

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND SIXTEEN

—  
S.P. 248 - L.D. 690

**An Act To Ensure the Safety of Home Birth**

Be it enacted by the People of the State of Maine as follows:

**Sec. 1. 32 MRSA §12501, sub-§1-A** is enacted to read:

**1-A. Accreditation commission for midwifery education.** "Accreditation commission for midwifery education" means the United States Department of Education-recognized commission approved in rules adopted by the board that provides accreditation, pre-accreditation of certificate, graduate and precertification programs that meet the national college of nurse midwives core competencies for midwifery practice.

**Sec. 2. 32 MRSA §12501, sub-§§4-A and 4-B** are enacted to read:

**4-A. Certified midwife.** "Certified midwife" means an individual who holds a current and valid national certification as a certified midwife from the national midwifery certification board and is licensed under this chapter to practice midwifery.

**4-B. Certified professional midwife.** "Certified professional midwife" means an individual who holds a current and valid national certification as a certified professional midwife from the national registry of midwives and is licensed under this chapter and practices midwifery.

**Sec. 3. 32 MRSA §12501, sub-§5-A** is enacted to read:

**5-A. Department.** "Department" means the Department of Professional and Financial Regulation.

**Sec. 4. 32 MRSA §12501, sub-§§6-A to 6-J** are enacted to read:

**6-A. International confederation of midwives.** "International confederation of midwives" means a nongovernmental organization, approved in rules adopted by the board, representing midwives and midwifery associations that authors international standards for education and essential competencies for practice.

**6-B. Midwife.** "Midwife" means a person who practices midwifery.

**6-C. Midwifery.** "Midwifery" means providing primary health or maternity care to women and infants. "Midwifery" includes consultation with or referral to medical and other health care providers when indicated by client health care needs.

**6-D. Midwifery bridge certificate.** "Midwifery bridge certificate" means a certificate issued by the national registry of midwives that documents completion of accredited continuing education for certified professional midwives based upon identified areas to address education in emergency skills and other competencies set by the international confederation of midwives.

**6-E. Midwifery education accreditation council.** "Midwifery education accreditation council" means the United States Department of Education-recognized commission that provides accreditation for programs and institutions that meet the national midwives alliance core competencies, the international confederation of midwives competencies and the national registry of midwives skills and standards for basic midwifery practice.

**6-F. National association of certified professional midwives.** "National association of certified professional midwives" means the national professional and standard-setting association for certified professional midwives approved in rules adopted by the board.

**6-G. National college of nurse midwives.** "National college of nurse midwives" means the national professional and standard-setting organization for midwives certified by the national midwifery certification board.

**6-H. National midwifery certification board.** "National midwifery certification board" means the national certifying body, approved in rules adopted by the board, for candidates in midwifery who have received graduate-level education in programs accredited by the accreditation commission for midwifery education.

**6-I. National midwives alliance.** "National midwives alliance" means the national midwifery organization, approved in rules adopted by the board, that has articulated core competencies for midwives.

**6-J. National registry of midwives.** "National registry of midwives" means the organization that sets national standards for the certified professional midwife credential approved in rules adopted by the board.

**Sec. 5. 32 MRSA §12501, sub-§14-A** is enacted to read:

**14-A. Qualified midwife preceptor.** "Qualified midwife preceptor" means a licensed and experienced midwife, or other health professional licensed in this State, who participates in the clinical education of individuals enrolled in a midwifery education program accredited by the midwifery education accreditation council or accreditation commission for midwifery education and who meets the criteria for midwife preceptors set forth by the organization.

