

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0439.01 Christy Chase x2008

HOUSE BILL 16-1360

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HOUSE SPONSORSHIP

Landgraf and Lontine, Esgar, Ginal

SENATE SPONSORSHIP

Lundberg,

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House Committees

Health, Insurance, & Environment

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING THE CONTINUATION OF THE REGULATION OF  
102 DIRECT-ENTRY MIDWIVES BY THE DIRECTOR OF THE DIVISION OF  
103 PROFESSIONS AND OCCUPATIONS IN THE DEPARTMENT OF  
104 REGULATORY AGENCIES, AND, IN CONNECTION THEREWITH,  
105 IMPLEMENTING THE RECOMMENDATIONS CONTAINED IN THE  
106 SUNSET REPORT PREPARED BY THE DEPARTMENT.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)*

Sunset Process - House Health, Insurance, and Environment

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters indicate new material to be added to existing statute.  
Dashes through the words indicate deletions from existing statute.

**Committee.** The bill implements the recommendations of the department of regulatory agencies (department) contained in the sunset review of direct-entry midwives, with some modifications, as follows:

- ! Continues the regulation of direct-entry midwives by the director of the division of professions and occupations (division) in the department for 7 years, through September 1, 2023;
- ! Authorizes direct-entry midwives to perform sutures of first- and second-degree perineal tears and to obtain and administer local anesthetics in connection with the sutures procedure after demonstrating to the director that the registrant has received approved education and training in suturing within the previous 6 months;
- ! Requires direct-entry midwives to inform parents of the importance of and perform, if appropriately trained and equipped, or refer to another provider to perform, newborn pulse oximetry screenings to detect critical congenital heart disease in newborns under their care;
- ! Repeals the requirement that the director send letters of admonition to direct-entry midwives via certified mail;
- ! Establishes failure to properly address a physical or mental illness or condition that affects one's ability to practice direct-entry midwifery with reasonable skill and safety to clients as a grounds for disciplining a direct-entry midwife and authorizes the director to enter into a confidential agreement with the direct-entry midwife to limit his or her practice;
- ! Requires a direct-entry midwife to sign a disclosure statement acknowledging his or her lack of coverage under a liability insurance policy and also include in the disclosure a statement indicating that, by signing the disclosure, the client is not waiving any rights against the direct-entry midwife for negligent acts;
- ! Requires the executive director of the department to convene a working group to investigate ways to manage risks in the practice of midwifery and report its findings to the executive director by October 1, 2016; and
- ! Requires the director of the division to convene a task force to review direct-entry midwives' data reporting requirements and report its findings to specified legislative committees by January 21, 2017.

1           **SECTION 1.** In Colorado Revised Statutes, **amend** 12-37-110 as  
2 follows:

3           **12-37-110. Repeal of article.** (1) This article is repealed,  
4 effective September 1, ~~2016~~ 2023.

5           (2) Prior to ~~such~~ THE repeal, THE DEPARTMENT OF REGULATORY  
6 AGENCIES SHALL REVIEW the registering of direct-entry midwives by the  
7 division of professions and occupations ~~shall be reviewed~~ as provided in  
8 section 24-34-104, C.R.S.

9           **SECTION 2.** In Colorado Revised Statutes, 24-34-104, **repeal**  
10 (47.5) (h); and **add** (54) (b) as follows:

11           **24-34-104. General assembly review of regulatory agencies**  
12 **and functions for termination, continuation, or reestablishment.**

13 (47.5) The following agencies, functions, or both, shall terminate on  
14 September 1, 2016:

15           (h) ~~The registration of direct-entry midwives by the division of~~  
16 ~~registrations in accordance with article 37 of title 12, C.R.S.~~

17           (54) The following agencies, functions, or both, terminate on  
18 September 1, 2023:

19           (b) THE REGISTRATION OF DIRECT-ENTRY MIDWIVES BY THE  
20 DIVISION OF PROFESSIONS AND OCCUPATIONS IN ACCORDANCE WITH  
21 ARTICLE 37 OF TITLE 12, C.R.S.

