

State of Wisconsin



2005 Assembly Bill 385

Date of enactment: **January 4, 2006**
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2005 WISCONSIN ACT 96

AN ACT *to amend* 102.07 (7m), 165.25 (6) (b), 440.75 (5), 441.06 (4), 441.10 (3) (c), 441.15 (2) (intro.), 447.03 (1) (intro.), 448.03 (3) (a) (intro.), 448.03 (3) (b), 448.03 (3) (e), 448.61, 448.66, 453.05 (1), 455.02 (1m), 455.02 (3m) and 457.04 (intro.); and *to create* 102.29 (10), 166.23 (2m), 250.042 (4), 441.15 (5) (a) 5., 448.03 (2) (p), 450.03 (1) (h), 893.82 (2) (d) 1n. and 895.46 (5) (am) of the statutes; **relating to**: designation of state agency status for certain health care providers, behavioral health providers, pupil services providers, or substance abuse prevention providers who provide services during a state of emergency related to public health or a state of emergency declared by a city, village, or town.

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

SECTION 1. 102.07 (7m) of the statutes is amended to read:

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

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

102.29 (10) No behavioral health provider, health care provider, pupil services provider, or substance abuse

prevention provider who, under s. 250.042 (4) (b), is considered to be an employee of the state for purposes of worker's compensation coverage while providing volunteer, unpaid behavioral health services, health care services, pupil services, or substance abuse prevention services on behalf of a health care facility during a state of emergency and who makes a claim for compensation under this chapter may make a claim or bring an action in tort against the health care facility that accepted those services.

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

165.25 (6) (b) Volunteer health care providers who provide services under s. 146.89 or 250.042 (4) and volunteer behavioral health providers, pupil services providers, and substance abuse prevention providers who provide services under s. 250.042 (4) are, for the provision of those services, covered by this section and shall be considered agents of the department of health and family services for purposes of determining which agency head may request the attorney general to appear and defend them.

* Section 991.11, WISCONSIN STATUTES 2003-04 : 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].

SECTION 3m. 166.23 (2m) of the statutes is created to read:

166.23 (2m) If the governing body of a city, village, or town declares an emergency under sub. (1) and intends to make use of behavioral health providers, health care providers, pupil services providers, or substance abuse prevention providers, as specified in s. 250.042 (4), the governing body or its agent shall, as soon as possible, notify the department of health and family services of this intent.

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

250.042 (4) (a) In this subsection:

1. "Behavioral health provider" means an individual who, at any time within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has, under chapter 455, been licensed as a psychologist or has, under ch. 457, been certified as a social worker or licensed as a clinical social worker, a marriage and family therapist, or a professional counselor.

2. "Health care facility" has the meaning given in s. 150.84 (2).

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

4. "Pupil services provider" means an individual who, at any time within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has been licensed as a school counselor, school psychologist, or school social worker under ch. PI 3, 2004 Wis. Adm. Code, or s. PI 34.31, Wis. Adm. Code.

5. "Substance abuse prevention provider" means an individual who, at any time within 10 years before a state of emergency is declared under s. 166.03 (1) (b) 1. or 166.23, has been certified as a counselor, supervisor, or specialist under s. HFS 75.02 (11) and (84), 2005 Wis. Adm. Code, or has been certified as a substance abuse counselor, clinical supervisor, or prevention specialist under s. 440.75.

(b) A behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who, during a state of emergency declared under s. 166.03 (1) (b) 1. or 166.23, provides behavioral health services, health care services, pupil services, or substance abuse prevention services for which the behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider has been licensed or certified or, as a nurse's assistant, has

met requirements, is, for the provision of these services a state agent of the department for purposes of ss. 165.25 (6), 893.82, and 895.46 and is an employee of the state for purposes of worker's compensation benefits. The behavioral health services, health care services, pupil services, or substance abuse prevention services shall be provided on behalf of a health care facility on a voluntary, unpaid basis, except that the behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider may accept reimbursement for travel, lodging, and meals.

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

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

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

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

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

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

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

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

8. A social worker, advanced practice social worker, or independent social worker whose certificate has been revoked, limited, suspended, or denied renewal under s. 457.26, or a clinical social worker, marriage and family therapist, or professional counselor whose license has been revoked, limited, suspended, or denied renewal under s. 457.26.

9. A psychologist whose license has been revoked, limited, suspended, or denied renewal under s. 455.09.

10. A school counselor, school psychologist, or school social worker whose license has been denied or revoked under ch. PI 3, 2004 Wis. Adm. Code, or s. PI 34.35, Wis. Adm. Code.

11. A counselor, supervisor, or specialist whose certification has been denied or revoked by the Wisconsin Certification Board, Inc., or a substance abuse counselor, clinical supervisor, or prevention specialist whose certification has been revoked, limited, suspended, or denied under s. 440.75 (6).

