

HOUSE No. 4253

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 12, 2012.

The committee on Health Care Financing, to whom was referred the Bill relative to certified professional midwives (House, No. 2368), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4253).

For the committee,

STEVEN M. WALSH.

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve
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An Act relative to certified professional midwives.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 112 of the General Laws is hereby amended by adding the following 20
2 sections:-

3 Section 259. As used in sections 260 to 277, inclusive of this chapter, the following words shall,
4 unless the context requires otherwise, have the following meanings:-

5 “Board”, the board of registration in medicine, established under section 10 of chapter 13.

6 “Certified Professional Midwife”, a professional independent practitioner who has been certified
7 as an expert in normal and out of hospital birth and has met the standards of certification by
8 North American Registry of Midwives.

9 “Certified nurse-midwife”, a nurse with advanced training who is authorized to practice by the
10 board of registration in nursing as a nurse midwife and who is certified by the American
11 Midwifery Certification Board.

12 “Client”, a woman under the care of a midwife and her fetus or newborn.

13 “Committee”, the committee on midwifery, established under section 261.

14 “Licensed midwife”, a person licensed under sections 260 to 277 to practice midwifery and who
15 holds a valid Certified Professional Midwife credential from the North American Registry of
16 Midwives.

17 “Midwifery” the practice of providing the necessary supervision, care and advice to a client
18 during normal pregnancy, labor, and the postpartum periods and conducting deliveries on the
19 midwife’s own responsibility consistent with the provisions of sections 260 to 277; including
20 preventative measures, the identification of physical, social and emotional needs of the client.

21 Section 260. Nothing in sections 259 through 277 inclusive, shall limit or regulate the practice
22 of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency
23 medical technician. The practice of midwifery shall not constitute the practice of medicine,
24 certified nurse-midwifery, or emergency medical care to the extent that a midwife advises,
25 attends, or assists a woman during pregnancy, labor, natural childbirth, or the postpartum period.

26 Section 261. (a) The board of registration in medicine shall form a committee on midwifery.

27 Committee members shall be appointed as follows: 8 members shall be appointed by the
28 governor, 5 of whom shall be midwives who possess a valid Certified Professional Midwife
29 credential from the North American Registry of Midwives; 1 of whom shall be a licensed
30 physician who is an obstetrician certified by the American Congress of Obstetrics and
31 Gynecology and who has been actively involved with the practice of midwifery for at least 2
32 years, 1 of whom shall be a certified nurse-midwife chosen from a list of nominees provided by
33 the Massachusetts Chapter of the American College of Nurse-Midwives who has worked in an
34 out of hospital setting, and 1 of whom shall be from the general public who has been a consumer

35 of certified professional midwifery services and who shall not be engaged in or have a financial
36 interest in the delivery of health services; 1 member shall be appointed by the board.

37 (b) Members of the committee shall be appointed for a term of 3 years, except that of the
38 members of the first committee, 4 members shall be appointed for terms of 3 years, and 3
39 members shall be appointed for terms of 2 years. No member may be appointed to more than 2
40 consecutive full terms, provided, however, that a member appointed for less than a full term may
41 serve 2 full terms in addition to such of a part of a full term, and a former member shall again be
42 eligible for appointment after a lapse of 1 or more years.

43 (c) Any member of the committee may be removed by the governor for neglect of duty,
44 misconduct or malfeasance or misfeasance in office after being given a written statement of the
45 charges against him and sufficient opportunity to be heard thereon. Upon the death or removal
46 for cause of a member of the committee, the governor shall fill the vacancy for the remainder of
47 that member's term.

48 (d) The committee shall meet not less than 4 times per calendar year. At its first meeting and
49 annually thereafter, the committee shall elect from among its members a chairperson, a vice-
50 chairperson and a secretary who shall each serve for 1 year and until a successor is appointed and
51 qualified. Committee members shall serve without compensation but shall be reimbursed for
52 actual and reasonable expenses incurred in the performance of their duties.

53 Section 262. The committee shall make and publish such rules and regulations as it may deem
54 necessary for the proper conduct of its duties. The commissioner may review and approve rules
55 and regulations proposed by the committee. Such rules and regulations shall be deemed
56 approved unless disapproved within 15 days of submission to the commissioner; provided,

57 however, that any such disapproval shall be in writing setting forth the reasons for such
58 disapproval.

59 Section 263. The committee shall keep a full record of its proceedings and keep a register of all
60 persons registered and licensed by it, which shall be available for public inspection. The register
61 shall contain the name of every living registrant, the registrant's last known place of business and
62 last known place of residence, and the date and number of the registrant's registration and
63 certificate as a licensed midwife. The committee shall make an annual report containing a full
64 and complete account of all its official acts during the preceding year, including a statement of
65 the condition of midwifery in the commonwealth.

