

HOUSE No. 4640

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 11, 2022.

The committee on Public Health to whom were referred the petition (accompanied by bill, Senate, No. 1519) of Rebecca L. Rausch, Kay Khan, Jason M. Lewis, Hannah Kane and other members of the General Court for legislation relative to out-of-hospital birth access and safety and the petition (accompanied by bill, House, No. 2341) of Kay Khan and others for legislation to establish a board of registration in midwifery and further regulating out-of-hospital birth access and safety, reports recommending that the accompanying bill (House, No. 4640) ought to pass.

For the committee,

MARJORIE C. DECKER.

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**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act relative to out-of-hospital birth access and safety.

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. Section 9 of chapter 13 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by inserting after the word “counselors”, in line 7, the
3 following words:- , the board of registration in midwifery.

4 SECTION 2. Said chapter 13, as so appearing, is hereby further amended by adding the
5 following section:-

6 Section 110. (a) There shall be within the department of public health a board of
7 registration in midwifery. The board shall consist of 8 members to be appointed by the governor,
8 5 of whom shall be midwives with not less than 5 years of experience in the practice of
9 midwifery and who shall be licensed under sections 276 to 289, inclusive, of chapter 112, 1 of
10 whom shall be a physician licensed to practice medicine under section 2 of said chapter 112 with
11 experience working with midwives, 1 of whom shall be a certified nurse-midwife licensed to
12 practice midwifery under section 80B of said chapter 112 and 1 of whom shall be a member of
13 the public. Four of the members of the board of registration in midwifery shall have experience

14 working on the issue of racial disparities in maternal health or be a member of a population that
15 is underrepresented in the midwifery profession. When making the appointments, the governor
16 shall consider the recommendations of organizations representing certified professional
17 midwives in the commonwealth. The appointed members shall serve for terms of 3 years. Upon
18 the expiration of a term of office, a member shall continue to serve until a successor has been
19 appointed and qualified. A member shall not serve for more than 2 consecutive terms; provided,
20 however, that a person who is chosen to fill a vacancy in an unexpired term of a prior board
21 member may serve for 2 consecutive terms in addition to the remainder of that unexpired term. A
22 member may be removed by the governor for neglect of duty, misconduct, malfeasance or
23 misfeasance in the office after a written notice of the charges against the member and sufficient
24 opportunity to be heard thereon. Upon the death or removal for cause of a member of the board,
25 the governor shall fill the vacancy for the remainder of that member's term after considering
26 suggestions from a list of nominees provided by organizations representing certified professional
27 midwives in the commonwealth. For the initial appointment of the board, the 5 members
28 required to be licensed midwives shall be persons with at least 5 years of experience in the
29 practice of midwifery who meet the eligibility requirements set forth in subsection (a) of section
30 281 of chapter 112. Members of the board shall be residents of the commonwealth.

31 (b) Annually, the board shall elect from its membership a chair and a secretary who shall
32 serve until their successors have been elected and qualified. The board shall meet not less than 4
33 times annually and may hold additional meetings at the call of the chair or upon the request of
34 not less than 4 members. A quorum for the conduct of official business shall be a majority of
35 those appointed. Board members shall serve without compensation but shall be reimbursed for
36 actual and reasonable expenses incurred in the performance of their duties. The members shall be

37 public employees for the purposes of chapter 258 for all acts or omissions within the scope of
38 their duties as board members.

39 SECTION 3. Section 1E of chapter 46 of the general laws, as appearing in the 2018
40 Official Edition, is hereby amended by inserting after the definition of “Physician” the following
41 definition:-

42 “Licensed midwife,” a midwife licensed to practice by the board of registration in
43 midwifery as provided in sections 276 to 289 of chapter 112.

44 SECTION 4. Section 3B of chapter 46 , as so appearing, is hereby amended by inserting
45 after the word “physician”, in line 1, the following words:- or licensed midwife.

46 SECTION 5. Section 1 of chapter 94C of the general laws, as appearing in the 2018
47 Official Edition, is hereby amended by inserting after the definition of “Isomer” the following
48 definition:-

49 “Licensed midwife,” a midwife licensed to practice by the board of registration in
50 midwifery as provided in sections 276 to 289 of chapter 112.

