



## 2005 ASSEMBLY BILL 385

April 27, 2005 - Introduced by Representatives HUEBSCH, NERISON, FREESE, HINES, VUKMIR, DAVIS, HAHN, MUSSER, KRAWCZYK, TOWNSEND, OTT, OWENS, LEMAHIEU, GUNDERSON, PETROWSKI, ALBERS, VRAKAS and SHILLING, cosponsored by Senators ROESSLER, KANAVAS, GROTHMAN and KAPANKE. Referred to Committee on Public Health.

1     **AN ACT to amend** 102.07 (7m), 165.25 (6) (b), 441.06 (4), 441.10 (3) (c), 441.15  
2           (2) (intro.), 447.03 (1) (intro.), 448.03 (3) (a) (intro.), 448.03 (3) (b), 448.03 (3) (e),  
3           448.61, 448.66 and 453.05 (1); and **to create** 102.29 (10), 250.042 (4), 441.15 (5)  
4           (a) 5., 448.03 (2) (p), 450.03 (1) (h), 893.82 (2) (d) 1n. and 895.46 (5) (am) of the  
5           statutes; **relating to:** designation of state agency status for certain health care  
6           providers who provide services during a state of emergency related to public  
7           health or a state of emergency declared by a city, village, or town.

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### *Analysis by the Legislative Reference Bureau*

Under current law, if the governor declares a state of emergency related to public health and designates the Department of Health and Family Services (DHFS) as the lead state agency to respond to that emergency, DHFS must act as the public health authority during the emergency. As such, among other things, DHFS may compel vaccinations and must consult with local health departments and individual health providers. Also, a city, village, or town may by ordinance or resolution declare an emergency existing within the city, village, or town under certain circumstances, including conditions that impair health or medical care.

Currently, persons are prohibited from practicing or attempting to practice professional nursing, engaging in the practice of nurse-midwifery, practicing medicine and surgery, practicing veterinary medicine, practicing as a physician

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assistant, engaging in the practice of pharmacy, practicing podiatry, or practicing or offering to practice dentistry, unless licensed or certified, as appropriate. In addition, with certain exceptions, a person without the appropriate license or certificate may not hold himself or herself out as a trained, certified, or graduate nurse, a licensed practical nurse, a doctor of medicine, a doctor of osteopathy, a physician assistant, a pharmacist, a doctor of dental surgery, a podiatrist, or a veterinarian. With certain exceptions, a person may not practice nurse-midwifery unless he or she has in effect malpractice liability insurance in the minimum amount specified by DHFS by rule.

Moreover, under current law, an individual who has been granted status as a state agent may be defended by the attorney general in a civil action or other matter before a court or administrative agency for acts the individual performs during the lawful course of his or her duties, amounts recoverable in the civil action or other matter are limited to \$250,000, and judgments in the actions or other matters must be paid by the state after payment under any liability insurance policy possessed by the individual.

Finally under current law, worker's compensation is the exclusive remedy for an employee who is injured while performing services growing out of and incidental to his or her employment, except that, subject to certain exceptions, an injured employee may claim worker's compensation from his or her employer and bring an action in tort against a third party for damages by reason of the injury. Currently, certain volunteers, such as volunteer fire fighters, volunteers of an emergency management unit, and, if certain conditions are met, state employees providing services to the American Red Cross in a particular disaster are also considered employees for purposes of worker's compensation benefits.

This bill designates as a state agent of DHFS a health care provider who during a state of emergency related to public health provides to a health care facility, as defined in the bill, voluntary, unpaid health care services for which the provider has been licensed or certified or has met certain requirements. The health care provider may accept reimbursement for travel, lodging, and meals. "Health care provider" is defined in the bill to mean an individual who, at any time within ten years before a state of emergency related to public health is declared, has met requirements for a nurse's assistant, has been licensed as a physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, pharmacist, podiatrist, dentist, or veterinarian, or has been certified as a respiratory care practitioner. The state agency status does not apply to a physician, physician assistant, registered nurse, licensed practical nurse, nurse-midwife, pharmacist, podiatrist, dentist, or veterinarian whose license has, for cause, been revoked, limited, suspended, or denied renewal, or to a respiratory care practitioner whose certificate has, for cause, been limited, suspended, or revoked. The bill also excepts the health care providers designated as state agents from the prohibitions on practicing or attempting to practice without a license or certificate and from the prohibitions on holding themselves out, without a license or certificate, as trained, certified, or licensed for performance of services.

