

STATE OF WISCONSIN
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF RULEMAKING : PROPOSED ORDER OF THE
PROCEEDINGS BEFORE THE : DEPARTMENT OF SAFETY
DEPARTMENT OF SAFETY AND : AND PROFESSIONAL SERVICES
PROFESSIONAL SERVICES : ADOPTING RULES
: (CLEARINGHOUSE RULE 19-066)

PROPOSED ORDER

An order of the Department of Safety and Professional Services to repeal SPS 180.02 (6) and 180.02 (1m) (a) to (c); and to amend SPS 180.01, 180.02 (intro), (1m), (3m), (8) and (11), 181.01 (1) (c), (2) (a), (4) (a) 2. b. and f., 182.02 (1) (intro) and (e), and (1m), 183.01 (1) (intro), (g), and (v), and (2), (3), and (4), relating to licensure, standards of practice, and grounds for discipline of midwives.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted:

Subchapter XIII of ch. 440, Stats.

Statutory authority:

Section 440.984, Stats.

Explanation of agency authority:

Section 440.984, Stats., provides: “The department shall promulgate rules necessary to administer this subchapter.”

Related statutes or rules: None.

Plain language analysis: This rule project amends chs. SPS 180 to 183, relating to licensure, standards of practice, and grounds for discipline of midwives, to bring the rules into conformity with current drafting standards. This includes removing an unnecessary definition, revising several definitions to instead refer to identical definitions found in subch. I of ch. 440, Stats., amending internal references to subch. XII of ch. 440, Stats., to instead reference the correct subchapter (XIII), removing the phrase “but not limited to,” and replacing the use of “his or her” and “he or she” throughout.

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

The federal government does not regulate licensed midwives.

Comparison with rules in adjacent states:

Illinois: Although Illinois does credential and regulate nurse midwives, unlike Wisconsin, Illinois does not credential licensed midwives.

Iowa: Although Iowa does credential and regulate nurse midwives, unlike Wisconsin, Iowa does not credential licensed midwives.

Michigan: Michigan has recently passed legislation, which was signed by the Governor, to create a Board of Midwifery to promulgate rules regulating licensed midwives. However, the Board has not yet produced administrative rules regulating this profession.

Minnesota: Minnesota does offer a credential for “traditional midwives,” which is similar to licensed midwives under Wisconsin law. The application requirements are substantially similar to Wisconsin’s requirements.

Summary of factual data and analytical methodologies:

The proposed rule project amends chs. SPS 180 to 183 to correct statutory references and otherwise bring the rules into conformity with current drafting standards. Department staff closely reviewed chs. SPS 180 to 183 to develop the proposed rule revisions.

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

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

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department’s Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8935, Madison, Wisconsin 53705; (608) 266-0955, email at

DSPSAdminRules@wisconsin.gov.

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

The deadline for comments was June 7, 2019.

TEXT OF RULE

SECTION 1. SPS 180.01 is amended to read:

SPS 180.01 The rules in chs. SPS 180 to 183 are adopted under the authority of ss. 227.11 (2) and 440.08 (3), Stats., and subch. ~~XII~~ XIII of ch. 440, Stats.

SECTION 2. SPS 180.02 (intro.) is amended to read:

SPS 180.02 As used in chs. SPS 180 to 183 and in subch. ~~XII~~ XIII of ch. 440, Stats.:

SECTION 3. SPS 180.02 (1m) (intro.) is renumbered SPS 180.02 (1m) and amended to read:

SPS 180.02 (1m) “Automated external defibrillator” ~~means a defibrillator device to which all of the following apply:~~ has the meaning given in s. 440.01 (1) (ad), Stats.

SECTION 4. SPS 180.02 (1m) (a) to (c) are repealed.

SECTION 5. SPS 180.02 (3m) is amended to read:

SPS 180.02 (3m) “Defibrillation” ~~means administering an electrical impulse to an individual's heart in order to stop ventricular fibrillation or rapid ventricular tachycardia~~ has the meaning given in s. 440.01 (1) (ag), Stats.

SECTION 6. SPS 180.02 (6) is repealed.

SECTION 7. SPS 180.02 (8) and (11) are amended to read:

SPS 180.02 (8) “Licensed midwife” means a person who has been granted a license under subch. ~~XII~~ XIII of ch. 440, Stats., to engage in the practice of midwifery.