51 SECTION 6. Section 7 of said chapter 94C, as so appearing, is hereby amended by
52 adding the following new subsection:-

53 (j) The commissioner shall promulgate regulations which provide for the automatic
54 registration of licensed midwives, upon the receipt of the fee as herein provided, to issue written
55 prescriptions in accordance with the provisions of sections 279 of chapter 112 and the
56 regulations issued by the board of registration in midwifery under said section 279 of chapter
57 112, unless the registration of such licensed midwife has been suspended or revoked pursuant to

58 the provisions of section 13 or section 14 or unless such registration is denied for cause by the
59 commissioner pursuant to the provisions of chapter 30A. Prior to promulgating such regulations,
60 the commissioner shall consult with the board of registration in midwifery.

61 SECTION 7. Section 9 of said chapter 94C, as so appearing, is hereby amended by
62 inserting in paragraph (a), after the words “certified nurse midwife as provided in section 80C of
63 said chapter 112” the following words:- , licensed midwife as limited by subsection (j) of said
64 section 7 and section 279 of said chapter 112.

65 SECTION 8. Section 9 of said chapter 94C, as so appearing, is hereby further amended in
66 paragraph (b), by inserting after the words “midwife” in each place that they appear, the
67 following words:- , licensed midwife.

68 SECTION 9. Said section 9 of said chapter 94C, as so appearing, is hereby further
69 amended in paragraph (b), by inserting after the words “nurse-midwifery” in each place that they
70 appear, the following words:- , midwifery.

71 SECTION 10. Section 9 of said chapter 94C is further amended in paragraph (c), by
72 inserting after the words “certified nurse midwife” in each place that they appear, the following
73 words:- , licensed midwife.

74 SECTION 11. The definition of “Medical peer review committee” in section 1 of chapter
75 111 of the General Laws, as appearing in the 2018 official edition, is hereby amended by adding
76 the following sentence:- “Medical peer review committee” shall include a committee or
77 association that is authorized by a midwifery society or association to evaluate the quality of
78 midwifery services or the competence of midwives and suggest improvements in midwifery
79 practices to improve patient care.

80 SECTION 12. Section 204 of said chapter 111, as so appearing, is hereby amended by
81 inserting after the word “medicine” in lines 7, 12 and 28 the following word:- , midwifery.

82 SECTION 13. Section 202 of said chapter 111, as so appearing, is hereby amended by
83 inserting after the word “attendance” in the second and third paragraphs, the following words:-
84 or midwife in attendance.

85 SECTION 14. Said section 202, as so appearing, is hereby further amended by inserting
86 after the word “attendance” in the fourth paragraph, the following words:- or without the
87 attendance of a midwife,.

88 SECTION 15. Chapter 112 of the General Laws is hereby amended by adding the
89 following 13 sections:-

90 Section 276. As used in sections 276 to 289, inclusive, the following words shall, have
91 the following meanings unless the context requires otherwise:

92 “Board”, the board of registration in midwifery, established under section 110 of chapter
93 13.

94 “Certified nurse-midwife”, a nurse with advanced training and who has obtained
95 certification by the American Midwifery Certification Board.

96 “Certified professional midwife”, a professional independent midwifery practitioner who
97 has obtained certification by the NARM."

98 “Client”, a person under the care of a licensed midwife, as codified by a written statement
99 pursuant to section 284.

100 “Licensed midwife”, a person registered by the board to practice midwifery in the
101 commonwealth under sections 276 to 289, inclusive.

102 “MBC”, the Midwifery Bridge Certificate issued by the NARM or its successor
103 credential.

104 “MEAC”, the Midwifery Education Accreditation Council or its successor organization.

105 “Midwifery”, the practice of providing primary care to a client and newborn during the
106 preconception, antepartum, intrapartum and postpartum periods.

107 “NARM”, the North American Registry of Midwives or its successor organization.

108 Section 277. Nothing in sections 276 to 289 inclusive, shall limit or regulate the practice
109 of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency
110 medical technician. The practice of midwifery shall not constitute the practice of medicine,
111 certified nurse-midwifery or emergency medical care.

112 Section 278. (a) The board shall:

113 (i) adopt rules and promulgate regulations governing licensed midwives and the practice
114 of midwifery to promote public health, welfare and safety, consistent with the essential
115 competencies identified by the NARM;

116 (ii) administer the licensing process, including, but not limited to:

117 (A) receiving, reviewing, approving, rejecting and issuing applications for licensure;

118 (B) renewing, suspending, revoking and reinstating licenses;

119 (C) investigating complaints against persons licensed under sections 276 to 289 inclusive;

120 (D) holding hearings and ordering the disciplinary sanction of a person who violates
121 sections 276 to 289, inclusive, or a regulation of the board;

122 (iii) establish administrative procedures for processing applications and renewals;

123 (iv) have the authority to adopt and provide a uniform, proctored examination for
124 applicants to measure the qualifications necessary for licensure;

125 (v) develop practice standards for licensed midwives that shall include, but not be limited
126 to:

127 (A) adoption of ethical standards for licensed midwives and apprentice midwives;

128 (B) maintenance of records of care, including client charts;

129 (C) participation in peer review; and

130 (D) development of standardized informed consent, reporting and written emergency
131 transport plan forms;

132 (vi) establish and maintain records of its actions and proceedings in accordance with
133 public records laws; and

134 (vii) adopt professional continuing education requirements for licensed midwives seeking
135 renewal consistent with those maintained by the NARM.

