

---

# Wisconsin Legislative Council

## AMENDMENT MEMO

---



**Memo published:** February 18, 2022

**Contact:** Steve McCarthy, Senior Staff Attorney

**2021 Senate Bill 394**

**Senate Substitute Amendment 1  
and Assembly Amendment 1**

### 2021 SENATE BILL 394

2021 Senate Bill 394 creates a new system of licensure that allows a registered nurse to be licensed by the Board of Nursing (board) as an advanced practice nurse practitioner (APRN). Among other things, the bill generally authorizes an APRN to issue prescription orders, use the title “A.P.R.N.,” and delegate certain tasks to another clinically trained health care workers.

The bill provides a number of paths that allow a registered nurse to be licensed as an APRN, though whether a registered nurse must apply for a license, is automatically granted a license, or has any limitations on the license, generally depends on the registered nurse’s education, experience, and the type of registered nurse license the person holds. The bill also recognizes four distinct APRN roles—certified nurse-midwife; certified registered nurse anesthetist; clinical nurse specialist; and nurse practitioner—and requires the board, upon granting a person an APRN license, to also grant the person one or more specialty designations corresponding to the recognized role or roles for which the person qualifies.

The bill also requires that the board promulgate administrative rules necessary to administer the newly created APRN law, including establishing certain criteria an APRN must satisfy for licensure, defining the scope of practice of APRNs, and specifying the classes of drugs, individual drugs, or devices that may not be prescribed by an APRN.

### SENATE SUBSTITUTE AMENDMENT 1

The substitute amendment makes a number of substantive and technical changes to the bill, as described below. Where applicable, the section number of the change within the substitute amendment is included below for reference.

- The substitute amendment explicitly provides that, except for additional requirements established as a condition of employment or relationship for an APRN by an entity employing or with a relationship with an APRN, an APRN may practice advanced practice registered nursing without a written collaborative agreement with a physician or being supervised by a physician. [SECTION 100.]
- The bill requires that an APRN must consult or collaborate with another health care provider or refer a patient to another health care provider if a particular patient’s needs are beyond the APRN’s expertise. The substitute amendment specifies that, under these circumstances, an APRN must consult or collaborate with or refer the patient to either a physician or another health care provider the APRN has reasonable evidence of having a scope of practice that includes the authorization to address the patient’s needs. [SECTION 100.]

- The bill includes a provision that requires the Governor, the board, and the Medical Examining Board to act to maintain an opt-out of the federal requirement for physician supervision of certified registered nurse anesthetists. The substitute amendment deletes this provision.
- The bill requires an APRN with a specialty designation as a certified nurse-midwife to file and keep current with the Department of Safety and Professional Services (DSPS) a plan for involving a hospital or physician in treating certain patients if the APRN practices outside of a hospital. The substitute amendment modifies some of the requirements of the plan and requires that it be filed with the board (rather than DSPS) when a person applies for initial licensure or renewal. [SECTION 100.]
- The bill requires the board to promulgate rules necessary to administer the APRN law, including rules for establishing the appropriate education, training, or experience requirements that a registered nurse must satisfy in order to be an APRN. The substitute amendment requires that the board also promulgate rules for establishing the appropriate education, training, or experience requirements that a registered nurse must satisfy to obtain each specialty designation corresponding to the recognized roles. [SECTION 100.]
- The substitute amendment adds a new requirement that the board promulgate rules establishing standards of professional conduct for APRNs generally and for practicing in each recognized role. The substitute amendment also specifies that the board may not promulgate rules that expand the scope of practice of an APRN beyond the practices within advanced practice registered nursing. [SECTION 100.]
- The substitute amendment modifies the bill's definition of "advanced practice registered nursing" from "the advanced practice of nursing in one of the 4 recognized roles based on advanced clinical knowledge and skills focusing on direct care of individuals, greater responsibility, autonomy, and accountability for the provision of care, health promotion and maintenance, including prescribing pharmacological agents and therapeutics, and management of patient conditions" to "the practice of a certified nurse-midwife, the practice of a certified registered nurse anesthetist, the practice of a clinical nurse specialist, and the practice of a nurse practitioner." [SECTION 83.]
- The substitute amendment deletes the definition of "clinical pharmacology or therapeutics" created by the bill.
- The substitute amendment modifies the bill's definition of "practice of a nurse practitioner" from "practice in ambulatory, acute, and long-term care settings as a primary and specialty care provider who assesses, diagnoses, treats, and manages acute, episodic, and chronic illnesses" to "practice in ambulatory, acute, long-term, or other health care settings as a primary or specialty care provider who provides health services, including assessing, diagnosing, treating, or managing acute, episodic, and chronic illnesses." [SECTION 87.]
- The bill provides a number of paths that allow a registered nurse to be licensed as an APRN. One such path allows a person who was licensed as a registered nurse in Wisconsin and practicing in one of the four recognized roles on January 1, 2019, and satisfies additional practice or education criteria established by the board to be licensed as an APRN. The substitute amendment changes the date for that "prior experience" path from January 1, 2019 to January 1, 2022. [SECTION 100.]
- The bill provides that both a person licensed as an APRN under the prior experience path described in the previous section and a person licensed as an APRN whose underlying registered nurse license is a multistate license issued by a jurisdiction pursuant to the nurse licensure compact, must have a notation on the person's APRN license that the person may not issue prescription orders if, on

January 1, 2019, the person did not hold a certificate to issue prescription orders under Wisconsin law. The substitute amendment changes the date for that requirement from January 1, 2019 to January 1, 2022. [SECTION 100.]

