
A BILL FOR AN ACT

RELATING TO THE LICENSURE OF MIDWIVES.

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

PART I

1

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

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10 However, the regulation of midwifery was repealed in 1998 when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

15 The legislature finds that mothers and families seek out
16 alternatives to hospital births and they find significant value
17 in community or home birth services. These services are



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

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

14 The legislature further finds the term "midwife" connotes
15 an expectation of a minimum level of care by consumers and the
16 community. The Hawaii regulatory licensing reform act requires
17 the State to regulate professions or vocations where the health,
18 safety, or welfare of the consumer may be jeopardized by the
19 nature of the service offered by the provider. The practice of
20 midwifery meets these criteria, and, therefore, must be
21 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:

17 "CHAPTER
18 MIDWIVES

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 "Interconception" means care provided to mothers between
16 pregnancies to improve health outcomes for women, newborns, and
17 children.

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



1 "Midwife" means a person licensed under this chapter.
2 "Midwifery" means the provision of one or more of the
3 following services:
4 (1) Assessment, monitoring, and care during pregnancy,
5 labor, childbirth, post-partum and interconception
6 periods, and for newborns, including ordering and
7 interpreting screenings and diagnostic tests, and
8 carrying out appropriate emergency measures when
9 necessary;
10 (2) Supervising the conduct of labor and childbirth; and
11 (3) Provision of advice and information regarding the
12 progress of childbirth and care for newborns and
13 infants.
14 "Midwifery Education Accreditation Council" means the
15 independent, nonprofit organization recognized by the United
16 States Department of Education as an accrediting agency of
17 direct-entry midwifery institutions and programs.
18 "North American Registry of Midwives" means the
19 organization that sets national standards for the certified
20 professional midwife credential.



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

3 "Qualified midwife preceptor" means a licensed and
4 experienced midwife, or other maternal health professional
5 licensed in the State, who participates in the clinical
6 education of individuals enrolled in a midwifery education
7 program accredited by the Midwifery Education Accreditation
8 Council or Accreditation Commission For Midwifery Education and
9 who meets the criteria for midwife preceptors set forth by the
10 applicable organization.

11 **§ -3 Midwives licensing program.** There is established a
12 midwives licensing program within the department to be
13 administered by the director.

14 **§ -4 Powers and duties of the director.** In addition to
15 any other powers and duties authorized by law, the director
16 shall have the power and duties to:

- 17 (1) Grant permission to a person to use the title of
18 "midwife" or "licensed midwife" and engage in the
19 practice of midwifery in this State pursuant to this
20 chapter and the rules adopted pursuant thereto;



- 1 (2) Adopt, amend, or repeal rules pursuant to chapter 91
- 2 to carry out the purposes of this chapter;
- 3 (3) Administer, coordinate, and enforce this chapter and
- 4 rules adopted pursuant thereto;
- 5 (4) Discipline a licensee for any cause described by this
- 6 chapter or for any violation of rules or refuse to
- 7 license a person for failure to meet the licensing
- 8 requirements or for any cause that would be grounds
- 9 for disciplining a licensee;
- 10 (5) Appoint an advisory committee to assist with the
- 11 implementation of this chapter and the rules adopted
- 12 pursuant thereto. The advisory committee shall
- 13 consist of the following:
- 14 (A) Three midwives who are certified professional
- 15 midwives or certified midwives;
- 16 (B) Two members of the public; and
- 17 (C) A certified nurse midwife; and
- 18 (6) Add, remove, or otherwise modify the authorized non-
- 19 controlled legend drugs and legend devices listed in
- 20 -11 by rule under chapter 91.



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

8 (b) Nothing in this section shall preclude a person
9 holding a national certification as a midwife from identifying
10 the person as holding such certification, so long as the person
11 is not practicing midwifery or professing to be authorized to
12 practice midwifery in the State unless that person is licensed
13 in accordance with this chapter.

14 § -6 **Exemptions.** (a) A person may practice midwifery
15 without a license to practice midwifery if the person is:

16 (1) A certified nurse-midwife holding a valid license
17 under chapter 457;

18 (2) Licensed and performing work within the scope of
19 practice or duties of the person's profession that
20 overlaps with the practice of midwifery;



- 1 (3) A student midwife who is currently enrolled in a
- 2 midwifery educational program under the direct
- 3 supervision of a qualified midwife preceptor;
- 4 (4) A person rendering aid in an emergency where no fee
- 5 for the service is contemplated, charged, or received;
- 6 or
- 7 (5) A person acting as a birth attendant on or before July
- 8 1, 2023, who:
- 9 (A) Does not use legend drugs or devices, the use of
- 10 which requires a license under the laws of the
- 11 State;
- 12 (B) Does not advertise that the person is a licensed
- 13 midwife;
- 14 (C) Discloses to each client verbally and in writing
- 15 on a form adopted by the department, which shall
- 16 be received and executed by the person under the
- 17 birth attendant's care at the time care is first
- 18 initiated:
- 19 (i) That the person does not possess a
- 20 professional license issued by the State to



