



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-3743/1
MED:amn

2021 ASSEMBLY BILL 402

June 17, 2021 - Introduced by Representatives PLUMER, BALDEH, BILLINGS, BROOKS, CABRAL-GUEVARA, DOYLE, DUCHOW, GUNDRUM, KURTZ, LOUDENBECK, MOSES, MURPHY, MURSAU, NEYLON, NOVAK, ROZAR, SHELTON, SORTWELL, STEFFEN, SUBECK, SUMMERFIELD, TAUCHEN, THIESFELDT, TITTL and VANDERMEER, cosponsored by Senators FELZKOWSKI, BALLWEG, BERNIER, COWLES, FEYEN, JACQUE, NASS, RINGHAND, L. TAYLOR and WIRCH. Referred to Committee on Health.

AUTHORS SUBJECT TO CHANGE

1 **AN ACT** *to renumber and amend* 447.05; *to amend* 440.08 (2) (a) (intro.),
2 447.04 (title), 447.07 (3) (intro.), 447.07 (3) (e), 447.07 (3) (f), 447.07 (3) (g),
3 447.07 (3) (h), 448.03 (2) (a), 448.21 (1) (a), 450.03 (1) (e) and 462.02 (2) (d); and
4 **to create** 440.03 (13) (b) 28m., 447.035, 447.04 (3) and 447.05 (1) (b) of the
5 statutes; **relating to:** certification of expanded function dental auxiliaries,
6 extending the time limit for emergency rule procedures, providing an
7 exemption from emergency rule procedures, and granting rule-making
8 authority.

Analysis by the Legislative Reference Bureau

This bill establishes a certification program for expanded function dental auxiliaries administered by the Dentistry Examining Board. Under the bill, a person who is not licensed as a dentist or as a dental hygienist may perform the following activities, as delegated and supervised by a licensed dentist, if the person is certified by the examining board as an expanded function dental auxiliary: 1) placing and finishing restoration material after a dentist prepares a tooth for restoration; 2) applying sealants; 3) coronal polishing; 4) impressions; 5) temporizations; 6) packing cord; 7) removing cement from crowns; 8) adjusting dentures and other removable oral appliances; 9) removing sutures and dressings; 10) supragingival scaling; and

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11) applying topical fluoride, fluoride varnish, or similar dental topical agent. The bill authorizes the examining board to promulgate rules for the certification and practice of expanded function dental auxiliaries, but prohibits the examining board from promulgating rules that allow an expanded function dental auxiliary to cut hard or soft tissue, diagnose, or plan treatments.

The examining board may grant a permanent certification as an expanded function dental auxiliary to an applicant who, among other things, has practiced as a dental assistant for a certain period, completes an accredited instructional program, and is proficient in cardiopulmonary resuscitation. Under the bill, the examining board investigates, holds hearings, and makes findings pertaining to violations of the bill and other statutes enforced by the examining board, and the examining board may impose on violators the same penalties that apply under current law to dentists and dental hygienists.

For further information see the state 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.** 440.03 (13) (b) 28m. of the statutes is created to read:

2 440.03 (13) (b) 28m. Expanded function dental auxiliary.

3 **SECTION 2.** 440.08 (2) (a) (intro.) of the statutes is amended to read:

4 440.08 (2) (a) (intro.) Except as provided in par. (b) and in ss. 440.51, 442.04,
5 444.03, 444.11, 447.04 (2) (c) 2., 447.05 (1) (b), 449.17 (1m) (d), 449.18 (2) (e), 463.10,
6 463.12, and 463.25 and subch. II of ch. 448, the renewal dates for credentials are as
7 follows:

8 **SECTION 3.** 447.035 of the statutes is created to read:

9 **447.035 Certification; expanded function dental auxiliaries.** (1) In this
10 section, "auxiliary" means an expanded function dental auxiliary.

11 (2) Notwithstanding s. 447.03 (1) and (2), a certification to practice as an
12 auxiliary granted under s. 447.04 (3) shall permit the holder to perform all of the
13 following as delegated and supervised by a dentist:

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- 1 (a) Placement and finishing of restoration material after the dentist prepares
2 a tooth for restoration.
- 3 (b) Application of sealants.
- 4 (c) Coronal polishing.
- 5 (d) Impressions.
- 6 (e) Temporizations.
- 7 (f) Packing cord.
- 8 (g) Removal of cement from crowns.
- 9 (h) Adjustment of dentures and other removable oral appliances.
- 10 (i) Removal of sutures and dressings.
- 11 (j) Supragingival scaling.
- 12 (k) Application of topical fluoride, fluoride varnish, or similar dental topical
13 agent.
- 14 **(3)** (a) The examining board shall, subject to pars. (b) and (c), promulgate rules
15 for the certification and practice of auxiliaries.
- 16 (b) The rules promulgated under par. (a) shall do all of the following:
- 17 1. Require an applicant to the accredited instructional program described in
18 subd. 2. to demonstrate in his or her application that the individual satisfies one of
19 the following criteria in order to be permitted to enroll in the instructional program:
- 20 a. Has completed at least 1,000 hours practicing as a dental assistant and holds
21 the certified dental assistant credential issued by the Dental Assisting National
22 Board, Inc., or its successor.
- 23 b. Has completed at least 2,000 hours practicing as a dental assistant, as
24 verified by the supervising licensed dentist.

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1 2. Require an applicant for certification under s. 447.04 (3) to demonstrate to
2 the satisfaction of the examining board that the applicant has successfully completed
3 an accredited instructional program that provides training in practice as an
4 auxiliary and requires no fewer than 70 hours of classroom instruction.

5 3. Require a dentist who delegates a procedure to an auxiliary certified under
6 s. 447.04 (3) to remain on the premises where the auxiliary is performing the
7 procedure until the procedure is complete and the dentist has verified that the
8 procedure has been performed successfully.

9 4. Require each auxiliary to maintain current proficiency in cardiopulmonary
10 resuscitation, including the use of an automated external defibrillator achieved
11 through instruction provided by an individual, organization, or institution of higher
12 education approved under s. 46.03 (38) to provide such instruction.

13 (c) The rules promulgated under par. (a) may not permit an auxiliary to perform
14 any of the following:

15 1. Cutting of hard or soft tissue.

16 2. Diagnosis.

17 3. Treatment planning.

18 **SECTION 4.** 447.04 (title) of the statutes is amended to read:

19 **447.04 (title) Licensure; certification.**

20 **SECTION 5.** 447.04 (3) of the statutes is created to read:

21 447.04 (3) EXPANDED FUNCTION DENTAL AUXILIARIES. The examining board shall
22 grant a certification to practice as an expanded function dental auxiliary to an
23 individual who does all of the following:

24 (a) Pays the fee specified in s. 440.05 (1).

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1 (b) Submits evidence satisfactory to the examining board that he or she has
2 completed the accredited instructional program required under s. 447.035 (3) (b) 2.

3 (c) Submits evidence satisfactory to the examining board that he or she has
4 current proficiency in cardiopulmonary resuscitation, including the use of an
5 automated external defibrillator achieved through instruction provided by an
6 individual, organization, or institution of higher education approved under s. 46.03
7 (38) to provide such instruction.

8 **SECTION 6.** 447.05 of the statutes is renumbered 447.05 (1) (a) and amended
9 to read:

10 447.05 (1) (a) ~~Renewal~~ Except as provided in par. (b), renewal applications
11 shall be submitted to the department on a form provided by the department on or
12 before the applicable renewal date specified under s. 440.08 (2) (a) and shall include
13 the applicable renewal fee determined by the department under s. 440.03 (9) (a).

14 **(2)** The examining board may not renew a license to practice dentistry unless
15 the applicant for renewal attests that he or she has complied with s. 447.056, that
16 he or she has current proficiency in cardiopulmonary resuscitation, ~~including~~ and
17 that he or she has current proficiency in the use of an automated external
18 defibrillator achieved through instruction provided by an individual, organization,
19 or institution of higher education approved under s. 46.03 (38) to provide such
20 instruction.

21 **(3)** The examining board may not renew a license to practice dental hygiene
22 unless the applicant for renewal attests that he or she has complied with s. 447.055
23 and any rules promulgated by the examining board under s. 447.055, that he or she
24 has a current certification in cardiopulmonary resuscitation, and that he or she has
25 current proficiency in the use of an automated external defibrillator achieved

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1 through instruction provided by an individual, organization, or institution of higher
2 education approved under s. 46.03 (38) to provide such instruction.

3 **SECTION 7.** 447.05 (1) (b) of the statutes is created to read:

4 447.05 (1) (b) A certification to practice as an expanded function dental
5 auxiliary granted under s. 447.04 (3) is permanent unless revoked and not subject
6 to periodic renewal.

