

Clearinghouse Rule 20-065

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULE-MAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING RULES
: (CLEARINGHOUSE RULE)

PROPOSED ORDER

An order of the Board of Nursing to repeal N 4.02 (2) and (6), 4.04 (2) to (4), 4.05 (6), and 4.10 (3) and (3) (Note); to renumber and amend N 4.01 (2), 4.04 (1) (intro.) and (a) to (d), 4.05 (1) and (4), and 4.08; to amend N 4.01 (1), 4.02 (2m) and (4), 4.03 (1) to (3), 4.04 (title), 4.05 (2), (3), and (7) (intro.), (a), and (b), 4.06 (1) to (4), 4.07 (1) to (4), and 4.10 (1) (intro.) and (2) (a) and (b); to repeal and recreate N 4.05 (5); and to create N 4.01 (2) (a) to (d), 4.025 (4), 4.04 (5), 4.043, 4.05 (1) (a) to (c), (6m), and (7) (d), 4.07 (2m), and 4.10 (2) (d) and (e), relating to licensure of nurse-midwives.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Section 441.15, Stats.

Statutory authority: Sections 15.08 (5) (b) and 441.15 (3) (c), Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides that each examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains, and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular trade or profession.”

Section 441.15 (3) (c), Stats., provides that “[t]he board shall promulgate rules necessary to administer this section, including the establishment of appropriate limitations on the scope of the practice of nurse-midwifery, the facilities in which such practice may occur and the granting of temporary permits to practice nurse-midwifery pending qualification for certification.”

Related statute or rule:

Chapter N 7 provides rules of conduct for licensees, including licensed nurse-midwives.

Plain language analysis:

The Board conducted a comprehensive review of ch. N 4 to ensure its provisions are statutorily compliant and current with professional standards and practices. As a result of this review, the following changes have been made:

- A definition of “bureau” and associated references to the Bureau of Health Service Professions within the Department of Safety and Professional Services are removed, as the Bureau no longer exists.
- A definition of “written agreement” is removed, as it contains substantive and self-evident criteria for the required written agreement under which a nurse-midwife works in collaboration with a physician.
- Sections N 4.03 and 4.05 are updated to reflect that the current accrediting body of educational programs in nurse-midwifery is the Accreditation Commission for Midwifery Education, and that the American Midwifery Certification Board is the current national certifying body.
- Section N 4.04 is revised to remove an obsolete requirement that an application be notarized.
- Section N 4.043 is created to specify the requirements for renewal of a license to practice nurse-midwifery.
- Section N 4.10, relating to malpractice insurance, is revised to be consistent with the exceptions to the malpractice insurance coverage requirements enumerated in s. 441.15 (5) (a), Stats.
- Provisions concerning licensure and temporary permits have been reorganized for connectivity and clarity.
- Other revisions throughout ch. N 4 have been made to provide clarity and comply with current drafting standards.

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

None.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation address the practice of midwifery in Illinois (68 Ill. Adm. Code 1300). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (68 Ill. Adm. Code 1300.400), the scope of practice of advanced practice registered nursing by certified nurse-midwives (68 Ill. Adm. Code 1300.440), requirements for written collaborative agreements (68 Ill. Adm. Code 1300.410), and requirements for late renewal and restoration of a license (68 Ill. Adm. Code 1300.50).

Iowa:

Rules of the Iowa Board of Nursing address the practice of midwifery in Iowa (655 IAC). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (655 IAC 7.2), the scope and standards of advanced nursing practice by certified nurse-midwives (655 IAC 7.4 to 7.6), and requirements for late renewal and reactivation of a license (655 IAC 7.3). Advanced practice registered nurses practicing in Iowa are not required to enter into a collaborative agreement.

Michigan:

Rules of the Michigan Board of Nursing address the practice of midwifery in Michigan (Mich Admin Code, R 338). This includes requirements for licensure as a registered professional nurse with specialty certification as a nurse-midwife (Mich Admin Code, R 338.10203 to R 338.10205 and R 338.10404a), a definition of the practice of a nurse-midwife within the scope of practice of registered professional nursing (Mich Admin Code, R 338.10401), and requirements for late renewal and reregistration of a nurse-midwife specialty certification (Mich Admin Code, R 338.10405a). Registered professional nurses with specialty certification, including specialty certification as a nurse-midwife, practicing in Michigan are not required to enter into a collaborative agreement.

