

2009 IDAHO MIDWIFERY LICENSURE BILL

AN ACT

RELATING TO THE LICENSURE OF MIDWIVES; AMENDING TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 53, TITLE 54, IDAHO CODE, TO STATE LEGISLATIVE PURPOSE, TO DEFINE TERMS, TO REQUIRE A LICENSE TO PRACTICE MIDWIFERY, TO ESTABLISH A BOARD OF MIDWIFERY, TO PROVIDE POWERS AND DUTIES OF THE BOARD, TO SPECIFY REQUIREMENTS FOR LICENSURE, TO PROVIDE EXEMPTIONS FROM THE APPLICATION OF THIS CHAPTER, TO PROVIDE FOR HANDLING OF LICENSURE FEES, TO PROVIDE FOR DISCIPLINE FOR UNPROFESSIONAL CONDUCT BY MIDWIVES, TO PROVIDE FOR RECORD KEEPING AND DISCLOSURE REQUIREMENTS, TO ELIMINATE VICARIOUS LIABILITY FOR HEALTH CARE PROVIDERS CONSULTING WITH OR ACCEPTING A REFERRAL FROM A LICENSED MIDWIFE, AND TO PROVIDE PENALTIES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 54, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 53, Idaho Code, and to read as follows:

CHAPTER 53

MIDWIFERY

54-5301. PURPOSE AND INTENT. The legislature finds and declares that the practice of midwifery has been a part of the culture and tradition of Idaho since before pioneer days and that for personal, religious and economic reasons some Idaho citizens will choose midwifery care. The purpose of this legislation is to preserve the rights of families to deliver their children in a setting of their choice, to provide additional maternity care options for Idaho's families, to protect the public health, safety, and welfare, and to provide a mechanism to assure quality care.

54-5302. DEFINITIONS. As used in this chapter:

- (1) "Board" means the Idaho state board of midwifery.
- (2) "Bureau" means the Idaho state bureau of occupational licenses.
- (3) "Certified Professional Midwife" (CPM) means a person who is certified by the North American Registry of Midwives (NARM) or any successor organization.

- (4) “Client” means a woman under the care of a licensed midwife, as well as her fetus or newborn child.
- (5) “Idaho Midwifery Council” (IMC) means the professional organization representing midwives in Idaho.
- (6) “Idahoans for Midwives” (IFM) means the Idaho consumer organization by that name that promotes and supports midwifery care in Idaho.
- (7) “Licensed midwife” means a person who holds a current license issued by the board under this chapter to engage in the practice of midwifery, who shall be designated “L.M.”
- (8) “Midwifery Education Accreditation Council” (MEAC) means and refers to the organization of that name established in 1991 and recognized by the U.S. Department of Education as an accrediting agency for midwifery education programs and institutions.
- (9) “Midwives Alliance of North America” (MANA) means and refers to the international professional organization representing all midwives.
- (10) “NACPM essential documents” refers to those documents adopted by NACPM that identify the nature of and standards of practice for responsible midwifery practice.
- (11) “National Association of Certified Professional Midwives” (NACPM) refers to the national organization for Certified Professional Midwives.
- (12) “North American Registry of Midwives” (NARM) means the international certification agency that establishes and administers certification for the CPM credential.
- (13) “Practice of midwifery” means providing maternity care for women and their newborns during the antepartum, intrapartum, and postpartum periods. The postpartum period for both maternal and newborn care may not exceed six weeks from the date of delivery.

54-5303. BOARD OF MIDWIFERY CREATED.

- (1) There is hereby established in the department of self-governing agencies, bureau of occupational licenses, a board of midwifery.
- (2) The board shall consist of five (5) members appointed by the governor, three (3) of whom must be licensed pursuant to this chapter, one (1) of whom must be a licensed physician who is board certified in either obstetrics/gynecology or family medicine, maintains current hospital privileges, and has provided primary maternity care for at least twenty births in the twelve months prior to the appointment, and one (1) of whom shall be a member of the public with an interest in the rights of consumers of midwifery services.

