



State of Wisconsin
2011 – 2012 LEGISLATURE



LRB-3689/1
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2011 BILL

1 **AN ACT** *to amend* 50.09 (1) (a) (intro.), 50.09 (1) (f) 1., 50.09 (1) (h), 50.09 (1) (k),
2 50.49 (1) (b) (intro.), 70.47 (8) (intro.), 146.82 (3) (a), 252.07 (8) (a) 2., 252.07 (9)
3 (c), 252.11 (2), 252.11 (4), 252.11 (5), 252.11 (7), 252.11 (10), 252.14 (1) (ar) 14.,
4 252.16 (3) (c) (intro.), 252.17 (3) (c) (intro.), 252.18, 343.16 (5) (a), 448.03 (5) (b),
5 448.56 (1), 448.56 (1m) (b), 448.67 (2), 450.11 (7) (b) and 450.11 (8) (b); and **to**
6 **create** 50.01 (4p), 252.01 (5), 450.01 (15r), 450.01 (16) (h) 3. and 450.13 (5) (c)
7 of the statutes; **relating to:** authorizing medically related actions by physician
8 assistants.

Analysis by the Legislative Reference Bureau

Under current law, the Medical Examining Board grants physician assistant licenses to individuals who meet training and examination requirements and any other requirements established in rules promulgated by the Medical Examining Board.

The following provisions under current law authorize physicians or other health care professionals to act under specified circumstances and to affect individuals by these authorized actions:

1. Unless medically contraindicated as documented by a nursing home or community-based residential facility resident's physician in the resident's medical

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record, the resident has the right to private and unrestricted communications with his or her family, physician, attorney, and others; to share a room with his or her spouse or domestic partner if the spouse or domestic partner is also a resident; to participate in activities of social, religious, and community groups; and to be free from chemical and physical restraints.

2. Home health services that are provided to an individual by a home health agency must be those specified under a plan for furnishing the services that is established and periodically reviewed by a physician.

3. For hearings before the local board of review concerning assessments of property taxes, an ill or disabled person who presents to the board a letter from a physician or osteopath confirming the illness or disability may present testimony by telephone.

4. Under laws relating to confidentiality of patient health care records, a physician who treats a patient whose physical or mental condition, in the physician's judgment, affects his or her ability to exercise reasonable and ordinary control over a motor vehicle may, without the patient's informed consent, report the patient's name and other information to the Department of Transportation. Physicians are exempted from civil liability for reporting, or not reporting, this information in good faith.

5. Under laws relating to communicable diseases:

a. The Department of Health Services (DHS) may order an individual who has a confirmed diagnosis of infectious tuberculosis or symptoms indicative of tuberculosis confined to a facility if several conditions are met, including notifying a court of the confinement and providing to the court a physician's written statement affirming the tuberculosis or symptoms.

b. If a court orders confinement of an individual with infectious tuberculosis or symptoms indicative of tuberculosis, the individual must remain confined until DHS or a local health officer, with the concurrence of a treating physician, determines that treatment is complete or that the individual is no longer a public health threat.

c. If, following a request by an officer of DHS or a local health officer, a person reasonably suspected of being infected with a sexually transmitted disease refuses or neglects examination by a physician or treatment, the DHS officer or local health officer may have the person committed to an institution for examination, treatment, or observation.

d. If a person with a sexually transmitted disease ceases or refuses treatment before reaching what is in a physician's opinion the noncommunicable stage, the physician must notify DHS and the person may be committed by a court for examination or treatment.

e. If a physician has reported to DHS a case of sexually transmitted disease, information regarding the disease and its treatment is not privileged before a court.

f. The State Laboratory of Hygiene must examine specimens for the diagnosis of sexually transmitted disease for any physician or local health officer and must report positive results to the local health officer and DHS.

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g. If a local health officer or DHS officer requires it, a person who is employed in the handling of food products or is suspected of having a disease in a form that is communicable by food handling must submit to an examination by the officer or by a physician.

6. Under occupational regulation laws relating to physical therapists, a physical therapist may practice only on the written referral of a physician, chiropractor, dentist, or podiatrist, except under certain conditions, including providing services to an individual for a previously diagnosed medical condition after informing the individual's physician, chiropractor, dentist, or podiatrist.

7. Under occupational regulation laws relating to podiatrists, a podiatrist who renders chargeable services to, among others, a patient or physician, must render a statement of the charge directly to the person served.

