

Sixty-second  
Legislative Assembly  
of North Dakota

**SENATE BILL NO. 2315**

Introduced by

Senators J. Lee, Krebsbach, Robinson

Representatives Delmore, Klemin, Maragos

A BILL ~~for an Act to create and enact a new chapter to title 43 of the North Dakota Century Code, relating to licensing and regulating direct entry or lay midwifery services and to preserve the right of women and families to home delivery of infants; to amend and reenact section 43-12.1-05 of the North Dakota Century Code, relating to members of the state board of nursing; and to provide a penalty~~ for an Act to create and enact a new section to chapter 43-12.1 of the North Dakota Century Code, relating to creation of a lay and traditional midwife registry; to amend and reenact sections 43-12.1-02, 43-12.1-09, and 43-12.1-09.1 of the North Dakota Century Code, relating to the registry of lay and traditional midwives; to provide for a legislative management study; and to provide an expiration date.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

~~**SECTION 1. AMENDMENT.** Section 43-12.1-05 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**43-12.1-05. Board of nursing -- Composition -- Term of office.**~~

~~There is a state board of nursing whose members must be appointed by the governor which must consist of five registered nurses, three licensed practical nurses, and one public member, and a certified nurse midwife appointed to the midwife advisory board, who may participate only in matters relating to the licensure and practice of licensed midwives. Each board member must be appointed for a term of four years. No appointee may be appointed for more than two consecutive terms. An appointment for an unexpired term of more than eighteen months will constitute a full term. Terms of nurse board members must be evenly distributed to allow two licensed nurse board members to be appointed or reappointed each year.~~

~~**SECTION 2.** A new chapter to title 43 of the North Dakota Century Code is created and enacted as follows:~~

~~— **Definitions.**~~

~~— As used in this chapter:~~

~~1. "Advisory board" means the advisory board on midwifery established to assist the board in formulating regulations pertaining to the practice of midwifery and to assist in such other matters relating to the practice of midwifery as the board may require.~~

~~2. "Board" means the state board of nursing.~~

~~3. "Licensed midwife" means an individual who is not licensed as a physician or nurse and who holds a current license issued by the board pursuant to the provisions of this chapter to engage in the practice of midwifery, who must be designated "L.M."~~

~~4. "Midwifery" or the "practice of midwifery" means providing primary maternity care outside a hospital or clinical setting which is consistent with the midwife's training, education, and experience to women and their newborn children throughout the childbearing cycle, and includes identifying and referring women or their newborn children who require health care to a qualified health care professional.~~

~~— **Licensure requirements.**~~

~~1. A person providing midwifery services in this state, regardless of whether for consideration, must be licensed under this chapter.~~

~~2. An individual is eligible to be licensed as a midwife if the individual:~~

~~a. Files a board-approved application for licensure and pays the required fees;~~

~~b. Submits an official transcript from an approved education program or submits evidence of having completed an apprenticeship approved by the board;~~

~~c. Provides proof of current certification as a certified professional midwife or "CPM" by North American registry of midwives;~~

~~d. Provides documentation of current certification from the American heart association or the American red cross for adult and infant cardiopulmonary resuscitation;~~

~~e. Provides documentation of successful completion of a board-approved midwifery education accreditation council accredited courses in pharmacology, treatment of shock, and suturing specific to midwives. The board may accept graduation from an accredited midwifery program as satisfying this requirement if the program adequately covered these subjects;~~

