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UNFINISHED BUSINESS

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Bill No: SB 1237  
Author: Dodd (D), et al.  
Amended: 8/25/20  
Vote: 21

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SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 8-0, 5/18/20  
AYES: Glazer, Chang, Archuleta, Dodd, Galgiani, Hill, Leyva, Wilk  
NO VOTE RECORDED: Pan

SENATE APPROPRIATIONS COMMITTEE: 6-0, 6/18/20  
AYES: Portantino, Bradford, Hill, Jones, Leyva, Wieckowski  
NO VOTE RECORDED: Bates

SENATE FLOOR: 35-1, 6/26/20  
AYES: Allen, Archuleta, Atkins, Beall, Borgeas, Bradford, Caballero, Chang, Dahle, Dodd, Durazo, Galgiani, Glazer, Lena Gonzalez, Grove, Hertzberg, Hill, Hueso, Hurtado, Jackson, Leyva, McGuire, Melendez, Mitchell, Monning, Moirlach, Portantino, Roth, Rubio, Skinner, Stern, Umberg, Wieckowski, Wiener, Wilk  
NOES: Morrell  
NO VOTE RECORDED: Bates, Jones, Nielsen, Pan

ASSEMBLY FLOOR: Not available

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**SUBJECT:** Nurse-midwives: scope of practice

**SOURCE:** Black Women for Wellness Action Project  
California Nurse-Midwives Association

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**DIGEST:** This bill removes the requirement for a certified nurse midwife (CNM) to practice midwifery according to standardized procedures or protocols with a physician; revises the provisions defining the practice of midwifery; authorizes a CNM to attend cases out of a hospital setting; authorizes a CNM to furnish or order drugs or devices in accordance with standardized protocols with a

physician; requires a CNM to provide specified disclosures to a patient; and, establishes new reporting and data collection requirements.

*Assembly Amendments* add chaptering language, revise the participants on the advisory committee, establish new reporting and data collection requirements for out-of-hospital births and transfers, as specified; and, make other technical and clarifying changes.

### **ANALYSIS:**

Existing law:

- 1) Establishes the Board of Registered Nursing (BRN) to provide for the licensure and regulation of the practice of nursing and authorizes the BRN to issue a certificate to practice nurse-midwifery to a person who meets educational standards established by the BRN or the equivalent of those educational standards. (Business and Professions Code (BPC) §§ 2700 et seq.)
- 2) Specifies that the practice of “midwifery” is the furthering or undertaking by a CNM, under the supervision of a licensed physician who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal and all complications are to be referred to a physician. (BPC § 2746.5(b))
- 3) Authorizes a CNM to perform and repair episiotomies and to repair first-degree and second degree lacerations of the perineum in a licensed acute care hospital and a licensed alternate birth center, if certain requirements are met, including, but not limited to, that episiotomies are performed pursuant to protocols developed and approved by the supervising physician and surgeon. (BPC § 2746.52)
- 4) Authorizes a CNM to furnish or order drugs or devices, including Schedule II-V controlled substances, pursuant to physician supervision, standardized procedures and protocols, and other conditions, as specified. (BPC § 2746.51)

This bill:

- 1) Names the BRN’s current CNM committee the Nurse-Midwifery Advisory Committee and requires the committee to be comprised of four NMs, two physicians, and one public member, as specified.
- 2) Deletes the requirement for standardized procedures and protocols with a physician as part of a certificate to practice midwifery. States that the

certificate to practice nurse-midwifery authorizes the holder to attend cases of low-risk pregnancy consistent with the Core Competencies for Basic Midwifery Practice adopted by the American College of Nurse-Midwives, or its successor national professional organization, as approved by the BRN. Defines low risk pregnancy as one in which there is a single fetus, there is a cephalic presentation at onset of labor; the gestational age of the fetus is greater than or equal to 37 weeks and zero days and less than or equal to 42 weeks and zero days at the time of delivery, labor is spontaneous or induced, and the patient does not have a preexisting disease or condition, whether arising out of the pregnancy or otherwise, that adversely affects the pregnancy and the CNM is not qualified to independently address.

