

AN ACT relating to midwifery and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

As used in Sections 1 to 7 of this Act, unless the context indicates otherwise:

- (1) "Board" means the Kentucky Board of Midwifery;*
- (2) "Certified professional midwife" or "CPM" means a person who has obtained certification by the NARM or its successor organization;*
- (3) "Client" means a person, fetus, or newborn under the care of a midwife;*
- (4) "Licensed midwife" means a person licensed by the board under Section 3 of this Act to practice midwifery;*
- (5) "MBC" means the Midwifery Bridge Certificate or its successor credential;*
- (6) "MEAC" means the Midwifery Education Accreditation Council or its successor organization;*
- (7) "Midwifery Model of Care" means:*
 - (a) Monitoring of the physical, psychological, and social well-being of the client throughout the childbearing cycle;*
 - (b) Providing the client with individualized education, counseling, prenatal care, continuous hands-on assistance during labor and delivery, and postpartum support;*
 - (c) Minimizing technological interventions; and*
 - (d) Identifying and referring clients who require obstetrical attention;*
- (8) "NACPM" means the National Association of Certified Professional Midwives or its successor organization;*
- (9) "NARM" means the North American Registry of Midwives or its successor organization;*
- (10) "Newborn" means an infant from birth through the first six (6) weeks of life;*

(11) "Normal" means circumstances under which a midwife has determined that a client is at a low risk of developing complications with a pregnancy, labor, delivery, postpartum period, or newborn period as evidenced by documentation of adequate prenatal care and the anticipation of an uncomplicated labor and birth;

(12) "Postpartum period" means the first six (6) weeks after a client has given birth;

(13) "Practice of midwifery" means:

(a) Providing the necessary supervision, care, and advice to a client during normal pregnancy, labor, and the postpartum period;

(b) Conducting a normal delivery of a child; and

(c) Providing normal newborn care; and

(14) "USMERA" means the United States Midwifery Education, Regulation, and Association, or its successor organization.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) The Kentucky Board of Midwifery is established and shall consist of seven (7) members appointed by the Governor as follows:

(a) Four (4) members shall have at least three (3) years of experience in the practice of midwifery eligible to become licensed pursuant to Section 3 of this Act from a list of six (6) names submitted to the Governor by the Kentucky Home Birth Coalition or its successor organization. Beginning January 1, 2018, these four (4) members shall also provide proof that they have become licensed midwives;

(b) One (1) member who is a certified nurse midwife licensed by the Kentucky Board of Nursing and has had professional experience consulting for and collaborating with CPMs from a list of (3) three names submitted to the Governor by the Kentucky Coalition of Nurse Practitioners and Nurse Midwives;

(c) One (1) member of the general public who has received midwifery care in an out-of-hospital setting from a list of two (2) names submitted by the Kentucky Home Birth Coalition or its successor organization; and

(d) One (1) member who is an obstetrician licensed by the Kentucky Board of Medical Licensure and who has had professional experience consulting for and collaborating with CPMs from a list of three (3) names submitted to the Governor by the Kentucky Section of the American Congress of Obstetricians and Gynecologists.

The board shall be attached to the Office of Occupations and Professions in the Public Protection Cabinet for administrative purposes.

(2) (a) The Governor shall make appointments to the board by August 1, 2016.

Initial terms of members shall be staggered as follows to provide continuity:

1. One (1) member for a term of one (1) year;

2. One (1) member for a term of two (2) years;

3. Two (2) members for a term of three (3) years; and

4. Three (3) members for a term of four (4) years.

These terms shall expire, in each instance, on June 30 of the designated year, and each member shall serve until a successor is appointed and accepts appointment.

(b) Upon the expiration of the initial staggered terms, members shall be appointed by the Governor for terms of four (4) years, and shall serve until successors are appointed and accept their appointments. Members shall be eligible for reappointment. Vacancies in the membership of the board shall be filled in the same manner as the original appointments.

(c) In the event of the death, resignation, or removal of any board member before the expiration of the term to which he or she is appointed, the vacancy shall be filled for the unexpired term in the same manner as the

original appointment.

(3) The board shall, within thirty (30) days after all appointments are made, hold a meeting and elect a chairperson.

(4) The members of the board shall serve without compensation, but may be reimbursed for all actual and necessary expenses incurred while discharging their official duties.