136 (b) Nothing in this section shall limit the board's authority to impose sanctions that are
137 considered reasonable and appropriate by the board. A person subject to any disciplinary action

138 taken by the board under this section or taken due to a violation of any other law, rule or
139 regulation may file a petition for judicial review pursuant to section 64.

140 (c) A licensed midwife shall accept and provide care to clients only in accordance with
141 the scope and standards of practice identified in the rules adopted pursuant to this section.

142 (d) Notwithstanding any other provision in this section, the board shall not issue any
143 regulations that require a licensed midwife to practice under the supervision of or in
144 collaboration with another healthcare provider or to enter into an agreement, written or
145 otherwise, with another healthcare provider.

146 Section 279. A licensed midwife duly registered to issue written prescriptions in
147 accordance with the provisions of subsection (j) of section 7 of chapter 94C may order, possess,
148 purchase, and administer pharmaceutical agents consistent with the scope of midwifery practice,
149 including without limitation antihemorrhagic agents including but not limited to oxytocin,
150 misoprostol and methergine; intravenous fluids for stabilization; vitamin K; eye prophylaxes;
151 oxygen; antibiotics for Group B Streptococcal antibiotic prophylaxes; Rho (D) immune globulin;
152 local anesthetic; epinephrine; and other pharmaceutical agents identified by the board, however,
153 that nothing in this section shall be construed to permit a licensed midwife's use of
154 pharmaceutical agents which are (a) controlled substances as described by Title 21 U.S.C.
155 Section 812 or in chapter 94C, except for those listed in schedule VI; or (b) not identified by
156 rules and regulations promulgated by the board of registration in midwifery as consistent with
157 the scope of midwifery practice.

158 Section 280. A person who desires to be licensed and registered as a licensed midwife
159 shall apply to the board in writing on an application form prescribed and furnished by the board.

160 The applicant shall include in the application statements under oath satisfactory to the board
161 showing that the applicant possesses the qualifications described under section 281 prior to any
162 examination which may be required under section 278. The secretary of administration and
163 finance, pursuant to section 3B of chapter 7, shall establish a license application fee, a license
164 renewal fee and any other fee applicable under sections 276 to 289, inclusive; provided,
165 however, that such license applicant and license renewal fees shall not exceed \$200 biennially.
166 The board, in consultation with the secretary of administration and finance, shall institute a
167 process for applicants to apply for a financial hardship waiver, which may reduce or fully exempt
168 an applicant from paying the fee pursuant to this section. Fees collected by the board shall be
169 deposited into the Quality in Health Professions Trust Fund pursuant to section 35X of chapter
170 10 to support board operations and administration and to reimburse board members for actual
171 and necessary expenses incurred in the performance of their official duties.

172 Section 281. (a) To be eligible for registration and licensure by the board as a licensed
173 midwife, an applicant shall: (i) be of good moral character; (ii) be a graduate of a high school or
174 its equivalent; and (iii) possess a valid certified professional midwife credential from the NARM.
175

176 (b) An applicant for a license to practice midwifery as a certified professional midwife
177 shall submit to the board proof of successful completion of a formal midwifery education and
178 training program as follows:

179 (i) An educational program or institution accredited by the MEAC;

180 (ii) For an applicant certified as a certified professional midwife who is certified before
181 five years after the effective date of this section, and who has completed a midwifery education

182 and training program from an educational program or institution that is not accredited by the
183 MEAC, a midwifery bridge certificate; or

184 (iii) for an applicant who has maintained an authorization to practice midwifery as a
185 licensed certified professional midwife in a state that does not require completion of a midwifery
186 education and training program from an educational program or institution that is accredited by
187 the MEAC, regardless of the date of that authorization, a midwifery bridge certificate.

188 Section 282. The board may license in a like manner, without examination, any midwife
189 who has been licensed in another state under laws which, in the opinion of the board, require
190 qualifications and maintain standards substantially the same as those of this commonwealth for
191 licensed midwives, provided, however, that such midwife applies and remits fees as provided for
192 in section 279.