The bill also designates as an employee of the state for purposes of worker's compensation benefits a health care provider who provides volunteer, unpaid health

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care services to a health care facility during a state of emergency related to public health and prohibits such a volunteer health care provider who makes a claim for worker's compensation from making a claim or bringing an action in tort against the health care facility that accepted those services.

For further information see the *state and local* 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.** 102.07 (7m) of the statutes is amended to read:

2           102.07 **(7m)** An employee, volunteer, or member of an emergency management  
3 unit is an employee for purposes of this chapter as provided in s. 166.03 (8) (d), and  
4 a member of a regional emergency response team who is acting under a contract  
5 under s. 166.215 (1) is an employee of the state for purposes of this chapter as  
6 provided in s. 166.215 (4), and a health care provider who is providing volunteer,  
7 unpaid health care services to a health care facility during a state of emergency is  
8 an employee of the state for purposes of this chapter as provided in s. 250.042 (4) (b).

9           **SECTION 2.** 102.29 (10) of the statutes is created to read:

10           102.29 **(10)** No health care provider who, under s. 250.042 (4) (b), is considered  
11 to be an employee of the state for purposes of worker's compensation coverage while  
12 providing volunteer, unpaid health care services to a health care facility during a  
13 state of emergency and who makes a claim for compensation under this chapter may  
14 make a claim or bring an action in tort against the health care facility that accepted  
15 those services.

16           **SECTION 3.** 165.25 (6) (b) of the statutes is amended to read:

17           165.25 **(6)** (b) Volunteer health care providers who provide services under s.  
18 146.89 or 250.042 (4) are, for the provision of those services, covered by this section  
19 and shall be considered agents of the department of health and family services for

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1 purposes of determining which agency head may request the attorney general to  
2 appear and defend them.

3 **SECTION 4.** 250.042 (4) of the statutes is created to read:

4 250.042 (4) (a) In this subsection:

5 1. “Health care facility” has the meaning given in s. 150.84 (2).

6 2. “Health care provider” means an individual who, at any time within 10 years  
7 before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has met  
8 requirements for a nurse’s assistant under s. 146.40 (2) (a), (b), (bm), (c), (e), (em),  
9 (f), or (g), has been licensed as a physician, a physician assistant, or a podiatrist  
10 under ch. 448, licensed as a registered nurse, licensed practical nurse, or  
11 nurse-midwife under ch. 441, licensed as a dentist under ch. 447, licensed as a  
12 pharmacist under ch. 450, licensed as a veterinarian under ch. 453, or has been  
13 certified as a respiratory care practitioner under ch. 448.

14 (b) A health care provider who, during a state of emergency declared under s.  
15 166.03 (1) (b) 1. or 166.23, provides health care services for which the health care  
16 provider has been licensed or certified or, as a nurse’s assistant, has met  
17 requirements, is, for the provision of these services, a state agent of the department  
18 for purposes of ss. 165.25 (6), 893.82, and 895.46 and is an employee of the state for  
19 purposes of worker’s compensation benefits. The health care services shall be  
20 provided to a health care facility on a voluntary, unpaid basis, except that the health  
21 care provider may accept reimbursement for travel, lodging, and meals.

22 (c) Paragraph (b) does not apply to any of the following:

23 1. A physician or physician assistant whose license has been limited,  
24 suspended, or revoked under s. 448.02 (3) (c).

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1           2. A respiratory care practitioner whose certificate has been limited,  
2 suspended, or revoked under s. 448.02 (3) (c).

3           3. A registered nurse, licensed practical nurse, or nurse-midwife whose license  
4 has been revoked, limited, suspended, or denied renewal under s. 441.07 (1).

5           4. A pharmacist whose license has been revoked, limited, suspended, or denied  
6 renewal under s. 450.10 (1) (b).

7           5. A podiatrist whose license has been limited, suspended, or revoked under s.  
8 448.675 (1) or suspended under s. 448.675 (2).

9           6. A dentist whose license has been limited, suspended, or revoked under s.  
10 447.07.

11           7. A veterinarian whose license has been limited, suspended, or revoked under  
12 s. 453.07.

