

1 STATE OF OKLAHOMA

2 2nd Session of the 57th Legislature (2020)

3 SENATE BILL 1823

By: Stanley

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5
6 AS INTRODUCED

7 An Act relating to midwifery; creating Shepherd's
8 Law; providing short title; defining terms; providing
9 exceptions to act; authorizing State Commissioner of
10 Health to adopt and promulgate certain rules;
11 providing certain powers and duties of the
12 Commissioner; creating the Advisory Committee on
13 Midwifery; providing for membership, terms,
14 vacancies, officers, meetings and quorum; requiring
15 Committee to meet under the Oklahoma Open Meeting
16 Act; authorizing Committee to advise the Commissioner
17 on certain matters pertaining to midwifery;
18 authorizing Committee to review and make certain
19 recommendations to the Commissioner; authorizing the
20 Committee to assist and advise the Commissioner in
21 certain hearings; authorizing the Commissioner to
22 establish qualifications for certain licensure;
23 prohibiting certain practice of midwifery and certain
24 representation without certain licensure; providing
for application for licensure and certain fee;
requiring documentary evidence of certain
requirements; providing for issuance and term of
initial license; establishing certain prohibited acts
or practices; prohibiting certain representations and
advertisements relating to the practice of midwifery;
prohibiting certain use of title; providing for
certain violation and administrative fine; requiring
licensed and unlicensed midwives to provide certain
oral and written informed choice and disclosure
statements; providing for form and information to be
included in such statements; providing for length and
language requirements of certain parts of such
statements; requiring disclosure for reporting
certain complaints; requiring licensed midwives to
encourage certain medical care and call for certain
assistance in certain situation; providing certain

1 immunity; providing for certain roster, information
2 to be contained in roster and distribution of roster;
3 providing for codification; and providing an
4 effective date.

5 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

6 SECTION 1. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3040.1 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 This act shall be known and may be cited as "Shepherd's Law".

10 SECTION 2. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 3040.2 of Title 59, unless there
12 is created a duplication in numbering, reads as follows:

13 As used in Shepherd's Law:

14 1. "Certified Nurse-Midwife" or "nurse-midwife" means a person
15 as defined in Section 567.3a of Title 59 of the Oklahoma Statutes;

16 2. "Commissioner" means the State Commissioner of Health;

17 3. "Committee" means the Advisory Committee on Midwifery;

18 4. "Department" means the State Department of Health;

19 5. "Local health department" means any of the local health
20 services as created and defined in Section 1-201 et seq. of Title 63
21 of the Oklahoma Statutes;

22 6. "Licensed midwife" means a person who practices midwifery
23 and is licensed under this act;

24 7. "Midwifery" means the practice of:

- a. providing the necessary supervision, care and advice to a woman during normal pregnancy, labor and the postpartum period,
- b. conducting a normal delivery of a child, and
- c. providing normal newborn care;

8. "Newborn" means an infant from birth through the first six weeks of life;

9. "Normal" means, as applied to pregnancy, labor, delivery, the postpartum period, and the newborn period, and as defined by the State Commissioner of Health, circumstances under which a midwife has determined that a client is at a low risk of developing complications;

10. "Postpartum period" means the first six weeks after a woman has given birth; and

11. "Unlicensed midwife" means a person who offers midwifery services or holds himself or herself out to be a midwife who is not licensed under this act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3040.3 of Title 59, unless there is created a duplication in numbering, reads as follows:

Shepherd's Law does not apply to:

1. A Certified Nurse-Midwife, a physician or another health care professional licensed by the state and operating within the scope of the person's license; or

1 2. A person other than a midwife who assists childbirth in an
2 emergency.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 3040.4 of Title 59, unless there
5 is created a duplication in numbering, reads as follows:

6 A. The State Commissioner of Health is hereby authorized to
7 adopt and promulgate rules, pursuant to the Administrative
8 Procedures Act, that the Commissioner deems necessary for the
9 implementation and enforcement of Shepherd's Law including, but not
10 limited to, scope of practice, qualifications for licensure,
11 renewals, reinstatements, continuing education requirements,
12 complaints, violations and penalties. In so doing, the Commissioner
13 shall give utmost consideration to the recommendations of the
14 Advisory Committee on Midwifery as created in Section 5 of this act.

