

HOUSE No. 4655

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

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 2016
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. Chapter 13 of the General Laws, as so appearing, is hereby amended by
5 adding the following section:-

6 Section 110.

7 (a) There shall be within the department a board of registration in midwifery which shall
8 consist of 8 persons appointed by the governor, 5 of whom shall be midwives with at least 5
9 years of experience in the practice of midwifery and who shall be licensed under sections 259 to
10 276 of chapter 112, 1 of whom shall be a physician licensed to practice medicine under section 2
11 of said chapter 112 with experience working with midwives, 1 of whom shall be a certified
12 nurse-midwife licensed to practice midwifery under section 80B of said chapter 112 and 1 of
13 whom shall be a member of the public. For the initial appointment, the 5 members required to be

14 midwives shall be persons with at least 5 years of experience in the practice of midwifery who
15 meet the eligibility requirements set forth in subsection (a) of section 266 of chapter 112. When
16 making such appointments, the governor shall consider the recommendations of organizations
17 representing certified professional midwives in the commonwealth. Board members shall be
18 residents of the commonwealth. The appointed members shall serve for terms of 3 years. A
19 member shall not serve for more than 2 consecutive terms; provided, however, that a person who
20 is chosen to fill a vacancy in an unexpired term of a prior board member may serve for 2
21 consecutive terms in addition to the remainder of that unexpired term. A member may be
22 removed by the governor for neglect of duty, misconduct or malfeasance or misfeasance in the
23 office after a written notice of the charges against the member and sufficient opportunity to be
24 heard thereon. Upon the death or removal for cause of a member of the board, the governor shall
25 fill the vacancy for the remainder of that member's term after considering suggestions from a list
26 of nominees provided by organizations representing certified professional midwives in the
27 commonwealth.

28 (b) The board shall annually elect from its membership a chair and a secretary who shall
29 serve until their successors have been elected and qualified. The board shall meet at least 4 times
30 annually and may hold additional meetings at the call of the chair or upon the request of 4
31 members. A quorum for the conduct of official business shall be a majority of those appointed.
32 Board members shall serve without compensation, but shall be reimbursed for actual and
33 reasonable expenses incurred in the performance of their duties. The members shall be public
34 employees for the purposes of chapter 258 for all acts or omissions within the scope of their
35 duties as board members.

36 SECTION 3. Section 3B of Chapter 46 of the General Laws, as so appearing, is hereby
37 amended by inserting in line 1 after the word “physician” the following: - “or licensed midwife”.

38 SECTION 4. Chapter 112 of the General Laws, as so appearing, is hereby amended by
39 adding the following 18 sections:—

40 Section 259. As used in sections 259 to 276, inclusive, of this chapter, the following
41 words shall, unless the context requires otherwise, have the following meanings:

42 “Board”, the Board of Registration in Midwifery, established under section 110 of
43 chapter 13.

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

46 “Client”, a person under the care of a midwife and such person’s fetus or newborn.

47 “Department”, the Department of Public Health.

48 “Licensed midwife”, a person registered by the board to practice midwifery under
49 sections 259 to 276, inclusive.

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

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

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

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

56 Section 260. Nothing in sections 259 through 276 inclusive, shall limit or regulate the
57 practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced
58 emergency medical technician. In addition, sections 259 through 276 inclusive shall not apply to
59 any person who, in good faith, engages in the practice of the religious tenets of any church or in
60 any religious act if no fee is contemplated, charged or received, or to any person rendering aid in
61 an emergency. The practice of midwifery shall not constitute the practice of medicine, certified
62 nurse-midwifery, or emergency medical care to the extent that a midwife advises, attends, or
63 assists a person during pregnancy, labor, natural childbirth, or the postpartum period.

64 Section 261. The board shall make, amend and rescind such rules and regulations as it
65 may deem necessary for the proper conduct of its duties. The commissioner may review and
66 approve rules and regulations proposed by the board. Such rules and regulations shall be deemed
67 approved unless disapproved within 15 days of submission to the commissioner; provided,
68 however, that any such disapproval shall be in writing setting forth the reasons for such
69 disapproval.

70 Section 262. The board shall keep a full record of its proceedings and keep a register of
71 all persons registered and licensed by it, which shall be available for public inspection. The
72 register shall contain the name of every living registrant, the registrant’s last known business
73 address and the date and number of the registrant’s registration and certificate as a licensed
74 midwife. The board shall make an annual report containing a full and complete account of all its
75 official acts during the preceding year, including a statement of the condition of midwifery in the
76 commonwealth.