7 **SECTION 8.** 447.07 (3) (intro.) of the statutes is amended to read:

8 447.07 (3) (intro.) Subject to the rules promulgated under s. 440.03 (1), the
9 examining board may make investigations and conduct hearings in regard to any
10 alleged action of any dentist ~~or~~, dental hygienist, or expanded function dental
11 auxiliary, of a mobile dentistry program registrant, or of any other person it has
12 reason to believe is engaged in or has engaged in the practice of dentistry or dental
13 hygiene, or the operation of a mobile dentistry program, in this state, and may, on
14 its own motion, or upon complaint in writing, reprimand any dentist ~~or~~, dental
15 hygienist, or expanded function dental auxiliary who is licensed or certified under
16 this chapter, or any mobile dentistry program registrant, or deny, limit, suspend, or
17 revoke his or her license or certificate, or the registration of the mobile dentistry
18 program registrant, if it finds that the dentist, dental hygienist, expanded function
19 dental auxiliary, or mobile dentistry program registrant has done any of the
20 following:

21 **SECTION 9.** 447.07 (3) (e) of the statutes is amended to read:

22 447.07 (3) (e) Subject to ss. 111.321, 111.322, and 111.335, been convicted of a
23 crime, the circumstances of which substantially relate to the practice of dentistry or
24 dental hygiene, the practice of an expanded function dental auxiliary, or the
25 operation of a mobile dentistry program.

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1 **SECTION 10.** 447.07 (3) (f) of the statutes is amended to read:

2 447.07 (3) (f) Violated this chapter or any federal or state statute or rule that
3 relates to the practice of dentistry or, dental hygiene, or an expanded function dental
4 auxiliary, or the operation of a mobile dentistry program.

5 **SECTION 11.** 447.07 (3) (g) of the statutes is amended to read:

6 447.07 (3) (g) Subject to ss. 111.321, 111.322 and 111.34, practiced dentistry or
7 dental hygiene or as an expanded function dental auxiliary while his or her ability
8 was impaired by alcohol or other drugs.

9 **SECTION 12.** 447.07 (3) (h) of the statutes is amended to read:

10 447.07 (3) (h) Engaged in conduct that indicates a lack of knowledge of, an
11 inability to apply or the negligent application of, principles or skills of dentistry or
12 dental hygiene or the practice of an expanded function dental auxiliary.

13 **SECTION 13.** 448.03 (2) (a) of the statutes is amended to read:

14 448.03 (2) (a) Any person lawfully practicing within the scope of a license,
15 permit, registration, certificate, or certification granted to practice midwifery under
16 subch. XIII of ch. 440, to practice professional or practical nursing or
17 nurse-midwifery under ch. 441, to practice chiropractic under ch. 446, to practice
18 dentistry or dental hygiene or as an expanded function dental auxiliary under ch.
19 447, to practice optometry under ch. 449, to practice acupuncture under ch. 451 or
20 under any other statutory provision, or as otherwise provided by statute.

21 **SECTION 14.** 448.21 (1) (a) of the statutes is amended to read:

22 448.21 (1) (a) The practice of dentistry or dental hygiene within the meaning
23 of ch. 447 or the practice of an expanded function dental auxiliary under s. 447.035.

24 **SECTION 15.** 450.03 (1) (e) of the statutes is amended to read:

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1 450.03 (1) (e) Any person lawfully practicing within the scope of a license,
2 permit, registration, certificate, or certification granted to provide home medical
3 oxygen under s. 450.076, to practice professional or practical nursing or
4 nurse-midwifery under ch. 441, to practice dentistry or dental hygiene or as an
5 expanded function dental auxiliary under ch. 447, to practice medicine and surgery
6 under ch. 448, to practice optometry under ch. 449, or to practice veterinary medicine
7 under ch. 89, or as otherwise provided by statute.

8 **SECTION 16.** 462.02 (2) (d) of the statutes is amended to read:

9 462.02 (2) (d) A dentist licensed under s. 447.04 (1), a dental hygienist licensed
10 under s. 447.04 (2), a person certified as an expanded function dental auxiliary under
11 s. 447.04 (3), or a person under the direct supervision of a dentist.

12 **SECTION 17. Nonstatutory provisions.**

13 (1) EMERGENCY RULES. Using the procedure under s. 227.24, the dentistry
14 examining board shall promulgate the rules for the certification and practice of
15 expanded function dental auxiliaries required under s. 447.035 (3).
16 Notwithstanding s. 227.24 (1) (a) and (3), the dentistry examining board is not
17 required to provide evidence that promulgating a rule under this subsection as an
18 emergency rule is necessary for the preservation of the public peace, health, safety,
19 or welfare and is not required to provide a finding of emergency for a rule
20 promulgated under this subsection. Notwithstanding s. 227.24 (1) (c) and (2), an
21 emergency rule promulgated under this subsection remains in effect for one year
22 after its promulgation, or until permanent rules take effect, whichever is sooner, and
23 the effective period may not be further extended under s. 227.24 (2).

24 (END)