

1 **AN ACT** *to repeal* 441.15 (1) (a) and 655.001 (7t) (b); *to renumber and amend*
2 655.001 (7t) and 655.001 (7t) (a); *to amend* 441.15 (2) (b), 441.15 (4), 619.04 (3),
3 655.002 (1) (a), 655.002 (1) (b) (intro.), 655.002 (1) (b) 1., 655.002 (1) (b) 2.,
4 655.002 (1) (b) 3., 655.002 (1) (c), 655.002 (1) (d), 655.002 (1) (e), 655.002 (1)
5 (em), 655.002 (2) (a), 655.002 (2) (b), 655.003 (1), 655.003 (3), 655.005 (2) (a),
6 655.005 (2) (a), 655.005 (2) (b), 655.23 (5m), 655.27 (3) (a) 4. and 655.27 (3) (b)
7 2m.; and *to create* 50.36 (3i), 441.15 (1) (c), 655.001 (7t) (b), 655.001 (9c), 655.002
8 (2) (d), 655.003 (4), 655.27 (3) (b) 2f. and 655.275 (5) (b) 3. of the statutes; **relating**
9 **to:** hospital staff privileges for and written agreements required for nurse–midwives
10 and allowing nurse–midwives to elect to be covered under the injured patients and
11 families compensation fund.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This draft was prepared for the Joint Legislative Council’s Special Committee on Infant Mortality. This draft is identical to 2009 Senate bill 451, as amended by Senate amendment 1 to the bill.

Practice of Nurse–Midwifery

Under current law, to practice nurse–midwifery a licensed nurse–midwife must collaborate with and enter into a written agreement with a physician who has postgraduate training in obstetrics. If a person practicing nurse–midwifery discovers evidence of any aspect of care that jeopardizes the health or life of a newborn or mother, the nurse–midwife must either consult with the collaborating physician with whom the nurse–midwife has entered into a written agreement or make a referral as specified in the written agreement.

This draft eliminates the requirement that a licensed nurse–midwife collaborate with and enter into a written agreement with a physician. If

a person practicing nurse–midwifery discovers evidence of any aspect of care that jeopardizes the health or life of a newborn or mother, a licensed nurse–midwife must consult with a qualified health care professional or make a referral. The draft defines a qualified health care professional as a health care practitioner who is performing services within his or her scope of practice. A health care practitioner is defined under current law to include an individual who is licensed, registered, or certified by the medical examining board, the board of nursing, and the pharmacy examining board.

Health Care Liability Coverage

Under the health care liability statutes in current law, certain health care providers must carry health care liability insurance with specified limits and pay assessments to the injured patients and families compensation fund (the Patients Compensation Fund). Certain other health care providers may elect to be subject to the health care liability statutes, including the insurance and assessment requirements. If a medical malpractice claim is made against a health care provider who is subject to the health care liability statutes, or against an employee of such a health care provider, the portion of the claim that exceeds the limits of the provider’s health care liability insurance is paid on behalf of the provider or provider’s employee by the fund.

Certain employees, called health care practitioners, who are providing services not in collaboration with a physician or under the direction and supervision of a physician or nurse anesthetist, are not covered by the Patients Compensation Fund as employees in the event that a medical malpractice claim is made against them. Nurse–midwives are not required to provide services under the direction and supervision of a physician or nurse anesthetist and since, under the draft, they are no longer required to provide services in collaboration with a physician, they would not be covered by the fund as employees. Therefore, the draft modifies the definition of a health care practitioner to exclude nurse–midwives so that a nurse–midwife is covered by the fund, as under current law, if he or she is providing services as an employee of a health care provider who is subject to the health care liability statutes.

The draft requires nurse–midwives to participate in the Patients Compensation Fund. The draft exempts from inclusion in the fund nurse–midwives who are public employees or volunteer health care providers, or employees of the federal public health service. This same exemption exists under current law for physicians and nurse anesthetists who are public employees or volunteers.

The draft modifies the membership of the Patients Compensation Fund Board of Governors to provide that one of the 4 public members that are on the board must be named by the Wisconsin Nurses Association.

