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September 10, 2026

Ms. Jennifer L. Malak
Chair, Wisconsin Board of Nursing
Dept of Safety and Professional Services
Madison, Wisconsin

DELIVERED ELECTRONICALLY

Dear Chair Malak and Board of Nursing,

WHA appreciates the work of the Board of Nursing and the Department of Safety and Professional Services to implement Act 17. That work has been more challenging and nuanced than many APRNs expected, and we appreciate the ongoing efforts of the Board of Nursing and the Department of Safety and Professional Services to communicate these challenges and address in rule, to the extent possible, areas of ongoing misunderstandings and confusion.

For purposes of the emergency rule hearing, WHA offers the following recommendations:

- Defining collaboration. Explicitly align collaboration requirements in N8.10 with Act 17, so that existing APNPs seeking to continue collaborative practice do not need to change their collaboration arrangements or scope of practice.
- Professional standards applicable to all APRNs. Move professional applicable professional standards in existing N8 to a new section that applies to all APRNs, whether independent or practicing collaboration.
- Address independent practice criteria confusion. For independent practice qualification requirements, address disconnects between Act 17 and the emergency rule and application forms regarding hours practicing in collaboration as had been required by N8 versus hours practicing in a direct supervision relationship.
- Address confusion regarding licensure requirements for medical malpractice coverage. Although Act 17 codified the same medical malpractice requirements specified for APNPs in N8 as a condition of licensure, there has been some misunderstanding that those requirements have changed for purposes of a licensure requirement. To help ensure APNPs are not purchasing additional coverage not required for licensure as an APRN, the same medical malpractice coverage licensure requirements and language that were required for APNPs in N8.08 should be retained in N8 for all APRNs.
- Update delegation standards. To align with delegation standards for physicians and physician assistants, update the Board of Nursing's delegation rules to utilize the same delegation language and standard specified in Act 17.
- Establishing professional standards for birth plans for out of hospital births. Amend N8.047 to align with the birth plan requirements specified in s.441.09(6)(a)6., including approval by the Board, and to establish in rule the Board's minimum professional standards for ensuring appropriate care and care transitions regarding home births.

Consistent with the above summary, WHA offers the following more detailed discussion and recommendations for the Board of Nursing's consideration.

1) Collaboration Recommendation: Do not add new complexity to collaboration in N8.10. Instead, for non-independent practice APRNs:

- **Adopt in new N8.10 the collaboration standard in Act 17 verbatim (s.441.09(3m)(bm)) that itself intentionally adopted the collaboration standard in current N8.10(7).**
- **Delete the definition of "collaboration" in new N8.02 (5).**
- **Move from new N8.10 provisions that are professional conduct standards that should apply to all APRNs, whether in independent practice or in a collaborative relationship practice.**

Since 1999, the Board of Nursing through N8.10(7) has maintained a collaboration standard that has allowed advanced practice nurse prescribers (APNPs) to use their clinical judgement to order treatment, therapeutics, and testing, if the APNP works in a documented collaborative relationship with a physician or dentist.

That standard established by the Board of Nursing in N8.10(7) reads:

> "N8.10(7). Advanced practice nurse prescribers shall work in a collaborative relationship with a physician or dentist. The collaborative relationship is a process in which an advanced practice nurse prescriber is working with a physician or dentist, in each other's presence when necessary, to deliver health care services within the scope of the practitioner's training, education, and experience. The advanced practice nurse prescriber shall document this relationship."

That standard in effect for over 25 years has allowed for APNPs to utilize their clinical judgment with minimal proscription regarding the details of the APNP's collaborative relationship with a physician or the documentation of that collaborative relationship. For many APNPs, the collaboration standard in N8.10(7) has enabled flexibility and minimal documentation.

Knowing that not all APRNs will seek the independent practice designation under Act 17, the statutory language in Act 17 at s.441.09(3m)(bm) regarding collaboration was intentionally written to mirror the existing N8.10(7) collaboration standard so as not to create new changes – intentionally or unintentionally – for APNPs that continue to practice in a documented collaborative relationship Act 17 took effect after September 1, 2026. The language in s.441.09(3m)(bm) reads:

> "441.09(3m)(bm). For purposes of pars. (a) 1. and (bg) 1., a collaborative relationship is a process in which an advanced practice registered nurse is working with a physician or dentist, in each other's presence when necessary, to deliver health care services within the scope of the advanced practice registered nurse's training, education, and experience. The advanced practice registered nurse shall document such a collaborative relationship."

