

# Legislative Analysis



## LICENSURE OF MIDWIVES

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**House Bill 4598 (H-3) as reported from committee**  
**Sponsor: Rep. Edward McBroom**  
**Committee: Regulatory Reform**  
**Revised on 10-19-15**

Analysis available at  
<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 4598 would amend the Public Health Code to provide for the licensing of midwives.

It would do this by adding a new part, Part 171, which would establish licensing criteria for midwives; adding a new Section 16326, which would set fees related to licensing midwives; and by amending Section 16192 to allow the Department of Licensing and Regulatory Affairs (LARA) to use email notifications for required communications. The bill would take effect 90 days after the date it is enacted into law.

**FISCAL IMPACT:** House Bill 4598 (H-3) would have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent that LARA would be required to implement, administer, and enforce the midwifery licensure provisions of the bill and reimburse expenses incurred by members of the Board of Licensed Midwifery. If LARA's estimates ultimately resemble the minimum number of midwives who apply for licensure and the actual costs to implement the licensure of midwives, then the fees proposed in HB 4598 would appear to be sufficient to offset LARA's costs during the initial and immediately subsequent fiscal years. See *Fiscal Information* for a more detailed discussion.

The proposed licensing fees for HB 4598 are as follows:

Type of License/Fee	
Application Processing Fee	<b>\$450</b>
Annual License Fee	<b>\$200</b>
Annual Student License Fee	<b>\$10</b>
Temporary License:	<b>\$10</b>
Limited License, per year	<b>(eliminated in H-3)</b>

## THE APPARENT PROBLEM:

According to testimony presented by the bill sponsor, midwives are utilized mostly by individuals who have difficulty accessing or affording health care during pregnancy, especially childbirth. While Michigan currently has a certificate program available to

licensed nurses, there is no licensure or certification offered by the state for individuals who wish to only practice midwifery in Michigan.

The result, according to testimony offered in committee, is that while individuals can take classes in midwifery and offer those services to clients, insurance companies are not obligated to offer coverage for those services, despite a lower cost of service than a hospital birth. Though the bill would not require insurance companies to do this, it is the stated hope of supporters that by creating a licensure system in Michigan that insurance companies might begin covering services provided by a licensed midwife, further lowering the cost to users of midwifery services.

### ***THE CONTENT OF THE BILL:***

House Bill 4598 would amend the Public Health Code to provide for the licensing of midwives. As noted above, it would do this by adding a new part, Part 171, which would establish licensing criteria for midwives; adding a new Section 16326, which would set fees related to licensing midwives; and by amending Section 16192 to allow the Department of Licensing and Regulatory Affairs (LARA) to use email notifications for required communications. The bill would take effect 90 days after the date it is enacted into law. Following is a detailed summary of the bill.

#### **Definitions**

The bill would add the following terms:

"Appropriate health professional," for the purposes of referral, consultation, or collaboration with a midwife under Part 171, would mean any of the following:

- A physician.
- A certified nurse midwife.
- As identified in rules promulgated under the bill, another appropriate health professional licensed, registered, or otherwise authorized to engage in a health profession under this article.

"Certified nurse midwife" would mean a registered professional nurse under Part 172 who has been issued a specialty certification in the profession specialty field of nurse midwifery by the board of nursing under Section 17210.

"Midwife" would mean an individual licensed under Part 171 to engage in the practice of midwifery.

"Physician" would mean an individual licensed to engage in the practice of medicine under part 170 or the practice of osteopathic medicine and surgery under part 175.

"Practice of midwifery" would mean providing maternity care that is consistent with a midwife's training, education, and experience, to women and neonates during the antepartum, intrapartum, and postpartum periods.

However, the practice of midwifery would not include either of the following:

- The practice of medicine or osteopathic medicine and surgery.

- The practice of nursing, including the practice of nursing with a specialty certification in the profession specialty field of nurse midwifery under Part 172.

