



**VIRTUAL/TELECONFERENCE
LEGISLATION AND RULES COMMITTEE
BOARD OF NURSING**

**Virtual, 4822 Madison Yards Way, Madison
Contact: Christine Poleski (608) 266-2112
April 8, 2021**

*Notice: The following agenda describes the issues that the Committee plans to consider at the meeting. At the time of the meeting, items may be removed from the agenda. Please consult the meeting minutes for a description of the actions and deliberations of the Committee. A **quorum of the Board may be present during the committee meeting.***

AGENDA

8:00 A.M.

CALL TO ORDER – ROLL CALL – OPEN SESSION

- A. Approval of Agenda (1)**
- B. Legislative and Policy Matters – Discussion and Consideration**
- C. Administrative Rules Matters – Discussion and Consideration (2)**
 - 1) Rule Draft for N2, Relating to Temporary Permits **(3-13)**
 - 2) Senate Bill 169 – Temporary Practice by RNs at Camps **(14-16)**
 - 3) 2021 Wisconsin Act 10 **(17-19)**
 - 4) Pending and Possible Rulemaking Projects
- D. Public Comments**

ADJOURNMENT

MEETINGS AND HEARINGS ARE OPEN TO THE PUBLIC, AND MAY BE CANCELLED WITHOUT NOTICE.

Times listed for meeting items are approximate and depend on the length of discussion and voting. All meetings are held at 4822 Madison Yards Way, Madison, Wisconsin, unless otherwise noted. In order to confirm a meeting or to request a complete copy of the board's agenda, please call the listed contact person. The board may also consider materials or items filed after the transmission of this notice. Times listed for the commencement of disciplinary hearings may be changed by the examiner for the convenience of the parties. Requests for interpreters for the deaf or hard of hearing, or other accommodations, are considered upon request by contacting the Affirmative Action Officer, 608-266-2112, or the Meeting Staff at 608-266-5439.

**State of Wisconsin
Department of Safety & Professional Services**

AGENDA REQUEST FORM

1) Name and title of person submitting the request: Kassandra Walbrun Administrative Rules Coordinator		2) Date when request submitted: 3/30/2021 <small>Items will be considered late if submitted after 12:00 p.m. on the deadline date which is 8 business days before the meeting</small>	
3) Name of Board, Committee, Council, Sections: Board of Nursing			
4) Meeting Date: 4/08/2021	5) Attachments: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	6) How should the item be titled on the agenda page? Legislative and Administrative Rule Matters – Discussion and Consideration 1) Discuss Rule Draft for N2, relating to Temporary Permits 2) SB 169 - Temporary Practice by RNs at Camps 3) 2021 Act 10 4) Other pending and possible rule issues	
7) Place Item in: <input checked="" type="checkbox"/> Open Session <input type="checkbox"/> Closed Session	8) Is an appearance before the Board being scheduled? <i>(If yes, please complete Appearance Request for Non-DSPS Staff)</i> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	9) Name of Case Advisor(s), if required:	
10) Describe the issue and action that should be addressed: 1) Draft Rules draft, approved Scope Statement, and EmR2107 (multiple pdfs) 2) SB 169 (pdf) 3) Act 10 (pdf)			
Authorization			
<i>Kassandra Walbrun</i>		3/30/2021	
Signature of person making this request		Date	
Supervisor (if required)		Date	
Executive Director signature (indicates approval to add post agenda deadline item to agenda)		Date	
Directions for including supporting documents: 1. This form should be attached to any documents submitted to the agenda. 2. Post Agenda Deadline items must be authorized by a Supervisor and the Policy Development Executive Director. 3. If necessary, provide original documents needing Board Chairperson signature to the Bureau Assistant prior to the start of a meeting.			

STATE OF WISCONSIN
BOARD OF NURSING

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : BOARD OF NURSING
BOARD OF NURSING : ADOPTING EMERGENCY RULES

The statement of scope for this rule, SS 015-21, was approved by the Governor on January 14, 2021, published in Register 782B on February 22, 2021, and approved by the Board of Nursing on March 3, 2021.