- The bill also provides for a transition period for an APRN that qualifies under the prior experience path. Specifically, under the bill, an individual who, on January 1, 2019, was licensed as a registered nurse and was practicing in a recognized role, may continue to practice advanced practice registered nursing and the corresponding recognized role in which he or she was practicing and may continue to use the titles corresponding to the recognized role in which he or she was practicing during the period before which the board takes final action on the person's application for an APRN license. This transition period expires March 1, 2023. The substitute amendment changes the relevant licensure date from January 1, 2019 to January 1, 2022, and provides that the transition period expires on the first day of the 13<sup>th</sup> month beginning after the effective date of the bill. [SECTION 139.]
- The bill provides the board with emergency rulemaking authority effective on the day after publication, with any emergency rules effective for two years after promulgation, or until permanent rules take effect, whichever is sooner. The substitute amendment includes the same emergency rulemaking authority and expiration provision, but provides that the emergency rules must be promulgated by the effective date of the rest of the bill (the first day of the 13<sup>th</sup> month beginning after publication of the act). [SECTION 139.]
- The substitute amendment modifies the bill's general effective date from March 1, 2022, to the first day of the 13<sup>th</sup> month beginning after publication. Additionally, because the bill's new effective date will be after April 1, 2022, the substitute amendment removes a number of sections of the bill that were included to reconcile the bill's treatment to sections affected by 2021 Wisconsin Act 23, which is not effective until April 1, 2022. [SECTION 140.]
- The substitute amendment modifies the bill's treatment of a requirement under current law that the Department of Health Services prepare an information sheet regarding sexually transmitted disease treatment. Specifically, the substitute amendment adds APRNs to the list of health care providers that must be included on the information sheet for referral if a person has questions about the information. [SECTION 10.]
- The bill modifies references to the definition of "nurse practitioner" under s. 255.06 (1) (d), Stats., within ss. 118.15 (3) (a) and 146.89 (1), Stats., by replacing them with "APRN." However, the definition of "nurse practitioner" under s. 255.06 (1) (d), Stats., includes registered nurses and not just advanced practice nurses. The substitute amendment therefore makes technical corrections to a number of sections to modify certain definitions and retain authority certain registered nurses have under current law pursuant to their inclusion in the definition of "nurse practitioner" under s. 255.06 (1) (d), Stats. [SECTIONS 32, 42, and 43.]
- The bill makes changes to the volunteer health care provider program regarding malpractice insurance coverage that applies only to APRNs with prescribing authority. The substitute amendment applies those changes to all APRNs, regardless of prescribing authority. [SECTION 44.]

## ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes a number of changes to Senate Bill 394, as amended by Senate Substitute Amendment 1. Specifically, Assembly Amendment 1 **removes** the provision in the substitute amendment that explicitly provides that an APRN may practice advanced practice registered nursing **without** a written collaborative agreement with a physician or without supervision by a physician.

Instead, the bill draft specifies that an APRN may only practice **with** a written collaborative agreement with a physician or dentist, with two exceptions:

- First, an APRN who has a certified nurse-midwife specialty designation is not subject to the written collaborative relationship requirement.
- Second, an APRN who has completed 3,840 clinical hours while working with a physician or dentist may apply to the board of nursing to practice independently. The hours may include lawful practice outside the state, and lawful practice in the state prior to enactment. During the 3,840 clinical hours, the APRN must have continuously satisfied three requirements:
  - The APRN maintained a mutual, professional relationship with at least one physician or dentist.
  - The APRN had relationships with one or more physicians or dentists to deal with issues outside the APRN's licensed scope of practice.
  - The APRN was subject to a quality assurance program, peer review process, or other similar program that included participation by a physician or dentist and was implemented and designed to ensure provision of competent and quality patient care. This may include a program administered by the APRN's employer, or a hospital, ambulatory surgery center, clinic, or other outpatient facility.

The amendment also specifies that a person licensed as an APRN may provide pain management services outside of a hospital or hospital-associated clinic only if working in a written collaborative relationship with a physician (even if the APRN would otherwise qualify for independent practice). An APRN who is providing pain management services in a hospital or hospital-associated clinic and who has qualified for independent practice is not subject to the collaborative relationship requirement.

## **BILL HISTORY**

Senate Substitute Amendment 1 was introduced by Senator Testin on November 10, 2021. On December 7, 2021, the Senate Committee on Health voted to adopt the amendment, and recommend passage of the bill, as amended, on votes of Ayes, 3; Noes, 2.

On January 25, 2022, Senate Substitute Amendment 1 was adopted by a voice vote in the Senate, and the Senate passed the bill, as amended, on a vote of Ayes, 19; Noes, 14. The bill, as amended, was messaged to and received by the Assembly on the same day.

Assembly Amendment 1 was introduced by Representatives Petersen, Cabral-Guevara, and Sanfelippo on February 17, 2022. On the same day, the Assembly adopted Assembly Amendment 1, and concurred in the bill, as amended, by voice votes.

SM:jal