(11) “Ventricular fibrillation” ~~means a disturbance in the normal rhythm of the heart that is characterized by rapid, irregular, and ineffective twitching of the ventricles of the heart~~ has the meaning given in s. 440.01 (1) (i), Stats.

SECTION 8. SPS 181.01 (1) (c), (2) (a), (4) (a) 2. b. and f. are amended to read:

SPS 181.01

(1) (c) That the applicant, subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record. An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the department with all information requested relating to ~~his or her~~ the applicant's pending criminal charge,

conviction or other offense, as applicable. The department may not grant a midwife license to a person convicted of an offense under s. 940.22, 940.225, 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11 or 948.12, Stats.

(2) (a) Except for temporary permits granted under sub. (4), the renewal date for licenses granted under subch. ~~XII~~ XIII of ch. 440, Stats., is July 1 of each even-numbered year.

(4) (a) 2. b. The applicant has received a written commitment from a licensed midwife to directly supervise ~~his or her~~ the applicant's practice of midwifery during the duration of the temporary permit.

(4) (a) 2. f. The applicant, subject to ss. 111.321, 111.322 and 111.335, Stats., does not have an arrest or conviction record. An applicant who has a pending criminal charge or has been convicted of any crime or ordinance violation shall provide the department with all information requested relating to ~~his or her~~ the applicant's pending criminal charge, conviction or other offense, as applicable. The department may not grant a temporary permit to a person convicted of an offense under s. 940.22, 940.225, 944.06, 944.15, 944.17, 944.30, 944.31, 944.32, 944.33, 944.34, 948.02, 948.025, 948.06, 948.07, 948.075, 948.08, 948.09, 948.095, 948.10, 948.11 or 948.12, Stats.

SECTION 9. SPS 182.02 (1) (intro.), (1) (e), and (1m) are amended to read:

SPS 182.02 (1) DISCLOSURE OF INFORMATION TO CLIENT. A licensed midwife shall, at an initial consultation with a client, provide a copy of the rules promulgated by the department under subch. ~~XII~~ XIII of ch. 440, Stats., and disclose to the client orally and in writing on a form provided by the department all of the following:

(1) (e) The number of babies delivered and the number of clients transferred to a hospital since the time the licensed midwife commenced ~~his or her~~ their practice of midwifery.

(1m) DISCLOSURE OF INFORMATION BY TEMPORARY PERMIT HOLDER. A temporary permit holder shall inform a client orally and in writing that the temporary permit holder may not engage in the practice of midwifery unless ~~he or she~~ the temporary permit holder practices under the direct supervision of a licensed midwife.

SECTION 10. SPS 183.01 (1) (intro), (g), (v), and (2), (3), and (4) are amended to read:

SPS 183.01 (1) Subject to the rules promulgated under s. 440.03 (1), Stats., the department may reprimand a licensed midwife or deny, limit, suspend, or revoke a license or temporary permit granted under subch. ~~XII~~ XIII of ch. 440, Stats., if the department finds that the applicant, temporary permit holder, or licensed midwife has engaged in misconduct. Misconduct comprises any practice or behavior that violates the minimum standards of the profession necessary for the protection of the health, safety, or welfare of a client or the public. Misconduct includes, ~~but is not limited to,~~ the following:

(g) Practicing or attempting to practice while the midwife is impaired as a result of any condition that impairs the midwife's ability to appropriately carry out ~~his or her~~ professional functions in a manner consistent with the safety of clients or the public.

(v) Allowing another person to use a license granted under subch. ~~XII~~ XIII of ch. 440, Stats.

(2) Subject to the rules promulgated under s. 440.03 (1), Stats., the department shall revoke a license granted under subch. ~~XII~~ XIII of ch. 440, Stats., if the licensed midwife is convicted of any of the offenses specified in s. 440.982 (2), Stats.

(3) Subject to s. 440.982, Stats., no person may engage in the practice of midwifery unless ~~he or she~~ the person has been granted a license or a temporary permit to practice midwifery under subch. ~~XII~~ XIII of ch. 440, Stats., or granted a license to practice as a nurse-midwife under s. 441.15, Stats.

(4) Subject to s. 440.981, Stats., no person may use the title "licensed midwife" unless ~~he or she~~ the person has been granted a license to practice midwifery under subch. ~~XII~~ XIII of ch. 440, Stats., or granted a license to practice as a nurse-midwife under s. 441.15, Stats.

SECTION 11. 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 Department of Safety and Professional Services is approved for submission to the Governor and Legislature.

Dated _____

Agency _____
Secretary