This emergency rule was approved by the Governor on *

PROPOSED ORDER

An order of the Board of Nursing to amend N 2.34, relating to temporary permits.

Analysis prepared by the Department of Safety and Professional Services.

FINDING OF EMERGENCY

Administrative rules provide that a nurse who has graduated from an approved school or comparable school or granted a certificate of completion by an approved school may be granted a temporary permit to practice nursing. A temporary permit may not exceed 6 months duration, and the holder of the permit must practice under the direct supervision of a registered nurse. The COVID-19 pandemic and the resulting closures and safety precautions have resulted in the postponement of NCLEX exams at Wisconsin testing sites. As a result, some graduate nurses currently practicing under a temporary permit may be unable to schedule their examination prior to the permit's expiration. An expeditious promulgation of the proposed rule is in the best interest of public welfare, as it will help ensure a robust nursing workforce in Wisconsin.

ANALYSIS

Statutes interpreted:

None.

Statutory authority:

Sections 15.08 (5) (b) and 441.08, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 441.08, Stats., provides that “[a] nurse who has graduated from a school approved by the board or that the board has authorized to admit students pending approval but who is not licensed in this state may be granted a temporary permit upon payment of the fee specified in s. 440.05 (6) by the board to practice for compensation until the nurse can qualify for licensure. The temporary permit may be renewed once.

Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

The proposed emergency rule will temporarily extend the timing of a temporary permit to six months instead of three months under ch. N 2.34

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 establish requirements for approval of nursing programs, including standards for clinical learning (68 Ill. Adm. Code 1300.230 and 1300.340). The rules do not explicitly limit the extent to which simulation may be utilized to meet clinical learning requirements.

Iowa: Rules of the Iowa Nursing Board establish requirements for approval of nursing programs, including standards for clinical instruction (655 IAC Chapter 2). The rules define “clinical instruction” to mean hands-on learning situations in which students directly care for patients. Simulation activities are not permitted to take the place of clinical experiences with actual patients.

Michigan: Rules of the Michigan Department of Licensing and Regulatory Affairs establish requirements for approval of nursing education programs, including standards for clinical experience (Mich Admin Code, R 338.10301 to R 338.10312). The rules define “clinical experience” to include simulated nursing experiences, and do not explicitly limit the extent to which simulated nursing experiences are permitted.

Minnesota: Rules of the Minnesota Nursing Board establish requirements for approval of nursing education programs, including standards for clinical learning (Minnesota Rules, parts 6301.0100 to 6301.2410). The rules allow “high-fidelity simulation” meeting specific criteria to be utilized for no more than half of the time designated for meeting clinical learning requirements in practical and professional programs. "High-fidelity simulation" is defined as a simulation conducted with computerized patient mannequins, virtual reality, or standardized patients and designed to provide a high level of interactivity and realism.

Summary of factual data and analytical methodologies:

The proposed emergency rules were developed by obtaining input and feedback from the Board of Nursing.

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

These emergency rules would temporarily extend the duration in which a temporary permit is valid.

Fiscal estimate:

To be determined.

Effect on small business:

These proposed emergency rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator, Dan Hereth, may be contacted by calling (608) 267-2435.

Agency contact person:

Kassandra Walbrun, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366; telephone 608-261-4463; email at DSPSAdminRules@wisconsin.gov .

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

Comments may be submitted to Kassandra Walbrun, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, Wisconsin 53708-8366, or through email to DSPSAdminRules@wisconsin.gov.

Comments must be submitted by the date and time at which the public hearing on these emergency rules is conducted. Information as to the place, date, and time of the public hearing will be published on the Legislature's website and in the Wisconsin Administrative Register.

TEXT OF RULE

SECTION 1. N 2.34 (1) as affected by EmR2107 is renumbered N 2.34 and amended to read:

N 2.34 (1) The temporary permit is valid for a period of ~~3~~ 6 months or until the holder receives notification of failing the NCLEX, whichever occurs first. Except as provided in sub. (2), practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect upon publication in the official state newspaper, pursuant to s. 227.22 (2) (c), Stats.