- 1 provide health or maternity care to women or
2 infants;
- 3 (ii) That the person's education and
4 qualifications have not been reviewed by the
5 State;
- 6 (iii) The person's education and training;
- 7 (iv) That the person is not authorized to
8 acquire, carry, administer, or direct others
9 to administer legend drugs;
- 10 (v) Any judgment, award, disciplinary sanction,
11 order, or other determination that adjudges
12 or finds that the person has committed
13 misconduct or is criminally or civilly
14 liable for conduct relating to midwifery by
15 a licensing or regulatory authority,
16 territory, state, or any other jurisdiction;
17 and
- 18 (vi) A plan for transporting the client to the
19 nearest hospital if a problem arises during
20 the client's care; and



1 (D) Maintains a copy of the form required by
2 subparagraph (C) for at least ten years and makes
3 the form available for inspection upon request by
4 the department.

5 (b) Nothing in this chapter shall prohibit healing
6 practices by traditional Hawaiian healers engaged in traditional
7 healing practices of prenatal, maternal, and child care as
8 recognized by any council of kupuna convened by Papa Ola Lokahi.
9 Nothing in this chapter shall limit, alter, or otherwise
10 adversely impact the practice of traditional Native Hawaiian
11 healing pursuant to the Constitution of the State of Hawaii.

12 (c) Nothing in this chapter shall prohibit a person from
13 administering care to a person's spouse, domestic partner,
14 parent, sibling, or child.

15 § -7 Fees. (a) Each applicant shall pay a licensing
16 fee upon application for an initial license or renewal of a
17 license. Fees collected pursuant to this section or by rule
18 adopted under this section shall be nonrefundable.

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



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

4 (d) Fees assessed pursuant to this chapter shall be used
5 to defray costs incurred by the department in implementing this
6 chapter.

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

12 (1) Holds at least one public hearing to discuss and take
13 testimony on the proposed fee change; and

14 (2) Provides public notice at least thirty days prior to
15 the date of the public hearing.

16 § -8 Application for license as a midwife. To obtain a
17 license under this chapter, the applicant shall provide:

18 (1) An application for licensure;

19 (2) The required fees;

20 (3) Proof of current, unencumbered certification as a:

21 (A) Certified professional midwife; or



- 1 (B) Certified midwife;
- 2 (4) For certified professional midwives, proof of a
- 3 successful completion of a formal midwifery education
- 4 and training program that is either:
- 5 (A) An educational program or pathway accredited by
- 6 the Midwifery Education Accreditation Council; or
- 7 (B) A midwifery bridge certificate issued by the
- 8 North American Registry of Midwives for certified
- 9 professional midwife applicants who either
- 10 obtained certification before January 1, 2020,
- 11 through a non-accredited pathway, or who have
- 12 maintained licensure in a state that does not
- 13 require accredited education;
- 14 (5) If applicable, evidence of any licenses held or once
- 15 held in other jurisdictions indicating the status of
- 16 the license and documenting any disciplinary
- 17 proceedings pending or taken by any jurisdiction;
- 18 (6) Information regarding any conviction of any crime
- 19 which has not been annulled or expunged; and



1 (7) Any other information the department may require to
2 investigate the applicant's qualifications for
3 licensure.

4 **§ -9 Issuance of license.** The director may issue a
5 license to any person who meets all licensure requirements and
6 pays the appropriate fees.

7 **§ -10 Renewals.** Every license issued under this chapter
8 shall be renewed triennially on or before June 30, with the
9 first renewal deadline occurring on June 30, 2023. Failure to
10 renew a license shall result in a forfeiture of the license.
11 Licenses which have been so forfeited may be restored within one
12 year of the expiration date upon payment of renewal and penalty
13 fees. Failure to restore a forfeited license within one year of
14 the date of its expiration shall result in the automatic
15 termination of the license. Relicensure after termination shall
16 require the person to apply as a new applicant and again satisfy
17 all licensing requirements in place at the time of the new
18 application.

19 **§ -11 Authority to purchase and administer certain**
20 **legend drugs and devices.** (a) A midwife licensed under this
21 chapter may purchase and administer non-controlled legend drugs



1 and devices that are used in pregnancy, birth, postpartum care,
2 newborn care, or resuscitation, and that are deemed integral to
3 providing care to the public by the department.

4 (b) Legend drugs authorized under subsection (a) are
5 limited for:

6 (1) Neonatal use to prophylactic ophthalmic medications,
7 vitamin K, epinephrine for neonatal resuscitation per
8 neonatal resuscitation guidelines, and oxygen; and

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

16 (c) Legend devices authorized under subsection (a) are
17 limited to devices for:

18 (1) Injection of medications;

19 (2) The administration of intravenous fluids;

20 (3) Adult and infant resuscitation;

21 (4) Rupturing amniotic membranes;



1 (5) Repairing vaginal tears; and

2 (6) Postpartum hemorrhage.

