

LEGISLATIVE BILL 761

Approved by the Governor April 10, 1984

Introduced by Marsh, 29; Fenger, 45

AN ACT relating to public health and welfare; to amend section 33-150, Revised Statutes Supplement, 1982; to adopt the Nebraska Certified Nurse Midwifery Practice Act; to adopt the Occupational Therapy Practice Act; to provide for the certification and practice of nurse midwives; to provide for the licensure of occupational therapists and occupational therapy assistants; to provide fees; to provide penalties; to create a fund; to harmonize provisions; to provide severability; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 28 of this act shall be known and may be cited as the Nebraska Certified Nurse Midwifery Practice Act.

Sec. 2. The Legislature hereby finds and declares that the Nebraska Certified Nurse Midwifery Practice Act is necessary to safeguard public life, health, safety, and welfare, to assure the highest degree of professional conduct by practitioners of certified nurse midwifery, and to insure the availability of high quality midwifery services to persons desiring such services.

Sec. 3. For purposes of the Nebraska Certified Nurse Midwifery Practice Act, unless the context otherwise requires, the definitions found in sections 4 to 14 of this act shall apply.

Sec. 4. Board shall mean the Board of Nursing.

Sec. 5. Board of examiners shall mean the Board of Examiners in Medicine and Surgery.

Sec. 6. Boards shall mean both the Board of Nursing and the Board of Examiners in Medicine and Surgery. A quorum shall be required of each board in order to transact any business. For the purposes of the Nebraska Certified Nurse Midwifery Practice Act, a majority vote of each respective board shall be required for taking any action and any action shall require the concurrence of both boards. The boards shall keep a record of all their proceedings relative to the act.

Sec. 7. Council shall mean the Council of Certified Nurse Midwifery created by section 21 of this act.

Sec. 8. Department shall mean the Department of

Health.

Sec. 9. Licensed practitioner shall mean any physician licensed to practice pursuant to section 71-1,104, whose practice includes obstetrics.

Sec. 10. Collaboration shall mean a process and relationship in which a certified nurse midwife works together, under the terms of a practice agreement, with a licensed practitioner, and may include work with other health professionals, to deliver health care within the scope of practice of certified nurse midwifery as provided in the Nebraska Certified Nurse Midwifery Practice Act. The collaborative relationship between the physician and the nurse midwife shall be subject to the joint control and regulation of the boards.

Sec. 11. Certified nurse midwife shall mean a person certified under the Nebraska Certified Nurse Midwifery Practice Act to practice certified nurse midwifery in the State of Nebraska. Nothing in the act is intended to restrict the practice of registered nurses.

Sec. 12. Approved certified nurse midwifery education program shall mean a certified nurse midwifery education program approved by the boards. The boards may allow such program to be accredited by the American College of Nurse-Midwives.

Sec. 13. Practice agreement shall mean the written agreement authored and signed by the certified nurse midwife and the licensed practitioner with whom he or she is associated which:

- (1) Identifies the settings within which the certified nurse midwife is authorized to practice;
- (2) Names the collaborating licensed practitioner or, if more than one licensed practitioner is a party to such practice agreement, names all of the collaborating licensed practitioners;
- (3) Defines or describes the medical functions to be performed by the certified nurse midwife, which are not inconsistent with the Nebraska Certified Nurse Midwifery Practice Act, as agreed to by the nurse midwife and the collaborating licensed practitioner; and
- (4) Contains such other information as required by the boards.

Sec. 14. Supervision shall mean the ready availability of a collaborating licensed practitioner for consultation and direction of the activities of the certified nurse midwife related to delegated medical functions as outlined in the practice agreement.

Sec. 15. The certificate to practice certified nurse midwifery shall authorize the holder, under the provisions of a practice agreement, to (1) attend cases of normal childbirth, (2) provide prenatal, intrapartum, and postpartum care, (3) provide normal obstetrical and gynecological services for women, and (4) provide care for the newborn immediately following birth. The conditions

under which a certified nurse midwife shall refer cases to a collaborating licensed practitioner shall be specified in the practice agreement.

