
THIRD READING

Bill No: SB 667
Author: Dodd (D)
Amended: 4/19/23
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 12-0, 4/17/23
AYES: Roth, Nguyen, Alvarado-Gil, Archuleta, Ashby, Becker, Dodd, Eggman,
Niello, Smallwood-Cuevas, Wahab, Wilk
NO VOTE RECORDED: Glazer

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

SUBJECT: Healing arts: pregnancy and childbirth

SOURCE: Certified Nurse Midwives Association

DIGEST: This bill updates independent practice authority for Certified Nurse Midwives (CNM) and revises authority to furnish or order specified controlled substances within a CNM's standard of care without mutually agreed upon policies or procedures; clarifies a CNM's authority to treat and provide care for common gynecologic conditions; permits a CNM to admit or discharge a patient if a CNM has privileges at a general acute care hospital, as specified; clarifies that a CNM is a practitioner for purposes of certifying disability; and includes a CNMs as a laboratory director for purposes of performing specified laboratory tests.

ANALYSIS:

Existing law:

- 1) States that the certificate to practice nurse-midwifery authorizes the holder (CNM) to attend cases of low-risk pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care, including interconception care, family planning care, and immediate care for the newborn, as specified.
(Business and Professions Code (BPC) § 2745.6(b))

- 2) Permits a CNM to furnish or order drugs or devices, including controlled substances classified in schedule II III IV or V, under the California Uniform Controlled Substances Act when the drugs or devices are furnished or ordered incidentally to the care and services are authorized in the certificate to practice midwifery and when the furnishing or ordering of drugs or devices by a CNM for services that do not fall within the certificate to practice midwifery are in accordance with standardized procedures or protocols, as defined; or a patient-specific protocol approved by a physician and surgeon, as specified. (BPC §2746.51(a))
- 3) Provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by CDPH, with specified exceptions. (BPC § 1200-1327)
- 4) Prohibits a person from performing a clinical laboratory test or examination classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a; P.L. 100-578) (CLIA) unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by specified personnel. (BPC § 1206.5(a))
- 5) Defines a “practitioner” for purposes of a claimant establishing medical eligibility for filing a claim for disability benefits supported by the certificate of a treating physician or practitioner. (Unemployment Insurance Code § 2708(a)(1) and 2708(e)(2).

This bill:

- 1) Adds common gynecologic conditions to the practice of midwifery by a CNM.
- 2) Permits a CNM who holds privileges in a general acute care hospital, as defined, to admit and discharge patients upon their own authority, within their scope of practice and in accordance with the bylaws of that facility, as specified.
- 3) Updates and revises the authority for CNMs to furnish and order controlled substances classified in schedule II, III, IV, and V,
- 4) Deletes the requirement that a copy of standardized procedure or protocol relating to the furnishing or ordering of controlled substances by a CNM be

provided upon request to any licensed pharmacist who is uncertain of the CNM to perform these functions.

- 5) Clarifies that a CNM may dispense drugs, which are defined in the pharmacy law as not dangerous, as specified.
- 6) Adds a CNM to the definition of “prescriber” in the pharmacy law, as specified.
- 7) Adds low-risk pregnancy and childbirth or postpartum conditions consistent with the scope of a CNM’s or midwife’s professional license to the definition of “practitioner” for purposes of obtaining medical eligibility for disability, as specified.
- 8) Adds a CNM to the definition of laboratory director as long as the CNM only performs clinical laboratory tests classified as waived or provider-performed microscopy authorized within the scope of the certificate to practice midwifery, as specified.
- 9) Makes other technical and clarifying changes.

Background

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. In order to obtain a certificate to practice as a CNM, the applicant must provide proof to the BRN that they have either graduated from a BRN approved program in nurse-midwifery or satisfied equivalence standards as set forth in the BRN’s regulations (Title 16 California Code of Regulations § 1460).

The nurse-midwifery certificate authorizes the CNM to attend cases of *low-risk* pregnancy and childbirth, as well as immediate care for the newborn along with family planning and interconception care. CNMs may furnish or order drugs and devices in certain healthcare settings. If a CNM orders or furnishes a drug or device that would be outside of the standard of care authorized by the certificate to practice midwifery, the CNM may only do so if they have established mutually agreed upon protocols with a physician and surgeon. Additionally, in order to furnish drugs or devices, the CNM must obtain a furnishing number from the BRN, and register with the United States Drug Enforcement Administration and the Controlled Substance Utilization Review and Enforcement System.

Prior to 2020, CNMs were required to practice under the supervision of a physician and surgeon under standardized procedures and protocols. SB 1237 (Dodd, Chapter, Statutes of 2019) eliminated the requirement for a CNM to practice midwifery according to standardized procedures or protocols with a physician in an effort to allow CNMs to practice independently of physician supervision. That bill revised provisions defining the practice of midwifery, authorized a CNM to attend cases of childbirth outside of a defined hospital setting; authorized a CNM to furnish or order drugs or devices in accordance with standardized protocols with a physician; required a CNM to provide specified disclosures to a patient; and, established new reporting and data collection requirements. SB 1237 did not change the scope of work that a CNM could perform, but permitted a CNM to perform their work without physician supervision.

