

**STATE OF KANSAS
BOARD OF HEALING ARTS**

Notice of Public Hearing on Proposed Administrative Regulations

A public hearing will be conducted on Wednesday, November 30, 2022, at 1:00 p.m. in the board room at the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas, to consider proposed regulations related to the independent practice of certified nurse midwifery.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the regulations. All interested parties may submit comments prior to the hearing to Courtney Cyzman, General Counsel, at the Board of Healing Arts at the address above or via e-mail to KSBHA_HealingArts@ks.gov. All interested parties will be given a reasonable opportunity to present their views, orally or in writing, concerning the proposed regulations during the public hearing. In order to provide all parties with an opportunity to present their views, it may be necessary to request each participant limit any oral presentations to five minutes.

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations may be obtained from the Kansas State Board of Healing Arts, 800 SW Jackson, Lower Level – Suite A, Topeka, Kansas 66612, on the agency website at <http://www.ksbha.org/publicinformation/publicinformation.shtml>, by contacting LeeAnn Hunter-Roach at (785) 296-4502, or by e-mailing the agency at KSBHA_HealingArts@ks.gov.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations being considered and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Sheila Rice at (785) 296-8558 or at Sheila.Rice@ks.gov. Individuals with hearing and/or speech disabilities may contact the Kansas Relay Center at 800-766-3777 for communication accommodations. Handicapped parking is located on 8th Street and in the building's parking garage. From the street, both the west entrance to the building on Jackson Street and the north entrance on 8th Street are accessible.

A summary of the proposed regulations and the economic impact follows:

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K.A.R. 100-28b-11. Licensees who direct, supervise, or delegate acts that constitute the independent practice of midwifery; requirements and limitations.

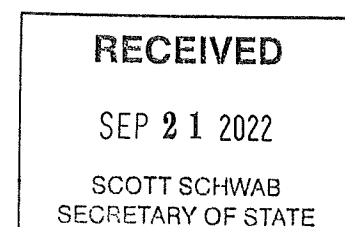
K.A.R. 100-28b-12. Assessment of patient for identifiable risks.

K.A.R. 100-28b-19. Unprofessional conduct.

The purpose of these proposed regulations is to effectuate the provisions of the Independent Practice of Midwifery Act, K.S.A. 65-28b01, *et seq.* The proposed regulations outline requirements of licensees who delegate acts that constitute the independent practice of midwifery, the assessment of patients for identifiable risks, and acts that constitute unprofessional conduct.

While a qualified economist would be required to provide an expert opinion of the regulations' impact on economic activity and growth, in the lay opinion of agency staff, the regulations enhance business activities by allowing an independent practice alternative for midwives in Kansas. There are no expected costs associated with the regulations other than the usual resource costs associated with the process of promulgating regulations.

These proposed regulations have been discussed in an open Board meeting of which members of the public, business, and stakeholders could attend. The agency has also had extensive discussions with members of the Independent Practice of Midwifery advisory council, which is made up of 7 members including four members who are licensed certified nurse midwives appointed by the Board of nursing. Further, it should be noted that the Board of Healing Arts is comprised of medical practitioners, business owners, and members of the public. The Board of Healing Arts intends to comply with all public hearing requirements involved in the regulation promulgation process.



K.A.R. 100-28b-11. Licensees who direct, supervise, or delegate acts that constitute the independent practice of midwifery; requirements and limitations. Each licensee who directs, supervises, or delegates acts that constitute the independent practice of midwifery to any other persons shall meet the following requirements:

- (a) Be engaged in the independent practice of midwifery in Kansas;
- (b) direct, supervise, or delegate only those acts and functions that the licensee knows or has reason to know can be competently performed by the person and are not in violation of any statute or regulation; and
- (c) direct, supervise, or delegate only those acts and functions that are within the competence and lawful practice of the licensee. (Authorized by and implementing K.S.A. 65-28b07; effective P-_____.)

