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**BILL ANALYSIS**

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House Bill 4598 (Substitute H-3 as passed by the House)  
Sponsor: Representative Edward McBroom  
House Committee: Regulatory Reform  
Senate Committee: Health Policy

Date Completed: 11-28-16

### **CONTENT**

**The bill would add Part 171 (Midwifery) to the Public Health Code to provide for the licensure of midwives. Specifically, the bill would do the following:**

- **Prohibit an individual from engaging in the practice of midwifery without a license.**
- **Require a midwife to obtain informed consent from a patient.**
- **Require a midwife to establish a patient-specific protocol for medical emergencies at his or her initial consultation with the patient.**
- **Provide that a health care provider would not be liable for an injury resulting from an act or omission by a midwife.**
- **Prohibit a midwife from using vacuum extractors or forceps, prescribing medications, or performing most surgical procedures.**
- **Prohibit a midwife from administering prescription drugs and medications except as allowed under the bill.**
- **Create the Michigan Board of Licensed Midwifery.**
- **Require the Department of Licensing and Regulatory Affairs (LARA), in consultation with the Board, to promulgate rules regarding the administration of specific prescription drugs and medications by midwives.**
- **Prescribe educational, credentialing, and examination criteria for licensure.**
- **Require LARA, in consultation with the Board, to promulgate rules to establish and implement the midwifery licensure program, prescribe continuing education requirements, describe a midwife's scope of practice, and prescribe the process for obtaining informed consent from a patient.**
- **Authorize LARA to grant a license to a person who was licensed as a midwife in another state, under certain conditions.**
- **Provide that Part 171 would not require new or additional third-party reimbursement or mandated worker's compensation benefits for services rendered by a licensed midwife.**

**The bill also would amend Part 161 (General Provisions), of the Code, to do the following:**

- **Establish application processing and license fees for midwives.**
- **Reduce the \$450 application processing fee to \$75 after LARA received more than \$23,000 in processing fees.**
- **Allow LARA to deliver or serve by electronic mail, rather than first-class mail, a notice or other communication to a health profession licensee or registrant who provided an electronic mail address for that purpose.**

The bill would take effect 90 days after enactment.

#### Part 171: Midwifery

Licensure Requirement. Beginning on the effective date of rules promulgated under the bill, an individual could not engage in the practice of midwifery unless licensed under proposed Part 171 or otherwise authorized by Article 15 (Occupations) of the Code. "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. The term 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 (Nursing).

The bill would prohibit a midwife from performing an act, task, or function within the practice of midwifery unless he or she were trained to do so and that performance were consistent with the rules promulgated by LARA.

In addition to general exemptions from licensure under Part 161, the proposed licensure requirement would not prevent any of the following:

- An individual licensed, registered, or certified under any other part of the Code or act from performing activities that were considered to be within the practice of midwifery, if those activities were within the individual's scope of practice and he or she did not use the titles protected under the bill (as described below).
- An employee or other individual who was assisting a midwife; who was under the midwife's supervision; and who was performing activities or functions that were delegated by the midwife, that were nondiscretionary, that did not require the exercise of professional judgment for their performance, and that were within the midwife's authority to perform.
- An individual from performing activities that were within the practice of midwifery if they were performed under the direct and immediate supervision of an appropriate health professional (described below) during completion of the North American Registry of Midwives Portfolio Evaluation processor as a student at a midwifery education program accredited by the Midwifery Accreditation Council or other accrediting body approved by the proposed Michigan Board of Licensed Midwifery.
- Self-care by a patient or uncompensated care by a friend or family member who did not represent or hold himself or herself out to be a midwife.
- Services provided by a religious practitioner, if he or she did not hold himself or herself out to the public as a midwife who was licensed to engage in the practice of midwifery in Michigan and did not use any of the protected titles.

