
A BILL FOR AN ACT

RELATING TO THE LICENSURE OF MIDWIVES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. As determined by Senate Concurrent Resolution
2 No. 64, S.D.1 (1998), subsequent Auditor's Report No. 99-14
3 (1999), House Concurrent Resolution No. 65, H.D.1 (2016), and
4 the subsequent Auditor's Report No. 17-01 (2017), the
5 legislature finds that it is necessary to establish a mandatory
6 regulatory process for the midwifery profession.

7 Hawaii regulated midwifery starting with registration in
8 1931, which progressed into certification and then licensure.
9 However, the regulation of midwifery was repealed in 1998 when
10 nurse-midwives were placed under the purview of the board of
11 nursing. Since 1998, there has been a lapse in regulation, yet
12 individuals in the community have continued to practice
13 midwifery and offer birth services to the public.

14 The legislature finds that mothers and families seek out
15 alternatives to hospital births and they find significant value
16 in community or home birth services. These services are
17 currently provided by individuals identifying themselves as



1 traditional or cultural practitioners, midwives, certified
2 professional midwives, lay midwives, direct entry midwives,
3 birth keepers, or birth attendants. This Act will continue to
4 allow a woman to choose where and with whom she gives birth.

5 The legislature further finds that the profession of
6 midwifery has continued to evolve since the lapse in regulation.
7 Common definitions, training, and competency standards for the
8 practice of midwifery have developed on both a global and
9 national level. However, not all practitioners easily fit into
10 these definitions, categories, and standards. Hawaii currently
11 has many individuals offering birth services under different
12 titles and at varying levels of competency and training.

13 The legislature further finds the term "midwife" connotes
14 an expectation of a minimum level of care by consumers and the
15 community. The Hawaii regulatory licensing reform act requires
16 the State to regulate professions or vocations where the health,
17 safety, or welfare of the consumer may be jeopardized by the
18 nature of the service offered by the provider. The practice of
19 midwifery meets these criteria, and, therefore, must be
20 regulated by the State.



1 The purpose of this Act is to resolve the lapse in
2 regulation of midwifery and to regulate midwives engaged in the
3 practice of midwifery by establishing licensure and regulatory
4 requirements under the department of commerce and consumer
5 affairs. This Act also exempts a separate category of birth
6 attendants for a three-year period, to allow this community to
7 define themselves and develop common standards, accountability
8 measures, and disclosure requirements. By the end of the three-
9 year period, the legislature intends to enact statutes that will
10 incorporate all birth practitioners and allow them to practice
11 to the fullest extent under the law. The legislature also notes
12 that practicing midwifery according to this Act does not impede
13 one's ability to incorporate or provide cultural practices.

14 SECTION 2. The Hawaii Revised Statutes is amended by
15 adding a new chapter to be appropriately designated and to read
16 as follows:

"CHAPTER

MIDWIVES

17
18
19 § -1 **Findings and purpose.** The legislature finds that:



- 1 (1) Midwives offer maternity and newborn care from the
- 2 antepartum period through the intrapartum period to
- 3 the postpartum period;
- 4 (2) The improper practice of midwifery poses a significant
- 5 risk of harm to the mother or newborn, and may result
- 6 in death; and
- 7 (3) The regulation of the practice of midwifery is
- 8 reasonably necessary to protect the health, safety,
- 9 and welfare of mothers and their newborns.

10 **§ -2 Definitions.** As used in this chapter:

11 "Accreditation Commission for Midwifery Education" means
12 the United States Department of Education-recognized commission
13 that provides accreditation and pre-accreditation of
14 certificates, post-baccalaureates, graduate degrees, and pre-
15 certificate programs in nurse-midwifery and midwifery.

16 "American Midwifery Certification Board" means the national
17 certifying body for certified nurse-midwife candidates and
18 certified midwife candidates who have received their graduate
19 level education in programs accredited by the Accreditation
20 Commission for Midwifery Education.



1 "Certified midwife" means a person who holds a current and
2 valid national certification as a certified midwife from the
3 American Midwifery Certification Board, or any successor
4 organization.

