

JAN 27 2016

A BILL FOR AN ACT

RELATING TO LICENSURE OF CERTIFIED PROFESSIONAL MIDWIVES.

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

1 SECTION 1. The legislature finds that the Hawaiian Islands
2 have a culture and traditional heritage that includes midwifery
3 care. Mothers have accessed midwifery care throughout history
4 regardless of their religious, economic, or personal reasons.
5 As determined by Senate Concurrent Resolution No. 64, S.D.1
6 (1998), and a subsequent sunrise audit report, Auditor's Report
7 No. 99-14 (1999), the legislature finds that it is necessary to
8 establish a regulatory process for certified professional
9 midwives.

10 The purpose of this Act is to regulate the practice of
11 midwifery care by establishing licensure requirements,
12 continuing education requirements, and minimum training
13 standards.

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:



1 "CHAPTER

2 CERTIFIED PROFESSIONAL MIDWIVES

3 § -1 Definitions. As used in this chapter:

4 "Certified professional midwife" means a person who is
5 certified by the North American Registry of Midwives or any
6 successor organization.

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

9 "Department" means the department of commerce and consumer
10 affairs.

11 "Director" means the director of commerce and consumer
12 affairs.

13 "Licensed midwife" means an individual who holds a current
14 license issued by the department pursuant to this chapter to
15 engage in the practice of midwifery in Hawaii.

16 "Midwifery Education Accreditation Council" means the
17 organization established in 1991 and recognized by the United
18 States Department of Education as an accrediting agency for
19 midwifery education programs and institutions.

20 "Midwives Alliance of North America" means a professional
21 organization representing out-of-hospital birth midwives.



1 "National Association of Certified Professional Midwives"
2 means the membership organization that specifically represents
3 certified professional midwives in the United States.

4 "North American Registry of Midwives" means the
5 organization that sets standards for competency based
6 certification for certified professional midwives.

7 "Out-of-hospital" means taking place in a birth center or
8 home.

9 "Postpartum period" means the period not exceeding six
10 weeks from the date of delivery.

11 "Practice of midwifery" means providing well-woman and
12 maternity care for individuals and their newborns during the
13 antepartum, intrapartum, and postpartum periods.

14 "Traditional birth attendant" or "traditional midwife"
15 means a person who assists a mother during childbirth and who
16 initially acquired the person's skills by delivering babies,
17 through an apprenticeship to other traditional birth attendants,
18 or through cultural lineage and who practices independently and
19 does not hold formal certification.

20 "United States Midwifery Education, Regulation, and
21 Association" means a coalition comprised of representatives of



1 the following national midwifery associations, credentialing
2 bodies, and education accreditation bodies: Accreditation
3 Commission for Midwifery Education, American College of Nurse
4 Midwives, American Midwifery Certification Board, Midwifery
5 Education Accreditation Council, Midwives Alliance of North
6 America, National Association of Certified Professional
7 Midwives, and North American Registry of Midwives.

8 § -2 Powers and duties. In addition to any other powers
9 and duties authorized by law, the director shall:

- 10 (1) Receive applications for licensure;
- 11 (2) Determine the qualifications of persons applying for
12 licensure;
- 13 (3) Grant licenses to qualified applicants;
- 14 (4) Establish procedures to renew, suspend, revoke, and
15 reinstate licenses;
- 16 (5) Establish and collect fees for the examination of
17 applicants for licensure and license renewal;
- 18 (6) Establish the minimum educational and continuing
19 educational requirements for licensure;
- 20 (7) Investigate complaints against licensed midwives;



1 (8) Undertake, when appropriate, disciplinary hearings;
2 and

3 (9) Subject to chapter 91, adopt, amend, or repeal rules,
4 as necessary to effectuate this chapter.