66 Section 264. The committee shall:

- 67 (1) examine applicants and issue licenses to those applicants it finds qualified;
- 68 (2) adopt regulations establishing licensing and licensing renewal requirements;
- 69 (3) issue permits to apprentice midwives;
- 70 (4) investigate complaints against persons licensed under this chapter;
- 71 (5) hold hearings and order the disciplinary sanction of a person who violates this chapter or a
72 regulation of the committee;
- 73 (6) approve education and apprentice training that meet the requirements of this chapter and of
74 the committee and deny, revoke, or suspend approval of such programs for failure to meet the
75 requirements;
- 76 (7) adopt standards for approved midwifery education and training;

- 77 (8) adopt professional continuing education requirements for licensed midwives;
- 78 (9) develop practice standards for licensed midwives that shall include, but not be limited to:
- 79 i. adoption of ethical standards for licensed midwives and apprentice midwives;
- 80 ii. maintenance of records of care, including client charts;
- 81 iii. participation in peer review; and
- 82 iv. development of standardized informed consent, reporting and written emergency transport
- 83 plan forms.

84 Section 265. A person who desires to be licensed and registered as a midwife shall apply to the

85 committee in writing on an application form prescribed and furnished by the committee. The

86 applicant shall include in the application statements under oath satisfactory to the committee

87 showing that the applicant possesses the qualifications required by section 267 preliminary to the

88 examination required by section 266. At the time of filing the application, an applicant shall pay

89 to the board a fee which shall be set by the secretary of administration and finance.

90 Section 266. (a) The committee may adopt an exam for applicants for licensure, and may

91 conduct up to two examinations in each calendar year. The committee may establish

92 examination and testing procedures to enable it to determine the competency of persons applying

93 for licensure as a midwife.

94 (b) An applicant who has failed the examination shall not retake the examination for a period of

95 6 months. An applicant who has failed the examination more than 1 time may not retake the

96 examination unless the applicant has participated in or successfully completed further education

97 and training programs as prescribed by the committee.

98 Section 267. (a) To be eligible for examination, registration and licensure by the committee as
99 a midwife, an applicant shall:

100 (1) be at least 21 years of age;

101 (2) be of good moral character;

102 (3) be a graduate of a high school or its equivalent;

103 (4) possess a valid Certified Professional Midwife credential from the North American
104 Registry of Midwives.

105 (5) Notwithstanding the provisions of section 172 of chapter 6, the committee shall obtain all
106 available criminal offender record information from the criminal history systems board on an
107 applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for a
108 national criminal history records check. The information obtained thereby may be used by the
109 committee to determine the applicant's eligibility for licensing under this chapter. Receipt of
110 criminal history record information by a private entity is prohibited. If the committee determines
111 that such information has a direct bearing on the applicant's ability to serve as a midwife, such
112 information may serve as a basis for the denial of the application;

113 (6) meet minimum educational requirements which shall include studying midwifery; basic
114 sciences; female reproductive anatomy and physiology; behavioral sciences; childbirth
115 education; community care; obstetrical pharmacology; epidemiology; gynecology; family
116 planning; genetics; embryology; neonatology; the medical and legal aspects of midwifery;
117 nutrition during pregnancy and lactation; breast feeding; and such other requirements prescribed
118 by the committee;

119 (7) meet practical experience requirements prescribed by the committee, including specific
120 numbers of prenatal visits, post-partum follow-up exams, attendance at live births as an observer
121 and primary birth attendant under supervision, performance of newborn examinations,
122 performance of laceration repairs, performance of postpartum visits, and observation of in-
123 hospital births.

124 The training required under this section shall include training in either hospitals, alternative birth
125 settings or both. The Department of Public Health shall assist the committee in facilitating
126 access to hospital training for approved midwifery programs.

127 Section 268. The committee shall annually administer an examination designed to measure the
128 qualifications necessary in order to safely utilize the pharmaceutical agents provided for in
129 section 275. Such examination shall be open upon application to any midwife licensed under the
130 provisions of this chapter and to any person who meets the qualifications for examination under
131 section 267; provided, however, that each applicant shall furnish to the committee satisfactory
132 evidence of the completion of a qualifying course of study relating to the safe and proper
133 administration of approved pharmaceutical agents as determined by the committee.

134 Section 269. (a) The committee shall issue a permit to practice as an apprentice midwife to a
135 person who:

136 (1) is at least 18 years of age;

137 (2) is a graduate of a high school or its equivalent; and

138 (3) has been accepted into a program of education, training, and apprenticeship approved by
139 the committee under section 264.