Currently, the Commissioner of Insurance sets fees for the Patients Compensation Fund by rule. The draft specifies that, with respect to fees paid by nurse-midwives, the rule may provide for a separate payment classification, or for a payment classification that is combined with one or more other categories of health care providers, as the Commissioner, after approval by Board of Governors, determines is appropriate for pooling risks under the fund.

Currently, the Patients Compensation Fund peer review council makes recommendations to the Commissioner and Board of Governors regarding fees and premiums after a review of claims. In reviewing claims, the peer review council is directed to consult with the categories of health care providers against who claims are filed. The draft provides that the peer review council must consult with at least one nurse-midwife if a claim was paid for damages arising out of care rendered by a nurse-midwife.

Finally, the draft provides that the provisions of the Act relating to the Patients Compensation Fund participation by nurse-midwives take effect on the first day of the third month beginning after the date the Commissioner of Insurance publishes the notice in the Wisconsin Administrative Register that the rules relating to fees paid to the fund by nurse-midwives are promulgated. The remaining provisions take effect the day after publication.

Hospital Staff Privileges

Under current law, only a physician, dentist, or podiatrist may admit a patient to a hospital. The draft provides that a hospital may grant to nurse-midwives who are covered under the Patients Compensation Fund any hospital staff privileges that the hospital must afford to persons who are licensed to practice medicine or podiatry, including hospital staff privileges to admit, treat, and discharge patients for whom nurse-midwives are qualified to provide care.

- 1 **SECTION 1.** 50.36 (3i) of the statutes is created to read:
- 2 50.36 (3i) A hospital may grant a nurse-midwife licensed under s. 441.15 (3) who is
- 3 covered under the injured patients and families compensation fund under s. 655.27 any
- 4 hospital staff privilege that a hospital must, under sub. (3) (a), afford to persons licensed to

1 practice medicine and surgery under subch. II of ch. 448 or to practice podiatry under subch.
2 IV of 448, including hospital staff privileges to admit, treat, and discharge any patient for
3 whom a nurse–midwife is qualified to provide care.

NOTE: Authorizes a hospital to grant staff privileges to a nurse–midwife
who is covered under the Patients Compensation Fund.

4 **SECTION 2.** 441.15 (1) (a) of the statutes is repealed.

5 **SECTION 3.** 441.15 (1) (c) of the statutes is created to read:

6 441.15 (1) (c) “Qualified health care professional” means a health care practitioner as
7 defined in s. 180.1901 (1m) who is performing services within his or her scope of practice.

8 **SECTION 4.** 441.15 (2) (b) of the statutes is amended to read:

9 441.15 (2) (b) The practice occurs in a health care facility approved by the board by rule
10 under sub. (3) (c), ~~in collaboration with a physician with postgraduate training in obstetrics,~~
11 ~~and pursuant to a written agreement with that physician.~~

12 **SECTION 5.** 441.15 (4) of the statutes is amended to read:

13 441.15 (4) A nurse–midwife who discovers evidence that any aspect of care involves
14 any complication which jeopardizes the health or life of a newborn or mother shall consult
15 with ~~the collaborating physician under sub. (2) (b) or the physician’s designee, or make a~~
16 ~~referral as specified in a written agreement under sub. (2) (b)~~ a qualified health care
17 professional or make a referral.

18 **SECTION 5m.** 619.04 (3) of the statutes is amended to read:

19 619.04 (3) The plan shall operate subject to the supervision and approval of a board of
20 governors consisting of 3 representatives of the insurance industry appointed by and to serve
21 at the pleasure of the commissioner, a person to be named by the State Bar Association, a
22 person to be named by the Wisconsin Academy of Trial Lawyers, 2 persons to be named by

1 the Wisconsin Medical Society, a person to be named by the Wisconsin Hospital Association,
2 the commissioner or a designated representative employed by the office of the commissioner,
3 and 4 public members at least one of whom is named by the Wisconsin Nurses Association
4 and at least 2 of whom are not attorneys or physicians and are not professionally affiliated with
5 any hospital or insurance company, appointed by the governor for staggered 3-year terms.
6 The commissioner or the commissioner's representative shall be the chairperson of the board
7 of governors. Board members shall be compensated at the rate of \$50 per diem plus actual
8 and necessary travel expenses.

