
A BILL FOR AN ACT

RELATING TO HOME BIRTH.

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

1 SECTION 1. The legislature finds that the practice of
2 midwifery has been a part of Hawaii's culture and tradition
3 since before Hawaii joined the Union as a state. For personal,
4 religious, and economic reasons, some Hawaii residents choose
5 midwifery care.

6 The legislature further finds that establishing a home
7 birth board in Hawaii will preserve the rights of families to
8 deliver their children in a setting of their choice; provide
9 additional maternity care options for Hawaii's families; protect
10 the public health, safety, and welfare; and provide a mechanism
11 to assure quality care.

12 The purpose of this Act is to improve home birth safety by
13 establishing a home birth board, established as an advisory
14 board to the Hawaii medical board, for licensure; requiring home
15 birth providers to meet minimum educational and training
16 requirements for midwives established by the American Midwifery
17 Certification Board; establishing protocols for home birth
18 safety; requiring collection of home birth data; and requiring



1 that home birth providers fully inform their clients regarding
2 their planned home birth so that they may make an informed
3 decision.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 **"CHAPTER**

8 **HOME BIRTH PROVIDERS**

9 **§ -1 Definitions.** As used in this part:

10 "Board" means the home birth board, placed administratively
11 under the Hawaii medical board.

12 "Certified professional midwife" or "CPM" means a person
13 who is certified by the North American Registry of Midwives or
14 any successor organization.

15 "Client" means an woman under the care of a licensed
16 midwife, as well as her fetus and newborn child.

17 "Department" means the department of commerce and consumer
18 affairs.

19 "Licensed midwife" means an individual who holds a current
20 license issued by the board pursuant to this chapter to engage
21 in the practice of midwifery care in Hawaii.



1 "Midwifery education accreditation council" or "MEAC" means
2 the organization established in 1991 and recognized by the U.S.
3 department of education as an accrediting agency for midwifery
4 education programs and institutions.

5 "Midwives Alliance of Hawaii" means the professional
6 organization representing midwives in Hawaii.

7 "NACPM" means the National Association of Certified
8 Professional Midwives.

9 "NACPM essential documents" means the documents adopted by
10 NACPM that identify the nature of and standards of practice for
11 responsible midwifery practice.

12 "NARM" means the North American Registry of Midwives.

13 "Practice of midwifery" means providing maternity care for
14 women and their newborns during the antepartum, intrapartum, and
15 postpartum periods. The postpartum period for both maternal and
16 newborn care may not exceed six weeks from the date of delivery.

17 **§ -2 Home birth board; established.** (a) There is
18 established under the board of medicine a home birth board.

19 (b) The board shall consist of seven members appointed by
20 the governor, as follows:

21 (1) The director of health, or the director's designee;



- 1 (2) Three members who have at least three years of
2 experience in the practice of midwifery, hold current
3 CPM certification or are nurse midwives, and are
4 eligible to become licensed pursuant to this chapter;
5 provided that after the initial appointment, the three
6 members shall be licensed pursuant to this chapter,
7 actively practice midwifery in Hawaii for the duration
8 of their appointment, and have been practicing
9 midwives in Hawaii for at least three years
10 immediately preceding their appointment; and
- 11 (3) Three members who are licensed physicians, are board
12 certified in obstetrics/gynecology, maintain current
13 hospital privileges, and have provided primary
14 maternity care for at least twenty births in the
15 twelve months prior to the appointment.
- 16 (c) One member of the initial board shall be appointed for
17 one year, one member of the initial board shall be appointed for
18 two years, one member of the initial board shall be appointed
19 for three years, one member of the initial board shall be
20 appointed for four years, and one member of the initial board
21 shall be appointed for five years. Thereafter, each board
22 member shall serve for five years.



1 (d) In the event of the death, resignation, or removal of
2 any board member before the expiration of the term to which the
3 board member is appointed, the vacancy shall be filled for the
4 unexpired portion of the term in the same manner as the original
5 appointment.

