an application for licensure that includes evidence satisfactory  
 11 to the board that the person has been engaged as a home medical oxygen supplier,  
 12 as defined in section 450.076 (1) (a) of the statutes, as created by this act, for all of  
 13 the 3-year period immediately preceding the effective date of this subsection.

\*\*\*\*NOTE: This grandfathering provision coincides with the May 1, 2015, compliance deadline provided by the federal Department of Health and Human Services. If that deadline is extended before this proposal becomes law, you may want to amend the grandfathering provision accordingly. Also, note that the provision waives the initial licensure fee. Please let me know if that is not consistent with your intent. Finally, please let me know if you want the prior practice period to be shorter or longer than three years.

14

(END)



State of Wisconsin  
2015 - 2016 LEGISLATURE



LRB-0117/P2  
MPG:wlj:jm

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

This is Insert A start

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 450.077 of the statutes; relating to: licensure of home  
3 medical equipment and services providers, granting rule-making authority,  
4 and providing a penalty.

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 businesses that dispense medical oxygen or provide certain other home medical equipment and services directly to patients. Under the bill, such a business, if licensed by the board, is exempt from pharmacist licensing requirements for activities that fall within the scope of the license.

Persons

Under the bill, subject to certain exceptions, any person that, for compensation, provides home medical equipment and services directly to an individual for the individual's own use where the individual resides must be licensed by the board. The bill defines "home medical equipment and services" as the delivery, installation, maintenance, replacement, or instruction in the use of medical oxygen and medical oxygen delivery systems and other durable medical equipment and supplies identified by the board by rule.

Person

Patients

The bill requires the board to grant a home medical equipment and services provider license to a business applying for the license that does all of the following:

oxygen

person

stet



This is Insert A End

1. Demonstrates to the board's satisfaction that the business maintains or will maintain a facility in Wisconsin related to the provision of home medical equipment and services. The board may waive this requirement for a business that maintains such a facility in an adjacent state.

2. Demonstrates to the board's satisfaction that the business is accredited by an accreditation body that is approved by the federal Centers for Medicare and Medicaid Services.

3. Pays the applicable initial licensure fee.

and meets any other requirements established by the board by rule

An accredited home medical equipment and services provider that has been in operation for at least three years before the bill's effective date may apply to the board before May 1, 2015, for a license without having to pay the initial licensure fee or demonstrate that it maintains or will maintain a facility in Wisconsin. Nevertheless, all licensed home medical equipment and services providers are required to maintain a facility in Wisconsin, unless the board waives that requirement because the home medical equipment and services provider maintains a facility in an adjacent state.

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

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:***

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

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

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

450.03 (1) (e) Any person lawfully practicing within the scope of a license, permit, registration, certificate, or certification granted to provide home medical equipment and services under s. 450.077, to practice professional or practical nursing or nurse-midwifery under ch. 441, to practice dentistry or dental hygiene under ch. 447, to practice medicine and surgery under ch. 448, to practice optometry under ch. 449 or to practice veterinary medicine under ch. 453, or as otherwise provided by statute.

1 7. Violated this section, or any rule promulgated under this section, or any  
2 other law of this state or federal law that substantially relates to the provision of  
3 home medical equipment and services.

4 8. Violated an order of the board.

5 (c) In addition to or in lieu of a disciplinary action under par. (b), the board may  
6 assess against a person specified in par. (b) that has engaged in any of the conduct  
7 specified in par. (b) a forfeiture of not more than \$1,000 for each separate offense.  
8 Each day of violation constitutes a separate offense.

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

10 450.08 (2) (b) A pharmacy, manufacturer's or distributor's, or home medical  
11 equipment and services provider's license may be renewed by paying the applicable  
12 fee determined by the department under s. 440.03 (9) (a) on or before the applicable  
13 renewal date specified under s. 440.08 (2) (a).

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

15 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. Except as provided in sub. (1i)  
16 (b) and s. 450.07<sup>6</sup>, no person other than a pharmacist or practitioner or their agents  
17 and employees as directed, supervised, and inspected by the pharmacist or  
18 practitioner may prepare, compound, dispense, or prepare for delivery for a patient  
19 any prescription drug.

