

State of Wisconsin



2009 Senate Bill 667

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2009 WISCONSIN ACT 282

AN ACT *to renumber* subchapter III of chapter 440 [precedes 440.41], subchapter IV of chapter 440 [precedes 440.51], subchapter V of chapter 440 [precedes 440.60], subchapter VI of chapter 440 [precedes 440.70], subchapter VII of chapter 440 [precedes 440.88], subchapter VIII of chapter 440 [precedes 440.90], subchapter IX of chapter 440 [precedes 440.96], subchapter X of chapter 440 [precedes 440.97], subchapter XI of chapter 440 [precedes 440.98], subchapter XII of chapter 440 [precedes 440.9805] and subchapter XIII of chapter 440 [precedes 440.99]; *to amend* 157.055 (2) (intro.), 441.15 (2m), 448.03 (2) (a) and 632.895 (12m) (b) 4.; and *to create* 440.03 (13) (b) 15m., 440.08 (2) (a) 20m., subchapter III of chapter 440 [precedes 440.310] and 632.895 (12m) (b) 3m. of the statutes; **relating to:** licensure and regulation of behavior analysts, insurance coverage of the services of behavior analysts for autism treatment, providing an exemption from emergency rule procedures, 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. 157.055 (2) (intro.) of the statutes, as affected by [2009 Wisconsin Act 42](#), is amended to read:
157.055 (2) (intro.) Notwithstanding ss. 69.18 (4), 445.04 (2), 445.14, 979.01 (3), (3m), and (4), 979.02, and 979.10, and subch. ~~VI~~ VII of ch. 440, during a period of a state of emergency related to public health declared by the governor under s. 323.10, a public health authority may do all of the following:

SECTION 2. 440.03 (13) (b) 15m. of the statutes is created to read:

440.03 (13) (b) 15m. Behavior analyst.

SECTION 3. 440.08 (2) (a) 20m. of the statutes is created to read:

440.08 (2) (a) 20m. Behavior analyst: December 15 of each even-numbered year.

SECTION 4. Subchapter III of chapter 440 [precedes 440.310] of the statutes is created to read:

CHAPTER 440 SUBCHAPTER III BEHAVIOR ANALYSTS

440.310 Definitions. In this subchapter:

(1) "Behavior analyst" means a person who is certified by the Behavior Analyst Certification Board, Inc., as a board-certified behavior analyst and has been granted a license under this subchapter to engage in the practice of behavior analysis.

(2) "Practice of behavior analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior, including the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, including interventions based on scientific research and the direct observation and measurement of behavior and environment. "Practice of behavior analysis" does not include psychological testing, neuropsychology, psychotherapy,

* Section 991.11, WISCONSIN STATUTES 2007-08 : 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].

cognitive therapy, sex therapy, marriage counseling, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

440.311 Use of title; penalty. (1) No person may use the title "behavior analyst" or represent or imply that he or she is a behavior analyst unless the person is licensed under this subchapter. This section may not be construed to restrict the practice of behavior analysis by a licensed professional who is not a behavior analyst, if the services performed are within the scope of the professional's practice and are performed commensurate with the professional's training and experience, and the professional does not represent that he or she is a behavior analyst.

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

440.312 Licensure. (1) Except as provided in sub. (2), the department shall grant a license as a behavior analyst to a person under this subchapter if all of the following apply:

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

(b) The person pays the initial credential fee determined by the department under s. 440.03 (9) (a).

(c) The person submits evidence satisfactory to the department that the person is a behavior analyst certified by the Behavior Analyst Certification Board, Inc., or its 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, 940.302 (2) (a) 1. b., 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.051, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11, or 948.12.

440.313 Renewal. (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 determined by the department under s. 440.03 (9) (a).

(2) A behavior analyst 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 is, at the time he or she applies for renewal, certified by the Behavior Analyst Certification Board, Inc., or its successor organization.

440.314 Rules. (1) The department may promulgate rules necessary to administer this subchapter, including rules of conduct by behavior analysts and by holders of temporary permits under sub. (2). Except as provided in subs. (2), (3), and (4), any rules regarding the practice of behavior analysis shall be consistent with standards established by the Behavior Analyst Certification Board, Inc., or its successor organization.