22           **SECTION 3.** In Colorado Revised Statutes, 12-37-105, **amend**  
23 (2), (5) (a) (IV), (9), and (14) as follows:

24           **12-37-105. Prohibited acts - practice standards - informed**  
25 **consent - emergency plan - risk assessment - referral - rules.** (2) A  
26 direct-entry midwife shall not perform any operative or surgical  
27 procedure; EXCEPT THAT A DIRECT-ENTRY MIDWIFE MAY PERFORM

1 SUTURES OF PERINEAL TEARS IN ACCORDANCE WITH SECTION 12-37-105.5.

2 (5) (a) A direct-entry midwife shall keep appropriate records of  
3 midwifery-related activity, including but not limited to the following:

4 (IV) (A) Until the liability insurance required pursuant to section  
5 12-37-109 (3) is available, each direct-entry midwife shall, before  
6 accepting a client for care, provide ~~such~~ THE client with a disclosure  
7 statement indicating that the midwife does not have liability insurance.  
8 ~~Such statement,~~ To comply with this section, ~~must be printed~~ THE  
9 DIRECT-ENTRY MIDWIFE SHALL ENSURE THAT THE DISCLOSURE STATEMENT  
10 IS PRINTED in at least twelve-point bold-faced type and shall ~~be read~~ THE  
11 STATEMENT to the client in a language ~~she~~ THE CLIENT understands. Each  
12 client shall sign the disclosure statement acknowledging that ~~she~~ THE  
13 CLIENT understands the effect of its provisions. THE DIRECT-ENTRY  
14 MIDWIFE SHALL ALSO SIGN THE DISCLOSURE STATEMENT AND PROVIDE a  
15 copy of the signed disclosure statement ~~shall be given~~ to the client.

16 (B) IN ADDITION TO THE INFORMATION REQUIRED IN  
17 SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (IV), THE DIRECT-ENTRY  
18 MIDWIFE SHALL INCLUDE THE FOLLOWING STATEMENT IN THE DISCLOSURE  
19 STATEMENT AND SHALL DISPLAY THE STATEMENT PROMINENTLY AND  
20 DELIVER THE STATEMENT ORALLY TO THE CLIENT BEFORE THE CLIENT  
21 SIGNS THE DISCLOSURE STATEMENT: "SIGNING THIS DISCLOSURE  
22 STATEMENT DOES NOT CONSTITUTE A WAIVER OF ANY RIGHT (INSERT  
23 CLIENT'S NAME) HAS TO SEEK DAMAGES OR REDRESS FROM THE  
24 UNDERSIGNED DIRECT-ENTRY MIDWIFE FOR ANY ACT OF NEGLIGENCE OR  
25 ANY INJURY (INSERT CLIENT'S NAME) MAY SUSTAIN IN THE COURSE OF  
26 CARE ADMINISTERED BY THE UNDERSIGNED DIRECT-ENTRY MIDWIFE."

27 (9) (a) A direct-entry midwife shall provide eye prophylactic

1 therapy to all newborn children in ~~such~~ THE direct-entry midwife's care  
2 in accordance with section 25-4-301, C.R.S.

3 (b) A DIRECT-ENTRY MIDWIFE SHALL INFORM THE PARENTS OF ALL  
4 NEWBORN CHILDREN IN THE DIRECT-ENTRY MIDWIFE'S CARE OF THE  
5 IMPORTANCE OF CRITICAL CONGENITAL HEART DEFECT SCREENING USING  
6 PULSE OXIMETRY IN ACCORDANCE WITH SECTION 25-4-1004.3, C.R.S. IF  
7 A DIRECT-ENTRY MIDWIFE IS NOT PROPERLY TRAINED IN THE USE OF PULSE  
8 OXIMETRY OR DOES NOT HAVE THE USE OF OR OWN A PULSE OXIMETER,  
9 THE DIRECT-ENTRY MIDWIFE SHALL REFER THE PARENTS TO A HEALTH  
10 CARE PROVIDER WHO CAN PERFORM THE SCREENING. IF A DIRECT-ENTRY  
11 MIDWIFE IS PROPERLY TRAINED IN THE USE OF PULSE OXIMETRY AND HAS  
12 THE USE OF OR OWNS A PULSE OXIMETER, THE DIRECT-ENTRY MIDWIFE  
13 SHALL PERFORM THE CRITICAL CONGENITAL HEART DEFECT SCREENING ON  
14 NEWBORN CHILDREN IN HIS OR HER CARE IN ACCORDANCE WITH SECTION  
15 25-4-1004.3, C.R.S.

16 (14) A registrant shall not practice beyond the scope of his or her  
17 education and training. ~~or with a mental or physical impairment sufficient~~  
18 ~~to render the registrant unable to perform midwifery services with~~  
19 ~~reasonable skill and with safety to the client.~~

20 **SECTION 4.** In Colorado Revised Statutes, **add** 12-37-105.3 as  
21 follows:

22 **12-37-105.3. Reporting requirements task force - director to**  
23 **convene - report - repeal.** (1) THE DIRECTOR SHALL CONVENE A TASK  
24 FORCE OF STAKEHOLDERS FROM THE MEDICAL COMMUNITY, THE  
25 DIRECT-ENTRY MIDWIFE PROFESSION, OTHER STATE DEPARTMENTS OR  
26 AGENCIES THAT MIGHT BE AFFECTED, AND THE PUBLIC TO REVIEW THE  
27 DATA REPORTING REQUIREMENTS SET FORTH IN SECTION 12-37-105 (12).

