

AN ACT

ENTITLED, An Act to update, revise, and repeal certain provisions relating to nurse practitioners and nurse midwives.

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

Section 1. That § 36-9A-1 be amended to read:

36-9A-1. Terms as used in this chapter mean:

- (1) "Approved program," an educational program of study which meets the requirements established by this chapter and by the board;
- (2) "Board," the South Dakota Board of Nursing;
- (3) "License," the written authorization by the board required to practice the specialties of certified nurse practitioner or certified nurse midwife;
- (4) "Certified nurse midwife," a provider duly authorized under this chapter to practice the nursing specialty of nurse midwifery as defined in § 36-9A-13;
- (5) "Certified nurse practitioner," a provider duly authorized under this chapter to practice the specialty of nurse practitioner as defined in § 36-9A-12;
- (6) "Collaboration," the act of communicating pertinent information or consulting with a licensed physician or other licensed health care provider with each provider contributing the provider's respective expertise to optimize the overall care delivered to the patient;
- (7) "Advanced practice registered nurse," or "APRN," a person licensed by the board in the role of a certified nurse practitioner or a certified nurse midwife;
- (8) A collaborative agreement, as used in this chapter, means a written mutual agreement between a licensee who has not met the required one thousand forty practice hours and a physician, licensed pursuant to chapter 36-4, or a certified nurse practitioner or certified nurse midwife licensed under this chapter.

Section 2. That § 36-9A-2 be amended to read:

36-9A-2. No person may practice or offer to practice as a certified nurse practitioner or certified nurse midwife in this state unless the person is currently licensed to practice pursuant to this chapter.

Section 3. That § 36-9A-2.1 be amended to read:

36-9A-2.1. Upon application and payment of the required fee the board may issue a temporary permit to practice as a nurse practitioner or nurse midwife to an applicant who is waiting for the results of the first examination the applicant is eligible to take after completion of an approved program. An applicant issued a temporary permit under this section shall initially receive thirty days of supervision by direct personal contact with a licensed physician, certified nurse practitioner, or certified nurse midwife that holds an unencumbered license to practice. Thereafter, and until expiration of the temporary permit, the supervision shall include two, one-half business days per week of supervision by direct personal contact. The permit shall become invalid upon notification to the applicant of the results of the first examination.

Section 4. That § 36-9A-2.2 be amended to read:

36-9A-2.2. Upon application and payment of the required fee the board may issue a license to practice as a certified nurse practitioner or certified nurse midwife by endorsement to an applicant who has been licensed as a certified nurse practitioner or certified nurse midwife under the laws of another state, territory, or foreign country, if, in the opinion of the board, the applicant meets the qualifications required of a certified nurse practitioner or a certified nurse midwife in this state.

Section 5. That § 36-9A-2.3 be amended to read:

36-9A-2.3. Upon application and payment of the required fee the board may issue a temporary permit to an applicant holding a current license as a certified nurse practitioner or certified nurse midwife from any other state or territory awaiting endorsement. This permit shall bear an issuance date and a date when it becomes invalid, and the period of time between the two dates may not

exceed one hundred twenty days.

Section 6. That § 36-9A-3 be amended to read:

36-9A-3. This chapter does not prohibit the performance of the functions of a certified nurse practitioner or certified nurse midwife by an unlicensed person if performed:

- (1) In an emergency situation;
- (2) By a legally qualified person from another state employed by the United States government and performing the person's official duties in this state; or
- (3) By a person enrolled in an approved program for the preparation of certified nurse practitioners or certified nurse midwives, as a part of that approved program.

Section 7. That § 36-9A-4 be amended to read:

36-9A-4. No person may be licensed to practice as a certified nurse practitioner or certified nurse midwife unless the person:

- (1) Is currently licensed by the Board of Nursing as a registered nurse or has a privilege to practice;
- (2) Has completed an approved program for the preparation of certified nurse practitioners or certified nurse midwives;
- (3) Has passed any examination, written or oral, or both, which the board may require; and
- (4) Has completed a minimum of one thousand forty practice hours as a licensed certified nurse practitioner or certified nurse midwife; or
- (5) Has a written collaborative agreement with a physician, licensed pursuant to chapter 36-4, or a certified nurse practitioner or certified nurse midwife licensed under this chapter, to meet the one thousand forty hour practice requirement; and
- (6) Is otherwise qualified under § 36-9A-29.