193 Section 283. (a) The board may, after a hearing pursuant to chapter 30A, revoke, suspend
194 or cancel the license of a licensed midwife, or reprimand or censure a licensed midwife, for any
195 of the reasons set forth in section 61.

196 (b) No person filing a complaint or reporting information pursuant to this section or
197 assisting the board at its request in any manner in discharging its duties and functions shall be
198 liable in any cause of action arising out of providing such information or assistance; provided,
199 however, that the person making the complaint or reporting or providing such information or
200 assistance does so in good faith and without malice.

201 Section 284. When accepting a client for care, a licensed midwife shall obtain the client's
202 informed consent, which shall be evidenced by a written statement in a form prescribed by the
203 board and signed by both the licensed midwife and the client.

204 Section 285. A licensed midwife shall prepare, in a form prescribed by the board, a
205 written plan for the appropriate delivery of emergency care. The plan shall include, but not be
206 limited to: (i) consultation with other health care providers; (ii) emergency transfer; and (iii)
207 access to neonatal intensive care units and obstetrical units or other patient care areas.

208 Section 286. A health care provider that consults with or accepts a transport, transfer or
209 referral from a licensed midwife, or that provides care to a client of a licensed midwife or such
210 client's newborn, shall not be liable in a civil action for personal injury or death resulting from
211 an act or omission by the licensed midwife, unless the professional negligence or malpractice of
212 the health care provider was a proximate cause of the injury or death.

213 Section 287. (a) . The board may petition any court of competent jurisdiction for an
214 injunction against any person practicing midwifery or any branch thereof without a license
215 granted pursuant to sections 276 to 288. Proof of damage or harm sustained by any person shall
216 not be required for issuance of such injunction. Nothing in this section shall relieve a person
217 from criminal prosecution for practicing without a license.

218 (b) Nothing in this section shall prevent or restrict the practice, service or activities of:

219 (i) a person licensed in the commonwealth from engaging in activities within the scope of
220 practice of the profession or occupation for which such person is licensed; provided, however,
221 that such person does not represent to the public, directly or indirectly, that such person is
222 licensed under sections 276 to 288, inclusive, and that such person does not use any name, title
223 or designation indicating that such person is licensed under said sections 276 to 288, inclusive; or

224 (ii) a person employed as a midwife by the federal government or an agency thereof if
225 that person provides midwifery services solely under the direction and control of the
226 organization by which such person is employed;

227 (iii) a traditional birth attendant who provides midwifery services if no fee is
228 contemplated, charged or received, and such person has cultural or religious traditions that have
229 historically included the attendance of traditional birth attendants at birth, and the birth attendant
230 serves only individuals and families in that distinct cultural or religious group;

231 (iv) persons who are members of Native American communities and provide traditional
232 midwife services to their communities; or

233 (v) to any person rendering aid in an emergency.

234 Section 288. A licensed midwife, registered by the board of registration in midwifery
235 pursuant to sections 276 to 288, inclusive, who provides services to any person or beneficiary
236 covered by Title XIX of the Social Security Act or MassHealth pursuant to section 9A of chapter
237 118E, may accept the Medicaid or MassHealth approved rate as payment in full for such
238 services; provided, that a licensed midwife who accepts the Medicaid or MassHealth approved
239 rate pursuant to this section shall be reimbursed at said rate for such services

240 SECTION 16. Chapter 118E of the General Laws, as appearing in the 2018 Official
241 Edition, is hereby amended in section 10A by adding the words “ licensed midwife,” after the
242 word “physician,” in line 15 and after the word “pediatrician,” in line 20, and by inserting at the
243 end of the section the following sentence: - The division shall provide coverage for midwifery
244 services including prenatal care, childbirth and postpartum care provided by a licensed midwife
245 regardless of the site of services.

246 SECTION 17. The board established pursuant to section 110 of chapter 13 of the General
247 Laws shall adopt rules and promulgate regulations pursuant to this act within 1 year from the
248 effective date of this act.

249 SECTION 18. The board established pursuant to section 110 of chapter 13 of the General
250 Laws shall promulgate regulations for the licensure of individuals practicing midwifery prior to
251 the date on which the board commences issuing licenses; provided, however, that individuals
252 practicing midwifery in the commonwealth as of the date on which the board commences issuing
253 licenses shall have 2 years from that date to complete the requirements necessary for licensure.

254 SECTION 19. Nothing in this act shall preclude a person who was practicing midwifery
255 before the effective date of this act from practicing midwifery in the commonwealth until the
256 board establishes procedures for the licensure of midwives pursuant to this act.