15 B. The Commissioner shall have the power to:

16 1. Deny, revoke or suspend any license to practice midwifery
17 for good cause pursuant to the provisions of the Administrative
18 Procedures Act. Good cause shall include, but not be limited to,
19 denial, revocation or suspension of the midwife's certification by
20 the North American Registry of Midwives or the American Midwifery
21 Certification Board;

22 2. Assess administrative penalties; and

23 3. Otherwise discipline a licensee.
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1 C. The Commissioner is hereby empowered to perform
2 investigations, require the production of records and other
3 documents relating to practices regulated by Shepherd's Law, and
4 seek injunctive relief.

5 SECTION 5. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3040.5 of Title 59, unless there
7 is created a duplication in numbering, reads as follows:

8 A. There is hereby created, to continue until July 1, 2026, in
9 accordance with the provisions of the Oklahoma Sunset Law, an
10 Advisory Committee on Midwifery, which shall consist of nine (9)
11 voting members to be appointed by the State Commissioner of Health
12 as follows:

13 1. Four licensed midwives, each of whom has at least three (3)
14 years' experience in the practice of midwifery;

15 2. One Certified Nurse-Midwife;

16 3. One physician who is certified by a national professional
17 organization of physicians that certifies obstetricians and
18 gynecologists and supports the practice of midwifery;

19 4. One physician who is certified by a national professional
20 organization of physicians that certifies family practitioners or
21 pediatricians and supports the practice of midwifery; and

22 5. Two members of the general public who are not practicing or
23 trained in a health care profession, and one of whom is a parent
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1 with at least one child born with the assistance of a licensed
2 midwife or a Certified Nurse-Midwife.

3 B. Members of the Committee shall serve for staggered terms of
4 six (6) years. The terms of three members shall expire on January
5 31 of each odd-numbered year. Members shall serve until a qualified
6 successor has been duly appointed. The Commissioner shall fill a
7 vacancy no later than sixty (60) days from the date the vacancy
8 occurs. No person shall be appointed to serve more than two (2)
9 consecutive terms.

10 C. The Committee shall annually elect a chair and vice-chair
11 from among its members.

12 D. The Committee shall meet at least semiannually and at any
13 other time at the call of the chair or the Commissioner.

14 E. The Committee shall meet in accordance with the Oklahoma
15 Open Meeting Act.

16 F. A majority of the members of the Committee shall constitute
17 a quorum for the conduct of Committee business.

18 G. 1. The Committee shall advise the Commissioner on all
19 matters pertaining to midwifery including but not limited to:

20 a. scope and standards of practice, including standards
21 for:

22 (1) the delineation of findings that preclude a woman
23 or newborn from being classified as having a
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1 normal pregnancy, labor, delivery, postpartum
2 period or newborn period,

3 (2) administration of oxygen by a licensed midwife to
4 a mother or newborn,

5 (3) required prenatal and newborn screenings. Rules
6 of the Commissioner shall provide for the ability
7 of a pregnant woman to opt out of the screenings
8 by signing a form created by the Department,

9 (4) prevention of ophthalmia neonatorum, and

10 (5) the role of local health departments in
11 midwifery,

12 b. licensure requirements, examination requirements,
13 exceptions thereto, renewal requirements, temporary
14 licensure and endorsement or reciprocity requirements,

15 c. methods and requirements for ensuring the continued
16 competence of licensed and registered persons,
17 including the type of courses and number of hours
18 required to meet the basic midwifery education course
19 and continuing midwifery education course

20 requirements, and instructors or facilities used in
21 the basic and continuing education requirements,

22 d. procedures for reporting of outcomes including, but
23 not limited to, live births and fetal, newborn or
24 maternal deaths;

1 e. grounds for reporting and processing complaints,
2 violations, probation, revocation or suspension of
3 license or reinstatement provisions, and

4 f. all other matters which may pertain to the practice of
5 midwifery.

6 2. The Committee shall review and make recommendations to the
7 Commissioner on all applications for licensure.

8 3. The Committee shall assist and advise the Commissioner in
9 all hearings related to the enforcement of Shepherd's Law. The
10 Committee shall review all complaints and make recommendations to
11 the Commissioner on appropriate disciplinary action including, but
12 not limited to, administrative fines, license revocation and license
13 suspension.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 3040.6 of Title 59, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The State Commissioner of Health, with the assistance of the
18 Advisory Committee on Midwifery, shall establish qualifications for
19 licensure under Shepherd's Law.