Sec. 16. (1) The specific medical functions to be performed by a certified nurse midwife within the scope of permitted practice defined by section 15 of this act shall be described in the practice agreement which shall be reviewed and approved by the boards. A copy of the agreement shall be maintained on file with the boards as a condition of lawful practice under the Nebraska Certified Nurse Midwifery Practice Act.

(2) A certified nurse midwife shall perform the functions detailed in the practice agreement only under the supervision of the licensed practitioner responsible for the medical care of the patients described in the practice agreement. If the collaborating licensed practitioner named in the practice agreement becomes temporarily unavailable, the certified nurse midwife may perform the authorized medical functions only under the supervision of another licensed practitioner designated as a temporary substitute for that purpose by the collaborating licensed practitioner.

(3) A certified nurse midwife may perform authorized medical functions only in the following settings:

(a) In a licensed or certified health care facility as an employee or as a person granted privileges by the facility;

(b) In the primary office of a licensed practitioner or in any setting authorized by the collaborating licensed practitioner, except that a certified nurse midwife shall not attend a home delivery; or

(c) Within an organized public health agency.

(4) In the event a certified nurse midwife renders services in a licensed or certified health care facility, he or she shall be subject to the rules and regulations of such facility. Such rules and regulations may include, but are not limited to, reasonable requirements that the certified nurse midwife and all collaborating licensed practitioners maintain professional liability insurance with such coverages and limits as may be established by the licensed or certified health care facility.

Sec. 17. If a certified nurse midwife intends to alter his or her practice status by reason of a change in the setting, supervision by a different licensed practitioner, modification of the authorized medical functions, or for any other reason, he or she shall submit a new or amended practice agreement to the boards for approval before any change may be permitted.

Sec. 18. (1) An applicant for certification as a nurse midwife shall submit to the boards a written

application and such evidence as the boards shall require showing that the applicant is currently licensed as a registered nurse by the state and has successfully completed an approved certified nurse midwifery education program. Upon successful completion of a nationally recognized nurse midwifery examination, which has been adopted by the boards, and upon recommendation by the boards, the department shall issue a certificate authorizing the applicant to practice certified nurse midwifery.

(2) The department may, with the approval of the boards, grant temporary certification as a nurse midwife for a period of one year to graduates of an approved nurse midwifery program pending results of the initial certifying examination.

(3) Before the boards adopt an examination to be used pursuant to subsection (1) of this section, the council shall recommend an examination.

Sec. 19. Any person who holds a certificate to practice nurse midwifery in this state shall have the right to use the title certified nurse midwife and the abbreviation CNM. No other person shall use such title or abbreviation to indicate that he or she is certified under the Nebraska Certified Nurse Midwifery Practice Act.

Sec. 20. (1) The certificate of each person certified under the Nebraska Certified Nurse Midwifery Practice Act shall be renewed at the same time and in the same manner as renewal of a license for a registered nurse. The department shall collect fees as follows:

(a) Application for certification, twenty-five dollars; and

(b) Certificate renewal, ten dollars annually or twenty dollars biennially.

(2) The department may also establish and collect fees for:

(a) Reexamination;

(b) Applications for temporary permits; and

(c) Applications for reinstatement after revocation, suspension, or expiration of certification.

Sec. 21. There shall be created an advisory council known as the Council of Certified Nurse Midwifery which shall be composed of two certified nurse midwives chosen by the Board of Nursing, one member of the general public chosen by the Governor, and two licensed practitioners chosen by the Board of Examiners in Medicine and Surgery. The licensed practitioners shall have collaborative relationships with certified nurse midwives. The term of office of council members shall be two years, except that of those members appointed to the initial council, one certified nurse midwife member, one practitioner member, and the member from the general public shall each be appointed to serve a one-year term. Council members may serve no more than two consecutive

terms. The boards may remove from the council any council member for neglect of duty, incompetence, or unprofessional conduct. In the event that a vacancy occurs on the council, the boards shall appoint a successor from the category vacated for the remaining portion of the unexpired term. The council shall hold meetings as it deems necessary. A majority of the council shall constitute a quorum at any meeting.