5 "Certified professional midwife" means a person who holds a
6 current and valid national certification as a certified
7 professional midwife from the North American Registry of
8 Midwives, or any successor organization.

9 "Client" means a person under the care of a licensed
10 midwife, as well as the person's fetus and newborn child.

11 "Department" means the department of commerce and consumer
12 affairs.

13 "Director" means the director of commerce and consumer
14 affairs.

15 "International Confederation of Midwives" means the
16 accredited nongovernmental organization and representative of
17 midwives and midwifery to organizations worldwide to achieve
18 common goals in the care of mothers and newborns.

19 "Intrapartum" means the period of time from the onset of
20 labor through the birth of the placenta.



1 "Midwife" means a person engaged in the practice of
2 midwifery.

3 "Midwifery" means providing any of the following services:

- 4 (1) Supervising the conduct of labor and childbirth;
- 5 (2) Advising a parent as to the progress of childbirth;
- 6 (3) Rendering prenatal, intrapartum, and postpartum care;
- 7 and
- 8 (4) Making newborn assessments.

9 "Midwifery Education Accreditation Council" means the
10 independent, nonprofit organization recognized by the United
11 States Department of Education as an accrediting agency of
12 direct-entry midwifery institutions and programs.

13 "North American Registry of Midwives" means the
14 organization that sets national standards for the certified
15 professional midwife credential.

16 "Postpartum" means the period of time immediately after and
17 up to eight weeks following the birth of the baby.

18 "Prenatal" means the period of time from conception to the
19 onset of labor.

20 "Qualified midwife preceptor" means a licensed and
21 experienced midwife, or other maternal health professional



1 licensed in the State, who participates in the clinical
2 education of individuals enrolled in a midwifery education
3 program accredited by the Midwifery Education Accreditation
4 Council or Accreditation Commission For Midwifery Education and
5 who meets the criteria for midwife preceptors set forth by the
6 applicable organization.

7 § -3 **Midwives licensing program.** There is established a
8 midwives licensing program within the department to be
9 administered by the director.

10 § -4 **Powers and duties of the director.** In addition to
11 any other powers and duties authorized by law, the director
12 shall have the power and duties to:

- 13 (1) Grant permission to a person to use the title of
14 "midwife" or "licensed midwife" and engage in the
15 practice of midwifery in this State pursuant to this
16 chapter and the rules adopted pursuant thereto;
- 17 (2) Adopt, amend, or repeal rules pursuant to chapter 91
18 to carry out the purposes of this chapter;
- 19 (3) Administer, coordinate, and enforce this chapter and
20 rules adopted pursuant thereto;



1 (4) Discipline a licensee for any cause described by this
2 chapter or for any violation of rules or refuse to
3 license a person for failure to meet the licensing
4 requirements or for any cause that would be grounds
5 for disciplining a licensee; and

6 (5) Appoint an advisory committee to assist with the
7 implementation of this chapter and the rules adopted
8 pursuant thereto. The advisory committee shall
9 consist of the following:

10 (A) Three midwives who are certified professional
11 midwives or certified midwives; and

12 (B) Two members of the public.

13 § -5 **License required.** (a) Beginning July 1, 2020,
14 except as provided in this chapter, no person shall engage in
15 the practice of midwifery, or use the title "midwife", "licensed
16 midwife", or the abbreviation "L.M.", or any other words,
17 letters, abbreviations, or insignia indicating or implying that
18 the person is a licensed midwife without a valid license issued
19 pursuant to this chapter.

20 (b) Nothing in this section shall preclude a person
21 holding a national certification as a midwife from identifying



1 the person as holding such certification, so long as the person
2 is not practicing midwifery or professing to be authorized to
3 practice midwifery in the State unless that person is licensed
4 in accordance with this chapter.

5 **§ -6 Exemptions.** (a) This chapter shall not apply to a
6 nurse midwife holding a valid license under chapter 457.

