



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 25, 2006

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Assembly Bill 709 and Senate Bill 477: Regulation and Licensure of Midwives

Assembly Bill 709 (AB 709) and Senate Bill 477 (SB 477) are companion bills and would establish regulation and licensing requirements for the practice of midwifery for individuals who are not also currently licensed to practice professional nursing in Wisconsin or in another state that has adopted the nurse licensure compact. AB 709 was introduced on October 3, 2005, and was referred to the Assembly Committee on Health. On January 9, 2006, the Assembly Committee on Health adopted Assembly Amendments 1, 2, and 3 and then recommended passage of the bill, as amended, all on separate votes of 11-1. On that same day, the bill was referred to the Joint Committee on Finance.

Senate Bill 477 was introduced on December 15, 2005, and was referred to the Senate Committee on Health, Children, Families, Aging and Long-Term Care. On January 18, 2006, the Senate Committee adopted Senate Amendments 1, 2, and 3 to the bill on votes of 5-0, and recommended passage of the bill, as amended, on a vote of 4-1. SB 477 was subsequently referred to the Joint Committee on Finance.

CURRENT LAW

Individuals who are currently licensed by the Board of Nursing as a professional nurse in Wisconsin (or are licensed as such in another state that is also a signatory of the nurse licensure compact) may obtain a separate license to practice nurse-midwifery. The practice of nurse-midwifery is defined as the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the standards of the American College of Nurse-Midwives and the education, training, and experience of the nurse-midwife.

No person may engage in the practice of nurse-midwifery unless all of the following conditions have been met: (1) the person possesses a professional nurses license issued by the Board of Nursing (or by a comparable entity in a state that is part of the nurse licensure compact); (2) the person possesses a separate nurse-midwifery license issued by the Board of Nursing; (3) the person practices in a health care facility approved by the Board of Nursing; (4) the person practices in collaboration with a physician with postgraduate training in obstetrics (and pursuant to a written agreement with that physician); and (5) the person maintains the malpractice insurance coverage levels required by the Board of Nursing.

Currently, a licensed nurse-midwife must maintain malpractice coverage levels of at least \$1,000,000 for each occurrence and \$3,000,000 for all occurrences in any one policy year. Primary malpractice insurance coverage for a nurse-midwife through the Wisconsin Health Care Liability Insurance Plan currently costs \$8,199 per year. Coverage for malpractice insurance in excess of the \$1,000,000/\$3,000,000 limits through the Injured Patients and Families Compensation Fund costs \$1,890 per year for a nurse-midwife (or \$1,976 for an advanced nurse-midwife).

However, a licensed nurse-midwife is not required to obtain separate malpractice insurance coverage if any of the following apply: (1) the individual is a government employee who practices nurse-midwifery within the scope of his or her employment; (2) the individual is considered an employee of the federal Public Health Service; (3) the individual is provided the required malpractice insurance coverage by his or her employer; or (4) the individual does not provide patient care.

The Board of Nursing must grant a nurse-midwife license to any registered nurse who submits all of the following: (1) evidence to the Board that the individual meets the educational and training requirements established by the Board by rule; (2) the required statutory license fee [currently \$53 for an initial license and \$70 for a license renewal]; and (3) evidence that the individual has sufficient liability insurance in force, if required.

If a nurse-midwife discovers that there is a complication that jeopardizes the health of the mother or the newborn, the statutes require that the nurse-midwife consult with the collaborating physician, or the physician's designee, or make a referral, as specified in the written agreement with the physician. The Board of Nursing has also established by rule the following additional scope of practice requirements: (1) the nurse-midwife must consult with the consulting physician regarding any complications discovered by the nurse-midwife or refer the patient pursuant to the written agreement noted above; and (2) upon referral, the nurse-midwife may manage that part of the care of the patient that is appropriate to the knowledge and skills of the licensee.

