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BILL ANALYSIS



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House Bill 4598 (Substitute S-3)
Sponsor: Representative Edward McBroom
House Committee: Regulatory Reform
Senate Committee: Health Policy

Date Completed: 12-5-16

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, upon inception of care for a patient, to establish a patient-specific protocol for transfer to a physician or hospital.**
- **Provide that a licensed midwife would not be an agent, ostensible agent, or employee of a health care provider who consulted with or accepted a referral from the licensee, based solely on the referral or consultation.**
- **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.**
- **Allow a midwife directly to obtain supplies and devices, order and obtain screen tests, and receive reports of test results.**
- **Create the Michigan Board of Licensed Midwifery.**
- **Require the Board to promulgate rules that required a midwife to report a patient's data to a statistical registry, unless the patient refused to consent to the reporting.**
- **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.**
- **Require LARA, in consultation with the Board, to promulgate rules that included standards for the delineation of findings that a particular woman's or newborn's situation was not normal, and specify that the findings would form the basis for any requirements or restrictions imposed on the practice of midwifery when care was provided in these situations.**
- **Require the Board to grant a temporary license to a certified professional midwife (CPM) whose educational program did not meet the bill's requirements, under certain circumstances.**

- **Authorize the Board to grant a license to a person who was licensed as a midwife in another state, under certain conditions.**
- **For two years after the effective date of LARA's licensure rules, allow the Board to grant a license to an applicant who did not meet the bill's licensure requirements but provided evidence that he or she had current proficiency in the safe practice of midwifery.**
- **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 establish application processing and license fees for midwives, and reduce the \$450 application processing fee to \$75 after LARA received more than \$23,000 in processing fees.

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 and who was under the midwife's supervision from 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) while completing a portfolio evaluation process of the North American Registry of Midwives (NARM) Portfolio Evaluation Process or an organization that the proposed Michigan Board of Licensed Midwifery determined was a successor organization, or participating as a student attending a midwifery education program that was accredited by the National Commission for Certifying Agencies (NCCA) or another accrediting organization approved by the Board.
- 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 granted 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 the rules promulgated under the bill, a midwife who had appropriate pharmacology training as established by rule, and who held a standing prescription from a licensed health care provider with prescriptive authority, could administer any of the following in accordance with the rules:

- Prophylactic vitamin K to a newborn, either orally or through intramuscular injection.
- Antihemorrhagic agents to a postpartum mother after the birth of the baby.
- 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.

Beginning on the effective date of, and subject to, the rules promulgated under the bill, and if necessary to the practice of midwifery and consistent with the scope of practice, a midwife could directly obtain supplies and devices; order and obtain screening tests, including ultrasound tests; and receive verbal and written reports of the test results.

In consultation with the Board, LARA would have to promulgate rules that included standards for the delineation of findings that precluded a woman or a newborn from being classified as having a normal pregnancy, labor, delivery, postpartum period, or newborn period. The findings would have to form the basis for any requirements or restrictions the Board imposed on the practice of midwifery during the provision of care to women or newborns whose condition was classified as outside of normal.

Emergency Protocol; Data Reporting; Provider Immunity.

At the inception of care, a midwife would have to establish a protocol for transfer of care to a physician or to a hospital, that was specific to that patient. The Board would have to identify or create a standard form and recommend its use to collect information on a patient whose care was transferred, either temporarily or permanently, to a hospital or physician.

The Board would have to promulgate rules that required a midwife to report a patient's data to the statistical registry maintained by the Midwives Alliance of North American or a similar registry maintained by a successor organization approved by the Board, unless the patient refused to consent to the reporting of his or her data.

A midwife would have to obtain informed consent from the patient at the inception of, and continuing throughout, the patient's care.

An individual licensed as a midwife under Part 171 would not be an agent, ostensible agent, or employee of a health care provider who consulted with or accepted a referral from the licensee, based solely on the consultation or referral. "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, the Board would have to grant a license under proposed Part 171 to an applicant who met all of the following requirements:

- Except as otherwise provided, he or she had completed an educational program or pathway accredited by the NCCA or another accrediting organization approved by the Board.
- 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 (CPM) from NARM or held an equivalent credential from another midwifery credentialing program that was approved by the Board and accredited by NCCA or another Board-approved accrediting organization.

If the education 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 that he or she held a Midwifery Bridge Certificate awarded by NARM or an equivalent credential from another midwifery credentialing program that was approved by the Board and accredited by NCCA or another Board-approved accrediting organization.

Temporary License. If LARA received a completed application, an application fee, and a temporary license fee, the Board would have to grant a nonrenewable temporary license to an individual who held a CPM credential from a midwifery education program that did not meet the bill's requirements. A temporary license holder would have to hold a Midwifery Bridge Certificate awarded by NARM or an equivalent credential approved by the Board to qualify for a license when his or her temporary license expired. The term of a temporary license would be 24 months.

An applicant who was granted a temporary license would be subject to all other requirements of Part 171 and the rules promulgated under it. The Department automatically could void the temporary license if the applicant failed to comply with those requirements.

An individual who paid an application fee in connection with an application for a temporary license would not have to pay an application fee in connection with an application for an initial license, if LARA receive the application within 60 days after the temporary license expired.

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

- Establish and implement the licensure program for the practice of midwifery under Part 171.
- Require the completion of continuing education for the practice of midwifery as a condition for license renewal.

The rule would have to allow the Board to accept proof of a current CPM credential as meeting the continuing education requirements.

The rules also would have to 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 transfer to a physician or hospital, regarding the referral to and consultation with appropriate health professionals, and ensure that those rules conformed to national standards for the practice of midwifery.

Additionally, the rules would have to establish the process by which informed consent was obtained and ensure that it conformed to national standards for the practice of midwifery. At a minimum, the process would have to require a midwife to do both of the following at the inception of care for 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 NARM or an organization that the Board determined was a successor organization.

Midwife Licensed in another State. The bill would allow the Board 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 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 Board could make an independent inquiry to determine whether the applicant met the requirements pertaining to pending disciplinary proceedings and sanctions.

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 CMP credential, and provided evidence that he or she held a Midwifery Bridge Certificate or an equivalent credential from an approved program, regardless of the date he or she obtained the credential.

Transitional Period. For two years after the effective date of the rules promulgated under the bill, if LARA received a complete application and payment of the fee, and if the applicant provided evidence satisfactory to the Board and LARA that he or she had current proficiency in the safe practice of midwifery, the Board could grant a license to an individual who did not meet the bill's requirements for licensure. The applicant would be subject to all other requirements of Part 171 and the rules promulgated under it.

License Term. Except as otherwise provided, LARA would have to determine the term of initial or renewal midwife licenses. Until the application processing fee for a license was reduced to \$75 (as described below), the term of an initial license would be one year. This provision would not limit LARA's authority to establish a renewal cycle for licenses under Part 171 regardless of the amount of the application fee.

Part 161: General Provisions

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 temporary license fee of \$200.

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.

Proposed MCL 333.16326 et al.

Legislative Analyst: Julie Cassidy

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 \$200 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.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.