For the purposes of referral, consultation, or collaboration with a midwife, "appropriate health professional" would mean a physician, a certified nurse midwife, or, as identified in the rules, another appropriate health professional licensed, registered, or otherwise authorized to engage in a health profession under Article 15. "Certified nurse midwife" would mean a registered professional nurse who has been issued a specialty certification in the profession specialty field of nurse midwifery by the Michigan Board of Nursing. "Physician" would mean an individual licensed under the Code to engage in the practice of medicine or the practice of osteopathic medicine and surgery.

Additionally, the bill's licensure requirement would not prevent services provided by a member of a bona fide church or religious denomination if both of the following conditions were met:

- The services were provided to another member of that church or denomination and that other member was an adherent of the established tenets or teachings of that church or denomination and relied on treatment by prayer or spiritual means only, in accordance with the creed or tenets of the church or denomination.
- The individual providing the services did not receive a fee (which would not include a voluntary contribution) for those services.

Beginning on the effective date of the rules, an individual could not use the title "licensed midwife" or "L.M.", or similar words or initials that indicated that the individual was licensed as a midwife, unless he or she were licensed under proposed Part 171.

Scope of Practice. The bill would prohibit a midwife from doing any of the following:

- Administering prescription drugs or medications, except as described below.
- Using vacuum extractors or forceps.
- Prescribing medications.
- Performing surgical procedures other than episiotomies or repairs of perineal lacerations.
- Performing any other act, task, or function prohibited in rules.

Beginning on the effective date of, and subject to, the rules promulgated under the bill, a midwife who held a standing prescription from a licensed health care provider with prescriptive authority could 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) immune globulin 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 was consistent with the scope of the practice of midwifery or authorized by the Board by rule.

The Department of Licensing and Regulatory Affairs, in consultation with the Board, would have to promulgate rules concerning the administration of the specified prescription drugs or medications by midwives.

Emergency Protocol; Provider Immunity.

At a midwife's initial consultation with a patient, the midwife would have to establish a protocol for medical emergencies, including transportation to a hospital, that was specific to that patient. A midwife would have to obtain informed consent from the patient at the inception of, and continuing throughout, the patient's care.

A health care provider would not be liable for an injury resulting from an act or omission by a licensed midwife, even if the provider had consulted with or accepted a referral from the midwife. "Health care provider" would mean an individual who was licensed or registered under Article 15.

Michigan Board of Licensed Midwifery. The bill would create the Board in LARA. The Board would consist of the following seven members who met the requirements of Part 161: five midwives, and two members of the general public, including one who was a consumer of midwifery care.

The term of office of a Board member would be four years and would expire on December 31 of the year in which the term expired. For members first appointed, however, two members would serve for two years, two for three years, and three for four years.

Licensure Criteria. If LARA received a complete application and payment of the fee prescribed in the bill, it would have to issue a license under proposed Part 171 to an applicant who met all of the following requirements:

- He or she had received a high school diploma or passed the general education development diploma test or any other high school graduate equivalency examination approved by the Board.
- Except as otherwise provided, he or she had completed an educational program or pathway accredited by the Midwifery Education Accreditation Council or a successor organization.
- He or she successfully passed an examination approved by LARA in consultation with the Board.
- He or she held the credential of certified professional midwife from the North American Registry of Midwives or held an equivalent credential from another accredited midwifery training program approved by the Board.

If the training program included an examination that met the requirements of Part 161, the Board could accept passage of that examination as meeting the bill's examination requirements.

An applicant who held the required credential before January 1, 2020, and had not completed the required educational program or pathway, would meet the educational program or pathway criterion if he or she provided evidence of completion in the preceding five 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.

Midwifery Rules. Within 24 months after the bill took effect, LARA, in consultation with the Board, would have to promulgate rules to do all of the following:

- Establish and implement the licensure program for the practice of midwifery under Part 171.
- Prescribe the completion of continuing education for the practice of midwifery as a condition for license renewal, subject to the Code's requirements regarding continuing education in pain and symptom management.
- Describe and regulate, limit, or prohibit the performance of acts, tasks, or functions by midwives.

