

STATE OF WISCONSIN  
BOARD OF NURSING

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

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PROPOSED ORDER

An order of the Board of Nursing to repeal ch. N 5 and N 6.02 (4); to renumber N 6.02 (1); to amend N 6.02 (11) and (12), 6.03 (2) and (3), 6.04 (1), 6.04 (2) (intro), 6.04 (2) (b) and 6.04 (3) (intro), (a) and (b); to repeal and recreate N 6.02 (5) and 6.04 (3) (c); to create N 2 Subchapter V, N 6.02 (1) and 6.02 (10m), relating to renewal, reinstatement and standards of practice.

Analysis prepared by the Department of Safety and Professional Services.

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ANALYSIS

**Statutes interpreted:** ss. 441.01 (7), 441.001 (3) and (4), Stats.

**Statutory authority:** ss. 15.08 (5) (b), and 441.01 (3), Stats.

**Explanation of agency authority:**

Each examining board shall promulgate rules for its own guidance and for the guidance of the profession to which it pertains and define and enforce professional conduct and unethical practices not inconsistent with the law relating to the particular profession. s. 15.08 (5) (b)

The board may establish minimum standards or schools for professional nurses and schools for licensed practical nurses, including all related clinical units and facilities, and make and provide periodic surveys and consultations to such schools. It may also establish rules to prevent unauthorized persons from practicing professional nursing. It shall approve all rules for the administration of this chapter in accordance with ch. 227. s. 441.01(3), Stats.

**Related statute or rule:** n/a

**Plain language analysis:**

The Board updated the current renewal chapter to reflect current practices and remove outdated references. The Board also updated the standards of practice chapter to current nursing practice standards.

Sections 1 and 2 repeals the current chapter 5 relating to renewal and creates a new subchapter in Chapter 2. The placement of the renewal and reinstatement provisions as a subsection of the

chapter on licensure makes sense as it relates to licensure. This section clarifies that a person who has an expired license may not reapply for a new credential under the initial application process. A person renewing a license within 5 years is required to pay a renewal fee, any late fees and the workforce survey fee and complete the workforce survey. A person renewing after 5 years is required to pay the renewal fee, late fee, and workforce survey fee and evidence of employment requiring a nursing license within the last five years or complete a nursing refresher course. A person who failed to renew a credential within 5 years with unmet disciplinary requirements or has a license which has been surrendered or revoked may apply for reinstatement by showing evidence of rehabilitation or change in circumstances, completing any unfilled disciplinary requirements and if the person has not had an active license in the past five years complete the requirements for renewal beyond 5 years. If a license has been revoked, the person's license may not be reinstated earlier than one year following revocation.

Section 3 rennumbers the definition of "basic nursing care" in order to make room alphabetically for a new definition.

Section 4 creates a definition for "advanced practice nurse prescriber". An advanced practice nurse prescriber is a registered nurse who holds an advanced practice nurse prescriber certificate.

Section 5 repeals the definition of "delegated medical act".

Section 6 repeals the definition of "delegated nursing act" and creates a definition of "delegated act". A delegated act is an act delegated to a registered nurse or license practical nurse.

Section 7 creates a definition of "provider". A provider is a physician, podiatrist, dentist, optometrist or advanced practice nurse prescriber.

Section 8 updates the definitions to reflect a R.N. or L.P.N. includes those who have the privilege to practice in Wisconsin under the Nurse Licensure Compact.

Sections 9 and 10 updates the delegated acts terminology by removing the references to medical and nursing acts, uses the term provider instead of listing the various professions and updates the formatting to current drafting style.

Section 11 updates to current drafting style by adding "do all of the following:"

Section 12 updates the delegated acts terminology.

Section 13 updates to current drafting style.

Section 14 repeals and recreates, a provision for an LPN to accept the charge nurse position in a nursing home only if prepared to do so based upon education, training and experience. The rewording of this provision is to provide more clarity.

**Summary of, and comparison with, existing or proposed federal regulation:** None

### **Comparison with rules in adjacent states:**

**Illinois:** A license within 5 years of expiration is renewed by paying a fee and completion of 20 hours of continuing education. After 5 years a license is renewed by evidence of active practice in another state and completion of an approved licensure examination. A LPN accepts delegated acts from a RN, APN, or a physician assistant, physician, dentist or podiatrist. A delegated act, to or by an RN, is not distinguished as a medical or nursing delegated act. Practice as a RN means the full scope of nursing for which the registered nurse is properly trained.