- 3) Authorizes a CNM to directly procure supplies and devices, obtain and administer diagnostic tests, order laboratory and diagnostic testing, and receive reports that are necessary to their practice as a CNM within their scope of practice. Allows CNM to perform and repair episiotomies, and to repair first and second degree lacerations of the perineum without standardized procedures and protocols with a physician, as specified. Prohibits a CNM from using vacuum or forceps, or performing any external cephalic version.
- 4) States that the certificate to practice nurse-midwifery authorizes the holder to practice with a physician under mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral and transfer of a patient's care, signed by the both the CNM and a physician to either: (a) provide patient with care that falls outside the scope of services of a low-risk pregnancy, as specified; or (b) provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.
- 5) Requires a patient to be transferred to the care of a physician if a CNM does not have in place mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care signed by both the CNM and a physician, if the care falls outside the specified scope of services, or if the patient has had a prior cesarean section or surgery. Authorizes a patient that has been transferred from the care of a CNM to that of a physician to be returned to the care of the CNM after the physician has determined the condition or the circumstance that required the transfer has been resolved. Requires a CNM to refer all emergencies to a physician immediately, and authorizes a CNM to provide emergency care until the assistance of a physician is obtained.

- 6) States that the certificate to practice midwifery authorizes the holder to attend pregnancy and childbirth in an out-of-hospital setting and authorizes a CNM to furnish or order drugs and devices when providing care in an out-of-hospital setting, as specified.
- 7) Requires a CNM to provide a disclosure, both orally and in written form, to a prospective patient as part of the patient care plan, and to obtain informed consent and a signature, when providing care in a setting outside of a hospital, that outlines information about the CNM's lack of supervision, licensure status, liability insurance status, arrangements for transfer, and the availability of statute regulating CNM practice.
- 8) Requires data to be submitted to the DCA for all maternal or neonatal transfers to a hospital setting during labor or the immediate postpartum period, if the intended place of birth was an out-of-hospital setting at the onset of labor, or for any maternal, fetal, or neonatal death that occurred in the out-of-hospital setting during labor or the immediate postpartum period, if the intended birth care provider is a CNM in the out-of-hospital setting, as specified.
- 9) Requires a CNM to report the outcome of a birth in an out-of-hospital setting, as specified.
- 10) Establishes various reporting and data collection requirements related to labor and delivery services occurring in an out-of-hospital setting, as specified.
- 11) Makes findings and declarations related to maternity care in California, including racial disparities.
- 12) Adds chaptering language to avoid a conflict with AB 890 (Wood).

## **Background**

*Certified Nurse Midwives.* CNMs are advanced practice registered nurses who have specialized education and training to provide primary care, prenatal, intrapartum, and postpartum care, including interconception care and family planning. These individuals are licensed by the BRN, have acquired additional training in the field of obstetrics, and are certified by the American College of Nurse Midwives.

Currently, the nurse-midwifery certificate authorizes the CNM to attend cases of *normal* childbirth, as well as immediate care for the newborn, but only according to standardized procedures and protocols with a licensed physician. A CNM may furnish drugs and devices after completing at least six months of physician

supervised experience in the furnishing of drugs and devices and a course in pharmacology.

Protocols are a part of standardized procedures and are designed to describe the steps of medical care for given patient situations. Protocols are currently developed in consultation with a supervising physician, and CNMs are required to include the extent of supervision as part of those standardized procedures related to ordering or furnishing drugs or devices (BPC § 2746.51(A)(2)(B)).

There are approximately 700 CNMs practicing in California. In 2017, it was reported that CNMs attended nearly 50,000 births across the state (out of the 470,000 births that occurred that year). Although CNMs are authorized to practice in birth centers and home-based settings, the majority provide client care in a hospital setting.

*Standardizes procedures.* Standardized procedures are developed collaboratively by nurses, physicians, and the administration of an organized health care system. The BRN and the Medical Board of California have jointly promulgated guidelines for standardized procedures (CCR, tit. 16, § 1474). They are based on the competence of the nurses providing the procedures and include record, referral, and setting requirements, among other patient protections. While supervision by a physician is required for CNMs to provide patient care, that supervision does not require the physical presence of a physician so currently, a CNM can work miles away from the actual location of the physician, and as long as the standardized procedures are in place, the CNM may deliver babies and provide other authorized practices by a CNM.

