

SESSION OF 2016

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 402**

As Recommended by House Committee on  
Health and Human Services

**Brief\***

House Sub. for SB 402 would create the Independent Practice of Midwifery Act (Act). The Act would allow certified nurse-midwives to practice without a collaborative practice agreement with a person licensed to practice medicine and surgery within a limited scope practice as set forth in the bill.

***Definitions***

The bill would define the following terms:

- “Board” to mean the Kansas Board of Healing Arts (Board of Healing Arts);
- “Certified nurse-midwife” to mean an individual who:
  - Is educated in the two disciplines of nursing and midwifery;
  - Is currently certified by a certifying board approved by the Kansas State Board of Nursing (Board of Nursing); and
  - Is currently licensed under the Kansas Nurse Practice Act;
- “Independent practice of midwifery” to mean the provision of clinical services by a certified nurse-

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

midwife without the requirement of a collaborative practice agreement with a person licensed to practice medicine and surgery when such clinical services are limited to those associated with a normal, uncomplicated pregnancy and delivery, including:

- The prescription of drugs and diagnostic tests;
- The performance of an episiotomy or a repair of a minor vaginal laceration;
- The initial care of the normal newborn; and
- Family planning services, including treatment or referral of a male partner for sexually transmitted infections;
- Professional incompetency to mean:
  - One or more instances involving failure to adhere to the applicable standard of care to a degree which constitutes gross negligence, as determined by the Board;
  - Repeated instances involving failure to adhere to the applicable standard of care to a degree which constitutes ordinary negligence, as determined by the Board; or
  - A pattern of practice or other behavior which demonstrates a manifest incapacity or incompetence to engage in the independent practice of midwifery.

### ***Authorization and Licensure***

In order to obtain authorization to engage in the independent practice of midwifery, the bill would require a certified nurse-midwife meet the following requirements:

- Be licensed to practice professional nursing under the Kansas Nurse Practice Act;

- Successfully complete a course of study in nurse-midwifery in a school of nurse-midwifery approved by the Board of Healing Arts;
- Successfully complete a national certification approved by the Board of Healing Arts;
- Successfully complete a refresher course if the individual has not been in active midwifery practice for five years immediately preceding the application;
- Be authorized to perform the duties of a certified nurse-midwife by the Board of Nursing;
- Be licensed as an advanced practice registered nurse by the Board of Nursing; and
- Paid all fees for licensure prescribed in the Act.

The bill specifies it would be unlawful for a person to engage in the independent practice of midwifery without a collaborative practice agreement with a person licensed to practice medicine and surgery, unless such certified nurse-midwife holds a license from the Board of Nursing and the Board of Healing Arts.

The bill would set forth the process for obtaining a new or renewal license and the corresponding caps on the fees for such licenses. The Board of Healing Arts would be required to remit all moneys received from fees, charges, or penalties to the State Treasurer. The State Treasurer would be required to deposit the entire amount in the State Treasury and ten percent of each amount would be credited to the State General Fund and the remaining balance would be credited to the Healing Arts Fee Fund.

The Kansas Bureau of Investigation would be required to provide criminal history record information as requested by the Board of Healing Arts for the purpose of the

determination of the initial and continuing qualifications of licensees and applicants for licensure by the Board.

### ***Rules and Regulations***

The Board of Healing Arts, in consultation with the Board of Nursing, would be required to promulgate rules and regulations pertaining to certified nurse-midwives engaging in the independent practice of midwifery and governing the ordering of tests; diagnostic services; prescribing of drugs; and referral or transfer to physicians in the event of complications or emergencies.

### ***Statutory Oversight***

A certified nurse-midwife engaging in the independent practice of midwifery would be subject to the provision of the Act with respect to the ordering of tests, diagnostic services, and prescribing of drugs and not subject to the provisions of the statute that governs advanced practice registered nurses on those specific topics.

### ***Standards of Care***

The standards of care in the ordering of tests, diagnostics services, and the prescribing of drugs would be those standards which protect patients and would be standards comparable to persons licensed to practice medicine and surgery providing the same services.