20 B. No person who is certified as, or holds himself or herself
21 out to be, a Certified Professional Midwife or a Certified Midwife
22 shall practice midwifery in this state without first applying for
23 and obtaining a license from the State Commissioner of Health.

1 C. Application shall be made to the Commissioner in writing and
2 shall be accompanied by a nonrefundable application fee of One
3 Thousand Dollars (\$1,000.00) and such other information required by
4 the Committee as established by rule.

5 D. An applicant for an initial license shall provide the
6 Committee with documentary evidence that the person has:

7 1. Satisfied each requirement for basic midwifery education as
8 established by the North American Registry of Midwives or the
9 American Midwifery Certification Board;

10 2. Passed a comprehensive midwifery examination administered by
11 the North American Registry of Midwives or the American Midwifery
12 Certification Board;

13 3. Been certified by the North American Registry of Midwives or
14 the American Midwifery Certification Board; and

15 4. Provided the Committee with satisfactory evidence that the
16 person:

17 a. is trained to perform the prenatal and newborn
18 screening tests or has made arrangements for the
19 performance of those tests, and

20 b. holds:

21 (1) a current certificate issued by the American
22 Heart Association in basic life support
23 cardiopulmonary resuscitation, or

1 (2) another form of certification acceptable to the
2 State Department of Health that demonstrates
3 proficiency in basic life support cardiopulmonary
4 resuscitation for adults and children.

5 C. The license shall be valid for three (3) years from the date
6 of issuance.

7 SECTION 7. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3040.7 of Title 59, unless there
9 is created a duplication in numbering, reads as follows:

10 A licensed midwife may not:

11 1. Provide midwifery care in violation of State Commissioner of
12 Health rules, except in an emergency that poses an immediate threat
13 to the life of a woman or newborn;

14 2. Administer a prescription drug to a client other than:

- 15 a. a drug administered under the supervision of a
16 licensed physician in accordance with state law,
17 b. prophylaxis approved by the Commissioner to prevent
18 ophthalmia neonatorum, or
19 c. oxygen administered in accordance with rules of the
20 Commissioner;

21 3. Use forceps or a surgical instrument for a procedure other
22 than cutting the umbilical cord or providing emergency first aid
23 during delivery;

1 4. Use forceps, vacuum extractor or any other mechanical
2 device or drug to advance or retard labor or delivery; or

3 5. Make on a birth certificate a false or misleading statement
4 or record.

5 SECTION 8. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 3040.8 of Title 59, unless there
7 is created a duplication in numbering, reads as follows:

8 A licensed or unlicensed midwife may not:

9 1. Except as provided by Section 9 of this act, use in
10 connection with the midwife's name a title, abbreviation, or
11 designation tending to imply that the midwife is a registered or
12 certified midwife as opposed to one who is licensed under this act;

13 2. Advertise or represent that the midwife is a physician or a
14 graduate of a medical school unless the midwife is licensed to
15 practice medicine by the State Board of Medical Licensure and
16 Supervision or the State Board of Osteopathic Examiners;

17 3. Use advertising or an identification statement that is
18 false, misleading, or deceptive; or

19 4. Except as authorized by rules adopted by the Oklahoma Board
20 of Nursing, use in combination with the term "midwife" the term
21 "nurse" or another title, initial, or designation that implies that
22 the midwife is licensed as a Registered Nurse or vocational nurse.

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1 SECTION 9. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3040.9 of Title 59, unless there
3 is created a duplication in numbering, reads as follows:

4 A. A midwife certified by the North American Registry of
5 Midwives or the American Midwifery Certification Board who uses the
6 term "certified" as part of the midwife's title in an identification
7 statement or advertisement shall include in the identification
8 statement or advertisement that the midwife is certified by the
9 North American Registry of Midwives or the American Midwifery
10 Certification Board.

11 B. A licensed or unlicensed midwife may not use a title in an
12 identification statement or advertisement that would lead a
13 reasonable person to believe that the midwife is certified by a
14 governmental entity, unless otherwise provided by this act.

15 C. All midwives licensed pursuant to Shepherd's Law shall
16 include in any title, identification statement or advertisement that
17 the midwife is licensed in this state.