6 (e) Within thirty days after appointment of all initial
7 members, the board shall hold a meeting and elect a chairperson.
8 The board shall meet at least annually thereafter and may hold
9 additional meetings at the call of the chairperson or at the
10 written request of any two members of the board. Three members
11 shall constitute a quorum. The vote of a majority of members
12 present at a meeting in which a quorum is present shall
13 determine the action of the board.

14 **§ -3 Powers and duties.** The board shall have the
15 authority and the responsibility to:

16 (1) Receive applications for licensure; determine the
17 qualifications of persons applying for licensure;
18 provide licenses to applicants qualified under this
19 chapter; and renew, suspend, revoke, and reinstate
20 licenses;

21 (2) Establish and collect fees for examination of
22 applicants for licensure and license renewal;



- 1 (3) Establish the minimum amount and type of continuing
2 education to be required for each licensed midwife
3 seeking renewal of the midwife's license;
- 4 (4) Investigate complaints against persons who are
5 licensed under this chapter;
- 6 (5) Undertake, when appropriate, disciplinary proceedings
7 and disciplinary action against persons licensed under
8 this chapter;
- 9 (6) Adopt rules, pursuant to chapter 91, necessary to
10 administer this chapter. To the degree they are
11 consistent with this chapter, rules shall be
12 consistent with the current job description for the
13 profession published by NARM and consistent with
14 standards regarding the practice of midwifery
15 established by the NACPM or a successor organization;
- 16 (7) Authorize, by written agreement, the department to act
17 as agent in its interest; and
- 18 (8) Provide such other services and perform such other
19 functions as are consistent with this chapter and
20 necessary to fulfill its responsibilities.

21 **§ -4 Rulemaking.** (a) The rules adopted by the board
22 shall:



- 1 (1) Allow a midwife to obtain and administer, during the
2 practice of midwifery, the following:
- 3 (A) Oxygen;
- 4 (B) Injectable local anesthetic for the repair of
5 lacerations that are no more extensive than
6 second degree; and
- 7 (C) Eye prophylactics to the baby;
- 8 (2) Prohibit the use of other legend drugs; and
- 9 (3) Establish scope and practice standards for antepartum,
10 intrapartum, postpartum, and newborn care that shall,
11 at a minimum:
- 12 (A) Prohibit a licensed midwife from providing care
13 for a client with a history of disorders,
14 diagnoses, conditions, or symptoms that include:
- 15 (i) Placental abnormality;
- 16 (ii) Multiple gestation;
- 17 (iii) Noncephalic presentation at the onset of
18 labor or rupture of membranes, whichever
19 occurs first;
- 20 (iv) Birth under thirty-seven weeks and after
21 forty-two completed weeks' gestational age;



- 1 (v) A history of more than one prior cesarean
2 section, a cesarean section within eighteen
3 months of the current delivery, or any
4 cesarean section that was surgically closed
5 with a classical or vertical uterine
6 incision;
- 7 (vi) Rh or other blood group or platelet
8 sensitization, hematological, or coagulation
9 disorders;
- 10 (vii) A body mass index of forty or higher at the
11 time of conception;
- 12 (viii) Prior chemotherapy or radiation treatment
13 for a malignancy;
- 14 (ix) Previous pre-eclampsia resulting in
15 premature delivery;
- 16 (x) Cervical insufficiency; or
- 17 (xi) HIV positive status;
- 18 (B) Prohibit a licensed midwife from providing care
19 for a client with a history of the following
20 disorders, diagnoses, conditions, or symptoms
21 unless such disorders, diagnoses, conditions, or