7 (b) A person may practice midwifery without a license to
8 practice midwifery if the person is:

9 (1) Licensed and performing work within the scope of
10 practice or duties of the person's profession that
11 overlaps with the practice of midwifery; provided that
12 the person does not purport to be a midwife unless the
13 person holds a valid advanced practice registered
14 nurse license as a certified nurse midwife pursuant to
15 chapter 457;

16 (2) A student midwife who is currently enrolled in a
17 midwifery educational program providing midwifery
18 services under the direct supervision of a qualified
19 midwife preceptor;

20 (3) Rendering aid in an emergency where no fee for the
21 service is contemplated, charged, or received; or



- 1 (4) On or before July 1, 2023, acting as a birth attendant
- 2 and:
- 3 (A) Does not use legend drugs or devices, the use of
- 4 which requires a license under the laws of the
- 5 State;
- 6 (B) Does not advertise that the person is a midwife;
- 7 (C) Discloses to each client verbally and in writing
- 8 on a form adopted by the department, which shall
- 9 be received and executed by the person under the
- 10 birth attendant's care at the time care is first
- 11 initiated:
- 12 (i) That the person does not possess a
- 13 professional license issued by the State to
- 14 provide health or maternity care to women or
- 15 infants;
- 16 (ii) That the person's education and
- 17 qualifications have not been reviewed by the
- 18 State;
- 19 (iii) The person's education and training;



- 1 (iv) That the person is not authorized to
- 2 acquire, carry, administer, or direct others
- 3 to administer legend drugs;
- 4 (v) Any judgment, award, disciplinary sanction,
- 5 order, or other determination that adjudges
- 6 or finds that the person has committed
- 7 misconduct or is criminally or civilly
- 8 liable for conduct relating to midwifery by
- 9 a licensing or regulatory authority,
- 10 territory, state, or any other jurisdiction;
- 11 (vi) That the client will not have recourse
- 12 through the State's authorized complaint
- 13 process for regulated industries; and
- 14 (vii) A plan for transporting the client to the
- 15 nearest hospital if a problem arises during
- 16 the client's care; and
- 17 (D) Maintains a copy of the form required by
- 18 subparagraph (C) for at least ten years and makes
- 19 the form available for inspection upon request by
- 20 the department.



1 (c) Nothing in this chapter shall prohibit healing
2 practices by traditional Hawaiian healers engaged in traditional
3 healing practices of prenatal, maternal, and child care as
4 recognized by any council of kupuna convened by Papa Ola Lokahi.

5 Nothing in this chapter shall limit, alter, or otherwise
6 adversely impact the practice of traditional Native Hawaiian
7 healing pursuant to the Constitution of the State of Hawaii.

8 **§ -7 Fees.** (a) Each applicant shall pay a licensing
9 fee upon application for an initial license or renewal of a
10 license. Fees collected pursuant to this section or by rule
11 adopted under this section shall be nonrefundable.

12 (b) Pursuant to section 26-9(1), the director may
13 establish fees to restore a license, penalty fees, and any other
14 fees required for the administration of this chapter by rule.

15 (c) All fees collected pursuant to this chapter shall be
16 deposited by the director to the credit of the compliance
17 resolution fund established pursuant to section 26-9(o).

18 (d) Fees assessed pursuant to this chapter shall be used
19 to defray costs incurred by the department in implementing this
20 chapter.



1 (e) The director may assess fees as provided in this
2 chapter and section 26-9 and, notwithstanding any other law to
3 the contrary, may change the amount of the fees required by this
4 section at any time without regard to chapter 91, if the
5 director:

- 6 (1) Holds at least one public hearing to discuss and take
7 testimony on the proposed fee change; and
- 8 (2) Provides public notice at least thirty days prior to
9 the date of the public hearing.

10 **§ -8 Application for license as a midwife.** To obtain a
11 license under this chapter, the applicant shall provide:

- 12 (1) An application for licensure;
- 13 (2) The required fees;
- 14 (3) Proof of current, unencumbered certification as a:
 - 15 (A) Certified professional midwife; or
 - 16 (B) Certified midwife;
- 17 (4) If applicable, evidence of any licenses held or once
18 held in other jurisdictions indicating the status of
19 the license and documenting any disciplinary
20 proceedings pending or taken by any jurisdiction;



1 (5) Information regarding any conviction of any crime
2 which has not been annulled or expunged; and

3 (6) Any other information the department may require to
4 investigate the applicant's qualifications for
5 licensure.