**Sec. 6. 32 MRSA §12502, sub-§1**, as amended by PL 2007, c. 402, Pt. AA, §1, is further amended to read:

**1. Membership.** The Board of Complementary Health Care Providers, as established in Title 5, section 12004-A, subsection 8-A, shall regulate the professions of acupuncture ~~and~~, naturopathic medicine and midwifery according to the provisions of this chapter. The board consists of ~~7~~ 9 members appointed by the Governor. The Governor shall make the initial appointments to the board no later than 60 days after the effective date of this section and shall inform the Commissioner of Professional and Financial Regulation of these appointments. The commissioner shall call the first meeting of the board on a date no later than 30 days following notification of appointments by the Governor. All members of the board must be residents of this State. Two members of the board must be acupuncturists licensed in this State. Two members of the board must be ~~practitioners of naturopathic medicine~~ doctors who are eligible for licensure under, or are licensed pursuant to, the requirements of subchapter 3. One member must be a certified professional midwife licensed in this State. One member must be a midwife of any classification licensed in this State. One member must be a public member as defined in Title 5, section 12004-A. One member must be an allopathic or osteopathic physician, board-certified in obstetrics and gynecology, who is licensed in this State. One member must be a ~~pharmacist who is licensed~~ physician or nurse practitioner with a specialty in pediatric care who is licensed in this State.

**Sec. 7. 32 MRSA §12503, sub-§1, ¶B-1** is enacted to read:

B-1. Set the standards of practice for midwives. Prior to January 1, 2021, rules relating to the limitations in section 12536, the drug formulary, informed consent documentation, preexisting conditions that render a pregnancy ineligible for out-of-hospital birth and data collection and reporting must be adopted by the board in joint rulemaking with the Board of Licensure in Medicine. On or after January 1, 2021, rules adopted pursuant to this paragraph must be adopted by the board. All other rules must be adopted by the board.

**Sec. 8. 32 MRSA §12503, sub-§1, ¶D**, as amended by PL 2007, c. 402, Pt. AA, §2, is further amended to read:

D. Ensure that acupuncturists ~~and~~, naturopathic doctors and midwives serving the public meet minimum standards of proficiency and competency to protect the health, safety and welfare of the public; and

**Sec. 9. 32 MRSA §12504**, as enacted by PL 1995, c. 671, §13, is amended to read:

#### **§12504. Unauthorized employment**

A person in the course of business may not employ an acupuncturist ~~or~~, naturopathic doctor or midwife who does not have a license unless that person is a student or intern within the meaning of this chapter.

**Sec. 10. 32 MRSA §12505-A**, as enacted by PL 2007, c. 402, Pt. AA, §5, is amended to read:

**§12505-A. Unlicensed practice**

A person who violates section 12504, 12511 ~~or~~ 12521 or 12531 is subject to the provisions of Title 10, section 8003.

**Sec. 11. 32 MRSA c. 113-B, sub-c. 4** is enacted to read:

**SUBCHAPTER 4**

**MIDWIFERY LICENSING REQUIREMENTS AND SCOPE OF PRACTICE**

**§12531. License required**

**1. License required.** Beginning January 1, 2020, a person may not practice, offer to practice or profess to be authorized to practice midwifery, or hold oneself out to the public, as a midwife licensed in this State or use the words "certified professional midwife" or "certified midwife" or the letters "C.P.M." or "C.M." or other words or letters to indicate that the person using the words or letters is a licensed certified midwife or licensed certified professional midwife or that may misrepresent to the public that the person is authorized to practice midwifery in this State, unless that person is licensed in accordance with this subchapter.

**2. National certification.** This section is not intended to prohibit persons holding national certifications as midwives from identifying themselves as holding such certifications, so long as those persons are not practicing midwifery or professing to be authorized to practice midwifery in this State.

**3. Individual license.** Only an individual may be licensed under this subchapter.

**§12532. Persons and practices exempt**

Nothing in this subchapter may be construed as preventing:

**1. Licensed persons.** A person licensed in this State by any other law who is performing services within that person's authorized scope of practice from engaging in the profession or occupation for which the person is licensed, including midwives authorized and licensed as advanced practice registered nurses under the State Board of Nursing to practice as certified nurse midwives;

**2. Students.** Midwifery services provided by student midwives acting under the direct supervision of a qualified midwife preceptor;

**3. Religious or cultural traditions.** A traditional birth attendant from practicing midwifery without a license if the traditional birth attendant has cultural or religious traditions that have historically included the attendance of traditional birth attendants at births and that birth attendant serves only the women and families in that distinct cultural or religious group; or