Section 8. That § 36-9A-5 be amended to read:

36-9A-5. The practice in this state as a certified nurse practitioner or certified nurse midwife is regulated by the South Dakota Board of Nursing. The board may license, supervise the practice, and revoke or suspend licenses or otherwise discipline any person applying for or practicing as a certified nurse practitioner or certified nurse midwife. The board shall conduct its business in accordance with chapter 36-9.

Section 9. That § 36-9A-5.1 be amended to read:

36-9A-5.1. The Board of Nursing shall appoint an advanced practice nurse advisory committee composed of two certified nurse midwives and four certified nurse practitioners. Committee members shall be selected from a list of nominees by the Board of Nursing. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than two members' terms expire in one year. No committee member may be appointed to more than three consecutive terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The appointment of a person to an unexpired term is not considered a full term. The committee shall meet at least annually, or as deemed necessary, to conduct business. The advisory committee shall assist the board in evaluating standards of advanced practice nursing care and the regulation of certified nurse practitioners and certified nurse midwives pursuant to this chapter. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this chapter.

Section 10. That § 36-9A-6 be repealed.

Section 11. That § 36-9A-7 be amended to read:

36-9A-7. The board may enter and inspect, during business hours, any place where the certified nurse practitioner or certified nurse midwife practiced for the purpose of enforcing this chapter and any rules promulgated by the board pursuant to this Act. The refusal to allow an inspection is a Class 1 misdemeanor. An inspection authorized in this section may include any medical or drug records,

and the copying thereof, and any inventory relating to drugs and controlled substances required to be kept under the provisions of chapter 34-20B. The board shall maintain the confidentiality of any records obtained pursuant to this section.

Section 12. That § 36-9A-8 be repealed.

Section 13. That § 36-9A-9 be amended to read:

36-9A-9. An applicant for licensure as a certified nurse practitioner or certified nurse midwife shall file with the board an application, verified by oath, on a form prescribed by the board and accompanied by the required fee. If the board finds that the applicant has satisfied all requirements, the board shall issue to the applicant a license to practice as a certified nurse practitioner or certified nurse midwife in a population focus consistent with education.

Section 14. That § 36-9A-9.1 be amended to read:

36-9A-9.1. Each applicant for licensure as a certified nurse practitioner or certified nurse midwife in this state shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. Upon application, the board shall submit completed fingerprint cards to the Division of Criminal Investigation. Upon completion of the criminal background check, the Division of Criminal Investigation shall forward to the board all information obtained as a result of the criminal background check. This information shall be obtained prior to permanent licensure of the applicant. The board may require a state and federal criminal background check for any licensee who is the subject of a disciplinary investigation by the board. Failure to submit to or cooperate with the criminal background investigation is grounds for denial of an application or may result in revocation of a license. The applicant shall pay any fees charged for the cost of fingerprinting or the criminal background investigation.

Section 15. That § 36-9A-11 be amended to read:

36-9A-11. A person licensed to practice as a certified nurse practitioner in this state may use the title, APRN, and certified nurse practitioner abbreviated, CNP. A person licensed to practice as a certified nurse midwife in this state may use the title, APRN, and certified nurse midwife abbreviated, CNM.

