

**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: \_\_\_\_\_

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**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

**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



26 58-77-601, as last amended by Laws of Utah 2014, Chapter 189



27  
28 *Be it enacted by the Legislature of the state of Utah:*

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

30 **58-77-501. Unlawful conduct.**

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

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

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

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

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

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

44 **58-77-503. Penalty for unlawful conduct -- Penalty for a violation by an**  
45 **unlicensed direct-entry midwife.**

46 [~~A person who violates the~~]

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

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

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

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

56 (c) violates Section 58-77-603.

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

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

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

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

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

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

68 **58-77-601. Standards of practice -- Informed consent -- Licensed direct-entry**  
 69 **midwives -- Unlicensed direct-entry midwives.**

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

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

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

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

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

79 ~~[(iii) the fact, if true, that the licensed Direct-entry midwife is not a certified nurse~~  
 80 ~~midwife or a physician;]~~

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

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

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

87 ~~[(v)]~~ (f) a description of the [licensed Direct-entry midwife's] individual's peer review

88 process, if any;

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

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

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

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

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

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

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

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

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

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

110 (k) if the individual is unlicensed, a statement that it is unlawful for the individual to  
111 carry or administer prescription medications other than oxygen;

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

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

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

115 ~~[(xiii)] (o) a statement that discloses whether the [licensed Direct-entry midwife]~~  
116 individual is covered by a professional liability insurance policy.

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

119 the client gives birth.

120 [~~(2)~~] (3) A licensed direct-entry midwife shall:

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

124 (A) that is not pharmacologically induced;

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

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

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

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

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

133 (A) intrauterine fetal demise; or

134 (B) a fetal anomaly incompatible with life; and

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

139 [~~(3)~~] (4) If after a client has been informed that she has or may have a condition  
140 indicating the need for medical consultation, collaboration, referral, or transfer and the client  
141 chooses to decline, then the licensed direct-entry midwife shall:

142 (a) terminate care in accordance with procedures established by division rule; or

143 (b) continue to provide care for the client if the client signs a waiver of medical  
144 consultation, collaboration, referral, or transfer.

145 [~~(4)~~] (5) If after a client has been informed that she has or may have a condition  
146 indicating the need for mandatory transfer, the licensed direct-entry midwife shall, in  
147 accordance with procedures established by division rule, terminate the care or initiate transfer  
148 by:

149 (a) calling 911 and reporting the need for immediate transfer;

150 (b) immediately transporting the client by private vehicle to the receiving provider; or

151 (c) contacting the physician to whom the client will be transferred and following that  
152 physician's orders.

153 [~~(5)~~] (6) The standards for consultation and transfer are the minimum standards that a  
154 licensed Direct-entry midwife must follow. A licensed Direct-entry midwife shall initiate  
155 consultation, collaboration, referral, or transfer of a patient sooner than required by  
156 administrative rule if in the opinion and experience of the licensed Direct-entry midwife, the  
157 condition of the client or infant warrant a consultation, collaboration, referral, or transfer.

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

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