
THIRD READING

Bill No: SB 1237
Author: Dodd (D), et al.
Amended: 6/18/20
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 8-0, 5/18/20
AYES: Glazer, Chang, Archuleta, Dodd, Galgiani, Hill, Leyva, Wilk
NO VOTE RECORDED: Pan

SENATE APPROPRIATIONS COMMITTEE: 6-0, 6/18/20
AYES: Portantino, Bradford, Hill, Jones, Leyva, Wieckowski
NO VOTE RECORDED: Bates

SUBJECT: Nurse-midwives: scope of practice

SOURCE: Black Women for Wellness Action Project
California Nurse-Midwives Association

DIGEST: This bill removes the requirement for physician and surgeon supervision for a certified nurse midwife (CNM) to practice midwifery; revises the provisions defining the practice of midwifery; authorizes a CNM to attend cases out of a hospital setting; authorizes a CNM to furnish or order drugs or devices in accordance with standardized protocols; and, requires a CNM to provide specified disclosures to a patient.

ANALYSIS:

Existing law:

- 1) Establishes the Board of Registered Nursing (BRN) to provide for the licensure and regulation of the practice of nursing and authorizes the BRN to issue a certificate to practice nurse-midwifery to a person who meets educational standards established by the BRN or the equivalent of those educational standards. (Business and Professions Code (BPC) §§ 2700 et seq.)

- 2) Specifies that the practice of “midwifery” is the furthering or undertaking by a CNM, under the supervision of a licensed physician who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal and all complications are to be referred to a physician. (BPC § 2746.5(b))
- 3) Authorizes a CNM to perform and repair episiotomies and to repair first-degree and second degree lacerations of the perineum in a licensed acute care hospital and a licensed alternate birth center, if certain requirements are met, including, but not limited to, that episiotomies are performed pursuant to protocols developed and approved by the supervising physician and surgeon. (BPC § 2746.52)
- 4) Authorizes a CNM to furnish or order drugs or devices, including Schedule II-V controlled substances, pursuant to physician supervision, standardized procedures and protocols, and other conditions, as specified. (BPC § 2746.51)

This bill:

- 1) Names the BRN’s current CNM committee the Nurse-Midwifery Advisory Committee and specifies that the majority of committee members are CNMs while 40 percent are physicians.
- 2) Deletes the requirement for supervision by a licensed physician as part of a certificate to practice midwifery. States that the certificate to practice nurse-midwifery authorizes the holder to attend cases of low-risk pregnancy consistent with the Core Competencies for Basic Midwifery Practice adopted by the American College of Nurse-Midwives, or its successor national professional organization, as approved by the BRN. Defines low risk pregnancy as one in which there is a single fetus, there is a cephalic presentation at onset of labor; the gestational age of the fetus is greater than or equal to 37 weeks and zero days and less than or equal to 42 weeks and zero days at the time of delivery, labor is spontaneous or induced, and the patient does not have a preexisting disease or condition, whether arising out of the pregnancy or otherwise, that adversely affects the pregnancy and the CNM is not qualified to independently address.
- 3) Authorizes a CNM to directly procure supplies and devices, obtain and administer diagnostic tests, order laboratory and diagnostic testing, and receive reports that are necessary to their practice as a CNM within their scope of practice. Allows CNM to perform and repair episiotomies, and to repair first and second degree lacerations of the perineum without physician supervision, as

specified. Prohibits a CNM from using vacuum or forceps, or performing any external cephalic version.

- 4) Deletes the definition of supervision for purposes of practicing nurse-midwifery. States that the certificate to practice nurse-midwifery authorizes the holder to practice with a physician under mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral and transfer of a patient's care, signed by the both the CNM and a physician to either: (a) provide patient with care that falls outside the scope of services of a low-risk pregnancy, as specified; or (b) provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.
- 5) Requires a patient to be transferred to the care of a physician if a CNM does not have in place mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care signed by both the CNM and a physician, if the care falls outside the specified scope of services, or if the patient has had a prior cesarean section or surgery. Authorizes a patient that has been transferred from the care of a CNM to that of a physician to be returned to the care of the CNM after the physician has determined the condition or the circumstance that required the transfer has been resolved. Requires a CNM to refer all emergencies to a physician immediately, and authorizes a CNM to provide emergency care until the assistance of a physician is obtained.
- 6) States that the certificate to practice midwifery authorizes the holder to attend pregnancy and childbirth in an out-of-hospital setting and authorizes a CNM to furnish or order drugs and devices when providing care in an out-of-hospital setting, as specified.
- 7) Requires a CNM to provide a disclosure, both orally and in written form, to a prospective patient as part of the patient care plan, and to obtain informed consent and a signature, when providing care in a setting outside of a hospital, that outlines information about the CNM's lack of supervision, licensure status, liability insurance status, arrangements for transfer, and the availability of statute regulating CNM practice.
- 8) Requires a CNM to report the outcome of a birth in an out-of-hospital setting, as specified.
- 9) Makes findings and declarations related to maternity care in California, including racial disparities.

Background

Certified Nurse Midwives. CNMs are advanced practice registered nurses who have specialized education and training to provide primary care, prenatal, intrapartum, and postpartum care, including interconception care and family planning. These individuals are licensed by the BRN, have acquired additional training in the field of obstetrics, and are certified by the American College of Nurse Midwives.