Section 16. That § 36-9A-12 be amended to read:

36-9A-12. In addition to the registered nurse scope of practice, as defined in § 36-9-3, and within the certified nurse practitioner role and population focus, a certified nurse practitioner may perform the following advanced practice registered nursing scope:

- (1) Conduct an advanced assessment;
- (2) Order and interpret diagnostic procedures;
- (3) Establish primary and differential diagnoses;
- (4) Prescribe, order, administer, and furnish therapeutic measures as follows:
 - (a) Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources;
 - (b) Prescribe, procure, administer, and furnish pharmacological agents, including over the counter, legend, and controlled drugs or substances listed on Schedule II in chapter 34-20B;
 - (c) Plan and initiate a therapeutic regimen that includes ordering and prescribing nonpharmacological interventions, including durable medical equipment, medical devices, nutrition, blood and blood products, diagnostic, and supportive services including home health care, hospice, and physical and occupational therapy; and
 - (d) Write a chemical or physical restraint order when the patient may do personal harm or harm others;
- (5) Perform a physical examination for the determination of participation in athletics or

employment duties;

- (6) Complete and sign official documents such as death certificates, birth certificates, and similar documents required by law; and
- (7) Delegate and assign therapeutic measures to assistive personnel.

Section 17. That § 36-9A-13 be amended to read:

36-9A-13. In addition to the registered nurse scope of practice, as defined in § 36-9-3, and within the certified nurse midwife role and population focus, a certified nurse midwife may perform the following advanced practice registered nursing scope:

- (1) Conduct an advanced assessment;
- (2) Order and interpret diagnostic procedures;
- (3) Manage the provision of women's health care throughout the lifespan, from adolescence through post menopause, including:
 - (a) Establishing primary and differential diagnoses;
 - (b) Managing prenatal care;
 - (c) Managing intrapartum care; and
 - (d) Managing postpartum care of the mother-baby unit;
- (4) Manage sexually transmitted infections in males;
- (5) Prescribe, order, administer, and furnish therapeutic measures as follows:
 - (a) Diagnose, prescribe, and institute therapy or referrals of patients to health care agencies, health care providers, and community resources;
 - (b) Prescribe, procure, administer, and furnish pharmacological agents, including over the counter, legend, and controlled drugs or substances listed on Schedule II in chapter 34-20B; and
 - (c) Plan and initiate a therapeutic regimen that includes ordering and prescribing

nonpharmacological interventions, including durable medical equipment, medical devices, nutrition, blood and blood products, and diagnostic and supportive services including home health care, physical and occupational therapy;

- (6) Complete and sign official documents such as death certificates, birth certificates, and similar documents required by law; and
- (7) Delegate and assign therapeutic measures to assistive personnel.

Section 18. That § 36-9A-13.1 be amended to read:

36-9A-13.1. The certified nurse practitioner or certified nurse midwife shall collaborate with other health care providers and refer or transfer patients as appropriate.

Section 19. That § 36-9A-15 be repealed.

Section 20. That § 36-9A-17 be repealed.

Section 21. That § 36-9A-17.1 be repealed.

Section 22. That § 36-9A-17.2 be amended to read:

36-9A-17.2. Nothing in this chapter authorizes a certified nurse practitioner or certified nurse midwife to perform abortions.

Section 23. That § 36-9A-17.3 be repealed.

Section 24. That § 36-9A-19 be amended to read:

36-9A-19. If a certified nurse practitioner or certified nurse midwife renders services in a hospital or a related institution licensed pursuant to chapter 34-12, the certified nurse practitioner or certified nurse midwife is subject to the rules and regulations of that hospital or related institution.

Section 25. That § 36-9A-20 be repealed.

Section 26. That § 36-9A-21.1 be amended to read:

36-9A-21.1. The board may approve curricula and standards for educational programs preparing persons to meet licensure requirements under this chapter. An institution desiring to conduct an

approved program shall apply to the board and submit evidence that it is prepared to provide a program that will meet the requirements of the board. The board may conduct a survey of an educational program of any institution in the state applying to conduct an approved program pursuant to this section. The board may deny approval of an educational program if the program fails to meet the curricula and educational program standards required in rules promulgated by the board pursuant to chapter 1-26.

Section 27. That § 36-9A-22 be amended to read:

36-9A-22. The license of every person licensed under the provisions of this chapter shall be renewed biennially, except as provided in § 36-9A-25. The expiration date shall be established by the board.

