

Chapter 77 Direct-entry Midwife Act

Part 1 General Provisions

58-77-101 Title.

This chapter is known as the "Direct-entry Midwife Act."

Enacted by Chapter 299, 2005 General Session

58-77-102 Definitions.

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

- (1) "Board" means the Licensed Direct-entry Midwife Board created in Section 58-77-201.
- (2) "Certified nurse-midwife" means a person licensed under Title 58, Chapter 44a, Nurse Midwife Practice Act.
- (3) "Client" means a woman under the care of a direct-entry midwife and her fetus or newborn.
- (4) "Direct-entry midwife" means an individual who is engaging in the practice of direct-entry midwifery.
- (5) "Licensed direct-entry midwife" means a person licensed under this chapter.
- (6) "Low risk" means a labor and delivery and postpartum, newborn and interconceptual care that does not include a condition that requires a mandatory transfer under administrative rules adopted by the division.
- (7) "Physician" means an individual licensed as a physician and surgeon, osteopathic physician, or naturopathic physician.
- (8) "Practice of direct-entry midwifery" means practice of providing the necessary supervision, care, and advice to a client during essentially normal pregnancy, labor, delivery, postpartum, and newborn periods that is consistent with national professional midwifery standards and that is based upon the acquisition of clinical skills necessary for the care of pregnant women and newborns, including antepartum, intrapartum, postpartum, newborn, and limited interconceptual care and includes:
 - (a) obtaining an informed consent to provide services;
 - (b) obtaining a health history, including a physical examination;
 - (c) developing a plan of care for a client;
 - (d) evaluating the results of client care;
 - (e) consulting and collaborating with and referring and transferring care to licensed health care professionals, as is appropriate, regarding the care of a client;
 - (f) obtaining medications, as specified in this Subsection (8)(f), to administer to clients, including:
 - (i) prescription vitamins;
 - (ii) Rho D immunoglobulin;
 - (iii) sterile water;
 - (iv) one dose of intramuscular oxytocin after the delivery of the placenta to minimize blood loss;
 - (v) an additional single dose of oxytocin if a hemorrhage occurs, in which case the licensed direct-entry midwife must initiate transfer if the client's condition does not immediately improve;
 - (vi) oxygen;
 - (vii) local anesthetics without epinephrine used in accordance with Subsection (8)(l);

- (viii) vitamin K to prevent hemorrhagic disease of the newborn;
 - (ix) eye prophylaxis to prevent ophthalmia neonatorum as required by law; and
 - (x) any other medication approved by a licensed health care provider with authority to prescribe that medication;
 - (g) obtaining food, food extracts, dietary supplements, as defined by the Federal Food, Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as prescription drugs or controlled substances, and over-the-counter medications to administer to clients;
 - (h) obtaining and using appropriate equipment and devices such as Doppler, blood pressure cuff, phlebotomy supplies, instruments, and sutures;
 - (i) obtaining appropriate screening and testing, including laboratory tests, urinalysis, and ultrasound;
 - (j) managing the antepartum period;
 - (k) managing the intrapartum period including:
 - (i) monitoring and evaluating the condition of mother and fetus;
 - (ii) performing emergency episiotomy; and
 - (iii) delivering in any out-of-hospital setting;
 - (l) managing the postpartum period including suturing of episiotomy or first and second degree natural perineal and labial lacerations, including the administration of a local anesthetic;
 - (m) managing the newborn period including:
 - (i) providing care for the newborn, including performing a normal newborn examination; and
 - (ii) resuscitating a newborn;
 - (n) providing limited interconceptual services in order to provide continuity of care including:
 - (i) breastfeeding support and counseling;
 - (ii) family planning, limited to natural family planning, cervical caps, and diaphragms; and
 - (iii) pap smears, where all clients with abnormal results are to be referred to an appropriate licensed health care provider; and
 - (o) executing the orders of a licensed health care professional, only within the education, knowledge, and skill of the direct-entry midwife.
- (9) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.
- (10) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-77-502 and as may be further defined by rule.

Amended by Chapter 365, 2008 General Session

Part 2 Board

58-77-201 Board.

- (1) There is created the Licensed Direct-entry Midwife Board consisting of:
 - (a) four licensed direct-entry midwives; and
 - (b) one member of the general public.
- (2) The board shall be appointed and serve in accordance with Section 58-1-201.
- (3)
 - (a) The duties and responsibilities of the board shall be in accordance with Sections 58-1-202 and 58-1-203.

- (b) The board shall designate one of its members on a permanent or rotating basis to:
 - (i) assist the division in reviewing complaints concerning the unlawful or unprofessional conduct of a licensed direct-entry midwife; and
 - (ii) 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.
- (5) Qualified faculty, board members, and other staff of direct-entry midwifery learning institutions may serve as one or more of the licensed Directed-entry midwives on the board.

Amended by Chapter 167, 2013 General Session

Part 3 Licensure

58-77-301 Licensure.

The division shall issue to a person who qualifies under this chapter a license as a licensed direct-entry midwife.