In addition to these definitions, the bill also specifies that Article 1 of the code contains general definitions and principles of construction applicable to all articles in the code, and that Part 161 contains definitions applicable to this part.

### **Changes in a licensee's name, mailing address, or email address**

Presently, Section 16192 requires individuals licensed under the code to notify LARA of any name or address changes and provides for the methods of communication the department may use to communicate with licensees regarding required messages. The bill would amend this section in two ways. First, LARA could provide notifications or other communications via email instead of first-class mail if that licensee has provided the department with his or her email address and granted advance permission, in writing, for using that email address instead of first-class mail to deliver those notifications or other communications. Second, a licensee would be required to notify the department of a change in email address if they opt to receive email communications instead of regular mail.

### **Midwife Licensing**

If LARA receives a complete application and payment of the appropriate fee, then the department would be required to issue a license if the applicant meets all of the following:

- Has received a high school diploma or passed the general educational development (G.E.D.) diploma test or any other high school graduate equivalency examination approved by the board.
- Has completed an educational program or pathway accredited by the Midwifery Education Accreditation Council or a successor organization.
- Holds the credential of certified professional midwife from the North American Registry of Midwives or holds an equivalent credential from another accredited midwifery training program approved by the Michigan Board of Licensed Midwifery (described below).
- Successfully passes an examination approved by LARA in consultation with the board. If the training program described above includes an examination that meets the requirements of Section 16178(1), the board may accept passing of that examination as meeting the requirements of this provision.

However, prior to January 1, 2020, an applicant who holds the credential of certified professional midwife from the North American Registry of Midwives, or an equivalent credential from another accredited midwifery training program approved by the board, and has not completed the education program or pathway, will be considered as having fulfilled that requirement if he or she can provide evidence of completion in the preceding 5 years of an additional 50 hours of accredited continuing education units in accordance with a certificate issued by the North American Registry of Midwives, or a successor organization, and approved by the board.

Section 16178(1) states that "unless otherwise necessary for a board to fulfill national or regional testing requirements, the department shall conduct examinations or other evaluations necessary to determine qualifications of applicants for initial licensure or

registration at least annually and may conduct other investigations or evaluations necessary to determine the qualifications of applicants. A board may accept passing a national or regional examination developed for use in the United States for the purpose of meeting a state board examination or a part thereof."

LARA may grant a license to a person who is licensed as a midwife in another state at the time of the application if the applicant provides evidence satisfactory to the Michigan Board of Licensed Midwifery and LARA that all of the following are met:

- The applicant meets the requirements of Part 171 for licensure, and related promulgated rules.
- There are no pending disciplinary proceedings against the applicant before a similar licensing agency of this or any other state or country.
- If sanctions have been imposed against the applicant by a similar licensing agency of this or any other state or country based upon grounds that are substantially similar to those under this article, as determined by the board, the sanctions are not in force at the time of the application.
- The other state maintains licensure standards equivalent to, or more stringent than, those of this state.

The board may make an independent inquiry to determine whether an applicant has pending disciplinary hearings or sanctions imposed against himself or herself.

### **Responsibilities of a midwife**

At the initial consultation with a patient, a midwife must establish a protocol for medical emergencies, including transportation to a hospital, specific to that patient. A midwife also must, at the inception of care and continuing through the patient's care, obtain informed consent from that patient. LARA would be required to promulgate rules specifying how informed consent can be obtained.

### **Prohibited actions for a licensed midwife**

An individual licensed as a midwife would be barred from doing any of the following:

- Except as otherwise provided in the bill, administering prescription drugs or medications.
- Using vacuum extractors or forceps.
- Prescribing medications.
- Performing surgical procedures other than episiotomies or repairs of perineal lacerations.
- Carrying out any other act, task, or function prohibited in rules promulgated under this part.