(2) (a) The department may promulgate rules authorizing the department to issue a temporary permit to a person who is certified by the Behavior Analyst Certification Board, Inc., or its successor organization authorizing the practice of behavior analysis by the person under the supervision of a behavior analyst licensed under s. 440.312 (1).

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

(a) Require an applicant for a license under this subchapter to have education in addition to the education required by the Behavior Analyst Certification Board, Inc., or its successor organization.

(b) Require a behavior analyst to practice behavior analysis under the supervision of, or in collaboration with, another health care provider.

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

(d) Limit the location where a behavior analyst may practice behavior analysis.

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

(1) A summary of the behavior analyst's experience and training.

(2) Any other information required by the department by rule.

440.316 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 behavior analyst or deny, limit, suspend, or revoke a license granted under this subchapter if the department finds that the applicant or the behavior analyst 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 behavior analysis 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 behavior analysis, made a substantial misrepresentation that was relied upon by a client.

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

(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 behavior analysis, violated this subchapter, or violated any rule promulgated under this subchapter.

(i) Engaged in unprofessional conduct.

(3) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke a license granted under this subchapter if the behavior analyst is convicted of any of the offenses specified in 440.312 (2).

440.317 Advisory committee. The department may appoint an advisory committee under s. 440.042 to advise the department on matters relating to the regulation of behavior analysts.

SECTION 5. Subchapter III of chapter 440 [precedes 440.41] of the statutes is renumbered subch. IV of ch. 440.

SECTION 6. Subchapter IV of chapter 440 [precedes 440.51] of the statutes is renumbered subch. V of ch. 440.

SECTION 7. Subchapter V of chapter 440 [precedes 440.60] of the statutes is renumbered subch. VI of ch. 440.

SECTION 8. Subchapter VI of chapter 440 [precedes 440.70] of the statutes is renumbered subch. VII of ch. 440.

SECTION 9. Subchapter VII of chapter 440 [precedes 440.88] of the statutes is renumbered subch. VIII of ch. 440.

SECTION 10. Subchapter VIII of chapter 440 [precedes 440.90] of the statutes is renumbered subch. IX of ch. 440.

SECTION 11. Subchapter IX of chapter 440 [precedes 440.96] of the statutes is renumbered subch. X of ch. 440.

SECTION 12. Subchapter X of chapter 440 [precedes 440.97] of the statutes is renumbered subch. XI of ch. 440.

SECTION 13. Subchapter XI of chapter 440 [precedes 440.98] of the statutes is renumbered subch. XII of ch. 440.

SECTION 14. Subchapter XII of chapter 440 [precedes 440.9805] of the statutes is renumbered subch. XIII of ch. 440.

SECTION 15. Subchapter XIII of chapter 440 [precedes 440.99] of the statutes is renumbered subch. XIV of ch. 440.

SECTION 16. 441.15 (2m) of the statutes is amended to read:

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

SECTION 17. 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. ~~XII~~ XIII 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 18. 632.895 (12m) (b) 3m. of the statutes is created to read:

632.895 (12m) (b) 3m. A behavior analyst who is licensed under s. 440.312.

SECTION 19. 632.895 (12m) (b) 4. of the statutes, as created by [2009 Wisconsin Act 28](#), is amended to read:

632.895 (12m) (b) 4. A paraprofessional working under the supervision of a provider listed under subds. 1. to ~~3.~~ 3m.

SECTION 20. Nonstatutory provisions.

(1) The department of regulation may promulgate rules under section 440.314 of the statutes, as created by this act, as emergency rules under section 227.24 of the statutes. Notwithstanding section 227.24 (1) (c) and (2) of the statutes, emergency rules promulgated under this subsection may remain in effect until the effective date of permanent rules promulgated by the department under section 440.314 of the statutes, as created by this act. Notwithstanding section 227.24 (1) (a) and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 21. Initial applicability.

(1) If a disability insurance policy or a governmental self–insured health plan that is in effect on the effective date of this subsection contains a provision that is inconsistent with this act, this act first applies to that policy or plan on the date on which it is renewed.

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

(1) The creation of subchapter III of ch. 440 of the statutes takes effect on the 30th day after publication.