

Chapter 44a Nurse Midwife Practice Act

Part 1 General Provisions

58-44a-101 Title.

This chapter is the "Nurse Midwife Practice Act."

Enacted by Chapter 187, 1994 General Session

58-44a-102 Definitions.

In addition to the definitions in Section 58-1-102, as used in this chapter:

- (1) "Administrative penalty" means a monetary fine imposed by the division for acts or omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine schedule established by rule and as a result of an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (2) "Board" means the Certified Nurse Midwife Board created in Section 58-44a-201.
- (3) "Consultation and Referral Plan" means a written plan jointly developed by a certified nurse midwife, as defined in Subsection (7), and a consulting physician that permits the certified nurse midwife to prescribe schedule II-III controlled substances in consultation with the consulting physician.
- (4) "Consulting physician" means a physician and surgeon or osteopathic physician:
 - (a) with an unrestricted license as a physician;
 - (b) qualified by education, training, and current practice in obstetrics, gynecology, or both to act as a consulting physician to a nurse midwife practicing under this chapter and providing intrapartum care or prescribing Schedule II-III controlled substances; and
 - (c) who is available to consult with a nurse midwife, which does not include the consulting physician being present at the time or place the nurse midwife is engaged in practice.
- (5) "Individual" means a natural person.
- (6) "Intrapartum referral plan":
 - (a) means a written plan prepared by a nurse midwife describing the guidelines under which the nurse midwife will consult with a consulting physician, collaborate with a consulting physician, and refer patients to a consulting physician; and
 - (b) does not require the nurse midwife to obtain the signature of a physician on the intrapartum referral plan.
- (7) "Nurse midwife" means a person licensed under this chapter to engage in practice as a certified nurse midwife.
- (8) "Physician" means a physician and surgeon or osteopathic surgeon licensed under Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical Practice Act.
- (9) "Practice as a certified nurse midwife" means:
 - (a) practice as a registered nurse as defined in Section 58-31b-102, and as consistent with the education, training, experience, and current competency of the licensee;
 - (b) practice of nursing within the generally recognized scope and standards of nurse midwifery as defined by rule and consistent with professionally recognized preparations and educational standards of a certified nurse midwife by a person licensed under this chapter, which practice includes:

- (i) having a safe mechanism for obtaining medical consultation, collaboration, and referral with one or more consulting physicians who have agreed to consult, collaborate, and receive referrals, but who are not required to sign a written document regarding the agreement;
 - (ii) providing a patient with information regarding other health care providers and health care services and referral to other health care providers and health care services when requested or when care is not within the scope of practice of a certified nurse midwife; and
 - (iii) maintaining written documentation of the parameters of service for independent and collaborative midwifery management and transfer of care when needed; and
- (c) the authority to:
- (i) elicit and record a patient's complete health information, including physical examination, history, and laboratory findings commonly used in providing obstetrical, gynecological, and well infant services to a patient;
 - (ii) assess findings and upon abnormal findings from the history, physical examination, or laboratory findings, manage the treatment of the patient, collaborate with the consulting physician or another qualified physician, or refer the patient to the consulting physician or to another qualified physician as appropriate;
 - (iii) diagnose, plan, and implement appropriate patient care, including the administration and prescribing of:
 - (A) prescription drugs;
 - (B) schedule IV-V controlled substances; and
 - (C) schedule II-III controlled substances in accordance with a consultation and referral plan;
 - (iv) evaluate the results of patient care;
 - (v) consult as is appropriate regarding patient care and the results of patient care;
 - (vi) manage the intrapartum period according to accepted standards of nurse midwifery practice and a written intrapartum referral plan, including performance of routine episiotomy and repairs, and administration of anesthesia, including local, pudendal, or paracervical block anesthesia, but not including general anesthesia and major conduction anesthesia;
 - (vii) manage the postpartum period;
 - (viii) provide gynecological services;
 - (ix) provide noncomplicated newborn and infant care to the age of one year; and
 - (x) represent or hold oneself out as a certified nurse midwife, or nurse midwife, or use the title certified nurse midwife, nurse midwife, or the initials C.N.M., N.M., or R.N.
- (10) "Unlawful conduct" is defined in Sections 58-1-501 and 58-44a-501.
- (11) "Unlicensed assistive personnel" means any unlicensed person, regardless of title, to whom tasks are delegated by a licensed certified nurse midwife in accordance with the standards of the profession as defined by rule.
- (12) "Unprofessional conduct" is defined in Sections 58-1-501 and 58-44a-502 and as may be further defined by rule.