Minnesota:

Rules of the Minnesota Board of Nursing and the Minnesota Statutes address the practice of midwifery in Minnesota (Minnesota Rules, Parts 6305.0100 to 6305.0800 and 2019 Minnesota Statutes, Sections 148.171 to 148.285). This includes requirements for licensure as an advanced practice registered nurse with certification as a nurse-midwife (Minnesota Rules, Part 6305.0410), a definition of nurse-midwife practice (2019 Minnesota Statutes, Section 148.171, Subd. 10), and requirements for late registration and reregistration of a license (2019 Minnesota Statutes, Section 148.231). Advanced practice registered nurses with certification as a nurse-midwife practicing in Minnesota are not required to enter into a collaborative management agreement.

Summary of factual data and analytical methodologies:

The Board conducted a comprehensive review and update of ch. N 4 to ensure the chapter is statutorily compliant and current with professional standards and practices. This included a review of the accreditation criteria established by the Accreditation Commission for Midwifery Education and the *Standards for the Practice of Midwifery* issued by the American College of Nurse-Midwives.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The proposed rules were posted for a period of 14 days to solicit public comment on economic impact, including how the proposed rules may affect businesses, local government units, and individuals. No comments were received.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

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, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

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

Comments may be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov. Comments must be received on or before the public hearing scheduled for 8:00 AM on December 10, 2020 to be included in the record of rule-making proceedings.

TEXT OF RULE

SECTION 1. N 4.01 (1) is amended to read:

N 4.01 (1) The rules in this chapter are adopted pursuant to authority of ss. 15.08 (5); ~~227.11~~ (b) and 441.15 (3) (c), Stats., and interpret s. 441.15, Stats.

SECTION 2. N 4.01 (2) is renumbered N 4.01 (2) (intro.) and amended to read:

N 4.01 (2) (intro.) The intent of the board of nursing in adopting rules in this chapter, ~~interpreting s. 441.15, Stats., is to specify the requirements for obtaining licensure as a nurse-midwife; the scope of practice of nurse-midwifery; the types of facilities in which such practice may occur; and malpractice insurance requirements for nurse-midwives.~~ all of the following:

SECTION 3. N 4.01 (2) (a) to (d) are created to read:

N 4.01 (2) (a) Requirements for licensure as a nurse-midwife and renewal of a license to practice nurse-midwifery.

(b) The scope of practice of nurse-midwifery.

(c) Requirements for health care facilities where the practice of nurse-midwifery may occur.

(d) Malpractice insurance requirements for nurse-midwives.

SECTION 4. N 4.02 (2) is repealed.

SECTION 5. N 4.02 (2m) and (4) are amended to read:

N 4.02 (2m) "Collaboration" has the meaning ~~specified~~ given in s. 441.15 (1) (a), Stats.

(4) "Complications" means ~~those conditions which jeopardized~~ specified in a written agreement under s. N 4.06 (2) as being conditions that jeopardize the health or life of ~~the a~~ a patient and ~~which deviate from normal as defined in the written agreement consistent with the standards of practice of the American College of Nurse-Midwives.~~

SECTION 6. N 4.02 (6) is repealed.

SECTION 7. N 4.025 (4) is created to read:

N 4.025 (4) A license to practice nurse-midwifery shall be issued separately from a license to practice professional nursing.

SECTION 8. N 4.03 (1) to (3) are amended to read:

N 4.03 (1) Has completed an educational program in nurse-midwifery accredited by the ~~American College of Nurse-Midwives~~ Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(2) Holds a certificate issued by the ~~American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ American Midwifery Certification Board, or another national certifying body approved by the board.

(3) Is currently licensed to practice as a professional nurse in ~~Wisconsin, this state or is currently licensed~~ has the privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact.

SECTION 9. N 4.04 (title) is amended to read:

N 4.04 (title) Application procedures for licensure.

SECTION 10. N 4.04 (1) (intro.) and (a) to (d) are renumbered N 4.04 (intro.) and (1m) to (4m) and amended to read:

N 4.04 (intro.) An applicant for ~~licensure~~ a license to practice as ~~a nurse-midwife~~ nurse-midwifery shall file a completed, ~~notarized~~ application on a form provided by the ~~bureau~~ board. The application shall include all of the following:

(1m) ~~Signature~~ The signature of the applicant.

(2m) ~~Fee~~ The fee specified under s. 440.05 (1), Stats.

