

Notice of Hearing

The Board of Nursing announces that it will hold a public hearing on a permanent rule revising N 1 to 8, relating to requirements in emergency situations, at the time and place shown below.

Hearing Information

Date: December 10, 2020

Time: 8:00 A.M.

Location: Virtual meeting—Connection information will be posted in advance of the hearing at the following webpage: <https://dsps.wi.gov/Pages/RulesStatutes/PublicHearingComments.aspx>

Appearances at the Hearing and Submittal of Written Comments

The rule may be reviewed and comments submitted at:

<http://docs.legis.wisconsin.gov/code/chr/hearings>.

Comments may also be submitted to Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, P.O. Box 8366, Madison, WI 53708-8366, or by email to DSPSAdminRules@wisconsin.gov.

Comments must be received at or before the public hearing to be included in the record of rulemaking proceedings.

Initial Regulatory Flexibility Analysis

The proposed rule will not have an effect on small businesses, as defined under s. 227.114 (1).

Agency Small Business Regulatory Coordinator

The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

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 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 or variance to the following requirements on a case-by-case basis, if a request for a waiver or variance 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 or variance to 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 will be 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.

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 under 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, 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 grant additional utilization of simulation for a period of time deemed necessary by the board to address the emergency circumstances.

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, the board may waive the requirement under this subsection. The board shall consider each request for a waiver individually on its merits, and the board may grant a waiver as deemed appropriate.

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

N 2.33 (1) Except as provided ~~in sub-~~ under 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, 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.

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 under 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 or emergency circumstances including illness, family illness or death, accident, natural disaster, or delay of verification from another state. 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.

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

N 2.40 (3) (d) (intro.) ~~Meet~~ Except as provided under 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, the board may waive the requirements under par. (d). The board shall consider each request for a waiver individually on its merits, and may grant a waiver based on satisfactory evidence that granting renewal of the license would adequately protect public health, safety, and welfare.

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 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 under 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)

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

1. Type of Estimate and Analysis <input checked="" type="checkbox"/> Original <input type="checkbox"/> Updated <input type="checkbox"/> Corrected	2. Date November 5, 2020
3. Administrative Rule Chapter, Title and Number (and Clearinghouse Number if applicable) N 1 to 8	
4. Subject Requirements in emergency situations	
5. Fund Sources Affected <input type="checkbox"/> GPR <input type="checkbox"/> FED <input checked="" type="checkbox"/> PRO <input type="checkbox"/> PRS <input type="checkbox"/> SEG <input type="checkbox"/> SEG-S	6. Chapter 20, Stats. Appropriations Affected 20.165(1)(g)
7. Fiscal Effect of Implementing the Rule <input type="checkbox"/> No Fiscal Effect <input type="checkbox"/> Increase Existing Revenues <input checked="" type="checkbox"/> Increase Costs <input type="checkbox"/> Decrease Costs <input type="checkbox"/> Indeterminate <input type="checkbox"/> Decrease Existing Revenues <input checked="" type="checkbox"/> Could Absorb Within Agency's Budget	
8. The Rule Will Impact the Following (Check All That Apply) <input type="checkbox"/> State's Economy <input type="checkbox"/> Specific Businesses/Sectors <input type="checkbox"/> Local Government Units <input type="checkbox"/> Public Utility Rate Payers <input type="checkbox"/> Small Businesses (if checked, complete Attachment A)	
9. Estimate of Implementation and Compliance to Businesses, Local Governmental Units and Individuals, per s. 227.137(3)(b)(1). \$0	
10. Would Implementation and Compliance Costs Businesses, Local Governmental Units and Individuals Be \$10 Million or more Over Any 2-year Period, per s. 227.137(3)(b)(2)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
11. Policy Problem Addressed by the Rule The proposed rule will allow the Board to grant a waiver from or variance to the following requirements on a case-by-case basis, if a request for a waiver or variance is made due to a public health crisis, natural disaster, critical nursing workforce shortage, or similar emergency circumstances: <ul style="list-style-type: none">• 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. <p>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.</p>	
12. 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.	

ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

The rule draft was posted on the department's website for 14 days to solicit economic impact comments from businesses, business sectors, associations representing business, local governmental units, and individuals. No comments were received.

13. Identify the Local Governmental Units that Participated in the Development of this EIA.

The rule draft was posted on the department's website for 14 days to solicit economic impact comments from local governmental units. No comments were received.

14. 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)

One time fiscal impact to DSPS of \$339 that could be absorbed within the agency's operating budget.

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

The benefit to implementing the rule is providing the Board the ability to provide waivers from and variances to its rules in emergency situations. If the rule is not implemented, the Board's ability to respond to emergency situations will be limited.

16. Long Range Implications of Implementing the Rule

The long range implication of implementing the rule is providing the Board the ability to provide waivers from and variances to its rules in emergency situations.

17. Compare With Approaches Being Used by Federal Government

None

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

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).

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- The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law.
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ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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).

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- 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).

19. Contact Name

Jon Derenne, Administrative Rules Coordinator

20. Contact Phone Number

(608) 266-0955

This document can be made available in alternate formats to individuals with disabilities upon request.

ADMINISTRATIVE RULES
Fiscal Estimate & Economic Impact Analysis

ATTACHMENT A

1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

2. Summary of the data sources used to measure the Rule's impact on Small Businesses

3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
 - Less Stringent Schedules or Deadlines for Compliance or Reporting
 - Consolidation or Simplification of Reporting Requirements
 - Establishment of performance standards in lieu of Design or Operational Standards
 - Exemption of Small Businesses from some or all requirements
 - Other, describe:
-

4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

5. Describe the Rule's Enforcement Provisions

6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes No
-