The Board on Nursing has also promulgated the following limitations on the practice of nurse-midwifery: (1) the licensee may not independently manage those complications that require referral pursuant to the written agreement; (2) the licensee may not perform deliveries by forceps or Caesarean section (but the licensee may use vacuum extractors in emergency situations); (3) the

licensee may not assume responsibilities (by physician-delegation or otherwise) that the nurse-midwife is not competent to perform by education, training, or experience; and (4) following the notification to a physician, a licensee may continue to manage a delivery when complications occur if emergency measures are required and the physician has not yet arrived.

SUMMARY OF BILLS

Regulation of Midwives Who are not Licensed Nurses. Assembly Bill 709 and Senate Bill 477 would authorize the regulation and licensure of midwives who are not separately licensed as nurses. For the purpose of licensure, "the practice of midwifery" would mean the provision of maternity care during the antepartum, intrapartum, postpartum periods. Midwives licensed under the bills would be regulated directly by the Secretary of the Department of Regulation and Licensing (R&L) under a new Subchapter XI of Chapter 440 of the statutes, rather than by the Board of Nursing. Any person practicing within the scope of a midwife license would not be deemed a physician for purposes of licensure under Chapter 448 of the statutes.

Requirements for Licensure. The Department would be authorized to grant a midwife license to an applicant, if all of the following conditions apply: (1) the individual submits an application for licensure to the Department on a form provided by the agency; (2) the individual pays the initial statutory credential fee of \$53; and (3) the individual submits satisfactory evidence to the Department of either of the following: (a) the person holds a valid professional midwife credential granted by the North American Registry of Midwives (or a successor organization); or (b) the person holds a valid certified nurse-midwife credential granted by the American College of Nurse-Midwives (or a successor organization) and attends to births in an out-of-hospital setting.

Midwife Licensure Prohibited for Certain Individuals. The bills would prohibit R&L from granting a midwife license to any individual who had been convicted of any of the following offenses: (1) sexual exploitation while performing duties as a physician, psychologist, social worker, marriage and family therapist, professional counselor, nurse, chemical dependency counselor, member of the clergy, or anyone who performs psychotherapy; (2) sexual assault; (3) incest; (4) public fornication; (5) sexual gratification in public; (6) prostitution; (7) patronizing a prostitute; (8) soliciting a prostitute; (9) pandering; (10) keeping a place of prostitution; (11) sexual assault of a child; (12) incest with a child; (13) child enticement; (14) use of a computer to facilitate a child sex crime; (15) soliciting a child for prostitution; (16) sexual intercourse with a child 16 or older; (17) sexual assault of a student by a school instructional staff; (18) exposing oneself in a public area; (19) exposing a child to pornographic material; and (20) possession of child pornography.

Currently, under s. 440.03(13) of the statutes, the Department must conduct an investigation to determine whether an applicant for licensure has an arrest or conviction record relating to an offense that might have a bearing on the applicant's fitness for licensure. The bills would

specifically authorize the Department to revoke the license of any licensed midwife convicted of any of the offenses listed above.

Restricted Use of Title. No person could use the title "licensed midwife," or describe, imply, or represent that the individual has a midwife license unless the person had obtained either a midwife, or a nurse-midwife license from the Department. Any person violating this restriction of title provision would be subject to a fine of up to \$250, imprisonment for up to three months, or both.

Scope of Practice. The bills would direct the Department to promulgate rules necessary to administer the regulation of midwives under Subchapter XI of Chapter 440. Any such rules would have to be consistent with the practice of midwifery standards established by the National Association of Certified Professional Midwives (or a successor organization), except that the rules must include the following scope of practice provisions: (1) they must authorize a licensed midwife to administer oxygen during the practice of midwifery; and (2) they may authorize a midwife to administer any of the following: (a) oxytocin ("Pitocin") as a postpartum antihemorrhagic agent; (b) intravenous fluids for stabilization; (c) vitamin K; (d) eye prophylactics, and (e) other drugs or procedures as determined by the Department.