(END OF TEXT OF RULE)

STATEMENT OF SCOPE

BOARD OF NURSING

Rule No.: N 2

Relating to: Temporary Permits

Rule Type: Emergency and Permanent

1. Finding/nature of emergency (Emergency Rule only):

Administrative rules provide that a nurse who has graduated from an approved school or comparable school or granted a certificate of completion by an approved school may be granted a temporary permit to practice nursing. A temporary permit may not exceed 6 months duration, and the holder of the permit must practice under the direct supervision of a registered nurse. The spread of COVID-19 and the resulting closures and safety precautions have resulted in the postponement of NCLEX exams at Wisconsin testing sites. As a result, some graduate nurses currently practicing under a temporary permit may be unable to schedule their examination prior to the permit's expiration. In addition, the current supervision requirement would make response to an emergency surge of COVID-19 more difficult. An expeditious promulgation of the proposed rule is in the best interest of public welfare, as it will help ensure Wisconsin's nursing workforce is in the best possible position to respond to COVID-19.

2. Detailed description of the objective of the proposed rule:

The Board's primary objective is to promulgate an emergency rule that will allow an extension of the duration of temporary permits, and establish criteria under which the holder of a temporary permit may practice without direct supervision.

The Board will also evaluate the requirements for temporary permits in light of the potential need to respond to a future public health crisis or other emergency and may, as a result of this evaluation, promulgate a permanent rule to allow the Board to grant a waiver of or variance to the requirements in emergency situations.

3. Description of the existing policies relevant to the rule, new policies proposed to be included in the rule, and an analysis of policy alternatives:

Chapter N 2 contains the requirements for temporary permits, including the duration of a permit and supervision of a permit holder. If the rules are not updated to allow an extension of the duration of temporary permits and establish criteria under which the holder of a temporary permit may practice without direct supervision, Wisconsin's nursing workforce will not be in the best possible position to respond to the spread of COVID-19. The Board will also determine if allowing a waiver or variance to the requirements on an ongoing basis is appropriate, given the potential need to respond to future emergency situations.

4. Detailed explanation of statutory authority for the rule (including the statutory citation and language):

Section 15.08 (5) (b), Stats., provides an examining board "[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . ."

Section 227.24 (1) (a), Stats., provides “[a]n agency may, except as provided in s. 227.136 (1), promulgate a rule as an emergency rule without complying with the notice, hearing, and publication requirements under this chapter if preservation of the public peace, health, safety, or welfare necessitates putting the rule into effect prior to the time it would take effect if the agency complied with the procedures.”

Section 441.08, Stats., provides that “[a] nurse who has graduated from a school approved by the board or that the board has authorized to admit students pending approval but who is not licensed in this state may be granted a temporary permit upon payment of the fee specified in s. 440.05 (6) by the board to practice for compensation until the nurse can qualify for licensure. The temporary permit may be renewed once. Further renewals may be granted in hardship cases. The board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

5. Estimate of amount of time that state employees will spend developing the rule and of other resources necessary to develop the rule:

80 hours

6. List with description of all entities that may be affected by the proposed rule:

Graduate nursing students applying for or working under a temporary permit, and entities who are hiring these students or currently have these students in their employment.

7. Summary and preliminary comparison with any existing or proposed federal regulation that is intended to address the activities to be regulated by the proposed rule:

None

8. Anticipated economic impact of implementing the rule (note if the rule is likely to have a significant economic impact on small businesses):

The proposed rule will have minimal to no economic impact on small businesses and the state’s economy as a whole.

Contact Person: Dale Kleven, (608) 261-4472, DSPSAdminRules@wisconsin.gov



Authorized Signature

October 13, 2020

Date Submitted

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 20-069)

PROPOSED ORDER

An order of the Board of Nursing to renumber and amend N 2.34; to amend N 1.08 (5m) (b), 2.31 (3), 2.33 (1), 2.35 (2), and 2.40 (3) (d) (intro.); and to create N 1.08 (5m) (c), 2.33 (3), 2.34 (2), 2.40 (3) (e), and 8.10 (8), relating to requirements in emergency situations.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: Subchapter I of ch. 441, Stats.

Statutory authority: Sections 15.08 (5) (b), 441.01 (3), 441.16 (3), and 441.08, Stats.