**Iowa:** A license is renewed by paying a fee, attesting that Iowa is the primary state of residence and completion of continuing education and mandatory reporter training. RN minimum standards do not include practices ascribed to the advanced registered nurse practitioner. In executing the medical regimen prescribed, the RN shall notify the physician. A RN may delegate nursing tasks. An LPN shall perform services under the supervision of a RN or physician and may not perform any activity requiring the knowledge and skill ascribed to a RN.

**Michigan:** A license is renewed by payment of paying fees and completion of continuing education. Only a RN may delegate nursing acts, functions or tasks.

**Minnesota:** A license is renewed by paying a fee and completion of continuing education. Minnesota has a definition of delegation referring to the transfer of authority to another nurse or competent, unlicensed assistive person to perform a specific nursing task or activity in a specific situation. A LPN performs nursing standards at the direction of a registered nurse, advanced practice registered nurse or other licensed health care provider. A RN performs nursing standards recognized by the board. A RN receives delegations from a licensed health care provider and delegates nursing tasks. There is not a definition for health care provider.

### **Summary of factual data and analytical methodologies:**

The Board conducted a comprehensive review and updated the renewal and standards of practice chapters in order to bring them up-to-date with current practice.

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

#### **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 Eric.Esser@wisconsin.gov, or by calling (608) 267-2435.

#### **Agency contact person:**

Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-261-2377; email at Sharon.Henes@wisconsin.gov.

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

Comments may be submitted to Sharon Henes, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Board Services, 1400 East Washington Avenue, Room 151, P.O. Box 8366, Madison, WI 53708-8366, or by email to Sharon.Henes@wisconsin.gov. Comments must be received on or before the public hearing to be held on January 14, 2015 at 8:00 a.m. to be included in the record of rule-making proceedings.

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TEXT OF RULE

SECTION 1. N 2 Subchapter V is created to read:

SUBCHAPTER V  
RENEWAL

**N 2.40 Renewal. (1) GENERAL.** A person with an expired credential may not reapply for a credential using the initial application process.

**(2) RENEWAL WITHIN 5 YEARS.** A person renewing the license within 5 years shall do all of the following:

- (a) Pay the renewal fee as determined by the department under s. 440.03(9)(a), Stats. and any applicable late renewal fee.
- (b) Pay a nursing workforce survey fee.
- (c) Complete the nursing workforce survey to the satisfaction of the board.

**(3) RENEWAL AFTER 5 YEARS.** This subsection does not apply to credential holders who have unmet disciplinary requirements or whose credential has been surrendered or revoked. A person renewing the credential after 5 years shall do all of the following:

- (a) Pay the renewal fee as determined by the department under s. 440.03(9)(a), Stats. and the late renewal fee.
- (b) Pay a nursing workforce survey fee.
- (c) Complete the nursing workforce survey to the satisfaction of the board.
- (d) Meet one of the following requirements:
  - 1. Documentation of employment requiring a nursing license within the last five years.
  - 2. Completion of a board approved nursing refresher course or education equivalent to a nursing refresher course. A nursing refresher course requires a limited license for the purpose of completing the clinical component of the course.

**N 2.41 Reinstatement.** A credential holder who has unmet disciplinary requirements and failed to renew the credential within 5 years or whose credential has been surrendered or revoked may apply to have the credential reinstated in accordance with all of the following:

- (1) Evidence of completion of the requirements in N 2.40(3) if the license has not been active within 5 years.
- (2) Evidence of completion of the disciplinary requirements, if applicable.
- (3) Evidence of rehabilitation or change in circumstances warranting reinstatement.
- (4) A revoked license may not be reinstated earlier than one year following revocation. This subsection does not apply to a license that is revoked under s. 440.12.

SECTION 2. Chapter N 5 is repealed.

SECTION 3. N 6.02 (1) is renumbered to N 6.02 (1m).

SECTION 4. N 6.02(1) is created to read:

**N 6.02 (1)** “Advanced practice nurse prescriber” means a registered nurse who holds an advanced practice nurse prescriber certificate under 441.16, Stats.

SECTION 5. N 6.02 (4) is repealed.

SECTION 6. N 6.02 (5) is repealed and recreated to read:

**N 6.02 (5)** “Delegated act” means acts delegated to a registered nurse or licensed practical nurse.

SECTION 7. N 6.02 (10m) is created to read:

**N 6.02 (10m)** “Provider” means a physician, podiatrist, dentist, optometrist or advanced practice nurse provider.

SECTION 8. N 6.02 (11) and (12) are amended to read:

**N 6.02 (11)** “R.N.” means a registered nurse licensed under ch. 441, Stats. or a nurse who has a privilege to practice in Wisconsin under s. 441.50, Stats.

**(12)** “L.P.N.” means a licensed practical nurse licensed under ch. 441, Stats. or a nurse who has a privilege to practice in Wisconsin under s. 441.50, Stats.