140 (b) A permit application under this section shall include information the committee may require.
141 The permit shall be valid for a term of 2 years and may be renewed in accordance with
142 regulations adopted by the committee.

143 (c) An apprentice midwife may perform all the activities of a licensed midwife if supervised in a
144 manner prescribed by the committee by:

145 (1) a licensed midwife who has practiced in this state for at least 2 years and who meets the
146 standards for qualification as a midwifery instructor approved by the committee under section
147 264;

148 (2) a physician licensed in this state with an obstetrical practice at the time of undertaking the
149 apprenticeship; or

150 (3) a certified nurse-midwife licensed by the board of registration in nursing in this state with
151 an obstetrical practice at the time of undertaking the apprenticeship.

152 Section 270. The committee may enter into agreements with medical or midwifery examination
153 boards of other states and territories of the United States, the District of Columbia, and Puerto
154 Rico, having qualifications and standards at least as high as those of the commonwealth,
155 providing for reciprocal licensing in this state, without further examination, of persons who hold
156 a valid license granted by written examination in the other state or territory, who have been
157 licensed to practice for at least 5 years, and who apply and remit fees as provided for in section
158 265.

159 Section 271. (a) The committee may, after a hearing pursuant to chapter 30A, revoke, suspend,
160 or cancel the license of a midwife, or reprimand or censure a midwife if it finds upon proof
161 satisfactory to the committee that such midwife:

162 (1) fraudulently procured licensure as a midwife;

163 (2) violated any provision of law relating to the practice of medicine or midwifery, or any rule
164 or regulation adopted thereunder ;

165 (3) acted with gross misconduct in the practice of midwifery or of practicing midwifery
166 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
167 negligence on a particular occasion or negligence on repeated occasions;

168 (4) practiced midwifery while the ability to practice is impaired by alcohol, drugs, physical
169 disability or mental instability;

170 (5) was habitually drunk or being or having been addicted to, dependent on, or a habitual user
171 of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar effects;

172 (6) knowingly permitted, aided or abetted an unlicensed person to perform activities requiring
173 a license for purposes of fraud, deception or personal gain;

174 (7) has been convicted of a criminal offense which reasonably calls into question the ability to
175 practice midwifery;

176 (8) violated any rule or regulation of the committee;

177 (9) acted in a manner which is professionally unethical according to ethical standards of the
178 profession of midwifery; or

179 (10) violated any provision of sections 260 to 278.

180 (b) No person filing a complaint or reporting information pursuant to this section or assisting the
181 committee or board at its request in any manner in discharging its duties and functions shall be
182 liable in any cause of action arising out of receiving such information or assistance, providing the
183 person making the complaint or reporting or providing such information or assistance does so in
184 good faith and without malice.

185 Section 272. When accepting a client for care, a midwife shall obtain the client's informed
186 consent, which shall be evidenced by a written statement in a form prescribed by the committee
187 and signed by both the midwife and the client. The form shall certify that full disclosure has
188 been made and acknowledged by the client as to each of the following items, with the client's
189 acknowledgement evidenced by a separate signature adjacent to each item in addition to the
190 client's signature and the date at the end of the form:

191 (1) the name, address, telephone number, and license number of the licensed midwife;

192 (2) a description of the midwife's education, training, and experience in midwifery;

193 (3) the nature and scope of the care to be given, including a description of the ante partum,
194 intrapartum , and postpartum conditions requiring consultation, transfer of care, or transport to a
195 hospital;

196 (4) a copy of the medical emergency or transfer plan particular to each client; the right of the
197 client to file a complaint with the committee and instructions on how to file a complaint with the
198 committee;

199 (5) a statement indicating that the client's records and any transaction with the license midwife
200 are confidential;

201 (6) a disclosure of whether the licensed midwife carries malpractice or liability insurance; and

202 (7) any further information as required by the committee.

203 Section 273. A midwife shall prepare, in a form prescribed by the committee, a written plan for
204 the appropriate delivery of emergency care. The plan shall address the following:

205 (1) consultation with other health care providers;

206 (2) emergency transfer; and

207 (3) access to neonatal intensive care units and obstetrical units or other patient care areas.

208 Section 274. (a) The midwife shall only accept and provide care to those women who are
209 expected to have a normal pregnancy, labor, and delivery.

210 (b) A midwife shall provide an initial and ongoing screening to ensure that each client receives
211 safe and appropriate care. As part of the initial screening to determine whether any
212 contraindications are present, the midwife shall take a detailed health history as defined by the
213 committee.

