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An Act

SENATE BILL 11-088

BY SENATOR(S) Carroll and Lundberg, Boyd, Mitchell, Brophy, Cadman, Grantham, Guzman, Harvey, Hodge, King K., Kopp, Lambert, Nicholson, Renfroe, Schwartz, Steadman, White, Williams S.;
also REPRESENTATIVE(S) Acree, Court, Fischer, Hamner, Jones, Kefalas, Lee, Riesberg, Wilson, Duran, Fields, Kerr J., Labuda, Pace, Schafer S., Summers, Todd.

CONCERNING THE REGULATION OF DIRECT-ENTRY MIDWIVES, AND, IN CONNECTION THEREWITH, IMPLEMENTING THE SUNSET REVIEW RECOMMENDATIONS OF THE DEPARTMENT OF REGULATORY AGENCIES, AND MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Repeal. 24-34-104 (42) (d), Colorado Revised Statutes, is repealed as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (42) The following agencies, functions, or both, shall terminate on July 1, 2011:

(d) ~~The registration of direct-entry midwives by the division of registrations in accordance with article 37 of title 12, C.R.S.;~~

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. 24-34-104 (47.5), Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PARAGRAPH to read:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (47.5) The following agencies, functions, or both, shall terminate on September 1, 2016:

(h) THE REGISTRATION OF DIRECT-ENTRY MIDWIVES BY THE DIVISION OF REGISTRATIONS IN ACCORDANCE WITH ARTICLE 37 OF TITLE 12, C.R.S.;

SECTION 3. 12-37-110 (1), Colorado Revised Statutes, is amended to read:

12-37-110. Repeal of article. (1) This article is repealed, effective July 1, 2011 SEPTEMBER 1, 2016.

SECTION 4. 12-37-101 (1), Colorado Revised Statutes, is amended to read:

12-37-101. Scope of article - exemptions - legislative declaration.

(1) (a) ~~The provisions of This article shall apply~~ APPLIES only to direct-entry midwives also known as "lay" midwives, and ~~shall~~ DOES not apply to those persons who are otherwise licensed by the state of Colorado under this title if the practice of midwifery is within the scope of such licensure.

(b) (I) ~~No A person who is a licensed professional or practical nurse as provided in article 38 of this title~~ CERTIFIED NURSE-MIDWIFE AUTHORIZED PURSUANT TO SECTION 12-38-111.5 or a physician as provided in article 36 of this title shall NOT simultaneously be so licensed and also be registered under this article. ~~A licensed professional or practical nurse as provided in article 38 of this title or physician as provided in article 36 of this title~~ OR CERTIFIED NURSE-MIDWIFE who holds a license in good standing may relinquish ~~said~~ THE license and subsequently be registered under this article.

(II) A DIRECT-ENTRY MIDWIFE SHALL NOT REPRESENT HIMSELF OR HERSELF AS A NURSE-MIDWIFE OR CERTIFIED NURSE-MIDWIFE.

(III) THE FACT THAT A DIRECT-ENTRY MIDWIFE MAY HOLD A PRACTICAL OR PROFESSIONAL NURSING LICENSE DOES NOT EXPAND THE SCOPE OF PRACTICE OF THE DIRECT-ENTRY MIDWIFE.

(IV) THE FACT THAT A PRACTICAL OR PROFESSIONAL NURSE MAY BE REGISTERED AS A DIRECT-ENTRY MIDWIFE DOES NOT EXPAND THE SCOPE OF PRACTICE OF THE NURSE.

(c) It is the intent of the general assembly that health care be provided pursuant to this article as an alternative to traditional licensed health care and not for the purpose of enabling providers of traditional licensed health care to circumvent the regulatory oversight to which they are otherwise subject under any other article of this title.

SECTION 5. 12-37-102, Colorado Revised Statutes, is amended to read:

12-37-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "CLIENT" MEANS A PREGNANT WOMAN FOR WHOM A DIRECT-ENTRY MIDWIFE PERFORMS SERVICES. FOR PURPOSES OF PERINATAL OR POSTPARTUM CARE, "CLIENT" INCLUDES THE WOMAN'S NEWBORN.