4. Emergency. The rendering of midwifery services in the case of emergency.

**§12533. Qualifications for licensure as a certified professional midwife**

An applicant for a license to practice midwifery as a certified professional midwife shall submit to the board in a format as prescribed by the board the following:

1. Fee. A completed application together with the fee established under section 12538;

2. Certification. Proof of a current and valid national certification as a certified professional midwife from the national registry of midwives; and

3. Education. Proof of successful completion of a formal midwifery education and training program as follows:

A. An educational program or institution accredited by the midwifery education accreditation council;

B. For an applicant certified as a certified professional midwife who is certified before January 1, 2020 and who has completed a midwifery education and training program from an educational program or institution that is not accredited by the midwifery education accreditation council, a midwifery bridge certificate; or

C. For an applicant who has maintained an authorization to practice midwifery as a licensed certified professional midwife in a state that does not require completion of a midwifery education and training program from an educational program or institution that is accredited by the midwifery education accreditation council, regardless of the date of that authorization, a midwifery bridge certificate.

**§12534. Qualifications for licensure as a certified midwife**

An applicant for a license to practice midwifery as a certified midwife shall submit to the board in a format as prescribed by the board the following:

1. Fee. A completed application together with the fee established under section 12538;

2. Certification. Proof of a current and valid national certification as a certified midwife from the national midwifery certification board; and

3. Education. Proof of successful completion of a graduate-level education program in midwifery that is accredited by the accreditation commission for midwifery education.

**§12535. Scope of practice for certified professional midwife**

1. Certification. A certified professional midwife may not practice without a current and valid certification.

2. National standards. A certified professional midwife shall at all times practice within the scope of practice and national standards as delineated by the national association of certified professional midwives.

**3. Medical testing and supplies.** The scope of practice of a certified professional midwife includes authorization to order and interpret medical laboratory tests and ultrasound scanning and to obtain equipment and supplies necessary for the safe practice of midwifery.

**4. Administration of drugs.** The scope of practice of a certified professional midwife includes the authority to obtain and administer certain drugs as determined by board rule. The board shall limit the drug formulary for certified professional midwives to only those medications that are indicated for the safe conduct of pregnancy, labor and birth and care of women and newborns and that a midwife is educationally prepared to administer and monitor. These may not include schedule II, III or IV drugs as defined in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812.

**5. Board rules.** Clarifications of the scope of practice of a certified professional midwife may be established by board rule.

### **§12536. Limitations on scope of practice for certified professional midwife**

**1. Limitations.** Certified professional midwives must refer clients to a hospital-based perinatal care provider and may not provide birth services to parents in a home or freestanding birth center setting when there is a reasonable likelihood that any of the following conditions exist:

- A. Multifetal gestation;
- B. Breech presentation;
- C. Vaginal birth after a cesarean section; and
- D. Conditions that present a moderate or high risk of harm to parent or child as defined in board rule.

**2. Rules.** Notwithstanding subsection 1, the board and the Board of Licensure in Medicine, jointly, prior to January 1, 2021 or the board beginning January 1, 2021 may adopt rules relating to the provision of birth services by certified professional midwives in cases in which there is a reasonable likelihood that any condition identified in subsection 1 exists.

**3. Contingent repeal.** Any paragraph in subsection 1 the subject matter of which is addressed in a rule or rules adopted pursuant to subsection 2 is repealed after the effective date of the rule or rules upon notification from the Director of the Office of Professional and Occupational Regulation within the department, or the commissioner, to the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes that the rule or rules have been adopted.

### **§12537. Scope of practice for certified midwife**

**1. Certification.** A certified midwife may not practice without a current and valid certification.

**2. Standards.** A certified midwife shall at all times practice within the scope of practice and national standards as delineated by the national college of nurse midwives.

**3. Medical testing and supplies.** The scope of practice of a certified midwife includes authorization to order and interpret medical laboratory tests, to perform ultrasound scanning and to obtain equipment and supplies necessary for the safe practice of midwifery.