1 THE TASK FORCE SHALL:

2 (a) DETERMINE WHETHER THE INFORMATION REQUIRED TO BE  
3 REPORTED UNDER SECTION 12-37-105 (12) SHOULD BE MODIFIED;

4 (b) IDENTIFY WAYS TO ENHANCE THE QUALITY AND USEFULNESS  
5 OF THE DATA COLLECTED;

6 (c) CONSIDER WHETHER DIRECT-ENTRY MIDWIVES SHOULD REPORT  
7 THE DATA TO DIFFERENT OR ADDITIONAL AGENCIES;

8 (d) CONSIDER WHETHER THE DIRECTOR SHOULD USE THE DATA  
9 WHEN DETERMINING WHETHER TO RENEW AN APPLICANT'S REGISTRATION;

10 AND

11 (e) DEVELOP LEGISLATIVE AND REGULATORY RECOMMENDATIONS  
12 AS NECESSARY TO IMPLEMENT THE TASK FORCE'S FINDINGS REGARDING  
13 DATA COLLECTION AND USE.

14 (2) THE DIRECTOR SHALL REPORT THE TASK FORCE'S FINDINGS AND  
15 RECOMMENDATIONS TO THE HEALTH, INSURANCE, AND ENVIRONMENT AND  
16 PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEES OF THE HOUSE  
17 OF REPRESENTATIVES OR THEIR SUCCESSOR COMMITTEES AND THE HEALTH  
18 AND HUMAN SERVICES COMMITTEE OF THE SENATE OR ITS SUCCESSOR  
19 COMMITTEE BY JANUARY 31, 2017.

20 (3) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2017.

21 **SECTION 5.** In Colorado Revised Statutes, 12-37-105.5, **amend**  
22 (2) (c) and (2) (d); **add** (2) (e); and **recreate and reenact, with**  
23 **amendments,** (6) as follows:

24 **12-37-105.5. Limited use of certain medications - limited use**  
25 **of sutures - limited administration of intravenous fluids - emergency**  
26 **medical procedures - rules.** (2) Except as otherwise provided in  
27 subsection (3) of this section, a registrant may obtain and administer:

1 (c) Postpartum antihemorrhagic drugs to mothers; ~~and~~  
2 (d) Eye prophylaxis; AND  
3 (e) LOCAL ANESTHETICS, AS SPECIFIED BY THE DIRECTOR BY RULE,  
4 TO USE IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION;

5 (6) (a) SUBJECT TO PARAGRAPH (b) OF THIS SUBSECTION (6), A  
6 REGISTRANT MAY PERFORM SUTURES OF FIRST-DEGREE AND  
7 SECOND-DEGREE PERINEAL TEARS, AS DEFINED BY THE DIRECTOR BY RULE,  
8 ON A CLIENT AND MAY ADMINISTER LOCAL ANESTHETICS TO THE CLIENT  
9 IN CONNECTION WITH SUTURING PERINEAL TEARS.

10 (b) IN ORDER TO PERFORM SUTURES OF FIRST-DEGREE AND  
11 SECOND-DEGREE PERINEAL TEARS, THE REGISTRANT SHALL APPLY TO THE  
12 DIRECTOR, IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR, AND  
13 PAY ANY APPLICATION FEE THE DIRECTOR MAY IMPOSE, FOR AN  
14 AUTHORIZATION TO PERFORM SUTURES OF FIRST-DEGREE AND  
15 SECOND-DEGREE PERINEAL TEARS. AS PART OF THE APPLICATION, THE  
16 REGISTRANT SHALL DEMONSTRATE TO THE DIRECTOR THAT THE  
17 REGISTRANT HAS RECEIVED EDUCATION AND TRAINING APPROVED BY THE  
18 DIRECTOR ON SUTURING OF PERINEAL TEARS WITHIN THE SIX MONTHS  
19 IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION. THE DIRECTOR  
20 MAY GRANT THE AUTHORIZATION TO THE REGISTRANT ONLY IF THE  
21 REGISTRANT HAS COMPLIED WITH THE EDUCATION AND TRAINING  
22 REQUIREMENT SPECIFIED IN THIS PARAGRAPH (b). AN AUTHORIZATION  
23 ISSUED UNDER THIS PARAGRAPH (b) IS VALID, AND NEED NOT BE RENEWED,  
24 IF THE DIRECT-ENTRY MIDWIFE HOLDS A VALID REGISTRATION UNDER THIS  
25 ARTICLE.

26 **SECTION 6.** In Colorado Revised Statutes, 12-37-107, **amend**  
27 (3) (l), (3) (m), (7) (a), and (7) (b); and **add** (3) (n) as follows:

1           **12-37-107. Disciplinary action authorized - grounds for**  
2 **discipline - injunctions - rules.** (3) The director may deny, revoke, or  
3 suspend a registration or issue a letter of admonition or place a registrant  
4 on probation for any of the following acts or omissions:

5           (l) Aiding or knowingly permitting any person to violate any  
6 provision of this article; ~~or~~

7           (m) Advertising through newspapers, magazines, circulars, direct  
8 mail, directories, radio, television, website, e-mail, text message, or  
9 otherwise that the registrant will perform any act prohibited by this  
10 article; OR

11           (n) (I) FAILING TO NOTIFY THE DIRECTOR, AS REQUIRED BY  
12 SECTION 12-37-108.5 (1), OF A PHYSICAL OR MENTAL ILLNESS OR  
13 CONDITION THAT RENDERS THE REGISTRANT UNABLE, OR LIMITS THE  
14 REGISTRANT'S ABILITY, TO PRACTICE DIRECT-ENTRY MIDWIFERY WITH  
15 REASONABLE SKILL AND SAFETY TO THE CLIENT;

16           (II) FAILING TO ACT WITHIN THE LIMITATIONS CREATED BY A  
17 PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE  
18 REGISTRANT UNABLE TO PRACTICE DIRECT-ENTRY MIDWIFERY WITH  
19 REASONABLE SKILL AND SAFETY OR THAT MAY ENDANGER THE HEALTH OR  
20 SAFETY OF PERSONS UNDER HIS OR HER CARE; OR

21           (III) FAILING TO COMPLY WITH THE LIMITATIONS AGREED TO  
22 UNDER A CONFIDENTIAL AGREEMENT ENTERED PURSUANT TO SECTION  
23 12-37-108.5.

24           (7) (a) When a complaint or investigation discloses an instance of  
25 misconduct that, in the opinion of the director, does not warrant formal  
26 action by the director but that should not be dismissed as being without  
27 merit, THE DIRECTOR MAY ISSUE AND SEND a letter of admonition ~~may be~~



1 ~~issued and sent, by certified mail,~~ to the registrant.

2 (b) When THE DIRECTOR SENDS a letter of admonition ~~is sent by~~  
3 ~~the director, by certified mail,~~ to a registrant, ~~such~~ THE DIRECTOR SHALL  
4 INFORM THE registrant ~~shall be advised~~ that he or she has the right to  
5 request in writing, within twenty days after receipt of the letter, that THE  
6 DIRECTOR INITIATE formal disciplinary proceedings ~~be initiated~~ to  
7 adjudicate the propriety of the conduct upon which the letter of  
8 admonition is based.

9 **SECTION 7.** In Colorado Revised Statutes, **add** 12-37-108.5 as  
10 follows:

11 **12-37-108.5. Confidential agreement to limit practice -**  
12 **violation - grounds for discipline.** (1) IF A REGISTERED DIRECT-ENTRY  
13 MIDWIFE HAS A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT  
14 RENDERS HIM OR HER UNABLE TO PRACTICE DIRECT-ENTRY MIDWIFERY  
15 WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE REGISTRANT SHALL  
16 NOTIFY THE DIRECTOR OF THE ILLNESS OR CONDITION IN A MANNER AND  
17 WITHIN A PERIOD DETERMINED BY THE DIRECTOR. THE DIRECTOR MAY  
18 REQUIRE THE REGISTRANT TO SUBMIT TO AN EXAMINATION TO EVALUATE  
19 THE EXTENT OF THE ILLNESS OR CONDITION AND ITS IMPACT ON THE  
20 REGISTRANT'S ABILITY TO PRACTICE DIRECT-ENTRY MIDWIFERY WITH  
21 REASONABLE SKILL AND SAFETY TO CLIENTS.

22 (2) (a) UPON DETERMINING THAT A REGISTRANT WITH A PHYSICAL  
23 OR MENTAL ILLNESS OR CONDITION IS ABLE TO RENDER LIMITED SERVICES  
24 WITH REASONABLE SKILL AND SAFETY TO CLIENTS, THE DIRECTOR MAY  
25 ENTER INTO A CONFIDENTIAL AGREEMENT WITH THE REGISTRANT IN WHICH  
26 THE REGISTRANT AGREES TO LIMIT HIS OR HER PRACTICE BASED ON THE  
27 RESTRICTIONS IMPOSED BY THE ILLNESS OR CONDITION, AS DETERMINED

1 BY THE DIRECTOR.

2 (b) AS PART OF THE AGREEMENT, THE REGISTRANT IS SUBJECT TO  
3 PERIODIC REEVALUATIONS OR MONITORING AS DETERMINED APPROPRIATE  
4 BY THE DIRECTOR.

5 (c) THE PARTIES MAY MODIFY OR DISSOLVE THE AGREEMENT AS  
6 NECESSARY BASED ON THE RESULTS OF A REEVALUATION OR MONITORING.

7 (3) BY ENTERING INTO AN AGREEMENT WITH THE DIRECTOR  
8 PURSUANT TO THIS SECTION TO LIMIT HIS OR HER PRACTICE, A REGISTRANT  
9 IS NOT ENGAGING IN ACTIVITIES THAT ARE GROUNDS FOR DISCIPLINE  
10 UNDER SECTION 12-37-107 (3). THE AGREEMENT DOES NOT CONSTITUTE  
11 A RESTRICTION OR DISCIPLINE BY THE DIRECTOR. HOWEVER, IF THE  
12 REGISTRANT FAILS TO COMPLY WITH THE TERMS OF AN AGREEMENT  
13 ENTERED INTO PURSUANT TO THIS SECTION, THE FAILURE CONSTITUTES A  
14 GROUND FOR DISCIPLINE PURSUANT TO SECTION 12-37-107 (3) (n), AND  
15 THE REGISTRANT IS SUBJECT TO DISCIPLINE IN ACCORDANCE WITH SECTION  
16 12-37-107.

17 (4) THIS SECTION DOES NOT APPLY TO A REGISTRANT WHO IS  
18 SUBJECT TO DISCIPLINE FOR ENGAGING IN ACTIVITIES AS DESCRIBED IN  
19 SECTION 12-37-107 (3) (f).

20 **SECTION 8.** In Colorado Revised Statutes, 12-37-109, **amend**  
21 (3) as follows:

22 **12-37-109. Assumption of risk - no vicarious liability -**  
23 **legislative declaration - professional liability insurance required -**  
24 **repeal.** (3) (a) If the director finds that liability insurance is available at  
25 an affordable price, registrants shall be required to carry such insurance.

26 (b) (I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
27 REGULATORY AGENCIES SHALL CONVENE A WORKING GROUP TO

1 INVESTIGATE WAYS OF MANAGING RISKS IN THE PRACTICE OF MIDWIFERY.  
2 THE WORKING GROUP SHALL CONSIST OF INDIVIDUALS WITH EXPERTISE IN  
3 RISK MANAGEMENT AND KNOWLEDGE OF THE PRACTICE OF MIDWIFERY.  
4 THE WORKING GROUP SHALL ASSESS POTENTIAL MECHANISMS FOR  
5 MANAGING RISKS, INCLUDING METHODS FOR MITIGATING LIABILITY;  
6 PROFESSIONAL LIABILITY INSURANCE; THE CREATION AND OPERATION OF  
7 A JOINT UNDERWRITING AUTHORITY; A RISK RETENTION GROUP; LETTERS  
8 OF CREDIT; AND POSTING SURETY BONDS OR OTHER FINANCIAL  
9 INSTRUMENTS OR ARRANGEMENTS THAT COULD BE USED TO SATISFY A  
10 CLAIM BASED ON PROFESSIONAL NEGLIGENCE.

11 (II) THE WORKING GROUP SHALL REPORT ITS FINDINGS TO THE  
12 EXECUTIVE DIRECTOR BY OCTOBER 1, 2016. THE EXECUTIVE DIRECTOR  
13 SHALL PROVIDE THE REPORT AND ANY RECOMMENDATIONS FOR  
14 LEGISLATION TO THE HEALTH, INSURANCE, AND ENVIRONMENT  
15 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE HEALTH AND  
16 HUMAN SERVICES COMMITTEE OF THE SENATE BY NOVEMBER 1, 2016.

17 (III) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE DECEMBER 1,  
18 2016.

19 **SECTION 9. Act subject to petition - effective date.** This act  
20 takes effect at 12:01 a.m. on the day following the expiration of the  
21 ninety-day period after final adjournment of the general assembly (August  
22 10, 2016, if adjournment sine die is on May 11, 2016); except that, if a  
23 referendum petition is filed pursuant to section 1 (3) of article V of the  
24 state constitution against this act or an item, section, or part of this act  
25 within such period, then the act, item, section, or part will not take effect  
26 unless approved by the people at the general election to be held in

- 1 November 2016 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.