However, beginning on the effective date of, and subject to, rules promulgated by LARA under the bill, a midwife who holds a standing prescription from a licensed health care provider with prescriptive authority may administer any of the following:

- Prophylactic Vitamin K to a newborn, either orally or through intramuscular injection.

- Postpartum antihemorrhagic agents to a mother.
- Local anesthetic for the repair of lacerations to a mother.
- Oxygen to a mother or newborn.
- Prophylactic eye agent to a newborn.
- Prophylactic Rho(D) immunoglobulin to a mother.
- Agents for Group B streptococcus prophylaxis, recommended by the Federal Centers for Disease Control and Prevention, to a mother.
- Intravenous Fluids, excluding blood products, to a mother.
- Any other drug or medication prescribed by a health care provider with prescriptive authority that is consistent with the scope of the practice of midwifery or authorized by the Michigan Board of Licensed Midwifery by rule.

### **Michigan Board of Licensed Midwifery**

The bill would create the Michigan Board of Licensed Midwifery in LARA. The board would consist of the following seven members who meet the requirements of Part 161 of the code:

- Five midwives.
- Two members of the general public, one of whom is a consumer of midwifery care.

Except as otherwise provided in this article, the term of office of a member of the board is four years and would expire on December 31 of the year in which the term expires. For members first appointed under the bill, two members would serve for two years, two members for three years, and three members for four years.

### **Prohibited actions for unlicensed individuals**

As of the effective date of the rules promulgated under the bill, an individual would be prohibited from using the title of Licensed Midwife, L.M., or a similar title or abbreviation, or engaging in the practice of midwifery, unless licensed or otherwise authorized under Part 171.

Specifically, an unlicensed individual would be prohibited from performing an act, task, or function within the practice of midwifery unless trained to perform the act, task, or function, and the performance of that act, task, or function is consistent with the rules promulgated under the bill.

However, this would not prohibit any of the following:

- An individual licensed, registered, or certified under any other part or act from performing activities that are considered to be within the practice of midwifery if those activities are within the individual's scope of practice and if the individual does not use the protected titles.
- An employee or other individual who is assisting a midwife and who is under the midwife's supervision, from performing activities or functions that are delegated by the midwife, that are nondiscretionary, that do not require the exercise of professional judgment for their performance, and that are within the midwife's authority to perform. (This provision would be subject to Section 16215 of the Public Health Code, which contains provisions on the delegation of acts, tasks, or functions to licensed or unlicensed individuals, among other topics.)

- An individual from performing activities that are within the practice of midwifery if those activities are performed under the direct and immediate supervision of an appropriate health professional during completion of the North American registry of midwives portfolio evaluation process or as a student at a midwifery education program accredited by the Midwifery Education Accreditation Council or other accrediting body approved by the board.
- Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a midwife.
- Services provided by a religious practitioner if that religious practitioner does not hold himself or herself out to the public as a midwife licensed in Michigan and does not use any of the protected midwife titles protected by the bill.
- Services provided by a member of a bona fide church or religious denomination if all of the following are met:
  - The services are provided to another member of that church or denomination and that other member is an adherent of the established tenets or teachings of that church or denomination and relies on treatment by prayer or spiritual means only, in accordance with the creed or tenets of that church or denomination.
  - The individual providing the services does not receive a fee for those services. For purposes of this subparagraph, a voluntary contribution is not considered a fee for the services provided by that individual.

### **Promulgation of rules**

By 24 months after the effective date of Part 171, LARA, in consultation with the board, would be required to promulgate rules that would do all of the following:

- Establish and implement the licensure program for the practice of midwifery.
- Subject to the Code's requirements for continuing education, prescribe the completion of continuing education for the practice of midwifery as a condition for license renewal.
- Describe and regulate, limit, or prohibit the performance of acts, tasks, or functions by midwives. The department must include rules that recognize and incorporate the requirements regarding the referral to and consultation with appropriate health professionals.
- Establish the process by which informed consent is obtained.