**4. Prescriptive authority.** The scope of practice of a certified midwife includes prescriptive authority, which may not include schedule II drugs. As used in this subsection, "schedule II drug" has the same meaning as in the federal Controlled Substances Act of 1970, 21 United States Code, Section 812.

**5. Board rules.** Clarifications of the scope of practice of a certified midwife may be established by board rule, consistent with national standards.

#### **§12538. Fees and renewals**

**1. Fees.** The Director of the Office of Professional and Occupational Regulation within the department may establish by rule fees for purposes authorized under this subchapter in amounts that are reasonable and necessary for their respective purposes, except that the fee for initial and renewal licensure may not exceed \$675 annually. Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**2. Renewal.** A license issued under this subchapter expires on the stated expiration date as determined by the commissioner. Prior to expiration of a license, a licensee may make an application in a format as determined by the commissioner for renewal and upon payment of the renewal fee as set pursuant to subsection 1. A license may not be issued until the applicant certifies to the board that the applicant has completed the continuing education requirements adopted by the board.

**3. Late renewal.** Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee in addition to the renewal fee as set pursuant to subsection 1. A person who submits an application for renewal more than 90 days after the date of expiration is subject to all requirements governing new applicants under this subchapter, except that the board, giving due consideration to the protection of the public, may waive any such requirement if that renewal application is received, together with the late fee and renewal fee, within 2 years from the date of the expiration.

#### **§12539. Data collection and reporting for a licensed midwife**

**1. Report.** Beginning February 1, 2017, and on each February 1st thereafter, a midwife licensed under this subchapter shall report to the board, in a form specified by the board, the following information regarding cases in which the midwife assisted during the previous calendar year when the intended place of birth at the onset of care was an out-of-hospital setting:

A. The total number of clients served as primary maternity caregiver at the onset of care;

B. The number, by county, of live births attended as primary maternity caregiver;

C. The number, by county, of cases of fetal demise, infant deaths and maternal deaths attended as primary maternity caregiver at the discovery of the demise or death;

D. The number of women whose primary maternity care was transferred to another health care practitioner during the antepartum period and the reason for transfer;

E. The number, reason for and outcome of each nonemergency transfer during the intrapartum or postpartum period;

F. The number, reason for and outcome of each urgent or emergency transport of an expectant mother in the antepartum period;

G. The number, reason for and outcome of each urgent or emergency transport of an infant or mother during the intrapartum or immediate postpartum period;

H. The number of planned out-of-hospital births at the onset of labor and the number of births completed in an out-of-hospital setting;

I. A brief description of any complications resulting in the morbidity or mortality of a mother or a neonate; and

J. Any information required by the board in rules.

2. **Penalty.** Failure to comply with the reporting requirements under subsection 1 is grounds for discipline by the board.

#### **§12540. Qualified immunity**

Other health care practitioners or health care providers, as defined in Title 24, section 2502, subsections 1-A and 2, respectively, are immune from civil liability for any injuries or death resulting from the acts or omissions of a midwife. Notwithstanding any inconsistent provisions of any public or private and special law, a health care practitioner or health care provider who consults or collaborates with a midwife or accepts transfer of care of clients of a midwife is not liable for damages for injuries or death alleged to have occurred by reason of an act or omission, unless it is established that the injuries or the death were caused willfully, wantonly or recklessly or by gross negligence on the part of the health care practitioner or health care provider.

#### **§12541. Informed consent to care**

In a format accepted by the board, a midwife licensed under this subchapter attending a birth at a home or freestanding birth center shall provide each client with and maintain a record of a signed informed consent to care form that describes the midwife's education and credentials, written practice guidelines, services provided, whether the midwife has professional liability insurance coverage, procedures and risks of birth in the client's chosen environment, components of the emergency plan and the address and telephone number of the board where complaints may be filed. The board shall establish by rule a form for this purpose.

## **§12542. Public health authority and responsibility**

A certified professional midwife or certified midwife is a licensed health care provider and has the same authority and responsibility as other licensed health care providers regarding public health laws, reportable disease and conditions, communicable disease control and prevention, recording of vital statistics, health and physical examinations and local boards of health, except that this authority is limited to activity consistent with the scope of practice authorized by this subchapter.