20 SECTION 6. Nonstatutory provisions.

21 (1) EMERGENCY RULES. The pharmacy examining board may promulgate  
22 emergency rules under section 227.24 of the statutes implementing section 450.077  
23 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (c) and (2)  
24 of the statutes, emergency rules promulgated under this subsection remain in effect  
25 until June 30, 2017, or the date on which permanent rules take effect, whichever is

This is Insert 3-13

2015-2016 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0384/P/ins  
MPG:.....

Insert 4-5 A  
~~INSERT 7-4~~

(CS)

Oxygen

~~(b)~~ REGULATION OF HOME MEDICAL EQUIPMENT AND SERVICES PROVIDERS. The

f pharmacy examining board shall administer section 450.070<sup>ve (b)</sup> of the statutes, as  
created by this act, on a case-by-case basis prior to the effective date of the rules

f promulgated under section 450.070<sup>ve (b)</sup> (b) of the statutes.

END ~~INSERT 7-4~~

Insert 4-5 A

4

1 sooner. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the board is  
2 not required to provide evidence that promulgating a rule under this subsection as  
3 an emergency rule is necessary for the preservation of the public peace, health,  
4 safety, or welfare and is not required to provide a finding of emergency for a rule  
5 promulgated under this subsection.

6 (2) TRANSITIONAL PROVISION; CURRENT HOME MEDICAL EQUIPMENT AND SERVICES  
7 PROVIDERS. Notwithstanding section 450.077 (3) (b) and (d) of the statutes, as created  
8 by this act, the pharmacy examining board shall grant a home medical equipment  
9 and services provider license under section 450.077 of the statutes, as created by this  
10 act, to any business, as defined in section 450.077 (1) (a) of the statutes, as created  
11 by this act, that, before May 1, 2015, submits an application for licensure that  
12 includes evidence satisfactory to the board that the business satisfies section 450.077  
13 (3) (c) of the statutes, as created by this act, and has been engaged as a home medical  
14 equipment and services provider, as defined in section 450.077 (1) (c) of the statutes,  
15 as created by this act, for all of the 3-year period immediately preceding the effective  
16 date of this subsection.

17 **SECTION 7. Effective date.**

18 (1) The treatment of section 450.077 (2) of the statutes takes effect on May 1,  
19 2015, or on the day after publication, whichever is later.

20 (END)

This is Jense 7-4-5B

(b) ✓ (a)

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0472/P1dn

MPG: 

*Date*

Jeff Grothman:

Please review this draft carefully to ensure that it is consistent with your intent.

This redraft contains the following changes ~~In~~ addition to the changes we discussed on October 21st:

1. I changed the title of the license from "home medical oxygen supplier" to "home medical oxygen provider." My purpose in replacing "supplier" with "provider" is to avoid any potential confusion with a wholesale distributor's license or a manufacturer's license. To my ear at least, "supplier" sounds closer to both of those than "provider."

2. I have included a nonstatutory provision authorizing the board to administer the home medical oxygen provider licensure program on a case-by-case basis prior to the effective date of the rules the board is required to promulgate under the proposal, including rules governing professional conduct.

3. I have included a delayed effective date of May 1, 2015 (or the day after publication in the unlikely event May 1, 2015 passes before the bill is enacted), for the requirement under proposed s. 450.076 (2) (a) that a person must be licensed in order to provide medical oxygen to patients. Delaying the licensing requirement provides a cushion for current home medical oxygen providers, allowing them time to get a license before the licensure requirement actually kicks in.

If you have any questions about these changes, please do not hesitate to contact me.

Thank you.

Michael Gallagher  
Legislative Attorney  
(608) 267-7511  
michael.gallagher@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0472/P1dn  
MPG:kjfrs

October 24, 2014

Jeff Grothman:

Please review this draft carefully to ensure that it is consistent with your intent.

This redraft contains the following changes in addition to the changes we discussed on October 21:

1. I changed the title of the license from "home medical oxygen supplier" to "home medical oxygen provider." My purpose in replacing "supplier" with "provider" is to avoid any potential confusion with a wholesale distributor's license or a manufacturer's license. To my ear at least, "supplier" sounds closer to both of those than "provider."
2. I have included a nonstatutory provision authorizing the board to administer the home medical oxygen provider licensure program on a case-by-case basis prior to the effective date of the rules the board is required to promulgate under the proposal, including rules governing professional conduct.
3. I have included a delayed effective date of May 1, 2015 (or the day after publication in the unlikely event May 1, 2015, passes before the bill is enacted), for the requirement under proposed s. 450.076 (2) (a) that a person must be licensed in order to provide medical oxygen to patients. Delaying the licensing requirement provides a cushion for current home medical oxygen providers, allowing them time to get a license before the licensure requirement actually kicks in.

