

HOUSE BILL No. 2732

By Committee on Appropriations

3-11

Proposed Amendments for HB 2732
House Committee on Health and Human Services
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Office of Revisor of Statutes
March 14, 2016

1 AN ACT concerning certified nurse-midwives; relating to scope of
2 practice; licensure.

amending K.S.A. 2015 Supp. 65-1130 and repealing the existing section

New 4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. The provisions of sections 1 through 10 and amendments
6 thereto, shall be known and may be cited as the independent practice of
7 midwifery act.

New 8 Sec. 2. As used in this act:

9 (a) "Board" means the state board of healing arts.

10 (b) "Certified nurse-midwife" means an individual who:

11 (1) Is educated in the two disciplines of nursing and midwifery;

12 (2) is currently certified by a certifying board approved by the state
13 board of nursing; and

14 (3) is currently licensed under the Kansas nurse practice act.

15 (c) "Independent practice of midwifery" means the provision of
16 clinical services by a certified nurse-midwife without the requirement of a
17 collaborative practice agreement with a person licensed to practice
18 medicine and surgery when such clinical services are limited to those
19 associated with a normal, uncomplicated pregnancy and delivery,
20 including:

21 (1) The prescription of drugs and diagnostic tests;

22 (2) the performance of episiotomy or repair of a minor vaginal
23 laceration;

24 (3) the initial care of the normal newborn; and

25 (4) family planning services, including treatment or referral of male
26 partners for sexually transmitted infections.

New 27 Sec. 3. (a) In order to obtain authorization to engage in the
28 independent practice of midwifery, a certified nurse-midwife must meet
29 the following requirements:

30 (1) Be licensed to practice professional nursing under the Kansas
31 nurse practice act;

32 (2) has successfully completed a course of study in nurse-midwifery
33 in a school of nurse-midwifery approved by the board;

34 (3) has successfully completed a national certification approved by
35 the board;

36 (4) has successfully completed a refresher course as defined by rules

1 and regulations of the board, if the individual has not been in active
2 midwifery practice for five years immediately preceding the application;

3 (5) be authorized to perform the duties of a certified nurse-midwife
4 by the state board of nursing;

5 (6) be licensed as an advanced practice registered nurse by the state
6 board of nursing; and

7 (7) has paid all fees for licensure prescribed in this act.

8 (b) Upon application to the board by any certified nurse-midwife and
9 upon satisfaction of the standards and requirements established under this
10 act, the board shall grant an authorization to the applicant to engage in the
11 independent practice of midwifery.

12 (c) A person whose licensure has been revoked may make written
13 application to the board requesting reinstatement of the license in a manner
14 prescribed by the board, which application shall be accompanied by the
15 fee provided for in section 5, and amendments thereto.

16 Sec. 4. (a) Licenses issued under this act shall expire on the date of
17 expiration established by rules and regulations of the board, unless
18 renewed in the manner prescribed by the board. The request for renewal
19 shall be accompanied by the fee provided for in section 5, and
20 amendments thereto.

21 (b) At least 30 days before the expiration of a licensee's license, the
22 board shall notify the licensee of the expiration, by mail, addressed to the
23 licensee's last mailing address. If the licensee fails to submit an application
24 for renewal on a form provided by the board, or fails to pay the renewal
25 fee by the date of expiration, the board shall give a second notice to the
26 licensee that the license has expired and the license may be renewed only
27 if the application for renewal, the renewal fee, and the late renewal fee are
28 received by the board within the 30-day period following the date of
29 expiration and that, if both fees are not received within the 30-day period,
30 the license shall be deemed canceled by operation of law and without
31 further proceedings.

32 (c) The board may require any licensee, as a condition of renewal, to
33 submit with the application of renewal, evidence of satisfactory
34 completion of a program of continuing education as required by rules and
35 regulations of the board.