9 **SECTION 6.** 655.001 (7t) of the statutes is renumbered 655.001 (7t) (a) and amended to
10 read:

11 655.001 (7t) (a) ~~“Health~~ Except as provided in par. (b), “health care practitioner” means
12 a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care
13 provider described in s. 655.002 (1) (d), (e), (em), or (f) and who has the authority to provide
14 health care services that are not ~~in collaboration with a physician under s. 441.15 (2) (b) or~~
15 under the direction and supervision of a physician or nurse anesthetist.

16 **SECTION 6m.** 655.001 (7t) (a) of the statutes, as affected by 2009 Wisconsin Act (this
17 act), is renumbered 655.001 (7t) and amended to read:

18 655.001 (7t) ~~Except as provided in par. (b), “health~~ “Health care practitioner” means
19 a health care professional, as defined in s. 180.1901 (1m), who is an employee of a health care
20 provider described in s. 655.002 (1) (d), (e), (em), or (f) and who has the authority to provide
21 health care services that are not under the direction and supervision of a physician ~~or,~~ nurse
22 anesthetist, or nurse-midwife.

23 **SECTION 7.** 655.001 (7t) (b) of the statutes is created to read:

1 655.001 (7t) (b) “Health care practitioner” does not include a person licensed to practice
2 nurse–midwifery under s. 441.15.

3 **SECTION 7b.** 655.001 (7t) (b) of the statutes, as created by 2009 Wisconsin Act ... (this
4 act), is repealed.

5 **SECTION 7d.** 655.001 (9c) of the statutes is created to read:

6 655.001 (9c) “Nurse–midwife” means a person who is licensed to practice
7 nurse–midwifery under s. 441.15.

8 **SECTION 7f.** 655.002 (1) (a) of the statutes is amended to read:

9 655.002 (1) (a) A physician ~~or~~, a nurse anesthetist, or a nurse–midwife for whom this
10 state is a principal place of practice and who practices his or her profession in this state more
11 than 240 hours in a fiscal year.

12 **SECTION 7h.** 655.002 (1) (b) (intro.) of the statutes is amended to read:

13 655.002 (1) (b) (intro.) A physician ~~or~~, a nurse anesthetist, or a nurse–midwife for whom
14 Michigan is a principal place of practice, if all of the following apply:

15 **SECTION 7i.** 655.002 (1) (b) 1. of the statutes is amended to read:

16 655.002 (1) (b) 1. The physician ~~or~~, ~~or~~, nurse anesthetist, or nurse–midwife is a resident
17 of this state.

18 **SECTION 7j.** 655.002 (1) (b) 2. of the statutes is amended to read:

19 655.002 (1) (b) 2. The physician ~~or~~, nurse anesthetist, or nurse–midwife practices his
20 or her profession in this state or in Michigan or a combination of both more than 240 hours
21 in a fiscal year.

22 **SECTION 7k.** 655.002 (1) (b) 3. of the statutes is amended to read:

23 655.002 (1) (b) 3. The physician ~~or~~, nurse anesthetist, or nurse–midwife performs more
24 procedures in a Michigan hospital than in any other hospital. In this subdivision, “Michigan

1 hospital” means a hospital located in Michigan that is an affiliate of a corporation organized
2 under the laws of this state that maintains its principal office and a hospital in this state.

3 **SECTION 7m.** 655.002 (1) (c) of the statutes is amended to read:

4 655.002 (1) (c) A physician ~~or~~, nurse anesthetist, or nurse-midwife who is exempt
5 under s. 655.003 (1) or (3), or a nurse-midwife who is exempt under s. 655.03 (4), but who
6 practices his or her profession outside the scope of the exemption and who fulfills the
7 requirements under par. (a) in relation to that practice outside the scope of the exemption. For
8 a physician ~~or a~~, nurse anesthetist, or nurse-midwife who is subject to this chapter under this
9 paragraph, this chapter applies only to claims arising out of practice that is outside the scope
10 of the exemption under s. 655.003 (1) or (3) or (4).

