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HOUSE BILL 422

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO HEALTH CARE; ENACTING A SECTION OF THE PUBLIC HEALTH ACT TO ALLOW LICENSED MIDWIVES TO OBTAIN, POSSESS AND ADMINISTER CERTAIN DANGEROUS DRUGS AND DEVICES; AMENDING SECTIONS OF THE NMSA 1978 TO CHANGE REFERENCES FROM "REGISTERED LAY MIDWIFE" TO "LICENSED MIDWIFE".

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Health Act is enacted to read:

"[NEW MATERIAL] LICENSED MIDWIVES--ADMINISTRATION OF CERTAIN DANGEROUS DRUGS--SPECIFIC DRUGS AUTHORIZED.--

A. A licensed midwife may obtain, possess, order and administer certain authorized dangerous drugs and devices, as set forth in Subsections B and C of this section, that are used in pregnancy, birth, postpartum care, newborn care or

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1 resuscitation and that are deemed integral to providing safe
2 care to the public. The department, the board of pharmacy and
3 the New Mexico medical board shall promulgate rules for
4 education and training requirements that shall include
5 instruction in the use of these drugs and devices.

6 B. Dangerous drugs authorized for use under this
7 section are limited to the following:

8 (1) for neonates:

9 (a) prophylactic ophthalmic medications
10 for neonatal use;

11 (b) neonatal hepatitis B vaccination;

12 (c) neonatal vitamin K; and

13 (d) inhaled oxygen; and

14 (2) for maternal use:

15 (a) antihemorrhagics, including
16 oxytocin, methergine and misoprostol;

17 (b) Rho(D) immune globulin;

18 (c) epinephrine SQ or IM;

19 (d) intravenous fluids for intravenous
20 rehydration and antibiotics;

21 (e) local anesthetic for perineal
22 repair;

23 (f) sterile water for subdermal
24 injection;

25 (g) antibiotics for Group B

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1 Streptococcus prophylaxis; and

2 (h) inhaled oxygen.

3 C. Devices authorized under this section are
4 limited to devices for injection of medications for the
5 administration of intravenous fluids for adult and infant
6 resuscitation, for rupturing the amniotic membranes and for
7 suturing the perineum.

8 D. A licensed midwife may obtain authorized drugs
9 and devices by presenting a midwifery license to a pharmacy.

10 E. A licensed midwife shall not prescribe any drug
11 or device for dispensing to individual patients.

12 F. Additions or deletions of dangerous drugs
13 authorized for procurement, possession and administration
14 pursuant to this section may be made with the approval of the
15 public health division of the department, the board of pharmacy
16 and the New Mexico medical board.

17 G. As used in this section, "licensed midwife"
18 means a person, other than a person licensed by the board of
19 nursing as a registered nurse and licensed by the public health
20 division of the department of health to practice nurse-
21 midwifery as a certified nurse midwife, who is licensed by the
22 public health division of the department of health to practice
23 midwifery as a licensed midwife."

24 Section 2. Section 61-11-22 NMSA 1978 (being Laws 1969,
25 Chapter 29, Section 21, as amended) is amended to read:

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1 "61-11-22. EXEMPTIONS FROM ACT.--

2 A. The Pharmacy Act does not apply to licensed
3 practitioners in this state in supplying to their patients any
4 drug if the licensed practitioner is practicing [~~his~~] the
5 licensed practitioner's profession and does not keep a pharmacy,
6 advertised or otherwise, for the retailing of dangerous drugs.

7 B. The Pharmacy Act does not prevent:

8 (1) the personal administration of drugs
9 carried by a licensed practitioner in order to supply the
10 immediate needs of [~~his~~] the licensed practitioner's patients;
11 [~~or~~]

12 (2) the sale of nonnarcotic proprietary
13 preparations; or

14 (3) the procurement, possession, ordering or
15 administration of certain dangerous drugs pursuant to the
16 Public Health Act."

17 Section 3. Section 7-9-93 NMSA 1978 (being Laws 2004,
18 Chapter 116, Section 6, as amended) is amended to read:

19 "7-9-93. DEDUCTION--GROSS RECEIPTS--CERTAIN RECEIPTS FOR
20 SERVICES PROVIDED BY HEALTH CARE PRACTITIONER.--

21 A. Receipts from payments by a managed health care
22 provider or health care insurer for commercial contract
23 services or medicare part C services provided by a health care
24 practitioner that are not otherwise deductible pursuant to
25 another provision of the Gross Receipts and Compensating Tax

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1 Act may be deducted from gross receipts, provided that the
2 services are within the scope of practice of the person
3 providing the service. Receipts from fee-for-service payments
4 by a health care insurer may not be deducted from gross
5 receipts. The deduction provided by this section shall be
6 separately stated by the taxpayer.

