

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2088
By: Cuellar (Zaffirini)
Health & Human Services
5-17-97
Committee Report (Substituted)

DIGEST

Each year, a number of women in Texas turn to lay midwives as their primary providers of childbirth services. This area of maternal health care remains virtually unregulated, however, placing the lives of women and their newborns at risk. There are also ambiguities in the current law in regard to testing requirements for midwives, the definition of normal pregnancy and infancy, state investigative authority, and the administration of medication to prevent certain eye infections. This bill would provide for increased regulation of midwifery in Texas.

PURPOSE

As proposed, C.S.H.B. 2088 provides for increased regulation of midwifery in Texas.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Midwifery Board under SECTION 4 (Section 8A, Article 4512i, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 1(c)(1), (2), (11), (12), and (13), Article 4512i, V.T.C.S. (Texas Midwifery Act), to redefine "midwife" and "midwifery," and define "normal" "newborn," and "postpartum period." Removes the terms "normal childbirth," "newborn care," and "postpartum care."

SECTION 2. Amends Section 3D(c), Article 4512i, V.T.C.S., to require the program coordinator and chairman of the midwifery board, rather than the Texas Board of Health (board), to notify the board, rather than the governor, that a potential ground for removal exists.

SECTION 3. Amends Section 8, Article 4512i, V.T.C.S., to require the midwifery board, subject to the approval of the board, to establish requirements for basic, rather than approved, midwifery education and midwifery continuing education, and establish eligibility requirements for taking a comprehensive midwifery examination, rather than the final examination of a basic midwifery education course, before initial documentation, and approve a comprehensive midwifery examination that must be passed before initial documentation. Deletes requirements regarding qualifications for the instructors of certain courses and the issuance of final examinations.

SECTION 4. Amends Section 8A, Article 4512i, V.T.C.S., to require the midwifery board, subject to the approval of the board, to adopt substantive and procedural rules as necessary for the documentation, rather than identification, of midwives; to adopt rules prescribing the standards for the practice of midwifery in this state, including standards required for the delineation of findings that preclude a woman or newborn from being classified as having a normal pregnancy, labor, delivery, postpartum period, or newborn period and standards for administration of oxygen to a mother or newborn by a midwife; to adopt and implement substantive and procedural rules as necessary to discipline midwives determined to be in violation of this Act or otherwise a threat to the public health and safety; and to adopt rules as necessary to establish eligibility for reciprocity for initial documentation under this Act. Sets forth requirements regarding rules adopted under Subsection (b)(7) of this section. Makes nonsubstantive and conforming changes.

SECTION 5. Amends Section 9(a), Article 4512i, V.T.C.S., to require the Texas Department of

Health (department) to provide the manuals to each documented midwife and to any other person on request.

SECTION 6. Amends Section 10(b), Article 4512i, V.T.C.S., to require the person to provide the program coordinator with documentary evidence, at the time of initial documentation, that the person has met all the requirements for mandatory basic midwifery education as prescribed by rules approved by the board and has passed the comprehensive midwifery examination approved by the midwifery board. Deletes text authorizing the person to also provide the program coordinator with a letter of documentation.

SECTION 7. Amends Section 11, Article 4512i, V.T.C.S., to require the midwifery board, with the approval of the board, to adopt a comprehensive midwifery examination for persons regulated under this Act. Makes a conforming change.

SECTION 8. Amends Section 12, Article 4512i, V.T.C.S., to require the department to provide a letter of documentation to a person who fulfills the requirements, rather than the educational requirements, for documentation.

SECTION 9. Amends Section 15, Article 4512i, V.T.C.S., to require the department to maintain a roster of all persons documented as midwives in this state, rather than of all persons identified to practice midwifery. Requires the roster to contain for each person the information required on the documentation form of this Act and other information that the department determines necessary to identify with accuracy each midwife who is documented, rather than identified, under this Act. Requires the information to be public information, rather than public record, as defined in Chapter 5522, Government Code, rather than Chapter 424 of Article 6252-17a, V.T.C.S.

SECTION 10. Amends Section 16(f), Article 4512i, V.T.C.S., to require a midwife to encourage a client to seek medical care through consultation or referral, as specified by rules adopted by the midwifery board, if the midwife determines that the pregnancy, labor, delivery, postpartum period, or newborn period of a woman or newborn may not be classified as "normal" for purposes of this Act. Deletes text regarding the recognition by a midwife of a sign or symptom of a complication to the client's childbirth.

SECTION 11. Amends Article 4512i, V.T.C.S., by adding Section 16A, as follows:

Sec. 16A. PREVENTION OF OPHTHALMIA NEONATORUM. Requires a midwife who attends the birth of a child, unless the newborn is immediately transferred to a hospital because of an emergency, to administer to that child prophylaxis approved by the board for the prevention of ophthalmia neonatorum as required under Section 81.091, Health and Safety Code.

SECTION 12. Amends Section 17, Article 4512i, V.T.C.S., to set forth prohibitions for a midwife. Requires a midwife certified by the North American Registry of Midwives, notwithstanding Subsection (a)(6), that in an identification statement or advertisement, uses "certified" as part of the midwife's title, to include in the statement or advertisement that the midwife is certified by the North American Registry of Midwives and is not certified by the State of Texas.

SECTION 13. Amends Article 4512i, V.T.C.S., by adding Section 17A, as follows:

Sec. 17A. GROUNDS FOR DISCIPLINARY ACTION; REFUSAL TO ISSUE LETTER OF DOCUMENTATION. Authorizes the midwifery board to discipline a documented midwife and to refuse to issue a letter of documentation to an individual for certain reasons.