- 1 symptoms are being treated, monitored, or managed
2 by a physician licensed pursuant to chapter 453:
- 3 (i) Diabetes;
 - 4 (ii) Thyroid disease;
 - 5 (iii) Epilepsy;
 - 6 (iv) Hypertension;
 - 7 (v) Cardiac disease;
 - 8 (vi) Pulmonary disease;
 - 9 (vii) Renal disease;
 - 10 (viii) Gastrointestinal disorders;
 - 11 (ix) Previous major surgery of the pulmonary
12 system, cardiovascular system, urinary
13 tract, or gastrointestinal tract;
 - 14 (x) Abnormal cervical cytology;
 - 15 (xi) Sleep apnea;
 - 16 (xii) Previous bariatric surgery;
 - 17 (xiii) Hepatitis; or
 - 18 (xiv) History of illegal drug use or excessive
19 prescription drug use;
- 20 (C) Require a licensed midwife to recommend that a
21 client see a physician licensed under chapter 453
22 and to document and maintain a record as required



1 by section -10, if the client has a history of
2 disorders, diagnoses, conditions, or symptoms
3 that include:

- 4 (i) Previous complicated pregnancy;
- 5 (ii) Previous cesarean section;
- 6 (iii) Previous pregnancy loss in second or third
7 trimester;
- 8 (iv) Previous spontaneous premature labor;
- 9 (v) Previous pre-term rupture of membranes;
- 10 (vi) Previous pre-eclampsia;
- 11 (vii) Previous hypertensive disease of pregnancy;
- 12 (viii) Parvo;
- 13 (ix) Toxoplasmosis (toxoplasmosis);
- 14 (x) Cytomegalovirus (CMV);
- 15 (xi) Herpes simplex virus (HSV);
- 16 (xii) Previous maternal/newborn group b
17 streptococcus infection;
- 18 (xiii) A body mass index of at least thirty-five
19 but less than forty at the time of
20 conception;
- 21 (xiv) Underlying family genetic disorders with
22 potential for transmission; or



- 1 (xv) Psychosocial situations that may complicate
- 2 pregnancy;
- 3 (D) Provide current certification in adult and
- 4 neonatal cardiopulmonary resuscitation;
- 5 (E) Provide current certification in neonatal
- 6 resuscitation program training from a course
- 7 approved by the American Academy of Pediatrics;
- 8 (F) Require a licensed midwife to facilitate the
- 9 immediate transfer to a hospital for emergency
- 10 care for disorders, diagnoses, conditions, or
- 11 symptoms that include:
 - 12 (i) Maternal fever in labor;
 - 13 (ii) Suggestion of fetal jeopardy such as
 - 14 bleeding, meconium, or abnormal fetal heart
 - 15 tones;
 - 16 (iii) Noncephalic presentation at the onset of
 - 17 labor or rupture of membranes, whichever
 - 18 occurs first;
 - 19 (iv) Second stage labor after two hours of
 - 20 initiation of pushing when the mother has
 - 21 had a previous cesarean section;
 - 22 (v) Current spontaneous premature labor;



- 1 (vi) Current pre-term premature rupture of
2 membranes;
- 3 (vii) Current pre-eclampsia;
- 4 (viii) Current hypertensive disease of pregnancy;
- 5 (ix) Continuous uncontrolled bleeding;
- 6 (x) Bleeding that necessitates the
7 administration of more than two doses of
8 oxytocin or other antihemorrhagic agent;
- 9 (xi) Delivery injuries to the bladder or bowel;
- 10 (xii) Grand mal seizure;
- 11 (xiii) Uncontrolled vomiting;
- 12 (xiv) Coughing or vomiting of blood;
- 13 (xv) Severe chest pain; or
- 14 (xvi) Sudden onset of shortness of breath and
15 associated labored breathing.
- 16 A transfer of care shall be accompanied by the
17 client's medical record, the licensed midwife's
18 assessment of the client's current condition, and
19 a description of the care provided by the
20 licensed midwife prior to transfer; and
- 21 (G) Establish a written plan for the emergency
22 transfer and transport required in subparagraph



1 (F) and for notifying the hospital to which a
2 client will be transferred in the case of an
3 emergency. If a client is transferred in an
4 emergency, the licensed midwife shall notify the
5 hospital when the transfer is initiated and
6 accompany the client to the hospital if feasible,
7 or communicate by telephone with the hospital if
8 unable to be present personally, and shall
9 provide the client's medical record. The record
10 shall include the client's name, address, list of
11 diagnosed medical conditions, list of
12 prescription or over the counter medications
13 regularly taken, history of previous allergic
14 reactions to medications, client's current
15 medical condition, description of the care
16 provided by the midwife, and next of kin contact
17 information; and

18 (4) Establish and operate a system of peer review for
19 licensed midwives that shall include but not be
20 limited to the appropriateness, quality, utilization,
21 and ethical performance of midwifery care.

