

# Health Care Workers Benefit From New Wis. Licensing Rules

By **Kristen Nelson** (April 24, 2020)

Over the past several weeks, Wisconsinites have been staying home in an effort to flatten the curve. By now, we all know that the effect of flattening the curve is that our health care system will not be overwhelmed by patients infected by COVID-19. The concern is that a spike in cases will result in a shortage of hospital beds and health care providers available to treat critically ill patients.



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On March 27, Gov. Tony Evers issued Emergency Order No. 16 to increase the number of health care professionals available to treat patients. The order suspends some licensing requirements for out-of-state licensed professionals who want to work in Wisconsin. It also temporarily gives greater flexibility to physician assistants and those physicians that supervise them.

While the order is in effect, recent nursing school graduates are able to receive a temporary permit to practice and the order extends the length of the permit during the health crisis. Finally, the order allows for nurses and other health care professionals whose licenses have expired to renew their licenses while removing some of the requirements needed for the renewal process.

While the order eases licensing and credentialing requirements for health care professionals, it does not open the door to allow any and all unlicensed health care professionals to practice in Wisconsin. Rather, the order is tailored to those health care professionals that have unblemished credentials who want to help during this crisis.

Health care professionals who do not meet the criteria below should still consider either becoming licensed or renewing their licenses. Depending on the individual's background, he or she may still be able to become licensed in Wisconsin, just not with the flexibility offered under the order.

Below is a breakdown of exactly which health care professionals will benefit from the easing of some of the licensing requirements.

## Health Care Professionals With Out-of-State Licenses

Normally a health care provider licensed in another state, needs to go through the licensing process in Wisconsin. Under Evers' order, a health care provider with a valid and current license issued by another state is able to practice under that license and within the scope of that license in Wisconsin. The license holder now does not need to first obtain a temporary or permanent license from the Wisconsin Department of Safety and Professional Services prior to starting work if the following conditions are met:

1. A health care facility is able to show that the out-of-state license holder is necessary to "ensure the continued and safe delivery of health care services."
2. The out-of-state health care provider has a license that is free and clear. What this means is that the health care provider's license cannot have limitations or restrictions in their home state, nor can their license currently be under investigation.

3. The health care facility's situation prevented it from having the out-of-state license holder obtain in-state credentialing in advance of practice.

Necessity is the operative term for out-of-state licensed holders wanting to work in Wisconsin under the order. A health care facility has to show that there is a need for the out-of-state licensed holder to begin working quickly and that no in-state license holder is available to perform the same necessary duties.

We have seen this type of situation playing out in New York City, with health care professionals from other parts of the country traveling to work in hospitals there. As the amount of deaths and hospitalizations stabilize and decrease in New York, most likely we will see health care providers volunteer to work in other parts of the county. If Wisconsin should ever have the need, it is comforting to know that out-of-state license holders will be able to help here without requiring a license prior to beginning work.

This order, however, does not allow an out-of-state license holder to work in Wisconsin without any communication to the Department of Safety and Professional Services. If an out-of-state license holder is practicing under this order, he or she must apply for a temporary or permanent health care license within 10 days of their first day of work.

Furthermore, the health care facility also has a reporting obligation. The health care facility must notify the Department of Safety and Professional Services at [dsps@iwsconsin.gov](mailto:dsps@iwsconsin.gov) within five days of the out-of-state license holder's first day of work. Evers has also directed the Office of the Commissioner of Insurance to work with health care providers that are working pursuant to this order, to ensure that they have the proper liability insurance, which is a welcome relief to any health care provider worried about malpractice during this time.

### **Expanding the Role of the Physician Assistant**

The order also eases the limitations on delegating duties and supervising requirements for physician assistants. Physician assistants practice in collaboration with physicians in which both have the same area of specialty. While it may appear that physician assistants work independently, in Wisconsin, they are actually supervised by physicians.

The governing administrative laws in Wisconsin require that a physician assistant's practice cannot exceed their education, experience or training, nor can their practice exceed the scope of the supervising physician.[1] Under nonpandemic circumstances, a physician assistant cannot delegate a task assigned to them by their supervising physician.

The order temporarily modifies this rule by allowing a physician assistant to delegate a care task to another clinically trained health care provider if the physician assistant has personal knowledge, based on personal experience, that the health care provider being delegated the task, has the required experience, education, training and capabilities to complete the task. Easing this requirement expands the role of the physician assistant and allows them to assist more patients by delegating more tasks to other health care providers.