SECTION 9. N 6.03 (2) and (3) are amended to read:

**N 6.03 (2)** PERFORMANCE OF DELEGATED ~~MEDICAL~~ ACTS. In the performance of delegated ~~medical~~ acts an R.N. shall do all of the following:

- (a) Accept only those delegated ~~medical~~ acts for which there are protocols or written or verbal orders;
- (b) Accept only those delegated ~~medical~~ acts for which the R.N. is competent to perform based on his or her nursing education, training or experience;

- (c) Consult with a ~~physician, podiatrist, dentist, or optometrist~~ provider in cases where the R.N. knows or should know a delegated ~~medical~~ act may harm a patient; ~~and,~~
- (d) Perform delegated ~~medical~~ acts under the general supervision or direction of a ~~physician, podiatrist, dentist or optometrist~~ provider.

**(3) SUPERVISION AND DIRECTION OF DELEGATED ~~NURSING~~ ACTS.** In the supervision and direction of delegated ~~nursing~~ acts an R.N. shall do all of the following:

- (a) Delegate tasks commensurate with educational preparation and demonstrated abilities of the person supervised; ~~;~~
- (b) Provide direction and assistance to those supervised; ~~;~~
- (c) Observe and monitor the activities of those supervised; ~~and,~~
- (d) Evaluate the effectiveness of acts performed under supervision.

SECTION 10. N 6.04 (1) is amended to read:

**N 6.04 Standards of practice for licensed practical nursing. (1) PERFORMANCE OF ACTS IN BASIC PATIENT SITUATIONS.** In the performance of acts in basic patient situations, the L.P.N., shall, under the general supervision of an R.N. or the direction of a ~~physician, podiatrist, dentist or,~~ optometrist provider:

- (a) Accept only patient care assignments which the L.P.N. is competent to perform; ~~;~~
- (b) Provide basic nursing care; ~~;~~
- (c) Record nursing care given and report to the appropriate person changes in the condition of a patient; ~~;~~
- (d) Consult with ~~an R.N., physician, podiatrist, dentist, optometrist~~ a provider in cases where an L.P.N. knows or should know a delegated ~~nursing or medical~~ act may harm a patient; ~~and,~~
- (e) Perform the following other acts when applicable:
  1. Assist with the collection of data; ~~;~~
  2. Assist with the development and revision of a nursing care plan; ~~;~~
  3. Reinforce the teaching provided by an R.N., ~~physician, podiatrist, dentist or optometrist~~ provider and provide basic health care instruction; ~~or,~~
  4. Participate with other health team members in meeting basic patient needs.

SECTION 11. N 6.04 (2) (intro) is amended to read:

**N 6.04 (2) PERFORMANCE OF ACTS IN COMPLEX PATIENT SITUATIONS.** In the performance of acts in complex patient situations the L.P.N. shall do all of the following:

SECTION 12. N 6.04 (2) (b) is amended to read:

**N 6.04 (2) (b)** Perform delegated ~~nursing or medical~~ acts beyond basic nursing care under the direct supervision of an R.N., ~~physician, podiatrist, dentist or optometrist~~ a provider. An L.P.N. shall, upon request of the board, provide documentation of his or her nursing education, training or experience which prepares the L.P.N. to competently perform these assignments.

SECTION 13. N 6.04 (3) (intro), (a) and (b) are amended to read:

**N 6.04 (3)** ASSUMPTION OF CHARGE NURSE POSITION IN NURSING HOMES. In assuming the position of charge nurse in a nursing home as defined in s. 50.04 (2) (b), Stats., an L.P.N. shall do all of the following:

- (a) Follow written protocols and procedures developed and approved by an R.N.;
- (b) Manage and direct the nursing care and other activities of L.P.N.s and nursing support personnel under the general supervision of an R.N.; ~~and,~~

SECTION 14. N 6.04 (3) (c) is repealed and recreated to read:

**N 6.04 (3) (c)** Accept the charge nurse position only if prepared for the responsibilities of charge nurse based upon education, training and experience beyond the practical nurse curriculum. The L.P.N. shall, upon request of the board, provide documentation of the nursing education, training or experience which prepared the L.P.N. to competently assume the position of charge nurse.

SECTION 15. 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.