36 Sec. 5. (a) The board shall charge and collect, in advance, fees for
37 certified nurse-midwives, as established by the board, not to exceed:

38 Application for license.....	\$100
39 License renewal.....	\$100
40 Late license renewal.....	\$100
41 License reinstatement fee.....	\$100
42 Revoked license fee.....	\$100
43 Certified copy of license.....	\$50

New

New

1 Verified copy of license.....\$25

2 (b) The board shall remit all moneys received by or for the board
3 from fees, charges or penalties to the state treasurer in accordance with the
4 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
5 each such remittance, the state treasurer shall deposit the entire amount in
6 the state treasury. Ten percent of each such amount shall be credited to the
7 state general fund, and the balance shall be credited to the healing arts fee
8 fund. All expenditures from the healing arts fee fund shall be made in
9 accordance with appropriation acts upon warrants of the director of
10 accounts and reports issued pursuant to vouchers approved by the
11 president of the board or persons designated by the president.

12 Sec. 6. It shall be unlawful for a person to engage in the independent
13 practice of midwifery without a collaborative practice agreement with a
14 person licensed to practice medicine and surgery, unless such certified
15 nurse-midwife holds a license from the state board of nursing and the
16 board.

New 17 Sec. 7. (a) Rules and regulations pertaining to certified nurse-
18 midwives engaging in the independent practice of midwifery and
19 governing the ordering of tests, diagnostic services and prescribing of
20 drugs shall be promulgated by the board in consultation with the state
21 board of nursing. Such rules and regulations shall not be promulgated until
22 the state board of nursing and the board have consulted and concurred on
23 the content of each rule and regulation.

24 (b) A certified nurse midwife engaging in the independent practice of
25 midwifery shall be subject to the provisions of the independent practice of
26 midwifery act with respect to the ordering of tests, diagnostic services and
27 prescribing of drugs and shall not be subject to the provisions of K.S.A.
28 65-1130, and amendments thereto.

29 (c) The standards of care in the ordering of tests, diagnostic services
30 and the prescribing of drugs, to which certified nurse-midwives engaging
31 in the independent practice of midwifery shall be held, shall be those
32 standards which protect patients and shall be standards comparable to
33 persons licensed to practice medicine and surgery providing the same
34 services.

35 (d) The board is hereby authorized to solely promulgate those rules
36 and regulations necessary to effectuate the administrative provisions of
37 this act.

New 38 Sec. 8. (a) The board may deny, revoke, limit or suspend any license
39 or authorization issued to a certified nurse-midwife to engage in the
40 independent practice of midwifery that is issued by the board or applied
41 for under this act, or may publicly ~~for privately censuring~~ a licensee or holder
42 of a temporary permit or authorization, if the applicant or licensee is found
43 after hearing;

and referral or transfer to physicians in the event of complications
or emergencies

deleted

(1) To be guilty of fraud or deceit in practicing the independent practice of midwifery or in procuring or attempting to procure a license to engage in the independent practice of midwifery;

(2) to have been guilty of a felony or to have been guilty of a misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that notwithstanding K.S.A. 74-120, and amendments thereto, no license or authorization to practice and engage in the independent practice of midwifery shall be granted to a person with a felony conviction for a crime against persons as specified in article 34 of chapter 21 of the Kansas Statutes Annotated, prior to its repeal, or article 54 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, or K.S.A. 2015 Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto;

(3) to have committed an act of professional incompetence as defined in subsection (e);

(4) ~~to be unable to practice with skill and safety due to current abuse of drugs or alcohol;~~

(5) to be a person who has been adjudged in need of a guardian or conservator, or both, under the act for obtaining a guardian or conservator, or both, and who has not been restored to capacity under that act;

(6) to be guilty of unprofessional conduct as defined by rules and regulations of the board;

(7) to have willfully or repeatedly violated the provisions of the Kansas nurse practice act or any rules and regulations adopted pursuant to that act, including K.S.A. 65-1114 and 65-1122, and amendments thereto;

(8) to have a license to practice nursing as a registered nurse, or as a practical nurse denied, revoked, limited or suspended, or to be publicly or privately censured, by a licensing authority of another state, agency of the United States government, territory of the United States or country, or to have other disciplinary action taken against the applicant or licensee by a licensing authority of another state, agency of the United States government, territory of the United States or country. A certified copy of the record or order of public or private censure, denial, suspension, limitation, revocation or other disciplinary action of the licensing authority of another state, agency of the United States government, territory of the United States or country shall constitute prima facie evidence of such a fact for purposes of this paragraph; or

(9) to have assisted suicide in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2015 Supp. 21-5407, and amendments thereto, as established by any of the following:

(A) A copy of the record of criminal conviction or plea of guilty for a felony in violation of K.S.A. 21-3406, prior to its repeal, or K.S.A. 2015 Supp. 21-5407, and amendments thereto;

to be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment due to physical or mental illness or condition or use of alcohol, drugs or controlled substances. All information, reports, findings and other records relating to impairment shall be confidential and not subject to discovery or release to any person or entity outside of a board proceeding

1 (B) a copy of the record of a judgment of contempt of court for
2 violating an injunction issued under K.S.A. 60-4404, and amendments
3 thereto; or

4 (C) a copy of the record of a judgment assessing damages under
5 K.S.A. 60-4405, and amendments thereto.

6 ~~[(a) Upon filing of a sworn complaint with the board charging a~~
7 ~~person with having been guilty of any of the unlawful practices specified~~
8 ~~in subsection (a), two or more members of the board shall investigate the~~
9 ~~charges, or the board may designate and authorize an employee or~~
10 ~~employees of the board to conduct an investigation. After such~~
11 ~~investigation, the board may institute charges. If an investigation, in the~~
12 ~~opinion of the board, reveals reasonable grounds for believing the~~
13 ~~applicant or licensee is guilty of the charges, the board shall fix a time and~~
14 ~~place for proceedings, which shall be conducted in accordance with the~~
15 ~~provisions of the Kansas administrative procedure act.]~~

16 (d) No person shall be excused from testifying in any proceedings
17 before the board under this act or in any civil proceedings under this act
18 before a court of competent jurisdiction on the ground that such testimony
19 may incriminate the person testifying, but such testimony shall not be used
20 against the person for the prosecution of any crime under the laws of this
21 state, except the crime of perjury as defined in K.S.A. 2015 Supp. 21-
22 5903, and amendments thereto.

23 ~~[(4) If final agency action of the board in a proceeding under this~~
24 ~~section is adverse to the applicant or licensee, the costs of the board's~~
25 ~~proceedings shall be charged to the applicant or licensee, as in ordinary~~
26 ~~civil actions in the district court, but if the board is the unsuccessful party,~~
27 ~~the costs shall be paid by the board. Witness fees and costs may be taxed~~
28 ~~by the board according to the statutes relating to procedure in the district~~
29 ~~court. All costs accrued by the board, when it is the successful party, and~~
30 ~~which the attorney general certifies cannot be collected from the applicant~~
31 ~~or licensee, shall be paid from the board of nursing fee fund. All moneys~~
32 ~~collected following board proceedings shall be credited in full to the board~~
33 ~~of nursing fee fund.]~~

34 (g) As used in this section, "professional incompetency" means:

35 (1) One or more instances involving failure to adhere to the
36 applicable standard of care to a degree which constitutes gross negligence,
37 as determined by the board;

38 (2) repeated instances involving failure to adhere to the applicable
39 standard of care to a degree which constitutes ordinary negligence, as
40 determined by the board; or

41 (3) a pattern of practice or other behavior which demonstrates a
42 manifest incapacity or incompetence to engage in the independent practice
43 of midwifery.

d (f) The board upon request shall receive from the Kansas bureau of investigation such criminal history record information relating to arrests and criminal convictions, as necessary, for the purpose of determining initial and continuing qualifications of licensees and applicants for licensure by the board.

New 6 Sec. 9. (a) There is hereby established a nurse-midwives council to advise the board in carrying out the provisions of this act. The council shall consist of seven members, all residents of the state of Kansas appointed as follows: Two members shall be licensees of the board, appointed by the board, who are licensed to practice medicine and surgery and whose specialty and customary practice includes obstetrics; one member shall be the president of the board or a board member designated by the president; and four members shall be certified nurse-midwives licensed and appointed by the board of nursing.

15 (b) If a vacancy occurs on the council, the appointing authority of the position which has become vacant shall appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.

18 ~~Sec. 10. This act shall take effect and be in force from and after its publication in the statute book.~~

Insert text from attachment here.

Sec. 10. K.S.A. 2015 Supp. 65-1130 is hereby amended to read as follows: 65-1130. (a) No professional nurse shall announce or represent to the public that such person is an advanced practice registered nurse unless such professional nurse has complied with requirements established by the board and holds a valid license as an advanced practice registered nurse in accordance with the provisions of this section.