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K.A.R. 100-28b-12. Assessment of patient for identifiable risks. Each licensee shall perform and document an initial and ongoing assessment of each identifiable risk to the course of labor, delivery, or health of the patient or newborn to determine whether the clinical services required by the patient will be limited to those associated with a normal, uncomplicated pregnancy and a normal, uncomplicated delivery, including the following:

- (a) Age of the patient;
- (b) gestational age;
- (c) major medical problems, including the following:
 - (1) Chronic hypertension, heart disease, or pulmonary embolus;
 - (2) congenital heart defect assessed as pathological by a cardiologist that places the patient or fetus at risk;
- (3) renal disease;
- (4) drug addiction or use of anticonvulsant drugs;
- (5) diabetes mellitus;
- (6) thyroid disease; and
- (7) bleeding disorder or hemolytic disease;
- (d) previous history of a significant obstetrical complication or medical condition, including the following:
 - (1) Rh sensitization;
 - (2) previous uterine wall surgery, including cesarean section;
 - (3) seven or more term pregnancies;
 - (4) previous placental abruption; and

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(5) previous preterm birth; and

(e) medical indication of any of the following:

(1) Uncontrolled gestational hypertension;

(2) polyhydramnios or oligohydramnios;

(3) placental abruption;

(4) chorioamnionitis;

(5) known fetal anomaly;

(6) multiple gestations;

(7) intrauterine growth restriction;

(8) fetal distress;

(9) alcoholism or drug addiction;

(10) thrombophlebitis; or

(11) pyelonephritis. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b02

and 65-28b07; effective P-_____.)

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K.A.R. 100-28b-19. Unprofessional conduct. (a) For the purposes of the independent practice of midwifery act and this article of the board's regulations, "unprofessional conduct" shall mean any of the following:

(1) Soliciting patients through the use of fraudulent or false advertisements, or profiting by the acts of those representing themselves to be agents of the licensee;

(2) representing to a patient that a manifestly incurable disease, condition, or injury can be permanently cured;

(3) assisting in the care or treatment of a patient without the consent of the patient or the patient's legal representatives;

(4) using any letters, words, or terms as an affix, on stationery, or in advertisements, or otherwise indicating that the person is entitled to practice any profession regulated by the board or any other state licensing board or agency for which the person is not licensed;

(5) performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;

(6) willful betrayal of confidential information;

(7) advertising professional superiority or the performance of professional services in a superior manner;

(8) advertising to guarantee any professional service painlessly;

(9) engaging in conduct related to practice as an independent certified nurse-midwife that is likely to deceive, defraud, or harm the public;

(10) making a false or misleading statement regarding the licensee's skill or the efficacy or value of the drug, treatment, or remedy prescribed by the licensee or at the licensee's direction

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in the treatment of any disease or other condition of the body or mind;

(11) committing any act of sexual abuse, misconduct or other improper sexual contact that exploits the licensee-patient relationship with a patient or a person responsible for health care decisions concerning the patient;

(12) using any false, fraudulent, or deceptive statement in any document connected with the independent practice of midwifery, including the intentional falsifying or fraudulent altering of a patient or medical care facility record;

(13) obtaining any fee by fraud, deceit, or misrepresentation;

(14) failing to transfer patient records to another licensee when requested to do so by the subject patient or by the patient's legally designated representative;

(15) performing unnecessary tests, examinations, or services that have no legitimate medical purpose;

(16) charging an excessive fee for services rendered;

(17) prescribing, dispensing, administering, or distributing a prescription drug or substance, including a controlled substance, in an improper or inappropriate manner, for other than a valid medical purpose, or not in the course of the licensee's professional practice;

(18) repeated failure to practice with that level of care, skill, and treatment that is recognized by a reasonably prudent similar practitioner as being acceptable under similar conditions and circumstances;

(19) failure to keep health care records that accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results, and test results;

(20) delegating professional responsibilities to a person if the licensee knows or has

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reason to know that the person is not qualified by training, experience, or licensure to perform these responsibilities;

(21) failing to properly supervise, direct, or delegate acts that constitute the independent practice of midwifery to persons who perform professional services pursuant to the licensee's direction, supervision, order, referral, delegation, or practice protocols;

(22) failing to meet the requirements of K.A.R. 100-28b-11;

(23) willfully or repeatedly violating the independent practice of midwifery act, the pharmacy act of the state of Kansas, or the uniform controlled substances act, or any implementing regulations, or any regulations of the secretary of health and environment;