(3) One (1) member of the initial board shall be appointed for a one (1) year term of office, one (1) member of the initial board shall be appointed for a two (2) year term of office, one (1) member of the initial board shall be appointed for a three (3) year term of office, one (1) member shall be appointed for a four (4) year term of office, and one (1) member of the initial board shall be appointed for a five (5) year term of office. Thereafter, the term of office for each board member shall be five (5) years.

(4) In making appointments to the board, the Governor's selection shall not be limited to nominations he receives, however, consideration shall be given to recommendations made by the Idaho midwifery council and Idahoans for midwives.

(5) The initial three (3) licensed midwife members of the board must be persons with at least three (3) years of experience in the practice of midwifery, with current CPM certification, who are eligible to become licensed pursuant to this chapter.

(6) The three (3) members of the board who are licensed midwives must be licensed pursuant to this chapter, must actively practice midwifery in the State of Idaho for the duration of their appointment, and must have been a practicing midwife in the state of Idaho for at least three (3) years immediately preceding their appointment.

(7) In the event of the death, resignation or removal of any member of the board before the expiration of the term to which he or she is appointed, the vacancy shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(8) Board members shall serve at the pleasure of the governor.

(9) Within thirty (30) days after its appointment, the initial board shall hold a meeting and elect a chairperson. The board shall meet at least annually thereafter, and may hold additional meetings at the call of the chairperson or at the written request of any two (2) members of the board. A majority of the board shall constitute a quorum. The vote of a majority of members present at a meeting wherein a quorum is present shall determine the action of the board.

54-5304. POWERS AND DUTIES. The board shall have the authority and responsibility to:

(1) Receive applications for licensure, determine the qualifications of persons applying for licensure, provide licenses to applicants qualified under this chapter, renew, suspend, revoke and reinstate licenses;

(2) Establish and collect fees for examination of applicants, licensure, and renewal of licensure;

(3) Establish the minimum amount and type of continuing education to be required for each licensed midwife seeking renewal of his or her license;

- (4) Investigate complaints against persons who are licensed under this chapter;
- (5) Undertake, when appropriate, disciplinary proceedings and disciplinary action against persons licensed under this chapter;
- (6) Promulgate and adopt rules, pursuant to chapter 52, title 67, Idaho Code, necessary to administer this chapter. To the degree they are consistent with this chapter, rules should be consistent with the current job description for the profession published by NARM and consistent with standards regarding the practice of midwifery established by the NACPM or a successor organization;
- (7) Authorize, by written agreement, the bureau of occupational licenses to act as agent in its interest;
- (8) Provide such other services and perform such other functions as are consistent with this chapter and necessary to fulfill its responsibilities.

54-5305. RULEMAKING.

- (1) The rules adopted by the board must:
 - (a) allow a midwife to obtain and administer, during the practice of midwifery, oxygen, oxytocin as a postpartum anti-hemorrhagic agent, injectible local anesthetic for the repair of lacerations that are no more extensive than second degree, antibiotics for group b streptococcus prophylaxis consistent with guidelines of the United States centers for disease control and prevention (CDC), epinephrine administered via a metered dose auto-injector, intravenous fluids for stabilization of the woman, Rho(D)Immune Globulin, vitamin K and eye prophylactics to the baby;
 - (b) allow the use of no other legend drugs except those of a similar nature and character as determined by the board to be consistent with the practice of midwifery provided that at least one hundred twenty (120) days advance notice of the proposal to allow the use of such drugs is given to the board of pharmacy and the board of medicine and neither board objects to the addition of such drugs to the midwifery formulary;
 - (c) define a protocol for use by licensed midwives of drugs approved by (a) and (b) above which shall include methods of obtaining, storage and disposal of such drugs and indication for use, dosage, route of administration, and duration of treatment;
 - (d) define a protocol for medical waste disposal; and
 - (e) establish scope and practice standards regarding antepartum, intrapartum, postpartum and newborn care which must at a minimum:

(i) prohibit a licensed midwife from providing care for a client with a history of disorders, diagnoses, conditions or symptoms that include: placental abnormality, multiple gestation, non-cephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, birth under 37 weeks and after 42 completed weeks gestational age, a history of more than one prior cesarean section, a cesarean section within eighteen (18) months of the current delivery, or any cesarean section that was surgically closed with a classical or vertical uterine incision, Rh or other blood group or platelet sensitization, hematological or coagulation disorders, a body mass index of 40.0 or higher at the time of conception, prior chemotherapy and/or radiation treatment for a malignancy, previous preeclampsia resulting in premature delivery, cervical insufficiency, or HIV positive status;

(ii) prohibit a licensed midwife from providing care for a client with a history of the following disorders, diagnoses, conditions or symptoms unless such disorders, diagnoses, conditions or symptoms are being treated, monitored or managed by a physician licensed pursuant to chapter 18, title 54, Idaho Code: diabetes, thyroid disease, epilepsy, hypertension, cardiac disease, pulmonary disease, renal disease, gastrointestinal disorders, previous major surgery of the pulmonary system, cardiovascular system, urinary tract, or gastrointestinal tract, abnormal cervical cytology, sleep apnea, previous bariatric surgery, hepatitis, history of illegal drug use, and excessive prescription drug use;

(iii) require a licensed midwife to recommend that a client see a physician licensed under chapter 18, title 54, Idaho Code, and to document and maintain a record as required by section 54-5312, Idaho Code, if such client has a history of disorders, diagnoses, conditions or symptoms that include: previous complicated pregnancy, previous cesarean section, previous pregnancy loss in second or third trimester, previous spontaneous premature labor, previous preterm rupture of membranes, previous preeclampsia, previous hypertensive disease of pregnancy, parvo, toxo, CMV, HSV, previous maternal/newborn group b streptococcus infection, a body mass index of at least 35.0 but less than 40.0 at the time of conception, underlying family genetic disorders with potential for transmission, and psychosocial situations that may complicate pregnancy;

(iv) require a licensed midwife to facilitate mandatory and immediate transfer of care to a hospital for emergency care for disorders, diagnoses, conditions or symptoms that include: maternal fever in labor, suggestion of fetal jeopardy such as bleeding or meconium or abnormal fetal heart tones, non-cephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, second stage labor after two hours of initiation of pushing when mother has had a previous cesarean section, current spontaneous premature labor, current pre-term premature rupture of membranes, current pre-eclampsia, current hypertensive disease of pregnancy, continuous uncontrolled bleeding, bleeding which necessitates the administration of more than two doses of oxytocin (or other anti-hemorrhagic agent), delivery injuries to bladder or bowel, grand mal seizure, uncontrolled vomiting, coughing or vomiting of blood, severe chest pain, sudden onset of shortness of breath and associated labored breathing. A transfer of care under this section shall be accompanied by the client's medical record, the licensed

midwife's assessment of the client's current condition and a description of the care provided by the licensed midwife prior to transfer;

(v) establish a written plan for emergency transfer and transport as required in (iv) above and for notifying the hospital to which a mother will be transferred in the case of an emergency. If a mother or infant is transferred in an emergency, the licensed midwife shall notify the hospital when the transfer is initiated and accompany the mother or infant to the hospital if feasible, or communicate by phone with the hospital if unable to be present personally, and shall provide the patient's medical record. The record shall include the mother's name, address, list of diagnosed medical conditions, list of prescription or over the counter medications regularly taken, history of previous allergic reactions to medications, if feasible the patient's current medical condition and description of the care provided by the midwife, and next of kin contact information.

(f) establish and operate a system of peer review for licensed midwives that shall include, but not be limited to, the appropriateness, quality, utilization, and the ethical performance of midwifery care.