Amended by Chapter 285, 2012 General Session

Part 2 Board

58-44a-201 Board.

- (1) There is created the Certified Nurse Midwife Board consisting of four certified nurse midwives and one member representing the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3) The duties and responsibilities of the board are in accordance with Sections 58-1-202 and 58-1-203, and the board shall also:
 - (a) designate one of its members on a permanent or rotating basis to assist the division in reviewing complaints concerning the unlawful or unprofessional practice of a certified nurse midwife; and
 - (b) advise the division in its investigation of these complaints.
- (4) A board member who has, under Subsection (3), reviewed a complaint or advised in its investigation may be disqualified from participating with the board when the board serves as a presiding officer in an adjudicative proceeding concerning the complaint.

Amended by Chapter 288, 1998 General Session

Part 3 Licensing

58-44a-301 Licensure required -- License classification.

- (1) A license is required to engage in practice as a certified nurse midwife, except as provided in Section 58-1-307.
- (2) The division shall issue to individuals qualified under the provisions of this chapter a license in the classification certified nurse midwife.
- (3) An individual holding a certified nurse midwife license as of July 1, 1998, who cannot document the successful completion of advanced course work approved by the division in collaboration with the board in patient assessment, diagnosis and treatment, and pharmacotherapeutics, may not prescribe and shall be issued a "CNM without prescriptive practice" license.
- (4) The division shall grant a certified nurse midwife license to any licensed certified nurse midwife currently holding prescriptive authority under any predecessor act on July 1, 1998.

Amended by Chapter 288, 1998 General Session

58-44a-302 Qualifications for licensure.

- (1) An applicant for licensure as a nurse midwife shall:
 - (a) submit an application in a form as prescribed by the division;
 - (b) pay a fee as determined by the department under Section 63J-1-504;
 - (c) at the time of application for licensure hold a license in good standing as a registered nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58, Chapter 31b, Nurse Practice Act;
 - (d) have completed:
 - (i) a certified nurse midwifery education program accredited by the Accreditation Commission for Midwifery Education and approved by the division; or
 - (ii) a nurse midwifery education program located outside of the United States which is approved by the division and is equivalent to a program accredited by the Accreditation Commission for Midwifery Education, as demonstrated by a graduate's being accepted to sit for the

national certifying examination administered by the Accreditation Commission for Midwifery Education or its designee;

- (e) have passed examinations established by the division rule in collaboration with the board within two years after completion of the approved education program required under Subsection (1)(d); and
 - (f) complete and pass a criminal background check in accordance with Section 58-44a-302.1.
- (2) For purposes of Subsection (1)(d), as of January 1, 2010, an applicant shall have completed a graduate degree, including post-master's certificate, in nurse midwifery from the accredited education program or the accredited education program's equivalent..

Amended by Chapter 415, 2022 General Session

Amended by Chapter 438, 2022 General Session

58-44a-302.1 Background checks.