Explanation of agency authority:

Section 15.08 (5) (b), Stats., provides an examining board “[s]hall promulgate rules for its own guidance and for the guidance of the trade or profession to which it pertains. . .”

Section 441.01 (3), Stats., provides “[t]he board may establish minimum standards for 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.”

Section 441.16 (3), Stats., requires the Board to promulgate rules necessary to administer the prescription privileges of nurses, including defining the scope of practice within which an advanced practice nurse may issue prescription orders.

Section 441.08, Stats., provides “[t]he board may promulgate rules limiting the use and duration of temporary permits and providing for revocation of temporary permits.”

Related statute or rule:

Subchapter I of ch. 441, Stats.

Plain language analysis:

The proposed rule will allow the Board to grant a waiver from the following requirements on a case-by-case basis, if a request for a waiver is made due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances:

- The requirement under s. N 1.08 (5m) (b) that simulation be utilized for no more than 50% of the time designated for meeting clinical learning requirements.

- The requirement under s. N 2.31 (3) that an application for a temporary permit include an official transcript of nursing education.
- The requirement under s. N 2.33 (1) that the holder of a temporary permit practice only under the direct supervision of a registered nurse.
- The requirement under s. N 2.34 that practice under temporary permits, including renewals, may not exceed 6 months total duration.
- The requirement under s. N 2.40 (3) (d) that a person renewing a nursing credential after 5 years provide documentation of employment requiring a nursing license within the last 5 years or evidence of completion of a board approved nursing refresher course or education equivalent to a nursing refresher course.

The rule will also allow the Board to grant a temporary waiver of the requirement under s. N 8.10 (2) and (7) that an advanced practice nurse prescriber work in a collaborative relationship with at least one physician or dentist and document that relationship. The board may grant a waiver if a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances exist or have occurred that are federally declared or declared by the governor of Wisconsin or the governor's designee, and granting a waiver is necessary to protect the public health, safety, and welfare. A waiver must be for a stated term not to exceed 90 days; however, the board may extend the waiver if it determines an extension is necessary to protect the public health, safety, or welfare.

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

None.

Summary of public comments and feedback on the statement of scope and the Board's responses:

The Board held a public comment period and conducted a public hearing on April 9, 2020. The Board received testimony in support of the statement of scope from Gina Dennik-Champion on behalf of the Wisconsin Nurses Association. The Board also received written comments in support of the statement of scope from the Wisconsin Association of Nurse Anesthetists.

Comparison with rules in adjacent states:

Illinois:

Rules of the Illinois Department of Financial and Professional Regulation regulate the profession of nursing in Illinois (68 Ill. Adm. Code Part 1300). The Secretary of the Department may grant variances from the rules in individual cases when it is determined that:

- the provision from which the variance is granted is not statutorily mandated;
- no party will be injured by the granting of the variance; and
- the rule from which the variance is granted would, in the particular case, be unreasonable or unnecessarily burdensome.

The Secretary is required to notify the Illinois Board of Nursing of the granting of the variance, and the reason for granting the variance, at the next meeting of the Board (68 Ill. Adm. Code s. 1300.60).

Iowa:

Rules of the Iowa Board of Nursing regulate the profession of nursing in Illinois (655 IAC chs. 1 to 20). In response to a petition for waiver, the Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the Board finds, based on clear and convincing evidence, all of the following:

- The application of the rule would impose an undue hardship on the person for whom the waiver is requested.
- The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person.
- The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law.
- Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested (655 IAC 15.4).

Michigan:

Rules of the Michigan Department of Licensing and Regulatory Affairs regulate the profession of nursing in Michigan (Mich Admin Code, R 338.10101 to R 338.10705). The Michigan Board of Nursing may waive the requirement to provide evidence of attendance at educational programs as a condition to license renewal if, upon written application, the Board finds the failure of the licensee to attend was due to the licensee's disability, military service, absence from the continental United States, or a circumstance beyond the control of the licensee which the Board considers good and sufficient (Mich Admin Code, R 338.10601).