The Department would have to include rules that recognized and incorporated the bill's requirement for the establishment of a protocol for medical emergencies, regarding the referral to and consultation with appropriate health professionals.

Additionally, the rules would have to establish the process by which informed consent was obtained. At a minimum, the process would have to require a midwife to do both of the following at an initial consultation with a client:

- Provide a copy of the Department's rules.
- Disclose orally and in writing whether the midwife had malpractice liability insurance coverage and, if so, the coverage's policy limitations.

In consultation with the Board, LARA also could promulgate rules to supplement the requirements for licensure under Part 171, including the adoption of updated standards applicable to the practice of midwifery established by the North American Registry of Midwives or a successor organization.

Midwife Licensed in another State. The bill would allow LARA to grant a license to a person who was licensed as a midwife in another state at the time of application if the applicant provided evidence satisfactory to the Board and the Department that all of the following criteria were met:

- The applicant met the requirements of Part 171 and rules promulgated under it for licensure.
- There were no pending disciplinary proceedings against the applicant before a similar licensing agency of Michigan or any other state or country.
- If sanctions had been imposed against the applicant by a similar licensing agency based upon grounds that were substantially similar to those under Article 15, as determined by the Board, the sanctions were not in force at the time of the application.
- The other state maintained licensure standards equivalent to or more stringent than those of Michigan.

If an applicant were licensed as a midwife in a state that did not require completion of an educational program or pathway equivalent to that required under the bill, LARA could determine that the applicant qualified for licensure if he or she otherwise met Michigan's licensure requirements, held the credential of a certified professional midwife, and provided evidence of completion of an additional 50 hours of continuing education units within the preceding five years, regardless of the date he or she obtained the credential.

#### Part 161: General Provisions

Midwife License Fees. The bill would establish the following fees for an individual who was licensed or seeking licensure to engage in the practice of midwifery under Part 171:

- An application processing fee of \$450.
- A per-year license fee of \$200.
- A per-year student license fee of \$10.
- A temporary license fee of \$10.

After LARA received more than a total of \$23,000 in application processing fees from individuals who were licensed or seeking licensure as midwives, the processing fee would be reduced to \$75. The Department would have to provide information related to the fee change on its internet website and notify the Legislature when the fee was reduced.

Licensee/Registrant Communication. Under the bill, if LARA were required or permitted under Article 15 to deliver or serve a notice or other communication to a health profession licensee or registrant by mail, LARA could deliver or serve it by electronic mail rather than by first-class mail, if the licensee or registrant provided an electronic mail address to the Department; authorized LARA in writing to deliver or serve notices and communications to him or her at that address; and agreed in writing that he or she consented to the service of any notice or communication sent to that address that LARA would otherwise serve by mail.

The Code requires all health profession licensees or registrants to report to LARA a change in name or mailing address within 30 days after the change occurs. Under the bill, this requirement also would apply in the case of an electronic mail address, if the licensee or registrant had provided one.

## **FISCAL IMPACT**

The bill would have a neutral fiscal impact on the Bureau of Professional Licensing (BPL) within the Department of Licensing and Regulatory Affairs, and no fiscal impact on local units of government. Under the bill, those wishing to engage in the practice of midwifery would first have to seek licensure and pay a fee to the BPL. Those fees would be \$450 for application processing and \$200 for annual licensure. Additionally, the bill would establish a \$10 annual fee for a student license and a \$10 fee for a temporary license. Once total application fee revenue exceeded \$23,000, the \$450 application fee would be reduced to \$75.

The Department has estimated that approximately 45 individuals would apply for licensure initially, which would generate \$20,250 in the first year, and \$9,000 each year thereafter. The initial administrative costs associated with licensing a new profession in the BPL average about \$20,000. Assuming licensure estimates are accurate, these costs should be covered in the second year the profession was licensed, once other likely costs directly related to license processing are taken into account.

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