

Regular Session, 2012

HOUSE BILL NO. 947

BY REPRESENTATIVE NANCY LANDRY

HEALTH/MIDWIVES: Amends provisions relative midwifery licensing

1 AN ACT

2 To amend and reenact R.S. 37:3241(8) and (12), 3244(B) and (C), 3245(D)(1), and 3248 and
3 to enact R.S. 37:3241(15) and (16), 3244(D), (E), (F), and (G), 3255(D), 3258, and
4 3259, relative to the Midwife Practitioners Act; to provide for definitions; to further
5 define the scope of practice as it relates to requirements for physician evaluations
6 and examinations and risk management physician referrals; to provide authority for
7 the issuance of a midwifery license to applicants who are members of certain
8 midwifery certifying organizations; to exempt certain students participating in a
9 board approved, accredited midwifery education program from the rules governing
10 midwives; to provide authority for the board to accept an examination administered
11 by the North American Registry of Midwives or other approved certifying
12 examination; to establish professional liability and immunity for physicians
13 performing risk assessments in certain settings; to provide for limitations on the
14 Louisiana State Board of Nursing; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 37:3241(8) and (12), 3244(B) and (C), 3245(D)(1), and 3248 are
17 hereby amended and reenacted and 37:3241(15) and (16), 3244(D), (E), (F), and (G),
18 3255(D), 3258, and 3259 are hereby enacted to read as follows:

19 §3241. Definitions

20 As used in this Chapter, the following terms shall apply unless the context
21 clearly states otherwise:

22 * * *

1 (8) "Licensed midwife" means a person who has completed all requirements
2 of R.S. 37:3247, 3253, and 3255, has successfully completed the examination
3 process, and is certified as a midwife by the North American Registry of Midwives
4 along with being in good standing on the registry of licensed midwives maintained
5 by the board.

6 * * *

7 (12) "Physician", except as provided in R.S. 37:3244(G
8) means a person who is currently practicing obstetrics and is licensed to practice medicine
9 or osteopathy in Louisiana.

10 * * *

11 (15) "Certified professional midwife" means a person certified by the North
12 American Registry of Midwives.

13 (16) "Low risk patient" means an individual who is at low or normal risk of
14 developing complications during pregnancy and childbirth as evidenced by the
15 absence of any preexisting maternal disease or disease arising during pregnancy or
16 such other conditions as the board may identify in rules.

17 * * *

18 §3244. Scope of practice

19 * * *

20 B. The licensed midwife may provide care to low risk patients as defined by
21 the board and as determined by physician evaluation and examination to be
22 essentially normal for pregnancy and childbirth. Such care includes prenatal
23 supervision and counseling; preparation for childbirth; and supervision and care
24 during labor and delivery and care of the mother and the newborn in the immediate
25 postpartum period if progress meets criteria generally accepted as normal as defined
26 by the board.

27 C. The physician who performs the evaluation and examination required by
28 this Section shall disclose the reason and effect of the evaluation and examination
29 to the patient and midwife using a form developed by the board for this purpose.

1 D. A licensed midwife shall refer a patient to a physician for risk assessment
2 whose progress at any time during pregnancy or the postpartum period deviates from
3 criteria generally accepted as normal as defined by the board, including but not limited to
4 diseases such as gestational diabetes, and preeclampsia or conditions such as post term
5 pregnancy, forty-two weeks of completed pregnancy, multiple births, or breech presentation.

6 E. If a midwife has referred a patient for a risk assessment to two
7 independent physicians and has documented the referrals in the patient's chart, then
8 that midwife can seek the risk assessment from an obstetrician/gynecologist who
9 does not practice obstetrics or a physician who practices family medicine.

10 F. A patient has the right to refuse a licensed midwife's referral to any
11 physician; provided, however, that a licensed midwife shall not knowingly accept or
12 thereafter maintain responsibility for the care of a woman who does not obtain
13 physician referral or when the results of the referral indicate that she no longer
14 qualifies as a low risk patient.

15 ~~E. G.~~ A person may be issued a license as a licensed midwife, or permit as
16 an apprentice midwife, or a senior apprentice midwife~~;~~, such that:

17 (1) A licensed midwife may provide any care or services provided for in R.S.
18 37:3244(B).