- (1) An applicant for licensure under this chapter shall:
- (a) submit fingerprint cards in a form acceptable to the division at the time the license application is filed; and
 - (b) consent to a fingerprint background check conducted by the Bureau of Criminal Identification and the Federal Bureau of Investigation regarding the application.
- (2) The division shall:
- (a) in addition to other fees authorized by this chapter, collect from each applicant submitting fingerprints in accordance with this section:
 - (i) the fee that the Bureau of Criminal Identification is authorized to collect for the services provided under Section 53-10-108; and
 - (ii) the fee charged by the Federal Bureau of Investigation for fingerprint processing for the purpose of obtaining federal criminal history record information;
 - (b) submit from each applicant the fingerprint card and the fees described in Subsection (2)(a) to the Bureau of Criminal Identification; and
 - (c) obtain and retain in division records a signed waiver approved by the Bureau of Criminal Identification in accordance with Section 53-10-108 for each applicant.
- (3) The Bureau of Criminal Identification shall, in accordance with the requirements of Section 53-10-108:
- (a) check the fingerprints submitted under Subsection (2)(b) against the applicable state and regional criminal records databases;
 - (b) forward the fingerprints to the Federal Bureau of Investigation for a national criminal history background check; and
 - (c) provide the results from the state, regional, and nationwide criminal history background checks to the division.
- (4) For purposes of conducting a criminal background check required under this section, the division shall have direct access to criminal background information maintained under Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
- (5) Except for information provided to the applicant, the division may not disseminate outside of the division any criminal history record information that the division obtains from the Bureau of Criminal Identification or the Federal Bureau of Investigation under the criminal background check requirements of this section.
- (6)
- (a) A new nurse midwife license issued under Section 58-44a-302 is conditional pending completion of the criminal background check.

- (b) Notwithstanding Title 63G, Chapter 4, Administrative Procedures Act, if the criminal background check required in Subsection 58-44a-302(1) demonstrates the applicant has failed to accurately disclose a criminal history, the license is immediately and automatically revoked upon notice to the licensee by the division.
 - (c) An individual's whose conditional license has been revoked under Subsection (6)(b) is entitled to a postrevocation hearing to challenge the revocation.
 - (d) The division shall conduct a postrevocation hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (7) The division may not authorize the practice of the licensee under Chapter 31d, Advanced Practice Registered Nurse Compact, until the criminal background check described in this section is completed.

Enacted by Chapter 438, 2022 General Session

58-44a-303 Term of license -- Expiration -- Renewal.

- (1)
- (a) Each license issued under this chapter shall be issued in accordance with a two-year renewal cycle established by rule.
 - (b) A renewal period may be extended or shortened by as much as one year to maintain established renewal cycles or to change an established renewal cycle.
- (2) At the time of renewal, the licensee shall:
- (a) hold a valid certification from the American College of Nurse Midwives Certification Council, Inc.; and
 - (b) have met continuing competency requirements defined by the division rule in collaboration with the board.

Amended by Chapter 268, 2001 General Session

58-44a-304 Continuing education.

The division in collaboration with the board may establish by rule continuing education requirements for renewal of licensure under this chapter, upon a finding by the division that continuing education requirements are necessary to protect the public health, safety, and welfare.

Enacted by Chapter 187, 1994 General Session

58-44a-305 Intern license.

- (1) The division may issue an intern license to an individual who meets all qualifications for licensure except the passing of the qualifying examination if the applicant:
- (a) graduated from an approved education program within the 12 months immediately preceding the application for licensure;
 - (b) has never before taken the qualifying examination;
 - (c) is registered to take the next qualifying examination; and
 - (d) presents a plan acceptable to the division and board under which the applicant will practice under any intern license issued only under the direct supervision of a nurse midwife or physician.
- (2) An intern license issued under this section expires on:
- (a) the date of the next qualifying examination immediately following issuance of the intern license if the intern license holder does not sit for that examination;

- (b) the date the examination results are available if the intern license holder sits for the next succeeding qualifying examination and fails the examination; or
- (c) the date on which a regular license is issued if the intern license holder passes the examination and is otherwise qualified for licensure.

Amended by Chapter 288, 1998 General Session

Part 4 License Denial and Discipline

58-44a-401 Grounds for denial of license -- Disciplinary proceedings.

Division grounds for refusal to issue a license to an applicant, for refusal to renew the license of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to issue a public or private reprimand to a licensee, and to issue cease and desist orders are in accordance with Section 58-1-401.

Enacted by Chapter 187, 1994 General Session

58-44a-402 Authority to assess penalty.

- (1) After a proceeding pursuant to Title 63G, Chapter 4, Administrative Procedures Act, and Title 58, Chapter 1, Division of Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule established by rule.
- (2) The assessment of a penalty under this section does not affect any other action the division is authorized to take regarding a license issued under this chapter.
- (3) The division may impose an administrative penalty of up to \$500 for any violation of Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.
- (4)
 - (a) The director may collect a penalty that is not paid by:
 - (i) referring the matter to a collection agency; or
 - (ii) bringing an action in the district court of the county where the person against whom the penalty is imposed resides or in the county where the office of the director is located.
 - (b) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.
 - (c) A court shall award reasonable attorney fees and costs to the prevailing party in an action brought by the division to collect a penalty.

Amended by Chapter 415, 2022 General Session

Part 5 Unlawful and Unprofessional Conduct - Penalties

58-44a-501 Unlawful conduct.

"Unlawful conduct" includes:

- (1) engaging in practice as a certified nurse midwife when not licensed or exempted from licensure under this chapter, or engaging in practice as a registered nurse when not licensed or exempted from licensure under this chapter or Title 58, Chapter 31b, Nurse Practice Act;
- (2) representing or holding oneself out as a certified nurse midwife, nurse midwife, or identifying oneself by the initials C.N.M. or N.M. when not licensed under this chapter;
- (3) representing or holding out oneself as a registered nurse or identifying oneself by the initials R.N. when not licensed under this chapter or Title 58, Chapter 31b, Nurse Practice Act; and
- (4) using any other title, initials, or any other means indicating that one is licensed under this chapter.

Repealed and Re-enacted by Chapter 288, 1998 General Session

58-44a-502 Unprofessional conduct.

"Unprofessional conduct" includes:

- (1) disregard for a patient's dignity or right to privacy as to the patient's person, condition, possessions, or medical record;
- (2) engaging in an act, practice, or omission which when considered with the duties and responsibilities of a certified nurse midwife does or could jeopardize the health, safety, or welfare of a patient or the public;
- (3) failure to confine one's practice as a certified nurse midwife to those acts or practices permitted by law;
- (4) failure to file or record any medical report as required by law, impeding or obstructing the filing or recording of such a report, or inducing another to fail to file or record such a report;
- (5) breach of a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a patient, unless ordered by the court;
- (6) failure to pay a penalty imposed by the division;
- (7) prescribing a schedule II-III controlled substance without a consulting physician;
- (8) performing or inducing an abortion in violation of the requirements of Section 76-7-302 or Section 76-7a-201, regardless of whether the individual licensed under this chapter is found guilty of a crime in connection with the violation;
- (9)
 - (a) failure to have and maintain a safe mechanism for obtaining medical consultation, collaboration, and referral with a consulting physician, including failure to identify one or more consulting physicians in the written documents required by Subsection 58-44a-102(9)(b)(iii); or
 - (b) representing that the certified nurse midwife is in compliance with Subsection (9)(a) when the certified nurse midwife is not in compliance with Subsection (9)(a); or
- (10) falsely making an entry in, or altering, a medical record with the intent to conceal:
 - (a) a wrongful or negligent act or omission of an individual licensed under this chapter or an individual under the direction or control of an individual licensed under this chapter; or
 - (b) conduct described in Subsections (1) through (9) or Subsection 58-1-501(1).

Amended by Chapter 301, 2023 General Session

58-44a-503 Penalty for unlawful conduct.

- (1) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(1) is guilty of a third degree felony.

- (2) Any individual who violates the unlawful conduct provisions of Subsection 58-44a-501(2), (3), or (4) is guilty of a class A misdemeanor.
- (3) Subject to Subsection (4), the division may assess administrative penalties in accordance with the provisions of Section 58-44a-402 for acts of unprofessional or unlawful conduct, or any other appropriate administrative action in accordance with the provisions of Section 58-44a-401.
- (4) If a licensee has been convicted of violating Section 58-44a-501 prior to an administrative finding of a violation of the same section, the licensee may not be assessed a administrative penalty under this chapter for the same offense for which the conviction was obtained.

Enacted by Chapter 288, 1998 General Session

Part 6 Delivery by Parents

58-44a-601 Parents delivering their children.

This chapter does not abridge, limit, or change in any way the right of parents to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Repealed and Re-enacted by Chapter 288, 1998 General Session