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February 19, 2020

COMMITTEE SUBSTITUTE
FOR

SENATE BILL NO. 1823

By: Stanley of the Senate

and

Roe of the House

[midwifery - Shepherd's Law - powers and duties of the Commissioner - Advisory Committee on Midwifery - membership, terms, vacancies, officers, meetings and quorum - hearings - application for licensure - administrative fine - informed choice and disclosure statements - immunity - roster - codification - effective date]

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

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

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

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

As used in Shepherd's Law:

1. "Certified Nurse-Midwife" or "nurse-midwife" shall have the same meaning as provided by Section 567.3a of Title 59 of the Oklahoma Statutes;

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

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

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

4 5. "Licensed midwife" means a person who practices midwifery
5 and is licensed under this act;

6 6. "Midwifery" means the practice of:

7 a. providing the necessary supervision, care and advice
8 to a woman during normal pregnancy, labor and the
9 postpartum period,

10 b. conducting a normal delivery of a child,

11 c. providing normal newborn care, and

12 d. providing routine well-woman care and screenings;

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

15 8. "Normal" means, as applied to pregnancy, labor, delivery,
16 the postpartum period and the newborn period, and as defined by
17 rules of the State Commissioner of Health, circumstances under which
18 a midwife has determined that a client does not have a condition
19 that requires medical intervention;

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

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

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

4 Shepherd's Law does not apply to:

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

8 2. A student midwife who is providing midwifery care under the
9 direct supervision of a qualified, licensed midwife preceptor;

10 3. A natural childbirth educator; or

11 4. A person other than a midwife who assists childbirth in an
12 emergency.

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

16 A. The State Commissioner of Health is hereby authorized to
17 promulgate rules, pursuant to the Administrative Procedures Act,
18 that the Commissioner deems necessary for the implementation and
19 enforcement of Shepherd's Law including, but not limited to:

20 1. Scope of practice;

21 2. A formulary of prescription drugs that a licensed midwife
22 may obtain, transport and administer when providing midwifery
23 services;

1 3. A list of routine tests and procedures for which informed
2 consent or refusal must be obtained;

3 4. Qualifications for licensure;

4 5. Renewals and reinstatements;

5 6. Fees;

6 7. Continuing education requirements;

7 8. Complaints;

8 9. Violations; and

9 10. Penalties.

10 In so doing, the Commissioner shall give utmost consideration to
11 the recommendations of the Advisory Committee on Midwifery as
12 created in Section 5 of this act.

13 B. The Commissioner shall have the power to, for good cause and
14 in accordance with the Administrative Procedures Act:

15 1. Deny, revoke or suspend any license to practice midwifery;

16 2. Develop a schedule of fines and penalties not to exceed Five
17 Thousand Dollars (\$5,000.00); and

18 3. Otherwise discipline a licensee.

19 C. As used in this section, good cause shall include, but not
20 be limited to:

21 1. Violation of Shepherd's Law; or

22 2. Denial, revocation or suspension of the midwife's
23 certification, assessment of a penalty or imposition of other
24 disciplinary action by the North American Registry of Midwives, the

1 American Midwifery Certification Board or a successor organization
2 approved by the Commissioner.

3 D. The Commissioner is hereby empowered to perform
4 investigations, require the production of records and other
5 documents relating to practices regulated by Shepherd's Law, and
6 seek injunctive relief.

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

10 A. There is hereby created, to continue until July 1, 2026, in
11 accordance with the provisions of the Oklahoma Sunset Law, an
12 Advisory Committee on Midwifery, which shall consist of seven (7)
13 voting members to be appointed by the State Commissioner of Health
14 as follows:

15 1. Three licensed midwives, each of whom has at least three (3)
16 years of experience in the practice of midwifery;

17 2. One Certified Nurse-Midwife;

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

21 4. One physician who is certified by a national professional
22 organization of physicians that certifies family practitioners or
23 pediatricians and supports the practice of midwifery; and
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1 5. One member of the general public who is not practicing or
2 trained in a health care profession, and who is a parent with at
3 least one child born with the assistance of a licensed midwife or a
4 Certified Nurse-Midwife.

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

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

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

16 E. The Committee shall meet in accordance with the Oklahoma
17 Open Meeting Act.

18 F. A majority of the members of the Committee including at
19 least two licensed midwives, shall constitute a quorum for the
20 conduct of Committee business.

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

23 a. scope and standards of practice,
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- b. licensure requirements, examination requirements, exceptions thereto, renewal requirements, temporary licensure and endorsement or reciprocity requirements,
- c. methods and requirements for ensuring the continued competence of licensed and registered persons, including the type of courses and number of hours required to meet the basic midwifery education course and continuing midwifery education course requirements, and instructors or facilities used in the basic and continuing education requirements,
- d. procedures for reporting of outcomes including, but not limited to, live births and fetal, newborn or maternal deaths,
- e. grounds for reporting and processing complaints, violations, probation, revocation or suspension of license or reinstatement provisions, and
- f. all other matters which may pertain to the practice of midwifery.