The purpose of the advisory council, which shall be under the supervision of and directly responsible to the boards, shall be to advise and make recommendations to the boards.

Sec. 22. The council is authorized to:

(1) Act as a consultant in matters pertaining to nurse midwife education and the scope of certified nurse midwife practice;

(2) Act as a resource body in matters pertaining to disciplinary action;

(3) Review certification requirements;

(4) Make an annual report to the Director of Health; and

(5) Undertake such other activities as are not inconsistent with the Nebraska Certified Nurse Midwifery Practice Act.

Sec. 23. All fees received pursuant to the Nebraska Certified Nurse Midwifery Practice Act shall be processed in the same manner as fees received pursuant to sections 71-1,132.04 to 71-1,132.53.

Sec. 24. A certificate to practice as a certified nurse midwife may be denied, refused renewal, revoked, or suspended for any violation of the Nebraska Certified Nurse Midwifery Practice Act, for physical or mental disability or incapacity, gross incompetence, or for any reason for which a license to practice as a registered professional nurse could be denied, revoked, or suspended. The methods and procedures for notice of hearing, opportunity for hearing, presentation of evidence, conduct of hearing, judicial review, reinstatement of a certificate, and other matters relating to licensing of certified nurse midwives shall be identical to those pertaining to the denial, revocation, or suspension of a license to practice as a registered professional nurse.

Sec. 25. Any person practicing as a certified nurse midwife who is not certified as such by the department and who possesses a current license to engage in any health profession for which a license is issued by the department may have such license denied, not renewed, suspended, or revoked or have other disciplinary action taken against him or her by the department pursuant to the provisions of Chapter 71, article 1, relating to such profession, irrespective of any criminal proceedings for practicing without a certificate.

Sec. 26. Nothing in the Nebraska Certified Nurse Midwifery Practice Act shall be interpreted to permit independent practice.

Sec. 27. Any person, corporation, association, or other entity who engages in any of the following activities shall be guilty of a Class IV felony:

(1) Practicing as a certified nurse midwife without a current certificate as such under the Nebraska Certified Nurse Midwifery Practice Act;

(2) Employing or offering to employ any person as a certified nurse midwife knowing that such person is not certified as such under the Nebraska Certified Nurse Midwifery Practice Act;

(3) Fraudulently seeking, obtaining, or furnishing a certificate as a certified nurse midwife; or

(4) Using in connection with his or her name the title certified nurse midwife, the abbreviation CNM, or any other designation tending to imply that he or she is a certified nurse midwife certified under the Nebraska Certified Nurse Midwifery Practice Act when such person is not a certified nurse midwife.

Sec. 28. The Nebraska Certified Nurse Midwifery Practice Act shall not prohibit the performance of the functions of a certified nurse midwife by an uncertified 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 official duties in this state; or

(3) By a person enrolled in an approved program for the preparation of certified nurse midwives as part of such approved program.

Sec. 29. Sections 29 to 44 of this act shall be known and may be cited as the Occupational Therapy Practice Act.

Sec. 30. In order to (1) safeguard the public health, safety, and welfare, (2) protect the public from being misled by incompetent, unscrupulous, and unauthorized persons, (3) assure the highest degree of professional conduct on the part of occupational therapists and occupational therapy assistants, and (4) assure the availability of occupational therapy services of high quality to persons in need of such services, it is the purpose of the Occupational Therapy Practice Act to provide for the regulation of occupational therapists.

Sec. 31. As used in the Occupational Therapy Practice Act, unless the context otherwise requires:

(1) Board shall mean the Board of Occupational Therapy Practice established by section 43 of this act;

(2) Occupational therapy shall mean the use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, or the aging

process in order to maximize independence, prevent disability, and maintain health. Occupational therapy shall encompass evaluation, treatment, and consultation. Occupational therapy may include teaching daily living skills, developing perceptual-motor skills and sensory integrative functioning, developing prevocational capacities, designing, fabricating, or applying selected orthotic and prosthetic devices or selective adaptive equipment, using specifically designed therapeutic media and exercises to enhance functional performance, administering and interpreting tests such as manual muscle and range of motion, and adapting environments for the handicapped;