8. Under laws relating to the practice of pharmacy, current law does the following:

a. Defines the term “practice of pharmacy” to include making therapeutic alternate drug selections in accordance with written guidelines or procedures approved by a hospital and by a physician for his or her patients for a hospital stay.

b. Provides that information communicated to a physician in an effort unlawfully to procure a prescription drug is not privileged communication.

c. Requires the enforcement of prescription drug laws that apply to physicians to be the responsibility of the Department of Regulation and Licensing and the Medical Examining Board.

d. Exempts pharmacists from requirements that they provide certain information when dispensing a drug product equivalent, if the patient is in a hospital and the drug product equivalent is dispensed in accordance with guidelines approved by, among others, the patient's physician.

Currently, an advanced practice nurse prescriber may act in the same manner physicians may act in the instances specified above.

This bill expands the current laws described above that authorize physicians to act under specified circumstances and to affect individuals by these authorized actions, by similarly authorizing individuals licensed as physician assistants.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 50.01 (4p) of the statutes is created to read:

2 50.01 (4p) “Physician assistant” has the meaning given in s. 448.01 (6).

3 **SECTION 2.** 50.09 (1) (a) (intro.) of the statutes is amended to read:

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1 50.09 (1) (a) (intro.) Private and unrestricted communications with the
2 resident's family, physician, physician assistant, advanced practice nurse prescriber,
3 attorney, and any other person, unless medically contraindicated as documented by
4 the resident's physician, physician assistant, or advanced practice nurse prescriber
5 in the resident's medical record, except that communications with public officials or
6 with the resident's attorney shall not be restricted in any event. The right to private
7 and unrestricted communications shall include, but is not limited to, the right to:

8 **SECTION 3.** 50.09 (1) (f) 1. of the statutes is amended to read:

9 50.09 (1) (f) 1. Privacy for visits by spouse or domestic partner. If both spouses
10 or both domestic partners under ch.770 are residents of the same facility, the spouses
11 or domestic partners shall be permitted to share a room unless medically
12 contraindicated as documented by the resident's physician, physician assistant, or
13 advanced practice nurse prescriber in the resident's medical record.

14 **SECTION 4.** 50.09 (1) (h) of the statutes is amended to read:

15 50.09 (1) (h) Meet with, and participate in activities of social, religious, and
16 community groups at the resident's discretion, unless medically contraindicated as
17 documented by the resident's physician, physician assistant, or advanced practice
18 nurse prescriber in the resident's medical record.

19 **SECTION 5.** 50.09 (1) (k) of the statutes is amended to read:

20 50.09 (1) (k) Be free from mental and physical abuse, and be free from chemical
21 and physical restraints except as authorized in writing by a physician, physician
22 assistant, or advanced practice nurse prescriber for a specified and limited period of
23 time and documented in the resident's medical record. Physical restraints may be
24 used in an emergency when necessary to protect the resident from injury to himself
25 or herself or others or to property. However, authorization for continuing use of the

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1 physical restraints shall be secured from a physician, physician assistant, or
2 advanced practice nurse prescriber within 12 hours. Any use of physical restraints
3 shall be noted in the resident's medical records. "Physical restraints" includes, but
4 is not limited to, any article, device, or garment that interferes with the free
5 movement of the resident and that the resident is unable to remove easily, and
6 confinement in a locked room.

7 **SECTION 6.** 50.49 (1) (b) (intro.) of the statutes is amended to read:

8 50.49 (1) (b) (intro.) "Home health services" means the following items and
9 services that are furnished to an individual, who is under the care of a physician,
10 physician assistant, or advanced practice nurse prescriber, by a home health agency,
11 or by others under arrangements made by the home health agency, that are under
12 a plan for furnishing those items and services to the individual that is established
13 and periodically reviewed by a physician, physician assistant, or advanced practice
14 nurse prescriber and that are, except as provided in subd. 6., provided on a visiting
15 basis in a place of residence used as the individual's home:

16 **SECTION 7.** 70.47 (8) (intro.) of the statutes is amended to read:

17 70.47 (8) HEARING. (intro.) The board shall hear upon oath all persons who
18 appear before it in relation to the assessment. The board shall hear upon oath, by
19 telephone, all ill or disabled persons who present to the board a letter from a
20 physician, osteopath, physician assistant, as defined in s. 448.01 (6), or advanced
21 practice nurse prescriber certified under s. 441.16 (2) that confirms their illness or
22 disability. The board at such hearing shall proceed as follows:

23 **SECTION 8.** 146.82 (3) (a) of the statutes is amended to read:

24 146.82 (3) (a) Notwithstanding sub. (1), a physician, physician assistant, as
25 defined in s. 448.01 (6), or advanced practice nurse prescriber certified under s.