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

7 § -12 Grounds for refusal to grant, renew, reinstate, or
8 restore licenses and for revocation, suspension, denial, or
9 condition of licenses. In addition to any other acts or
10 conditions provided by law, the director may refuse to grant,
11 renew, reinstate, or restore, or may deny, revoke, suspend, or
12 condition in any manner, any license for any one or more of the
13 following acts or conditions on the part of the licensee or the
14 applicant thereof:

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

18 (2) Failing to notify the department in writing that the
19 licensee's certification as a certified professional
20 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 § -13 Penalties. Any person who violates this chapter
17 or rules adopted pursuant thereto shall be subject to a fine of
18 not more than \$1,000 for each separate offense. For purposes of
19 this section, each day of violation shall constitute a separate
20 offense."



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

3 "§26H-4 Repeal dates for newly enacted professional and
4 vocational regulatory programs. (a) Any professional or
5 vocational regulatory program enacted after January 1, 1994, and
6 listed in this section shall be repealed as specified in this
7 section. The auditor shall perform an evaluation of the
8 program, pursuant to section 26H-5, prior to its repeal date.

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

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

13 (d) Chapter (midwives) shall be repealed on June 30,
14 2025."

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

19 SECTION 5. The department of commerce and consumer affairs
20 may adopt interim rules to carry out the purposes of this Act



1 without regard to chapters 91 or 201M, Hawaii Revised Statutes;
2 provided that:

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

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

7 SECTION 6. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$146,000 or so much
9 thereof as may be necessary for fiscal year 2019-2020 to be
10 deposited into the compliance resolution fund.

11 SECTION 7. There is appropriated out of the compliance
12 resolution fund the sum of \$146,000 or so much thereof as may be
13 necessary for fiscal year 2019-2020 and \$73,000 or so much
14 thereof as may be necessary for fiscal year 2020-2021 to
15 implement the licensure of midwives as required by this Act.

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

18 PART II

19 SECTION 8. (a) There is established a home birth task
20 force under the Hawaii state commission on the status of women.



1 (b) The task force shall consist of no more than twelve
2 members and shall include:

3 (1) The director of commerce and consumer affairs, or the
4 director's designee;

5 (2) The director of health, or the director's designee;

6 (3) A representative from the Hawaii section of the
7 American College of Obstetricians and Gynecologists;

8 (4) A representative of the Healthcare Association of
9 Hawaii; and

10 (5) Members recommended by the Hawaii Home Birth
11 Collective that represent the following stakeholder
12 groups: certified nurse midwife; certified
13 professional midwife; home birth elder; traditional or
14 cultural birth attendant; and a member of the public
15 that has used home birth services.

16 (c) The task force shall include representation from all
17 counties. The task force may recommend additional members with
18 appropriate expertise, to be approved by the chairperson.

19 (d) The task force shall elect a chairperson from among
20 the members of the task force.



1 (e) The task force shall investigate issues relating to
2 direct entry midwives and home births. The investigation shall
3 include but not be limited to the following:

- 4 (1) Data collection and reporting on home births;
5 (2) Education and training of direct entry midwives; and
6 (3) Regulation of direct entry midwives.

7 (f) The members of the task force shall serve without
8 compensation. No member of the task force shall be made subject
9 to section 84-17, Hawaii Revised Statutes, solely because of
10 that member's participation on the task force. The task force
11 shall be exempt from part I, chapter 92, Hawaii Revised
12 Statutes.

13 (g) The Hawaii state commission on the status of women
14 shall provide administrative and clerical support required by
15 the task force.

16 (h) The task force shall submit a report of its findings
17 and recommendations, including any proposed legislation, to the
18 legislature no later than twenty days prior to the convening of
19 the regular session of 2020.

20 (i) The home birth task force shall dissolve on June 30,
21 2020.



1 PART III

2 SECTION 9. If any provision of this Act, or the
3 application thereof to any person or circumstance, is held
4 invalid, the invalidity does not affect other provisions or
5 applications of the Act that can be given effect without the
6 invalid provision or application, and to this end the provisions
7 of this Act are severable.

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

11 SECTION 11. New statutory material is underscored.

12 SECTION 12. This Act shall take effect upon its approval;
13 provided that sections 6 and 7 shall take effect on July 1,
14 2019.



Report Title:

Licensure; Midwives; DCCA; Appropriation

Description:

Establishes licensure of midwives. Temporarily exempts birth attendants and exempts Native Hawaiian healers from licensure requirements. Establishes task force. Appropriates funds.
(SB1033 HD2)

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