Further, the bills stipulate that the rules promulgated by the Department could not do any of the following: (1) require a licensed midwife to have a nursing degree or diploma; (2) require a licensed midwife to practice midwifery under the supervision of, or in collaboration with, another health care provider; (3) require a licensed midwife to enter into an agreement with another health care provider; (4) limit the location where a licensed midwife may practice; and (5) authorize a licensed midwife to use forceps or vacuum extractions.

The bills would clarify that current statutory requirements that a nurse-midwife hold a registered nurse license, work in a health care facility, and maintain liability insurance do not apply with respect to a licensed midwife under Subchapter XI of Chapter 440 of the statutes.

Required Disclosures to Clients Relating to Experience and Training, Malpractice Insurance Coverage, and Medical Emergency Protocols. At an initial consultation with a client, the bills would require a licensed midwife both to provide the client with a copy of the rules promulgated by Department relating to the practice of midwifery and to disclose in writing all of the following: (1) the midwife's experience and training; (2) whether the licensed midwife has malpractice liability insurance coverage and the policy limits of any such coverage; (3) a protocol for medical emergencies, including transportation to a hospital that is particular to each client; and (4) any other information required by the Department by rule.

Physicians' Liability. The bills would specify that health care providers could not be held liable for an injury resulting from an act or omission of a licensed midwife, even if the health care provider consulted with or accepted a referral from the licensed midwife.

Disciplinary Proceedings and Actions. Subject to rules promulgated by the Department, the agency would be authorized to conduct investigations and hearings to determine whether a violation had occurred of the midwife regulation and licensing provisions of Subchapter XI of Chapter 440 or of the related administrative rules.

The Department would be authorized to reprimand a licensed midwife or deny, limit, suspend, or revoke an existing midwife license if a licensee did any of the following: (1) intentionally made a material misstatement in a license application; (2) engaged in the practice while impaired by alcohol or other drugs (subject to current statutory prohibitions against employment discrimination based on arrest or conviction records and disabilities); (3) advertised in a false or misleading manner; (4) in the course of practice, made a substantial misrepresentation that was relied upon by a client; (5) in the course of practice, engaged in conduct that evidences an inability to apply midwife skills or principles; (6) obtained or attempted to obtain compensation through fraud or deceit; (7) allowed another person to use the individual's midwife a license; and (8) violated any state or federal law substantially relating to the practice of midwifery.

License Renewals. The bills would require a licensed midwife to renew his or her license on July 1, of each even-numbered year on forms provided by the Department. Applicants for license renewal would be required to pay a biennial renewal fee of \$56 and provide evidence that they hold a valid professional midwife credential from the North American Registry of Midwives (or a successor organization) or a valid certified nurse-midwife credential from the American College of Nurse Midwives (or a successor organization).

Advisory Committee. The Secretary of R&L is currently authorized to appoint persons or advisory committees to advise the agency in matters relating to the regulation of credential holders. The bills would specify that if such an advisory committee is created for midwives, it must consist of the following members: (1) two licensed midwives; (2) one licensed nurse-midwife who practices in an out-of-hospital setting [since nurse-midwives, under current law, can only practice in a health care facility this individual would have to practice in a health care facility other than a hospital]; (3) one physician who specializes in obstetrics and gynecology; and (4) one public member who has received midwife care in an out-of-hospital setting.

The bills would provide that if a midwife advisory committee is formed by the Department before the first day of the thirteenth month following publication (the general effective date of the legislation, other than for the creation of an advisory committee), the initial membership of the advisory committee would not have to include a licensed midwife. Under such a circumstance, the midwives appointed to the advisory committee could instead include individuals who are professional midwives as certified by the North American Registry of Midwives (or a successor organization).

The current law provision authorizing the Secretary of R&L to appoint advisory committees includes an obsolete cross reference to a repealed statutory section governing massage therapists and bodyworkers. This obsolete statutory section would be recodified under the bills as the

statutory section relating to an advisory committee for licensed midwives. As recodified, this provision would now specify that the advisory committee on midwives, if appointed, advise the Department on making investigations, conducting hearings, and taking disciplinary actions relating to the regulating to midwife regulation. However, the current law provision governing the general appointment of advisory committees continues to retain another cross reference to a repealed regulation governing massage therapists and bodyworkers. The Committee may wish to adopt a technical amendment to delete this obsolete reference.