If you have any questions about these changes, please do not hesitate to contact me.

Thank you.

Michael Gallagher  
Legislative Attorney  
(608) 267-7511  
michael.gallagher@legis.wisconsin.gov

## Gallagher, Michael

---

**From:** Grothman, Jeffrey - DSPS <Jeffrey.Grothman@wisconsin.gov>  
**Sent:** Monday, October 27, 2014 11:16 AM  
**To:** Gallagher, Michael  
**Subject:** RE: Medical oxygen

Thanks Mike

---

**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Monday, October 27, 2014 11:15 AM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Okay. I'll get a redraft out.

**Mike Gallagher**  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

---

**From:** Grothman, Jeffrey - DSPS [mailto:Jeffrey.Grothman@wisconsin.gov]  
**Sent:** Monday, October 27, 2014 11:12 AM  
**To:** Gallagher, Michael  
**Subject:** RE: Medical oxygen

I don't think so

---

**From:** Gallagher, Michael [mailto:Michael.Gallagher@legis.wisconsin.gov]  
**Sent:** Monday, October 27, 2014 11:11 AM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Yes. I can make that change. Do you have any other changes?

**Mike Gallagher**  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

---

**From:** Grothman, Jeffrey - DSPS [mailto:Jeffrey.Grothman@wisconsin.gov]  
**Sent:** Monday, October 27, 2014 10:55 AM  
**To:** Gallagher, Michael  
**Subject:** FW: Medical oxygen

Hi Mike,

What do you think of the change mentioned by Gretchen highlighted below? Is it possible to fix this?

---

**From:** Mrozinski, Gretchen - DSPS  
**Sent:** Monday, October 27, 2014 10:13 AM

**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Hi Jeff,

The revisions look good and mirror what we requested. The only request that I have is regarding 450.076(1)(a) "Home medical oxygen supplier" definition. The words, "for the individual's own use" were eliminated. I do not believe we need to eliminate those words. I believe that retaining those words adds clarification that we are referring to retailers who provide the medical oxygen directly to the consumer or patient.

Thank you,  
Gretchen

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**From:** Grothman, Jeffrey - DSPS  
**Sent:** Monday, October 27, 2014 9:28 AM  
**To:** Mrozinski, Gretchen - DSPS  
**Subject:** RE: Medical oxygen

Sounds great. Thanks.

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**From:** Mrozinski, Gretchen - DSPS  
**Sent:** Monday, October 27, 2014 9:23 AM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Good Morning,

I will review this a.m. and get back to you shortly. I was out of the office Wed. through Fri. last week.

Thanks,  
Gretchen

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**From:** Grothman, Jeffrey - DSPS  
**Sent:** Monday, October 27, 2014 7:57 AM  
**To:** Mrozinski, Gretchen - DSPS  
**Subject:** RE: Medical oxygen

Do you think the draft is good to go?

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**From:** Mrozinski, Gretchen - DSPS  
**Sent:** Monday, October 27, 2014 7:57 AM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Thank you for the forwarded email. I agree with Michael. I had reservations when he mentioned it last week and I'm glad he changed his mind. I also believe "provide" will work.

---

**From:** Grothman, Jeffrey - DSPS  
**Sent:** Wednesday, October 22, 2014 7:31 AM  
**Subject:** FW: Medical oxygen

FYI.



**Jeff Grothman**  
Legislative Liaison/Policy Director  
Wisconsin Department of Safety and Professional Services  
608-267-9794  
[Jeffrey.Grothman@wisconsin.gov](mailto:Jeffrey.Grothman@wisconsin.gov)

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**From:** Gallagher, Michael [<mailto:Michael.Gallagher@legis.wisconsin.gov>]  
**Sent:** Wednesday, October 22, 2014 7:28 AM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** RE: Medical oxygen

Yes, it will be a /P1.

Also, I didn't make the change I suggested, changing "provide" to "dispense" in the definition of "home medical oxygen provider" because the definition of "dispense" in ch. 450 raised potential issues there. I think "provide" is fine. We can discuss that after you see the next draft, if you have questions about it. I just wanted to give you a heads-up on that. You'll have the draft no later than end of day, Friday, but hopefully sooner.

