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# Legislative Briefs

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## LICENSING OF MIDWIVES

2005 Wisconsin Act 292, passed by the legislature and signed by Governor Jim Doyle on April 10, 2006, regulates the practice and licensing of lay midwives in Wisconsin. Wisconsin has not regulated the activities of lay midwives since 1953. Midwives generally attend at-home births and may receive training in a variety of ways. Nurse-midwives, who have been recognized under Wisconsin law since 1980, are registered nurses and operate within the medical profession. Act 292 creates a category of “licensed midwives” that requires certified training.

### 2005 WISCONSIN ACT 292

Act 292 defines the “practice of midwifery” to mean providing maternity care during the antepartum (before childbirth), intrapartum (during labor and delivery), and postpartum (after childbirth) periods. A “licensed midwife” means a person who has been granted a license under Subchapter XI of Chapter 440, Wisconsin Statutes. Licensed midwives will be regulated by the Department of Regulation and Licensing (DRL).

The department may grant a midwife license to a person if that person submits an application on a form provided by DRL, pays the initial credential fee of \$53, and submits satisfactory evidence of holding either a valid certified professional midwife credential from the North American Registry of Midwives or a valid certified nurse-midwife credential from the American College of Nurse Midwives. The renewal date for midwife licenses is July 1 of each even-numbered year, with a \$56 credential renewal fee.

**Administrative Rules.** The Department of Regulation and Licensing is directed to adopt administrative rules for midwives consistent with the standards of the National Association of Certified Professional Midwives. These rules *shall* allow a licensed midwife to administer oxygen during his or her practice, and *may* allow a midwife to administer oxytocin (Pitocin) as an agent to treat heavy bleeding after birth, intravenous fluids, vitamin K to control blood clotting, eye prophylactics to ward off infections, and other drugs or procedures.

Act 292 provides that the administrative rules may not require a licensed midwife to have a nursing degree; require him or her to practice under the supervision of, or enter into an agreement with, another health care provider; limit the location where he or she may practice; nor permit a midwife to use forceps or vacuum extraction.

**Informed Consent.** Under Act 292, a licensed midwife is required to provide his or her client with certain information, orally and in writing, at the initial consultation. That information includes the midwife’s experience and training, whether he or she has malpractice insurance and its policy limits, a plan for medical emergencies designed specifically for the client, and any other information that DRL rules may require.

**Advisory Committee.** Act 292 also includes provisions for a committee to advise DRL on matters relating to midwife regulations. The act states that the committee must consist of two members who are licensed midwives, a licensed nurse-midwife who practices

outside of a hospital setting, a physician specializing in obstetrics and gynecology, and a public member who has received midwife care outside of a hospital setting.

**Discipline and penalties.** The Department of Regulation and Licensing may conduct investigations and invoke penalties in the case of violations. Violations of the law include: lying on an initial or renewal application for a license; practicing while impaired by alcohol or drugs; false advertising; misrepresenting oneself to a client; evidencing the inability to apply principles and skills of the practice; using fraud or deceit to obtain compensation; and allowing another person to use his or her license. The department has the power to reprimand a midwife or deny, limit, suspend, or revoke a license.

No one may use the term “licensed midwife” or represent himself or herself as such unless they are granted a license by DRL or have a nurse-midwife license. Anyone who violates this provision may be fined not more than \$250, imprisoned not more than 3 months, or both.

### **PRIOR REGULATION**

Midwifery has a long history of lay practice, and has been the subject of Wisconsin legislation since the late nineteenth century. Chapter 528, Laws of 1909, created statutes requiring midwives to register under the state board of medical examiners. Midwifery was regulated under its own chapter in the Wisconsin Statutes from 1923 until 1953, when that chapter was repealed. The repeal was due to the board of medical examiners receiving no applications for examination or registration for the designation of midwife “for many years”. Chapter 103, Laws of 1953, provided that those who had received a license before 1953 could still practice under the old laws.

An opinion was issued by the Wisconsin Attorney General in May of 1955 that the prac-

tice of midwifery amounted to practicing medicine without a license. It was noted that for prosecution of such a case to be successful, one would have to prove that the midwife was compensated for his or her services.

### **NURSE-MIDWIVES**

Nurse-midwives must be licensed registered nurses and conduct their practice in collaboration with a physician. They are regulated by the Board of Nursing under Section 441.15, Wisconsin Statutes. They are not allowed to practice outside of a health care facility and must carry malpractice insurance. Nurse-midwives are considered midlevel practitioners of medicine, a category of professionals created to improve access to health care during the decline in the number of general practitioners in the latter half of the twentieth century. Chapter 317, Laws of 1979, indicated that the legislative intent in certifying nurse-midwives was to provide cost savings to patients who chose not to use the services of physicians. Act 292 allows nurse-midwives to also become “licensed midwives” under DRL.

### **COSTS TO THE STATE**

A fiscal estimate by DRL created for Senate Bill 477, which became Act 292, noted that one-time costs to implement the new licensing program would be \$12,280, while annual costs would equal \$23,788. The estimate also assumed 50 people would seek midwife licenses, generating biennial revenues of \$2,800.

### **EFFECTIVE DATE**

2005 Wisconsin Act 292 is generally effective May 1, 2007. Sections relating to the advisory committee took effect April 21, 2006.

### **FOR FURTHER INFORMATION**

View a copy of 2005 Wisconsin Act 292 at [www.legis.state.wi.us/2005/data/acts/05Act292.pdf](http://www.legis.state.wi.us/2005/data/acts/05Act292.pdf)