22 (b) The rules adopted by the board shall not:



- 1 (1) Require a licensed midwife to have a nursing degree or
2 diploma;
- 3 (2) Require a licensed midwife to practice midwifery under
4 the supervision of another health care provider,
5 except as a condition imposed by disciplinary
6 proceedings by the board;
- 7 (3) Require a licensed midwife to enter into an agreement,
8 written or otherwise, with another health care
9 provider, except as a condition imposed in
10 disciplinary proceedings by the board;
- 11 (4) Limit the location where a licensed midwife may
12 practice midwifery;
- 13 (5) Allow a licensed midwife to use vacuum extraction or
14 forceps as an aid in the delivery of a newborn;
- 15 (6) Grant a licensed midwife prescriptive privilege; or
- 16 (7) Allow a licensed midwife to perform abortions.

17 **§ -5 Licensure; penalty.** (a) The board shall grant a
18 license to any individual who submits a completed application,
19 pays the required license fee as established by the board, and
20 meets the qualifications set forth in section -6.



1 (b) All licenses issued under this chapter shall be for a
2 term of one year and shall expire on the birthday of the
3 licensee unless renewed in the manner prescribed by rule.

4 (c) It is a misdemeanor for any person to assume or use
5 the title or designation "licensed midwife", "L.M.", or any
6 other title, designation, words, letters, abbreviations, sign,
7 card, or device to indicate to the public that such person is
8 licensed to practice midwifery pursuant to this chapter unless
9 that person is so licensed. Any person who pleads guilty to or
10 is found guilty of a second or subsequent offense under this
11 subsection shall be guilty of a felony.

12 (d) Except as provided in section -7, on and after
13 January 1, 2016, it shall be a misdemeanor for any person to
14 engage in the practice of midwifery without a license. Any
15 person who pleads guilty to or is found guilty of a second or
16 subsequent offense under this subsection shall be guilty of a
17 felony.

18 **§ -6 Qualifications for licensure.** A person shall be
19 eligible to be licensed as a midwife if the person:

20 (1) Provides proof of current certification as a CPM by
21 NARM or a successor organization;



- 1 (2) Files a board approved application for licensure and
- 2 pays the required fees; and
- 3 (3) Provides documentation of successful completion of
- 4 board approved MEAC accredited courses in
- 5 pharmacology, the treatment of shock/IV therapy, and
- 6 suturing specific to midwives.

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

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



1 (5) The practice of a profession by individuals who are
2 licensed, certified, or registered under other laws of
3 this State and are performing services within the
4 authorized scope of practice.

5 **§ -8 Fees.** (a) All fees received pursuant to this
6 chapter shall be paid to the department and deposited in the
7 state treasury to the credit of the compliance resolution fund.
8 All costs and expenses incurred pursuant to this chapter shall
9 be charged against and paid from the compliance resolution fund.
10 In no case shall any salary, expense, or other obligation of the
11 board be charged against the general fund.

12 (b) The fee for licensure shall not exceed \$100.

13 **§ -9 Client protection.** A licensed midwife or applicant
14 for licensure, renewal, or reinstatement shall not:

15 (1) Disregard a client's dignity or right to privacy as to
16 the client's person, condition, possessions, or
17 medical record;

18 (2) Breach any legal requirement of confidentiality with
19 respect to a client, unless ordered by a court of law;

20 (3) Submit a birth certificate known by the person to be
21 false or fraudulent, or wilfully make or file false or



- 1 incomplete reports or records in the practice of
- 2 midwifery;
- 3 (4) Fail to provide information sufficient to allow a
- 4 client to give fully informed consent;
- 5 (5) Engage in the practice of midwifery while impaired
- 6 because of the use of alcoholic beverages or drugs; or
- 7 (6) Violate any other standards of conduct as determined
- 8 by the board in rules adopted for the regulation of
- 9 the practice of midwifery.