~~(1)~~ (2) "Direct-entry midwife" means a person who practices ~~traditional~~, direct-entry midwifery. ~~as defined in subsection (2) of this section.~~

~~(2)~~ (3) "Direct-entry midwifery" or "practice of direct-entry midwifery" means the advising, attending, or assisting of a woman during pregnancy, labor and natural childbirth at home, and during the postpartum period in accordance with this article.

~~(3)~~ (4) "Director" means the director of the division. ~~of registrations in the department of regulatory agencies.~~

(5) "DIVISION" MEANS THE DIVISION OF REGISTRATIONS IN THE DEPARTMENT OF REGULATORY AGENCIES.

~~(4)~~ (6) "Natural childbirth" means the birth of a child without the

use of ~~prescription drugs~~, instruments, or surgical procedures, OR PRESCRIPTION DRUGS OTHER THAN THOSE FOR WHICH THE DIRECT-ENTRY MIDWIFE HAS SPECIFIC AUTHORITY UNDER THIS ARTICLE TO OBTAIN AND ADMINISTER.

~~(5)~~ (7) "Postpartum period" means the period of six weeks after birth.

~~(6)~~ (8) "Registrant" means a direct-entry midwife registered pursuant to section 12-37-103.

SECTION 6. 12-37-103 (1), (2), (3), and (4.5), the introductory portion to 12-37-103 (5), and 12-37-103 (5) (d), (5) (e), and (6), Colorado Revised Statutes, are amended, and the said 12-37-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

12-37-103. Requirement for registration with the division of registrations - annual fee - grounds for revocation. (1) Every direct-entry midwife shall register with the division of registrations by ~~providing an application~~ APPLYING to the director in the form AND MANNER the director ~~shall require~~ REQUIRES. Said application shall include the information specified in section 12-37-104.

(2) Any changes in the information required by subsection (1) of this section shall be reported within thirty days ~~of said~~ AFTER THE change to the division ~~of registrations~~ in the FORM AND manner ~~prescribed~~ REQUIRED by the director.

(3) Every applicant for registration shall pay a registration fee to be established by the director in the manner authorized by section 24-34-105, C.R.S. Registrations shall be renewed or reinstated pursuant to a schedule established by the director and shall be renewed or reinstated pursuant to section 24-34-102 (8), C.R.S. The director may establish renewal fees and delinquency fees for reinstatement pursuant to section 24-34-105, C.R.S. If a person fails to renew his or her registration pursuant to the schedule established by the director, ~~of the division of registrations~~, such registration shall expire. Any person whose registration has expired shall be subject to the penalties provided in this article or section 24-34-102 (8), C.R.S.

(4.5) A person who has had his or her registration revoked shall not

apply for ~~reregistration~~ A NEW REGISTRATION until at least two years have elapsed since the date of the revocation.

(5) To qualify to register, a direct-entry midwife ~~shall~~ MUST have successfully completed an examination evaluated and approved by the director as an appropriate test to measure competency in the practice of direct-entry midwifery, which examination ~~shall~~ MUST have been developed by a person or entity other than the director or the division and the acquisition of which shall require no expenditure of state funds. The national registry examination administered by the midwives' alliance of North America, incorporated, ~~shall~~ OR ITS SUCCESSOR, MUST be among those evaluated by the director. The director is authorized to approve any existing test meeting all the criteria set forth in this subsection (5). In addition to successfully completing such examination, a direct-entry midwife ~~shall be deemed~~ IS qualified to register if such person has:

(d) Acquired practical experience including, at a minimum, experience with the conduct of AT LEAST one hundred prenatal examinations on no fewer than thirty different women and observation of AT LEAST thirty births;

(e) Participated as a birth attendant, including rendering care from the prenatal period through the postpartum period, in connection with ~~no less than~~ AT LEAST thirty births; and

(6) Effective July 1, 2003, in order to be deemed qualified to register, a direct-entry midwife ~~shall~~ MUST have graduated from an accredited midwifery educational program or obtained a substantially equivalent education approved by the director. Such educational requirement ~~shall~~ DOES not apply to direct-entry midwives who have registered with the division of ~~registrations~~ before July 1, 2003.

(7) FOR PURPOSES OF REGISTRATION UNDER THIS ARTICLE, NO CREDENTIAL, LICENSURE, OR CERTIFICATION ISSUED BY ANY OTHER STATE MEETS THE REQUIREMENTS OF THIS ARTICLE, AND THEREFORE THERE IS NO RECIPROCITY WITH OTHER STATES.