SECTION 14. Amends Section 18(a), Article 4512i, V.T.C.S., to provide that a person required to be documented under this Act commits an offense if the person, rather than midwife, knowingly or intentionally takes practices midwifery without proper documentation issued under this Act. Deletes text regarding failure to take certain action.

SECTION 15. Amends Section 18B(a), 4512i, V.T.C.S., to authorize the attorney general

or a district, county, or city attorney, at the request of the midwifery board or commissioner of health, to institute a civil action in district court to collect a civil penalty from a person who is required to be documented under this Act and who knowingly or intentionally has practiced midwifery without proper documentation issued under this Act, or in violation of an order of the midwifery board or while the person's documentation was suspended or revoked.

SECTION 16. Amends Section 18D, Article 4512i, to set forth requirements regarding rules adopted under this subsection to provide for the release of any relevant midwifery or medical record to the midwifery board under certain circumstances.

SECTION 17. Amends Section 4512i, V.T.C.S., by adding Section 18E, as follows:

Sec. 18E. ADMINISTRATIVE PENALTY. Authorizes the midwifery board to assess an administrative penalty against a person who violates this Act or a rule adopted under this Act. Sets forth provisions regarding the amount and assessment of the penalty. Sets forth provisions applicable if, after investigation of a possible violation and the facts surrounding that possible violation, the midwifery board or its designee determines that a violation has occurred. Sets forth requirements regarding written notice of the violation to the person alleged to have committed the violation. Sets forth provisions regarding receipt of notice, acceptance of the determination, and hearing on the determination. Sets forth requirements for the hearings examiner. Authorizes the midwifery board, based on the findings of fact and conclusion of law and the recommendations of the hearings examiner, by order, to find that a violation has occurred and to assess a penalty or to find that no violation has occurred. Requires the midwifery board to give notice of the order under Subsection (j) of this section to the person notified, and sets forth requirements regarding the notice. Sets forth requirements regarding the payment of the penalty and filing a petition for judicial review. Sets forth provisions regarding a person who without paying the penalty, files a petition for judicial review. Sets forth provisions regarding judicial review and the resulting judgment of the court. Sets forth provisions regarding an administrative penalty collected under this section. Authorizes the midwifery board to assess reasonable expenses and costs against a person in an administrative hearing under certain conditions, and sets forth related provisions. Authorizes the attorney general to recover, under certain conditions, on behalf of the attorney general, midwifery board, and the department, reasonable expenses and costs. Defines "reasonable expenses and costs." Sets forth requirements regarding costs and expenses collected under this section.

SECTION 18. Amends Section 483.001(c), Health and Safety Code, to redefine "prescription."

SECTION 19. Amends Section 483.041(c), Health and Safety Code, to provide that Subsection (a) does not apply to the possession of a dangerous drug in the usual course of business or practice or in the performance of official duties by a documented midwife or agent or employee of a documented midwife, who obtains oxygen for administration to a mother or newborn or who obtains a dangerous drug for the administration of prophylaxis to a newborn for the prevention of ophthalmia neonatorum in accordance with Section 16A, Article 4512i, V.T.C.S.

SECTION 20. Repealer: Sections 10(e)-(i), Article 4512i, V.T.C.S. (Approved Course; Number of Courses; Spanish; Expired; Competent Performance--Educational Requirements).

SECTION 21. Effective date: September 1, 1997.

SECTION 22. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 12.

Amends Section 17, Article 4512i, V.T.C.S., to undelete proposed deleted text in proposed Subsection (6) and set forth a new provision regarding an exception. Redesignates proposed Subdivision (7) as Subdivision (8) and removes certain proposed text. Undeletes proposed deleted text in proposed Subsection (7) and redesignates that text under Subdivision (9). Makes conforming changes. Adds Subsection (b) regarding certification by the North American Registry of Midwives.

Amendment 1.

Page 3, line 18, add "and standards for administration of oxygen to a mother or newborn by a midwife" after "newborn period."

Page 8, line 10, add "or the administration of oxygen in accordance with rules of the midwifery board" after "neonatorum."

Page 9, line 25, delete the letter "(a)."

Page 9, line 25-26, delete "board, with the recommendation of the midwifery board," and substitute "midwifery board."

Page 10, line 26, delete Subsection (b) in its entirety.

Page 11, lines 22-23, and delete the underlined language. Delete the strike out of "At." On line 23 insert "midwifery board or" before "commissioner."

Page 12, line 23, change "department: to midwifery board."

Page 13, line 3, change "department: to midwifery board."

Page 14, line 25, change "department: to midwifery board."

Page 16, line 6, change "department: to midwifery board."

Page 16, line 7, change "department: to midwifery board."

Page 16, line 8, change "department: to midwifery board."

Page 16, line 17, change "department: to midwifery board."

Page 17, line 5, change "department: to midwifery board."

Page 17, line 16, change "department: to midwifery board."

Page 17, line 24, change "department: to midwifery board."

Page 18, line 4, change "department: to midwifery board."

Page 13, line 3, change "department" to "midwifery board or its designee."

Page 13, line 14, change "department" to "midwifery board or its designee."

Page 13, line 26, change "department" to "midwifery board or its designee."

Page 14, line 3, change "department" to "midwifery board or its designee."

Page 14, line 8, change change "department" to "midwifery board or its designee."

Page 14, lines 3 and 4, change "commissioner of health or the commissioner's designee" to "midwifery board."

Page 14, lines 15-16, change "commissioner of health or the commissioner's designee" to "midwifery board."

Page 14, lines 21-22, change "commissioner of health or the commissioner's designee" to "midwifery board."

Page 18, line 2, change "commissioner of health or the commissioner's designee" to "midwifery board."

Page 18, line 9, insert ",midwifery board," after the second "attorney general."

Page 18, line 12, insert ",midwifery board," after "department."