



## 2023 South Dakota Legislature

# Senate Bill 175

Introduced by: **Senator Tobin**

1 **An Act to modify practice criteria for physician assistants.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That § 36-4A-1 be AMENDED:**

4 **36-4A-1.** Terms as used in this chapter mean:

- 5 (1) "Board," the State Board of Medical and Osteopathic Examiners;
- 6 (2) "Collaboration," the communication of pertinent information to a physician or other  
 7 licensed health care provider, together with a consultation, during which each  
 8 provider contributes the provider's expertise to optimize the overall care delivered  
 9 to a patient; and
- 10 (3) "Physician assistant," a health professional care provider who meets the  
 11 qualifications defined set forth in this chapter and is licensed by the board;
- 12 (3) ~~"Supervising physician," a doctor of medicine or doctor of osteopathy licensed by~~  
 13 ~~the board who supervises a physician assistant;~~
- 14 (4) ~~"Supervision," the act of overseeing the activities of, and accepting responsibility~~  
 15 ~~for, the medical services rendered by a physician assistant.~~

16 **Section 2. That § 36-4A-1.1 be AMENDED:**

17 **36-4A-1.1.** The term, ~~practice collaborative agreement,~~ as used in this chapter,  
 18 means a written agreement ~~authored and that:~~

- 19 (1) Is signed by the a physician assistant and the supervising physician. The practice  
 20 agreement shall prescribe the delegated activities which the physician assistant  
 21 may perform, consistent with § 36-4A-26.1 and contain such other information as  
 22 required by the board to describe the physician assistant's level of competence and  
 23 the supervision provided by the physician who has not completed two thousand  
 24 eighty practice hours and:
- 25 (a) A physician licensed in accordance with chapter 36-4; or

- 1           **(b)** A physician assistant who has completed four thousand practice hours;  
 2           **(2)** Contains the terms and conditions governing the collaboration of the providers;  
 3           and  
 4           **(3)** Contains any other information required by the board, in accordance § 36-4A-42.

5           A physician assistant for whom a collaborative agreement has been signed shall  
 6           keep a copy of the practice agreement shall be kept on file at the physician assistant's  
 7           primary practice site and be filed with and approved by the board prior to beginning  
 8           practice. No physician assistant may practice without an approved practice agreement shall  
 9           provide a copy to the board, upon request.

10           **Section 3. That chapter 36-4A be amended with a NEW SECTION:**

11           If a physician assistant has completed two thousand eighty practice hours, a  
 12           collaborative agreement is no longer required in order for the physician assistant to  
 13           practice:

- 14           **(1)** In the primary care areas of:  
 15           (a) Acute care;  
 16           (b) Family medicine;  
 17           (c) General internal medicine;  
 18           (d) General pediatrics; and  
 19           (e) Geriatrics; or  
 20           **(2)** In the emergency department of a rural health care facility.

21           **Section 4. That chapter 36-4A be amended with a NEW SECTION:**

22           Before a physician assistant may engage in any area of practice other than those  
 23           listed in section 3 of this Act, the physician assistant shall, for each additional area, acquire  
 24           two thousand eighty practice hours, under the terms of a collaborative agreement with  
 25           the employing health care facility.

26           The agreement must also set forth the scope and manner of practice, as governed  
 27           by the facility's credentialing and privileging requirements.

28           The facility shall keep a copy of the collaborative agreement on file and provide a  
 29           copy to the board, upon request.

30           **Section 5. That § 36-4A-4 be AMENDED:**

1           **36-4A-4.** Except as provided in §§ 36-4A-5 and 36-4A-6, any person who  
2 practices as a physician assistant in this state, without a license issued by the board and  
3 a ~~practice collaborative agreement approved by the board,~~ if required by this chapter, is  
4 guilty of a Class 1 misdemeanor. Each violation ~~shall be considered~~ is a separate offense.

5           **Section 6. That chapter 36-4A be amended with a NEW SECTION:**

6           A person who is not licensed under this chapter, but meets the qualifications for  
7 licensure under this chapter, may use the title of physician assistant, but may not practice  
8 as a physician assistant.

9           **Section 7. That § 36-4A-8 be AMENDED:**

10           **36-4A-8.** The board may grant a license to an applicant who:  
11           (1) Is of good moral character;  
12           (2) Has successfully completed an educational program for physician assistants  
13 accredited by the Accreditation Review Commission on Education for the Physician  
14 Assistant or its successor agency, or, prior to 2001, either by the Committee on  
15 Allied Health Education and Accreditation or the Commission on Accreditation of  
16 Allied Health Education-~~Program Programs~~;  
17           (3) Has passed the Physician Assistant National-~~Certification~~ Certifying Examination  
18 administered by the National-~~Committee on Education for~~ Commission on  
19 Certification of Physician Assistants; ~~and~~  
20           (4) Has submitted verification that the physician assistant applicant is not subject to  
21 any disciplinary proceeding or pending complaint before any medical or other  
22 licensing board unless the board considers such proceedings or complaint and  
23 agrees to licensure; and  
24           (5) Has completed a minimum of two thousand eighty practice hours or entered into a  
25 collaborative agreement, as provided for in this chapter.