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1 441.16 (2) who treats a patient whose physical or mental condition in the physician's,
2 physician assistant's, or advanced practice nurse prescriber's judgment affects the
3 patient's ability to exercise reasonable and ordinary control over a motor vehicle may
4 report the patient's name and other information relevant to the condition to the
5 department of transportation without the informed consent of the patient.

6 **SECTION 9.** 252.01 (5) of the statutes is created to read:

7 252.01 (5) "Physician assistant" has the meaning given in s. 448.01 (6).

8 **SECTION 10.** 252.07 (8) (a) 2. of the statutes is amended to read:

9 252.07 (8) (a) 2. The department or local health officer provides to the court a
10 written statement from a physician, physician assistant, or advanced practice nurse
11 prescriber that the individual has infectious tuberculosis or suspect tuberculosis.

12 **SECTION 11.** 252.07 (9) (c) of the statutes is amended to read:

13 252.07 (9) (c) If the court orders confinement of an individual under this
14 subsection, the individual shall remain confined until the department or local health
15 officer, with the concurrence of a treating physician, physician assistant, or advanced
16 practice nurse prescriber, determines that treatment is complete or that the
17 individual is no longer a substantial threat to himself or herself or to the public
18 health. If the individual is to be confined for more than 6 months, the court shall
19 review the confinement every 6 months.

20 **SECTION 12.** 252.11 (2) of the statutes is amended to read:

21 252.11 (2) An officer of the department or a local health officer having
22 knowledge of any reported or reasonably suspected case or contact of a sexually
23 transmitted disease for which no appropriate treatment is being administered, or of
24 an actual contact of a reported case or potential contact of a reasonably suspected
25 case, shall investigate or cause the case or contact to be investigated as necessary.

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1 If, following a request of an officer of the department or a local health officer, a person
2 reasonably suspected of being infected with a sexually transmitted disease refuses
3 or neglects examination by a physician, physician assistant, or advanced practice
4 nurse prescriber or treatment, an officer of the department or a local health officer
5 may proceed to have the person committed under sub. (5) to an institution or system
6 of care for examination, treatment, or observation.

7 **SECTION 13.** 252.11 (4) of the statutes is amended to read:

8 252.11 (4) If a person infected with a sexually transmitted disease ceases or
9 refuses treatment before reaching what in a physician's, physician assistant's, or
10 advanced practice nurse prescriber's opinion is the noncommunicable stage, the
11 physician, physician assistant, or advanced practice nurse prescriber shall notify the
12 department. The department shall without delay take the necessary steps to have
13 the person committed for treatment or observation under sub. (5), or shall notify the
14 local health officer to take these steps.

15 **SECTION 14.** 252.11 (5) of the statutes is amended to read:

16 252.11 (5) Any court of record may commit a person infected with a sexually
17 transmitted disease to any institution or may require the person to undergo a system
18 of care for examination, treatment, or observation if the person ceases or refuses
19 examination, treatment, or observation under the supervision of a physician,
20 physician assistant, or advanced practice nurse prescriber. The court shall summon
21 the person to appear on a date at least 48 hours, but not more than 96 hours, after
22 service if an officer of the department or a local health officer petitions the court and
23 states the facts authorizing commitment. If the person fails to appear or fails to
24 accept commitment without reasonable cause, the court may cite the person for
25 contempt. The court may issue a warrant and may direct the sheriff, any constable,

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1 or any police officer of the county immediately to arrest the person and bring the
2 person to court if the court finds that a summons will be ineffectual. The court shall
3 hear the matter of commitment summarily. Commitment under this subsection
4 continues until the disease is no longer communicable or until other provisions are
5 made for treatment that satisfy the department. The certificate of the petitioning
6 officer is prima facie evidence that the disease is no longer communicable or that
7 satisfactory provisions for treatment have been made.