(24) being found to have unlawfully practiced any profession regulated by the board in which the licensee is not licensed to practice;

(25) violating any lawful order or directive of the board;

(26) being found to be mentally ill, disabled, not guilty by reason of insanity, not guilty because the licensee suffers from a mental disease or defect, or incompetent to stand trial by a court of competent jurisdiction;

(27) prescribing, selling, administering, distributing, or giving a controlled substance to any person for other than medically accepted or lawful purposes;

(28) engaging in a practice or conduct that violates a federal law or regulation relating to controlled substances;

(29) engaging in a practice or conduct that violates a federal law or regulation relating to health care records;

(30) failing to furnish the board, or its investigators or representatives, any information

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legally requested by the board;

(31) having sanctions or disciplinary actions against the licensee by a peer review committee, a health care facility, a governmental agency or department, or a professional association or society for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(32) surrendering a license or authorization to practice nursing in another state or jurisdiction, surrendering the authority to utilize controlled substances issued by any state or federal agency, agreeing to a limitation to or restriction of privileges at any medical care facility, or surrendering the licensee's membership on any professional staff or in any professional association or society while under investigation for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(33) having an adverse judgment, award, or settlement against the licensee resulting from a medical liability claim related to acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action under the independent practice of midwifery act;

(34) failing to maintain a policy of professional liability insurance as required by K.S.A. 40-3402 or K.S.A. 40-3403a, and amendments thereto;

(35) failing to pay the premium surcharges pursuant to K.S.A. 40-3404, and amendments thereto;

(36) knowingly submitted any misleading, deceptive, untrue, or fraudulent representation on a claim form, bill, or statement;

(37) giving a worthless check or stopping payment on a debit or credit card for fees or moneys legally due to the board;

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(38) knowingly or negligently abandoning medical records;

(39) engaging in conduct that violates patient trust and exploits the licensee-patient relationship for personal gain; or

(40) obstructing a board investigation, including engaging in one or more of the following acts:

(A) Falsifying or concealing a material fact;

(B) knowingly making or causing to be made any false or misleading statement or writing; or

(C) any other acts or conduct likely to deceive or defraud the board.

(B) "False advertisement" shall mean any advertisement that is false, misleading, or deceptive in a material respect. In determining whether any advertisement is misleading, there shall be taken into account not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the advertisement fails to reveal facts material in the light of the representations made.

(c) "Advertisement" shall mean any representation disseminated in any manner or by any means, for the purpose of inducing, or likely to induce, directly or indirectly, the purchase of professional services.

(d) Failure to meet any of the requirements of this regulation shall constitute unprofessional conduct. (Authorized by K.S.A. 65-28b07; implementing K.S.A. 65-28b08; effective P-_____.)

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Kansas Administrative Regulations Economic Impact Statement (EIS)

Kansas State Board of Healing Arts
Agency

Courtney Cyzman
Agency Contact

785/296-1384
Contact Phone Number

K.A.R. 100-28b-11, K.A.R. 100-28b-12, K.A.R. 100-28b-19

K.A.R. Number(s)

☒ Permanent ☐ Temporary

Is/Are the proposed rule(s) and regulation(s) mandated by the federal government as a requirement for participating in or implementing a federally subsidized or assisted program?

- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.
- ☒ No If no, do the total annual implementation and compliance costs for the proposed rule(s) and regulation(s), calculated from the effective date of the rule(s) and regulation(s), exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024 (as calculated in Section III, F)?
- ☐ Yes If yes, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration, the Attorney General, AND the Division of the Budget. The regulation(s) and the EIS will require Budget approval.
- ☒ No If no, continue to fill out the remaining form to be included with the regulation packet submitted in the review process to the Department of Administration and the Attorney General. Budget approval is not required; however, the Division of the Budget will require submission of a copy of the EIS at the end of the review process.

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Section I

Brief description of the proposed rule(s) and regulation(s).