26           **Section 8. That § 36-4A-8.1 be AMENDED:**

27           **36-4A-8.1.** The board may issue a temporary license to an applicant who has  
28 successfully completed an approved program and has submitted evidence to the board  
29 that the applicant is a candidate accepted to write the examination required by § 36-4A-  
30 8 or is awaiting the results of the first examination for which the applicant is eligible after  
31 graduation from an approved physician assistant program.

1           A temporary license may be issued only once and, except as otherwise provided in  
 2 this section, is effective for a ~~term of not more~~period no longer than one hundred twenty  
 3 days. A temporary license expires ~~on the occurrence of the following~~upon:

- 4       (1) Issuance of a regular license; or  
 5       (2) Failure to pass the licensing examination; ~~or~~  
 6       (3) ~~Expiration of the term for which the temporary license was issued.~~

7           The period of effectiveness set forth in this section for a temporary license does  
 8 not apply to an applicant who has passed the licensing examination, has a collaborative  
 9 agreement, and has an application for licensure pending before the board.

10          The period of effectiveness set forth in this section for a temporary license and the  
 11 requirement for evidence of acceptance to write the examination required by § 36-4A-8,  
 12 upon graduation from an approved program, do not apply to an otherwise eligible  
 13 applicant, if the examination is delayed or cancelled due to a natural disaster or  
 14 gubernatorially declared emergency.

15       **Section 9. That chapter 36-4A be amended with a NEW SECTION:**

16          Upon application and payment of the fee established by the board in accordance  
 17 with § 36-4A-42, the board may issue a license to practice, as a physician assistant, to a  
 18 person licensed under the laws of another state, territory, or country, if the requirements  
 19 for licensure of that other state, territory, or country meet the requirements of this state  
 20 and if the person is not otherwise disqualified under § 36-4A-8.

21          Upon application and payment of the fee established by the board in accordance  
 22 with § 36-4A-42, the board may issue a temporary license to a person awaiting licensure  
 23 by endorsement under this section. A temporary license issued under this section must  
 24 state the period during which the license is effective. The period may not exceed one  
 25 hundred twenty days, except in the case of a natural disaster or gubernatorially declared  
 26 emergency.

27       **Section 10. That § 36-4A-20.1 be AMENDED:**

28           ~~36-4A-20.1. The board may not approve any practice agreement that includes~~  
 29 ~~abortion as a permitted procedure~~Nothing in this chapter authorizes a physician assistant  
 30 to effectuate an abortion.

31       **Section 11. That § 36-4A-26.1 be AMENDED:**

1           **36-4A-26.1.** A physician assistant ~~shall be considered an agent of the supervising~~  
 2 ~~physician in the performance of all practice related activities. A physician assistant may~~  
 3 ~~provide those medical services that are delegated by the supervising physician pursuant~~  
 4 ~~to § 36-4A-1.1 if the service is within the physician assistant's skills, forms a component~~  
 5 ~~of the physician's scope of practice, and is provided with supervision~~may provide any  
 6 medical service for which the physician assistant has been prepared by education, training,  
 7 and experience, including:

- 8           (1) Initial medical diagnosis and institution of a plan of therapy or referral;  
 9           (2) Prescribing and provision of drug samples or a limited supply of labeled  
 10           medications, including controlled substances listed on Schedule II in chapter 34-  
 11           20B ~~for one period of not more than thirty days, for treatment of causative factors~~  
 12           and symptoms. Medications or sample drugs provided to patients ~~shall~~must be  
 13           accompanied with written administration instructions and appropriate  
 14           documentation ~~shall~~must be entered in the patient's record. Physician assistants  
 15           may request, receive, and sign for professional samples of drugs provided by the  
 16           manufacturer;  
 17           (3) Responding to emergencies and the institution of emergency treatment measures,  
 18           including the writing of a chemical or physical restraint order ~~when~~if the patient  
 19           may do personal harm or harm others;  
 20           (4) Completing and signing ~~of official documents such as birth and death certificates~~  
 21           and ~~similar~~other official documents required by law;  
 22           (5) ~~Taking X-rays~~x-rays and performing radiologic procedures; ~~and~~  
 23           (6) Performing physical examinations for participation in athletics and certifying that  
 24           the patient is healthy and able to participate in athletics; and  
 25           (7) Delegating and assigning patient care measures to assistive personnel.