## **§12543. Disciplinary actions**

**1. Disciplinary action.** The board may deny a license, refuse to renew a license or impose the disciplinary sanctions authorized by Title 10, section 8003, subsection 5-A for any of the reasons enumerated in Title 10, section 8003, subsection 5-A, paragraph A.

**2. Consultation.** In any disciplinary actions involving consultation between midwives and physicians, informed consent, transport, transfer of care, scope of practice, drug formulary or standards of care, the board shall act in consultation with the Board of Licensure in Medicine but is not bound by that board's recommendations.

**3. Reinstatement after revocation.** An application for reinstatement may be made to the board one year from the date of revocation of a license. The board may accept or reject the application for reinstatement and hold a hearing to consider reinstatement.

**Sec. 12. 32 MRSA §13811,** as enacted by PL 2007, c. 669, §1, is repealed.

**Sec. 13. 32 MRSA §13812,** as enacted by PL 2007, c. 669, §2, is repealed.

**Sec. 14. Midwife data collection and reporting guidelines pending initial licensure.** The Board of Complementary Health Care Providers, established in the Maine Revised Statutes, Title 5, section 12004-A, subsection 8-A, shall invite and encourage every midwife who intends to be licensed in this State to keep data records and report them to the board upon application for initial licensure. Those records must contain the following information:

1. The total number of clients served as primary maternity caregiver at the onset of care;
2. The number, by county, of live births attended as primary maternity caregiver;
3. The number, by county, of cases of fetal demise, infant deaths and maternal deaths attended as primary maternity caregiver at the discovery of the demise or death;
4. The number of women whose primary maternity care was transferred to another health care practitioner during the antepartum period and the reason for transfer;
5. The number, reason for and outcome of each nonemergency transfer of care during the intrapartum or postpartum period;

6. The number, reason for and outcome of each urgent or emergency transfer of care of an expectant mother in the antepartum period;

7. The number, reason for and outcome of each urgent or emergency transfer of care of an infant or mother during the intrapartum or immediate postpartum period;

8. The number of planned home or freestanding birth center out-of-hospital births at the onset of labor and the number of births completed in an out-of-hospital setting;

9. A brief description of any complications resulting in the morbidity or mortality of a mother or a neonate that occurs during pregnancy, postpartum and the newborn period; and

10. The number of cases involving vaginal birth after cesarean section, breech presentation and multifetal gestation, including for each such case the information contained in subsections 1 to 9.

### **Sec. 15. Transition provisions**

**1. Midwife members; initial appointments.** For purposes of initial appointments to the Board of Complementary Health Care Providers pursuant to that section of this Act that amends the Maine Revised Statutes, Title 32, section 12502, subsection 1, the midwife members need only hold a current and valid national certification as a midwife, except that after January 1, 2020 all midwife members of the board must be licensed pursuant to the requirements of Title 32, chapter 113-B, subchapter 4.

**2. Expiration of terms.** The terms of members of the Board of Complementary Health Care Providers who on the effective date of this Act do not meet the requirements of the Maine Revised Statutes, Title 32, section 12502, subsection 1 expire on September 1, 2016. New members appointed in accordance with the provisions of Title 32, section 12502, subsection 1 must be appointed by September 1, 2016.

**Sec. 16. Contingent effective date.** Those sections of this Act that repeal the Maine Revised Statutes, Title 32, sections 13811 and 13812 do not take effect unless:

1. The Board of Complementary Health Care Providers, established in the Maine Revised Statutes, Title 5, section 12004-A, subsection 8-A, either alone or in joint rulemaking with the Board of Licensure in Medicine, established in Title 5, section 12004-A, subsection 24, adopts a rule or rules concerning drug possession and administration by certified professional midwives and certified midwives; and

2. The Director of the Office of Professional and Occupational Regulation within the Department of Professional and Financial Regulation, or the Commissioner of Professional and Financial Regulation, notifies the Secretary of the Senate, the Clerk of the House of Representatives and the Revisor of Statutes that the rule or rules have been adopted.