6 § -9 **Issuance of license.** The director may issue a
7 license to any person who meets all licensure requirements and
8 pays the appropriate fees.

9 § -10 **Renewals.** Every license issued under this chapter
10 shall be renewed triennially on or before June 30, with the
11 first renewal deadline occurring on June 30, 2023. Failure to
12 renew a license shall result in a forfeiture of the license.
13 Licenses which have been so forfeited may be restored within one
14 year of the expiration date upon payment of renewal and penalty
15 fees. Failure to restore a forfeited license within one year of
16 the date of its expiration shall result in the automatic
17 termination of the license. Relicensure after termination shall
18 require the person to apply as a new applicant and again satisfy
19 all licensing requirements in place at the time of the new
20 application.



1 **§ -11 Authority to purchase and administer certain**

2 **legend drugs and devices.** (a) A midwife licensed under this
3 chapter may purchase and administer authorized scheduled legend
4 drugs and devices that are used in pregnancy, birth, postpartum
5 care, newborn care, or resuscitation, and that are deemed
6 integral to providing care to the public by the department.

7 (b) Legend drugs authorized under subsection (a) are
8 limited for:

9 (1) Neonatal use to prophylactic ophthalmic medications,
10 vitamin K, and oxygen; and

11 (2) Maternal use to antibiotics for Group B Streptococcal
12 antibiotic prophylaxis per guidelines adopted by the
13 Centers for Disease Control and Prevention, postpartum
14 antihemorrhagics, Rho(D) immune globulin, epinephrine
15 for neonatal resuscitation per neonatal resuscitation
16 guidelines and anaphylactic reaction to an
17 administered medication, intravenous fluids, amino
18 amide local anesthetic, and oxygen.

19 (c) Legend devices authorized under subsection (a) are
20 limited to devices for:

21 (1) Injection of medications;



1 (2) The administration of intravenous fluids;

2 (3) Adult and infant resuscitation; and

3 (4) Rupturing amniotic membranes.

4 (d) A pharmacist who dispenses drugs and devices to a
5 midwife as authorized by this section and in conformity with
6 chapter 461 is not liable for any adverse reactions caused by
7 the midwife's administration of legend drugs and devices.

8 § -12 **Grounds for refusal to grant, renew, reinstate or**
9 **restore licenses and for revocation, suspension, denial, or**
10 **condition of licenses.** In addition to any other acts or
11 conditions provided by law, the director may refuse to grant,
12 renew, reinstate, or restore, or may deny, revoke, suspend, or
13 condition in any manner, any license for any one or more of the
14 following acts or conditions on the part of the licensee or the
15 applicant thereof:

16 (1) Failing to meet or maintain the conditions and
17 requirements necessary to qualify for the granting of
18 a license;

19 (2) Failing to notify the department in writing that the
20 licensee's certification as a certified professional
21 midwife or as a certified midwife is no longer current



- 1 or unencumbered within thirty days of the change in
2 status;
- 3 (3) Engaging in false, fraudulent, or deceptive
4 advertising, or making untruthful or improbable
5 statements;
- 6 (4) Being addicted to, dependent on, or a habitual user of
7 a narcotic, barbiturate, amphetamine, hallucinogen,
8 opium, or cocaine, or other drugs or derivatives of a
9 similar nature;
- 10 (5) Practicing as a licensed midwife while impaired by
11 alcohol, drugs, physical disability, or mental
12 instability;
- 13 (6) Procuring a license through fraud, misrepresentation,
14 or deceit;
- 15 (7) Aiding and abetting an unlicensed person to directly
16 or indirectly perform activities requiring a license;
- 17 (8) Engaging in professional misconduct as defined by the
18 program in accordance with its own rules,
19 incompetence, gross negligence, or manifest incapacity
20 in the practice of midwifery;



