

Clearinghouse Rule 19-066
STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 180.02 (6); and to amend SPS 180.01, 180.02 (intro), (1m), (3m), (8) and (11), 181.01 (1) (a) and (c), (2) (a), 4 (a) 2. b. and f., 182.02 (1) (intro) and (e), and (1m), 183.01 (1) (intro), (g), and (v), and (2), (3), and (4) relating to licensure, standards of practice, and grounds for discipline of midwives.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Subchapter XIII of ch. 440, Stats.

Statutory authority:

Section 440.984, Stats.

Explanation of agency authority:

Section 440.984, Stats. provides: “The department shall promulgate rules necessary to administer this subchapter.”

Related statutes or rules: None.

Plain language analysis: This rule project amends chs. SPS 180 to 183 relating to licensure, standards of practice, and grounds for discipline of midwives to bring the rules into conformity with current drafting standards. This includes removing an unnecessary definition, revising several definitions to instead refer to identical definitions found in subch. I of ch. 440, Stats., amending internal references to subch. XII of ch. 440, Stats. to instead reference the correct subchapter (XIII), removing the phrase “but not limited to,” and replacing the use of “his or her” and “he or she” throughout.

Summary of, and comparison with, existing or proposed federal regulation:

The federal government does not regulate licensed midwives.

Comparison with rules in adjacent states:

Illinois: Although Illinois does credential and regulate nurse midwives, unlike Wisconsin, Illinois does not credential licensed midwives.

Iowa: Although Iowa does credential and regulate nurse midwives, unlike Wisconsin, Iowa does not credential licensed midwives.

Michigan: Michigan has recently passed legislation, which was signed by the Governor, to create a Board of Midwifery to promulgate rules regulating licensed midwives. However, the Board has not yet produced administrative rules regulating this profession.

Minnesota: Minnesota does offer a credential for “traditional midwives,” which is similar to licensed midwives under Wisconsin law. There are no similarities or differences between the states that are relevant for the purposes of this rule project, however.

Summary of factual data and analytical methodologies:

The proposed rule project amends chs. SPS 180 to 183 to correct statutory references and otherwise bring the rules into conformity with current drafting standards.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8935, Madison, Wisconsin 53705; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

Comments may be submitted to Jon Derenne, Rule Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8935, Madison, WI 53705, or by email to DSPSAdminRules@wisconsin.gov. Comments shall be received at or before the hearing scheduled for 11:00 AM on June 7, 2019 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. SPS 180.01 is amended to read:

SPS 180.01 The rules in chs. SPS 180 to 183 are adopted under the authority of ss. 227.11 (2) and 440.08 (3), Stats., and subch. ~~XII~~ XIII of ch. 440, Stats.

SECTION 2. SPS 180.02 (intro.), (1m), (3m), (4), (8), and (11) are amended to read:

SPS 180.02 As used in chs. SPS 180 to 183 and in subch. ~~XII~~ XIII of ch. 440, Stats.:

(1m) "Automated external defibrillator" ~~means a defibrillator device to which all of the following apply:~~

~~(a) It is approved for commercial distribution by the federal food and drug administration.~~

~~(b) It is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and of determining without intervention by the user of the device whether defibrillation should be performed.~~

~~(c) After having determined that defibrillation should be performed, it is capable, either at the command of an operator or without intervention by an operator, of delivering an electrical shock to an individual. has the meaning given in s. 440.01 (1) (ad), Stats.~~

(3m) "Defibrillation" ~~means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia~~ has the meaning given in s. 440.01 (1) (ag), Stats.

(8) "Licensed midwife" means a person who has been granted a license under subch. ~~XII~~ XIII of ch. 440, Stats., to engage in the practice of midwifery.

(11) "Ventricular fibrillation" ~~means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart~~ has the meaning given in s. 440.01 (1) (i), Stats.

SECTION 3. SPS 180.02 (6) is repealed.

SECTION 4. SPS 181.01 (1) (a) and (c), (2) (a), 4 (a) 2. b. and f. are amended to read:

SPS 181.01

(1) (a) The fee specified in ~~s. 440.05 (1), Stats.~~ s. 440.03 (9), Stats.

(1) (c) That the applicant, subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record. An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the department with

all information requested relating to ~~his or her~~ the applicant's pending criminal charge, conviction or other offense, as appropriate. The department may not grant a midwife license to a person 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, Stats.

(2) (a) Except for temporary permits granted under sub. (4), the renewal date for licenses granted under subch. ~~XII~~ XIII of ch. 440, Stats., is July 1 of each even-numbered year.

(4) (a) 2. b. The applicant has received a written commitment from a licensed midwife to directly supervise ~~his or her~~ the applicant's practice of midwifery during the duration of the temporary permit.

(4) (a) 2. f. The applicant, subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record. An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the department with all information requested relating to ~~his or her~~ the applicant's pending criminal charge, conviction or other offense, as appropriate. The department may not grant a temporary permit to a person 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, Stats.