(3m) Evidence of completion of an educational program in nurse-midwifery approved by the ~~American College of Nurse-Midwives and evidence of certification as a nurse-midwife from the American College of Nurse-Midwives or the American College of Nurse-Midwives Certification Council~~ Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(4m) ~~Identification~~ Evidence of current licensure as a professional nurse in ~~Wisconsin~~ this state or ~~of current licensure~~ privilege to practice professional nursing in another state ~~which that~~ has adopted the nurse licensure compact, including the license number and renewal information.

SECTION 11. N 4.04 (2) to (4) are repealed.

SECTION 12. N 4.04 (5) is created to read:

N 4.04 (5) Evidence of certification as a nurse-midwife from the American Midwifery Certification Board, or another national certifying body approved by the board.

SECTION 13. N 4.043 is created to read:

N 4.043 **License renewal.** An individual holding a license to practice nurse-midwifery may renew the license by doing all of the following:

- (1) Pay the renewal fee as determined by the department under s. 440.03 (9) (a), Stats., the workforce survey fee, and any applicable late renewal fee.
- (2) Complete the nursing workforce survey to the satisfaction of the board.
- (3) Provide evidence of current certification as a nurse-midwife by the American Midwifery Certification Board, or another national certifying body approved by the board.
- (4) If applicable, provide evidence to the board that the applicant maintains in effect malpractice insurance meeting the requirements under s. N 4.10 (1).

SECTION 14. N 4.05 (1) is renumbered N 4.05 (1) (intro.) and amended to read:

N 4.05 (1) (intro.) ~~ELIGIBILITY APPLICATION. An applicant for licensure as a nurse-midwife a license to practice nurse-midwifery who has completed an educational program in nurse-midwifery approved by the American college of nurse midwives, who is currently licensed to practice as a professional nurse in Wisconsin and who has paid the fee specified in s. 440.05 (6), Stats.,~~ may be eligible for granted a temporary permit to practice nurse-midwifery. An application for a temporary permit to practice nurse-midwifery shall include all of the following:

SECTION 15. N 4.05 (1) (a) to (c) are created to read:

N 4.05 (1) (a) Verification the applicant has completed an educational program in nurse midwifery accredited by the Accreditation Commission for Midwifery Education, or another accrediting body approved by the board.

(b) Verification the applicant is currently licensed to practice as a professional nurse in this state or currently has the privilege to practice professional nursing in another state that has adopted the nurse licensure compact.

(c) The fee specified in s. 440.05 (1), Stats.

SECTION 16. N 4.05 (2) and (3) are amended to read:

N 4.05 (2) ISSUING A TEMPORARY PERMIT. ~~The bureau of health service professions board~~ shall issue a temporary permit to an eligible applicant within one week of the determination of eligibility.

(3) SUPERVISION REQUIRED. The holder of a temporary permit shall practice under the direct supervision of a nurse-midwife ~~certified~~ licensed under s. 441.15, Stats., or a physician. The holder may not practice beyond the scope of practice of a nurse-midwife as set forth in s. N 4.06.

SECTION 17. N 4.05 (4) is renumbered N 4.025 (3) and amended to read:

N 4.025 (3) The holder of a valid temporary permit under ~~this section~~ s. N 4.05 may use the title "graduate nurse-midwife" or the letters "G.N.M."

SECTION 18. N 4.05 (5) is repealed and recreated to read:

N 4.05 (5) DURATION. **(a)** Except as provided under par. (b), a temporary permit is valid for a period of 6 months or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.

(b) If the holder of a temporary permit has also been granted a temporary permit to practice as a registered nurse under s. N 2.31, the temporary permit is valid for the period that coincides with the duration of the temporary permit under s. N 2.34 or until the permit holder receives notification of failing the examination required for certification under s. N 4.03 (2), whichever occurs first.

(c) Practice under a temporary permit, including renewals under sub. (6m), may not exceed 12 months.

SECTION 19. N 4.05 (6) is repealed.

SECTION 20. N 4.05 (6m) is created to read:

N 4.05 (6m) RENEWALS. A temporary permit may be renewed twice for a period of 3 months for each renewal. A second renewal under this subsection may only be granted if the holder of the temporary permit is awaiting examination results or an affidavit is filed with the board identifying a hardship. As used in this subsection, "hardship" includes the inability to take or complete a scheduled examination because of illness, family illness or death, accident, or natural disaster.

