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**SB-667 Healing arts: pregnancy and childbirth.** (2023-2024)

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**Senate Bill No. 667**

**CHAPTER 497**

An act to amend Sections 1209, 2746.5, 2746.51, and 4170 of the Business and Professions Code, and to amend Section 2708 of the Unemployment Insurance Code, relating to healing arts.

[ Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 667, Dodd. Healing arts: pregnancy and childbirth.

(1) Existing law, the Nursing Practice Act, establishes the Board of Registered Nursing within the Department of Consumer Affairs for the licensure and regulation of the practice of nursing. A violation of the act is a crime. Existing law requires the board to issue a certificate to practice nurse-midwifery to a person who meets specified qualifications. Existing law authorizes a certified nurse-midwife to attend cases of low-risk pregnancy and childbirth and to provide prenatal, intrapartum, and postpartum care, including interconception care, family planning care, and immediate care for the newborn, as specified. Existing law authorizes a certified nurse-midwife to practice with a physician and surgeon under mutually agreed-upon policies and protocols, as specified, to provide a patient with care outside of that scope of services or to provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.

This bill would revise and recast those provisions to, among other things, authorize a certified nurse-midwife, pursuant to policies and protocols that are mutually agreed upon with a physician and surgeon, as specified, to provide a patient with care outside of that scope of services, to provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium, or to furnish or order a Schedule II or III controlled substance, as specified. The bill would include care for common gynecologic conditions, as specified, in the scope of services a certified nurse-midwife is authorized to perform without policies and protocols that are mutually agreed upon with a physician and surgeon. The bill would additionally authorize a general acute care hospital, as defined, or a special hospital specified as a maternity hospital, as defined, to grant privileges to a certified nurse-midwife, allowing them to admit and discharge patients upon their own authority if in accordance with organized medical staff bylaws of that facility and within the nurse-midwife's scope of practice.

Existing law generally authorizes a certified nurse-midwife to furnish drugs or devices incidentally to the provision of care and services described above that the certified nurse-midwife is authorized to perform and care rendered to persons within certain settings, subject to specified requirements and exceptions. Among those requirements is that a certified nurse-midwife follow standardized procedures or protocols if they furnish or order Schedule IV or V controlled substances or drugs or devices for services other than attending cases of low-risk pregnancy and childbirth or providing prenatal, intrapartum, and postpartum care, as specified. Existing law requires those standardized procedures or protocols to specify which nurse-midwife is authorized to furnish or order drugs or devices, which drugs or devices may be furnished or ordered and under what circumstances, and the method of periodic review of the certified nurse-midwife's competence, as specified, and review of the provisions of the standardized procedure. Existing law requires a certified nurse-midwife to follow a patient-specific protocol approved by a

physician and surgeon if the certified nurse-midwife furnishes or orders Schedule II or III controlled substances for any condition. Existing law requires the patient-specific protocol to address the diagnosis of the illness, injury, or condition for which a Schedule II controlled substance is to be furnished.

This bill would revise and recast those provisions to remove references to standardized procedures or protocols and patient-specific protocols. Instead, the bill would require the above-described policies and protocols that a certified nurse-midwife is required to follow for certain care to contain provisions governing the furnishing or ordering of drugs or devices for services other than attending cases of low-risk pregnancy and childbirth or providing prenatal, intrapartum, and postpartum care, as specified.

Existing law authorizes a certified nurse-midwife to procure supplies and devices, obtain and administer diagnostic tests, obtain and administer nonscheduled drugs consistent with the provision of services authorized to be performed without policies and protocols mutually agreed upon with a physician and surgeon, order laboratory and diagnostic testing, and receive reports, as specified. Existing law imposes various requirements on a prescriber, as defined, for dispensing drugs and dangerous devices, including that the drug or device is necessary in the treatment of the condition for which the prescriber is attending the patient.

This bill would additionally authorize a certified nurse-midwife to dispense drugs when attending cases of low-risk pregnancy and childbirth or providing prenatal care, intrapartum care, postpartum care, or care for common gynecologic conditions, pursuant to the above-described requirements on prescribers. The bill would add a certified nurse-midwife to the definition of "prescriber" for purposes of those requirements.

(2) Existing law prohibits, except as specified, a person from performing a clinical laboratory test or examination classified as waived or classified as of moderate complexity under the federal Clinical Laboratory Improvement Amendments of 1988 (CLIA) unless the test or examination is performed under the overall operation and administration of the laboratory director, as specified. Existing law defines laboratory director for this purpose.

This bill would amend the definition of laboratory director to include a nurse-midwife serving as a director of a laboratory that performs only testing and examinations classified as waived or a provider-performed microscopy authorized within the scope of the nurse-midwife's certificate to practice.

(3) Existing law requires a claimant for unemployment compensation disability benefits to establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. Existing law defines the term "practitioner" to mean certain healing arts professions, as specified, including, as to normal pregnancy or childbirth, a midwife, nurse-midwife, or nurse practitioner.

This bill would revise the part of the definition of "practitioner" relating to normal pregnancy or childbirth to include, instead, as to pregnancy, childbirth, or postpartum conditions consistent with the scope of their professional licensure, a midwife, nurse-midwife, or nurse practitioner.

(4) This bill would incorporate additional changes to Section 2746.5 of the Business and Professions Code proposed by SB 345 to be operative only if this bill and SB 345 are enacted and this bill is enacted last.

(5) This bill would incorporate additional changes to Section 2708 of the Unemployment Insurance Code proposed by AB 575 to be operative only if this bill and AB 575 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 1209 of the Business and Professions Code is amended to read:

**1209.** (a) As used in this chapter, "laboratory director" means any person who is any of the following:

(1) A duly licensed physician and surgeon.

(2) Only for purposes of a clinical laboratory test or examination classified as waived, except as provided in paragraph (G), is any of the following:

(A) A duly licensed clinical laboratory scientist.

(B) A duly licensed limited clinical laboratory scientist.

(C) A duly licensed naturopathic doctor.

(D) A duly licensed optometrist serving as the director of a laboratory that only performs clinical laboratory tests authorized in clause (ii) of subparagraph (E) of paragraph (5) of subdivision (a) of Section 3041.

(E) A duly licensed dentist serving as the director of a laboratory that performs only clinical laboratory tests authorized within the scope of practice of dentistry as delineated under Section 1625.

(F) A pharmacist-in-charge of a pharmacy serving as the director of a laboratory that only performs tests waived pursuant to the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a), as authorized by the Pharmacy Law (Chapter 9 (commencing with Section 4000)).

(G) A certified nurse-midwife serving as the director of a laboratory that only performs clinical laboratory tests classified as waived or provider-performed microscopy authorized within the scope of the certificate to practice nurse-midwifery as specified in Section 2746.5.

(3) Licensed to direct a clinical laboratory under this chapter.

(b) (1) A person defined in paragraph (1) or (3) of subdivision (a) who is identified as the CLIA laboratory director of a laboratory that performs clinical laboratory tests classified as moderate or high complexity shall also meet the laboratory director qualifications under CLIA for the type and complexity of tests being offered by the laboratory.

(2) As used in this subdivision, "CLIA laboratory director" means the person identified as the laboratory director on the CLIA certificate issued to the laboratory by the federal Centers for Medicare and Medicaid Services (CMS).

(c) The laboratory director, if qualified under CLIA, may perform the duties of the technical consultant, technical supervisor, clinical consultant, general supervisor, and testing personnel, or delegate these responsibilities to persons qualified under CLIA. If the laboratory director reapportions performance of those responsibilities or duties, they shall remain responsible for ensuring that all those duties and responsibilities are properly performed.

(d) (1) The laboratory director is responsible for the overall operation and administration of the clinical laboratory, including administering the technical and scientific operation of a clinical laboratory, the selection and supervision of procedures, the reporting of results, and active participation in its operations to the extent necessary to ensure compliance with this act and CLIA. They shall be responsible for the proper performance of all laboratory work of all subordinates and shall employ a sufficient number of laboratory personnel with the appropriate education and either experience or training to provide appropriate consultation, properly supervise and accurately perform tests, and report test results in accordance with the personnel qualifications, duties, and responsibilities described in CLIA and this chapter.

(2) Where a point-of-care laboratory testing device is utilized and provides results for more than one analyte, the testing personnel may perform and report the results of all tests ordered for each analyte for which they have been found by the laboratory director to be competent to perform and report.

(e) As part of the overall operation and administration, the laboratory director of a registered laboratory shall document the adequacy of the qualifications (educational background, training, and experience) of the personnel directing and supervising the laboratory and performing the laboratory test procedures and examinations. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for personnel, in addition to any CLIA requirements relative to the education or training of personnel.

(f) As part of the overall operation and administration, the laboratory director of a licensed laboratory shall do all of the following:

(1) Ensure that all personnel, prior to testing biological specimens, have the appropriate education and experience, receive the appropriate training for the type and complexity of the services offered, and have demonstrated that they can perform all testing operations reliably to provide and report accurate results. In determining the adequacy of qualifications, the laboratory director shall comply with any regulations adopted by the department that specify the minimum qualifications for, and the type of procedures that may be performed by, personnel in addition to any CLIA requirements relative to the education or training of personnel. Any regulations adopted pursuant to this section that specify the type of procedure that may be performed by testing personnel shall be based on the skills, knowledge, and tasks required to perform the type of procedure in question.

(2) Ensure that policies and procedures are established for monitoring individuals who conduct preanalytical, analytical, and postanalytical phases of testing to ensure that they are competent and maintain their competency to process biological specimens, perform test procedures, and report test results promptly and proficiently, and, whenever necessary, identify needs for remedial training or continuing education to improve skills.

(3) Specify in writing the responsibilities and duties of each individual engaged in the performance of the preanalytic, analytic, and postanalytic phases of clinical laboratory tests or examinations, including which clinical laboratory tests or examinations the individual is authorized to perform, whether supervision is required for the individual to perform specimen processing, test

performance, or results reporting, and whether consultant, supervisor, or director review is required prior to the individual reporting patient test results.

(g) The competency and performance of staff of a licensed laboratory shall be evaluated and documented by the laboratory director, or by a person who qualifies as a technical consultant or a technical supervisor under CLIA depending on the type and complexity of tests being offered by the laboratory.

(1) The procedures for evaluating the competency of the staff shall include, but are not limited to, all of the following:

(A) Direct observations of routine patient test performance, including patient preparation, if applicable, and specimen handling, processing, and testing.

(B) Monitoring the recording and reporting of test results.

(C) Review of intermediate test results or worksheets, quality control records, proficiency testing results, and preventive maintenance records.

(D) Direct observation of performance of instrument maintenance and function checks.

(E) Assessment of test performance through testing previously analyzed specimens, internal blind testing samples, or external proficiency testing samples.

(F) Assessment of problem solving skills.

(2) Evaluation and documentation of staff competency and performance shall occur at least semiannually during the first year an individual tests biological specimens. Thereafter, evaluations shall be performed at least annually unless test methodology or instrumentation changes, in which case, prior to reporting patient test results, the individual's performance shall be reevaluated to include the use of the new test methodology or instrumentation.

(h) The laboratory director of each clinical laboratory of an acute care hospital shall be a physician and surgeon who is a qualified pathologist, except as follows:

(1) If a qualified pathologist is not available, a physician and surgeon or a clinical laboratory bioanalyst qualified as a laboratory director under subdivision (a) may direct the laboratory. However, a qualified pathologist shall be available for consultation at suitable intervals to ensure high-quality service.

(2) If there are two or more clinical laboratories of an acute care hospital, those additional clinical laboratories that are limited to the performance of blood gas analysis, blood electrolyte analysis, or both, may be directed by a physician and surgeon qualified as a laboratory director under subdivision (a), irrespective of whether a pathologist is available.

As used in this subdivision, a qualified pathologist is a physician and surgeon certified or eligible for certification in clinical or anatomical pathology by the American Board of Pathology or the American Osteopathic Board of Pathology.

(i) Subdivision (h) does not apply to any director of a clinical laboratory of an acute care hospital acting in that capacity on or before January 1, 1988.

(j) A laboratory director may serve as the director of up to the maximum number of laboratories stipulated by CLIA, as defined under Section 1202.5.

**SEC. 2.** Section 2746.5 of the Business and Professions Code is amended to read:

**2746.5.** (a) The certificate to practice nurse-midwifery authorizes the holder to attend cases of low-risk pregnancy and childbirth and to provide prenatal care, intrapartum care, postpartum care, including immediate care for the newborn, interconception care, family planning care, and care for common gynecologic conditions, consistent with the Core Competencies for Basic Midwifery Practice adopted by the American College of Nurse-Midwives, or its successor national professional organization, as approved by the board. For purposes of this subdivision, "low-risk pregnancy" means a pregnancy in which all of the following conditions are met:

(1) There is a single fetus.

(2) There is a cephalic presentation at onset of labor.

(3) The gestational age of the fetus is greater than or equal to 37 weeks and zero days and less than or equal to 42 weeks and zero days at the time of delivery.

(4) Labor is spontaneous or induced.

(5) The patient has no preexisting disease or condition, whether arising out of the pregnancy or otherwise, that adversely affects the pregnancy and that the certified nurse-midwife is not qualified to independently address consistent with this section.

(b) (1) The certificate to practice nurse-midwifery authorizes the holder, pursuant to policies and protocols that are mutually agreed upon with a physician and surgeon, that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care, and that are signed by both the certified nurse-midwife and a physician and surgeon, to do any of the following:

(A) Provide a patient with care that falls outside the scope of services specified in subdivision (a).

(B) Provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.

(C) Furnish or order a Schedule II or III controlled substance, including for patients that fall within the scope of services specified in subdivision (a).

(2) If a physician and surgeon assumes care of the patient, the certified nurse-midwife may continue to attend the birth of the newborn and participate in physical care, counseling, guidance, teaching, and support, as indicated by the mutually agreed-upon policies and protocols signed by both the certified nurse-midwife and a physician and surgeon.

(3) After a certified nurse-midwife refers a patient to a physician and surgeon, the certified nurse-midwife may continue care of the patient during a reasonable interval between the referral and the initial appointment with the physician and surgeon.

(c) (1) If a nurse-midwife does not have in place mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care, signed by both the certified nurse-midwife and a physician and surgeon pursuant to paragraph (1) of subdivision (b), the patient shall be transferred to the care of a physician and surgeon to do either or both of the following:

(A) Provide a patient with care that falls outside the scope of services specified in subdivision (a).

(B) Provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.

(2) After the certified nurse-midwife initiates the process of transfer pursuant to paragraph (1), for a patient who otherwise meets the definition of a low-risk pregnancy but no longer meets the criteria specified in paragraph (3) of subdivision (a) because the gestational age of the fetus is greater than 42 weeks and zero days, if there is inadequate time to effect safe transfer to a hospital prior to delivery or transfer may pose a threat to the health and safety of the patient or the unborn child, the certified nurse-midwife may continue care of the patient consistent with the transfer plan described in subdivision (a) of Section 2746.54.

(3) A patient who has been transferred from the care of a certified nurse-midwife to that of a physician and surgeon may return to the care of the certified nurse-midwife after the physician and surgeon has determined that the condition or circumstance that required, or would require, the transfer from the care of the nurse-midwife pursuant to paragraph (1) is resolved.

(d) The certificate to practice nurse-midwifery authorizes the holder to attend pregnancy and childbirth in an out-of-hospital setting if consistent with subdivisions (a), (b), and (c).

(e) This section shall not be interpreted to deny a patient's right to self-determination or informed decisionmaking with regard to choice of provider or birth setting.

(f) The certificate to practice nurse-midwifery does not authorize the holder of the certificate to assist childbirth by vacuum or forceps extraction, or to perform any external cephalic version.

(g) A certified nurse-midwife shall document all consultations, referrals, and transfers in the patient record.

(h) (1) A certified nurse-midwife shall refer all emergencies to a physician and surgeon immediately.

(2) A certified nurse-midwife may provide emergency care until the assistance of a physician and surgeon is obtained.

(i) This chapter does not authorize a nurse-midwife to practice medicine or surgery.

(j) This section shall not be construed to require a physician and surgeon to sign protocols and procedures for a nurse-midwife or to permit any action that violates Section 2052 or 2400.

(k) This section shall not be construed to require a nurse-midwife to have mutually agreed-upon, signed policies and protocols for the provision of services described in subdivision (a).

(l) Notwithstanding any other law, subject to the discretion of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, or a special hospital specified as a maternity hospital, as defined in subdivision (f) of

Section 1250 of the Health and Safety Code, and the medical staff bylaws of that facility, a hospital may grant privileges to a certified nurse-midwife, allowing them to admit and discharge patients upon their own authority, within their scope of practice, as delineated in this section, and in accordance with organized medical staff bylaws of that facility.

**SEC. 2.5.** Section 2746.5 of the Business and Professions Code is amended to read:

**2746.5.** (a) The certificate to practice nurse-midwifery authorizes the holder to attend cases of low-risk pregnancy and childbirth and to provide prenatal care, intrapartum care, and postpartum care, including immediate care for the newborn, interconception care, family planning care, and care for common gynecologic conditions, consistent with the Core Competencies for Basic Midwifery Practice adopted by the American College of Nurse-Midwives, or its successor national professional organization, as approved by the board. For purposes of this subdivision, "low-risk pregnancy" means a pregnancy in which all of the following conditions are met:

(1) There is a single fetus.

(2) There is a cephalic presentation at onset of labor.

(3) The gestational age of the fetus is greater than or equal to 37 weeks and zero days and less than or equal to 42 weeks and zero days at the time of delivery.

(4) Labor is spontaneous or induced.

(5) The patient has no preexisting disease or condition, whether arising out of the pregnancy or otherwise, that adversely affects the pregnancy and that the certified nurse-midwife is not qualified to independently address consistent with this section.

(b) (1) The certificate to practice nurse-midwifery authorizes the holder, pursuant to policies and protocols that are mutually agreed upon by a physician and surgeon, that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care, and that are signed by both the certified nurse-midwife and a physician and surgeon, to do any of the following:

(A) Provide a patient with care that falls outside the scope of services specified in subdivision (a).

(B) Provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.

(C) Furnish or order a Schedule II or III controlled substance, including for patients that fall within the scope of services specified in subdivision (a).

(2) If a physician and surgeon assumes care of the patient, the certified nurse-midwife may continue to attend the birth of the newborn and participate in physical care, counseling, guidance, teaching, and support, as indicated by the mutually agreed-upon policies and protocols signed by both the certified nurse-midwife and a physician and surgeon.

(3) After a certified nurse-midwife refers a patient to a physician and surgeon, the certified nurse-midwife may continue care of the patient during a reasonable interval between the referral and the initial appointment with the physician and surgeon.

(c) (1) If a nurse-midwife does not have in place mutually agreed-upon policies and protocols that delineate the parameters for consultation, collaboration, referral, and transfer of a patient's care, signed by both the certified nurse-midwife and a physician and surgeon pursuant to paragraph (1) of subdivision (b), the patient shall be transferred to the care of a physician and surgeon to do either or both of the following:

(A) Provide a patient with care that falls outside the scope of services specified in subdivision (a).

(B) Provide intrapartum care to a patient who has had a prior cesarean section or surgery that interrupts the myometrium.

(2) After the certified nurse-midwife initiates the process of transfer pursuant to paragraph (1), for a patient who otherwise meets the definition of a low-risk pregnancy but no longer meets the criteria specified in paragraph (3) of subdivision (a) because the gestational age of the fetus is greater than 42 weeks and zero days, if there is inadequate time to effect safe transfer to a hospital prior to delivery or transfer may pose a threat to the health and safety of the patient or the fetus, the certified nurse-midwife may continue care of the patient consistent with the transfer plan described in subdivision (a) of Section 2746.54.

(3) A patient who has been transferred from the care of a certified nurse-midwife to that of a physician and surgeon may return to the care of the certified nurse-midwife after the physician and surgeon has determined that the condition or circumstance that required, or would require, the transfer from the care of the nurse-midwife pursuant to paragraph (1) is resolved.

(d) The certificate to practice nurse-midwifery authorizes the holder to attend pregnancy and childbirth in an out-of-hospital setting if consistent with subdivisions (a), (b), and (c).

(e) This section shall not be interpreted to deny a patient's right to self-determination or informed decisionmaking with regard to choice of provider or birth setting.

(f) The certificate to practice nurse-midwifery does not authorize the holder of the certificate to assist childbirth by vacuum or forceps extraction, or to perform any external cephalic version.

(g) A certified nurse-midwife shall document all consultations, referrals, and transfers in the patient record.

(h) (1) A certified nurse-midwife shall refer all emergencies to a physician and surgeon immediately.

(2) A certified nurse-midwife may provide emergency care until the assistance of a physician and surgeon is obtained.

(i) This chapter does not authorize a nurse-midwife to practice medicine or surgery.

(j) This section shall not be construed to require a physician and surgeon to sign protocols and procedures for a nurse-midwife or to permit any action that violates Section 2052 or 2400.

(k) This section shall not be construed to require a nurse-midwife to have mutually agreed-upon, signed policies and protocols for the provision of services described in subdivision (a).

(l) Notwithstanding any other law, subject to the discretion of a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, or a special hospital specified as a maternity hospital, as defined in subdivision (f) of Section 1250 of the Health and Safety Code, and the medical staff bylaws of that facility, a hospital may grant privileges to a certified nurse-midwife, allowing them to admit and discharge patients upon their own authority, within their scope of practice, as delineated in this section, and in accordance with organized medical staff bylaws of that facility.

**SEC. 3.** Section 2746.51 of the Business and Professions Code is amended to read:

**2746.51.** (a) Neither this chapter nor any other law shall be construed to prohibit a certified nurse-midwife from furnishing or ordering drugs or devices, including controlled substances classified in Schedule II, III, IV, or V under the California Uniform Controlled Substances Act (Division 10 (commencing with Section 11000) of the Health and Safety Code), when all of the following apply:

(1) The drugs or devices are furnished or ordered incidentally to the provision of any of the following:

(A) The care and services described in Section 2746.5.

(B) Care rendered, consistent with the certified nurse-midwife's educational preparation or for which clinical competency has been established and maintained, to persons within a facility specified in subdivision (a), (b), (c), (d), (i), or (j) of Section 1206 of the Health and Safety Code, a clinic as specified in Section 1204 of the Health and Safety Code, a general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code, a licensed birth center as defined in Section 1204.3 of the Health and Safety Code, or a special hospital specified as a maternity hospital in subdivision (f) of Section 1250 of the Health and Safety Code.

(C) Care rendered in an out-of-hospital setting pursuant to subdivision (d) of Section 2746.5.

(2) The furnishing or ordering of drugs or devices by a certified nurse-midwife for services that do not fall within the scope of services specified in subdivision (a) of Section 2746.5 shall be furnished in accordance with, and specified in, the policies and protocols mutually agreed upon pursuant to paragraph (1) of subdivision (b) of Section 2746.5, which shall specify all of the following:

(A) Which certified nurse-midwife may furnish or order drugs or devices.

(B) Which drugs or devices may be furnished or ordered and under what circumstances.

(C) The method of periodic review of the certified nurse-midwife's competence, including peer review, and review of the provisions of the standardized procedure.

(3) If Schedule II or III controlled substances, as defined in Sections 11055 and 11056 of the Health and Safety Code, are furnished or ordered by a certified nurse-midwife for any condition, including, but not limited to, Schedule II or III controlled substances for services that fall within the scope of services specified in subdivision (a) of Section 2746.5, the controlled substances shall be furnished or ordered in accordance with policies and protocols mutually agreed upon pursuant to paragraph (1) of subdivision (b) of Section 2746.5. For Schedule II controlled substance protocols, the provision for furnishing the Schedule II controlled substance shall address the diagnosis of the illness, injury, or condition for which the Schedule II controlled substance is to be furnished.

(b) (1) The furnishing or ordering of drugs or devices by a certified nurse-midwife is conditional on the issuance by the board of a number to the applicant who has successfully completed the requirements of paragraph (2). The board may issue a furnishing number upon initial application and, if approved by the board, the applicant shall not be required to make a separate application. The number shall be included on all transmittals of orders for drugs or devices by the certified nurse-midwife. The board shall maintain a list of the certified nurse-midwives that it has certified pursuant to this paragraph and the number it has issued to each one. The board shall make the list available to the California State Board of Pharmacy upon its request. Every certified nurse-midwife who is authorized pursuant to this section to furnish or issue a drug order for a controlled substance shall register with the United States Drug Enforcement Administration and the Controlled Substance Utilization Review and Enforcement System (CURES) pursuant to Section 11165.1 of the Health and Safety Code.

(2) The board has certified in accordance with paragraph (1) that the certified nurse-midwife has satisfactorily completed a course in pharmacology covering the drugs or devices to be furnished or ordered under this section, including the risks of addiction and neonatal abstinence syndrome associated with the use of opioids. The board shall establish the requirements for satisfactory completion of this paragraph.

(3) Certified nurse-midwives who are certified by the board and hold an active furnishing number and who are registered with the United States Drug Enforcement Administration shall provide documentation of continuing education specific to the use of Schedule II controlled substances in settings other than a hospital based on standards developed by the board.

(c) Furnishing of drugs or devices by a certified nurse-midwife means the act of making a pharmaceutical agent or agents available to the patient. Use of the term "furnishing" in this section shall include the following:

(1) The ordering of a nonscheduled drug or device for services that fall within the scope of services specified in subdivision (a) of Section 2746.5.

(2) The ordering of a nonscheduled drug or device for services that fall outside the scope of services specified in subdivision (a) of Section 2746.5 in accordance with mutually agreed upon policies and protocols pursuant to paragraph (1) of subdivision (b) of Section 2746.5.

(3) The ordering of a Schedule IV or V drug for any condition, including, but not limited to, for care that falls within the scope of services specified in subdivision (a) of Section 2746.5.

(4) The ordering of a Schedule II or III drug in accordance with mutually agreed upon policies and protocols pursuant to paragraph (1) of subdivision (b) of Section 2746.5.

(5) Transmitting an order of a physician and surgeon.

(d) "Drug order" or "order" for purposes of this section means an order for medication or for a drug or device that is dispensed to or for an ultimate user, issued by a certified nurse-midwife as an individual practitioner, within the meaning of Section 1306.03 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription of the supervising physician; (2) all references to "prescription" in this code and the Health and Safety Code shall include drug orders issued by certified nurse-midwives; and (3) the signature of a certified nurse-midwife on a drug order issued in accordance with this section shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(e) Notwithstanding any other law, a certified nurse-midwife may directly procure supplies and devices, obtain and administer diagnostic tests, directly obtain and administer nonscheduled drugs, and dispense drugs pursuant to Section 4170, consistent with the provision of services that fall within the scope of services specified in subdivision (a) of Section 2746.5, order laboratory and diagnostic testing, and receive reports that are necessary to their practice as a certified nurse-midwife within their scope of practice, consistent with Section 2746.5.

**SEC. 4.** Section 4170 of the Business and Professions Code is amended to read:

**4170.** (a) A prescriber shall not dispense drugs or dangerous devices to patients in the prescriber's office or place of practice unless all of the following conditions are met:

(1) The dangerous drugs or dangerous devices are dispensed to the prescriber's own patient, and the drugs or dangerous devices are not furnished by a nurse or physician attendant.

(2) The dangerous drugs or dangerous devices are necessary in the treatment of the condition for which the prescriber is attending the patient.

(3) The prescriber does not keep a pharmacy, open shop, or drugstore, advertised or otherwise, for the retailing of dangerous drugs, dangerous devices, or poisons.



(4) The prescriber fulfills all of the labeling requirements imposed upon pharmacists by Section 4076, all of the recordkeeping requirements of this chapter, and all of the packaging requirements of good pharmaceutical practice, including the use of childproof containers.

(5) The prescriber does not use a dispensing device unless the prescriber personally owns the device and the contents of the device, and personally dispenses the dangerous drugs or dangerous devices to the patient packaged, labeled, and recorded in accordance with paragraph (4).

(6) The prescriber, before dispensing, offers to give a written prescription to the patient that the patient may elect to have filled by the prescriber or by any pharmacy.

(7) The prescriber provides the patient with written disclosure that the patient has a choice between obtaining the prescription from the dispensing prescriber or obtaining the prescription at a pharmacy of the patient's choice.

(b) A certified nurse-midwife who functions pursuant to a mutually agreed-upon policy or protocol described in Section 2746.5, a nurse practitioner who functions pursuant to a standardized procedure described in Section 2836.1, or protocol, a physician assistant who functions pursuant to Section 3502.1, or a naturopathic doctor who functions pursuant to Section 3640.5, may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, a manufacturer as defined in this chapter, or a pharmacist.

(c) The Medical Board of California, the California State Board of Optometry, the California Board of Naturopathic Medicine, the Dental Board of California, the Podiatric Medical Board of California, the Osteopathic Medical Board of California, the Board of Registered Nursing, the Veterinary Medical Board, and the Physician Assistant Board shall have authority with the California State Board of Pharmacy to ensure compliance with this section, and those boards are specifically charged with the enforcement of this chapter with respect to their respective licensees.

(d) "Prescriber," as used in this section, means a person who holds a physician's and surgeon's certificate, a license to practice optometry, a license to practice naturopathic medicine, a license to practice dentistry, a license to practice veterinary medicine, a certificate to practice podiatry, a certificate to practice as a nurse practitioner practicing pursuant to Section 2837.103 or 2837.104, or a certificate to practice as a nurse-midwife, and who is duly registered by the Medical Board of California, the Osteopathic Medical Board of California, the California State Board of Optometry, the California Board of Naturopathic Medicine, the Dental Board of California, the Veterinary Medical Board, the Podiatric Medical Board of California, or the Board of Registered Nursing.

**SEC. 5.** Section 2708 of the Unemployment Insurance Code is amended to read:

**2708.** (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts, including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for their child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within the first year of the child's birth or placement in connection with foster care or adoption.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate, with the investigation. A physician or practitioner licensed by, and practicing in, a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Physician" has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) (A) "Practitioner" means a person duly licensed or certified in California acting within the scope of their license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to pregnancy, childbirth, or postpartum conditions consistent with the scope of their professional licensure, a midwife or nurse-midwife, or nurse practitioner.

(B) "Practitioner" also means a physician assistant who has performed a physical examination under the supervision of a physician and surgeon. Funds appropriated to cover the costs required to implement this subparagraph shall come from the Unemployment Compensation Disability Fund. This subparagraph shall be implemented on or before January 1, 2017.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) Nothing in this section shall be construed to preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

(h) This section shall become operative on July 1, 2014.

**SEC. 5.5.** Section 2708 of the Unemployment Insurance Code is amended to read:

**2708.** (a) (1) In accordance with the director's authorized regulations, and except as provided in subdivision (c) and Sections 2708.1 and 2709, a claimant shall establish medical eligibility for each uninterrupted period of disability by filing a first claim for disability benefits supported by the certificate of a treating physician or practitioner that establishes the sickness, injury, or pregnancy of the employee, or the condition of the family member that warrants the care of the employee. For subsequent periods of uninterrupted disability after the period covered by the initial certificate or any preceding continued claim, a claimant shall file a continued claim for those benefits supported by the certificate of a treating physician or practitioner. A certificate filed to establish medical eligibility for the employee's own sickness, injury, or pregnancy shall contain a diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) A certificate filed to establish medical eligibility of the employee's own sickness, injury, or pregnancy shall also contain a statement of medical facts, including secondary diagnoses when applicable, within the physician's or practitioner's knowledge, based on a physical examination and a documented medical history of the claimant by the physician or practitioner, indicating the physician's or practitioner's conclusion as to the claimant's disability, and a statement of the physician's or practitioner's opinion as to the expected duration of the disability.

(b) An employee shall be required to file a certificate to establish eligibility when taking leave to care for a family member with a serious health condition. The certificate shall be developed by the department. In order to establish medical eligibility of the serious health condition of the family member that warrants the care of the employee, the information shall be within the physician's or practitioner's knowledge and shall be based on a physical examination and documented medical history of the family member and shall contain all of the following:

(1) A diagnosis and diagnostic code prescribed in the International Classification of Diseases, or, if no diagnosis has yet been obtained, a detailed statement of symptoms.

(2) The date, if known, on which the condition commenced.

(3) The probable duration of the condition.

(4) An estimate of the amount of time that the physician or practitioner believes the employee needs to care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(5) (A) A statement that the serious health condition warrants the participation of the employee to provide care for their child, parent, grandparent, grandchild, sibling, spouse, or domestic partner.

(B) "Warrants the participation of the employee" includes, but is not limited to, providing psychological comfort, and arranging "third party" care for the child, parent, grandparent, grandchild, sibling, spouse, or domestic partner, as well as directly providing, or participating in, the medical care.

(c) The department shall develop a certification form for bonding that is separate and distinct from the certificate required in subdivision (a) for an employee taking leave to bond with a minor child within one year of the child's birth, placement of the child in connection with foster care or adoption, or an individual's assumption of responsibilities for the child in loco parentis.

(d) The first and any continuing claim of an individual who obtains care and treatment outside this state shall be supported by a certificate of a treating physician or practitioner duly licensed or certified by the state or foreign country in which the claimant is receiving the care and treatment. If a physician or practitioner licensed by and practicing in a foreign country is under investigation by the department for filing false claims and the department does not have legal remedies to conduct a criminal investigation or prosecution in that country, the department may suspend the processing of all further certifications until the physician or practitioner fully cooperates, and continues to cooperate, with the investigation. A physician or practitioner licensed by, and practicing in, a foreign country who has been convicted of filing false claims with the department may not file a certificate in support of a claim for disability benefits for a period of five years.

(e) For purposes of this part:

(1) "Physician" has the same meaning as defined in Section 3209.3 of the Labor Code.

(2) (A) "Practitioner" means a person duly licensed or certified in California acting within the scope of their license or certification who is a dentist, podiatrist, or a nurse practitioner, and in the case of a nurse practitioner, after performance of a physical examination by a nurse practitioner and collaboration with a physician and surgeon, or as to pregnancy, childbirth, or postpartum conditions consistent with the scope of their professional licensure, a midwife or nurse-midwife, or nurse practitioner.

(B) "Practitioner" also means a physician assistant who has performed a physical examination under the supervision of a physician and surgeon. Funds appropriated to cover the costs required to implement this subparagraph shall come from the

Unemployment Compensation Disability Fund.

(f) For a claimant who is hospitalized in or under the authority of a county hospital in this state, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by the hospital's registrar. For a claimant hospitalized in or under the care of a medical facility of the United States government, a certificate of initial and continuing medical disability, if any, shall satisfy the requirements of this section if the disability is shown by the claimant's hospital chart, and the certificate is signed by a medical officer of the facility duly authorized to do so.

(g) This section does not preclude the department from requesting additional medical evidence to supplement the first or any continued claim if the additional evidence can be procured without additional cost to the claimant. The department may require that the additional evidence include any or all of the following:

(1) Identification of diagnoses.

(2) Identification of symptoms.

(3) A statement setting forth the facts of the claimant's disability. The statement shall be completed by any of the following individuals:

(A) The physician or practitioner treating the claimant.

(B) The registrar, authorized medical officer, or other duly authorized official of the hospital or health facility treating the claimant.

(C) An examining physician or other representative of the department.

(h) The amendments made to subdivision (c) by the act adding this subdivision shall become operative on February 1, 2025.

**SEC. 6.** Section 2.5 of this bill incorporates amendments to Section 2746.5 of the Business and Professions Code proposed by both this bill and Senate Bill 345. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 2746.5 of the Business and Professions Code, and (3) this bill is enacted after Senate Bill 345, in which case Section 2.5 of this bill shall not become operative.

**SEC. 7.** Section 5.5 of this bill incorporates amendments to Section 2708 of the Unemployment Insurance Code proposed by both this bill and Assembly Bill 575. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2024, (2) each bill amends Section 2708 of the Unemployment Insurance Code, and (3) this bill is enacted after Assembly Bill 575, in which case Section 5.5 of this bill shall not become operative.