SECTION 7. The introductory portion to 12-37-104 (1) and 12-37-104 (1) (d), (1) (e), and (3), Colorado Revised Statutes, are amended, and the said 12-37-104 (1) is further amended BY THE ADDITION OF

THE FOLLOWING NEW PARAGRAPHS, to read:

12-37-104. Mandatory disclosure of information to clients.

(1) Every direct-entry midwife shall provide the following information in writing to each ~~patient~~ CLIENT during the initial ~~patient~~ CLIENT contact:

(d) A listing of any license, certificate, or registration in the health care field previously OR CURRENTLY held by the direct-entry midwife and SUSPENDED OR revoked by any local, state, or national health care agency;

(e) A statement that the practice of direct-entry midwifery is regulated by the department of regulatory agencies. The statement ~~shall~~ MUST provide the address and telephone number of the ~~complaints and investigations section of~~ OFFICE OF MIDWIFERY REGISTRATION IN the division of registrations in the department of regulatory agencies and shall state that violation of ~~the provisions of~~ this article may result in revocation of registration and of the authority to practice direct-entry midwifery in ~~the~~ state of Colorado.

(g) A STATEMENT INDICATING WHETHER OR NOT THE DIRECT-ENTRY MIDWIFE WILL ADMINISTER VITAMIN K TO THE CLIENT'S NEWBORN INFANT AND, IF NOT, A LIST OF QUALIFIED HEALTH CARE PRACTITIONERS WHO CAN PROVIDE THAT SERVICE; AND

(h) A STATEMENT INDICATING WHETHER OR NOT THE DIRECT-ENTRY MIDWIFE WILL ADMINISTER RHO(D) IMMUNE GLOBULIN TO THE CLIENT IF SHE IS DETERMINED TO BE RH-NEGATIVE AND, IF NOT, A LIST OF QUALIFIED HEALTH CARE PRACTITIONERS WHO CAN PROVIDE THAT SERVICE.

(3) ~~For purposes of registration under this article, no credentials, licensure, or certification issued by any other state shall constitute or be deemed to meet the requirements of this article, and to that extent there shall be no reciprocity with other states.~~

SECTION 8. 12-37-105 (1), the introductory portion to 12-37-105 (5) (a) (III), 12-37-105 (5) (a) (III) (C), (5) (a) (III) (D), (5) (a) (III) (F), (5) (a) (IV), (6), (7), and (8), the introductory portion to 12-37-105 (12), and 12-37-105 (12) (f), (13), and (14), Colorado Revised Statutes, are amended to read:

12-37-105. Prohibited acts - practice standards - informed consent - emergency plan - risk assessment - referral - rules. (1) A direct-entry midwife shall not dispense or administer any medication or drugs ~~except for required eye prophylactic therapy~~ IN ACCORDANCE WITH SECTION 12-37-105.5.

(5) (a) A direct-entry midwife shall keep appropriate records of midwifery-related activity, including but not limited to the following:

(III) ~~Prior to~~ BEFORE accepting a client for care, the direct-entry midwife shall obtain the client's informed consent, which shall be evidenced by a written statement in a form prescribed by the director and signed by both the direct-entry midwife and the client. The form shall certify that full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgment evidenced by a separate signature or initials adjacent to each item in addition to the client's signature at the end of the form:

(C) A DESCRIPTION OF the available alternatives to direct-entry midwifery care, INCLUDING A STATEMENT THAT THE CLIENT UNDERSTANDS SHE IS NOT RETAINING A CERTIFIED NURSE MIDWIFE OR A NURSE MIDWIFE;

(D) A description of the risks of birth, including ~~but not limited to~~ those that are different from those of hospital birth and ~~including but not limited to~~ those conditions that may arise during delivery;

(F) A statement informing the client that, ~~in the event~~ IF subsequent care is required resulting from the acts or omissions of the direct-entry midwife, any physician, nurse, prehospital emergency personnel, and health care institution rendering such care shall be held only to a standard of gross negligence or willful and wanton conduct.