- 1 ~~\_\_\_\_\_ f. Submits a copy of the applicant's medical consultation plan; and~~  
2 ~~\_\_\_\_\_ g. Completes a criminal history record background check, which demonstrates that~~  
3 ~~the applicant has not been convicted of a crime that in the judgment of the board~~  
4 ~~renders the individual unfit to practice midwifery.~~  
5 ~~\_\_\_\_\_ 2. For any midwife who has been continuously practicing midwifery in the state for at~~  
6 ~~least five years before July 31, 2011, the qualifications for initial licensure in~~  
7 ~~subdivisions b and d of subsection 1 may be waived for a period of two years if such~~  
8 ~~midwife provides the following documentation to the board:~~  
9 ~~\_\_\_\_\_ a. Primary attendance at seventy-five births within the past ten years, ten of which~~  
10 ~~births occurred in the two years immediately preceding the application for~~  
11 ~~licensure.~~  
12 ~~\_\_\_\_\_ b. Complete practice data for the two years preceding the application for licensure,~~  
13 ~~on a form provided by the board.~~  
14 ~~\_\_\_\_\_ c. A plan to successfully complete within two years of the date of initial licensure the~~  
15 ~~North American registry of midwives portfolio evaluation program for the~~  
16 ~~"experienced midwife" to become a certified professional midwife and a~~  
17 ~~board-approved midwifery education accreditation council accredited courses in~~  
18 ~~pharmacology, treatment of shock, and suturing specific to midwives within the~~  
19 ~~two-year initial licensure period.~~  
20 ~~\_\_\_\_\_ d. Any midwife who wishes to qualify for the waiver provided in subsection 2 shall~~  
21 ~~apply for initial licensure and provide the required documentation before July 31,~~  
22 ~~2012.~~  
23 ~~\_\_\_\_\_ e. If the plan identified in subdivision c is not completed within the two-year~~  
24 ~~licensure period, the midwife must obtain a new license by fulfilling the~~  
25 ~~requirements in existence for obtaining an initial license as a licensed midwife to~~  
26 ~~continue to practice in this state.~~  
27 ~~\_\_\_\_\_ 3. The board may by endorsement license any individual as a midwife who applies in the~~  
28 ~~manner prescribed by the board who:~~  
29 ~~\_\_\_\_\_ a. Files a board-approved application for licensure and pays the required fees;~~  
30 ~~\_\_\_\_\_ b. Provides evidence of current licensure or certification by another state with~~  
31 ~~requirements at least as stringent as this state and in good standing in that state;~~

1 ~~c. Has provided the board fingerprints and other information necessary for a~~  
2 ~~criminal history record background check, and the background check~~  
3 ~~demonstrates that the applicant has not been convicted of a crime that in the~~  
4 ~~judgment of the board renders the individual unfit to practice midwifery; and~~  
5 ~~d. Has not been sanctioned in another state without resolution satisfactory to the~~  
6 ~~board.~~

7 ~~4. The period of licensure may not exceed two years. Licensure renewal includes:~~

8 ~~a. Completion and filing a board-approved application for licensure renewal and~~  
9 ~~payment of the required fees;~~

10 ~~b. Submission of a copy of the applicant's current certification as a certified~~  
11 ~~professional midwife through the North American registry of midwives with the~~  
12 ~~applicant's application for renewal; and~~

13 ~~c. Verification of completion of the continuing education requirements for continued~~  
14 ~~certification through the North American registry of midwives as a certified~~  
15 ~~professional midwife.~~

16 ~~5. Other information may be required for initial licensure, endorsement of licensure from~~  
17 ~~another state, licensure renewal, temporary licensure, or changes that have occurred~~  
18 ~~in the information submitted for licensure pursuant to regulations adopted by the~~  
19 ~~board.~~

20 ~~**Regulation of the practice of midwifery.**~~

21 ~~The board may adopt rules governing the practice of midwifery, upon consultation with the~~  
22 ~~advisory board. The rules may:~~

23 ~~1. Impose any additional reasonable and necessary requirements for licensure to~~  
24 ~~practice midwifery;~~

25 ~~2. Be consistent with the North American registry of midwives' current job description and~~  
26 ~~the national association of certified professional midwives' standards of practice;~~

27 ~~3. Require an appropriate license fee not to exceed one hundred dollars every two years;~~

28 ~~4. Impose additional requirements for license renewal and continuing education; and~~

29 ~~5. Require the reporting and discipline of licensed midwives authorized by chapter~~  
30 ~~43-12.1.~~