26           A physician assistant shall collaborate with other health care providers and refer or  
 27 transfer patients, as necessary and appropriate, based on the condition of the patient; the  
 28 education, experience, and competence of the physician assistant; and the standard of  
 29 care.

30           A physician assistant may not engage in independent surgical services, but may  
 31 provide routine clinical office surgical procedures, including a skin biopsy, the removal of  
 32 a mole or wart, the removal of a toenail, the removal of a foreign body, arthrocentesis, or  
 33 the incision and drainage of an abscess.

34   **Section 12. That § 36-4A-26.2 be AMENDED:**

1           **36-4A-26.2.** ~~A~~If any physician assistant, licensed in this state ~~or~~, licensed or  
 2 authorized to practice in any other state or territory of the United States jurisdiction ~~or~~  
 3 ~~who is~~, or credentialed as a physician assistant by a federal employer ~~who~~, is responding  
 4 to a need for medical care created by ~~an emergency or a state or local disaster~~ ~~(not to be~~  
 5 ~~defined as an emergency situation which occurs in the place of one's employment)~~ a  
 6 natural disaster or other gubernatorially declared emergency, that physician assistant may  
 7 render ~~such the~~ care that ~~he or she~~ the physician assistant is able to provide ~~without~~  
 8 supervision as it is defined in this chapter, ~~or with such supervision as is available.~~

9           ~~No physician who supervises a physician assistant providing medical care in~~  
 10 ~~response to such an emergency or state or local disaster is required to meet the~~  
 11 ~~requirements set forth in this chapter for a supervising physician.~~

12 **Section 13. That § 36-4A-26.3 be AMENDED:**

13           **36-4A-26.3.** ~~No~~ A physician assistant licensed in this state, ~~or~~ licensed or  
 14 authorized to practice in ~~other states~~ another state or territory of the United States ~~who~~  
 15 ~~voluntarily and gratuitously, and other than in the ordinary course of employment or~~  
 16 ~~practice, renders emergency medical assistance,~~ is not liable for civil damages for any  
 17 personal injuries ~~which~~ that result from the physician assistant's acts or omissions ~~by~~  
 18 ~~those persons in rendering emergency care~~ which constitute ordinary negligence. This  
 19 section does not apply to any acts or omissions that occur in the ordinary course of  
 20 employment or practice.

21           The immunity granted by this section does not apply to acts or omissions  
 22 constituting willful, or wanton negligence ~~or~~, and does not apply if the medical assistance  
 23 is rendered at any hospital, physician's office, or other health care delivery entity, ~~where~~  
 24 those services are normally rendered.

25           ~~No~~ A physician ~~who supervises~~ collaborating with a physician assistant ~~voluntarily~~  
 26 ~~and gratuitously providing~~ who renders emergency care, ~~as described in this section,~~ is not  
 27 liable for civil damages for any personal injuries ~~which~~ that result from acts or omissions  
 28 by the physician assistant rendering the emergency care.

29 **Section 14. That § 36-4A-29.2 be AMENDED:**

30           **36-4A-29.2.** ~~In order to supervise a physician assistant, a physician shall:~~  
 31 ~~(1) Be licensed as a physician by the board pursuant to chapter 36-4;~~  
 32 ~~(2) Be free from any restriction on his or her ability to supervise a physician~~  
 33 ~~assistant that has been imposed by board disciplinary action; and~~

Underscores indicate new language.  
Overstrikes indicate deleted language.

1           ~~(3) Maintain a written practice agreement with the physician assistant as described~~  
 2 ~~in § 36-4A-1.1~~If the person entering into a collaborative agreement with a physician  
 3 assistant is a physician, that person must be licensed in accordance with chapter 36-4 and  
 4 be free from any disciplinary action that would restrict the ability to collaborate.

5           If the person entering into a collaborative agreement with a physician assistant is  
 6 a physician assistant who has more than four thousand practice hours in a related field,  
 7 that person must be licensed in accordance with this chapter and be free from any  
 8 disciplinary action that would restrict the ability to collaborate.

9   **Section 15. That § 36-4A-30 be AMENDED:**

10           ~~36-4A-30. Nothing in this chapter relieves the~~A physician of the professional or  
 11 legal responsibility is neither professionally nor legally responsible for the specific care and  
 12 treatment of patients cared for by the~~that~~ a physician assistant provides to a patient.

13   **Section 16. That § 36-4A-37 be AMENDED:**

14           ~~36-4A-37. The board may deny the issuance or renewal of a~~physician assistant  
 15 license.