19 (2) A senior apprentice midwife may only provide care or services under the
20 supervision of a licensed physician, certified nurse midwife, or licensed midwife.

21 (3) An apprentice midwife may provide care or services only under the
22 supervision of a licensed physician, certified nurse midwife, or licensed midwife.

23 * * *

24 §3245. Permits and licenses

25 * * *

26 D. Upon meeting the educational and clinical experience requirements
27 provided by the board, a person may apply for a midwifery license.

28 (1) An application for the license and to take the next qualifying
29 examination; provided, however, the board may issue a midwifery license to an

applicant who holds current certification by the North American Registry of Midwives or such other certifying organization as the board may subsequently approve.

* * *

§3248. Persons not affected

A. Any person authorized by the Louisiana State Board of Nursing to practice as a certified nurse midwife in the state shall not be affected by the provisions of this Chapter.

B. Any student pursuing a course of study in an accredited midwifery education program that is approved by the board who provides midwifery services, provided that such services are an integral part of the student's course of study, that are performed under the direct supervision of physician or a licensed midwife, and the student is designated by a title which clearly indicates his status as a student or trainee.

* * *

§3255. Examination

* * *

D. The examination administered by the North American Registry of Midwives, or such other certifying examination as the board may subsequently approve, shall be accepted by the board as a qualifying examination for purposes of midwifery licensure.

* * *

§3258. Professional liability

A. Physician evaluation and examination as provided in R.S. 37:3244 shall be deemed to constitute a risk assessment. A physician performing a risk assessment is responsible only for determining that at the time of the risk assessment the individual is at low or normal risk of developing complications during pregnancy and childbirth.

1 B. Physician risk assessment as defined in this Section shall not create either
2 of the following:

3 (1) A physician-patient relationship or any legal duty, responsibility, or
4 obligation by the physician to provide continuing care.

5 (2) A legal relationship between the physician and the licensed midwife or
6 any duty, responsibility or obligation by the physician to supervise, collaborate,
7 back-up, or oversee the licensed midwife's care of the patient.

8 C. No physician or other health care provider as defined in R.S. 40:1299.41,
9 no hospital as defined in R.S. 40:2102, or no institution, facility, or clinic licensed
10 by the department shall be:

11 (1) Deemed to have established a legal relationship with a licensed midwife
12 solely by providing a risk assessment as defined in this Section or accepting a
13 transfer of a patient from a licensed midwife.

14 (2) Liable for civil damages arising out of the negligent, grossly negligent,
15 or wanton or willful acts or omissions of the licensed midwife solely for providing
16 a risk assessment as defined in this Section or accepting a transfer of a patient from
17 a licensed midwife.

18 §3259. Limitations on the Louisiana State Board of Nursing

19 The Louisiana State Board of Nursing shall not impede the right of any
20 person to legally pursue a midwife license under this Part. Neither shall the
21 Louisiana State Board of Nursing use the legal practice of midwifery under this Part
22 as the basis for any action against any person licensed by the Louisiana State Board
23 of Nursing such as denial of license or disciplinary proceedings.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Nancy Landry

HB No. 947

Abstract: Revises statutory provisions relative to the Midwife Practitioners Act.

Present law (R.S. 37:3241(8)) defines "licensed midwife" as meaning a person who has completed all requirements of present law, has successfully completed the examination

process, and is in good standing on the registry of licensed midwives maintained by the board.

Proposed law retains present law and adds a requirement that the a licensed midwife be certified as midwife by the North American Registry of Midwives in addition to being in good standing on the registry of licensed midwives maintained by the board.

Present law (R.S. 37:3241(12)) defines "physician" as meaning a person who is currently practicing obstetrics and is licensed to practice medicine or osteopathy in Louisiana.

Proposed law excludes licensed midwives, apprentice midwives, and senior apprentice midwives from the definition of "physician."

Proposed law (R.S. 37:3241(15)) defines "certified professional midwife" as meaning a person certified by the North American Registry of Midwives.

Proposed law (R.S. 37:3241(16)) defines "low risk patient" as meaning an individual who is at low or normal risk of developing complications during pregnancy and childbirth as evidenced by the absence of any preexisting maternal disease or disease arising during pregnancy or such other conditions as the board may identify in rules.