(IV) ~~Until such time as~~ the liability insurance required pursuant to section 12-37-109 (3) is available, each direct-entry midwife shall, ~~prior to~~ BEFORE accepting a client for care, provide such client with a disclosure statement indicating that the midwife does not have liability insurance. Such statement, ~~shall~~ TO COMPLY WITH THIS SECTION, MUST be printed in at least twelve-point bold-faced type and shall be read to the client in a language she understands. Each client shall sign the disclosure statement acknowledging that she understands the effect of its provisions. A copy of

the signed disclosure statement shall be given to the client.

(6) A direct-entry midwife shall prepare a plan, ~~and procedure~~, in a THE form ~~prescribed~~ AND MANNER REQUIRED by the director, for emergency situations. ~~which shall~~ THE PLAN MUST include ~~but not be limited to~~, PROCEDURES TO BE FOLLOWED IN situations in which the time required for transportation to the nearest facility capable of providing appropriate treatment exceeds limits established by the director by rule. A copy of such plan shall be given to each client as part of the informed consent required by subsection (5) of this section.

(7) A direct-entry midwife shall prepare and transmit appropriate specimens for newborn screening in accordance with section 25-4-1004, C.R.S., AND SHALL REFER EVERY NEWBORN CHILD FOR EVALUATION, WITHIN SEVEN DAYS AFTER BIRTH, TO A LICENSED HEALTH CARE PROVIDER WITH EXPERTISE IN PEDIATRIC CARE.

(8) A direct-entry midwife shall ensure that appropriate laboratory testing, as determined by the director, is completed for each ~~pregnant woman in such direct-entry midwife's care~~ CLIENT.

(12) At the time of ~~re-registration~~ RENEWAL OF A REGISTRATION, each registrant shall submit the following data ~~on a~~ IN THE form ~~prescribed~~ AND MANNER REQUIRED by the director:

(f) Any perinatal deaths, INCLUDING THE CAUSE OF DEATH AND A DESCRIPTION OF THE CIRCUMSTANCES; and

(13) ~~It shall be lawful for~~ A registered direct-entry midwife to MAY purchase, possess, carry, and administer oxygen. The department of regulatory agencies shall promulgate rules concerning minimum training requirements for direct-entry midwives with respect to the safe administration of oxygen. ~~to patients~~. Each ~~direct-entry midwife registered pursuant to this article~~ REGISTRANT shall complete the minimum training requirements and submit proof of having completed such requirements to the director before administering oxygen to any ~~patient~~ CLIENT.

(14) A ~~direct-entry midwife is prohibited from practicing~~ REGISTRANT SHALL NOT PRACTICE beyond the scope of HIS OR HER education and training or ~~from practicing~~ with a mental or physical

impairment sufficient to render the registrant unable to perform midwifery services with reasonable skill and with safety to the ~~patient~~ CLIENT.

SECTION 9. Article 37 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-37-105.5. Limited use of certain medications - limited use of sutures - limited administration of intravenous fluids - emergency medical procedures - legislative declaration - rules - repeal. (1) A REGISTRANT MAY OBTAIN PRESCRIPTION MEDICATIONS TO TREAT CONDITIONS SPECIFIED IN THIS SECTION FROM A REGISTERED PRESCRIPTION DRUG OUTLET, REGISTERED MANUFACTURER, OR REGISTERED WHOLESALER. AN ENTITY THAT PROVIDES A PRESCRIPTION MEDICATION TO A REGISTRANT IN ACCORDANCE WITH THIS SECTION, AND WHO RELIES IN GOOD FAITH UPON THE REGISTRATION INFORMATION PROVIDED BY THE REGISTRANT, IS NOT SUBJECT TO LIABILITY FOR PROVIDING THE MEDICATION.

(2) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3) OF THIS SECTION, A REGISTRANT MAY OBTAIN AND ADMINISTER:

(a) VITAMIN K TO NEWBORNS BY INTRAMUSCULAR INJECTION;

(b) RHO(D) IMMUNE GLOBULIN TO RH-NEGATIVE MOTHERS BY INTRAMUSCULAR INJECTION;

(c) POSTPARTUM ANTIHEMORRHAGIC DRUGS TO MOTHERS; AND

(d) EYE PROPHYLAXIS, APPROVED PURSUANT TO SECTION 25-4-303, C.R.S., TO NEWBORNS.