SECTION 21. N 4.05 (7) (intro.), (a), and (b) are amended to read:

N 4.05 (7) (intro.) ~~REVOCATION~~ DENIAL OR REVOCATION. A temporary permit may, ~~after notice and hearing,~~ be denied or revoked by the board for any of the following reasons:

(a) Violation of any of the rules of conduct for registered nurses in ch. N 7 or for violation of the rules governing nurse-midwives under ~~ch. N 4~~ this chapter.

(b) Failure to pay ~~the required fees~~ a fee required under s. 440.05 ~~(6)~~ (1), Stats.

SECTION 22. N 4.05 (7) (d) is created to read:

N 4.05 (7) (d) Misrepresentation of being a nurse-midwife or a graduate nurse-midwife when applying for a temporary permit under this section.

SECTION 23. N 4.06 (1) to (4) are amended to read:

N 4.06 (1) The scope of practice of nurse-midwifery is the overall management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of practice of the American College of Nurse-Midwives and the education, training, and experience of the nurse-midwife.

(2) ~~The~~ A nurse-midwife shall collaborate with a physician with postgraduate training in obstetrics pursuant to a written agreement with that physician.

(3) ~~The~~ A nurse-midwife shall consult with the ~~consulting~~ collaborating physician regarding any complications discovered by the nurse-midwife, or refer the patient pursuant to the written agreement under sub. (2).

(4) Upon referral under sub. (3), ~~the~~ a nurse-midwife may independently manage that part of the care ~~of the~~ for a patient ~~which~~ that is appropriate to ~~consistent with the knowledge and skills~~ education, training, and experience of the nurse-midwife.

SECTION 24. N 4.07 (1) and (2) are amended to read:

N 4.07 (1) ~~The~~ A nurse-midwife shall may not independently manage those complications that require referral pursuant to the written agreement under s. N 4.06 (2).

(2) ~~The~~ A nurse-midwife may not perform deliveries by forceps or Caesarean section. ~~The nurse-midwife may use vacuum extractors only in emergency delivery situations.~~

SECTION 25. N 4.07 (2m) is created to read:

N 4.07 (2m) A nurse-midwife may use vacuum extractors only in emergency delivery situations.

SECTION 26. N 4.07 (3) and (4) are amended to read:

N 4.07 (3) ~~The~~ A nurse-midwife may not assume any responsibilities, ~~either by physician delegation or otherwise, which he or she is not competent to perform by that are inconsistent with the education, training, or and experience of the nurse-midwife.~~

(4) Following notification of a physician as required by s. 441.15 (4), Stats., a nurse-midwife may continue to manage ~~the~~ a delivery ~~when complications occur~~ if emergency measures are required and the physician has not yet arrived.

SECTION 27. N 4.08 is renumbered N 4.025 and amended to read:

N 4.025 Licensure and ~~exception~~ exceptions.

(1) ~~No~~ Except as provided under subs. (2) and (3), unless licensed under this chapter no person may practice or attempt to practice nurse-midwifery or use the title or letters "Certified Nurse-Midwife", or "C.N.M.", "Nurse-Midwife", or "N.M.", or anything else any other title or letters to indicate that he or she person is a nurse-midwife unless he or she is licensed under this chapter.

(2) ~~Nothing in this chapter shall be construed either to prohibit or to require a license under this chapter for any~~ Any person lawfully practicing professional nursing within the scope of a license granted under ch. 441, Stats., is not required to be licensed under this chapter.

SECTION 28. N 4.10 (1) (intro.) and (2) (a) and (b) are amended to read:

N 4.10 (1) (intro.) ~~Nurse-midwives~~ A nurse-midwife shall ~~maintain~~ have in effect malpractice insurance evidenced by one of the following:

(2) (a) A nurse-midwife who practices nurse-midwifery within the scope of employment as a federal, state, county, city, village, or town employee who practices nurse-midwifery within the scope of his or her employment.

(b) A nurse-midwife who practices nurse-midwifery as an employee of the federal public health service under 42 USC 233 (g).

SECTION 29. N 4.10 (2) (d) and (e) are created to read:

N 4.10 (2) (d) A nurse-midwife whose employer has in effect malpractice liability insurance that provides coverage for the nurse-midwife in an amount equal to or greater than the amounts specified in sub. (1) (a) or (b).

(e) A nurse-midwife providing nurse-midwifery services under s. 257.03, Stats.

SECTION 30. N 4.10 (3) and (3) (Note) are repealed.

SECTION 31. 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)