11 **SECTION 7p.** 655.002 (1) (d) of the statutes is amended to read:

12 655.002 (1) (d) A partnership comprised of physicians ~~or~~, nurse anesthetists, or
13 nurse-midwives and organized and operated in this state for the primary purpose of providing
14 the medical services of physicians ~~or~~, nurse anesthetists, or nurse-midwives.

15 **SECTION 7q.** 655.002 (1) (e) of the statutes is amended to read:

16 655.002 (1) (e) A corporation organized and operated in this state for the primary
17 purpose of providing the medical services of physicians ~~or~~, nurse anesthetists, or
18 nurse-midwives.

19 **SECTION 7r.** 655.002 (1) (em) of the statutes is amended to read:

20 655.002 (1) (em) Any organization or enterprise not specified under par. (d) or (e) that
21 is organized and operated in this state for the primary purpose of providing the medical
22 services of physicians ~~or~~, nurse anesthetists, or nurse-midwives.

23 **SECTION 7t.** 655.002 (2) (a) of the statutes is amended to read:

1 655.002 (2) (a) A physician ~~or~~, nurse anesthetist, or nurse-midwife for whom this state
2 is a principal place of practice but who practices his or her profession fewer than 241 hours
3 in a fiscal year, for a fiscal year, or a portion of a fiscal year, during which he or she practices
4 his or her profession.

5 **SECTION 7v.** 655.002 (2) (b) of the statutes is amended to read:

6 655.002 (2) (b) Except as provided in sub. (1) (b), a physician ~~or~~, nurse anesthetist, or
7 nurse-midwife for whom this state is not a principal place of practice, for a fiscal year, or a
8 portion of a fiscal year, during which he or she practices his or her profession in this state. For
9 a health care provider who elects to be subject to this chapter under this paragraph, this chapter
10 applies only to claims arising out of practice that is in this state and that is outside the scope
11 of an exemption under s. 655.003 (1) or (3) or (4).

12 **SECTION 8.** 655.002 (2) (d) of the statutes is created to read:

13 655.002 (2) (d) A person licensed to practice nurse-midwifery under s. 441.15.

14 **SECTION 8f.** 655.003 (1) of the statutes is amended to read:

15 655.003 (1) A physician ~~or~~, a nurse anesthetist, or a nurse-midwife who is a state,
16 county, or municipal employee, or federal employee or contractor covered under the federal
17 tort claims act, as amended, and who is acting within the scope of his or her employment or
18 contractual duties.

19 **SECTION 8h.** 655.003 (3) of the statutes is amended to read:

20 655.003 (3) A physician ~~or~~, a nurse anesthetist, or a nurse-midwife who provides
21 professional services under the conditions described in s. 146.89 or 250.042 (4) (b), with
22 respect to those professional services provided by the physician ~~or~~, nurse anesthetist, or
23 nurse-midwife for which he or she is covered by s. 165.25 and considered an agent of the
24 department, as provided in s. 165.25 (6) (b).

1 **SECTION 8j.** 655.003 (4) of the statutes is created to read:

2 655.003 (4) A nurse–midwife who is considered to be an employee of the federal public
3 health service under 42 USC 233 (g).

4 **SECTION 9.** 655.005 (2) (a) of the statutes is amended to read:

5 655.005 (2) (a) An employee of a health care provider if the employee is a physician
6 or a nurse anesthetist or is a health care practitioner who is providing health care services that
7 are not ~~in collaboration with a physician under s. 441.15 (2) (b) or~~ under the direction and
8 supervision of a physician or nurse anesthetist.

9 **SECTION 10.** 655.005 (2) (a) of the statutes, as affected by 2009 Wisconsin Act (this
10 act), is amended to read:

11 655.005 (2) (a) An employee of a health care provider if the employee is a physician
12 ~~or a~~ nurse anesthetist, or nurse–midwife or is a health care practitioner who is providing health
13 care services that are not under the direction and supervision of a physician ~~or~~ nurse
14 anesthetist, or nurse–midwife.

15 **SECTION 11.** 655.005 (2) (b) of the statutes is amended to read:

16 655.005 (2) (b) A service corporation organized under s. 180.1903 by health care
17 professionals, as defined under s. 180.1901 (1m), if the board of governors determines that
18 it is not the primary purpose of the service corporation to provide the medical services of
19 physicians ~~or~~ nurse anesthetists, or nurse–midwives. The board of governors may not
20 determine under this paragraph that it is not the primary purpose of a service corporation to
21 provide the medical services of physicians ~~or~~ nurse anesthetists, or nurse–midwives unless
22 more than 50% of the shareholders of the service corporation are ~~neither not~~ neither
23 nurse anesthetists, or nurse–midwives.