(3) (a) IF A CLIENT REFUSES A MEDICATION LISTED IN PARAGRAPH (a) OR (b) OF SUBSECTION (2) OF THIS SECTION, THE REGISTRANT SHALL PROVIDE THE CLIENT WITH AN INFORMED CONSENT FORM CONTAINING A DETAILED STATEMENT OF THE BENEFITS OF THE MEDICATION AND THE RISKS OF REFUSAL, AND SHALL RETAIN A COPY OF THE FORM ACKNOWLEDGED AND SIGNED BY THE CLIENT.

(b) IF A CLIENT EXPERIENCES UNCONTROLLABLE POSTPARTUM HEMORRHAGE AND REFUSES TREATMENT WITH ANTIHEMORRHAGIC DRUGS, THE REGISTRANT SHALL IMMEDIATELY INITIATE THE TRANSPORTATION OF

THE CLIENT IN ACCORDANCE WITH THE EMERGENCY PLAN.

(4) A REGISTRANT SHALL, AS PART OF THE EMERGENCY MEDICAL PLAN REQUIRED BY SECTION 12-37-105 (6), INFORM THE CLIENT THAT:

(a) IF SHE EXPERIENCES UNCONTROLLABLE POSTPARTUM HEMORRHAGE, THE REGISTRANT IS REQUIRED BY COLORADO LAW TO INITIATE EMERGENCY MEDICAL TREATMENT, WHICH MAY INCLUDE THE ADMINISTRATION OF AN ANTIHEMORRHAGIC DRUG BY THE REGISTRANT TO MITIGATE THE POSTPARTUM HEMORRHAGING WHILE INITIATING THE IMMEDIATE TRANSPORTATION OF THE CLIENT IN ACCORDANCE WITH THE EMERGENCY PLAN.

(b) IF SHE EXPERIENCES POSTPARTUM HEMORRHAGE, THE REGISTRANT IS PREPARED AND EQUIPPED TO ADMINISTER INTRAVENOUS FLUIDS TO RESTORE VOLUME LOST DUE TO EXCESSIVE BLEEDING.

(5) THE DIRECTOR SHALL PROMULGATE RULES TO IMPLEMENT THIS SECTION. IN PROMULGATING SUCH RULES, THE DIRECTOR SHALL SEEK THE ADVICE OF KNOWLEDGEABLE MEDICAL PROFESSIONALS TO SET STANDARDS FOR EDUCATION, TRAINING, AND ADMINISTRATION THAT REFLECT CURRENT GENERALLY ACCEPTED PROFESSIONAL STANDARDS FOR THE SAFE AND EFFECTIVE USE OF THE MEDICATIONS, METHODS OF ADMINISTRATION, AND PROCEDURES DESCRIBED IN THIS SECTION, INCLUDING A REQUIREMENT THAT, TO ADMINISTER INTRAVENOUS FLUIDS, THE REGISTRANT COMPLETE AN INTRAVENOUS THERAPY COURSE OR PROGRAM APPROVED BY THE DIRECTOR. THE DIRECTOR SHALL ESTABLISH A PREFERRED DRUG LIST THAT DISPLAYS THE MEDICATIONS THAT A REGISTRANT CAN OBTAIN.

(6) (a) THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT THE ISSUE OF WHETHER REGISTRANTS SHOULD BE AUTHORIZED TO PERFORM SUTURING OF PERINEAL TEARS AND, IF SO, WHAT STANDARDS FOR EDUCATION, TRAINING, AND PRACTICE SHOULD BE ESTABLISHED FOR THE EXERCISE OF THAT AUTHORITY, IS AN ISSUE REQUIRING THOROUGH STUDY AND CONSIDERATION. THEREFORE, AS SOON AS IS PRACTICABLE, REPRESENTATIVES OF THE MEDICAL COMMUNITY, THE MIDWIFE COMMUNITY, THE DEPARTMENT OF REGULATORY AGENCIES, AND OTHER INTERESTED PARTIES SHALL MEET AND DISCUSS THE ISSUE IN AN EFFORT TO REACH AN ACCORD ON WHAT LEGISLATIVE AND REGULATORY CHANGES ARE APPROPRIATE TO ENSURE GREATER CLIENT CHOICE WITHOUT UNDULY

COMPROMISING CLIENT SAFETY. THE PARTIES TO THESE MEETINGS AND DISCUSSIONS SHALL MAKE THE RESULTS PUBLICLY AVAILABLE THROUGH POSTING ON THE DIVISION'S WEB SITE OR BY OTHER APPROPRIATE MEANS.