(3) Occupational therapist shall mean a person licensed to practice occupational therapy pursuant to the Occupational Therapy Practice Act and whose license is in good standing;

(4) Occupational therapy assistant shall mean a person licensed to assist in the practice of occupational therapy under the supervision of or in consultation with an occupational therapist and whose license is in good standing;

(5) Occupational therapy aide shall mean a person who assists in the practice of occupational therapy, who works under the supervision of an occupational therapist, and whose activities require an understanding of occupational therapy but shall not require professional or advanced training or licensure;

(6) Person shall mean any individual, partnership, unincorporated organization, or corporate body;

(7) Association shall mean a recognized national or state association for occupational therapy; and

(8) Department shall mean the Department of Health.

Sec. 32. No person may represent himself or herself to be a licensed occupational therapist or occupational therapy assistant unless he or she is licensed in accordance with the Occupational Therapy Practice Act. Nothing in such act shall be construed to prevent:

(1) Any person licensed in this state pursuant to Chapter 71 from engaging in the profession or occupation for which he or she is licensed;

(2) The activities and services of any person employed as an occupational therapist or occupational therapy assistant by the armed forces, Veterans' Administration, or the U.S. Public Health Service if such person provides occupational therapy solely under the direction or control of the organization by which he or she is employed;

(3) The activities and services of any person pursuing an accredited course of study leading to a degree

or certificate in occupational therapy if such activities and services constitute a part of a supervised course of study and if such a person is designated by a title which clearly indicates his or her status as a student or trainee;

(4) The activities and services of any person fulfilling the supervised fieldwork experience requirements of sections 34 and 35 of this act if such activities and services constitute a part of the experience necessary to meet the requirements of such sections;

(5) An unlicensed person from performing occupational therapy; or

(6) Qualified members of other professions or occupations including, but not limited to, recreation specialists or therapists, special education teachers, independent living specialists, work adjustment trainers, caseworkers, and persons pursuing courses of study leading to a degree or certification in such fields, from doing work similar to occupational therapy which is consistent with their training if they do not represent themselves by any title or description to be occupational therapists.

Sec. 33. Any person who has applied to take the examination under section 34 or 35 of this act and who has completed the education and experience requirements of the Occupational Therapy Practice Act may be granted a temporary permit to practice as an occupational therapist or an occupational therapy assistant. A temporary permit shall allow the person to practice only in association with a licensed occupational therapist and shall be valid until the date on which the results of the next qualifying examination for licensure are released by the department. The temporary permit shall not be renewed if the applicant has failed the examination. The permit may be extended at the discretion of the board with the approval of the department. In no case may a temporary permit be extended beyond one year.

Sec. 34. An applicant applying for a license as an occupational therapist shall file a written application in the manner and on forms provided by the department, showing to the satisfaction of the department that he or she:

(1) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(2) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of six months of supervised

fieldwork experience shall be required for an occupational therapist; and

(3) Has passed an examination as provided in section 36 of this act.

Until January 1, 1988, an applicant for licensure as an occupational therapist who has practiced as an occupational therapist for four years immediately preceding the effective date of the Occupational Therapy Practice Act may take the examination to be licensed as an occupational therapist without meeting the requirements for occupational therapists pursuant to subdivisions (1) and (2) of this section.

Residency in this state shall not be a requirement of licensure. A corporation, partnership, or association shall not be licensed as an occupational therapist pursuant to the Occupational Therapy Practice Act.

Sec. 35. An applicant applying for a license as an occupational therapy assistant shall file a written application in the manner and on forms provided by the department, showing to the satisfaction of the department that he or she:

(1) Has successfully completed the academic requirements of an educational program in occupational therapy recognized by the department and accredited by a nationally recognized medical association or nationally recognized occupational therapy association;

(2) Has successfully completed a period of supervised fieldwork experience at an educational institution approved by the department and where the applicant's academic work was completed or which is part of a training program approved by such educational institution. A minimum of two months of supervised fieldwork experience shall be required for an occupational therapy assistant; and

(3) Has passed an examination as provided in section 36 of this act.