16           The board may suspend, ~~or revoke a license,~~ or impose other disciplinary ~~actions~~  
 17 ~~upon the license of any physician assistant issued under this chapter~~action on a licensee,  
 18 upon satisfactory proof, in compliance with chapter 1-26, of the licensee's:

19           (1) Professional incompetence or unprofessional or dishonorable conduct, ~~as defined~~  
 20 in §§ 36-4-29 and 36-4-30;

21           (2) Violation of this chapter ~~in any respect;~~

22           (3) ~~Failure to maintain on file with the board a copy of each practice agreement~~  
 23 ~~containing the current information regarding the licensee's practice status as~~  
 24 ~~required by;~~

25           (a) Maintain a collaborative agreement, as required by this chapter; or

26           (b) Provide the agreement to the board, upon request; or

27           (4) ~~Rendering medical services beyond those delegated to the physician assistant in~~  
 28 ~~the practice agreement; or~~

29           ~~(5) Rendering medical services without supervision of a physician as required by law~~  
 30 ~~and the rules of the board~~permitted by the chapter.

31   **Section 17. That § 36-4A-42 be AMENDED:**

1           **36-4A-42.** The board shall promulgate rules pursuant to chapter 1-26 pertaining  
2           to ~~fees~~;

3           (1) Fees;

4           (2) The licensure of physician assistants; ~~and supervision requirements~~

5           (3) Requirements pertaining to collaborative agreements.

6           **Section 18. That chapter 36-4A be amended with a NEW SECTION:**

7           Notwithstanding any other law, a physician assistant is considered to be a primary  
8           care provider, if the physician assistant is practicing:

9           (1) In the primary care areas of:

10           (a) Acute care;

11           (b) Family medicine;

12           (c) General internal medicine;

13           (d) General pediatrics; and

14           (e) Geriatrics; or

15           (2) In the emergency department of a rural health care facility.

16           **Section 19. That chapter 36-4A be amended with a NEW SECTION:**

17           Payment for services within the physician assistant's scope of practice must be  
18           made when the services are ordered by or performed by a physician assistant, if the same  
19           service would have been covered had it been ordered or performed by a physician. A  
20           physician assistant may bill for and receive direct payment for any medically necessary  
21           service delivered.

22           A physician assistant must be identified as the rendering professional in the billing  
23           and claims process, if the physician assistant delivered the services to a patient.

24           An insurance company or third-party payor may not impose a practice, education,  
25           or collaborative requirement that is inconsistent with or more restrictive than any existing  
26           law or rule otherwise applicable to physician assistants.

27           **Section 20. That chapter 36-4A be amended with a NEW SECTION:**

28           If a physician assistant intends to change to a specialty in which the physician  
29           assistant has fewer than two thousand eighty practice hours, the physician assistant must  
30           practice under the terms of a collaborative agreement, for a minimum of two thousand  
31           eighty hours, with:



- 1        (1) A physician licensed pursuant to chapter 36-4; or  
2        (2) A physician assistant having four thousand or more practice hours in that specialty.

3        **Section 21. That § 36-4A-29 be REPEALED:**

4                ~~The physician, by supervision, continuous monitoring, and evaluation accepts initial~~  
5                ~~and continuing responsibility for the physician assistant or assistants responsible to the~~  
6                ~~physician until such relationship is terminated. Supervision may be by direct personal~~  
7                ~~contact, or by a combination of direct personal contact and contact via telecommunication,~~  
8                ~~as may be required by the board. If the office of a physician assistant is separate from the~~  
9                ~~main office of the supervising physician, the supervision shall include on-site personal~~  
10               ~~supervision by a supervising physician as required by the board. A physician assistant who~~  
11               ~~is issued a temporary license pursuant to § 36-4A-8.1 shall initially receive thirty days of~~  
12               ~~on-site, direct supervision by a supervising physician. Thereafter, and until expiration of~~  
13               ~~the temporary license, the supervision shall include at least two one-half business days~~  
14               ~~per week of on-site personal supervision by a supervising physician.~~

15        **Section 22. That § 36-4A-29.1 be REPEALED:**

16               ~~The board may authorize modifications in the method and frequency of supervision~~  
17               ~~of a physician assistant required by § 36-4A-29 that it considers appropriate based upon~~  
18               ~~its finding of adequate supervision, training, and proficiency.~~

19               ~~A supervising physician may apply to the board for permission to supervise more~~  
20               ~~than one physician assistant. The board shall establish the number of physician assistants,~~  
21               ~~up to four FTE, to be supervised by a supervising physician based upon its finding that~~  
22               ~~adequate supervision will exist under the arrangement proposed by the supervising~~  
23               ~~physician.~~

24               ~~The board may consider a joint application for both modification of supervision and~~  
25               ~~the number of physician assistants supervised as provided in this section.~~