While likely not intended to change the collaboration standard, the draft proposed changes to N8.10 in the proposed rule deviate from the language in both Act 17 and existing N8.10.

For example, the draft proposed N8.10(7) changes from "*deliver health care services" to "order treatment, therapeutics, testing, and other relevant health care services."* As another example, the draft proposed N8.10(1) adds language regarding a "written collaborative agreement," for collaborative practice APRNs. While certified nurse midwives under pre-Act 17 s. 441.15(2)(b) explicitly required a collaborative "agreement", neither current N8.10 nor Act 17 required an

"agreement." These changes could be interpreted to change the meaning of N8.10(7), unnecessarily creating confusion for existing APNPs that continue to practice under the existing documented collaborative relationship standard.

Thus, consistent with the statutory direction in Act 17 at s.441.09(3m)(bm), we recommend that the Board of Nursing simply revise N8.10(6) and (7) to verbatim repeat the collaboration standard in s. 441.09(3m)(bm).

In addition, N8.10 (1) – (5) should either be deleted in their entirety or moved to a separate section defining professional practice standards for all APRNs, whether in independent practice or in a collaborative relationship practice.

If the Board of Nursing believes that an APRN should be required to "communicate through the use of any clinical service modality that is consistent with the advanced practice registered nurse training, certification…and applicable laws and regulations," as it proposes to amend N8.10(1), that should apply to all APRNs, whether practicing independently or in collaboration. However, the standard that would be created in new N8.10(1) is somewhat confusing and has an unclear policy purpose. We would recommend deleting N8.10(1) in its entirety and instead relying on the collaboration standard in s. 441.09(3m)(bm) and N8.10(7) as suggested above.

Similarly, if the Board of Nursing believes that an APRN should meet the referral standards and patient care records summaries in revised N8.10(3) and (4), those standards should be included elsewhere in the rule and apply to all APRNs, whether practicing under the collaboration standard or the independent practice standard.

Thus, consistent with Act 17 which creates both an independent practice standard and a collaborative practice standard, we recommend that new N8.10(1) be deleted and new N8.10(3) and (4) either be deleted or moved to a new professional conduct section appliable to all APRNs.-

Immediately below is draft rule language to effectuate the above recommendations:

> **Collaboration-related recommended rule language:**
>
> *Repeal N8.10(1)-(7) and recreate as N 8.10 and N 8.11 as follows:*
>
> **N 8.10** COLLABORATION WITH OTHER HEALTH CARE PROFESSIONALS. If required to practice in collaboration under s. 441.09 (3m), Stats., an advanced practice registered nurse shall maintain a collaborative relationship with a physician or dentist. A collaborative relationship is a process in which an advanced practice registered nurse is working with a physician or dentist, in each other's presence when necessary, to deliver health care services within the scope of the advanced practice registered nurse's training, education, and experience. The advanced practice registered nurse shall document such a collaborative relationship.
>
> **N 8.11** PROFESSIONAL CONDUCT. As provided by s. 441.09(3m)(d), an advanced practice registered nurse shall adhere to professional standards when managing situations that are beyond the advanced practice registered nurse's expertise. If a particular patient's needs are beyond the advanced practice registered nurse's expertise, the advanced practice registered nurse shall, as warranted by the patient's needs, consult or collaborate with or refer the patient to at least one of the following:
>
> (1) A physician licensed under ch. 448.
>
> (2) Another health care provider for whom the advanced practice registered nurse has reasonable evidence of having a scope of practice that includes the authorization to address the patient's needs.

2) Independent Practice Verification Process. Many APRNs are surprised that Act 17 created a pathway for independent practice that requires direct supervision-like practice hours rather than hours that met the N8

collaboration standard set by the Board of Nursing. To minimize additional confusion among APRNs and employers, we encourage the Board of Nursing to:

- **Remove attestation requirements in N8.046(3) that specify "verifiers" of hours that are different from the physicians/dentists specified in Act 17's s. 441.09(3m)(b)3.**
- **Amend its verification forms to explicitly mirror the hours requirements specified in N8.046(2) and Act 17's 441.09(3m)(b)3. and explicitly note that hours working in collaboration under N8.10 do not necessarily meet that requirement.**

As discussed earlier, the Board of Nursing through N8 for the past 25 years has allowed APNPs to exercise clinical judgement, including prescriptive authority, under a collaboration standard. That collaboration standard has NOT required a physician to be "immediately available for consultation" or "accept responsibility for the actions of the [APNP]."