Until January 1, 1988, an applicant for licensure as an occupational therapy assistant who has practiced as an occupational therapy assistant for four years immediately preceding the effective date of the Occupational Therapy Practice Act may take the examination to be licensed as an occupational therapy assistant without meeting the requirements for occupational therapists pursuant to subdivisions (1) and (2) of this section.

Residency in this state shall not be a requirement of licensure as an occupational therapy assistant. A corporation, partnership, or association shall not be licensed pursuant to the Occupational Therapy Practice Act.

Sec. 36. (1) Any person applying for licensure under the Occupational Therapy Practice Act shall, in

addition to demonstrating his or her eligibility in accordance with the education and fieldwork requirements of sections 34 and 35 of this act, make an application for examination at least thirty days prior to the date of examination upon a form and in such manner as the department shall prescribe. Such application shall be accompanied by the fee prescribed by section 42 of this act and such fee shall not be refunded. A person who fails an examination may submit an application for reexamination. The fee for reexamination shall be the same as that for examination.

(2) Each applicant for licensure pursuant to the Occupational Therapy Practice Act shall be examined by a written examination which tests his or her knowledge of the basic and clinical sciences relating to occupational therapy and occupational therapy theory and practice including, but not limited to, professional skills and judgment in the utilization of occupational therapy techniques and methods and such other subjects as the board may deem useful to determine the applicant's fitness to practice. The board shall approve the examination and establish standards for acceptable performance.

(3) Applicants for licensure shall be examined at a time and place and under such supervision as the board may determine. The board shall notify all applicants by mail of the time and place of the examination.

Sec. 37. (1) The department shall grant a license as an occupational therapist or occupational therapy assistant to any applicant who has actively practiced in the respective field for at least one of the five years immediately prior to the effective date of the Occupational Therapy Practice Act and who is certified as a registered occupational therapist or who is a certified occupational therapy assistant in accordance with guidelines established by a national association upon payment of not less than thirty nor more than fifty dollars as the department shall determine.

(2) The department shall grant a license without examination to any foreign-trained applicant who has completed educational and supervised fieldwork requirements approved by the department as substantially equivalent to those contained in sections 34 and 35 of this act, upon payment of a fee of not less than thirty nor more than fifty dollars as the department shall determine.

(3) The department may waive the examination requirements in the Occupational Therapy Practice Act and grant a license to any applicant who presents proof of current licensure as an occupational therapist or occupational therapy assistant in another state, the District of Columbia, or territory of the United States which requires standards for licensure considered by the department to be substantially equivalent to the requirements for licensure of the Occupational Therapy

Practice Act.

Sec. 38. The department shall issue a license to any person who meets the requirements of the Occupational Therapy Practice Act upon payment of the license fee required in section 42 of this act.

Sec. 39. The department shall have the power to enforce the Occupational Therapy Practice Act and to deny, revoke, or suspend any license to practice as an occupational therapist or occupational therapy assistant issued by the department or applied for in accordance with the provisions of section 36 of this act or to otherwise discipline a licensee on the grounds and in the manner provided in sections 71-147 to 71-161.08 and 71-161.11 to 71-161.19 and in rules and regulations defining unprofessional conduct adopted and promulgated by the department.

Sec. 40. Any person who violates any provision of the Occupational Therapy Practice Act shall be guilty of a Class III misdemeanor and such violation by a person licensed under such act shall be cause for disciplinary action prescribed in section 39 of this act. The department may appoint investigators pursuant to section 71-124.01 to assist in enforcing the provisions of the Occupational Therapy Practice Act.

Sec. 41. (1) Licenses issued under the Occupational Therapy Practice Act shall be subject to biennial renewal and shall expire August 1 of each even-numbered year beginning in 1986 unless renewed in the manner provided by section 71-110 upon the payment of the renewal fee prescribed in section 42 of this act.

(2) A licensee whose license is revoked for nonpayment of the biennial renewal fee may be reinstated upon the recommendation of the board and the payment of the reinstatement and renewal fees prescribed in section 42 of this act, except that no reinstatement of a license may be granted more than five years after its expiration.