18 SECTION 10. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 3040.10 of Title 59, unless
20 there is created a duplication in numbering, reads as follows:

21 Effective July 1, 2021, any person who holds himself or herself
22 out to be, represents himself or herself to be or uses the title of
23 Certified Professional Midwife or Certified Midwife, without holding
24 a license issued by the State Commissioner of Health, or who is in
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1 violation of any provision of Shepherd's Law shall be subject to an
2 administrative fine for each day found to be in violation. The
3 amount of any fine shall be determined by the Commissioner within
4 limits set by the Commissioner pursuant to rules adopted and
5 promulgated by the Commissioner and may be in addition to any other
6 penalty provided by the Commissioner or otherwise provided by law.

7 SECTION 11. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 3040.11 of Title 59, unless
9 there is created a duplication in numbering, reads as follows:

10 A. A licensed or unlicensed midwife shall disclose in oral and
11 written form to a prospective client at the outset of the
12 professional relationship:

- 13 1. Which credential the midwife possesses, if any;
- 14 2. The limitations of the skills and practices of a midwife;

15 and

- 16 3. Whether the midwife carries malpractice insurance.

17 B. The Advisory Committee on Midwifery shall prescribe the form
18 of the informed choice and disclosure statement required to be used
19 by a licensed or unlicensed midwife under this act. The form shall
20 include:

- 21 1. Credential of the midwife, if any;
- 22 2. Disclosure of experience as a midwife;
- 23 3. The amount of malpractice insurance carried;
- 24 4. The date the license expires, if the midwife is licensed;

1 5. The date the cardiopulmonary resuscitation certification
2 expires, if the midwife is licensed;

3 6. Documentation of compliance with continuing education
4 requirements, if the midwife is licensed;

5 7. A description of medical backup arrangements; and

6 8. A summary of the basic scope of practice standards of a
7 licensed midwife, including statements concerning newborn blood
8 screening, ophthalmia neonatorum prevention, and prohibited acts
9 under Section 7 of this act.

10 C. All written disclosures required by this section shall not
11 exceed five hundred words and must be in the language primarily used
12 by the client.

13 D. A licensed midwife shall disclose to a prospective or actual
14 client the procedure for reporting complaints to the State
15 Department of Health.

16 SECTION 12. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 3040.12 of Title 59, unless
18 there is created a duplication in numbering, reads as follows:

19 A. A licensed midwife shall advise a client in writing to seek:

20 1. Prenatal care; and

21 2. Medical care through consultation or referral, as specified
22 by rules of the State Commissioner of Health, if the midwife
23 determines that the pregnancy, labor, delivery, postpartum period or
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1 newborn period of a woman or newborn may not be within the scope of
2 practice of the midwife.

3 B. A licensed midwife shall call for emergency assistance in an
4 emergency situation which is outside of the licensed midwife's scope
5 of practice.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 3040.13 of Title 59, unless
8 there is created a duplication in numbering, reads as follows:

9 A. A physician, Certified Nurse-Midwife, Registered Nurse, or
10 other person who, on the order of a physician, instructs a midwife
11 in the approved techniques for collecting blood specimens to be used
12 for newborn screening tests is immune from liability arising out of
13 the failure or refusal of the midwife to:

- 14 1. Collect the specimens in the approved manner; or
- 15 2. Submit the specimens to the State Department of Health in a
16 timely manner.

17 B. A physician or Certified Nurse-Midwife who issues an order
18 directing or instructing a midwife is immune from liability arising
19 out of the failure or refusal of the midwife to comply with the
20 order if, before the issuance of the order, the midwife provided the
21 physician or Certified Nurse-Midwife with evidence satisfactory to
22 the State Commissioner of Health of compliance with this act.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3040.14 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A. The State Department of Health shall maintain a roster of
5 each person licensed as a midwife in this state.

6 B. The roster shall contain for each person the information
7 required on the license form pursuant to Section 11 of this act and
8 other information the Department determines necessary to accurately
9 identify each licensed midwife. The roster shall be a public
10 document available pursuant to the Oklahoma Open Records Act.

11 C. The Department shall provide each county clerk and each
12 local registrar of births in a county with the name of each midwife
13 practicing in the county.

14 SECTION 15. This act shall become effective November 1, 2020.

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