In contrast, under s. 441.09(3m)(b)3. of Act 17, the Board of Nursing may only grant licensed independent practice authority if the Board verifies that the applying APRN "has completed 3,840 clinical hours of advanced practice registered nursing practice in that recognized role while working with a physician or dentist who is *immediately available for consultation* and *accepted responsibility for the actions of the advanced practiced registered nurse* during those 3,840 hours of practice." (emphasis added)

Although the emergency rule correctly states in new N8.046(2) (intro) the standard in s.441.09(3m)(b)3., many existing APNPs have not understood the significant difference between the existing N8.10 collaboration standard and the direct-supervision like standard in s.441.09(3m)(b)3. As a result, many existing APNPs have been asking their employers to attest to the Board of Nursing in the APNP's independent practice application the number of the APNP's hours worked as an APNP at the employer, incorrectly assuming that working under the N8 collaboration standard would satisfy the hours requirement in s. 441.09(3m)(b)3.

Adding to confusion is that the current Form 2158 APRN Independent Practice Requirements Verification form simply asks for "Reported Hours" but does not specify on the fillable form or the "Attestation of the Applicant" that the "Reported Hours" refers to the clinical hours under the direct-supervision like s. 441.09(3m)(b)3. standard and not clinical hours under the N8.10 collaboration standard that the APNP had been practicing under pursuant to the Board of Nursing's N8 rule. As a result, it is not clear to the applying APRN or the "verifier" in the form that the clinical hours they are attesting to are NOT collaboration hours but instead are direct supervision like hours. To help provide additional clarity, the Board of Nursing could amend the hours field in Form 2158 to:

- Include the language from s. 441.09(3m)(b)3. of Act 17 and/or N8.046(2).
- Include a note that such hours do not necessarily include hours working under an N8 collaborative relationship.

Further, both the emergency rule at N8.046(3) and the APRN Independent Practice Requirements Verification Form specify that the "verifier" must be one of three individuals, none of which include the actual physician who "accepted responsibility for the actions of the APRN" under s. 441.09(3m)(b)3. Thus the "verifier" is being asked to verify and attest to the Board of Nursing that a person other than the verifier – the physician or dentist – accepted responsibility for the APRN's clinical actions. Attesting to such responsibility – particularly when such responsibility did not exist - creates liability risks for both the verifier and the physician/dentist.

As a result of the disconnect between the Board of Nursing's long-time APNP collaboration standard in N8 that did not require a physician to be immediately availability for consultation for the physician to accept responsibility for the APNP's actions and Act 17's new pathway to licensed independent practice that does require those elements, as well as the disconnect between the verification process in the emergency rule's N8.046(3), the Form 2158 verification form, and s.

441.09(3m)(b)3., there is significant confusion and frustration among many APNPs and their employers. While the Board of Nursing cannot change the independent practice requirements in s. 441.09(3m)(b)3., it can ensure that both the emergency rule and the independent practice application forms explicitly refer to and use the exact same language in s. 441.09(3m)(b)3. Doing so should minimize confusion and variation among APRNs and their employers regarding the independent practice criteria set in Act 17 at s.441.09(3m)(b)3.

Immediately below is draft rule language to effectuate the above recommendations (this does not include the suggested clarifying changes to the Form 2158 APRN Independent Practice Requirements Verification):

Recommended Independent Practice Verification Process rule language:

Amend N8.046(3) as follows:

(3) The applicant shall submit evidence of satisfying the requirements under subs. (1) and (2) on a form provided by the board. ~~The form shall be completed and signed by a medical director in charge of the applicant's employment, the dean in charge of clinical hours at a qualifying school of nursing, or an authorized individual in charge of the clinical setting who can verify the applicant's clinical hours.~~

3) Medical Malpractice Coverage Recommendation: As a condition of APRN licensure, maintain the same medical malpractice coverage requirements that were required for APNPs in N8.08.

As specified in N8.08, all APNPs have been required by the Board of Nursing as a condition of certification to have medical liability coverage of $1m/$3m. That coverage did not have to be a personal policy but could be coverage provided by an employer's group policy that provided $1m/$3m coverage for the APNP's negligent acts.