**Mike Gallagher**  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
(608) 267-7511

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**From:** Grothman, Jeffrey - DSPS [<mailto:Jeffrey.Grothman@wisconsin.gov>]  
**Sent:** Tuesday, October 21, 2014 4:53 PM  
**To:** Gallagher, Michael  
**Subject:** RE: Medical oxygen

Hi Mike,  
Still a P draft right?

**Jeff Grothman**  
Legislative Liaison/Policy Director  
Wisconsin Department of Safety and Professional Services  
608-267-9794  
[Jeffrey.Grothman@wisconsin.gov](mailto:Jeffrey.Grothman@wisconsin.gov)

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**From:** Gallagher, Michael [<mailto:Michael.Gallagher@legis.wisconsin.gov>]  
**Sent:** Tuesday, October 21, 2014 2:06 PM  
**To:** Grothman, Jeffrey - DSPS  
**Subject:** Medical oxygen

Jeff: just an FYI, this will be LRB-0472. I had to reenter it for the 2015 session.

Mike

**Michael P. Gallagher**  
Legislative Attorney  
Wisconsin Legislative Reference Bureau  
1 East Main Street, Suite 200  
P.O. Box 2037

Madison, WI 53701-2037  
(608) 267-7511  
[michael.gallagher@legis.wisconsin.gov](mailto:michael.gallagher@legis.wisconsin.gov)



LRB-0472/P1  
MPG:kjf&wlj:rs

Stays

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1/22

Regen

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.

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

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*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 <sup>for that consumer's or</sup>  
<sup>patient's own use</sup>

17 (b) "Licensed provider" means a home medical oxygen provider licensed under  
18 this section.

19 (c) "Medical oxygen" means oxygen that is a prescription drug.

20 (2) LICENSE REQUIRED. (a) Except as provided in par. (b), no person may operate  
21 as a home medical oxygen provider, use the title "home medical oxygen provider" or

1 any similar title, or hold itself out as a home medical oxygen provider unless the  
2 person is a licensed provider.

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

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

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

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

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

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

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

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

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

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

19 450.08 (2) (b) A pharmacy, manufacturer's ~~or~~, distributor's, or home medical  
20 oxygen provider's license may be renewed by paying the applicable fee determined  
21 by the department under s. 440.03 (9) (a) on or before the applicable renewal date  
22 specified under s. 440.08 (2) (a).

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

24 450.11 (3) PREPARATION OF PRESCRIPTION DRUGS. Except as provided in sub. (1i)  
25 (b) and s. 450.076, no person other than a pharmacist or practitioner or their agents

1 and employees as directed, supervised, and inspected by the pharmacist or  
2 practitioner may prepare, compound, dispense, or prepare for delivery for a patient  
3 any prescription drug.

4 **SECTION 6. Nonstatutory provisions.**

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

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

19 **SECTION 7. Effective date.**

20 (1) The treatment of section 450.076 (2) (a) of the statutes takes effect on May  
21 1, 2015, or on the day after publication, whichever is later.

22 (END)



**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1

No changes

Regen

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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.

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14 this section:

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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.



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  
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9 operated by a hospital.

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

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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:



## Gallagher, Michael

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**From:** Rausch, Scott  
**Sent:** Wednesday, January 21, 2015 3:51 PM  
**To:** Gallagher, Michael  
**Cc:** Neville, William  
**Subject:** Medical Oxygen

Mike,

Sorry that I haven't gotten back to you. Its been a bit crazy over here and I didn't want to confuse the situation.

The DSPS draft of the Medical Oxygen bill has been released to us. We have looked it over and discussed it with our constituent and was just able to meet with Sec. Ross and Deputy Sec. Engels. We have decided to propose their draft and we do not need to make any changes.

Please make LRB 0472 ready for introduction. We would like to that draft jacketed for tomorrow and our co-sponsorship will be set out tomorrow. You can get an Assembly version ready as well and send that to Rep. Kooyenga's office. I have cc'd his Legislative Assistant, Bill Neville, on this email.

Thanks for your assistance and work on this request.

Regards,

**Scott Rausch**

Chief of Staff

Office of Senator Paul Farrow

(608) 266-9174

Scott.Rausch@legis.wi.gov