The department, in consultation with the board, also may promulgate rules to supplement the requirements for licensure under this part, including the adoption of updated standards applicable to the practice of midwifery established by the North American registry of midwives or successor agency.

### **Third Party reimbursement & worker's compensation benefits**

The bill also contains a provision that Part 171 does not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by a licensed individual.

## ***FISCAL INFORMATION:***

### **Midwives Licensure**

Under the proposed H-3, once LARA receives a total of \$23,000 in application processing fees from individuals who are licensed or seeking licensure to engage in the practice of midwifery, the processing fee would be reduced to \$75. Once this occurs, LARA would be required to provide information related to the fee change on its website and to provide notice to the legislature when the fee is reduced. This amount would be reached and exceeded upon the payment of a 52nd application fee.

House Bill 4598 (H-3) would have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) to the extent that LARA would be required to implement, administer, and enforce the midwifery licensure provisions of the bill and reimburse expenses incurred by members of the Board of Licensed Midwifery.

According to the North American Registry of Midwives (NARM), a total of 44 Certified Professional Midwives (CPM) have ever been registered within the state, while 31 CPMs are currently actively registered. However, while registration with NARM is voluntary to practice midwifery in the state, licensure under HB 4598 would be mandatory and consequently, the number of applicants for licensure would likely be indeterminately higher.

LARA anticipates that 45 midwives would apply for licensure. At the fee amounts proposed in HB 4598, LARA would collect \$20,250 in application fees during the first year<sup>[1]</sup> and approximately \$9,000 in licensure fees per year.

Based on the previous implementation of other health professional licensure programs, LARA estimates one-time information technology costs to implement the licensure program for midwives would be approximately \$18,720 and, based on a provisional cost-allocation methodology, LARA estimates the ongoing costs to implement, administer, and enforce the licensure provisions of HB 4598 would be approximately \$6,281 per year.

If LARA's estimates ultimately resemble the minimum number of midwives who apply for licensure and the actual costs to implement the licensure of midwives, then the fees proposed in HB 4598 would appear to be sufficient to offset LARA's costs during the initial and immediately subsequent fiscal years.

### **Email Notification/Communication**

Allowing LARA to notify and otherwise communicate with (potential) health professional licensees via email would result in an indeterminate savings for the department. In FY 2014-15, LARA expended approximately \$305,575 on postage and parcel services, not include the costs of printing materials for mailing. The rate at which (potential) licensees would opt to receive notifications and other communications via email is unknown; consequently, the extent of the cost savings for LARA is indeterminate.

## ***BACKGROUND INFORMATION:***

Presently, the Michigan Board of Nursing offers a specialty certification to registered professional nurses who have advance training in certain fields, midwifery being one of those fields. This certification would not be affected by the bill and is specifically exempted from the definition of "practice of midwifery."

## ***ARGUMENTS:***

### ***For:***

As noted above, supporters hope that by creating a path to licensure for midwives, the bill will open more opportunities for both midwives and those who wish to use midwife services.

### ***Against:***

Opponents of the bill worry that the licensure fees imposed by the bill will raise the price of midwifery care without providing additional, tangible benefits to either consumers or those already practicing midwifery.

## ***POSITIONS:***

The following organizations indicated support for HB 4598:

Agape School (6-17-15)  
American Legion (6-17-15)  
Blacksoil Church (6-17-15)  
Midwifery Education Accreditation Council (6-17-15)  
Midwives Alliance of North America (6-17-15)  
MSU Center for Ethics & Humanities (6-17-15)  
National Association of Certified Professional Midwives (6-17-15)

The following organizations indicated they are neutral on HB 4598:

Planned Parenthood Advocated of Michigan (9-29-15)

The following organizations indicated opposition to HB 4598:

American Congress of OB/GYNs (9-16-15)  
Michigan Association of Health Plans (9-16-15)

Legislative Analyst: Josh Roesner  
Fiscal Analyst: Paul B.A. Holland

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.