8 **SECTION 15.** 252.11 (7) of the statutes is amended to read:

9 252.11 (7) Reports, examinations and inspections and all records concerning
10 sexually transmitted diseases are confidential and not open to public inspection, and
11 may not be divulged except as may be necessary for the preservation of the public
12 health, in the course of commitment proceedings under sub. (5), or as provided under
13 s. 938.296 (4) or 968.38 (4). If a physician, physician assistant, or advanced practice
14 nurse prescriber has reported a case of sexually transmitted disease to the
15 department under sub. (4), information regarding the presence of the disease and
16 treatment is not privileged when the patient, physician, physician assistant, or
17 advanced practice nurse prescriber is called upon to testify to the facts before any
18 court of record.

19 **SECTION 16.** 252.11 (10) of the statutes is amended to read:

20 252.11 (10) The state laboratory of hygiene shall examine specimens for the
21 diagnosis of sexually transmitted diseases for any physician, physician assistant,
22 advanced practice nurse prescriber, or local health officer in the state, and shall
23 report the positive results of the examinations to the local health officer and to the
24 department. All laboratories performing tests for sexually transmitted diseases
25 shall report all positive results to the local health officer and to the department, with

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1 the name of the physician, physician assistant, or advanced practice nurse prescriber
2 to whom reported.

3 **SECTION 17.** 252.14 (1) (ar) 14. of the statutes is amended to read:

4 252.14 (1) (ar) 14. A physician assistant ~~licensed under ch. 448.~~

5 **SECTION 18.** 252.16 (3) (c) (intro.) of the statutes is amended to read:

6 252.16 (3) (c) (intro.) Has submitted to the department a certification from a
7 physician, as defined in s. 448.01 (5), physician assistant, or advanced practice nurse
8 prescriber of all of the following:

9 **SECTION 19.** 252.17 (3) (c) (intro.) of the statutes is amended to read:

10 252.17 (3) (c) (intro.) Has submitted to the department a certification from a
11 physician, as defined in s. 448.01 (5), physician assistant, or advanced practice nurse
12 prescriber of all of the following:

13 **SECTION 20.** 252.18 of the statutes is amended to read:

14 **252.18 Handling foods.** No person in charge of any public eating place or
15 other establishment where food products to be consumed by others are handled may
16 knowingly employ any person handling food products who has a disease in a form
17 that is communicable by food handling. If required by the local health officer or any
18 officer of the department for the purposes of an investigation, any person who is
19 employed in the handling of foods or is suspected of having a disease in a form that
20 is communicable by food handling shall submit to an examination by the officer or
21 by a physician, physician assistant, or advanced practice nurse prescriber
22 designated by the officer. The expense of the examination, if any, shall be paid by the
23 person examined. Any person knowingly infected with a disease in a form that is
24 communicable by food handling who handles food products to be consumed by others

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1 and any persons knowingly employing or permitting such a person to handle food
2 products to be consumed by others shall be punished as provided by s. 252.25.

3 **SECTION 21.** 343.16 (5) (a) of the statutes is amended to read:

4 343.16 (5) (a) The secretary may require any applicant for a license or any
5 licensed operator to submit to a special examination by such persons or agencies as
6 the secretary may direct to determine incompetency, physical or mental disability,
7 disease, or any other condition that might prevent such applicant or licensed person
8 from exercising reasonable and ordinary control over a motor vehicle. If the
9 department requires the applicant to submit to an examination, the applicant shall
10 pay for the examination. If the department receives an application for a renewal or
11 duplicate license after voluntary surrender under s. 343.265 or receives a report from
12 a physician, physician assistant, as defined in s. 448.01 (6), advanced practice nurse
13 prescriber certified under s. 441.16 (2), or optometrist under s. 146.82 (3), or if the
14 department has a report of 2 or more arrests within a one-year period for any
15 combination of violations of s. 346.63 (1) or (5) or a local ordinance in conformity with
16 s. 346.63 (1) or (5) or a law of a federally recognized American Indian tribe or band
17 in this state in conformity with s. 346.63 (1) or (5), or s. 346.63 (1m), 1985 stats., or
18 s. 346.63 (2) or (6) or 940.25, or s. 940.09 where the offense involved the use of a
19 vehicle, the department shall determine, by interview or otherwise, whether the
20 operator should submit to an examination under this section. The examination may
21 consist of an assessment. If the examination indicates that education or treatment
22 for a disability, disease or condition concerning the use of alcohol, a controlled
23 substance or a controlled substance analog is appropriate, the department may order
24 a driver safety plan in accordance with s. 343.30 (1q). If there is noncompliance with

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1 assessment or the driver safety plan, the department shall revoke the person's
2 operating privilege in the manner specified in s. 343.30 (1q) (d).