Act 17 codified N8.08 for all APRNs, making such coverage a condition of licensure as an APRN. However, with the enactment of Act 17, some have advised that collaborative practice APNPs (now collaborative practice APRNs) must purchase additional coverage at additional cost to the APRN or employer, despite no substantive change to the requirement in N8.08.

To help highlight to insurers, APRNs, and employers that no new coverages are necessary under Act 17's licensure requirement in s.441.09 (5) compared to N8.08, we would encourage the Board of Nursing to not delete N8.08, but to retain it and update it with the new APRN appropriate language.

Recommended Medical Malpractice Coverage Requirement rule language:

Retain existing N8.08 and amend that section as follows:

N 8.08 Malpractice insurance coverage.

(1) Advanced practice registered nurses ~~nurse prescribers who prescribe independently~~ shall maintain in effect malpractice insurance evidenced by one of the following:

(a) Personal liability coverage in the amounts specified in s. 655.23 (4), Stats.

(b) Coverage under a group liability policy providing individual coverage for the nurse in the amounts set forth in s. 655.23 (4), Stats. An advanced practice registered nurse ~~prescriber~~ covered under one or more such group policies shall certify on forms provided by the board that the nurse will practice ~~independently prescribe~~ only within the limits of the policy's coverage, or shall obtain personal liability coverage for ~~independent prescribing~~ practice outside the scope of the group liability policy or policies.

(2) Notwithstanding sub. (1), an advanced practice registered nurse ~~prescriber~~ who practices as an employee of this state or a governmental subdivision, as defined under s. 180.0103, Stats., is not required to maintain in effect malpractice insurance coverage, but the nurse shall certify on forms provided by the board that the nurse will ~~prescribe~~ practice within employment policies.

~~(3) An advanced practice registered nurse prescriber who prescribes under the supervision and delegation of a physician or CRNA shall certify on forms provided by the board that the nurse complies with s. N 6.03 (2) and (3), regarding delegated acts.~~

(4) An advanced practice registered nurse ~~prescriber~~ who ~~prescribes~~ practices in more than one setting or capacity shall comply with the provisions of subs. (1)~~,~~and (2) ~~and (3)~~ applicable to each setting or capacity. An advanced practice registered nurse ~~prescriber~~ who is not an employee of this state or a governmental subdivision, and who ~~prescribes~~ practices as an APRN ~~independently~~ in some situations and ~~prescribes~~ practices as an RN under the supervision and delegation of a physician or CRNA in other situations, shall meet the requirements of sub. (1) with respect to APRN practice ~~independent prescribing and the requirements of sub. (3) with respect to delegated prescribing~~.

(5) Every advanced practice registered nurse ~~who is certified to issue prescription orders~~ shall annually submit to the board satisfactory evidence that he or she has in effect malpractice insurance required by sub. (1).

4) Delegation Recommendation: To align with physicians and physician assistants, update the Board of Nursing's delegation rules to utilize the same delegation language and standard specified in Act 17.

The ability for an APNP to delegate tasks or orders to other clinicians under N6.03 (3) and N7.03(7) has been read by some clinicians to be more narrow compared to physicians and physician assistants. To bring the ability for APRNs to delegate tasks or orders into alignment with physicians and physician assistants, Act 17 created s. 441.09(3m)(e) which reads:

> "441.09(3m)(e). An advanced practice registered nurse licensed under this section may delegate a task or order to another clinically trained health care worker if the task or order is within the scope of the advanced practice registered nurse's practice, the advanced practice registered nurse is competent to perform the task or issue the order, and the advanced practice registered nurse has reasonable evidence that the health care worker is minimally competent to perform the task or issue the order under the circumstances."

By enacting s. 441.09(3m)(e), APRNs, physician assistants, and physicians now all have the same standards and language regarding authority to delegate. However, the emergency rule currently does not modify N6.03 (3) and N7.03(7) to bring them in alignment with s. 441.09(3m)(e) for APRNs. To remove administrative complexity and variation in interpretations of the rule and statute, we recommend amending those sections incorporate the explicit delegation language in s. 441.09(3m)(e).

Additionally, we recommend that the Board of Nursing as part of its comprehensive revision of its nursing rules overall, apply the same language created in s. 441.09(3m)(e) to all registered nurses. This would remove administrative complexity and simplify processes for all providers by having RNs, APRNs, physician assistants, and physicians all utilizing the same standard for delegation.