- 1 (9) Failing to maintain a record or history of competency,
2 trustworthiness, fair dealing, and financial
3 integrity;
- 4 (10) Engaging in conduct or practice contrary to recognized
5 standards of ethics for the practice of midwifery;
- 6 (11) Violating any condition or limitation upon which a
7 conditional license was issued;
- 8 (12) Engaging in business under a past or present license
9 issued pursuant to this chapter, in a manner causing
10 injury to one or more members of the public;
- 11 (13) Failing to comply, observe, or adhere to any law in a
12 manner such that the director deems the applicant or
13 licensee to be an unfit or improper person to hold a
14 license;
- 15 (14) Having a revocation, suspension, or other disciplinary
16 action by a territory, or by another state or federal
17 agency against a licensee or applicant for any reason
18 provided by the licensing laws or this section;
- 19 (15) Having a criminal conviction, whether by nolo
20 contendere or otherwise, of a penal crime directly



1 related to the qualifications, functions, or duties of
2 a licensed midwife;

3 (16) Failing to report in writing to the director any
4 disciplinary decision issued against the licensee or
5 the applicant in another jurisdiction within thirty
6 days of the disciplinary decision;

7 (17) Employing, utilizing, or attempting to employ or
8 utilize at any time any person not licensed under this
9 chapter where licensure is required;

10 (18) Violating this chapter, any other applicable licensing
11 laws, or any rule or order of the director; or

12 (19) Using or removing without authorization controlled
13 substances or drugs, including diverting or attempting
14 to divert drugs or controlled substances for
15 unauthorized use."

16 SECTION 3. Section 26H-4, Hawaii Revised Statutes, is
17 amended to read as follows:

18 **"§26H-4 Repeal dates for newly enacted professional and**
19 **vocational regulatory programs.** (a) Any professional or
20 vocational regulatory program enacted after January 1, 1994, and
21 listed in this section shall be repealed as specified in this



1 section. The auditor shall perform an evaluation of the
2 program, pursuant to section 26H-5, prior to its repeal date.

3 (b) Chapter 465D (behavior analysts) shall be repealed on
4 June 30, 2021.

5 (c) Chapter 466L (appraisal management companies) shall be
6 repealed on June 30, 2023.

7 (d) Chapter (midwives) shall be repealed on June 30,
8 2025."

9 SECTION 4. The department of commerce and consumer affairs
10 may appoint an executive officer and a secretary, without regard
11 to chapter 76, Hawaii Revised Statutes, to assist with the
12 activities of the midwives licensing program.

13 SECTION 5. The department of commerce and consumer affairs
14 may adopt interim rules to carry out the purposes of this Act
15 without regard to chapters 91 or 201M, Hawaii Revised Statutes;
16 provided that:

17 (1) The department shall hold at least one public hearing
18 prior to the adoption of interim rules; and

19 (2) The interim rules shall be effective for no more than
20 one year after their adoption.



1 SECTION 6. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2019-2020 and the
4 same sum or so much thereof as may be necessary for fiscal year
5 2020-2021 to be deposited into the compliance resolution fund.

6 SECTION 7. There is appropriated out of the compliance
7 resolution fund the sum of \$ or so much thereof as may
8 be necessary for fiscal year 2019-2020 and the same sum or so
9 much thereof as may be necessary for fiscal year 2020-2021 to
10 implement the licensure of midwives as required by this Act.

11 The sums appropriated shall be expended by the department
12 of commerce and consumer affairs for the purposes of this Act.

13 SECTION 8. If any provision of this Act, or the
14 application thereof to any person or circumstance, is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act that can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 9. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.



1 SECTION 10. New statutory material is underscored.
2 SECTION 11. This Act shall take effect upon approval;
3 provided that sections 6 and 7 shall take effect on July 1,
4 2019.



Report Title:

Licensure; Midwives; DCCA; Appropriation

Description:

Establishes licensure of midwives. Temporarily exempts birth attendants and exempts Native Hawaiian healers from licensure requirements. Appropriates funds. (SB1033 HD1 PROPOSED)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