7 B. For the purposes of this section:

8 (1) "commercial contract services" means
9 health care services performed by a health care practitioner
10 pursuant to a contract with a managed health care provider or
11 health care insurer other than those health care services
12 provided for medicare patients pursuant to Title 18 of the
13 federal Social Security Act or for medicaid patients pursuant
14 to Title 19 or Title 21 of the federal Social Security Act;

15 (2) "health care insurer" means a person that:

16 (a) has a valid certificate of authority
17 in good standing pursuant to the New Mexico Insurance Code to
18 act as an insurer, health maintenance organization or nonprofit
19 health care plan or prepaid dental plan; and

20 (b) contracts to reimburse licensed
21 health care practitioners for providing basic health services
22 to enrollees at negotiated fee rates;

23 (3) "health care practitioner" means:

24 (a) a chiropractic physician licensed
25 pursuant to the provisions of the Chiropractic Physician

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1 Practice Act;

2 (b) a dentist or dental hygienist
3 licensed pursuant to the Dental Health Care Act;

4 (c) a doctor of oriental medicine
5 licensed pursuant to the provisions of the Acupuncture and
6 Oriental Medicine Practice Act;

7 (d) an optometrist licensed pursuant to
8 the provisions of the Optometry Act;

9 (e) an osteopathic physician licensed
10 pursuant to the provisions of Chapter 61, Article 10 NMSA 1978
11 or an osteopathic physician's assistant licensed pursuant to
12 the provisions of the Osteopathic Physicians' Assistants Act;

13 (f) a physical therapist licensed
14 pursuant to the provisions of the Physical Therapy Act;

15 (g) a physician or physician assistant
16 licensed pursuant to the provisions of Chapter 61, Article 6
17 NMSA 1978;

18 (h) a podiatrist licensed pursuant to
19 the provisions of the Podiatry Act;

20 (i) a psychologist licensed pursuant to
21 the provisions of the Professional Psychologist Act;

22 (j) a [~~registered~~ lay] licensed midwife
23 [~~registered~~] licensed by the public health division of the
24 department of health;

25 (k) a registered nurse or licensed

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1 practical nurse licensed pursuant to the provisions of the
2 Nursing Practice Act;

3 (l) a registered occupational therapist
4 licensed pursuant to the provisions of the Occupational Therapy
5 Act;

6 (m) a respiratory care practitioner
7 licensed pursuant to the provisions of the Respiratory Care
8 Act;

9 (n) a speech-language pathologist or
10 audiologist licensed pursuant to the Speech-Language Pathology,
11 Audiology and Hearing Aid Dispensing Practices Act;

12 (o) a professional clinical mental
13 health counselor, marriage and family therapist or professional
14 art therapist licensed pursuant to the provisions of the
15 Counseling and Therapy Practice Act who has obtained a master's
16 degree or a doctorate;

17 (p) an independent social worker
18 licensed pursuant to the provisions of the Social Work Practice
19 Act; and

20 (q) a clinical laboratory that is
21 accredited pursuant to 42 U.S.C. Section 263a but that is not a
22 laboratory in a physician's office or in a hospital defined
23 pursuant to 42 U.S.C. Section 1395x;

24 (4) "managed health care provider" means a
25 person that provides for the delivery of comprehensive basic

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1 health care services and medically necessary services to
2 individuals enrolled in a plan through its own employed health
3 care providers or by contracting with selected or participating
4 health care providers. "Managed health care provider" includes
5 only those persons that provide comprehensive basic health care
6 services to enrollees on a contract basis, including the
7 following:

- 8 (a) health maintenance organizations;
- 9 (b) preferred provider organizations;
- 10 (c) individual practice associations;
- 11 (d) competitive medical plans;
- 12 (e) exclusive provider organizations;
- 13 (f) integrated delivery systems;
- 14 (g) independent physician-provider
15 organizations;
- 16 (h) physician hospital-provider
17 organizations; and
- 18 (i) managed care services organizations;
- 19 and

20 (5) "medicare part C services" means services
21 performed pursuant to a contract with a managed health care
22 provider for medicare patients pursuant to Title 18 of the
23 federal Social Security Act."

24 Section 4. Section 59A-22-32 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 454, as amended) is amended to read:

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1 "59A-22-32. FREEDOM OF CHOICE OF HOSPITAL AND
2 PRACTITIONER.--

3 A. Within the area and limits of coverage offered
4 an insured and selected by the insured in the application for
5 insurance, the right of a person to exercise full freedom of
6 choice in the selection of a hospital for hospital care or of a
7 practitioner of the healing arts or optometrist, psychologist,
8 podiatrist, physician assistant, certified nurse-midwife,
9 [~~registered lay~~] licensed midwife or registered nurse in
10 expanded practice, as defined in Subsection B of this section,
11 for treatment of an illness or injury within that person's
12 scope of practice shall not be restricted under any new policy
13 of health insurance, contract or health care plan issued after
14 June 30, 1967 in this state or in the processing of a claim
15 thereunder. A person insured or claiming benefits under any
16 such health insurance policy, contract or health care plan
17 providing within its coverage for payment of service benefits
18 or indemnity for hospital care or treatment of persons for the
19 cure or correction of any physical or mental condition shall be
20 deemed to have complied with the requirements of the policy,
21 contract or health care plan as to submission of proof of loss
22 upon submitting written proof supported by the certificate of
23 any hospital currently licensed by the department of health or
24 any practitioner of the healing arts or optometrist,
25 psychologist, podiatrist, physician assistant, certified nurse-

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1 midwife, [~~registered lay~~] licensed midwife or registered nurse
2 in expanded practice.