Currently, the nurse-midwifery certificate authorizes the CNM to attend cases of *normal* childbirth, as well as immediate care for the newborn, but only under the supervision of a licensed physician. A CNM may furnish drugs and devices after completing at least six months of physician supervised experience in the furnishing of drugs and devices and a course in pharmacology.

Protocols are a part of standardized procedures and are designed to describe the steps of medical care for given patient situations. Protocols are currently developed in consultation with a supervising physician, and CNMs are required to include the extent of that supervisions as part of those standardized procedures related to ordering or furnishing drugs or devices (BPC § 2746.51(A)(2)(B)).

There are approximately 700 CNMs practicing in California. In 2017, it was reported that CNMs attended nearly 50,000 births across the state (out of the 470,000 births that occurred that year). Although CNMs are authorized to practice in birth centers and home-based settings, the majority provide client care in a hospital setting.

Supervision. Standardized procedures are developed collaboratively by nurses, physicians, and the administration of an organized health care system. The BRN and the Medical Board of California have jointly promulgated guidelines for standardized procedures (CCR, tit. 16, § 1474). They are based on the competence of the nurses providing the procedures and include record, referral, and setting requirements, among other patient protections. While supervision by a physician is required for CNMs to provide patient care, that supervision does not require the physical presence of a physician so currently, a CNM can work miles away from the actual location of the physician, and as long as the standardized procedures are in place, the CNM may deliver babies and provide other authorized practices by a CNM.

Studies and Access to Care. On March 11, 2020, the Legislative Analyst's Office released *Analysis of California's Physician-Supervision Requirement for Certified Nurse Midwives*, which analyzed whether the current physician supervision

requirement is meeting its intended safety and quality objectives, without significantly increasing cost or decreasing access to health care services. Ultimately, part of the findings of that report noted that California's current supervision requirement is "unlikely to improve safety and quality for low-risk pregnancies and births". The LAO report, based on an analysis of various studies, did "not find evidence that the safety and quality of maternal and infant health care by nurse midwives is inferior to that of physicians in cases of low risk pregnancies and births." The report also concludes that "states with physician supervision or collaboration agreement requirements do not have superior maternal and infant health outcomes than states without such requirements." It notes that since the supervision requirements in statute do not clearly define the responsibilities of supervision, "the state's requirement is unlikely to be more effective than other states' similar requirements. Therefore, we find that California's supervision requirement for nurse midwives is unlikely to improve safety and quality for low risk pregnancies and births."

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee, BRN does not anticipate a substantial fiscal impact as a result of this bill, however there may be additional unanticipated indeterminable cost pressures to the BRN for expanded enforcement and workload requirements. Fees and assessments from licensees may offset ongoing enforcement and administration costs. The Office of Statewide Health Planning and Development anticipates a one-time cost of \$250,000 to build a data collection system and \$50,000 ongoing for system maintenance and acknowledges potential additional ongoing costs to manage data collection and reports.

SUPPORT: (Verified 6/19/20)

Black Women for Wellness Action Project (co-source)

California Nurse-Midwives Association (co-source)

2020 Mom

Academy of Lactation Policy and Practice Inc.

American Association of Birth Centers

American Civil Liberties Union/northern California/southern California/san Diego and Imperial Counties

American College of Nurse-midwives

Association of Women's Health and Neonatal Nursing

Beach Cities Midwifery & Women's Health Care

Best Start Birth Center

Black Wellness & Prosperity Center

California Association of Nurse Anesthetists
California Black Women's Health Project
California Board of Registered Nursing
California Health Coalition Advocacy
California Latinas for Reproductive Justice
California Women's Law Center
Center on Reproductive Rights and Justice
Citizens for Choice
Every Neighborhood Partnership
Feminist Majority Foundation
Grow Midwives
HealthImpact
Healthy Children Project, Inc.
If/when/how: Lawyering for Reproductive Justice
Medical Board of California
Midwives Alliance North America
Momsrising
Naral Pro-choice California
National Council of Jewish Women California
National Council of Jewish Women Los Angeles
National Health Law Program
New Birth Services
Pacific Business Group on Health
Planned Parenthood Affiliates of California
The Praxis Project
Training in Early Abortion for Comprehensive Healthcare
United Nurses Associations of California/union of Health Care Professionals
Urge: Unite for Reproductive & Gender Equity
Western Center on Law & Poverty, Inc.
Women's Foundation California/Women's Policy Institute

OPPOSITION: (Verified 6/19/20)

American Congress of Obstetricians & Gynecologists - District IX
California Association of Licensed Midwives
California Families for Access to Midwives
Californians for the Advancement of Midwifery
Intergalactic Council of Midwives
Welcome Home Community Birth Center, Inc.

ARGUMENTS IN SUPPORT: Supporters note that this bill will increase access to maternal health and improve maternal and newborn health outcomes.

ARGUMENTS IN OPPOSITION: Opponents note concerns about restricting access to patient choice in certain healthcare settings while supporting the removal of physician supervision of nurse-midwifery.

Prepared by: Sarah Mason and Elissa Silva / B., P. & E.D. /
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