1     ~~— **Education grants.**~~

2     ~~— The board shall establish a grant program for midwives who have been continuously~~  
3 ~~practicing midwifery in North Dakota for at least five years before to July 31, 2011, and are~~  
4 ~~licensed before July 31, 2012, who were not certified as a certified professional midwives~~  
5 ~~through the North American registry of midwives at the time of initial licensure. A qualified~~  
6 ~~applicant may be eligible for a one-time educational grant up to two thousand five hundred~~  
7 ~~dollars. The purpose of this grant is to help cover the costs related to successful completion of~~  
8 ~~the North American registry of midwives portfolio evaluation program for the experienced~~  
9 ~~midwife to become a certified professional midwife and of the board-approved midwifery~~  
10 ~~education accreditation council accredited courses in pharmacology, treatment of shock, and~~  
11 ~~suturing specific to midwives within the two-year initial licensure period. The board shall~~  
12 ~~establish eligibility, disbursement, and other criteria for the administration of the grant program.~~

13    ~~— **Advisory board on midwifery.**~~

14    ~~— 1. The advisory board on midwifery shall consist of five members appointed by the~~  
15       ~~governor, two of whom will be licensed midwives consistent with the chapter; one of~~  
16       ~~whom is a licensed physician who is board-certified in either obstetrics and~~  
17       ~~gynecology or family practice, maintains hospital privileges, and has provided~~  
18       ~~maternity care for at least twenty births in the twelve months prior to appointment; one~~  
19       ~~of whom is a certified nurse midwife; and one of whom is a member of the public with~~  
20       ~~an interest in the rights of consumers of midwifery practice.~~

21    ~~— 2. A board term is four years, except initial appointments shall provide for staggered~~  
22       ~~terms with two members being appointed for a two-year term, two members being~~  
23       ~~appointed for a three-year term, and one member being appointed for a four-year~~  
24       ~~term. Appointments to fill vacancies, other than expiration of the term, must be for the~~  
25       ~~unexpired terms. All members may be reappointed. Vacancies must be filled in the~~  
26       ~~same manner as the original appointments.~~

27    ~~— 3. The advisory board shall elect a chairman and vice chairman from among the advisory~~  
28       ~~board's membership. A majority of the members constitutes a quorum. The meetings~~  
29       ~~of the advisory board are held at the call of the chairman or whenever the majority of~~  
30       ~~the members so request.~~

1 ~~4. The certified nurse midwife member of the advisory board is a member of the board~~  
2 ~~for discussion and decisions related to the licensure and practice of licensed~~  
3 ~~midwives.~~

4 ~~**Requirements for disclosure and written agreement.**~~

5 ~~1. Before initiating care, a licensed midwife shall obtain a signed written agreement from~~  
6 ~~each client that the client has received the following written documents, at a minimum:~~

7 ~~a. A description of the midwife's qualifications, experience, and training;~~

8 ~~b. A written protocol for medical emergencies, including hospital transport particular~~  
9 ~~to each client, including both mother and infant;~~

10 ~~c. A description of the midwife's model of care, including a description of the~~  
11 ~~procedures, benefits, and risks of home birth, primarily those conditions that may~~  
12 ~~arise for the mother and infant during the delivery;~~

13 ~~d. A copy of the regulations governing the practice of midwifery;~~

14 ~~e. A statement concerning the licensed midwife's malpractice or liability insurance~~  
15 ~~coverage or lack of insurance coverage;~~

16 ~~f. A description of the right to file a complaint with the board;~~

17 ~~g. Such other information as the board determines is appropriate to allow the client~~  
18 ~~to make an informed choice to select midwifery care; and~~