(2) The rules adopted by the board may not:

(a) require a licensed midwife to have a nursing degree or diploma;

(b) except as a condition imposed by disciplinary proceedings by the board, require a licensed midwife to practice midwifery under the supervision of another health care provider;

(c) except as a condition imposed by disciplinary proceedings by the board, require a licensed midwife to enter into an agreement, written or otherwise, with another health care provider;

(d) limit the location where a licensed midwife may practice midwifery;

(e) permit a licensed midwife to use vacuum extraction or forceps as an aid in the delivery of a newborn;

(f) grant a licensed midwife prescriptive privilege;

(g) permit a licensed midwife to perform abortions.

54-5306. LICENSURE.

(1) The board shall grant a license to a person who submits a completed application, pays the required license fee established by the board, and meets the qualifications set forth in Section 54-5307.

(2) All licenses issued under this chapter shall be for a term of one (1) year, and shall expire on the birthday of the licensee unless renewed in the manner prescribed by rule. Except as set forth in this Chapter, rules governing procedures and conditions for license renewal and reinstatement shall be in accordance with Section 67-2614.

(3) It is a misdemeanor for any person to assume or use the title or designation “licensed midwife”, “L.M.”, or any other title, designation, words, letters, abbreviations, sign, card, or device to indicate to the public that such person is licensed to practice midwifery pursuant to this chapter unless such person is so licensed. A person convicted of a second or subsequent offense under this section shall be guilty of a felony.

(4) Except as provided in Section 54-5309, it shall constitute a misdemeanor for any person to engage in the practice of midwifery without a license. A person convicted of a second or subsequent offense under this section shall be guilty of a felony.

54-5307. QUALIFICATIONS.

(1) A person shall be eligible to be licensed as a midwife if the person has:

(a) Provided proof of current certification as a CPM by NARM or a successor organization;

(b) Filed a board-approved application for licensure and paid the required fees; and

(c) Provided documentation of successful completion of board-approved MEAC accredited courses in pharmacology, the treatment of shock/IV therapy and suturing specific to midwives.

(2) For any midwife who has been continuously practicing in Idaho for at least five years prior to July 1, 2009, the qualifications for licensure and renewal of a license under Section 54-5307 (1)(a) may be waived if such midwife documents to the board:

(a) primary attendance at seventy-five (75) births within the past ten (10) years, ten (10) of which occurred in the preceding two (2) years; and

(b) in addition to completion of the courses listed in (1)(c) above, successful completion of board approved courses in CPR and neonatal resuscitation, and

(c) complete practice data for the preceding (2) two years on a form provided by the board.

(3) Any midwife who wishes to qualify for the waiver permitted by subsection (2) above must apply for licensure and provide the required documentation before July 1, 2010.

54-5308. EXEMPTIONS. This chapter does not apply to:

- (1) Certified nurse midwives (CNM) authorized under the board of nursing to practice in Idaho, unless they chose to become licensed midwives. CNMs who are also licensed midwives remain subject to the jurisdiction of the board of nursing as well as to the provisions of this chapter;
- (2) Student midwives in training under the direct supervision of licensed midwives as required by NARM;
- (3) A person engaged in good faith in the practice of the religious tenets of any church or religious act where no fee is contemplated, charged, or received, whose license to practice midwifery has not been revoked and who has not been convicted of a felony for violation of section 54-5306, Idaho Code;
- (4) A person administering a remedy, diagnostic procedure or advice as specifically directed by a physician;
- (5) A person rendering aid in an emergency, where no fee for the service is contemplated, charged or received;
- (6) A person administering care to a member of the family;
- (7) The practice of a profession by individuals who are licensed, certified or registered under other laws of this state and are performing services within the authorized scope of practice.

54-5309. FEES.