10 **§ -10 Disclosure; recordkeeping.** (a) Before initiating
11 care, a licensed midwife shall obtain a signed informed consent
12 agreement from each client, acknowledging receipt, at minimum,
13 of the following:

- 14 (1) The licensed midwife's training and experience;
- 15 (2) Instructions for obtaining a copy of the rules adopted
- 16 by the board pursuant to this chapter;
- 17 (3) Instructions for obtaining a copy of the NACPM
- 18 essential documents and NARM job description;
- 19 (4) Instructions for filing complaints with the board;
- 20 (5) Notice of whether or not the licensed midwife has
- 21 professional liability insurance coverage;



1 (6) A written protocol for emergencies, including hospital
2 transport that is specific to each individual client;

3 (7) A description of the procedures, benefits, and risks
4 of home birth, primarily those conditions that may
5 arise during delivery; and

6 (8) Any other information required by rules adopted by the
7 board.

8 (b) All licensed midwives shall maintain a record of
9 signed informed consent agreements for each client for a minimum
10 of nine years after the last day of care for each client.

11 (c) Before providing care for a client who has a history
12 of disorders, diagnoses, conditions, or symptoms identified in
13 section -4(a)(5)(B), the licensed midwife shall provide
14 written notice to the client that the client shall obtain care
15 from a physician licensed pursuant to chapter 453 as a condition
16 to the client's eligibility to obtain maternity care from the
17 licensed midwife. Before providing care for a client who has a
18 history of disorders, diagnoses, conditions, or symptoms
19 identified in section -4(a)(5)(C), or who has had a previous
20 cesarean section, the licensed midwife shall provide written
21 notice to the client that the client is advised to consult with
22 a physician licensed pursuant to chapter 453 during her



1 pregnancy. The midwife shall obtain the client's signed
2 acknowledgment of receipt of this notice.

3 (d) Any licensed midwife submitting an application to
4 renew a license shall compile and submit to the board complete
5 practice data for the twelve months immediately preceding the
6 date of the application. The information shall be provided in
7 form and content as prescribed by rule of the board and shall
8 include but not be limited to:

- 9 (1) The number of clients to whom care has been provided
10 by the licensed midwife;
- 11 (2) The number of deliveries performed by the licensed
12 midwife;
- 13 (3) The apgar scores of the infants delivered by the
14 licensed midwife;
- 15 (4) The number of prenatal transfers;
- 16 (5) The number of transfers during labor, delivery, and
17 immediately following birth;
- 18 (6) Any perinatal deaths; and
- 19 (7) Other morbidity statistics as required by the board.

20 **§ -11 Immunity from vicarious liability.** No physician,
21 hospital, emergency room personnel, emergency medical
22 technician, or ambulance personnel shall be liable in any civil



1 action arising out of any injury resulting from an act or
2 omission of a licensed midwife, even if the health care provider
3 has consulted with or accepted a referral from the licensed
4 midwife. A physician who consults with a licensed midwife but
5 who does not examine or treat a client of the midwife shall not
6 be deemed to have created a physician-patient relationship with
7 the client."

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

14 SECTION 4. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 5. This Act shall take effect on January 1, 2016.



Report Title:

Home Birth Board; Midwives; License

Description:

Establishes the home birth board to adopt rules and protocols for midwives and licensure of midwives. Requires midwives to be licensed and meet minimum educational and training requirements. Requires the board to investigate complaints concerning violations of its rules and to take disciplinary action when necessary. Limits home births to clients with low-risk pregnancies. Requires licensed midwives to use informed consent agreements with their clients and to follow record keeping and reporting requirements. Effective 1/1/2016. (Proposed SD1)

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