13           **SECTION 5.** 441.06 (4) of the statutes is amended to read:

14           441.06 (4) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may practice  
15 or attempt to practice professional nursing, nor use the title, letters, or anything else  
16 to indicate that he or she is a registered or professional nurse unless he or she is  
17 licensed under this section. ~~No~~ Except as provided in s. 250.042 (4) (b), no person not  
18 so licensed may use in connection with his or her nursing employment or vocation  
19 any title or anything else to indicate that he or she is a trained, certified or graduate  
20 nurse. This subsection does not apply to any person who is licensed to practice  
21 nursing by a jurisdiction, other than this state, that has adopted the nurse licensure  
22 compact under s. 441.50.

23           **SECTION 6.** 441.10 (3) (c) of the statutes is amended to read:

24           441.10 (3) (c) No license is required for practical nursing, but, except as  
25 provided in s. 250.042 (4) (b), no person without a license may hold himself or herself

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1 out as a licensed practical nurse or licensed attendant, use the title or letters  
2 “Trained Practical Nurse” or “T.P.N.”, “Licensed Practical Nurse” or “L.P.N.”,  
3 “Licensed Attendant” or “L.A.”, “Trained Attendant” or “T.A.”, or otherwise seek to  
4 indicate that he or she is a licensed practical nurse or licensed attendant. No licensed  
5 practical nurse or licensed attendant may use the title, or otherwise seek to act as  
6 a registered, licensed, graduate or professional nurse. Anyone violating this  
7 subsection shall be subject to the penalties prescribed by s. 441.13. The board shall  
8 grant without examination a license as a licensed practical nurse to any person who  
9 was on July 1, 1949, a licensed attendant. This paragraph does not apply to any  
10 person who is licensed to practice practical nursing by a jurisdiction, other than this  
11 state, that has adopted the nurse licensure compact under s. 441.50.

12 **SECTION 7.** 441.15 (2) (intro.) of the statutes is amended to read:

13 441.15 (2) (intro.) No Except as provided in s. 250.042 (4) (b), no person may  
14 engage in the practice of nurse–midwifery unless each of the following conditions is  
15 satisfied:

16 **SECTION 8.** 441.15 (5) (a) 5. of the statutes is created to read:

17 441.15 (5) (a) 5. The provision of services by a nurse–midwife under s. 250.042  
18 (4) (b).

19 **SECTION 9.** 447.03 (1) (intro.) of the statutes is amended to read:

20 447.03 (1) DENTISTS. (intro.) Except as provided under sub. (3) and s. 250.042  
21 (4) (b), no person may do any of the following unless he or she is licensed to practice  
22 dentistry under this chapter:

23 **SECTION 10.** 448.03 (2) (p) of the statutes is created to read:

24 448.03 (2) (p) The provision of services by a health care provider under s.  
25 250.042 (4) (b).

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1           **SECTION 11.** 448.03 (3) (a) (intro.) of the statutes is amended to read:

2           448.03 (3) (a) (intro.) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may  
3 use or assume the title “doctor of medicine” or append to the person’s name the letters  
4 “M.D.” unless one of the following applies:

5           **SECTION 12.** 448.03 (3) (b) of the statutes is amended to read:

6           448.03 (3) (b) ~~No~~ Except as provided in s. 250.042 (4) (b), no person not  
7 possessing the degree of doctor of osteopathy may use or assume the title “doctor of  
8 osteopathy” or append to the person’s name the letters “D.O.”.

9           **SECTION 13.** 448.03 (3) (e) of the statutes is amended to read:

10          448.03 (3) (e) ~~No~~ Except as provided in s. 250.042 (4) (b), no person may  
11 designate himself or herself as a “physician assistant” or use or assume the title  
12 “physician assistant” or append to the person’s name the words or letters “physician  
13 assistant” or “P.A.” or any other titles, letters or designation which represents or may  
14 tend to represent the person as a physician assistant unless he or she is licensed as  
15 a physician assistant by the board.

16          **SECTION 14.** 448.61 of the statutes is amended to read:

17          **448.61 License required.** Except as provided in s. ss. 250.042 (4) (b) and  
18 448.62, no person may practice podiatry, designate himself or herself as a podiatrist,  
19 use or assume the title “doctor of surgical chiropody”, “doctor of podiatry” or “doctor  
20 of podiatric medicine”, or append to the person’s name the words or letters “doctor”,  
21 “Dr.”, “D.S.C.”, “D.P.M.”, “foot doctor”, “foot specialist” or any other title, letters or  
22 designation which represents or may tend to represent the person as a podiatrist  
23 unless the person is licensed under this subchapter.

24          **SECTION 15.** 448.66 of the statutes is amended to read:

