

CHAPTER 350

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 16-1360

BY REPRESENTATIVE(S) Landgraf and Lontine, Esgar, Ginal, Court, Pabon, Rosenthal, Young, Humphrey, Klingenschmitt, Lebsock, Ransom;
also SENATOR(S) Lundberg, Crowder, Grantham, Hodge, Lambert, Neville T., Woods.

AN ACT

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

Be it enacted by the General Assembly of the State of Colorado:

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

12-37-110. Repeal of article. (1) This article is repealed, effective September 1, ~~2016~~ 2021.

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

SECTION 2. In Colorado Revised Statutes, 24-34-104, **repeal** (47.5) (h); and **add** (52.5) (f) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

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

(52.5) The following agencies, functions, or both, terminate on September 1, 2021:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

SECTION 3. In Colorado Revised Statutes, 12-37-102, **add** (6.5) as follows:

12-37-102. Definitions. As used in this article, unless the context otherwise requires:

(6.5) "PERINATAL" MEANS THE PERIOD FROM THE TWENTY-EIGHTH WEEK OF PREGNANCY THROUGH SEVEN DAYS AFTER BIRTH.

SECTION 4. In Colorado Revised Statutes, 12-37-105, **amend** (2), (5) (a) (IV), (9), and (14) as follows:

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules. (2) A direct-entry midwife shall not perform any operative or surgical procedure; except that a direct-entry midwife may perform sutures of perineal tears in accordance with section 12-37-105.5.

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

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

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

(9) (a) A direct-entry midwife shall provide eye prophylactic therapy to all newborn children in ~~such~~ THE direct-entry midwife's care in accordance with section 25-4-301, C.R.S.

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

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

SECTION 5. In Colorado Revised Statutes, **add** 12-37-105.3 as follows:

12-37-105.3. Reporting requirements task force - director to convene - report - repeal. (1) THE DIRECTOR SHALL CONVENE A TASK FORCE OF STAKEHOLDERS FROM THE MEDICAL COMMUNITY, INCLUDING AN OBSTETRICIAN, A PEDIATRICIAN, AND A CERTIFIED NURSE MIDWIFE, THE DIRECT-ENTRY MIDWIFE PROFESSION, OTHER STATE DEPARTMENTS OR AGENCIES THAT MIGHT BE AFFECTED, AND THE PUBLIC TO REVIEW THE DATA REPORTING REQUIREMENTS SET FORTH IN SECTION 12-37-105 (12). THE TASK FORCE SHALL:

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

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

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

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

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

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

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

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

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

(c) Postpartum antihemorrhagic drugs to mothers; ~~and~~

(d) Eye prophylaxis; AND

(e) LOCAL ANESTHETICS, AS SPECIFIED BY THE DIRECTOR BY RULE, TO USE IN ACCORDANCE WITH SUBSECTION (6) OF THIS SECTION;

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

(b) IN ORDER TO PERFORM SUTURES OF FIRST-DEGREE AND SECOND-DEGREE PERINEAL TEARS, THE REGISTRANT SHALL APPLY TO THE DIRECTOR, IN THE FORM AND MANNER REQUIRED BY THE DIRECTOR, AND PAY ANY APPLICATION FEE THE DIRECTOR MAY IMPOSE, FOR AN AUTHORIZATION TO PERFORM SUTURES OF FIRST-DEGREE AND SECOND-DEGREE PERINEAL TEARS. AS PART OF THE APPLICATION, THE REGISTRANT SHALL DEMONSTRATE TO THE DIRECTOR THAT THE REGISTRANT HAS RECEIVED EDUCATION AND TRAINING APPROVED BY THE DIRECTOR ON SUTURING OF PERINEAL TEARS WITHIN THE YEAR IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION OR WITHIN SUCH OTHER TIME THE DIRECTOR, BY RULE, DETERMINES TO BE APPROPRIATE. THE DIRECTOR MAY GRANT THE AUTHORIZATION TO THE REGISTRANT ONLY IF THE REGISTRANT HAS COMPLIED WITH THE EDUCATION AND TRAINING REQUIREMENT SPECIFIED IN THIS PARAGRAPH (b). AN AUTHORIZATION ISSUED UNDER THIS PARAGRAPH (b) IS VALID, AND NEED NOT BE RENEWED, IF THE DIRECT-ENTRY MIDWIFE HOLDS A VALID REGISTRATION UNDER THIS ARTICLE.

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

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

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

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

(n) (I) FAILING TO NOTIFY THE DIRECTOR, AS REQUIRED BY SECTION 12-37-108.5

(1), OF A PHYSICAL OR MENTAL ILLNESS OR CONDITION THAT RENDERS THE REGISTRANT UNABLE, OR LIMITS THE REGISTRANT'S ABILITY, TO PRACTICE DIRECT-ENTRY MIDWIFERY WITH REASONABLE SKILL AND SAFETY TO THE CLIENT;

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

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

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, ~~THE DIRECTOR MAY ISSUE AND SEND A LETTER OF ADMONITION MAY BE ISSUED AND SENT, BY CERTIFIED MAIL,~~ to the registrant.

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

SECTION 8. In Colorado Revised Statutes, **add** 12-37-108.5 as follows:

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

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

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

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

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

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

SECTION 9. In Colorado Revised Statutes, 12-37-109, **amend** (3) as follows:

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

(b)(I) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF REGULATORY AGENCIES SHALL CONVENE A WORKING GROUP TO INVESTIGATE WAYS OF MANAGING RISKS IN THE PRACTICE OF MIDWIFERY. THE WORKING GROUP SHALL CONSIST OF INDIVIDUALS WITH EXPERTISE IN RISK MANAGEMENT AND KNOWLEDGE OF THE PRACTICE OF MIDWIFERY. THE WORKING GROUP SHALL ASSESS POTENTIAL MECHANISMS FOR MANAGING RISKS, INCLUDING METHODS FOR MITIGATING LIABILITY; PROFESSIONAL LIABILITY INSURANCE; THE CREATION AND OPERATION OF A JOINT UNDERWRITING AUTHORITY; A RISK RETENTION GROUP; LETTERS OF CREDIT; AND POSTING SURETY BONDS OR OTHER FINANCIAL INSTRUMENTS OR ARRANGEMENTS THAT COULD BE USED TO SATISFY A CLAIM BASED ON PROFESSIONAL NEGLIGENCE.

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

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

SECTION 10. In Colorado Revised Statutes, 12-36-106, **recreate and reenact, with amendments**, (1) (f) (II) as follows:

12-36-106. Practice of medicine defined - exemptions from licensing requirements - unauthorized practice by physician assistants and anesthesiologist assistants - penalties - rules - repeal. (1) For the purpose of this article, "practice of medicine" means:

(f) The practice of midwifery, except:

(II) (A) SERVICES RENDERED BY A PERSON PROPERLY REGISTERED AS A DIRECT-ENTRY MIDWIFE AND PRACTICING IN ACCORDANCE WITH ARTICLE 37 OF THIS

TITLE.

(B) THIS SUBPARAGRAPH (II) IS REPEALED, EFFECTIVE SEPTEMBER 1, 2023.

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

Approved: June 10, 2016