214 (c) The midwife must be able at all times to recognize the warning signs of abnormal or
215 potentially abnormal conditions necessitating referral to a physician. If a midwife determines at
216 any time during the course of the pregnancy that a woman's condition may preclude attendance
217 by the midwife, the client shall be referred to an appropriate licensed health care provider.

218 (d) As part of the initial screening and ongoing screening, a midwife may order and interpret
219 clinical tests for the client as required by the committee. The midwife shall include these results
220 in the client's record.

221 (f) If the client is delivering at home, the midwife shall ensure that the home is safe and hygienic
222 and meets standards set forth by the committee.

223 (g) A midwife shall not perform any operative or surgical procedures except for episiotomy or
224 suture repair of episiotomy or first or second degree perineal lacerations.

225 Section 275. A midwife qualified by examination under the provisions of section 268 may
226 obtain and administer prophylactic ophthalmic medication, anti-hemorrhagic medications,
227 vitamin K, Rho immune globulin, intravenous fluids, oxygen for maternal or fetal distress and
228 infant resuscitation, and local anesthetic and may administer such other drugs or medications as
229 prescribed by a physician or certified nurse-midwife. A pharmacist who dispenses such drugs to
230 a licensed midwife shall not be liable for any adverse reactions caused by any method of use by
231 the midwife.

232 Section 276. When a birth occurs with a licensed midwife in attendance, the midwife shall
233 prepare and file a birth certificate as required by chapter 46. Failure of a midwife to prepare and
234 file the birth certificate constitutes grounds for the suspension or revocation of a license granted
235 under this chapter.

236 Section 277. No physician duly registered under the provisions of sections 2, 2A, 9, 9A or 9B,
237 no physician assistant duly registered under the provisions of section 9I or the physician
238 assistant's employing or supervising physician, and no nurse duly registered or licensed under
239 the provisions of section 74, 74A or 76, providing medical treatment to a woman or infant due to

240 an emergency arising during the delivery or birth as a consequence of the care received by a
241 midwife licensed under chapter 112 shall be held liable for any civil damages as a result of such
242 medical care or treatment, other than gross negligence or willful or wanton misconduct, resulting
243 from the attempt to render such emergency care, nor shall he be liable to a hospital for its
244 expenses if, under such emergency conditions, he orders a person hospitalized or causes his
245 admission. No health care facility licensed under chapter 111, providing medical treatment to a
246 woman or infant due to an emergency arising during the delivery or birth as a consequence of the
247 care received by a midwife licensed under chapter 112, shall be held liable for any civil damages
248 as a result of such medical care or treatment resulting from the attempt to render such emergency
249 care.

250 Section 278. (a) Any person who practices midwifery in the commonwealth without a license
251 granted pursuant to sections 260 to 277, inclusive, shall be punished by a fine of not less than
252 \$100 nor more than \$ 1,000, or by imprisonment for not more than 3 months, or by both. The
253 committee may petition in any court of competent jurisdiction for an injunction against any
254 person practicing midwifery or any branch thereof without a license. Such injunction may be
255 issued without proof of damage sustained by any person. Such injunction shall not relieve such
256 person from criminal prosecution for practicing without a license.

257 (b) Nothing in this section shall be construed to prevent or restrict the practice, service or
258 activities of (1) any person licensed in the commonwealth from engaging in activities within the
259 scope of practice of the profession or occupation for which such person is licensed, provided that
260 such person does not represent to the public, directly or indirectly, that such person is licensed
261 under sections 260 to 277, inclusive, and that such person does not use any name, title or
262 designation indicating that such person is licensed under said sections 260 to 277, inclusive; (2)

263 any person employed as a midwife by the federal government or an agency thereof if that person
264 provides midwifery services solely under the direction and control of the organization by which
265 such person is employed.

266 SECTION 2. The committee shall adopt rules and regulations pursuant to section 264 of
267 chapter 112 within 180 days after the effective date of this act. Within 180 days after the
268 committee adopts the rules and regulations pursuant to said section 264 of said chapter 112, the
269 committee may commence the issuing of licenses.

270 SECTION 3. Nothing in this act shall preclude any person who was practicing midwifery before
271 the effective date of this act from practicing midwifery in the commonwealth until the committee
272 establishes procedures for the licensure of midwives pursuant to sections 259 to 278, inclusive,
273 of chapter 112.

274 SECTION 4. The committee of midwifery, established pursuant to section 261 of chapter 112,
275 shall establish regulations for the licensure of individuals practicing midwifery prior to the date
276 on which the committee commences issuing licenses, provided that the individuals shall have 2
277 years from the date on which the committee commences issuing licenses to provide proof of
278 passage of a licensing examination recognized by the committee and proof of completion of any
279 continuing education requirements necessary for re-licensure.