3 **SECTION 22.** 448.03 (5) (b) of the statutes is amended to read:

4 448.03 (5) (b) No physician or physician assistant shall be liable for any civil
5 damages for either of the following:

6 1. Reporting in good faith to the department of transportation under s. 146.82
7 (3) a patient's name and other information relevant to a physical or mental condition
8 of the patient which in the physician's or physician assistant's judgment impairs the
9 patient's ability to exercise reasonable and ordinary control over a motor vehicle.

10 2. In good faith, not reporting to the department of transportation under s.
11 146.82 (3) a patient's name and other information relevant to a physical or mental
12 condition of the patient which in the physician's or physician assistant's judgment
13 does not impair the patient's ability to exercise reasonable and ordinary control over
14 a motor vehicle.

15 **SECTION 23.** 448.56 (1) of the statutes is amended to read:

16 448.56 (1) WRITTEN REFERRAL. Except as provided in this subsection and s.
17 448.52, a person may practice physical therapy only upon the written referral of a
18 physician, physician assistant, chiropractor, dentist, podiatrist, or advanced practice
19 nurse prescriber certified under s. 441.16 (2). Written referral is not required if a
20 physical therapist provides services in schools to children with disabilities, as
21 defined in s. 115.76 (5), pursuant to rules promulgated by the department of public
22 instruction; provides services as part of a home health care agency; provides services
23 to a patient in a nursing home pursuant to the patient's plan of care; provides services
24 related to athletic activities, conditioning, or injury prevention; or provides services
25 to an individual for a previously diagnosed medical condition after informing the

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1 individual's physician, physician assistant, chiropractor, dentist, podiatrist, or
2 advanced practice nurse prescriber certified under s. 441.16 (2) who made the
3 diagnosis. The examining board may promulgate rules establishing additional
4 services that are excepted from the written referral requirements of this subsection.

5 **SECTION 24.** 448.56 (1m) (b) of the statutes is amended to read:

6 448.56 **(1m)** (b) The examining board shall promulgate rules establishing the
7 requirements that a physical therapist must satisfy if a physician, physician
8 assistant, chiropractor, dentist, podiatrist, or advanced practice nurse prescriber
9 makes a written referral under sub. (1). The purpose of the rules shall be to ensure
10 continuity of care between the physical therapist and the health care practitioner.

11 **SECTION 25.** 448.67 (2) of the statutes is amended to read:

12 448.67 **(2)** SEPARATE BILLING REQUIRED. Except as provided in sub. (4), a licensee
13 who renders any podiatric service or assistance, or gives any podiatric advice or any
14 similar advice or assistance, to any patient, podiatrist, physician, physician
15 assistant, advanced practice nurse prescriber certified under s. 441.16 (2),
16 partnership, or corporation, or to any other institution or organization, including a
17 hospital, for which a charge is made to a patient, shall, except as authorized by
18 Title 18 or Title 19 of the federal Social Security Act, render an individual statement
19 or account of the charge directly to the patient, distinct and separate from any
20 statement or account by any other podiatrist, physician, physician assistant,
21 advanced practice nurse prescriber, or other person.

22 **SECTION 26.** 450.01 (15r) of the statutes is created to read:

23 450.01 **(15r)** "Physician assistant" has the meaning given in s. 448.01 (6).

24 **SECTION 27.** 450.01 (16) (h) 3. of the statutes is created to read:

25 450.01 **(16)** (h) 3. The patient's physician assistant.

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1 **SECTION 28.** 450.11 (7) (b) of the statutes is amended to read:

2 450.11 (7) (b) Information communicated to a physician, physician assistant,
3 or advanced practice nurse prescriber in an effort to procure unlawfully a
4 prescription drug or the administration of a prescription drug is not a privileged
5 communication.

6 **SECTION 29.** 450.11 (8) (b) of the statutes is amended to read:

7 450.11 (8) (b) The medical examining board, insofar as this section applies to
8 physicians and physician assistants.

9 **SECTION 30.** 450.13 (5) (c) of the statutes is created to read:

10 450.13 (5) (c) The patient's physician assistant.

11

(END)