Section 28. That § 36-9A-23 be amended to read:

36-9A-23. The board shall provide a notice for renewal of license to every license holder at least ninety days prior to the expiration date of the person's license. The license holder shall, before the expiration date, pay the required fee to the board. If the license holder meets the requirements established by the board in rules promulgated pursuant to chapter 1-26 and pays the required fee, the board shall renew the license.

Section 29. That § 36-9A-24 be amended to read:

36-9A-24. A license holder who fails to renew the license as provided in §§ 36-9A-22 and 36-9A-23 may be reinstated upon meeting the terms and conditions prescribed by the board and upon payment of the required fee.

Section 30. That § 36-9A-25 be amended to read:

36-9A-25. The holder of a current license may file with the board a written application, together with the required fee, requesting inactive status.

Section 31. That § 36-9A-26 be amended to read:

36-9A-26. The board, in rules promulgated pursuant to chapter 1-26, shall establish the following nonrefundable fees within the prescribed limits as follows:

- (1) For initial licensure or endorsement from another state, not more than two hundred dollars;
- (2) For biennial renewal of license, not more than one hundred fifty dollars;
- (3) For reinstatement of a lapsed license, the current renewal fee and not more than one hundred dollars;
- (4) For providing a transcript, not more than five dollars;
- (5) For effecting a name change upon the records of the license holder, not more than twenty dollars;
- (6) For issuing a duplicate license, not more than thirty dollars;
- (7) For issuing a temporary permit, not more than fifty dollars;
- (8) For placing a license on inactive status, not more than twenty dollars; and
- (9) For endorsing to another state, territory, or foreign country, not more than thirty dollars.

Section 32. That § 36-9A-27 be repealed.

Section 33. That § 36-9A-28 be repealed.

Section 34. That § 36-9A-29 be amended to read:

36-9A-29. The board may deny, revoke, or suspend any license or application for licensure to practice as a certified nurse practitioner or certified nurse midwife in this state, and may take any other disciplinary or corrective action the board considers appropriate upon proof that the license holder or applicant has:

- (1) Committed fraud, deceit, or misrepresentation in procuring or in attempting to procure a license;
- (2) Aided or abetted an unlicensed person to practice as a certified nurse practitioner or

certified nurse midwife;

- (3) Engaged in practice as a certified nurse practitioner or certified nurse midwife under a false or assumed name and failed to register that name pursuant to chapter 37-11, or impersonated another license holder of a like or different name;
- (4) Committed an alcohol or drug related act or offense that interferes with the ability to practice safely;
- (5) Negligently, willfully, or intentionally acted in a manner inconsistent with the health and safety of persons entrusted to the license holder's care;
- (6) Had a license or privilege to practice as a certified nurse practitioner or certified nurse midwife denied, revoked, or suspended or had other disciplinary action taken in another state, territory, or foreign country;
- (7) Exercised influence within the nurse-patient relationship for the purpose of engaging a patient in sexual activity or engaging in gross sexual harassment or sexual contact. For the purpose of this subdivision, the patient is presumed incapable of giving free, full, and informed consent to sexual activity or sexual contact with the nurse;
- (8) Practiced as a certified nurse practitioner or certified nurse midwife without a valid license;
- (9) Engaged in unsafe practices, substandard care, or unprofessional or dishonorable conduct;
- (10) Violated any provisions of this chapter or the rules promulgated hereunder; or
- (11) Been convicted of a felony. The conviction of a felony means the conviction of any offense which, if committed within the state of South Dakota, would constitute a felony.

Section 35. That § 36-9A-30 be repealed.

Section 36. That § 36-9A-31 be amended to read:

36-9A-31. Any proceeding relative to the revocation or suspension of a license shall conform to

the procedures set forth in chapter 1-26. A license may be revoked or suspended only after a hearing conducted by a hearing examiner appointed by the board or by a majority of members of the board. Any decision to suspend or revoke a license requires a majority vote of the board.

