

Regular Session, 2012

HOUSE BILL NO. 947

BY REPRESENTATIVES NANCY LANDRY, ADAMS, ARMES, BARROW, WESLEY BISHOP, BROADWATER, BROSSETT, BROWN, BURFORD, CARMODY, CHANEY, CONNICK, COX, HODGES, HUNTER, GIROD JACKSON, KATRINA JACKSON, JEFFERSON, TERRY LANDRY, LEBAS, MORENO, PIERRE, PRICE, PYLANT, REYNOLDS, SEABAUGH, SMITH, ST. GERMAIN, THIBAUT, THIERRY, PATRICK WILLIAMS, AND WILLMOTT

HEALTH/MIDWIVES: Amends provisions relative to 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 R.S. 37:3241(15) and (16), 3244(D), (E), (F), and (G),
18 3255(D), 3258, and 3259 are hereby enacted to read as follows:

§3241. Definitions

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

* * *

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

* * *

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

* * *

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

(16) "Low risk patient" means 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.

* * *

§3244. Scope of practice

* * *

B. The licensed midwife may provide care to low risk patients as defined by the board and as determined by physician evaluation and examination to be essentially normal for pregnancy and childbirth. Such care includes prenatal supervision and counseling; preparation for childbirth; and supervision and care during labor and delivery and care of the mother and the newborn in the immediate

1 postpartum period if progress meets criteria generally accepted as normal as defined
2 by the board.

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

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

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

17 F. Prior to providing any services, a licensed midwife shall obtain informed
18 consent, in writing, of the patient in a manner and form prescribed by the board
19 which shall include but not be limited to the following:

20 (1) The name and license number of the licensed midwife.

21 (2) The patient's name, address, telephone number, and the name of the
22 patient's primary care provider if the patient has one.

23 (3) A statement that the licensed midwife is not an advanced practice
24 registered nurse midwife or physician.

25 (4) A description of the education, training, continuing education, and
26 experience of the licensed midwife.

27 (5) A description of the licensed midwife's philosophy of practice.

28 (6) A statement recognizing the obligation of the licensed midwife to provide
29 the client, upon request, separate documents describing the law and regulations

1 governing the practice of midwifery, including the requirement for an evaluation and
2 examination by a physician, the protocol for transfer or mandatory transfer, and the
3 licensed midwife's personal written practice guidelines.

4 (7) A description of the protocol for transfer to a hospital and disclosure of
5 the hospital with which the licensed midwife has a current transfer agreement.

6 (8) A complete and accurate description of the services to be provided to the
7 patient.

8 (9) Whether the licensed midwife maintains a professional liability policy
9 and if insurance is maintained a description of the liability conditions and limits of
10 such insurance.

11 (10) Any additional information or requirement which the board deems
12 necessary to protect the health, safety, or welfare of the patient.

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

15 (1) A licensed midwife may provide any care or services provided for in ~~R.S.~~
16 ~~37:3244(B)~~ Subsection B of this Section.

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

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

22 §3245. Permits and licenses

23 * * *

24 D. Upon meeting the educational and clinical experience requirements
25 provided by the board, a person may apply for a midwifery license by submitting the
26 following:

27 (1) An application for the license and to take the next qualifying
28 examination; provided, however, the board may issue a midwifery license to an
29 applicant who holds current certification by the North American Registry of

1 Midwives or such other certifying organization as the board may subsequently
2 approve.

3 * * *

4 §3248. Persons not affected

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

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

14 * * *

15 §3255. Examination

16 * * *

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

21 * * *

22 §3258. Professional liability

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

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

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

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

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

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

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

16 §3259. Reporting

17 A. Every licensed midwife shall report to the board semiannually in a
18 manner and form prescribed by the board. The report shall be submitted within the
19 months of January and July of each year and shall include all of the following:

20 (1) The licensed midwife's name and license number.

21 (2) The calendar year being reported.

22 (3) The total number of clients served.

23 (4) The total number and parish of live births attended as a primary
24 caregiver.

25 (5) The total number and parish of stillbirths attended as a primary caregiver.

26 (6) The number of patients whose primary care was transferred to another
27 health care provider during the antepartum period and the reason for each transfer.