It appears that after three years of implementation of independent practice for CNMs, there are aspects of current law that hinder the CNM's ability to fully practice independently as was the aim of SB 1237. This bill attempts to address these challenges by updating and revising a number of provisions related to the CNM's practice authority. One of the more significant updates is the revisions to the CNM's prescribing authority. As a result of SB 1237, CNMs were limited in prescribing certain controlled substances unless they had established mutually agreed upon protocols with a physician and surgeon. This bill revises that requirement and would permit a CNM to furnish or order a drug or device that is schedule II or III, as long as the furnishing or prescribing of that drug would fall within the standard of care of a CNM's certificate to practice midwifery-if the prescribing would fall outside of those parameters, the CNM would then be required to have a mutually agreed upon protocols.

This bill adds CNMs to the definition of "practitioner" under the unemployment insurance code to ensure that CNMs can establish eligibility for disability purposes related to low-risk pregnancy, childbirth and postpartum conditions. This bill would also add the care of "common gynecological conditions" to the list of services that a CNM is able to provide based on a certificate to practice midwifery. If a CNM were to provide care for a gynecological condition that falls outside that normal parameter, they would subject themselves to potential enforcement by the BRN. This bill updates the pharmacy law to include CNMs in the definition of "prescriber", among other provisions.

A facility that performs laboratory tests on human specimens for diagnosis or assessment must be certified under CLIA. CLIA certification requirements vary depending on the complexity of the laboratory tests performed. The FDA determines the complexity of CLIA laboratory tests. Waived tests are simple tests

with a low risk for an incorrect result. They include tests listed in the CLIA regulations, tests cleared by the FDA for home use, and tests approved for waiver by the FDA using the CLIA criteria. Tests not classified as waived are assigned a moderate or high complexity category based on seven criteria given in the CLIA regulations, including ease of use, knowledge required, and types of materials tested. While CLIA establishes minimum federal standards, it allows states to enact more stringent state law requirements. At the federal level and in California, anyone may perform a waived test in a licensed laboratory or as part of a nondiagnostic health assessment program under the overall direction of a laboratory director, unless otherwise limited.

Currently, CNMs who work independently at certain facilities including alternative birth centers, where there is not a physician and surgeon owner, and therefore no licensed laboratory director, report that they are unable to provide routine, standard tests unless they contract with a physician and surgeon who is willing to lend their license to the facility simply for oversight purposes. As specified in BPC Section 2746.51(f), a CNM may directly procure supplies and devices, *obtain and administer diagnostic tests*, *directly* obtain and administer nonscheduled drugs consistent with the provision of services that fall within the scope of services, as specified, *order laboratory and diagnostic testing*, and receive reports that are necessary to their practice as a certified nurse-midwife within their scope of practice as specified within the certificate to practice midwifery. However, the author and sponsor note difficulties in administering tests.

This bill adds a CNM to the current list of individuals who may be a laboratory director and eligible to perform clinical tests classified as waived and those very specific PPM tests that are permitted only under the CNM's certificate to practice midwifery.

Comments

The Board of Registered Nursing states that it supports this bill if it amended to clarify that when a CNM is providing intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium, it be done with a physician and surgeon under mutually agreed upon policies and protocols.

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

SUPPORT: (Verified 5/1/23)

2020 Mom

American Association of Birth Centers

American Association of University Women - California
American Nurses Association/California
Best Start Birth Center
California Association for Nurse Practitioners
California Association of Nurse Anesthetists
California Nurse Midwives Association
NARAL Pro-Choice California
National Health Law Program
Purchaser Business Group on Health
San Francisco Black, Jewish and Unity Group
Training in Early Abortion for Comprehensive Health Care

OPPOSITION: (Verified 5/1/23)

American College of Obstetricians and Gynecologists District IX
California Academy of Family Physicians
California Medical Association

ARGUMENTS IN SUPPORT: Supporters believe that this bill addresses the redundancies, and red tape revealed only through the everyday practice of midwives who continue to experience disruptive and unnecessary limitations to practice. According to supporters, this bill also strengthens continuity and access by clarifying the ability of CNMs to dispense drugs that are consistent with their scope of practice and current prescribing capabilities. It also reduces costly barriers that threaten the sustainability of birth centers and midwife-owned clinics by exempting these specific clinics from California rules that require a physician to be the laboratory director. This bill seeks to reduce geographic and economic barriers to reproductive health care by extending the ability of CNMs to manage common gynecologic conditions across the lifespan rather than only within the discrete periods of pregnancy and conception

ARGUMENTS IN OPPOSITION: Opponents note, “While we appreciate and understand the nurse-midwives desire to perform certain tests without needing a laboratory director, authorizing nurse-midwives to become laboratory directors, solely for that purpose, is problematic.”

Prepared by: Elissa Silva / B., P. & E.D. / 916-651-4104
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