### ***Disciplinary Procedures***

The Board of Healing Arts would be allowed to deny, revoke, limit, or suspend any license or authorization issued to a certified nurse-midwife to engage in the independent practice of midwifery that is issued by the Board of Healing Arts or would be allowed to publicly censure a licensee if an applicant or licensee is found after a hearing:

- To be guilty of fraud or deceit in practicing the independent practice of midwifery or in procuring or attempting to procure a license to engage in the independent practice of midwifery;
- To have been guilty of a felony or misdemeanor involving an illegal drug offense unless the applicant or licensee establishes sufficient rehabilitation to warrant the public trust, except that no license would be granted to a person with a felony conviction for a crime against persons as specified in Kansas law;
- To have committed an act of professional incompetence as defined above;
- To be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment due to physical or mental illness or condition or use of alcohol, drugs, or controlled substances;
- To be a person who has been adjudged in need of a guardian or conservator, or both, and who has not been restored to capacity under the Act for obtaining a guardian or conservator;
- To be guilty of unprofessional conduct as defined by rules and regulations of the Board of Healing Arts;

- To have willfully or repeatedly violated the provision of the Kansas Nurse Practice Act or any rules or regulations adopted pursuant to that Act;
- To have a license to practice nursing as a registered nurse, or as a practical nurse denied, revoked, limited, or suspended, to be publicly or privately censured, or have other disciplinary action taken against the applicant or licensee by a licensing authority of another state; or
- To have assisted suicide in violation of Kansas law.

No person would be excused from testifying in any proceedings before the Board of Healing Arts under this act or in any civil proceedings under this act on the grounds that such testimony may incriminate the person testifying, but such testimony would not be used against the person for the prosecution of any crime in Kansas, except perjury.

### ***Nurse-midwives Council***

The bill would establish a Nurse-midwives Council to advise the Board of Healing Arts in carrying out the provision of the Act. The Council would consist of seven members, all residents of Kansas, appointed as follows:

- Two members licensed by the Board of Healing Arts to practice medicine and surgery and whose specialty and customary practice includes obstetrics, appointed by the Board;
- The president of the Board of Healing Arts, or a Board member designated by the president; and
- Four members who are certified nurse-midwives licensed and appointed by the Board of Nursing.

If a vacancy occurs on the Council, the appointing authority of the position that has become vacant would

appoint a person of like qualifications to fill the vacant position for the unexpired term, if any.

## **Background**

The House Committee on Health and Human Services recommended the adoption of a substitute bill. The substitute bill removes the contents of SB 402, as amended by Senate Committee of the Whole, relating to healthcare provider continuing education credits for gratuitous care and inserts the contents of HB 2732, as amended by the House Committee, relating to the creation of the Independent Practice of Midwifery Act.

### ***HB 2732 Background***

In the House Committee on Health and Human Services hearing, representatives from the Kansas Medical Society and the Board of Healing Arts testified in favor of the bill. The American Congress of Obstetricians and Gynecologists provided proponent written-only testimony. Proponents stated the bill is a compromise that would allow nurse midwives to practice, upon meeting certain requirements, without a collaborative agreement with a physician while holding midwives to the same standard as other healthcare providers that do not have limitations on scope of practice by requiring dual licensure with the Board of Nursing and the Board of Healing Arts.

Opponent testimony was provided by a medical doctor, and representatives from Kansas Board of Nursing and American College of Nurse Midwives. Opponents stated nurse midwives, as a profession, prefer to remain under the Kansas Board of Nursing as the profession's only regulating authority. No neutral testimony was provided.

The House Committee amended HB 2732 as follows:

- To insert “referral or transfer to physicians in the event of complications or emergencies” in the topics to be addressed in rules and regulations;
- To delete private censure as a discipline measure the Board of Healing Arts may utilize;
- To modify the definition of an act of professional incompetence as it relates to an applicant or licensee to be unable to practice the healing arts with reasonable skill and safety to patients by reason of impairment;
- To delete provisions that would require members of the Board of Healing Arts or its designee to investigate a sworn complaint filed with the Board and to delete the option of the Board to conduct proceedings under the Kansas Administrative Procedure Act if in the opinion of the Board, reasonable grounds for believing the applicant or licensee is guilty of the charges in the sworn complaint;
- To delete provisions that address which party would be responsible for costs incurred in proceedings under the Act; and
- To insert language into the statute governing advanced practice registered nurses, specifying an advanced practice registered nurse certified in the role of certified nurse-midwife and engaging in the independent practice of midwifery under the Act with respect to prescribing drugs shall be subject to the provisions of the Act.

According to the fiscal note prepared by the Division of the Budget on HB 2732, as introduced, the Board of Nursing indicates enactment of the bill would reduce both agency



expenditures and revenues. However, without sufficient time to analyze the provisions of the bill, the agency is unable to provide estimates.

The Board of Healing Arts indicates, upon enactment of the bill, there would be 100 or less possible licensees; thus, it would not require additional staff to accomplish licensure. The Board also could accommodate the regulation writing requirement within the current budget. The Board estimates approximately \$6,480 in additional licensure revenue in FY 2017 and ongoing additional revenue of \$7,000 to \$10,000 per year. Any fiscal effect associated with the bill is not reflected in *The FY 2017 Governor's Budget Report*.