HB 1056

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 1056 (Delegate A. Kelly, *et al.*)
Health and Government Operations

Health Occupations - Licensed Midwives

This bill establishes the State Board of Midwives within the Department of Health and Mental Hygiene (DHMH) and requires individuals to be licensed to practice "midwifery" by October 1, 2013, with specified exceptions. The bill also establishes the State Board of Midwifery Fund.

Fiscal Summary

State Effect: General fund expenditures increase by at least $28,900 in FY 2013 to administer the board. Special fund revenues increase by an indeterminate amount beginning in FY 2014 from new licensing fee revenues. Future year expenditures reflect special funding of the board, annualization, and inflation for administrative costs.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
SF Revenue	$0	-	-	-	-
GF Expenditure	$28,900	$0	$0	$0	$0
SF Expenditure	$0	$33,000	$34,200	$35,100	$36,100
Net Effect	($28,900)	($33,000)	($34,200)	($35,100)	($36,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Meaningful for midwives who must be licensed under the bill.

Analysis

Bill Summary: "Midwifery" means providing maternity care for women during the antepartum, intrapartum, and postpartum period, including the independent management

of deliveries and care for the newborn. "Midwifery" includes (1) the detection of abnormal conditions in the mother and newborn; (2) the execution of emergency measures in a life-threatening situation; (3) the possession and dispensing of lifesaving medications and other substances used in the practice of midwifery in the course of treating a mother or a newborn in accordance with the Standards for Practice of the National Association of Certified Professional Midwives (NACPM); and (4) well-woman care and family planning.

A licensed midwife may:

- apply sutures for the purpose of repairing first, second, and third degree perineal tears;
- administer a local anesthetic in connection with the application of sutures;
- order medical tests and therapeutic doses of prescription drugs commonly used in the practice of midwifery; and
- obtain specified prescription drugs and other substances from a licensed pharmacist, a manufacturer, or a wholesale distributor regulated by the State Board of Pharmacy.

A licensed pharmacist, a manufacturer, or a wholesale distributor, when providing a prescription drug to a licensed midwife in accordance with the bill, is not civilly liable for any act or omission in providing the prescription drug if the act or omission is not one of gross negligence.

Midwife License

To qualify for a license, an applicant must (1) be of good moral character; (2) be at least 18 years of age; (3) be a high school graduate or have completed an equivalent education; (4) pass the North American Registry of Midwives (NARM) examination; and (5) hold a valid professional midwife credential from NARM. The board may waive the examination requirement for individuals who have practiced midwifery for at least five years in another state under specified circumstances.

The following individuals are exempt from the licensure requirement: (1) registered nurses who are certified to practice nurse midwifery; (2) students and apprentices under the supervision of a licensed midwife; (3) specified individuals otherwise licensed in the State who are engaging in activities within their scope of practice; (4) midwives employed by the federal government; and (5) specified individuals who provide midwifery services in accordance with religious beliefs.

The bill specifies licensing procedures for initial licensure, biennial renewal, inactive status, and reinstatement.

State Board of Midwives

The board consists of seven members: five licensed midwives and two consumers. Board members serve staggered four-year terms and are entitled to compensation in accordance with the board's budget and reimbursement for expenses. The board may employ a staff in accordance with its budget.

The board must adopt regulations for the licensure of midwives and the practice of midwifery consistent with the standards published by NACPM or a successor organization. The regulations must include standards for the administration of oxygen, lifesaving medications, prophylactic antibiotics, and Rho(D) immune globulin by a midwife to a mother or a newborn. The regulations may not (1) require any agreement between a midwife and any other practitioner as a condition of licensure; (2) require that a midwife practice under the supervision or direction of any other practitioner; (3) require the assessment of a mother who is seeking midwifery services by any other practitioner; or (4) limit the setting in which a licensed midwife may practice. The board is also charged with establishing procedures for the issuance of reciprocal licenses and adopting a code of ethics.

A person must have certain immunity from liability for giving information to the board or otherwise participating in its activities.

The bill subjects the new licensure program to periodic review under the Maryland Program Evaluation Act, as with other health occupations boards, and terminates the program on July 1, 2023.

State Board of Midwives Fund

The fund is a continuing, nonlapsing fund, to be administered by a designee of the board. The Legislative Auditor must audit the accounts and transactions of the fund. The board may set reasonable fees for the issuance and renewal of licenses and its other services that approximate the cost of maintaining the board. The fund must be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the board. Any interest from the fund will accrue to the general fund.