24 **SECTION 12.** 655.23 (5m) of the statutes is amended to read:

1 655.23 **(5m)** The limits set forth in sub. (4) shall apply to any joint liability of a
2 physician ~~or~~, nurse anesthetist, or nurse-midwife and his or her corporation, partnership, or
3 other organization or enterprise under s. 655.002 (1) (d), (e), or (em).

4 **SECTION 13.** 655.27 (3) (a) 4. of the statutes is amended to read:

5 655.27 **(3)** (a) 4. For a health care provider described in s. 655.002 (1) (d), (e), (em),
6 or (f), risk factors and past and prospective loss and expense experience attributable to
7 employees of that health care provider other than employees licensed as a physician ~~or~~, nurse
8 anesthetist, or nurse-midwife.

9 **SECTION 14.** 655.27 (3) (b) 2f. of the statutes is created to read:

10 655.27 **(3)** (b) 2f. With respect to fees paid by nurse-midwives, the rule may provide
11 for a separate payment classification or for a payment classification that is combined with one
12 or more other categories of health care providers, as the commissioner, after approval by the
13 board of governors, determines is appropriate for pooling risks under the fund.

14 **SECTION 15.** 655.27 (3) (b) 2m. of the statutes is amended to read:

15 655.27 **(3)** (b) 2m. In addition to the fees and payment classifications described under
16 subs. 1. ~~and 2.~~ to 2f., the commissioner, after approval by the board of governors, may by rule
17 establish a separate payment classification for physicians satisfying s. 655.002 (1) (b) ~~and~~, a
18 separate fee for nurse anesthetists satisfying s. 655.002 (1) (b), and a separate fee for
19 nurse-midwives satisfying s. 655.002 (1) (b) which take into account the loss experience of
20 health care providers for whom Michigan is a principal place of practice.

21 **SECTION 16.** 655.275 (5) (b) 3. of the statutes is created to read:

22 655.275 **(5)** (b) 3. If a claim was paid for damages arising out of the rendering of care
23 by a nurse-midwife, with at least one nurse-midwife.

24 **SECTION 17. Nonstatutory provisions.**

1 (1) EXPIRATION OF TERM OF MEMBER ON BOARD OF GOVERNORS. Notwithstanding the
2 length of terms specified for the members of the board of governors under section 619.04 (3)
3 of the statutes, as affected by this act, the initial public member named by the Wisconsin
4 Nurses Association shall be appointed for a term expiring on May 1, 2015.

5 (2) NOTICE OF EFFECTIVE DATE OF RULE FOR FEES. The commissioner of insurance shall
6 promulgate a rule under section 655.27 (3) (b) of the statutes, as affected by this act, that takes
7 into account participation in the injured patients and families compensation fund by
8 nurse-midwives. The rule may provide for a separate payment classification or for a payment
9 classification that is combined with one or more other categories of health care providers, as
10 the commissioner, after approval by the board of governors, determines is appropriate for
11 pooling risks under the fund. When the rule has been promulgated and is in effect, the
12 commissioner of insurance shall publish a notice in the Wisconsin Administrative Register
13 that specifies the effective date of the rule.

14 **SECTION 18. Effective dates.** This act takes effect on the first day of the 3rd month
15 beginning after the date published by the commissioner of insurance in the Wisconsin
16 Administrative Register under 2011 Wisconsin Act ... (this act), section 17 (2), except as
17 follows:

18 (1) The treatment of sections 50.36 (3i), 441.51 (1) (a) and (c), (2) (b), and (4), 619.04
19 (3), 655.001 (9c), and 655.005 (2) (a) (by SECTION 9) of the statutes, the renumbering and
20 amendment of section 655.001 (7t) of the statutes, the creation of section 655.001 (7t) (b) of
21 the statutes, and SECTION 17 of this act take effect on the day after publication.

22 (END)