3 B. As used in this section:

4 (1) "hospital care" means hospital service
5 provided through a hospital that is maintained by the state or
6 a political subdivision of the state or a place that is
7 currently licensed as a hospital by the department of health
8 and has accommodations for resident bed patients, a licensed
9 professional registered nurse always on duty or call, a
10 laboratory and an operating room where surgical operations are
11 performed, but "hospital care" does not include a convalescent
12 or nursing or rest home;

13 (2) "practitioner of the healing arts" means a
14 person holding a license or certificate authorizing the
15 licensee to offer or undertake to diagnose, treat, operate on
16 or prescribe for any human pain, injury, disease, deformity or
17 physical or mental condition pursuant to:

18 (a) the Chiropractic Physician Practice
19 Act;

20 (b) the Dental Health Care Act;

21 (c) the Medical Practice Act;

22 (d) Chapter 61, Article 10 NMSA 1978;

23 and

24 (e) the Acupuncture and Oriental

25 Medicine Practice Act;

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1 (3) "optometrist" means a person holding a
2 license provided for in the Optometry Act;

3 (4) "podiatrist" means a person holding a
4 license provided for in the Podiatry Act;

5 (5) "psychologist" means a person who is duly
6 licensed or certified in the state where the service is
7 rendered and has a doctoral degree in psychology and has had at
8 least two years of clinical experience in a recognized health
9 setting or has met the standards of the national register of
10 health service providers in psychology;

11 (6) "physician assistant" means a person who
12 is licensed by the New Mexico medical board to practice as a
13 physician assistant and who provides services to patients under
14 the supervision and direction of a licensed physician;

15 (7) "certified nurse-midwife" means a person
16 licensed by the board of nursing as a registered nurse and who
17 is registered with the public health division of the department
18 of health as a certified nurse-midwife;

19 (8) "~~[registered lay]~~ licensed midwife" means
20 a person who ~~[practices lay midwifery and is registered as a~~
21 ~~registered lay midwife]~~ is licensed by the public health
22 division of the department of health to practice midwifery; and

23 (9) "registered nurse in expanded practice"
24 means a person licensed by the board of nursing as a registered
25 nurse approved for expanded practice pursuant to the Nursing

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1 Practice Act as a certified nurse practitioner, certified
2 registered nurse anesthetist, certified clinical nurse
3 specialist in psychiatric mental health nursing or clinical
4 nurse specialist in private practice and who has a master's
5 degree or doctorate in a defined clinical nursing speciality
6 and is certified by a national nursing organization.

7 C. This section shall apply to any such policy that
8 is delivered or issued for delivery in this state on or after
9 July 1, 1979 and to any existing group policy or plan on its
10 anniversary or renewal date after June 30, 1979 or at
11 expiration of the applicable collective bargaining contract, if
12 any, whichever is later."

13 Section 5. Section 59A-47-28.1 NMSA 1978 (being Laws
14 1985, Chapter 192, Section 2) is amended to read:

15 "59A-47-28.1. COVERAGE FOR SERVICE OF CERTIFIED NURSE-
16 MIDWIVES AND [~~REGISTERED-LAY~~] LICENSED MIDWIVES.--

17 A. Any individual and group subscriber contracts
18 delivered in New Mexico [~~which~~] that provide for obstetrical
19 [~~and/or~~] or maternity benefits on a service basis or an
20 indemnity basis, or both, and that provide for treatment of
21 persons for the prevention, cure or correction of any illness
22 or physical or mental condition shall include coverage for the
23 services of a certified nurse-midwife or [~~registered-lay~~]
24 licensed midwife as defined in Subsection B of this section.
25 Deductibles, limits of coverage or other terms and conditions

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1 of coverage for such services shall not differ substantially
2 from coverage for the same or similar services provided by
3 other practitioners.

4 B. As used in this section:

5 (1) "certified nurse-midwife" means any person
6 who is licensed by the board of nursing as a registered nurse
7 and who is ~~[registered with]~~ licensed by the [health services]
8 public health division of the department of health ~~[and~~
9 ~~environment department]~~ as a certified nurse-midwife; and

10 (2) "~~[registered lay]~~ licensed midwife" means
11 any person ~~[who practices lay]~~ licensed by the public health
12 division of the department of health to practice midwifery ~~[and~~
13 ~~who is registered as a registered lay midwife by the health~~
14 ~~services division of the health and environment department]."~~

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