➔SECTION 3. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) The board shall meet at least quarterly, and may hold additional meetings at the call of the chairperson or at the written request of a majority of the members of the board. A majority of the board shall constitute a quorum. The vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board.

(2) The board shall employ a qualified person to serve as executive director to the board, and shall fix the compensation and define the duties of the executive director. It may employ other persons as may be necessary to carry on the work of the board.

(3) The board shall have the authority to:

(a) Receive applications for licensure, determine the qualifications of persons applying for licensure, and provide licenses to applicants qualified under Sections 1 to 7 of this Act;

(b) Renew, suspend, revoke, and reinstate licenses;

(c) Establish and collect fees for examination of applicants for licensure and for license renewal that shall not exceed five hundred dollars (\$500) for a three (3) year period;

(d) Investigate complaints against licensees;

(e) Undertake, when appropriate, disciplinary proceedings and disciplinary

action against licensees; and

(f) Promulgate administrative regulations in accordance to KRS Chapter 13A, which are necessary to administer Sections 1 to 7 of this Act.

(4) The administrative regulations promulgated by the board pursuant to this section shall:

(a) Be consistent with:

1. The current job description for midwifery published by NARM;

2. Standards regarding the practice of midwifery established by the NACPM or its successor organization;

3. The Midwifery Model of Care; and

4. The USMERA statement on the licensure of certified professional midwives;

(b) Establish processes for licensure application and renewal, including fees;

(c) Permit a licensee to obtain for clients appropriate screening and testing, including but not limited to laboratory tests and ultrasounds;

(d) Permit a licensee to obtain and administer during the practice of midwifery medications from a formulary established by the board that is limited to only those medications that are indicated for the safe conduct of pregnancy, labor and birth, and care of a client, and that the licensed midwife is educationally prepared to administer and monitor, including but not limited to antihemorrhagic agents, intravenous fluids for stabilization, vitamin K, eye prophylactics, oxygen, and other drugs and procedures consistent with the scope of midwifery practice as defined by NACPM. The formulary shall not include Schedule II, III, or IV drugs;

(e) Establish a process for documentation of the disclosure required under subsection (8) of this section;

(f) Establish standardized forms to document informed consent requirements

under Section 5 of this Act;

(g) Require licensees to report to the board, in a form specified by the board, the following information regarding cases in which the licensee assisted during the previous calendar year when the intended place of birth at the onset of care was at home:

1. The total number of clients served as primary maternity caregiver at the onset of care;

2. The number of live births attended as primary maternity caregiver;

3. The number of cases of fetal demise, infant deaths, and maternal deaths attended as primary maternity caregiver at the discovery of the demise or death;

4. The number, reason for, and outcome of each transport of a client in the antepartum, intrapartum, or immediate postpartum periods;

5. A brief description of any complications resulting in the morbidity or mortality of a mother or a neonate; and

6. Any other information required by administrative regulations promulgated by the board;

(h) Not require a licensee to have a nursing degree or diploma;

(i) Not require a licensed midwife to practice under the supervision of or in collaboration with another healthcare provider;

(j) Not limit the location where a licensee may practice midwifery;

(k) Not allow a licensed midwife to use forceps or vacuum extractor;

(l) Not allow a licensed midwife to obtain or administer narcotics; and

(m) Require midwives to complete birth certificate data as required in KRS 213.046 and 213.096.

(5) The board shall grant or renew a license for a term of three (3) years that shall expire on the birthday of the licensee unless renewed, to any person who:

- (a) Provides documentation that NARM certification or recertification requirements have been met;
- (b) Completes any additional board-approved educational requirements;
- (c) Files an application for licensure or renewal approved by the board; and
- (d) Pays the required fees.
- (6) All applicants for licensure as a midwife shall be required to have obtained certification as a CPM and:
- (a) Beginning January 1, 2020, obtain certification by completing an education program or pathway accredited by the MEAC;
- (b) If certification was obtained prior to January 1, 2020, from an education program or pathway not accredited by the MEAC, obtain the MBC issued by NARM; or
- (c) If licensure has been maintained in a state that does not require an education program or pathway accredited by the MEAC, obtain the MBC regardless of the date of certification.
- (7) It shall be unlawful for a person to assume or use the title or designation "Licensed Midwife," or any other title, designation, words, letters, abbreviations, sign, card, or device to indicate to the public that he or she is licensed to practice midwifery unless he or she is licensed pursuant to this section.
- (8) A licensed midwife shall be required to disclose to a client options for consultation and referral to a physician if the midwife determines that the client's pregnancy, labor, delivery, postpartum period, or newborn period may present a moderate or high risk of harm to parent or child as defined in administrative regulations promulgated by the board.
- (9) A client shall maintain the right to decline any consultation or referral as disclosed by a licensed midwife under subsection (8) of this section.
- (10) A licensed midwife shall provide a client with evidence-based information,