77 Section 263. The board shall:

78 (1) establish regulations that:

79 (A) are consistent with the current job description for midwifery published by the
80 NARM;

81 (B) create processes for licensure application and renewal and for the granting of
82 temporary permits to practice midwifery pending qualification for licensure;

83 (C) permit a licensee to obtain for clients appropriate screening and testing, including but
84 not limited to laboratory tests and ultrasounds;

85 (D) permit a licensee to obtain and administer during the practice of midwifery,
86 antihemorrhagic agents including but not limited to Pitocin (oxytocin), misoprostol and
87 methergine, intravenous fluids for stabilization, vitamin K, eye prophylaxis, oxygen, antibiotics
88 for Group B Streptococcal antibiotic prophylaxis, Rho (D) immune globulin, local anesthetic,
89 epinephrine and other drugs and procedures consistent with the scope of midwifery practice;

90 (E) do not require a licensee to have a nursing degree;

91 (F) do not require a licensed midwife to practice under the supervision of or in
92 collaboration with another healthcare provider or to enter into an agreement, written or
93 otherwise, with another healthcare provider;

94 (G) do not limit the location where a licensee may practice midwifery;

95 (H) do not allow a licensed midwife to use forceps or a vacuum extractor;

96 (I) do not allow a licensed midwife to obtain or administer narcotics; and

97 (J) require a licensed midwife to report a client's data to the MANA Statistical Registry
98 maintained by the Midwives Alliance of North America, or a similar registry maintained by a
99 successor organization approved by the board, unless the client refuses to consent to the
100 reporting of their data.

101 (2) examine applicants and issue licenses to those applicants it finds qualified;

102 (3) renew, suspend, revoke and reinstate licenses;

103 (4) investigate complaints against persons licensed under this chapter;

104 (5) hold hearings and order the disciplinary sanction of a person who violates this chapter
105 or a regulation of the board;

106 (6) adopt professional continuing education requirements for licensed midwives seeking
107 renewal consistent with those maintained by the NARM; and

108 (7) develop practice standards for licensed midwives that shall include, but not be limited
109 to:

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

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

112 (C) participation in peer review; and

113 (D) development of standardized informed consent, reporting and written emergency
114 transport plan forms.

115 Section 264. A person who desires to be licensed and registered as a midwife shall apply
116 to the board in writing on an application form prescribed and furnished by the board. The
117 applicant shall include in the application statements under oath satisfactory to the board showing
118 that the applicant possesses the qualifications required by section 266 preliminary to the
119 examination required by section 265. At the time of filing the application, an applicant shall pay
120 to the department a fee which shall be set by the secretary of administration and finance.

121 Section 265.

122 (a) The board may adopt an exam for applicants for licensure to measure the
123 qualifications necessary for licensure; provided, however, that the board may accept the exam
124 administered by the NARM in connection with granting a certified professional midwife
125 credential in place of and as an equivalent to its own professional examination. In such case,
126 before registration in pursuance of this section, the applicant therefor shall pay the fees set forth
127 in Section 264. In the event the board determines to adopt a separate examination for applicants,
128 the board shall conduct at least one but not more than two examinations in each calendar year.

129 (b) The board may adopt an exam for applicants to measure the qualifications necessary
130 in order to safely utilize the pharmaceutical agents provided for in section 274, and in such case,
131 shall conduct at least one but not more than two examinations in each calendar year.

132 (c) An applicant who has failed an examination administered by the board shall not retake
133 the examination for a period of 6 months. An applicant who has failed an examination more than
134 1 time may not retake the examination unless the applicant has participated in or successfully
135 competed further education and training programs as prescribed by the board.

136 Section 266.

137 (a) To be eligible for registration and licensure by the board as a midwife, an applicant
138 shall:

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

140 (2) be of good moral character;

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

142 (4) possess a valid certified professional midwife credential from the NARM.

143 (b) In addition, to be eligible for registration and licensure by the board as a midwife,

144 (1) beginning January 1, 2020, an applicant must obtain certification by completing a
145 program or pathway accredited by the MEAC;

146 (2) if certification was obtained prior to January 1, 2020, from an education program or
147 pathway not accredited by the MEAC, an applicant must obtain the MBC; or

148 (3) if licensure has been maintained in a state that does not require an education or
149 pathway accredited by the MEAC, an applicant must obtain the MBC regardless of the date of
150 certification.

151 Section 267. Notwithstanding the provisions of section 172 of chapter 6, the board shall
152 obtain all available criminal offender record information from the criminal history systems board
153 on an applicant by means of fingerprint checks, and from the Federal Bureau of Investigation for
154 a national criminal history records check. The information obtained thereby may be used by the
155 board to determine the applicant's eligibility for licensing under this chapter. Receipt of criminal
156 history record information by a private entity is prohibited. If the board determines that such

157 information has a direct bearing on the applicant's ability to serve as a midwife, such information
158 may serve as a basis for the denial of the application.

159 Section 268. Fees collected by the board shall be deposited into the Quality in Health
160 Professions Trust Fund pursuant to section 35X of chapter 10 to support board operations and
161 administration and to reimburse board members for actual and necessary expenses incurred in
162 the performance of their official duties.

163 Section 269. The board may license in like manner, without examination, any certified
164 professional midwife who has been licensed in another state under laws which, in the opinion of
165 the board, require qualifications and maintain standards substantially the same as those of this
166 commonwealth for licensed midwives, provided such certified professional midwife applies and
167 remits fees as provided for in section 264.

168 Section 270.

169 (a) The Board may, after a hearing pursuant to chapter 30A, revoke, suspend or cancel
170 the license of a midwife, or reprimand or censure a licensed midwife, for any of the reasons set
171 forth in section 61 of chapter 112.