Minnesota:

Rules of the Minnesota Board of Nursing regulate the profession of nursing in Minnesota (Minnesota Rules, chs. 6301 to 6321). The Board must waive the requirement for licensure of graduation from an approved nursing program if:

- an applicant has been licensed by another jurisdiction based on requirements equivalent to the qualifications required in Minnesota at the time of the applicant's original licensure; or
- an applicant for licensed practical nurse licensure has been licensed by another jurisdiction and passed an acceptable examination as specified in subpart 12 and has had at least 4,000 clock hours of employment as a licensed practical nurse in the five years prior to application for licensure in Minnesota (Minnesota Rules, part 6305.0500, subpart 6).

In addition, on presentation of convincing evidence by a registration or reregistration applicant, the Board must grant a variance from the following requirements:

- For a receipt deadline, on presentation of convincing evidence of mail delay.
- For a fee, on presentation of convincing evidence of financial hardship.
- For document submission, on presentation of convincing evidence of loss of records through fire or other disaster.
- For the required number of continuing education contact hours, on presentation of convincing evidence of unexpected illness or personal tragedy (Minnesota Rules, part 6310.2800, subpart 9).

Summary of factual data and analytical methodologies:

In consultation with staff from the Department of Safety and Professional Services, the Board developed a proposed rule that gives it the ability to provide a waiver from certain requirements in the event of a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances.

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.

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.

TEXT OF RULE

SECTION 1. N 1.08 (5m) (b) is amended to read:

N 1.08 (5m) (b) ~~Simulation~~ Except as provided in par. (c), simulation may not be utilized for more than 50% of the time designated for meeting clinical learning requirements.

SECTION 2. N 1.08 (5m) (c) is created to read:

N 1.08 (5m) (c) If requested by a school of nursing due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services, the board may temporarily allow simulation to be utilized for up to 100% of the time designated for meeting clinical learning requirements. The board shall consider each request under this paragraph individually on its merits, and the board may authorize the use of simulation under this paragraph for a period of time deemed necessary by the board to address the emergency circumstances, not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 3. N 2.31 (3) is amended to read:

N 2.31 (3) An official transcript of nursing education submitted by the school of professional nursing or practical nursing directly to the department. If requested by an applicant due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services, the board may waive the requirement under this subsection. The board shall consider each request for a waiver individually on its merits.

SECTION 4. N 2.33 (1) is amended to read:

N 2.33 (1) Except as provided ~~in sub.~~ in subs. (2) and (3), the holder of a temporary permit shall practice only under the direct supervision of a registered nurse.

SECTION 5. N 2.33 (3) is created to read:

N 2.33 (3) If requested by an applicant under s. N 2.31 or the holder of a temporary permit and the employer of the applicant or permit holder due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services, the board may grant a waiver of the requirement under sub. (1). The board shall consider each request for a waiver individually on its merits, and the board may grant a waiver for a period of time deemed necessary by the board to address the emergency circumstances, not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 6. N 2.34 is renumbered N 2.34 (1) and amended to read:

N 2.34 (1) The temporary permit is valid for a period of 3 months or until the holder receives notification of failing the NCLEX, whichever occurs first. ~~Practice~~ Except as provided in sub. (2), practice under temporary permits, including renewals under s. N 2.35, may not exceed 6 months total duration.

SECTION 7. N 2.34 (2) is created to read:

N 2.34 (2) The holder of a temporary permit renewed under s. N 2.35 (2) may practice for the duration of the renewal period established by the board.

SECTION 8. N 2.35 (2) is amended to read:

N 2.35 (2) Subsequent renewals may be granted in hardship cases including illness, family illness or death, accident, or delay of verification from another state, or granted due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services. The board shall consider each application for renewal under this subsection individually on its merits, and the board may grant a renewal as for a renewal period deemed appropriate necessary by the board to address the hardship or emergency circumstances, not to exceed 90 days, except that the board may extend the renewal if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 9. N 2.40 (3) (d) (intro.) is amended to read:

N 2.40 (3) (d) (intro.) ~~Meet~~ Except as provided in par. (e), meet one of the following requirements:

SECTION 10. N 2.40 (3) (e) is created to read:

N 2.40 (3) (e) If requested by an applicant due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services, the board may waive the requirements under par. (d). The board shall consider each request for a waiver individually on its merits.