including risks associated with a birth of a child outside of a hospital, regarding any condition identified by the midwife as not normal.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) There is hereby established in the State Treasury the Kentucky Board of Midwifery trust and agency fund. The fund shall be administered by the board for the purposes of Sections 1 to 7 of this Act, including but not limited to:

(a) Reimbursement of board members for actual and necessary expenses incurred in the performance of their official duties;

(b) Compensation of all employees of the board; and

(c) Payment of all other operational expenses incurred by the board in executing its duties.

(2) All fees, charges, and other moneys collected or received by the board shall be deposited to the credit of this fund.

(3) Notwithstanding KRS 45.229, any moneys remaining in the fund at the close of the fiscal year shall not lapse but shall be carried forward into the succeeding fiscal year. Any interest earnings of the fund shall become a part of the fund and shall not lapse.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

(1) Before initiating care, a licensed midwife shall obtain a signed informed consent agreement from each adult client, acknowledging receipt of, at a minimum, the following:

(a) The licensed midwife's training and experience;

(b) Instructions for obtaining a copy of the administrative regulations promulgated by the board pursuant to Section 3 of this Act;

(c) Instructions for obtaining a copy of standards of practice defined by

NACPM and the NARM midwife job description;

(d) Instructions for filing complaints with the board;

(e) A written protocol for emergencies, including hospital transport;

(f) A description of the procedures, benefits, and risks of an out-of-hospital birth, primarily those conditions that may arise during delivery; and

(g) Any other information required by the board.

(2) All licensed midwives shall maintain a record of each signed informed consent agreement for a minimum of seven (7) years after the last day of care.

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO READ AS FOLLOWS:

Sections 1 to 7 of this Act do not apply to any of the following:

(1) A certified nurse midwife licensed by the Kentucky Board of Nursing, except that a certified nurse midwife who is also a licensed midwife shall be subject to administrative regulations relating to the practice of certified nurse midwifery promulgated by the Kentucky Board of Nursing and the provisions of Sections 1 to 7 of this Act;

(2) A student midwife in training under the direct supervision of licensed midwives, as required by NARM;

(3) A person who, in good faith, engages in the practice of the religious tenets of any church or in any religious act if no fee is contemplated, charged, or received;

(4) A person rendering aid in an emergency if no fee for the service is contemplated, charged, or received;

(5) A person administering care to a member of the person's family; or

(6) A practicing professional who is licensed, certified, or registered under other laws of this state, and who is performing services within the professional's authorized scope of practice.

➔SECTION 7. A NEW SECTION OF KRS CHAPTER 309 IS CREATED TO

READ AS FOLLOWS:

- (1) No physician, hospital, emergency room personnel, emergency medical technician ambulance personnel, or other health care provider shall be liable in any civil action arising out of any injury resulting from an act or omission of a licensed midwife, solely because the health care provider has consulted with or accepted a referral from the licensed midwife. Nothing in this subsection shall affect the liability of any physician, hospital, emergency room personnel, emergency medical technician ambulance personnel, or other health care provider for such person's own acts or omissions.**
- (2) A physician who consults with a licensed midwife, but who does not examine or treat a client of the licensed midwife, shall not be deemed to have created a physician-patient relationship with the client solely because of the consultation.**

➔Section 8. KRS 211.180 is amended to read as follows:

- (1) The cabinet shall enforce the administrative regulations promulgated by the secretary of the Cabinet for Health and Family Services for the regulation and control of the matters set out below and shall formulate, promote, establish, and execute policies, plans, and programs relating to all matters of public health, including but not limited to the following matters:
- (a) Detection, prevention, and control of communicable diseases, chronic and degenerative diseases, dental diseases and abnormalities, occupational diseases and health hazards peculiar to industry, home accidents and health hazards, animal diseases which are transmissible to man, and other diseases and health hazards that may be controlled;
- (b) The adoption of regulations specifying the information required in and a minimum time period for reporting a sexually transmitted disease. In adopting the regulations the cabinet shall consider the need for information, protection for the privacy and confidentiality of the patient, and the practical ability of

persons and laboratories to report in a reasonable fashion. The cabinet shall require reporting of physician-diagnosed cases of acquired immunodeficiency syndrome based upon diagnostic criteria from the Centers for Disease Control and Prevention of the United States Public Health Service. No later than October 1, 2004, the cabinet shall require reporting of cases of human immunodeficiency virus infection by reporting of the name and other relevant data as requested by the Centers for Disease Control and Prevention and as further specified in KRS 214.645. Nothing in this section shall be construed to prohibit the cabinet from identifying infected patients when and if an effective cure for human immunodeficiency virus infection or any immunosuppression caused by human immunodeficiency virus is found or a treatment which would render a person noninfectious is found, for the purposes of offering or making the cure or treatment known to the patient;

- (c) The control of insects, rodents, and other vectors of disease; the safe handling of food and food products; the safety of cosmetics; the control of narcotics, barbiturates, and other drugs as provided by law; the sanitation of schools, industrial establishments, and other public and semipublic buildings; the sanitation of state and county fairs and other similar public gatherings; the sanitation of public and semipublic recreational areas; the sanitation of public rest rooms, trailer courts, hotels, tourist courts, and other establishments furnishing public sleeping accommodations; the review, approval, or disapproval of plans for construction, modification, or extension of equipment related to food-handling in food-handling establishments; the licensure of hospitals; and the control of such other factors, not assigned by law to another agency, as may be necessary to insure a safe and sanitary environment;
- (d) The construction, installation, and alteration of any on-site sewage disposal system, except for a system with a surface discharge;

- (e) Protection and improvement of the health of expectant mothers, infants, preschool, and school-age children; and
 - (f) ~~[The practice of midwifery, including the issuance of permits to and supervision of women who practice midwifery; and~~
 - ~~(g)]~~Protection and improvement of the health of the people through better nutrition.
- (2) The secretary shall have authority to establish by regulation a schedule of reasonable fees, not to exceed twenty dollars (\$20) per inspector hour plus travel costs pursuant to state regulations for travel reimbursement, to cover the costs of inspections of manufacturers, retailers, and distributors of consumer products as defined in the Federal Consumer Product Safety Act, 15 U.S.C. secs. 2051 et seq.; 86 Stat. 1207 et seq. or amendments thereto, and of youth camps for the purpose of determining compliance with the provisions of this section and the regulations adopted by the secretary pursuant thereto. Fees collected by the secretary shall be deposited in the State Treasury and credited to a revolving fund account for the purpose of carrying out the provisions of this section. The balance of the account shall lapse to the general fund at the end of each biennium.
- (3) Any administrative hearing conducted under authority of this section shall be conducted in accordance with KRS Chapter 13B.

➔Section 9. KRS 311.550 is amended to read as follows:

As used in KRS 311.530 to 311.620 and KRS 311.990(4) to (6):

- (1) "Board" means the State Board of Medical Licensure;
- (2) "President" means the president of the State Board of Medical Licensure;
- (3) "Secretary" means the secretary of the State Board of Medical Licensure;
- (4) "Executive director" means the executive director of the State Board of Medical Licensure or any assistant executive directors appointed by the board;
- (5) "General counsel" means the general counsel of the State Board of Medical

- Licensure or any assistant general counsel appointed by the board;
- (6) "Regular license" means a license to practice medicine or osteopathy at any place in this state;
 - (7) "Limited license" means a license to practice medicine or osteopathy in a specific institution or locale to the extent indicated in the license;
 - (8) "Temporary permit" means a permit issued to a person who has applied for a regular license, and who appears from verifiable information in the application to the executive director to be qualified and eligible therefor;
 - (9) "Emergency permit" means a permit issued to a physician currently licensed in another state, authorizing the physician to practice in this state for the duration of a specific medical emergency, not to exceed thirty (30) days;
 - (10) Except as provided in subsection (11) of this section, the "practice of medicine or osteopathy" means the diagnosis, treatment, or correction of any and all human conditions, ailments, diseases, injuries, or infirmities by any and all means, methods, devices, or instrumentalities;
 - (11) The "practice of medicine or osteopathy" does not include the practice of Christian Science, the domestic administration of family remedies, the rendering of first aid or medical assistance in an emergency in the absence of a person licensed to practice medicine or osteopathy under the provisions of this chapter, the use of automatic external defibrillators in accordance with the provisions of KRS 311.665 to 311.669, the practice of podiatry as defined in KRS 311.380, the practice of a midlevel health care practitioner as defined in KRS 216.900, the practice of dentistry as defined in KRS 313.010, the practice of optometry as defined in KRS 320.210, the practice of chiropractic as defined in subsection (2) of KRS 312.015, the practice as a nurse as defined in KRS 314.011, the practice of physical therapy as defined in KRS 327.010, the performance of duties for which they have been trained by paramedics licensed under KRS Chapter 311A, first responders, or