Enacted by Chapter 299, 2005 General Session

58-77-302 Qualifications for licensure.

Each applicant for licensure as a licensed direct-entry midwife shall:

- (1) submit an application in a form prescribed by the division;
- (2) pay a fee as determined by the department under Section 63J-1-504;
- (3) be of good moral character;
- (4) hold a Certified Professional Midwife certificate in good standing with the North American Registry of Midwives or equivalent certification approved by the division in collaboration with the board;
- (5) hold current adult and infant CPR and newborn resuscitation certifications through an organization approved by the division in collaboration with the board; and
- (6) provide documentation of successful completion of an approved pharmacology course as defined by division rule.

Amended by Chapter 183, 2009 General Session

58-77-303 Term of license -- Expiration -- Renewal.

- (1)
 - (a) The division shall issue each license under this chapter in accordance with a two-year renewal cycle established by rule.
 - (b) The division may by rule extend or shorten a renewal period by as much as one year to stagger the renewal cycles it administers.
- (2) Each license automatically expires on the expiration date shown on the license unless the individual renews it in accordance with Section 58-1-308.
- (3) At the time of renewal, the licensed direct-entry midwife shall be in current compliance with the requirements of Section 58-77-302.

Enacted by Chapter 299, 2005 General Session

58-77-304 Parents' rights.

Nothing in this chapter abridges, limits, or changes 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.

Enacted by Chapter 299, 2005 General Session

**Part 4
Licensure Denial and Discipline**

58-77-401 Grounds for denial of license -- Disciplinary proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew a license, for revoking, suspending, restricting, or placing on probation a license, for issuing a public or private reprimand, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

Enacted by Chapter 299, 2005 General Session

**Part 5
Unlawful and Unprofessional Conduct - Penalties**

58-77-501 Unlawful conduct.

- (1) In addition to the conduct that constitutes unlawful conduct under Subsection 58-1-501(1), it is unlawful conduct for an individual who is not licensed under this chapter to:
- (a) represent or hold out that the individual is a licensed direct-entry midwife;
 - (b) administer a prescription medication, except oxygen, in the practice of direct-entry midwifery;
 - (c) before engaging in the practice of midwifery with a client, fail to obtain from the client an informed consent statement that includes the following:
 - (i) a description of the individual's midwifery education, training, continuing education, and experience;
 - (ii) a statement that the individual is not licensed by the state as a direct-entry midwife;
 - (iii) a statement that it is unlawful for the individual to administer to the client a prescription medication, except oxygen, in the practice of direct-entry midwifery;
 - (iv) a written plan to address medical issues the client may experience during pregnancy, labor, or childbirth, which plan shall address transfer of the client to a licensed health care provider or facility, if necessary;
 - (v) the name and signature of the individual;
 - (vi) the name and signature of the client;
 - (vii) the date the individual signed the statement; and
 - (viii) the date the client signed the statement; or
 - (d) fail to retain for at least 4 years a signed statement from a client described by Subsection (1)
 - (c).
- (2)

- (a) Except for conduct that constitutes unlawful conduct under Subsection (1), it is lawful to practice direct-entry midwifery in the state without being licensed under this chapter.
- (b) The practice of direct-entry midwifery is not considered the practice of medicine, nursing, or nurse-midwifery.

Amended by Chapter 107, 2016 General Session

58-77-502 Unprofessional conduct.

In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct" includes:

- (1) failing to obtain informed consent as described in Subsection 58-77-601(1);
- (2) disregarding a client's dignity or right to privacy as to her person, condition, possessions, or medical record;
- (3) failing to file or record any medical report as required by law, impeding, or obstructing the filing or recording of the report, or inducing another to fail to file or record the report;
- (4) breaching a statutory, common law, regulatory, or ethical requirement of confidentiality with respect to a person who is a client, unless ordered by the court;
- (5) inappropriately delegating direct-entry midwifery duties;
- (6) using advertising or an identification statement that is false, misleading, or deceptive;
- (7) using in combination with the term "midwife" the term "nurse" or another title, initial, or designation that falsely implies that the direct-entry midwife is licensed as a certified nurse midwife, registered nurse, or licensed practical nurse; and
- (8) submitting a birth certificate known by the person to be false or fraudulent.

Enacted by Chapter 299, 2005 General Session

58-77-503 Penalty for unlawful conduct.

A person who violates the unlawful conduct provisions defined in this chapter is guilty of a class A misdemeanor.

Enacted by Chapter 299, 2005 General Session

**Part 6
Standards of Practice**

58-77-601 Standards of practice.