*Studies and Access to Care.* On March 11, 2020, the Legislative Analyst's Office released *Analysis of California's Physician-Supervision Requirement for Certified Nurse Midwives*, which analyzed whether the current physician supervision requirement is meeting its intended safety and quality objectives, without significantly increasing cost or decreasing access to health care services. Ultimately, part of the findings of that report noted that California's current supervision requirement is "unlikely to improve safety and quality for low-risk pregnancies and births". The LAO report, based on an analysis of various studies, did "not find evidence that the safety and quality of maternal and infant health care by nurse midwives is inferior to that of physicians in cases of low risk pregnancies and births." The report also concluded, "states with physician supervision or collaboration agreement requirements do not have superior maternal and infant health outcomes than states without such requirements." It notes that since the supervision requirements in statute do not clearly define the responsibilities of

supervision, “the state’s requirement is unlikely to be more effective than other states’ similar requirements. Therefore, we find that California’s supervision requirement for nurse midwives is unlikely to improve safety and quality for low risk pregnancies and births.”

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee, this bill will result in one-time costs of \$3.6 million for CDPH to develop and deploy a new web-based reporting system, as well as \$400,000 annually to perform maintenance and support. The Committee notes that BRN does not anticipate a substantial fiscal impact as a result of this bill, however there may be additional unanticipated indeterminable cost pressures to the BRN for expanded enforcement and workload requirements. Fees and assessments from licensees may offset ongoing enforcement and administration costs.

**SUPPORT:** (Verified 8/30/20)

Black Women for Wellness Action Project (co-source)  
 California Nurse-Midwives Association (co-source)  
 2020 Mom  
 Academy of Lactation Policy and Practice INC.  
 Access Women's Health Justice  
 American Association of Birth Centers  
 American Civil Liberties Union/Northern California/Southern California/San Diego and Imperial Counties  
 American College of Nurse-midwives  
 Asian Americans Advancing Justice - California  
 Association of Women's Health and Neonatal Nursing  
 Beach Cities Midwifery & Women's Health Care  
 Best Start Birth Center  
 Black Wellness & Prosperity Center  
 CA Board of Registered Nursing  
 California Association of Nurse Anesthetists  
 California Black Women's Health Project  
 California Health Coalition Advocacy  
 California Latinas for Reproductive Justice  
 California Women's Law Center  
 Center on Reproductive Rights and Justice  
 Citizens for Choice  
 Every Neighborhood Partnership

Feminist Majority Foundation  
Grow Midwives  
Healthimpact  
Healthy Children Project, INC.  
If/When/How: Lawyering for Reproductive Justice  
Medical Board of California  
Midwives Alliance North America  
Momsrising  
Naral Pro-choice California  
National Council of Jewish Women California  
National Council of Jewish Women Los Angeles  
National Health Law Program  
New Birth Services  
Pacific Business Group on Health  
The Praxis Project  
Training in Early Abortion for Comprehensive Healthcare  
United Nurses Associations of California/Union of Health Care Professionals  
University of California  
Urge: Unite for Reproductive & Gender Equity  
Western Center on Law & Poverty, INC.

**OPPOSITION:** (Verified 8/30/20)

Bakersfield Birth Center  
Better Birth Association of Harlem, NY  
Big Valley Midwives  
Birth Rights Solutions  
Birthing Without Fear  
Birthstream Midwifery Service  
Birthwaves Midwifery  
California Association of Licensed Midwives  
California College of Midwives  
California Families for Access to Midwives  
Californians for Advancement of Midwifery  
Coalition for Ethical Maternity Care  
Cornerstone Doula Trainings  
Full Moon Family Wellness & Birth Center  
Golden State Midwifery and Birth Services  
Hero Birth Services  
ICOM (East Bay Midwives of Color)  
International Cesarean Awareness Network

LGBTQ Perinatal Wellness Center  
Little Acorn Doula Services  
Long Beach Birth Workers of Color Collective  
Midwives Alliance of North America  
Nia Healing Center for Birth and Family Life  
Roots of Labor Birth Collective  
See Midwives  
The Oakland Better Birth Foundation  
Urban Village Birth Services  
VBAC Facts  
Welcome Home Community Birth Center

**ARGUMENTS IN SUPPORT:** Supporters note that this bill will increase access to maternal health and improve maternal and newborn health outcomes.

**ARGUMENTS IN OPPOSITION:** A coalition of opponents note that this bill leaves a significant number of Californians ineligible for CNM care and rather than increasing access, represents a harmful barrier to care.

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\*\*\*\* END \*\*\*\*