Under Wisconsin Administrative Code Section Med 8.07(1), physician assistants are required to practice under the supervision of at least one licensed physician. Physicians are normally not allowed to supervise more than four on-duty physician assistants at any time.[2] The order increases the number of on-duty physician assistants that a physician can supervise to eight, which will allow more physician assistants to be on the front lines treating patients. There is no change to the limit of physician assistants for whom a physician may provide

supervision over time.[3] Furthermore, a physician assistant may still be supervised by more than one physician at a time.

Renewal notification requirements for physician assistants are also modified by the order. A physician assistant is still required to disclose to the Medical Examining Board the name and address of their supervising physician at the time of applying for a license and during license renewal.[4]

Physician assistants also have an ongoing duty to notify the Medical Examining Board of any change of a supervising physician. The order increased the time frame from 20 days to 40 days that a physician assistant has to notify the Medical Examining Board of a change in a supervising physician. Granting a physician assistant more time to notify the Medical Examining Board of a change in supervising physician temporarily modifies a technicality in the licensing requirements without negatively affecting patient care.

### **First-Time Applicants for a License to Practice as a Nurse**

Recent nursing school graduates are also affected by this order. Under Wisconsin Administrative Code Section N. 2.31, a nurse who has graduated from a Wisconsin Board of Nursing-approved school or comparable school; or granted a certificate of completion from a board-approved school may be granted a temporary permit upon submitting a completed application.

The administrative rules require that the application has to include: (1) verification from a board-approved school that the application has graduated or received a certificate of completion; (2) a certificate of graduation or completion from a board-approved school; and (3) an official transcript of nursing education submitted by the school directly to the Department of Safety and Professional Services.

Evers' order suspends the third requirement. In other words, documentation that a nurse has completed the education requirements is sufficient. Right now the Board of Nursing is not concerned with the nitty-gritty of the course work supporting the certification or graduation.

A temporary permit to practice as a nurse under Wisconsin Administrative Code Section N 2.34 is normally only valid for a total of six months. Under the order, an issued temporary permit will remain valid until the end of the emergency or six months after availability of National Council Licensure Examination, whichever occurs last.

### **Easing the Requirements on Expired Licenses**

The administrative rules pertaining to late credential renewal of nursing license are also modified or suspended under the order. Under Wisconsin Administrative Code Section N 2.40(2), a nurse whose license has expired within the past five years is normally required to:

1. Pay a renewal fee and any applicable late fee;
2. Pay a nursing workforce survey fee; and
3. Complete the nursing workforce survey to the satisfaction of the board.

The order suspended the requirement to pay any applicable late fee, as is paying the nurse

workforce survey fee and completing the nursing workforce survey.

Nurses whose license have been expired for more than five years are normally subject to the same requirements listed above, as well as providing documentation of either employment requiring a nursing license within the last five years or completion of a board-approved nursing refresher course.[5]

The order suspends the requirement of paying a late renewal fee, paying a nursing workforce survey fee, and completing the nursing workforce survey. It also suspends the requirement of providing documentation of employment requiring a nursing license within the last five years or completing a nursing refresher court.

The renewal requirements for other recently expired credentials or licenses are modified under the order as well. Renewal requirements for physicians, radiologists, social workers, psychologists, pharmacists, chiropractors, dentists and physical therapists whose licenses have expired within the last five years have been modified under the order. These modifications include the suspension of late renewal fees and/or the suspension of continuing education requirements.

While this order is welcome news for those individuals whose licenses have expired and want to return to the workforce, it is not meant to clear the way for licensees or credential holders who have unmet disciplinary requirements or whose licenses have been surrendered or revoked. Additionally, if a license holder allowed their license to expire rather than address allegations of professional wrongdoing, this order will not allow these individuals to avoid the consequences while renewing their licenses.

### **The Rules of Professional Conduct Still Apply**

Clearly, this is an all-hands-on-deck situation. However, this order does not circumvent the Department of Safety and Professional Services' authority nor does it allow for health care professionals to take advantage of the current crisis. If the Department of Safety and Professional Services has good cause, it will have the authority to withdraw an individual's authority to practice pursuant to this order.

More importantly, if an individual or an entity falsely reports the required information to the Department of Safety and Professional Services, or practices without following the requirements of this order, they may be subject to civil or criminal action.

It is important to note that the administrative rules governing professional conduct in each profession are still in effect. How each professional board will respond to violations of professional conduct during this time is unknown. While physical safety of all health care workers is a top concern, the long-term professional safety is also important. Stay safe and follow the rules.

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[1] Wis. Admin. Code §MED 8.07(2).

[2] Wis. Admin Code §MED8.10(1).

[3] Wis. Admin Code §MED 8.10(1).

[4] Wis. Admin. Code §8.05(4).

[5] Wis. Admin Code. §N. 2.40(3)(a) through (d).