(b) The board shall establish standards and requirements for any professional nurse who desires to obtain licensure as an advanced practice registered nurse. Such standards and requirements shall include, but not be limited to, standards and requirements relating to the education of advanced practice registered nurses. The board may give such examinations and secure such assistance as it deems necessary to determine the qualifications of applicants.

(c) The board shall adopt rules and regulations applicable to advanced practice registered nurses which:

(1) Establish roles and identify titles and abbreviations of advanced practice registered nurses which are consistent with nursing practice specialties recognized by the nursing profession.

(2) Establish education and qualifications necessary for licensure for each role of advanced practice registered nurse established by the board at a level adequate to assure the competent performance by advanced practice registered nurses of functions and procedures which advanced practice registered nurses are authorized to perform. Advanced practice registered nursing is based on knowledge and skills acquired in basic nursing education, licensure as a registered nurse and graduation from or completion of a master's or higher degree in one of the advanced practice registered nurse roles approved by the board of nursing.

(3) Define the role of advanced practice registered nurses and establish limitations and

restrictions on such role. The board shall adopt a definition of the role under this subsection (c)(3) which is consistent with the education and qualifications required to obtain a license as an advanced practice registered nurse, which protects the public from persons performing functions and procedures as advanced practice registered nurses for which they lack adequate education and qualifications and which authorizes advanced practice registered nurses to perform acts generally recognized by the profession of nursing as capable of being performed, in a manner consistent with the public health and safety, by persons with postbasic education in nursing. In defining such role the board shall consider: (A) The education required for a licensure as an advanced practice registered nurse; (B) the type of nursing practice and preparation in specialized advanced practice skills involved in each role of advanced practice registered nurse established by the board; (C) the scope and limitations of advanced practice nursing prescribed by national advanced practice organizations; and (D) acts recognized by the nursing profession as appropriate to be performed by persons with postbasic education in nursing.

(d) An advanced practice registered nurse may prescribe drugs pursuant to a written protocol as authorized by a responsible physician. Each written protocol shall contain a precise and detailed medical plan of care for each classification of disease or injury for which the advanced practice registered nurse is authorized to prescribe and shall specify all drugs which may be prescribed by the advanced practice registered nurse. Any written prescription order shall include the name, address and telephone number of the responsible physician. The advanced practice registered nurse may not dispense drugs, but may request, receive and sign for professional samples and may distribute professional samples to patients pursuant to a written protocol as authorized by a responsible physician. In order to prescribe controlled substances, the advanced practice registered nurse shall (1) register with the federal drug enforcement administration; and (2) notify the board of the name and address of the responsible physician or

physicians. In no case shall the scope of authority of the advanced practice registered nurse exceed the normal and customary practice of the responsible physician. An advanced practice registered nurse certified in the role of registered nurse anesthetist while functioning as a registered nurse anesthetist under K.S.A. 65-1151 ~~to~~ through 65-1164, ~~inclusive~~, and amendments thereto, shall be subject to the provisions of K.S.A. 65-1151 ~~to~~ through 65-1164, ~~inclusive~~, and amendments thereto, with respect to drugs and anesthetic agents and shall not be subject to the provisions of this subsection. For the purposes of this subsection, "responsible physician" means a person licensed to practice medicine and surgery in Kansas who has accepted responsibility for the protocol and the actions of the advanced practice registered nurse when prescribing drugs.

(e) As used in this section, "drug" means those articles and substances defined as drugs in K.S.A. 65-1626 and 65-4101, and amendments thereto.

(f) A person registered to practice as an advanced registered nurse practitioner in the state of Kansas immediately prior to the effective date of this act shall be deemed to be licensed to practice as an advanced practice registered nurse under this act and such person shall not be required to file an original application for licensure under this act. Any application for registration filed which has not been granted prior to the effective date of this act shall be processed as an application for licensure under this act.

(g) An advanced practice registered nurse certified in the role of certified nurse-midwife and engaging in the independent practice of midwifery under the independent practice of midwifery act with respect to prescribing drugs shall be subject to the provisions of the independent practice of midwifery act and shall not be subject to the provisions of this section.

Sec. 11. K.S.A. 2015 Supp. 65-1130 is hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the

statute book.

