SENATE DOCKET, NO. 1327 FILED ON: 1/19/2023

SENATE . . . . . No. 1457

The Commonwealth of Massachusetts

PRESENTED BY:

Rebecca L. Rausch

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act promoting access to midwifery care and out-of-hospital birth options.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Rebecca L. Rausch	*Norfolk, Worcester and Middlesex*	
Jack Patrick Lewis	*7th Middlesex*	*1/30/2023*
Hannah Kane	*11th Worcester*	*1/31/2023*
Jason M. Lewis	*Fifth Middlesex*	*2/1/2023*
Joanne M. Comerford	*Hampshire, Franklin and Worcester*	*2/1/2023*
Lydia Edwards	*Third Suffolk*	*2/3/2023*
Patrick M. O'Connor	*First Plymouth and Norfolk*	*2/7/2023*
Thomas M. Stanley	*9th Middlesex*	*2/8/2023*
Walter F. Timilty	*Norfolk, Plymouth and Bristol*	*2/8/2023*
Vanna Howard	*17th Middlesex*	*2/9/2023*
Anne M. Gobi	*Worcester and Hampshire*	*2/9/2023*
James B. Eldridge	*Middlesex and Worcester*	*2/10/2023*
John F. Keenan	*Norfolk and Plymouth*	*2/28/2023*
Patricia D. Jehlen	*Second Middlesex*	*3/29/2023*
Michael J. Barrett	*Third Middlesex*	*3/29/2023*
Brendan P. Crighton	*Third Essex*	*3/29/2023*
Bruce E. Tarr	*First Essex and Middlesex*	*3/29/2023*
Robyn K. Kennedy	*First Worcester*	*5/12/2023*

Liz Miranda	*Second Suffolk*	*6/2/2023*
Manny Cruz	*7th Essex*	*6/15/2023*
Susan L. Moran	*Plymouth and Barnstable*	*7/27/2023*
Adam Gomez	*Hampden*	*9/29/2023*
Carmine Lawrence Gentile	*13th Middlesex*	*10/31/2023*
Jacob R. Oliveira	*Hampden, Hampshire and Worcester*	*11/6/2023*
Nick Collins	*First Suffolk*	*1/23/2024*
Pavel Payano	*First Essex*	*1/30/2024*

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SENATE . . . . . No. 1457

By Ms. Rausch, a petition (accompanied by bill, Senate, No. 1457) of Rebecca L. Rausch, Jack Patrick Lewis, Hannah Kane, Jason M. Lewis and other members of the General Court for legislation to promote access to midwifery care and out-of-hospital birth options. Public Health.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act promoting access to midwifery care and out-of-hospital birth options.

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

SECTION 1. Section 9 of chapter 13 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting, in line 7, after the word "counselors" the following words:- , the board of registration in midwifery.

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

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

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

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

actual and reasonable expenses incurred in the performance of their duties. The members shall be public employees for the purposes of chapter 258 for all acts or omissions within the scope of their duties as board members.

SECTION 3. Section 1E of chapter 46 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the definition of "Physician" the following definition:-

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

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

SECTION 5. Section 1 of chapter 94C of the general laws, as appearing in the 2020 Official Edition, is hereby amended by inserting after the definition of "Isomer" the following definition:-

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

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

(j) The commissioner shall promulgate regulations which provide for the automatic registration of licensed midwives, upon the receipt of the fee as herein provided, to issue written prescriptions in accordance with the provisions of sections 279 of chapter 112 and the regulations issued by the board of registration in midwifery under said section 279 of chapter

112, unless the registration of such licensed midwife has been suspended or revoked pursuant to the provisions of section 13 or section 14 or unless such registration is denied for cause by the commissioner pursuant to the provisions of chapter 30A. Prior to promulgating such regulations, the commissioner shall consult with the board of registration in midwifery.

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

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

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

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

SECTION 11. The definition of “medical peer review committee” in section 1 of chapter 111 of the General Laws, as appearing in the 2020 official edition, is hereby amended by adding the following sentence:- “Medical peer review committee” shall include a committee or association that is authorized by a midwifery society or association to evaluate the quality of

midwifery services or the competence of midwives and suggest improvements in midwifery practices to improve patient care.

SECTION 12. Section 202 of said chapter 111, as so appearing, is hereby amended by inserting, in the second and third paragraphs, after the word “attendance”, in each instance, the following words:- or midwife in attendance.

SECTION 13. Said section 202, as so appearing, is hereby further amended by inserting, in the fourth paragraph, after the word “attendance” the following words:- or without the attendance of a midwife,.

SECTION 14. Section 204 of said chapter 111, as so appearing, is hereby amended by inserting, in lines 7, 12 and 28, after the word “medicine”, in each instance, the following word:- , midwifery.