19 ~~h. The following statement of informed consent: "I realize that there are risks~~  
20 ~~associated with birth, including the risk of death or disability of either mother or~~  
21 ~~child. I understand that a situation may arise, which requires emergency medical~~  
22 ~~care and that it may not be possible to transport the mother, the baby, or both to~~  
23 ~~the hospital in time to benefit from any such care. I fully accept the outcome and~~  
24 ~~consequences of our decision to have a licensed midwife attend us during~~  
25 ~~pregnancy and at our birth. I realize that our licensed midwife is not licensed to~~  
26 ~~practice medicine. I am not seeking a licensed physician or certified nurse~~  
27 ~~midwife as the primary caregiver for this pregnancy, and I understand that our~~  
28 ~~licensed midwife must inform me of any observed signs or symptoms of disease,~~  
29 ~~which may require evaluation, care, or treatment by a qualified health care~~  
30 ~~practitioner. I agree that I am totally responsible for obtaining qualified care of any~~  
31 ~~disease or pathological condition."~~

1 ~~2. The licensed midwife must have a signed written agreement form on file for each~~  
2 ~~client. Upon request, the licensed midwife must provide a copy of the written~~  
3 ~~agreement form to the board.~~

4 ~~**Limitations of practice.**~~

5 ~~1. A licensed midwife may not prescribe, dispense, or administer prescription drugs,~~  
6 ~~except as permitted by the board specific to the maternity care, labor, delivery, and~~  
7 ~~post partum for the care of the mother and newborn infant.~~

8 ~~a. A licensed midwife with prescriptive authority may prescribe drugs as defined by~~  
9 ~~chapter 43-15, pursuant to applicable state and federal laws.~~

10 ~~b. Notice of the prescriptive authority granted must be forwarded to the state board~~  
11 ~~of pharmacy.~~

12 ~~c. A prescriptive authority license does not include drug enforcement administration~~  
13 ~~authority for prescribing controlled substances.~~

14 ~~d. A licensed midwife may not prescribe, administer, sign for, dispense, or procure~~  
15 ~~pharmaceutical samples following state and federal regulations.~~

16 ~~e. The signature on documents related to prescriptive practices must clearly~~  
17 ~~indicate that the licensee is a licensed midwife.~~

18 ~~f. A licensed midwife with prescriptive authority may not prescribe, sell, administer,~~  
19 ~~distribute, give to oneself, or give to the midwife's spouse or family member any~~  
20 ~~drug.~~

21 ~~2. A licensed midwife may not perform any operative or surgical procedures except for~~  
22 ~~suture repair of first-degree or second-degree perineal lacerations.~~

23 ~~**Immunity.**~~

24 ~~A physician, nurse, hospital, emergency medical technician, or ambulance personnel is not~~  
25 ~~liable in any civil action for damages for any injury resulting from an act or omission of a~~  
26 ~~licensed midwife in the treatment of a mother or infant, or a pregnant woman whose delivery~~  
27 ~~was attempted under the care of a licensed midwife, even if the health care provider has~~  
28 ~~consulted with or accepted a referral from the licensed midwife. A physician, nurse, emergency~~  
29 ~~medical technician, ambulance personnel, or hospital is liable for the provider's own subsequent~~  
30 ~~or independent negligent acts or omissions, or if the provider has a business relationship with~~  
31 ~~the licensed midwife who provided care to the patient. A physician, nurse, hospital, emergency~~



~~medical technician, or ambulance personnel is not considered to have established a business relationship or relationship of agency, employment, partnership, or joint venture with the licensed midwife solely by providing consultation to or accepting a referral from the licensed midwife.~~

~~— **Reporting.**~~

~~1. A licensed midwife shall complete a record of birth in accordance with section 23-02.1-13.~~

~~2. A licensed midwife shall compile a summary report on each client. The board may review these reports at any time upon request. The report must include the following:~~

~~a. Vital statistics;~~

~~b. Scope of care administered;~~

~~c. Whether the medical consultation plan was implemented; and~~

~~d. Any physician or other health care provider referrals made.~~

~~3. A licensed midwife shall promptly report to the board any maternal, fetal, or neonatal mortality or morbidity.~~

~~4. A licensed midwife must report to the board termination, revocation, or suspension of the licensed midwife's certification or any disciplinary action taken against the licensed midwife by the North American registry of midwives or by any other jurisdiction.~~