Section 37. That § 36-9A-32 be amended to read:

36-9A-32. The board may take action authorized by § 36-9A-29 upon a satisfactory showing that the physical or mental condition of the license holder or applicant is determined by a competent medical examiner to jeopardize or endanger the health of those entrusted to the person's care. The board may demand an examination of the license holder or applicant by a competent medical examiner selected by the board at the license holder's or applicant's expense. If a license holder or applicant fails to submit to the examination, the failure constitutes immediate grounds for suspension of that person's license or denial of licensure.

Section 38. That § 36-9A-34 be amended to read:

36-9A-34. A revoked or suspended license may be reissued at the discretion of the board upon a finding of good cause.

Section 39. That § 36-9A-35 be amended to read:

36-9A-35. No person may:

- (1) Practice or offer to practice as a certified nurse practitioner or certified nurse midwife without being licensed under this chapter;
- (2) Sell or fraudulently obtain or furnish a diploma, license, renewal of license, or any other record necessary to practice under this chapter or aid or abet in such actions;
- (3) Practice as a certified nurse practitioner or a certified nurse midwife under cover of any diploma, license, renewal of license, or other record necessary to practice under this chapter that was issued unlawfully or under fraudulent representation;
- (4) Use in connection with that person's name a sign, card, device, or other designation

tending to imply that the person is a certified nurse practitioner or certified nurse midwife without being licensed under this chapter; or

- (5) Practice as a certified nurse practitioner or certified nurse midwife during the time that the person's license has lapsed or has been revoked or suspended.

A violation of this section is a Class 1 misdemeanor.

Section 40. That § 36-9A-37 be amended to read:

36-9A-37. The board may prosecute all persons violating this chapter and may incur the necessary expenses.

Section 41. That § 36-9A-38 be amended to read:

36-9A-38. The board may apply for an injunction in the circuit court for the county of the person's residence to enjoin any person who:

- (1) Is unlawfully practicing as a certified nurse practitioner or certified nurse midwife without a license issued by the board;
- (2) Is practicing as a certified nurse practitioner or certified nurse midwife under a license that has lapsed or has been suspended or revoked;
- (3) Is practicing as a certified nurse practitioner or certified nurse midwife beyond the scope of practice authorized by § 36-9A-12 or 36-9A-13; or
- (4) Is, by reason of a physical or mental condition, endangering, or threatening to endanger, the health or safety of those entrusted to that person's care as a certified nurse practitioner or certified nurse midwife.

Section 42. That § 36-9A-39 be amended to read:

36-9A-39. Upon the filing of a verified complaint, the court, if satisfied by affidavit or otherwise, that the person is or has been engaging in unlawful or dangerous practice as described in § 36-9A-38, may issue a temporary injunction, without notice or bond, enjoining that person from further practice

as a certified nurse practitioner or certified nurse midwife.

Section 43. That § 36-9A-40 be amended to read:

36-9A-40. An action for injunction is an alternative to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 44. That § 36-9A-41 be amended to read:

36-9A-41. The board may promulgate rules pursuant to chapter 1-26 pertaining to: licensure and licenses, practice, prescriptive authority, disciplinary proceedings, and approval of education programs.

Section 45. That § 36-9A-42 be repealed.

Section 46. That § 36-9A-43 be repealed.

Section 47. That § 36-9A-44 be repealed.

Section 48. That § 36-9A-45 be repealed.

Section 49. That § 36-9A-46 be repealed.

Section 50. That the code be amended by adding a NEW SECTION to read:

Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are hereby directed to replace the term, nurse practitioner, with the term, certified nurse practitioner, and to replace the term, nurse midwife, with the term, certified nurse midwife, anywhere those terms appear in the code.

An Act to update, revise, and repeal certain provisions relating to nurse practitioners and nurse midwives.

=====

I certify that the attached Act originated in the

SENATE as Bill No. 61

Secretary of the Senate

=====

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 61
File No. _____
Chapter No. _____

=====

Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby approved this _____ day of _____ , A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.

Office of the Secretary of State

Filed _____ , 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State