28 (7) The number, reason, and outcome for each elective hospital transfer.

1 (8) The number, reason, and outcome for each emergency transport of an
2 expectant mother prior to labor.

3 (9) A brief description of any complications resulting in the mortality of a
4 mother or an infant.

5 (10) Any other information prescribed by the board through rule or
6 regulation.

7 B. A licensed midwife shall report within forty-eight hours to the board any
8 maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been
9 given. The report shall include the sex, weight, date and place of delivery, method
10 of delivery, congenital anomalies of the fetus, and cause of death.

11 C. In addition to the penalties set forth in R.S. 37:3256, any licensed midwife
12 failing to satisfy the provisions of this Section shall be subject to a civil fine not to
13 exceed one hundred dollars each day the report is filed late. In no case shall the fine
14 exceed five hundred dollars.

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 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 La.

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)) 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.

Proposed law (R.S. 37:3244(F)) requires a licensed midwife to obtain written, informed consent of the patient prior to providing any services. Further, requires that such information be provided on a form prescribed by the board which shall include but not be limited to the following:

- (1) The name and license number of the licensed midwife.
- (2) The patient's name, address, telephone number, and the name of the patient's primary care provider if the patient has one.
- (3) A statement that the licensed midwife is not an advanced practice registered nurse midwife or physician.
- (4) A description of the education, training, continuing education, and experience of the licensed midwife.
- (5) A description of the licensed midwife's philosophy of practice.
- (6) A statement recognizing the obligation of the licensed midwife to provide the client, upon request, separate documents describing the law and regulations governing the practice of midwifery, including the requirement for an evaluation and examination by a physician, the protocol for transfer or mandatory transfer, and the licensed midwife's personal written practice guidelines.
- (7) A description of the protocol for transfer to a hospital and disclosure of the hospital with which the licensed midwife has a current transfer agreement.
- (8) A complete and accurate description of the services to be provided to the patient.

- (9) Whether the licensed midwife maintains a professional liability policy and if insurance is maintained, a description of the liability conditions and limits of such insurance.
- (10) Any additional information or requirement which the board deems necessary to protect the health, safety, or welfare of the 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 a physician, certified nurse midwife, 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) requires every licensed midwife to report to the board semiannually in a manner and form prescribed by the board. Requires the report to be submitted within the months of Jan. and July of each year and it must include all of the following:

- (1) The licensed midwife's name and license number.
- (2) The calendar year being reported.
- (3) The total number of clients served.
- (4) The total number and parish of live births attended as a primary caregiver.
- (5) The total number and parish of stillbirths attended as a primary caregiver.
- (6) The number of patients whose primary care was transferred to another health care provider during the antepartum period, and the reason for each transfer.
- (7) The number, reason, and outcome for each elective hospital transfer.
- (8) The number, reason, and outcome for each emergency transport of an expectant mother prior to labor.
- (9) A brief description of any complications resulting in the mortality of a mother or an infant.
- (10) Any other information prescribed by the board through rule or regulation.

Requires a licensed midwife to report within 48 hours to the board any maternal, fetal, or neonatal mortality or morbidity in patients for whom care has been given. Also, requires the report include the sex, weight, date and place of delivery, method of delivery, congenital anomalies of the fetus, and cause of death.

Specifies that in addition to the penalties set forth in present law, any licensed midwife failing to satisfy the provisions of proposed law will be subject to a civil fine not to exceed \$100 each day the report is filed late; however, specifies that in no case will the fine exceed \$500.

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

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Made technical changes.
2. Removed a provision which authorized a midwife to seek a risk assessment from an OBGYN, who did not practice obstetrics, or a physician who practiced family medicine if the patient had been referred to two independent physicians for a risk assessment.
3. Removed a provision which prevented the Board of Nursing from using the legal practice of midwifery as the basis for any action against a person licensed by the board.

4. Added a provision that requires a licensed midwife to obtain written, informed consent of the patient on a form prescribed by the board that includes certain enumerated information.
5. Added certified nurse midwives to the list of health care professionals that are authorized to provide direct supervision over students who provide midwifery services.
6. Added a provision that establishes reporting requirements for midwives.