The purpose of these regulations is to effectuate the provisions of the Independent Practice of Midwifery Act, K.S.A. 65-28b01, *et seq.*

Section II

Statement by the agency if the rule(s) and regulation(s) exceed the requirements of applicable federal law, and a statement if the approach chosen to address the policy issue(s) is different from that utilized by agencies of contiguous states or the federal government. *(If the approach is different or exceeds federal law, then include a statement of why the proposed Kansas rule and regulation is different.)*

The proposed regulations are not mandated by federal law and the approach chosen to address the policy issues is not different from that utilized by agencies of contiguous states or the federal government.

Section III

Agency analysis specifically addressing the following:

- A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

While a qualified economist would be required to provide an expert opinion of the regulations impact on economic activity and growth, in the lay opinion of agency staff, the regulations enhance business activities by allowing an independent practice alternative for midwives in Kansas.

- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule(s) and regulation(s) and on the state economy as a whole;

The agency is not aware of implementation and compliance costs to public utility ratepayers or local governments. While a qualified economist would be required to provide an opinion of the regulation's impact on the state economy as a whole, in the lay opinion of agency staff, the regulations enhance business activity by allowing an independent practice alternative for midwives in Kansas.

- C. Businesses that would be directly affected by the proposed rule(s) and regulation(s);

Businesses and solo practitioners that include the services of a licensed independent certified nurse midwife.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The benefit of the regulations is that they implement the Act that allows an independent practice alternative for midwives in Kansas and provide another option for Kansas patients seeking care and treatment related to a normal and uncomplicated pregnancy and delivery. There is no expected cost

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associated with the regulations other than the usual resource costs associated with the process of promulgating this regulation.

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

There is no expected cost associated with the regulations other than the usual resource costs associated with the process of promulgating this regulation.

- F. An estimate of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to businesses, local governments, or members of the public.

Note: Do not account for any actual or estimated cost savings that may be realized.

Costs to Affected Businesses – \$0

Costs to Local Governmental Units – \$0

Costs to Members of the Public – \$0

Total Annual Costs – \$0

(sum of above amounts)

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

This estimate is based on lay opinion and rationale as described above.

- ☐ Yes If the total implementation and compliance costs exceed \$1.0 million over any two-year period through June 30, 2024, or exceed \$3.0 million over any two-year period on or after July 1, 2024, and prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.
- ☐ No
- ☒ Not Applicable

If applicable, click here to enter public hearing information.

Provide an estimate to any changes in aggregate state revenues and expenditures for the implementation of the proposed rule(s) and regulation(s), for both the current fiscal year and next fiscal year.

\$0

Provide an estimate of any immediate or long-range economic impact of the proposed rule(s) and regulation(s) on any individual(s), small employers, and the general public. If no dollar estimate can be given for any individual(s), small employers, and the general public, give specific reasons why no estimate is possible.

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The agency is not aware of annual implementation cost to these regulations. No annual implementation costs to these regulations. This estimate is based on lay opinion and rationale as described above.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.

Although the agency does not employ an economist, the agency does not believe these regulations will meaningfully impact the revenue of cities or school districts.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).

These regulations have been discussed in an open Board meeting of which members of the public, business, and stakeholders could attend. The agency has also had extensive discussions with members of the Independent Practice of Midwifery Advisory council, which is made up of 7 members including four members who are licensed certified nurse-midwives appointed by the Board of nursing, and the Kansas Board of Nursing with regard to these regulations. Further it should be noted that the Board of Healing Arts is comprised of medical practitioners, business owners, and members of the public. The Board of Healing Arts intends to comply with all public hearing requirements involved in the regulation promulgation process.

Section IV

Does the Economic Impact Statement involve any environmental rule(s) and regulation(s)?

- ☐ Yes If yes, complete the remainder of Section IV.
☒ No If no, skip the remainder of Section IV.

- A. Describe the capital and annual costs of compliance with the proposed rule(s) and regulation(s), and the persons who would bear the costs.

Click here to enter agency response.

- B. Describe the initial and annual costs of implementing and enforcing the proposed rule(s) and regulation(s), including the estimated amount of paperwork, and the state agencies, other governmental agencies, or other persons who would bear the costs.

Click here to enter agency response.

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- C. Describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

[Click here to enter agency response.](#)

- D. Provide a detailed statement of the data and methodology used in estimating the costs used.

[Click here to enter agency response.](#)

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