SECTION 11. N 8.10 (8) is created to read:

N 8.10 (8) If a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances impacting the delivery of healthcare services exist or have occurred that are federally declared or declared by the governor of this state or the governor's

designee, the board may grant a temporary waiver of the requirements in subs. (2) and (7) if the board determines that granting a waiver is necessary to protect the public health, safety, or welfare. A waiver granted under this subsection shall be for a stated term not to exceed 90 days, except that the board may extend the waiver if it determines that an extension is necessary to protect the public health, safety, or welfare.

SECTION 12. 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)

This Proposed Order of the Board of Nursing is approved for submission to the Governor and Legislature.

Dated January 7, 2021



Chair



2021 SENATE BILL 169

March 3, 2021 - Introduced by Senators FELZKOWSKI, BALLWEG, BEWLEY, COWLES, JACQUE, MARKLEIN and NASS, cosponsored by Representatives MAGNAFICI, ARMSTRONG, BROOKS, CABRAL-GUEVARA, CALLAHAN, DITTRICH, DOYLE, EDMING, JAMES, KNODL, MILROY, MOSES, MURPHY, NEYLON, NOVAK, OLDENBURG, PETRYK, PLUMER, RAMTHUN, ROZAR, SKOWRONSKI, SPIROS, TAUCHEN, THIESFELDT and WICHGERS. Referred to Committee on Insurance, Licensing and Forestry.

1 **AN ACT to create** 441.115 (3) of the statutes; **relating to:** temporary practice by
2 registered nurses at camps, providing an exemption from emergency rule
3 procedures, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

This bill allows a person to practice for up to 90 days a year as a registered nurse for campers and staff at a recreational and educational camp licensed in this state if both of the following are satisfied: 1) the person is licensed in good standing to practice professional nursing by another state or territory or a foreign country or province and the licensure standards in that jurisdiction are substantially equivalent to the requirements of this state; and 2) the person is not under active investigation by a licensing authority or law enforcement authority in any state, federal, or foreign jurisdiction. Before practicing as a registered nurse as allowed under the bill, a person is required to submit a form to the Board of Nursing.

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

4 **SECTION 1.** 441.115 (3) of the statutes is created to read:
5 441.115 (3) (a) Notwithstanding s. 441.06 (4), a person may at a recreational
6 and educational camp licensed under s. 97.67 (1) practice professional nursing to

SENATE BILL 169**SECTION 1**

1 provide treatment to campers and staff for not more than 90 days in any year without
2 holding a license granted under this subchapter if all of the following apply:

3 1. The person holds in good standing a license, permit, registration, or
4 certificate granted by another state or territory or by a foreign country or province
5 that authorizes the person to perform acts that are substantially the same as those
6 performed by a person licensed as a registered nurse under this subchapter.

7 2. The requirements for the license, permit, registration, or certificate that the
8 person holds under subd. 1. are substantially equivalent to the requirements for
9 licensure as a registered nurse under this subchapter.

10 3. The person is not under active investigation by a licensing authority or law
11 enforcement authority in any state, federal, or foreign jurisdiction.

12 (b) A person shall submit to the board a form provided by the board before
13 practicing under par. (a). The board may promulgate rules establishing the form to
14 be submitted under this subsection.

15 (c) This subsection does not apply to a person who holds a multistate license,
16 as defined in s. 441.51 (2) (h), issued by a party state, as defined in s. 441.51 (2) (k).

SECTION 2. Nonstatutory provisions.

18 (1) Using the procedure under s. 227.24, the board of nursing may promulgate
19 rules establishing the form that a person shall submit before practicing under s.
20 441.115 (3) (a). Notwithstanding s. 227.24 (1) (a) and (3), the board of nursing is not
21 required to provide evidence that promulgating a rule under this subsection is
22 necessary for the preservation of the public peace, health, safety, or welfare and is
23 not required to provide a finding of emergency for a rule promulgated under this
24 subsection. Notwithstanding s. 227.24 (1) (c) and (2), emergency rules promulgated
25 under this subsection may remain in effect until May 1, 2022, or the date on which

SENATE BILL 169

1 permanent rules take effect, whichever is sooner, and the effective period may not
2 be further extended under s. 227.24 (2).

3 **SECTION 3. Effective dates.** This act takes effect on the 60th day after the day
4 of publication, except as follows:

5 (1) SECTION 2 (1) of this act takes effect on the day after publication.

6 (END)

State of Wisconsin



2021 Assembly Bill 148

Date of enactment: **March 26, 2021**

Date of publication*: **March 27, 2021**

2021 WISCONSIN ACT 10

AN ACT *to create* 50.33 (2d), 50.36 (5m), 50.49 (6m) (d) and 440.094 of the statutes; **relating to:** state response to COVID-19 related to health services and practice of health care providers licensed outside of this state.

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

SECTION 3. 50.33 (2d) of the statutes is created to read:

50.33 (2d) "Hospital-associated service" means a health care service that meets all of the following conditions:

(a) The service is of the same type as those furnished by a hospital in an inpatient or outpatient facility.

(b) The service is of a type for which a payment could be claimed as a hospital service under the federal Medicare program, 42 USC 1395 et seq.

(c) The service is provided at a location other than in a facility approved by the department under s. 50.35.

(d) The service is provided in a home setting before January 1, 2022.

SECTION 4. 50.36 (5m) of the statutes is created to read:

50.36 (5m) If the federal centers for medicare and medicaid services has approved a hospital to provide any hospital-associated service, the department may apply to and enforce upon the hospital as the state standard for the hospital-associated service any rule or standard that is required by the centers for medicare and medicaid services for the service. This subsection does not apply on or after January 1, 2022.

SECTION 5. 50.49 (6m) (d) of the statutes is created to read:

50.49 (6m) (d) A hospital that is providing hospital-associated services in accordance with s. 50.36 (5m).

SECTION 6. 440.094 of the statutes is created to read: **440.094 Practice by health care providers from other states. (1) DEFINITIONS.** In this section:

(a) "Credential" means a license, permit, certificate, or registration.

(b) "Health care employer" means a system, care clinic, care provider, long-term care facility, or any entity whose employed, contracted, or affiliated staff provide health care service to individuals in this state.

(c) "Health care provider" means an individual who holds a valid, unexpired credential granted by another state or territory that authorizes or qualifies the individual to perform acts that are substantially the same as the acts that any of the following are licensed or certified to perform:

1. A registered nurse, licensed practical nurse, or nurse midwife licensed under ch. 441, or advanced practice nurse prescriber certified under ch. 441.

2. A chiropractor licensed under ch. 446.

3. A dentist licensed under ch. 447.

4. A physician, physician assistant, perfusionist, or respiratory care practitioner licensed or certified under subch. II of ch. 448.

5. A physical therapist or physical therapist assistant licensed under subch. III of ch. 448 or who holds a compact privilege under subch. IX of ch. 448.

* Section 991.11, WISCONSIN STATUTES: 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."

6. A podiatrist licensed under subch. IV of ch. 448.
7. A dietitian certified under subch. V of ch. 448.
8. An athletic trainer licensed under subch. VI of ch. 448.
9. An occupational therapist or occupational therapy assistant licensed under subch. VII of ch. 448.
10. An optometrist licensed under ch. 449.
11. A pharmacist licensed under ch. 450.
12. An acupuncturist certified under ch. 451.
13. A psychologist licensed under ch. 455.
14. A social worker, marriage and family therapist, or professional counselor certified or licensed under ch. 457 or a clinical substance abuse counselor certified under s. 440.88.
15. A speech-language pathologist or audiologist licensed under subch. II of ch. 459.
16. A massage therapist or bodywork therapist licensed under ch. 460.