- (1) All fees received under the provisions of this chapter shall be paid to the department of self-governing agencies, bureau of occupational licenses, and deposited in the state treasury to the credit of the occupational licenses fund. All costs and expenses incurred under the provisions of this chapter shall be a charge against and paid from said fund. In no case may any salary, expense or other obligation of the board be charged against the general fund.
- (2) The fee for licensure may not exceed one thousand dollars (\$1,000).

54-5310. CLIENT PROTECTION AND UNPROFESSIONAL CONDUCT. A licensed midwife or applicant for licensing, renewal or reinstatement may not: a) disregard a client's dignity or right to privacy as to her person, condition, possessions or medical record; b) breach any legal requirement of confidentiality with respect to a client, unless ordered by a court of law; c) submit a birth certificate known by the person to be false or fraudulent, or willfully make or file false or incomplete reports or records in the practice

of midwifery; d) fail to provide information to allow a client to give a fully informed consent; (e) engage in the practice of midwifery while impaired because of the use of alcoholic beverages or drugs; or (f) violate other standards of conduct as determined by the board in rules adopted for the regulation of the practice of midwifery.

54-5311. DISCLOSURE AND RECORD KEEPING.

(1) Prior to initiating care, the licensed midwife shall obtain a signed Informed Consent agreement for each client, acknowledging receipt at a minimum of the following information: (a) the licensed midwife's training and experience; (b) how to obtain a copy of the rules adopted under this chapter; (c) how to obtain a copy of the NACPM essential documents and NARM job description; (d) instructions for filing complaints with the board; (e) whether or not the licensed midwife has professional liability insurance coverage; (f) a written protocol for emergencies, including hospital transport, particular to each client; (g) a description of the procedures, benefits and risks of home birth, primarily those conditions that may arise during delivery; and (h) any other information required by board rule.

(2) The licensed midwife shall maintain a record of all signed informed consent agreements for a minimum of nine (9) years after the last day of care for a client.

(3) Prior to providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in 54-5305(1)(e)(ii), the licensed midwife shall provide written notice to the client that the client must obtain care from a physician licensed pursuant to chapter 18, title 54, Idaho code as a condition of her ability to obtain maternity care from the licensed midwife. Prior to providing care for a client who has a history of disorders, diagnoses, conditions or symptoms identified in 54-5305(1)(e)(iii) or who has had a previous cesarean section, the licensed midwife shall provide written notice to the client that the client is advised to consult with a physician licensed pursuant to chapter 18, title 54, Idaho Code, during her pregnancy. The midwife must obtain the client's signed acknowledgement of receipt of the notice.

(4) A licensed midwife submitting an application to renew a license shall compile and submit to the board complete practice data for the twelve months preceding the date of the application. Such information shall be provided in form and content as prescribed by rule. At a minimum, such information shall include:

- (a) The number of women to whom care was provided;
- (b) The number of deliveries performed;
- (c) The apgar scores of delivered infants;
- (d) The number of prenatal transfers;
- (e) The number of transfers during labor, delivery, and immediately following birth;

(f) Any perinatal deaths; and

(g) Other morbidity statistics as required by the board.

54-5312. VICARIOUS LIABILITY. No physician, hospital, emergency room personnel, emergency medical technician, or ambulance personnel shall be liable for any injury resulting from an act or omission of a licensed midwife, even if the health care provider has consulted with or accepted a referral from the licensed midwife. A physician who consults with a licensed midwife but who does not examine or treat a client of the midwife shall not be deemed to have created a physician-patient relationship with such client.

SECTION 2. The board of midwifery shall report on the status of the board, and the practice of licensed midwifery in Idaho to the sixty second Idaho Legislature, second regular session in 2014.

SECTION 3. The provisions of this act shall take effect on July 1, 2009, provided however, that section 54-5306(4), as enacted herein, shall not take effect until July 1, 2010.

SECTION 4. This chapter is repealed effective July 1, 2014, unless, prior to that date, the Idaho legislature approves the continuation of this subsection by repeal of this sunset clause.