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

3. The Committee shall assist and advise the Commissioner in all hearings related to the enforcement of Shepherd's Law. The Committee shall review all complaints and make recommendations to the Commissioner on appropriate disciplinary action including, but

1 not limited to, administrative fines, license revocation and license
2 suspension.

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

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

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

13 C. Application shall be made to the Commissioner on a form
14 created by the Department and posted on the website of the
15 Department. The application shall be accompanied by a nonrefundable
16 application fee of One Thousand Dollars (\$1,000.00) and such other
17 information required by the Committee as established by rule. The
18 license shall be valid for three (3) years from the date of
19 issuance.

20 D. An applicant for an initial license shall provide the
21 Committee with documentary evidence that the person has been
22 certified by the North American Registry of Midwives, the American
23 Midwifery Certification Board or a successor organization approved
24 by the Commissioner.

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

4 A licensed midwife shall not:

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

8 2. Administer a prescription drug to a client other than as
9 provided by the formulary or as ordered by a physician;

10 3. Use forceps, a vacuum extractor or any prescription drug to
11 advance or retard labor or delivery; or

12 4. Make on a birth certificate a false or misleading statement
13 or record.

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

17 A. A licensed or unlicensed midwife shall not:

18 1. Advertise or represent that the midwife is a physician or a
19 graduate of a medical school unless the midwife is licensed to
20 practice medicine by the State Board of Medical Licensure and
21 Supervision or the State Board of Osteopathic Examiners or can show
22 proof of graduation from a medical school;

23 2. Use advertising or an identification statement that is
24 false, misleading or deceptive; or

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

5 B. An unlicensed midwife shall not use a title in an
6 identification statement or advertisement that would lead a
7 reasonable person to believe that the midwife is certified.

8 C. All midwives licensed pursuant to Shepherd's Law shall
9 include in any title, identification statement or advertisement that
10 the midwife is licensed in this state and the credential the midwife
11 possesses.

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

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

SECTION 10. NEW LAW A new section of law to be codified

in the Oklahoma Statutes as Section 3040.10 of Title 59, unless
there is created a duplication in numbering, reads as follows:

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

1. Which credential the midwife possesses, if any;

2. The limitations of the skills and practices of a midwife;

and

3. Whether the midwife carries malpractice insurance.

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

1. Credential of the midwife, if any;

2. Disclosure of experience as a midwife;

3. The date the license expires, if the midwife is licensed;

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

5. A description of the transfer or referral strategy;

6. Direction on where to find the scope of practice standards
of a licensed midwife, as provided by rules of the State
Commissioner of Health; and

1 7. Additional informed choice and disclosure statements
2 approved by the Committee and provided by rule specific to vaginal
3 birth after Caesarean (VBAC), vaginal breech birth and vaginal
4 multiple birth.

5 C. The informed choice and disclosure statement shall include a
6 notification that state law requires a newborn to be tested for
7 certain heritable disorders and hypothyroidism, in the absence of a
8 signed parental waiver from the State Department of Health.

9 D. A licensed midwife shall disclose to a prospective or actual
10 client the procedure for reporting complaints to the Department.

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

14 A. A licensed midwife shall advise a client in writing to seek
15 medical care through consultation or referral, as specified by rules
16 of the State Commissioner of Health, if the midwife determines that
17 the pregnancy, labor, delivery, postpartum period or newborn period
18 of a woman or newborn may not be within the scope of practice of the
19 midwife.

20 B. A licensed midwife shall call for emergency assistance in an
21 emergency situation that is outside of the licensed midwife's scope
22 of practice.
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1 SECTION 12. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 3040.12 of Title 59, unless
3 there is created a duplication in numbering, reads as follows:

4 A physician or Certified Nurse-Midwife who issues an order
5 directing or instructing a midwife is immune from liability arising
6 out of the inability, failure or refusal of the midwife to comply
7 with the order.

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

11 A. The State Department of Health shall maintain a roster of
12 each person licensed as a midwife in this state. The roster shall
13 contain for each licensed midwife the information required on the
14 informed choice and disclosure statement under Section 10 of this
15 act and other information the Department determines necessary to
16 accurately identify each licensed midwife. The roster shall be a
17 public document available under the Oklahoma Open Records Act.

18 B. The Department shall provide each county clerk and each
19 local registrar of births in a county with the name of each midwife
20 practicing in the county.

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

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS
23 February 19, 2020 - DO PASS AS AMENDED
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