5 § -3 Advisory committee; appointment; term. (a) The
6 director shall appoint an advisory committee to serve as experts
7 to the department in licensing matters. The advisory committee
8 shall consist of eight members as follows:

9 (1) The director or the director's designee, who shall be
10 a non-voting member;

11 (2) Four licensed midwives who shall be in current and
12 active practice in the State for the duration of their
13 appointment and who shall have actively practiced as
14 licensed midwives in the State for at least three
15 years immediately preceding their appointment, who
16 shall be voting members; provided that the initial
17 members appointed pursuant to this paragraph shall be
18 three certified professional midwives and one
19 certified nurse midwife who each have at least three
20 years of experience in the practice of midwifery and



1 who are eligible to become licensed pursuant to this
2 chapter;

3 (3) One traditional birth attendant, who shall be a voting
4 member;

5 (4) One licensed physician, who has provided primary
6 maternity care for at least twenty births in the
7 twelve-month period prior to appointment, maintains
8 current hospital privileges, and has attended at least
9 one home birth, who shall be a non-voting member; and

10 (5) One out-of-hospital birth consumer, who is either
11 currently under midwifery care and planning an out-of-
12 hospital birth or has had an out-of hospital-birth in
13 the past, who shall be a non-voting member.

14 (b) Members of the committee shall serve four year terms.

15 (c) In the event of the death, resignation, or removal of
16 any committee member before the expiration of the member's term,
17 the vacancy shall be filled for the unexpired portion of the
18 term in the same manner as the original appointment.

19 (d) The committee shall elect a chairperson from amongst
20 its members. The committee shall meet at least annually to make
21 recommendations to the director and may hold additional meetings



1 at the call of the chairperson or at the written request of any
2 two members of the committee. Three voting members shall
3 constitute a quorum. The vote of the majority of members
4 present at a meeting in which a quorum is present shall
5 determine the action of the committee.

6 § -4 Scope of practice; formulary. (a) The director
7 shall establish scope of practice standards for the practice of
8 midwifery.

9 (b) The scope of practice standards shall include:

- 10 (1) Adoption of a drug formulary recommended by the
11 advisory committee and approved by the director; and
12 (2) Practice standards for antepartum, intrapartum,
13 postpartum, and newborn care that prohibit a licensed
14 midwife from providing care for a client with a
15 history of disorders, diagnoses, conditions, or
16 symptoms outside of the scope of practice recommended
17 by the advisory committee and approved by the director
18 pursuant to the standards of the National Association
19 of Certified Professional Midwives.

20 (c) The scope of practice standards:



- 1 (1) Shall not require a licensed midwife to practice under
2 the supervision of another health care provider,
3 except as a condition imposed as a result of
4 discipline by the department;
- 5 (2) Shall not require a licensed midwife to enter into an
6 agreement with another health care provider, except as
7 a condition imposed as a result of discipline by the
8 department;
- 9 (3) Shall not impose distance or time restrictions on
10 where a licensed midwife may practice;
- 11 (4) Shall not grant a licensed midwife prescriptive
12 privileges outside of the privilege of ordering,
13 obtaining, and administering medications on the
14 approved formulary; and
- 15 (5) Shall not allow a licensed midwife to perform
16 abortions.

17 § -5 License; qualifications. (a) A license to practice
18 midwifery pursuant to this chapter shall be granted to an
19 applicant who files a department-approved application for
20 licensure, pays the required application fees, and provides
21 evidence to the department of the following:



- 1 (1) Current certification as a certified professional
- 2 midwife by the North American Registry of Midwives or
- 3 a successor organization;
- 4 (2) Completion of an educational program or pathway
- 5 accredited by the Midwifery Education Accreditation
- 6 Council or having obtained the midwifery bridge
- 7 certificate issued by North American Registry of
- 8 Midwives;
- 9 (3) Documentation of a graduate letter from a Midwifery
- 10 Education Accreditation Council accredited school or
- 11 letter of completion of portfolio evaluation process;
- 12 and
- 13 (4) Successful completion of continuing education
- 14 requirements.

15 (b) All licenses issued under this chapter shall be valid
16 for two years from the date of issuance.

17 § -6 Fees; penalties. (a) Each applicant shall pay a
18 licensing fee of \$250 upon application for a new or renewal
19 license. Fees collected pursuant to this section shall be
20 deposited into the compliance resolution fund established
21 pursuant to section 26-9(o).



1 (b) Any fine imposed by the department after a hearing
2 conducted pursuant to this chapter shall be no less than \$100
3 and no more than \$1,000 for the first violation. A second or
4 subsequent violation of this chapter shall be referred to the
5 office of the attorney general for criminal prosecution. Any
6 person who pleads guilty to or is found guilty of a second or
7 subsequent violation of this chapter shall be guilty of a
8 misdemeanor.