12. A nurse's assistant whose name is listed under s. 146.40 (4g) (a) 2.

SECTION 4m. 440.75 (5) of the statutes, as created by 2005 Wisconsin Act (Assembly Bill 100), is amended to read:

440.75 (5) CERTIFICATION REQUIRED. Except as provided in sub. (3m) and s. 250.042 (4) (b), no person may represent himself or herself to the public as a substance abuse counselor, clinical supervisor, or prevention specialist or a certified substance abuse counselor, clinical supervisor, or prevention specialist or use in connection with his or her name a title or description that conveys the impression that he or she is a substance abuse counselor, clinical supervisor, or prevention specialist or a certified substance abuse counselor, clinical supervisor, or prevention specialist unless he or she is so certified under sub. (2).

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

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

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

441.10 (3) (c) No license is required for practical nursing, but, except as provided in s. 250.042 (4) (b), no person without a license may hold himself or herself out as a licensed practical nurse or licensed attendant, use the title or letters "Trained Practical Nurse" or "T.P.N.", "Licensed Practical Nurse" or "L.P.N.", "Licensed Attendant" or "L.A.", "Trained Attendant" or "T.A.", or otherwise seek to indicate that he or she is a licensed practical nurse or licensed attendant. No licensed practical nurse or licensed attendant may use the title, or otherwise seek to act as a registered, licensed, graduate or professional nurse. Anyone violating this subsection shall be subject to the penalties prescribed by s. 441.13. The board shall grant without examination a license as a licensed practical nurse to any person who was on July 1, 1949, a licensed attendant. This paragraph does not apply to any person who is licensed to practice practical nursing by a jurisdiction, other than this state, that has adopted the nurse licensure compact under s. 441.50.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

448.66 Malpractice. Except as provided in s. 250.042 (4) (b), a person who practices podiatry without having a license under this subchapter may be liable for malpractice, and his or her ignorance of a duty ordinarily performed by a licensed podiatrist shall not limit his or her liability for an injury arising from his or her practice of podiatry.

SECTION 16. 450.03 (1) (h) of the statutes is created to read:

450.03 (1) (h) The provision of services by a health care provider under s. 250.042 (4) (b).

SECTION 17. 453.05 (1) of the statutes is amended to read:

453.05 (1) Except as provided under sub. (2) and s. 250.042 (4) (b), no person may offer to practice, advertise to practice or practice veterinary medicine, or use, in connection with his or her name, any title or description which may convey the impression that he or she is a veterinarian, without a license or temporary permit from the examining board. For purposes of this subsection, a person who makes extra-label use of a drug on an animal without a prescription or in any manner not authorized by that prescription is considered to be practicing veterinary medicine.

SECTION 17g. 455.02 (1m) of the statutes is amended to read:

455.02 (1m) LICENSE REQUIRED TO PRACTICE. ~~No~~ Except as provided in s. 250.042 (4) (b), no person may engage in the practice of psychology or the private practice of school psychology, or attempt to do so or make a representation as authorized to do so, without a license issued by the examining board.

SECTION 17j. 455.02 (3m) of the statutes is amended to read:

455.02 (3m) USE OF TITLES. ~~Only~~ Except as provided in s. 250.042 (4) (b), only an individual licensed under s. 455.04 (1) may use the title “psychologist” or any similar title or state or imply that he or she is licensed to practice psychology, and only an individual licensed under s.

455.04 (4) may use the title “private practice school psychologist” or any similar title or state or imply that he or she is licensed to engage in the private practice of school psychology. ~~Only~~ Except as provided in s. 250.042 (4) (b), only an individual licensed under s. 455.04 (1) or (4) may represent himself or herself to the public by any description of services incorporating the word “psychological” or “psychology”.

SECTION 17m. 457.04 (intro.) of the statutes is amended to read:

457.04 Prohibited practices. (intro.) Except as provided in ~~s. ss. 250.042 (4) (b) and~~ 457.02, no person may do any of the following:

SECTION 18. 893.82 (2) (d) 1n. of the statutes is created to read:

893.82 (2) (d) 1n. A behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who provides services under s. 250.042 (4), for the provision of those services.

SECTION 19. 895.46 (5) (am) of the statutes is created to read:

895.46 (5) (am) A behavioral health provider, health care provider, pupil services provider, or substance abuse prevention provider who provides services under s. 250.042 (4).

SECTION 19m. Effective dates. This act takes effect on the day after publication, except as follows:

(1) The treatment of section 440.75 (5) of the statutes takes effect on the day after publication or on the date on which the treatment of subchapter VII of chapter 440 of the statutes takes effect under SECTION 9421 (10q) of 2005 Wisconsin Act 25, whichever is later.