(b) THIS SUBSECTION (6) IS REPEALED, EFFECTIVE JULY 1, 2013.

SECTION 10. 12-37-106 (1) (a), (1) (d), and (1) (e), Colorado Revised Statutes, are amended, and the said 12-37-106 (1) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

12-37-106. Director - powers and duties. (1) In addition to any other powers and duties conferred on the director by law, the director has the following powers and duties:

(a) To adopt such rules ~~and regulations~~ as may be necessary to carry out the provisions of this article;

(d) To accept applications for registration ~~which~~ THAT meet the requirements set forth in this article, and to collect the annual registration fees authorized by this article;

(e) To seek, through the office of the attorney general, an injunction in ~~any~~ A court of competent jurisdiction to enjoin any person from committing ~~any~~ AN act prohibited by this article. When seeking an injunction under this paragraph (e), the director shall not be required to allege or prove the inadequacy of any remedy at law or that substantial or irreparable damage is likely to result from a continued violation of this article.

(f) TO SUMMARILY SUSPEND A REGISTRATION UPON THE FAILURE OF THE REGISTRANT TO COMPLY WITH ANY CONDITION OF A STIPULATION OR ORDER IMPOSED BY THE DIRECTOR UNTIL THE REGISTRANT COMPLIES WITH THE CONDITION, UNLESS COMPLIANCE IS BEYOND THE CONTROL OF THE REGISTRANT.

SECTION 11. 12-37-107 (1), (2), (3), (6), (7), and (13), Colorado Revised Statutes, are amended to read:

12-37-107. Disciplinary action authorized - grounds for discipline - injunctions - rules. (1) If a direct-entry midwife has violated

any of the provisions of section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3), the director may deny, revoke, or suspend any A registration, issue a letter of admonition to a registrant, place a registrant on probation, or apply for a temporary or permanent injunction against a direct-entry midwife, through the attorney general, in any court of competent jurisdiction, enjoining such direct-entry midwife from practicing midwifery or committing any SUCH violation. ~~of the provisions of the said section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3).~~ Such Injunctive proceedings UNDER THIS SUBSECTION (1) shall be in addition to, and not in lieu of, any other penalties or remedies provided in this article.

(2) (a) (I) ~~As an alternative to or in addition to a suspension or revocation of registration under subsection (3) of this section,~~ The director may assess a civil penalty in the form of a fine, not to exceed five thousand dollars, for VIOLATION OF A RULE OR ORDER OF THE DIRECTOR OR any OTHER act or omission ~~enumerated in subsection (3) of this section~~ PROHIBITED BY THIS ARTICLE.

(II) THE DIRECTOR SHALL ADOPT RULES ESTABLISHING A FINE STRUCTURE AND THE CIRCUMSTANCES UNDER WHICH FINES MAY BE IMPOSED.

(b) Any moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, who shall credit such moneys to the general fund.

(3) The director ~~has the power to~~ MAY deny, revoke, or suspend any A registration or ~~to~~ issue a letter of admonition or place a registrant on probation for any of the following acts or omissions:

(a) Any violation of ~~the provisions of~~ section 12-37-103, 12-37-104, 12-37-105, or 12-37-109 (3); ~~or any rule promulgated pursuant to section 12-37-106 (1) (a);~~

(b) Failing to provide any information required pursuant to, or to pay any fee assessed in accordance with, section 12-37-103 or providing false, deceptive, or misleading information to the division ~~of registrations~~ that the direct-entry midwife knew or should reasonably have known was false, deceptive, or misleading;

(c) FAILING TO RESPOND IN AN HONEST, MATERIALLY RESPONSIVE, AND TIMELY MANNER TO A LETTER OF COMPLAINT FROM THE DIRECTOR;

(d) FAILING TO COMPLY WITH AN ORDER OF THE DIRECTOR, INCLUDING AN ORDER PLACING CONDITIONS OR RESTRICTIONS ON THE REGISTRANT'S PRACTICE;