Sec. 42. The department shall establish and collect the following fees:

(1) For licensure by examination, an amount not less than fifty nor more than one hundred dollars;

(2) For licensure by reciprocity, an amount not less than twenty nor more than eighty dollars;

(3) For renewal of license, an amount not less than twenty nor more than eighty dollars;

(4) For reinstatement of license, five dollars;

(5) For a temporary permit, twenty-five dollars;

(6) For endorsement or certification, five dollars; and

(7) For a duplicate license, five dollars.

Sec. 43. (1) There is hereby established the Board of Occupational Therapy Practice. The board shall consist of at least four members appointed by the State Board of Health, all of whom shall be residents of this

state. Any statewide association of occupational therapists may submit a list of names of qualified persons from which the State Board of Health may choose members of the Board of Occupational Therapy Practice. Three of the persons appointed shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointments. Two of the persons appointed shall be occupational therapists and one shall be either an occupational therapist or an occupational therapy assistant and all shall be holders of valid licenses issued under the Occupational Therapy Practice Act during their terms, except that the members of the initial board shall meet the requirements for licensure pursuant to sections 34 and 35 of this act not later than January 1, 1985. The fourth member shall be a member of the public with an interest in the rights of the consumers of health services. The members of the board shall be appointed not later than sixty days after the effective date of this section. The members of the board shall serve five-year terms, except that the initial members of the board shall serve as follows: The member of the public shall serve one year and the remaining members shall serve terms of two, three, and four years as the State Board of Health shall designate. The term of each member shall commence on December 1 following the expiration of the preceding term. No person shall serve more than two full consecutive terms on the board. The Board of Health shall fill any vacancy for an unexpired term in the same manner as the initial appointment. The members shall not receive compensation but shall be reimbursed for their actual expenses incurred while in the performance of their duties in the same manner as state employees pursuant to sections 84-306.01 to 84-306.05. The board shall annually elect a chairperson and such other officers as it deems necessary and shall meet at least once per year or more as the department and board shall determine. Members of the board may be removed from office on the grounds and in the manner provided by section 71-118.

(2) The department shall adopt and promulgate rules and regulations necessary to administer the Occupational Therapy Practice Act, including definitions of unprofessional conduct.

Sec. 44. There is hereby created a fund to be known as the Occupational Therapy Licensing Cash Fund, from which shall be appropriated such amounts as are available and incident to the administration of the Occupational Therapy Practice Act. The fund shall contain all fees and money collected by the board or the department under such act, which shall be paid into the state treasury and credited to the Occupational Therapy Licensing Cash Fund. Any money in the Occupational Therapy Licensing Cash Fund available for investment shall be invested by the

state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 45. That section 33-150, Revised Statutes Supplement, 1982, be amended to read as follows:

33-150. The State Treasurer shall credit to the General Fund of the state fifteen per cent of all fees remitted to the state treasury by the state boards of examiners in medicine, chiropractic, dentistry, including fees from dental hygienists, optometry, pharmacy, embalming and funeral directing, including fees received from funeral establishments as well as embalmers and funeral directors, podiatry, and veterinary medicine, the Board of Occupational Therapy Practice, the Board of Cosmetologist Examiners, the Board of Barber Examiners, the Board of Nursing, the State Real Estate Commission, the Brand Fund of the Secretary of State, the State Board of Examiners for Professional Engineers and Architects, the State Athletic Commissioner, the Nebraska Oil and Gas Conservation Commission pursuant to sections 57-906 and 57-911, and any other state board, bureau, division, fund, or commission not mentioned above, if and when fifteen per cent of all ~~their said~~ such fees remitted into the treasury be appropriated or reappropriated to the General Fund of the state by the Legislature for the uses and purposes of ~~said the~~ General Fund during any biennium. Nothing ; PROVIDED, nothing in this section shall be construed to apply to the fees inuring to the Nebraska Brand Inspection and Theft Prevention Fund and funds of the State Racing Commission.

Sec. 46. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 47. That original section 33-150, Revised Statutes Supplement, 1982, is repealed.