Effective Date. Except for the creation of a midwife advisory committee, the general effective date of the bills would be the first day of the thirteenth month following publication.

Assembly/Senate Amendment 1. Assembly Amendment 1 (AA 1) to AB 709 and Senate Amendment 1 (SA 1) to SB 477 would modify the nature of the evidence for midwife licensure that could be submitted by the applicant to the Department. Under the bills, that evidence would be that the applicant holds a valid certified nurse-midwife credential from the American Council of Nurse Midwives (or a successor organization) and practices in an out-of-hospital setting. AA 1/SA 1 delete the requirement that the applicant practice in out-of-hospital situations.

Assembly/Senate Amendment 2. Assembly Amendment 2 to AB 709 and Senate Amendment 2 to SB 477 would authorize the Department to grant a temporary permits to practice midwifery, pursuant to rules promulgated by the agency. The rules would provide for the granting of a temporary permit to practice midwifery pending qualification for licensure.

Assembly/Senate Amendment 3. Assembly Amendment 3 to AB 709 and Senate Amendment 3 to SB 477 would require a licensed midwife to disclose to a client "orally" in addition to in writing all of the following during the initial consultation: (1) the midwife's experience and training; (2) whether the licensed midwife has malpractice liability insurance coverage and the policy limits of any such coverage; (3) a protocol for medical emergencies, including transportation to a hospital that is particular to each client; and (4) any other information required by the Department by rule.

Technical Amendment. As noted above, the Committee may wish to adopt a technical amendment to both bills relating to the Department's general authority to appoint advisory committees to delete an obsolete statutory reference to a repealed massage therapists and bodyworkers provision.

FISCAL EFFECT

Department of Regulation and Licensing. The bills do not appropriate additional funding to the Department; however, any newly-licensed midwife would be subject to a current law \$53 initial credential fee. A \$56 renewal fee would also be established but would not be collected until July 1, 2008.

Department estimates that based on the current number of Wisconsin residents in the Wisconsin Guild of Midwives and in the American College of Midwives, perhaps 15 practicing and five nonpracticing members may seek licensure as midwives under the provisions of the bills. The Department also estimates that in addition to these 20 individuals, midwifery licenses will also be requested from individuals that are not members of these organizations or from among the current group of nurse-midwives. The Department believes that as many as 50 individuals might seek licensure during the first biennial licensing cycle. (The first license renewals would not occur until July 1, 2008).

Based on 50 licensing applications, biennial initial credential fee revenues of \$2,700 are indicated (\$2,400 PR-REV and \$300 GPR-REV). On an annualized basis, initial license revenues are projected at \$1,200 PR REV and \$150 GPR-REV). While the provisions of the bill would likely be in effect only during the last six months of the 2006-07 fiscal year, a smaller annual amount of fee revenue could be collected during the remainder of the current fiscal biennium; however, the degree to which there is pent up demand for licensure among potentially eligible licensees is unknown and could affect overall first year revenue collection amounts.

The Department estimates that there would one-time costs of \$12,300 PR would be incurred during the first year of regulation due to the promulgation of rules and related activities. In addition, the Department estimates that there could be on-going annual costs of \$23,800 PR to screen, investigate, and resolve complaints related to the practice of midwifery. The bills do not authorize any additional expenditure authority for the agency; however the Department indicates that it may be possible to absorb any additional costs within base level budgeted resources.

Other Agencies. The State Prosecutors Office, the State Public Defender, and the Department of Corrections all submitted estimates relating to the potential fiscal impact of any violations arising out of the enforcement of the proposed new midwife regulations. It is not anticipated that any additional costs would be incurred that could not be supported from existing resources.

Prepared by: Darin Renner