Present law (R.S. 37:3244(B)) authorizes a licensed midwife to care for low risk patients as determined by physician evaluation and examination to be essentially normal for pregnancy and childbirth.

Proposed law specifies that the care provided to low risk patients, who are declared to be essentially normal for pregnancy and childbirth, will be determined by the board.

Proposed law (R.S. 37:3244(C)) requires the physician who performs the evaluation and examination required by proposed law to disclose the reason and effect of the evaluation and examination to the patient and midwife using a form developed by the board for this purpose.

Proposed law (R.S. 37:3244(D)) requires a licensed midwife to refer a patient to a physician for risk assessment when the patient's progress at any time during pregnancy or the postpartum period deviates from criteria generally accepted as normal as defined by the board, including but not limited to diseases such as gestational diabetes, and preeclampsia or conditions such as post term pregnancy, 42 weeks of completed pregnancy, multiple births, or breech presentation.

Proposed law (R.S. 37:3244(E)) specifies that if a midwife has referred a patient for a risk assessment to two independent physicians and has documented the referrals in the patient's chart then that midwife can seek the risk assessment from an obstetrician/gynecologist who does not practice obstetrics or a physician who practices family medicine.

Proposed law (R.S. 37:3244(F)) allows a patient to refuse a licensed midwife's referral to any physician. However, provides that a licensed midwife must not knowingly accept or maintain responsibility for the care of a woman who does not obtain physician referral or when the results of the referral indicate that she no longer qualifies as a low risk patient.

Present law (R.S. 37:3245(D)(1)) in pertinent part, specifies that upon meeting the educational and clinical experience requirements, which include an application for the license and taking the next qualifying examination, provided by the board, a person may apply for a midwifery license.

Proposed law allows the board to issue a midwifery license to an applicant who holds current certification by the North American Registry of Midwives or such other certifying organization as the board subsequently approves.

Proposed law (R.S. 37:3248(B)) excludes from the application of midwifery laws any student pursuing a course of study in an accredited and board approved midwifery education program who provides midwifery services, provided that such services are an integral part of the student's course of study, that are performed under the direct supervision of physician or a licensed midwife, and the student is designated by a title which clearly indicates his status as a student or trainee.

Proposed law (R.S. 37:3255(D)) authorizes the board to accept as a qualifying examination for purposes of midwifery licensure an examination administered by the North American Registry of Midwives, or such other certifying examination as the board subsequently approves.

Proposed law (R.S. 37:3258(A)) specifies that a risk assessment is any physician evaluation and examination conducted in accordance with the law governing the scope of practice. Further provides that the physician performing a risk assessment is only responsible for determining that at the time of such assessment the individual is at low or normal risk of developing complications during pregnancy and childbirth.

Proposed law (R.S. 37:3258(B)) provides that a physician risk assessment, as defined by proposed law, does not create either of the following:

- (1) A physician-patient relationship or any legal duty, responsibility, or obligation by the physician to provide continuing care.
- (2) A legal relationship between the physician and the licensed midwife or any duty, responsibility or obligation by the physician to supervise, collaborate, back-up, or oversee the licensed midwife's care of the patient.

Proposed law (R.S. 37:3258(C)) specifies that no physician or health care provider as defined by statute, no hospital as defined by statute, or no institution, facility, or clinic licensed by the department can be:

- (1) Deemed to have established a legal relationship with a licensed midwife solely by providing a risk assessment as defined in proposed law or accepting a transfer of a patient from a licensed midwife.
- (2) Liable for civil damages arising out of the negligent, grossly negligent, or wanton or willful acts or omissions of the licensed midwife solely for providing a risk assessment as defined in proposed law or accepting a transfer of a patient from a licensed midwife.

Proposed law (R.S. 37:3259) prohibits the Louisiana State Board of Nursing from impeding the right of any person to legally pursue a midwife license under state law. Further, prohibits the Louisiana State Board of Nursing from using the legal practice of midwifery under the law as the basis for any action against any person licensed by the Louisiana State Board of Nursing such as denial of license or disciplinary proceedings.

(Amends R.S. 37:3241(8) and (12), 3244(B) and (C), 3245(D)(1) and 3248; Adds 37:3241(15) and (16), 3244(D), (E), (F), and (G), 3255(D), 3258, and 3259)