SECTION 15. Chapter 112 of the General Laws, as appearing in the 2020 Official Edition, is hereby amended by adding the following new sections:-

Section 276. As used in sections 276 to 288, inclusive, of this chapter, the following words shall have the following meanings unless the context clearly requires otherwise:

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

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

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

"Client", a person under the care of a licensed midwife, as described by a written statement pursuant to section 284 of this chapter.

"Licensed midwife", a person registered by the board to practice midwifery in the commonwealth under sections 276 to 288, inclusive, of this chapter.

"MBC", the midwifery bridge certificate issued by the NARM or its successor credential.

"MEAC", the Midwifery Education Accreditation Council or its successor organization.

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

"NARM", the North American Registry of Midwives or its successor organization.

Section 277. Nothing in sections 276 to 288, inclusive, of this chapter shall limit or regulate the practice of a licensed physician, certified nurse-midwife, or licensed basic or advanced emergency medical technician. The practice of midwifery shall not constitute the practice of medicine, certified nurse-midwifery or emergency medical care.

Section 278. (a) The board shall:

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

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

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

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

(C) investigating complaints against persons licensed under sections 276 to 288, inclusive, of this chapter;

(D) holding hearings and ordering the disciplinary sanction of a person who violates sections 276 to 288, inclusive, of this chapter or a regulation of the board;

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

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

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

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

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

(C) participation in peer review; and

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

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

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

(b) Nothing in this section shall limit the board's authority to impose sanctions that are considered reasonable and appropriate by the board. A person subject to any disciplinary action taken by the board under this section or taken due to a violation of any other law, rule or regulation may file a petition for judicial review pursuant to section 64 of this chapter.

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

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

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

Section 280. A person who desires to be licensed and registered as a licensed midwife shall apply to the board in writing on an application form prescribed and furnished by the board. The applicant shall include in the application statements under oath satisfactory to the board showing that the applicant possesses the qualifications described under section 281 prior to any examination which may be required under section 278. The secretary of administration and finance, pursuant to section 3B of chapter 7, shall establish a license application fee, a license renewal fee and any other fee applicable under sections 276 to 288, inclusive, of this chapter; provided, however, that such license applicant and license renewal fees shall not exceed $200 biennially. The board, in consultation with the secretary of administration and finance, shall institute a process for applicants to apply for a financial hardship waiver, which may reduce or fully exempt an applicant from paying the fee pursuant to this section. Fees collected by the board shall be deposited into the Quality in Health Professions Trust Fund pursuant to section 35X of chapter 10 to support board operations and administration and to reimburse board members for actual and necessary expenses incurred in the performance of their official duties.

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

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

(i) a certificate of completion or equivalent from an educational program or institution accredited by the MEAC; or

(ii) an MBC, provided that an applicant: (1) is certified as a certified professional midwife within 5 years after the effective date of this section and completed a midwifery education and training program from an educational program or institution that is not accredited by the MEAC; or (2) is licensed as a 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 MEAC.

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

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

(b) No person filing a complaint or reporting information pursuant to this section or assisting the board at its request in any manner in discharging its duties and functions shall be liable in any cause of action arising out of providing such information or assistance; provided, however, that the person making the complaint or reporting or providing such information or assistance does so in good faith and without malice. Section 284. When accepting a client for care, a licensed midwife shall obtain the client’s informed consent, which shall be evidenced by a written statement in a form prescribed by the board and signed by both the licensed midwife and the client.

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

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

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

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

(i) a person licensed in the commonwealth from engaging in activities within the scope of practice of the profession or occupation for which such person is licensed; provided, however, that such person does not represent to the public, directly or indirectly, that such person is licensed under sections 276 to 289, inclusive, and that such person does not use any name, title or designation indicating that such person is licensed under said sections 276 to 289, inclusive; or

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

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

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

(v) any person rendering aid in an emergency.

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

SECTION 16. Chapter 118E of the General Laws, as appearing in the 2020 Official Edition, is hereby amended in section 10A by adding the words “licensed midwife,” after the word “physician,” in line 15 and after the word “pediatrician,” in line 20, and by inserting at the end of the section the following sentence:- The division shall provide coverage for midwifery services including prenatal care, childbirth and postpartum care provided by a licensed midwife regardless of the site of services.

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

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

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

SECTION 20. The department of public health shall promulgate regulations within 1 year from the effective date of this act governing birth centers, consistent with standards set forth by the American Association of Birth Centers, including without limitation authorizing licensed professional midwives to practice in birth centers as primary birth attendants, director of birth centers, and director of clinical affairs. Licensed professional midwives practicing in licensed birth centers shall not be required to enter into any agreement for supervision or collaboration with any other healthcare provider or hospital.