~~(e)~~ (e) Engaging in any act or omission that does not meet generally accepted standards of safe care for women and infants, whether or not actual injury to a ~~patient~~ CLIENT is established;

~~(d)~~ (f) ABUSE OR habitual ~~intemperance with regard to~~ or excessive use of a habit-forming drug, a controlled substance as defined in section 12-22-303 (7), or ~~an alcoholic beverage~~ ALCOHOL;

~~(e)~~ (g) ~~Has procured or attempted~~ PROCURING OR ATTEMPTING to procure a registration in this or any other state or jurisdiction by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;

~~(f)~~ (h) ~~Has~~ HAVING had a license or registration to practice direct-entry midwifery or any other health care PROFESSION OR occupation suspended or revoked in any jurisdiction;

~~(g)~~ (i) ~~Violation of~~ VIOLATING any law or regulation governing the practice of direct-entry midwifery in another state or jurisdiction. A plea of nolo contendere or its equivalent accepted by any state agency of another state or jurisdiction may be considered to be the same as a finding of violation for purposes of a proceeding under this article.

~~(h)~~ (j) ~~Has falsified, failed~~ FALSIFYING, FAILING to make essential entries in, or in a negligent manner ~~made~~ MAKING incorrect entries in client records;

~~(i)~~ (k) ~~Has been convicted~~ CONVICTION of a felony or ~~has had~~ ~~accepted~~ ACCEPTANCE by a court OF a plea of guilty or nolo contendere to a felony. A certified copy of the judgment of a court of competent jurisdiction of such conviction or plea shall be prima facie evidence of such conviction.

~~(j)~~ (l) ~~Has violated any provision of this article or has aided~~ AIDING or knowingly ~~permitted~~ PERMITTING any person to violate any provision of this article; or

~~(k)~~ (m) ~~Has advertised~~ ADVERTISING through newspapers, magazines, circulars, direct mail, directories, radio, television, WEB SITE, E-MAIL, TEXT MESSAGE, or otherwise that the registrant will perform any act prohibited by this article.

(6) (a) The director or an administrative law judge ~~shall have the power to~~ MAY administer oaths, take affirmations of witnesses, and issue subpoenas to compel the attendance of witnesses and the production of all relevant papers, books, records, documentary evidence, and materials in any hearing, investigation, accusation, or other matter coming before the director. The director may appoint an administrative law judge pursuant to part 10 of article 30 of title 24, C.R.S., to take evidence and to make findings and report them to the director, including ~~but not limited to,~~ COPIES OF hospital and physician records. The provider of such copies shall prepare the copies from the original record and shall delete the name of the patient OR CLIENT, to be retained by the custodian of the records from which the copies were made, but shall identify the patient OR CLIENT by a numbered code. Upon certification by the custodian that the copies are true and complete except for the patient's OR CLIENT'S name, the copies shall be deemed authentic, subject to the right to inspect the originals for the limited purpose of ascertaining the accuracy of the copies. No privilege of confidentiality ~~shall exist~~ EXISTS with respect to such copies and no liability ~~shall lie~~ LIES against the director or the custodian or the director's or custodian's authorized employees for furnishing or using such copies in accordance with this section.

(b) Upon failure of any witness to comply with such subpoena or process, the district court of the county in which the subpoenaed person or ~~licensee~~ REGISTRANT resides or conducts business, upon application by the ~~board or~~ director with notice to the subpoenaed person or ~~licensee~~ REGISTRANT, may issue to the person or ~~licensee~~ REGISTRANT an order requiring that person or ~~licensee~~ REGISTRANT to appear before the director; to produce the relevant papers, books, records, documentary evidence, or materials if so ordered; or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(7) (a) When a complaint or investigation discloses an instance of misconduct that, in the opinion of the director, does not warrant formal action by the director but that should not be dismissed as being without merit, a letter of admonition may be issued and sent, by certified mail, to the ~~licensee~~ REGISTRANT.

(b) When a letter of admonition is sent by the director, by certified mail, to a ~~licensee~~ REGISTRANT, such ~~licensee~~ REGISTRANT shall be advised that he or she has the right to request in writing, within twenty days after receipt of the letter, that formal disciplinary proceedings be initiated to adjudicate the propriety of the conduct upon which the letter of admonition is based.