9 § -7 Hearings. (a) Unless otherwise provided by law, in
10 every case in which the department refuses to issue, renew,
11 restore, or reinstate a license under this chapter, or proposes
12 to take disciplinary action or other licensing sanctions against
13 a licensee, the department shall conduct an administrative
14 proceeding in accordance with chapter 91.

15 (b) In all proceedings before it, the department and each
16 member thereof shall have the same powers respecting
17 administering oaths, compelling the attendance of witnesses and
18 the production of documentary evidence, and examining witnesses
19 as are possessed by circuit courts. In case of disobedience by
20 any person of any order of the department or of a member
21 thereof, or of any subpoena issued by it or a member, or the



1 refusal of any witness to testify to any matter regarding which
2 the witness may be questioned lawfully, any circuit judge, on
3 application by the department or a member thereof, shall compel
4 obedience as in the case of disobedience of the requirements of
5 a subpoena issued by a circuit court, or a refusal to testify
6 therein.

7 § -8 Exemptions. This chapter shall not apply to the
8 following:

- 9 (1) Certified nurse midwives authorized by the board of
10 nursing to practice in Hawaii, unless the certified
11 nurse midwife chooses to become concurrently licensed
12 under this chapter. Certified nurse midwives with
13 concurrent licensure shall be subject to chapter 457,
14 as well as this chapter;
- 15 (2) Student midwives in training under the direct
16 supervision of licensed midwives as required by North
17 American Registry of Midwives;
- 18 (3) A person administering care to a spouse or parent;
- 19 (4) A person rendering aid in an emergency where no fee
20 for the service is contemplated, charged, or received;



- 1 (5) A traditional birth attendant who does not receive
2 compensation for midwifery services; or
- 3 (6) Other than as provided in paragraph (1), the practice
4 of a profession by persons who are licensed,
5 certified, or registered under other laws of this
6 State and are performing services within their
7 authorized scope of practice.
- 8 § -9 Client protection. A licensed midwife shall not:
- 9 (1) Disregard a client's dignity or right to privacy as to
10 the client's person, condition, possessions, or
11 medical record;
- 12 (2) Breach any legal requirement of confidentiality with
13 respect to a client, unless ordered by a court of law;
- 14 (3) Submit a birth certificate known by the licensed
15 midwife to be false or fraudulent, or willfully make
16 or file false or incomplete reports or records in the
17 practice of midwifery;
- 18 (4) Fail to provide information sufficient to allow a
19 client to give fully informed consent;
- 20 (5) Engage in the practice of midwifery while impaired
21 because of the use of alcoholic beverages or drugs; or



1 (6) Violate any other standards of conduct as determined
2 by the department.

3 § -10 Disclosure; record keeping. (a) Before initiating
4 care, a licensed midwife shall obtain a signed informed consent
5 agreement from each client, acknowledging receipt, at minimum,
6 of the current North American Registry of Midwives required
7 Informed Disclosure for Midwifery Care.

8 (b) All licensed midwives shall maintain a record of
9 signed informed consent agreements for each client pursuant to
10 section 622-58.

11 § -11 Immunity from vicarious liability. No licensed
12 medical provider or facility providing medical care or treatment
13 to a person due to an emergency arising during childbirth as a
14 consequence of care received by a licensed midwife shall be held
15 liable for any civil damages as a result of such medical care or
16 treatment unless the damages result from the licensed medical
17 provider or facility's provision of or failure to provide
18 medical care or treatment under circumstances demonstrating a
19 reckless disregard for the consequences so as to affect the life
20 or health of another. A physician who consults with a licensed
21 midwife but who does not examine or treat a client of the



1 midwife shall not be deemed to have created a physician-patient
2 relationship with the client."

3 SECTION 3. If any provision of this Act, or the
4 application thereof to any person or circumstance, is held
5 invalid, the invalidity does not affect other provisions or
6 applications of the Act that can be given effect without the
7 invalid provision or application, and to this end the provisions
8 of this Act are severable.

9 SECTION 4. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 5. This Act shall take effect upon its approval;
13 provided that section 2 of this Act shall take effect on July 1,
14 2017.

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S.B. NO. 2326

Report Title:

Licensure; Midwife

Description:

Establishes licensure requirements for the practice of midwifery. Requires the Director of Commerce and Consumer Affairs to adopt rules regulating the practice of midwifery.

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