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(END OF TEXT OF RULE)

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original    Updated    Corrected

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2. Administrative Rule Chapter, Title and Number

N 5 and 6

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3. Subject

Renewal, reinstatement and standards of practice

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4. Fund Sources Affected

GPR    FED    PRO    PRS    SEG    SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.165(1)(g)

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect    Increase Existing Revenues    Increase Costs  
 Indeterminate    Decrease Existing Revenues    Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy    Specific Businesses/Sectors  
 Local Government Units    Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes    No

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9. Policy Problem Addressed by the Rule

The current renewal chapter contains rules which are inconsistent with current practices for renewal and included outdated references. The proposed rule recognizes modern practices, technologies and procedures, removed obsolete references and corrected inconsistencies with statutes as well as relocated the chapter to be a subchapter of the licensure chapter which is more logical. The standards of practice chapter is being updated to current nursing standards and practice.

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10. 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.

This rule was posted for economic comments for 14 days and none were received.

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11. Identify the local governmental units that participated in the development of this EIA.

None. This does not affect local governmental units.

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12. 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 rule will not have an economic affect specific businesses, business sectors, public utility rate payers, local governmental units or the state's economy as a whole.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

The benefits to implementing the rule are to create clarity and reflect current standards and practices.

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14. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is to have chapters which are up-to-date.

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15. Compare With Approaches Being Used by Federal Government

None

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

**Illinois:** A license within 5 years of expiration is renewed by paying a fee and completion of 20 hours of continuing education. After 5 years a license is renewed by evidence of active practice in another state and completion of an approved licensure examination. A LPN accepts delegated acts from a RN, APN, or a physician assistant, physician,

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

dentist or podiatrist. A delegated act, to or by an RN, is not distinguished as a medical or nursing delegated act. Practice as a RN means the full scope of nursing for which the registered nurse is properly trained.

**Iowa:** A license is renewed by paying a fee, attesting that Iowa is the primary state of residence and completion of continuing education and mandatory reporter training. RN minimum standards do not include practices ascribed to the advanced registered nurse practitioner. In executing the medical regimen prescribed, the RN shall notify the physician. A RN may delegate nursing tasks. An LPN shall perform services under the supervision of a RN or physician and may not perform any activity requiring the knowledge and skill ascribed to a RN.

**Michigan:** A license is renewed by payment of paying fees and completion of continuing education. Only a RN may delegate nursing acts, functions or tasks.

**Minnesota:** A license is renewed by paying a fee and completion of continuing education. Minnesota has a definition of delegation referring to the transfer of authority to another nurse or competent, unlicensed assistive person to perform a specific nursing task or activity in a specific situation. A LPN performs nursing standards at the direction of a registered nurse, advanced practice registered nurse or other licensed health care provider. A RN performs nursing standards recognized by the board. A RN receives delegations from a licensed health care provider and delegates nursing tasks. There is not a definition for health care provider.

17. Contact Name Sharon Henes	18. Contact Phone Number (608) 261-2377
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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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### CLEARINGHOUSE RULE 15-099

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated December 2014.]**

#### 2. Form, Style and Placement in Administrative Code

a. Under the subheading “Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis”, the agency should include the “n/a” notation to clarify that it does not apply.

b. Based on the language of s. N 2.40 (3) (intro.) and (d) 1., does the agency create a situation where a credential holder who is renewing a credential that has been expired for more than five years must provide documentation of employment requiring a license within the last five years? Is this provision intended to force applicants to self-identify instances of unlicensed practice? If not, what is the agency’s intent regarding the combination of these provisions?

c. In s. N 2.40 (3) (d) 2., the agency refers to a “limited license”. The agency should indicate how such a license may be obtained, either via cross-reference or note.

d. Is there a rule provision that applies to reinstatement of a credential holder who has unmet disciplinary requirements, has not surrendered the credential or had it revoked, and who wishes to renew the credential within five years? Section N 2.41 appears to apply only to credential holders with unmet disciplinary requirements who fail to renew within five years or whose credential has been surrendered or revoked. Should ch. N 2 contain a provision similar to s. Phar 5.04, as amended by CHR 15-081?

**5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In SECTION 1, the treatment clause should be revised to read as follows: "Subch. V of N 2 is created to read:". [s. 1.07 (2), Manual.]

b. In s. N. 2.41, the agency should add "s." before "N 2.40 (3)" and should add ", Stats." after "s. 440.12".

c. In s. N 2.40 (2) (intro.), the agency refers to a "license". Throughout the other provisions of the rule, the term "credential" or "expired credential" is used. Is it necessary to reconcile the use of these terms?

d. Because s. N 2.41 relates to reinstatement and licensees with unmet disciplinary requirements, is it necessary to use the phrase "if applicable" at the end of s. N 2.41 (2)? Under what circumstances would evidence of completion of disciplinary requirements be inapplicable?

e. As it relates to the use of the phrase "delegated act" in the proposed rule, should the agency identify the authorities responsible for the delegation? These authorities were identified in the existing s. N 6.02 (4) and (5), but only appear to be implied by context in the proposed rule.