(c) If the request for adjudication is timely made, the letter of admonition ~~shall be deemed~~ IS vacated and the matter shall be processed by means of formal disciplinary proceedings.

(13) A person aggrieved by the final cease-and-desist order may seek judicial review of the ~~board's~~ DIRECTOR'S determination or of the ~~board's~~ DIRECTOR'S final order in a court of competent jurisdiction.

SECTION 12. 12-37-109, Colorado Revised Statutes, is amended to read:

12-37-109. Assumption of risk - no vicarious liability - legislative declaration. (1) (a) ~~The general assembly hereby finds, determines, and declares that the authority granted in this article for the provision of unlicensed midwifery services does not constitute an endorsement of such practices, and that it is incumbent upon the individual seeking such services to ascertain the qualifications of the registrant direct-entry midwife. It is the policy of this state that registrants shall be liable for their acts or omissions in the performance of the services that they provide, and that no licensed physician, nurse, prehospital emergency medical personnel, or health care institution shall be liable for any act or omission resulting from the administration of services by any registrant. The provisions of This subsection (1) shall~~ DOES not relieve any physician, nurse, prehospital emergency personnel, or health care institution from liability for any willful and wanton act or omission or any act or omission constituting gross negligence, or under circumstances where a registrant has a business or supervised relationship with any such physician, nurse, prehospital

emergency personnel, or health care institution. A physician, nurse, prehospital emergency personnel, or health care institution may provide consultation or education to the registrant without establishing a business or supervisory relationship, AND IS ENCOURAGED TO ACCEPT REFERRALS FROM REGISTRANTS PURSUANT TO THIS ARTICLE.

~~(b) The general assembly further finds, determines, and declares that the limitation on liability provided in section 13-64-302, C.R.S., is predicated upon full licensure, discipline, and regulatory oversight and that the practice of unlicensed midwifery by registrants pursuant to this article is authorized as an alternative to such full licensure, discipline, and regulatory oversight and is therefore not subject to the limitations provided in section 13-64-302, C.R.S.~~

~~(2) Nothing in this article shall be construed to indicate or imply that a registrant providing services under this article is a licensed health care provider for the purposes of reimbursement by any health insurer, third party payer, or governmental health care program.~~

~~(3) At such time as IF the director finds that liability insurance is available at an affordable price, the direct-entry midwife REGISTRANTS shall be required to carry such insurance.~~

SECTION 13. 12-37-109.7, Colorado Revised Statutes, is amended to read:

12-37-109.7. Confidential files. The director may keep confidential all files and information concerning an investigation authorized under this article until the results of ~~such~~ THE investigation are provided to the director and either the complaint is dismissed or notice of hearing and charges are served upon the ~~registrant~~ PERSON SUBJECT TO THE INVESTIGATION.

SECTION 14. 13-21-115.5 (3) (c) (II) (C), Colorado Revised Statutes, is amended to read:

13-21-115.5. Volunteer service act - immunity - exception for operation of motor vehicles. (3) As used in this section, unless the context otherwise requires:

(c) (II) "Volunteer" includes:

(C) A registered midwife governed by ~~the provisions of~~ article 37 of title 12, C.R.S., performing the practice of direct-entry midwifery, as defined in section 12-37-102, ~~(2)~~; C.R.S., as a volunteer for a nonprofit organization, a nonprofit corporation, a governmental entity, or a hospital;

SECTION 15. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the division of registrations, for personal services, for the fiscal year beginning July 1, 2011, the sum of one thousand seven hundred fifty dollars (\$1,750) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the division of registrations cash fund created in section 24-34-105 (2) (b) (I), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for allocation to the executive director's office and administrative services, for legal services, for the fiscal year beginning July 1, 2011, the sum of four thousand one hundred nine dollars (\$4,109) cash funds, or so much thereof as may be necessary, for the implementation of this act.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2011, the sum of four thousand one hundred nine dollars (\$4,109), or so much thereof as may be necessary, for the provision of legal services to the department of regulatory agencies related to the implementation of this act. Said sum shall be from reappropriated funds received from the department of regulatory agencies out of the appropriation made in subsection (2) of this section.

SECTION 16. Effective date. This act shall take effect July 1, 2011.

SECTION 17. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Brandon C. Shaffer
PRESIDENT OF
THE SENATE

Frank McNulty
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO