

HB0202S02 compared with HB0202S01

~~text~~ shows text that was in HB0202S01 but was deleted in HB0202S02.

text shows text that was not in HB0202S01 but was inserted into HB0202S02.

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Representative Carol Spackman Moss proposes the following substitute bill:

MIDWIFE PRACTICE AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carol Spackman Moss

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to the practice of direct-entry midwifery.

Highlighted Provisions:

This bill:

- ▶ requires an individual who practices direct-entry midwifery without a license to comply with informed consent requirements; and
- ▶ subject to certain conditions and procedures, gives the Division of Occupational and Professional Licensing the authority to assess an administrative penalty upon an individual who violates certain provisions related to the practice of direct-entry midwifery.

Money Appropriated in this Bill:

None

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Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-77-501, as enacted by Laws of Utah 2005, Chapter 299

58-77-503, as enacted by Laws of Utah 2005, Chapter 299

58-77-601, as last amended by Laws of Utah 2014, Chapter 189

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **58-77-501** is amended to read:

58-77-501. Unlawful conduct.

(1) In addition to the [~~definition in Subsection 58-1-501(1), "unlawful conduct" includes~~] conduct that constitutes unlawful conduct under Subsection 58-1-501(1), it is unlawful conduct for an individual who is not licensed under this chapter to:

(a) [~~representing or holding oneself out as a~~] represent or hold out that the individual is a licensed direct-entry midwife [when not licensed under this chapter, and]; or

(b) [~~using~~] administer prescription medications, except oxygen, [~~while engaged~~] in the practice of direct-entry midwifery [~~when not licensed under this chapter (.)~~] [~~or~~];

~~(c) fail to obtain from a client, before providing service to the client, the informed consent agreement described in Section 58-77-601.~~

† (2) (a) Except [~~as provided in Subsections (1)(a) and (b)~~] for conduct that constitutes unlawful conduct under Subsection (1), it is lawful to practice direct-entry midwifery in the state without being licensed under this chapter.

(b) The practice of direct-entry midwifery is not considered the practice of medicine, nursing, or nurse-midwifery.

Section 2. Section **58-77-503** is amended to read:

58-77-503. Penalty for unlawful conduct -- Penalty for a violation by an unlicensed direct-entry midwife.

[~~A person who violates the~~]

† (1) An individual who engages in unlawful conduct [provisions] as defined in this chapter is guilty of a class A misdemeanor.

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(2) In addition to the division's authority to assess an administrative penalty under Section 58-1-502, subject to Section 58-77-401, the division may assess an administrative penalty, using a citation, of up to \$5,000 for each violation upon an individual who is not licensed under this chapter, if the individual:

(a) engages in conduct that constitutes unprofessional conduct or unlawful conduct under this title or this chapter;

(b) violates Subsection 58-77-601(1) or (2); or

(c) violates Section 58-77-603.

(3) The division shall issue a citation described in Subsection (2) in writing with a description of the violation.

(4) The division shall allow an individual to whom the division issues a citation under Subsection (2) to contest the citation at an administrative hearing conducted under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if the individual requests a hearing within 20 days after the day on which the division issues the citation.

(5) A citation the division issues under Subsection (2) shall become final if:

(a) at a hearing described in Subsection (4), the division determines the citation was properly issued; or

(b) the individual fails to timely request an administrative hearing.

Section 3. Section **58-77-601** is amended to read:

58-77-601. Standards of practice -- Informed consent -- Licensed direct-entry midwives -- Unlicensed direct-entry midwives.

~~[(1)(a) Prior to providing any services, a licensed Direct-entry midwife must obtain an informed consent from a client.]~~

~~[(b) The consent must include:]~~

(1) Before an individual provides direct-entry midwifery services to a client, the individual shall obtain from the client a written informed consent agreement that includes:

~~[(+)]~~ (a) the individual's name and, if the individual is licensed as a direct-entry midwife under this chapter, the individual's license number [of the Direct-entry midwife];

~~[(+)]~~ (b) the client's name, address, telephone number, and, if any, the client's primary care provider[, if the client has one];

~~[(+)]~~ (c) the fact, if true, that the licensed Direct-entry midwife is not a certified nurse

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~~midwife or a physician;]~~

~~(c) a list of the individual's midwifery licenses and certifications, if any;~~

~~(d) if the individual is not licensed as a direct-entry midwife under this chapter, a statement that the individual is not licensed and that the individual's education and qualifications have not been reviewed by the state;~~

~~[(iv)] (e) a description of the [licensed Direct-entry midwife's] individual's midwifery education, training, continuing education, and experience [in midwifery];~~

~~[(v)] (f) a description of the [licensed Direct-entry midwife's] individual's peer review process, if any;~~

~~[(vi)] (g) the [licensed Direct-entry midwife's philosophy of] individual's practice philosophy;~~

~~[(vii)] (h) (i) a promise to provide the client, upon request, [separate documents describing the rules governing licensed Direct-entry midwifery practice, including a list of conditions indicating the need for consultation, collaboration, referral, transfer or mandatory transfer, and the licensed Direct-entry midwife's personal written practice guidelines;] a description of the requirements governing the practice of direct-entry midwifery; and~~

~~[(viii) a medical back-up or transfer plan;]~~

~~(ii) if the individual is not licensed under this chapter, a statement that the individual is not subject to the rules governing licensed direct-entry midwives and that a failure to follow the rules could increase the risk to the client and the client's child;~~

~~(i) a plan to address any medical issues the client experiences during pregnancy, labor, or childbirth, including a plan for transportation of the client to a hospital, if necessary;~~

~~[(ix) a description of the services provided to the client by the licensed Direct-entry midwife;]~~

~~[(x) the licensed Direct-entry midwife's current legal status;]~~

~~[(xi) the availability of a grievance process;]~~

~~[(xii) client and licensed Direct-entry midwife signatures and the date of signing; and]~~

~~(j) a separate copy of a publication, created by the board in collaboration with the division, that describes each type of midwife that may legally practice in Utah, and each midwife type's scope of practice and minimum educational requirements; and~~

~~(k) if the individual is unlicensed, a statement that it is unlawful for the individual to~~

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carry or administer prescription medications other than oxygen:

(l) a description of administrative grievance processes available through the division;

(m) the individual's signature and date of signing;

(n) the client's signature and date of signing; and

~~(xiii)~~ (o) a statement that discloses whether the ~~[licensed Direct-entry midwife]~~

individual is covered by a professional liability insurance policy.

(2) An individual who provides direct-entry midwifery services to a client shall retain the consent agreement described in Subsection (1) for at least 10 years after the day on which the client gives birth.

~~[(2)]~~ (3) A licensed direct-entry midwife shall:

(a) (i) limit the licensed direct-entry midwife's practice to a normal pregnancy, labor, postpartum, newborn and interconceptual care, which for purposes of this section means a normal labor:

(A) that is not pharmacologically induced;

(B) that is low risk at the start of labor;

(C) that remains low risk ~~[through-out]~~ throughout the course of labor and delivery;

(D) in which the infant is born spontaneously in the vertex position between 37 and 43 completed weeks of pregnancy; and

(E) except as provided in Subsection ~~[(2)]~~ (3)(a)(ii), in which after delivery, the mother and infant remain low risk; and

(ii) the limitation of Subsection ~~[(2)]~~ (3)(a)(i) does not prohibit a licensed direct-entry midwife from delivering an infant when there is:

(A) intrauterine fetal demise; or

(B) a fetal anomaly incompatible with life; and

(b) appropriately recommend and facilitate consultation with, collaboration with, referral to, or transfer or mandatory transfer of care to a licensed health care professional when the circumstances require that action in accordance with this section and standards established by division rule.

~~[(3)]~~ (4) If after a client has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer and the client chooses to decline, then the licensed direct-entry midwife shall:

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- (a) terminate care in accordance with procedures established by division rule; or
- (b) continue to provide care for the client if the client signs a waiver of medical

consultation, collaboration, referral, or transfer.

~~[(4)]~~ (5) If after a client has been informed that she has or may have a condition indicating the need for mandatory transfer, the licensed direct-entry midwife shall, in accordance with procedures established by division rule, terminate the care or initiate transfer by:

- (a) calling 911 and reporting the need for immediate transfer;
- (b) immediately transporting the client by private vehicle to the receiving provider; or
- (c) contacting the physician to whom the client will be transferred and following that physician's orders.

~~[(5)]~~ (6) The standards for consultation and transfer are the minimum standards that a licensed Direct-entry midwife must follow. A licensed Direct-entry midwife shall initiate consultation, collaboration, referral, or transfer of a patient sooner than required by administrative rule if in the opinion and experience of the licensed Direct-entry midwife, the condition of the client or infant warrant a consultation, collaboration, referral, or transfer.

~~[(6) For the period from 2006 through 2011, a licensed Direct-entry midwife must submit outcome data to the Midwives' Alliance of North America's Division of Research on the form and in the manner prescribed by rule.]~~

- (7) This chapter does not mandate health insurance coverage for midwifery services.