SECTION 5. SPS 182.02 (1) (intro.), (e), and (1m) are amended to read:

SPS 182.02 (1) DISCLOSURE OF INFORMATION TO CLIENT. A licensed midwife shall, at an initial consultation with a client, provide a copy of the rules promulgated by the department under subch. ~~XII~~ XIII of ch. 440, Stats., and disclose to the client orally and in writing on a form provided by the department all of the following:

(1) (e) The number of babies delivered and the number of clients transferred to a hospital since the time the licensed midwife commenced ~~his or her~~ practice of midwifery.

(1m) DISCLOSURE OF INFORMATION BY TEMPORARY PERMIT HOLDER. A temporary permit holder shall inform a client orally and in writing that the temporary permit holder may not engage in the practice of midwifery unless ~~he or she~~ the temporary permit holder practices under the direct supervision of a licensed midwife.

SECTION 6. SPS 183.01 (1) (intro), (g), (v), and (2), (3), and (4) are amended to read:

SPS 183.01 (1) Subject to the rules promulgated under s. 440.03 (1), Stats., the department may reprimand a licensed midwife or deny, limit, suspend, or revoke a license or temporary permit granted under subch. ~~XII~~ XIII of ch. 440, Stats., if the department finds that the applicant, temporary permit holder, or licensed midwife has engaged in misconduct. Misconduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a client or the public. Misconduct includes, ~~but is not limited to,~~ the following:

(1) (g) Practicing or attempting to practice while the midwife is impaired as a result of any condition that impairs the midwife's ability to appropriately carry out ~~his or her~~ professional functions in a manner consistent with the safety of clients or the public.

(1) (v) Allowing another person to use a license granted under subch. ~~XII~~ XIII of ch. 440, Stats.

(2) Subject to the rules promulgated under s. 440.03 (1), Stats., the department shall revoke a license granted under subch. ~~XII~~ XIII of ch. 440, Stats., if the licensed midwife is convicted of any of the offenses specified in s. 440.982 (2), Stats.

(3) Subject to s. 440.982, Stats., no person may engage in the practice of midwifery unless ~~he or she~~ the person has been granted a license or a temporary permit to practice midwifery under subch. ~~XII~~ XIII of ch. 440, Stats., or granted a license to practice as a nurse-midwife under s. 441.15, Stats.

(4) Subject to s. 440.981, Stats., no person may use the title "licensed midwife" unless ~~he or she~~ the person has been granted a license to practice midwifery under subch. ~~XII~~ XIII of ch. 440, Stats., or granted a license to practice as a nurse-midwife under s. 441.15, Stats.

SECTION 7. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin administrative register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected		2. Date May 6, 2019	
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) SPS 180 to 183			
4. Subject Licensure, standards of practice, and grounds for discipline of midwives			
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S		6. Chapter 20, Stats. Appropriations Affected	
7. Fiscal Effect of Implementing the Rule <input checked="" type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input type="checkbox"/> Could Absorb Within Agency's Budget			
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)			
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0			
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
11. Policy Problem Addressed by the Rule The objective of the proposed rule is to revise Chapter SPS 180-183 relating to licensure, standards of practice, and grounds for discipline of midwives to remove an unnecessary definition, to revise several definitions to reference the appropriate definitions found in the statutes, to correct internal statutory references, and to ensure the code is otherwise drafted in conformity with current drafting standards.			
12. Summary of the Businesses, Business Sectors, Associations Representing Business, Local Governmental Units, and Individuals that may be Affected by the Proposed Rule that were Contacted for Comments. The proposed rule was posted on the Department of Safety and Professional Services' website for 14 days in order to solicit comments from businesses, representative associations, local governmental units, and individuals that may be affected by the rule. No comments were received.			
13. Identify the Local Governmental Units that Participated in the Development of this EIA. No local governmental units participated in the development of the EIA.			
14. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred) This proposed rule will not have a significant impact on specific businesses, business sectors, public utility rate payers, local governmentnal units, or the state's economy as a whole.			
15. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule The primary benefit of updating SPS 180-183 is to ensure that the rule is consistent with current rule-drafting standards and makes accurate statutory references. If the rule is not implemented, licensees and applicants for licensure may face confusion when reading the rules.			
16. Long Range Implications of Implementing the Rule			

The long-range implication of implementing the rule is clarity for applicants for licensure and licensed midwives.

17. Compare With Approaches Being Used by Federal Government

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

The federal government does not regulate licensed midwives.

18. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois: Although Illinois does credential and regulate nurse midwives, unlike Wisconsin, Illinois does not credential licensed midwives.

Iowa: Although Iowa does credential and regulate nurse midwives, unlike Wisconsin, Iowa does not credential licensed midwives.

Michigan: Michigan has recently passed legislation, which was signed by the Governor, to create a Board of Midwifery to promulgate rules regulating licensed midwives. However, the Board has not yet produced administrative rules regulating this profession.

Minnesota: Minnesota does offer a credential for “traditional midwives,” which is similar to licensed midwives under Wisconsin law. There are no similarities or differences between the states that are relevant for the purposes of this rule project, however.

19. Contact Name Jon Derenne, Administrative Rules Coordinator	20. Contact Phone Number (608) 266-0955
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This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES

Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements

Other, describe:

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

Yes No