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

177 Section 271. When accepting a client for care, a midwife shall obtain the client's
178 informed consent, which shall be evidenced by a written statement in a form prescribed by the
179 board and signed by both the midwife and the client. The form shall certify that full disclosure
180 has been made and acknowledged by the client as to each of the following items, with the
181 client's acknowledgement evidenced by a separate signature adjacent to each item in addition to
182 the client's signature and the date at the end of the form:

183 (1) the name, business address, telephone number and license number of the Licensed
184 Midwife;

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

186 (3) the nature and scope of the care to be given, including a description of any
187 antepartum, intrapartum and/or postpartum conditions for which consultation, transfer of care or
188 transport to a hospital is recommended or required;

189 (4) a copy of the medical emergency or transfer plan particular to each client as required
190 by section 272;

191 (5) the right of the client to file a complaint with the board and instructions on how to file
192 a complaint with the board;

193 (6) a statement indicating that the client's records and any transaction with the licensed
194 midwife are confidential;

195 (7) a disclosure of whether the licensed midwife carries malpractice or liability insurance;
196 and

197 (8) any further information as required by the board.

198 Section 272. A midwife shall prepare, in a form prescribed by the board, a written plan
199 for the appropriate delivery of emergency care. The plan shall address the following:

200 (1) consultation with other health care providers;

201 (2) emergency transfer; and

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

203 Section 273. The midwife shall only accept and provide care to clients in accordance
204 with the scope and standards of practice identified in the rules adopted pursuant to section 263.

205 Section 274. A midwife (i) qualified by examination under the provisions of subsection
206 (b) of section 265, if the board elects to adopt such examination, or (ii) who has appropriate
207 pharmacology training as otherwise established by rule by the board pursuant to section 263,
208 may obtain and administer prophylactic ophthalmic medication, anti-hemorrhagic medications
209 including but not limited to Pitocin (oxytocin), misoprostol and methergine, vitamin K, eye
210 prophylaxis, antibiotics for Group B Streptococcal antibiotic prophylaxis, Rho (D) immune
211 globulin, intravenous fluids, oxygen for maternal or fetal distress and infant resuscitation,
212 epinephrine and local anesthetic and may administer such other drugs or medications as
213 prescribed by a physician or certified nurse-midwife or otherwise consistent with the scope of
214 midwifery practice. A pharmacist who dispenses such drugs to a licensed midwife shall not be
215 liable for any adverse reactions caused by any method of use by the midwife.

216 Section 275. A health care provider that consults with or accepts a transport, transfer or
217 referral from a licensed midwife, or that provides care to a client of a licensed midwife or such
218 client's newborn, shall not be liable in a civil action for personal injury or death resulting from

219 an act or omission by the licensed midwife, unless the professional negligence or malpractice of
220 the health care provider was a proximate cause of the injury or death.

221 Section 276.

222 (a) Other than as set forth in the second sentence of section 260, any person who
223 practices midwifery in the commonwealth without a license granted pursuant to sections 259 to
224 276, inclusive, shall be punished by a fine of not less than \$100 nor more than \$1,000, or by
225 imprisonment for not more than 3 months, or by both. The board may petition in any court of
226 competent jurisdiction for an injunction against any person practicing midwifery or any branch
227 thereof without a license. Such injunction may be issued without proof of damage sustained by
228 any person. Such injunction shall not relieve such person from criminal prosecution for
229 practicing without a license.

230 (b) Nothing in this section shall be construed to prevent or restrict the practice, service or
231 activities of (1) any person licensed in the commonwealth from engaging in activities within the
232 scope of practice of the profession or occupation for which such person is licensed, provided that
233 such person does not represent to the public, directly or indirectly, that such person is licensed
234 under sections 259 to 276, inclusive, and that such person does not use any name, title or
235 designation indicating that such person is licensed under said sections 259 to 276, inclusive; or
236 (2) any person employed as a midwife by the federal government or an agency thereof if that
237 person provides midwifery services solely under the direction and control of the organization by
238 which such person is employed.

239 SECTION 5. The board shall adopt rules and regulations pursuant to section 263 of
240 chapter 112 of the General Laws within 365 days after the effective date of this act. Within 180

241 days after the board adopts the rules and regulations pursuant to said section 263 of said chapter
242 112, the board may commence the issuing of licenses.

243 SECTION 6. Nothing in this act shall preclude any person who was practicing midwifery
244 before the effective date of this act from practicing midwifery in the commonwealth until the
245 board establishes procedures for the licensure of midwives pursuant to sections 259 to 276,
246 inclusive, of chapter 112 of the General Laws.

247 SECTION 7. The board, established pursuant to section 110 of chapter 13 of the General
248 Laws, shall establish regulations for the licensure of individuals practicing midwifery prior to the
249 date on which the board commences issuing licenses, provided that individuals practicing out-of-
250 hospital midwifery in the commonwealth as of the date on which the board commences issuing
251 licenses shall have 2 years from the date on which the board commences issuing licenses to
252 provide proof of passage of a licensing examination recognized by the board and proof of
253 completion of any continuing education requirements necessary for re-licensure.