(2) PRACTICE BY HEALTH CARE PROVIDERS FROM OTHER STATES. (a) Notwithstanding ss. 441.06 (4), 441.15 (2), 441.16, 446.02 (1), 447.03 (1) and (2), 448.03 (1) (a), (b), and (c) and (1m), 448.51 (1), 448.61, 448.76, 448.961 (1) and (2), 449.02 (1), 450.03 (1), 451.04 (1), 455.02 (1m), 457.04 (4), (5), (6), and (7), 459.02 (1), 459.24 (1), and 460.02, a health care provider may provide services within the scope of the credential that the health care provider holds and the department shall grant the health care provider a temporary credential to practice under this section if all of the following apply:

1. The health care provider applies to the department for a temporary credential under this section within 30 days of beginning to provide health care services for a health care employer. The health care provider shall include in the application an attestation of all of the following:

- a. The date on which the health care provider first provided health care services in this state under this section.
- b. That the health care provider holds a valid, unexpired credential granted in another state.
- c. The health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.
- d. The health care provider has applied for a permanent credential granted by the department or an examining board, as applicable, under chs. 440 to 480. This subd. 1. d. does not apply to a health care provider who provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends.

2. If the health care provider provides services other than services provided through telehealth as described in sub. (3), the health care employer of the health care

provider attests all of the following to the department within 10 days of the date on which the health care provider begins providing health care services in this state under this section:

a. The health care employer has confirmed that the health care provider holds a valid, unexpired credential granted by another state.

b. To the best of the health care employer's knowledge and with a reasonable degree of certainty, the health care provider is not currently under investigation and no restrictions or limitations are currently placed on the health care provider's credential by the credentialing state or any other jurisdiction.

(b) A health care provider who practices within the scope of a temporary credential granted under this section has all rights and is subject to all responsibilities, malpractice insurance requirements, limitations on scope of practice, and other provisions that apply under chs. 440 to 480 to the practice of the health care provider.

(c) 1. A temporary credential granted under this section becomes effective on the date identified in the attestation under par. (a) 1. a. that the health care provider first provided health care services in this state under this section.

2. a. Except as provided in subd. 2. b., a temporary credential granted under this section expires on the date that the department, or an examining board in the department, as applicable, grants or denies the application under par. (a) 1. d. for a permanent credential submitted by the health care provider.

b. If a health care provider provides health care services only during the period covered by a national emergency declared by the U.S. president under 50 USC 1621 in response to the 2019 novel coronavirus or during the 30 days immediately after the national emergency ends, a temporary credential granted under this section to the health care provider expires 30 days after the national emergency ends.

(3) TELEHEALTH. A health care provider who practices within the scope of a temporary credential granted under this section may provide services through telehealth to a patient located in this state.

SECTION 9119. Nonstatutory provisions; Health Services.

(1) PAYMENT FOR HOSPITALS FOR NURSING FACILITY CARE.

(a) In this subsection, "public health emergency period" means the period ending on January 1, 2022, or the termination of any public health emergency declared under 42 USC 247d by the secretary of the federal department of health and human services in response to the 2019 novel coronavirus, whichever is earlier.

(b) During the public health emergency period, subject to par. (c), the department of health services shall provide, under the Medical Assistance program, reimbursement at the statewide average per-diem rate paid to

nursing facilities or a supplemental payment to hospitals for providing nursing–facility–level care when all of the following criteria apply:

1. The individual for whom the hospital provided nursing–facility–level care is enrolled in the Medical Assistance program, has been admitted on an inpatient basis to the hospital, is eligible for discharge after receiving care in the hospital, requires nursing–facility–level care upon discharge, and due to the hospital making a reasonable attempt but being unable to locate a nursing facility that accepts the individual for admission, is unable to be transferred to a nursing facility.

2. The services provided to the individual described under subd. 1. are custodial care for which federal financial participation is approved.

3. The hospital notifies the department of health services that it is participating as a swing bed hospital under the Medical Assistance program and that it has been unable to locate a suitable nursing home placement in its community for each individual.

(c) The department of health services shall use the same standards and criteria for determining whether a hospital is eligible for reimbursement or a supplemental payment under par. (b) as are used by the federal Medicare program under 42 USC 1395 et seq. for the payment for use of swing beds or, for any hospital that is not a critical access hospital, under the terms of a federal waiver approved under section 1135 of the federal social security act. The department shall seek any approval from the federal government necessary to implement the reimbursement under this subsection.