~~— **Protected titles and licensure – Penalty.**~~

~~1. It is unlawful for any person to assume or use the title or designation "licensed midwife", "L.M.", or any other titles, words, letters, abbreviations, sign, card, or device to indicate to the public that the person is authorized to practice midwifery unless the person is licensed under this chapter or is exempt from the requirement to be licensed until July 31, 2012.~~

~~2. After July 31, 2012, it is unlawful for any person to engage in the practice of midwifery without a license.~~

~~3. An individual whose license under this chapter has been revoked by the board is prohibited from practicing midwifery.~~

~~4. A person that violates this section is guilty of a class A misdemeanor.~~

**SECTION 1. AMENDMENT.** Section 43-12.1-02 of the North Dakota Century Code is amended and reenacted as follows:



**43-12.1-02. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Advanced practice registered nurse" means an individual who holds a current license to practice in this state as an advanced practice registered nurse.
2. "Board" means the North Dakota board of nursing.
3. "Lay or traditional midwife" means an individual who is currently registered as a lay or traditional midwife under this chapter.
4. "Licensed practical nurse" means an individual who holds a current license to practice in this state as a licensed practical nurse.
- ~~4.5.~~ "Nurse" means an individual who is currently licensed as an advanced practice registered nurse, registered nurse, or licensed practical nurse.
- ~~5.6.~~ "Nursing" means the performance of acts utilizing specialized knowledge, skills, and abilities for people in a variety of settings. The term includes the following acts, which may not be deemed to include acts of medical diagnosis or treatment or the practice of medicine as defined in chapter 43-17:
  - a. The maintenance of health and prevention of illness.
  - b. Diagnosing human responses to actual or potential health problems.
  - c. Providing supportive and restorative care and nursing treatment, medication administration, health counseling and teaching, case finding and referral of individuals who are ill, injured, or experiencing changes in the normal health processes.
  - d. Administration, teaching, supervision, delegation, and evaluation of health and nursing practices.
  - e. Collaboration with other health care professionals in the implementation of the total health care regimen and execution of the health care regimen prescribed by a health care practitioner licensed under the laws of this state.
- ~~6.7.~~ "Prescriptive practices" means assessing the need for drugs, immunizing agents, or devices and writing a prescription to be filled by a licensed pharmacist.
- ~~7.8.~~ "Registered nurse" means an individual who holds a current license to practice in this state as a registered nurse.

~~8.9.~~ "Specialty practice registered nurse" means an individual who holds a current license to practice in this state as a specialty practice registered nurse.

~~9.10.~~ "Unlicensed assistive person" means an assistant to the nurse who regardless of title is authorized by the board to perform nursing interventions delegated and supervised by a nurse.

**SECTION 2. AMENDMENT.** Section 43-12.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09. Initial licensure and registration.**

1. The board shall license and register nursing, lay or traditional midwife, and unlicensed assistive person applicants. The board shall adopt rules establishing qualifications for initial nursing licensure and unlicensed assistive person registration and for issuing limited licenses and registrations pursuant to subsection 3.
2. Each applicant who successfully meets the requirements of this section is entitled to initial licensure or registration as follows:
  - a. An applicant for licensure by examination to practice as a registered nurse or licensed practical nurse shall:
    - (1) Submit a completed application and appropriate fee as established by the board.
    - (2) Submit an official transcript showing completion of an in-state nursing education program or a board-approved out-of-state nursing education program preparing for the level of licensure sought. The board shall adopt rules establishing standards for the approval of out-of-state nursing education programs. These standards for out-of-state programs must include consideration of whether the program is accredited by the national league for nursing accrediting commission, incorporated, or the commission on collegiate nursing education and whether the program meets the requirements of the state in which the program is provided.
    - (3) Pass an examination approved by the board.
  - b. An applicant for licensure by endorsement to practice as a registered nurse or licensed practical nurse shall:

- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit an official transcript showing completion of a nursing education program preparing for the level of licensure sought.
  - (3) Submit proof of initial licensure by examination with the examination meeting North Dakota requirements for licensure examinations in effect at the time the applicant qualified for initial licensure.
  - (4) Submit evidence of current unencumbered licensure in another state or meet continued competency requirements as established by the board.
  - (5) Notwithstanding the foregoing requirements of this subdivision, if an applicant for licensure as a licensed practical nurse has been licensed in another state as a licensed practical nurse based upon completion of a registered nurse education program and has had at least twenty-four months of unencumbered practice as a licensed practical nurse in another state within the five-year period preceding the application, then the applicant is not required to meet any additional educational requirements for licensure as a licensed practical nurse.
- c. An applicant for licensure as an advanced practice registered nurse shall:
- (1) Submit a completed application and appropriate fee as established by the board.
  - (2) Submit evidence of appropriate education and current certification in an advanced nursing role by a national nursing organization meeting criteria as established by the board. An advanced practice registered nurse applicant must have a graduate degree with a nursing focus or must have completed the educational requirements in effect when the applicant was initially licensed.
  - (3) Possess or show evidence of application for a current unencumbered registered nurse license.
- d. An applicant for licensure as an advanced practice registered nurse who completed an advanced nursing education program and was licensed or certified in advanced practice by another state before January 1, 2001, or who completed

an advanced nursing education program and was licensed or certified as a women's health care nurse practitioner by another state before January 1, 2007, may apply for and receive an advanced practice license if that applicant meets the requirements that were in place in this state at the time the applicant qualified for initial advanced practice licensure in that state.

e. An applicant for unlicensed assistive person registration shall:

(1) Submit a completed application and the appropriate fee as established by the board.

(2) Provide verification of appropriate training or evidence of certification or evaluation in the performance of basic nursing interventions.

f. An applicant for licensure as a specialty practice registered nurse shall:

(1) Submit a completed application and appropriate fee as established by the board.

(2) Submit evidence of appropriate education and current certification in a specialty nursing role by a national nursing organization meeting criteria as established by the board. A specialty practice registered nurse applicant must have the educational preparation and national certification within a defined area of nursing practice.

(3) Possess or show evidence of application for a current unencumbered registered nurse license.

g. An applicant for registration as a lay or traditional midwife shall:

(1) Submit a completed application and the appropriate fee as established by the board. A qualified applicant may not be licensed as a physician or nurse.

(2) Submit evidence of education related to the practice as a lay midwife; experience, including preceptorship, in the practice of a lay midwife; and effective January 1, 2013, certification by a national organization.

3. For good cause shown, the board may issue a limited license or registration to an applicant.

**SECTION 3. AMENDMENT.** Section 43-12.1-09.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-12.1-09.1. ~~Nursing-licensure~~Licensure or registration - Criminal history record checks.**

The board may require each applicant for initial or renewed ~~nursing-licensure~~ or registration and any licensee or registrant who is the subject of a disciplinary investigation or proceeding to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the applicant, licensee, or registrant. The board may grant a nonrenewable temporary permit to an applicant for initial or renewed license or registration who submits to a criminal history record check as required by this chapter if the applicant has met all other licensure or registration requirements in accordance with subsection 2 of section 43-12.1-09.

**SECTION 4.** A new section to chapter 43-12.1 of the North Dakota Century Code is created and enacted as follows:

**Lay or traditional midwife registry.**

The board shall administer a voluntary registry for an individual who provides services to women and their newborn children outside of a hospital or clinical setting which is consistent with the individual's training, education, and certification. In order to register as a lay or traditional midwife, an applicant shall submit to a statewide and nationwide criminal history record check under section 43-12.1-09.1.

**SECTION 5. LEGISLATIVE MANAGEMENT STUDY - REGULATION OF LAY OR TRADITIONAL MIDWIVES.** During the 2011-12 interim, the legislative management shall study the feasibility and desirability of developing a mechanism for mandatory regulation of lay or traditional midwives. The state department of health shall convene a task force of interested parties to study the feasibility and desirability of developing a method and source of funding for the regulation of lay or traditional midwives, including the gathering of current and relevant data, and shall report any recommendations to the legislative management. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 6. EXPIRATION DATE.** This Act is effective through July 31, 2013, and after that date is ineffective.