emergency medical technicians certified under Chapter 311A, the practice of pharmacy by persons licensed and registered under KRS 315.050, the sale of drugs, nostrums, patented or proprietary medicines, trusses, supports, spectacles, eyeglasses, lenses, instruments, apparatus, or mechanisms that are intended, advertised, or represented as being for the treatment, correction, cure, or relief of any human ailment, disease, injury, infirmity, or condition, in regular mercantile establishments, or the practice of midwifery~~[by women. KRS 311.530 to 311.620 shall not be construed as repealing the authority conferred on the Cabinet for Health and Family Services by KRS Chapter 211 to provide for the instruction, examination, licensing, and registration of all midwives through county health officers];~~

- (12) "Physician" means a doctor of medicine or a doctor of osteopathy;
- (13) "Grievance" means any allegation in whatever form alleging misconduct by a physician;
- (14) "Charge" means a specific allegation alleging a violation of a specified provision of this chapter;
- (15) "Complaint" means a formal administrative pleading that sets forth charges against a physician and commences a formal disciplinary proceeding;
- (16) As used in KRS 311.595(4), "crimes involving moral turpitude" shall mean those crimes which have dishonesty as a fundamental and necessary element, including but not limited to crimes involving theft, embezzlement, false swearing, perjury, fraud, or misrepresentation;
- (17) "Telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of medical data, and medical education;
- (18) "Order" means a direction of the board or its panels made or entered in writing that determines some point or directs some step in the proceeding and is not included in

the final order;

- (19) "Agreed order" means a written document that includes but is not limited to stipulations of fact or stipulated conclusions of law that finally resolves a grievance, a complaint, or a show cause order issued informally without expectation of further formal proceedings in accordance with KRS 311.591(6);
- (20) "Final order" means an order issued by the hearing panel that imposes one (1) or more disciplinary sanctions authorized by this chapter;
- (21) "Letter of agreement" means a written document that informally resolves a grievance, a complaint, or a show cause order and is confidential in accordance with KRS 311.619;
- (22) "Letter of concern" means an advisory letter to notify a physician that, although there is insufficient evidence to support disciplinary action, the board believes the physician should modify or eliminate certain practices and that the continuation of those practices may result in action against the physician's license;
- (23) "Motion to revoke probation" means a pleading filed by the board alleging that the licensee has violated a term or condition of probation and that fixes a date and time for a revocation hearing;
- (24) "Revocation hearing" means a hearing conducted in accordance with KRS Chapter 13B to determine whether the licensee has violated a term or condition of probation;
- (25) "Chronic or persistent alcoholic" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic consumption of alcoholic beverages resulting in the interference with the individual's social or economic functions in the community or the loss of powers of self-control regarding the use of alcoholic beverages;
- (26) "Addicted to a controlled substance" means an individual who is suffering from a medically diagnosable disease characterized by chronic, habitual, or periodic use of any narcotic drug or controlled substance resulting in the interference with the

individual's social or economic functions in the community or the loss of powers of self-control regarding the use of any narcotic drug or controlled substance;

- (27) "Provisional permit" means a temporary permit issued to a licensee engaged in the active practice of medicine within this Commonwealth who has admitted to violating any provision of KRS 311.595 that permits the licensee to continue the practice of medicine until the board issues a final order on the registration or reregistration of the licensee;
- (28) "Fellowship training license" means a license to practice medicine or osteopathy in a fellowship training program as specified by the license; and
- (29) "Special faculty license" means a license to practice medicine that is limited to the extent that this practice is incidental to a necessary part of the practitioner's academic appointment at an accredited medical school program or osteopathic school program and any affiliated institution for which the medical school or osteopathic school has assumed direct responsibility.

➔Section 10. Sections 1 to 7 of this Act are intended to be consistent with the USMERA statement on the licensure of certified professional midwives, July 2015.