Recommended Delegation rule language:

Repeal N6.03(3) and recreate N6.03(3) as follows:

N6.03(3) DELEGATION. A registered nurse may delegate a task or order to another clinically trained health care worker if the task or order is within the scope of the registered nurse's practice, the registered nurse is competent to perform the task or issue the order, and the registered nurse has reasonable evidence that the health care worker is minimally competent to perform the task or issue the order under the circumstances.

Amend N7.03(7) as follows:

N7.03(7) Improper supervision or allowing unlicensed practice, including any of the following:
(a) Delegating a task or order inconsistent with N6.03(3)~~nursing function or a prescribed health function when the delegation could reasonably be expected to result in unsafe or ineffective patient care~~.
(b) Knowingly aiding, assisting, advising, or allowing a person to engage in the unlawful practice of nursing.
(c) Inappropriate or inadequate supervision ~~or delegation~~.
(d) Failing to supervise assigned student experiences

5) Home Birth Plan Recommendation: Amend N8.047 to align with the birth plan requirements specified in s.441.09(6)(a)6., including approval by the Board, and to establish in rule the Board's minimum professional standards for ensuring appropriate care and care transitions regarding home births.

Act 17 gave all licensed certified nurse midwives independent practice authority without any collaboration with a physician that can perform birthing services outside of the scope of practice of a certified nurse midwife. However, Act 17 also created enhanced professional conduct standards to be established and enforced by the Board of Nursing regarding the provision of home births. In particular, if a certified nurse midwife chooses to perform births outside of a hospital setting, Act 17 charged the Board of Nursing with the responsibility for ensuring each certified nurse midwife provides appropriate care and care transitions.

In addition to the responsibility placed on the Board of Nursing in 441.09(6)(a)6. to promulgate rules "establishing standards of professional conduct for advanced practice registered nurses generally and for practicing in each recognized role, s.441.09(3m)(f) additionally directs:

> "441.09(3m)(f). An advanced practice registered nurse with a certified nurse-midwife specialty designation may not offer to deliver babies outside of a hospital setting unless the advanced practice registered nurse files with the board, **and the board approves**, a proactive plan for ensuring appropriate care or care transitions **conforming with professional standards** for patients with higher acuity or emergency care needs that exceed the advanced practice registered nurse's scope of practice. An advanced practice registered nurse who offers to deliver babies outside of a hospital setting shall file a plan under this paragraph when applying for an initial license under this section or a renewal of a license under this section, **shall keep the plan current with the board**, and shall follow the plan." (emphasis added)

The initial standards established in the emergency rule in N8.047 regarding the above referenced plan for deliveries outside of a hospital setting need additional detail and specifically need to explicitly address the process for the board approving a certified nurse midwife's plan as required by s.441.09(3m)(f). The current emergency rule lacks:

- A requirement that the Board of Nursing approve the plan, as is required by s. 441.09(3m)(f).
- A requirement that the certified nurse midwife keep the plan current with the board and follow the plan as is required by s.441.09(3m)(f).

- Standards for ensuring appropriate care and care transitions that conform with certified nurse midwife professional standards. For example, simply calling 911 in an emergency or simply directing a patient to go to an emergency department that the certified nurse midwife has no transfer arrangement does not ensure appropriate care and care transitions and should not be conduct permitted by the Board of Nursing.

At this time, we do not have a specific recommendation for how the Board of Nursing should amend N8.047 in the permanent rulemaking to address the absence of the above core requirements and roles of the Board of Nursing to ensure appropriate care that are specified in Act 17. However, we encourage the Board of Nursing to have further discussion and make changes to N8.047 to further specify the Board of Nursing 's standards for ensuring appropriate care and care transitions in the plan required by s. 441.09(3m)(f).

Closing

WHA appreciates the work of the Board of Nursing and the Department of Safety and Professional Services to implement of Act 17. That work has been more challenging and nuanced than many APRNs expected, and we appreciate the ongoing efforts of the Board of Nursing and the Department of Safety and Professional Services to communicate these challenges and address in rule, to the extent possible, areas of ongoing misunderstandings and confusion.

As the permanent rule development process continues, WHA will continue to engage with the Board of Nursing and address other issues that may emerge in the permanent rule development process.

Sincerely,

/s/

Ann Zenk, RN BSN MHA
Senior Vice President Workforce and Clinical Practice
Wisconsin Hospital Association

/s/

Matthew Stanford
General Counsel
Wisconsin Hospital Association

cc: DSPS Secretary Dan Hereth