- (1)
 - (a) Prior to providing any services, a licensed direct-entry midwife must obtain an informed consent from a client.
 - (b) The consent must include:
 - (i) the name and license number of the direct-entry midwife;
 - (ii) the client's name, address, telephone number, and primary care provider, if the client has one;
 - (iii) the fact, if true, that the licensed direct-entry midwife is not a certified nurse midwife or a physician;
 - (iv) a description of the licensed direct-entry midwife's education, training, continuing education, and experience in midwifery;

- (v) a description of the licensed direct-entry midwife's peer review process;
 - (vi) the licensed direct-entry midwife's philosophy of practice;
 - (vii) a promise to provide the client, upon request, separate documents describing the rules governing licensed direct-entry midwifery practice, including a list of conditions indicating the need for consultation, collaboration, referral, transfer or mandatory transfer, and the licensed direct-entry midwife's personal written practice guidelines;
 - (viii) a medical back-up or transfer plan;
 - (ix) a description of the services provided to the client by the licensed direct-entry midwife;
 - (x) the licensed direct-entry midwife's current legal status;
 - (xi) the availability of a grievance process;
 - (xii) client and licensed direct-entry midwife signatures and the date of signing; and
 - (xiii) whether the licensed direct-entry midwife is covered by a professional liability insurance policy.
- (2) A licensed direct-entry midwife shall:
- (a)
 - (i) limit the licensed direct-entry midwife's practice to a normal pregnancy, labor, postpartum, newborn and interconceptual care, which for purposes of this section means a normal labor:
 - (A) that is not pharmacologically induced;
 - (B) that is low risk at the start of labor;
 - (C) that remains low risk through out the course of labor and delivery;
 - (D) in which the infant is born spontaneously in the vertex position between 37 and 43 completed weeks of pregnancy; and
 - (E) except as provided in Subsection (2)(a)(ii), in which after delivery, the mother and infant remain low risk; and
 - (ii) the limitation of Subsection (2)(a)(i) does not prohibit a licensed direct-entry midwife from delivering an infant when there is:
 - (A) intrauterine fetal demise; or
 - (B) a fetal anomaly incompatible with life; and
 - (b) appropriately recommend and facilitate consultation with, collaboration with, referral to, or transfer or mandatory transfer of care to a licensed health care professional when the circumstances require that action in accordance with this section and standards established by division rule.
- (3) If after a client has been informed that she has or may have a condition indicating the need for medical consultation, collaboration, referral, or transfer and the client chooses to decline, then the licensed direct-entry midwife shall:
- (a) terminate care in accordance with procedures established by division rule; or
 - (b) continue to provide care for the client if the client signs a waiver of medical consultation, collaboration, referral, or transfer.
- (4) If after a client has been informed that she has or may have a condition indicating the need for mandatory transfer, the licensed direct-entry midwife shall, in accordance with procedures established by division rule, terminate the care or initiate transfer by:
- (a) calling 911 and reporting the need for immediate transfer;
 - (b) immediately transporting the client by private vehicle to the receiving provider; or
 - (c) contacting the physician to whom the client will be transferred and following that physician's orders.
- (5) The standards for consultation and transfer are the minimum standards that a licensed direct-entry midwife must follow. A licensed direct-entry midwife shall initiate consultation, collaboration, referral, or transfer of a patient sooner than required by administrative rule if in

the opinion and experience of the licensed direct-entry midwife, the condition of the client or infant warrant a consultation, collaboration, referral, or transfer.

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

Amended by Chapter 238, 2016 General Session

58-77-602 Immunity and liability.

- (1) If a direct-entry midwife seeks to consult with, refer, or transfer a client to a licensed health care provider or facility, the responsibility of the provider or facility for the client does not begin until the client is physically within the care of the provider or facility.
- (2) A licensed health care provider who examines a direct-entry midwife's client is only liable for the actual examination and cannot be held accountable for the client's decision to pursue an out-of-hospital birth or the services of a direct-entry midwife.
- (3)
 - (a) A licensed health care provider may, upon receiving a briefing data from a direct-entry midwife, issue a medical order for the direct-entry midwife's client, without that client being an explicit patient of the provider.
 - (b) Regardless of the advice given or order issued, the responsibility and liability for caring for the client is that of the direct-entry midwife.
 - (c) The provider giving the order is responsible and liable only for the appropriateness of the order given the data received.
 - (d) The issuing of an order for a direct-entry midwife's client does not constitute a delegation of duties from the other provider to the direct-entry midwife.
- (4) A licensed health care provider may not be held civilly liable for rendering emergency medical services that arise from prohibited conduct in Section 58-77-603, or from care rendered under a waiver as specified in Subsection 58-77-601(3)(b), unless the emergency medical services constitute gross negligence or reckless disregard for the client.
- (5) A licensed direct-entry midwife shall be solely responsible for the use of medications under this chapter.

Enacted by Chapter 299, 2005 General Session

58-77-603 Prohibited practices.

A direct-entry midwife may not:

- (1) administer a prescription drug to a client in a manner that violates this chapter;
- (2) effect any type of surgical delivery except for the cutting of an emergency episiotomy;
- (3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic analgesia;
- (4) use forceps or a vacuum extractor;
- (5) manually remove the placenta, except in an emergency that presents an immediate threat to the life of the client; or
- (6) induce abortion.

Enacted by Chapter 299, 2005 General Session