Disciplinary Grounds and Reporting

The board must investigate complaints and provide information on the status of complaints. The board must also conduct unannounced inspections of the office of

specified midwives upon receipt of written and signed complaints. The bill sets specific grounds for disciplinary action against a licensee or applicant. The board may deny a license, reprimand any licensee, place any licensee on probation, or suspend or revoke a license. The board must provide an applicant or licensee an opportunity for a hearing. Generally, any person aggrieved by a final decision of the board in a contested case may appeal the decision to the board of review and take any other appeal allowed under the Administrative Procedure Act, including judicial appeal.

The board is authorized to issue subpoenas and oaths in connection with an investigation. An individual that disobeys a subpoena may be punished by a court of competent jurisdiction for contempt of court. If an individual is found in violation of a disciplinary ground, the individual must pay the cost of the board hearing. All board orders must be passed in accordance with the Administrative Procedure Act. If the board dismisses charges, it must expunge all record of the charges three years after the charges are dismissed. If the board issues an advisory opinion, the board must, at the request of the licensee, expunge all record of the matter five years after the determination is made.

An individual may not practice midwifery without a license. Unless licensed to practice, a person may not (1) represent to the public by title; description of services, methods, procedures, or otherwise that the person is licensed to practice midwifery; (2) use the designation "midwife" or "licensed midwife"; or (3) use the initials "L.M." after the name of the individual. However, there are no penalties for practicing without a license or misrepresentation.

Current Law/Background: The profession of midwifery includes direct-entry midwives and nurse midwives. The State Board of Nursing provides advance practice certification to nurse midwives, who must also be licensed registered nurses. Under board regulations, an applicant for certification as a nurse midwife must hold a current license to practice registered nursing in Maryland, hold current certification as a nurse midwife from the American Midwifery Certification Board or any other certifying body approved by the board, and submit an affidavit that the applicant is in compliance at all times with specified clinical practice guidelines.

Certified nurse midwives must have a collaborative practice agreement with a collaborating physician and a collaborative plan that fully describes delegated medical functions; parameters of service; a comprehensive plan for transfer of care when needed; practice guidelines; appropriate interventions including treatment, medication, and devices; and categories of substances selected from the approved formulary that may be prescribed and dispensed by the certified nurse midwife. Certified nurse midwives generally practice in hospital-based settings.

Direct-entry midwifery refers to an educational path that does not require prior nursing training to enter the profession. NARM issues the national, competency-based certified professional midwife (CPM) credential. As of January 2012, more than 2,000 midwives nationally hold CPM certification. CPMs offer primary maternity care to women in private homes or birth center-based practices. The CPM credential allows multiple routes of entry into the profession. Aspiring midwives can attend a midwifery program or school or apprentice with a qualified midwife and complete an evaluation process that verifies an individual's experience and skills. Individuals must then sit for the NARM written examination. Recertification is required every three years and includes a continuing education requirement.

CPMs are guided by the NACPM Standards for Practice and the Midwives' Model of Care™ based on the fact that pregnancy and birth are normal life events. Midwife care includes (1) monitoring the physical, psychological, and social well-being of the mother throughout the childbearing cycle; (2) providing the mother with individualized education, counseling, and prenatal care; (3) continuous hands-on assistance during labor and delivery and postpartum support; (4) minimizing technological interventions; and (5) identifying and referring women who require obstetrical attention. According to NACPM, the application of this model has been proven to reduce the incidence of birth injury, trauma, and cesarean section.

Twenty-seven states (including Delaware and Virginia) recognize direct-entry midwives in statute. In 2007, the Washington State legislature commissioned a cost-benefit analysis from the Washington Department of Health on licensed midwifery care. The analysis found that licensed midwives save the State of Washington at least $473,000 per biennium in cost offsets to Medicaid when women give birth at home or in freestanding birth centers. This was a conservative estimate that reflects only avoided costs associated with licensed midwives' lower cesarean section rates. When facility fees and medical procedures such as epidurals and continuous electronic fetal monitoring are factored into the equation, the actual savings to Medicaid biennially are approximately $3.1 million. These savings occur with licensed midwives attending fewer than 2% of births in Washington State.

State Expenditures: Establishment and maintenance of an independent health occupations board requires a minimum amount of fixed costs. As licensure is required beginning October 1, 2013, this analysis assumes that expenses will begin October 1, 2012. Based on costs incurred by other small health occupations boards, board expenditures increase by at least $28,946 in fiscal 2013. This includes a salary for one part-time (20%) grade 19 program manager, fringe benefits, one-time start-up costs, and ongoing operating expenses, including the Department of Health and Mental Hygiene's indirect cost assessment and the board's contribution for the staff members that several other health occupations boards and commission share (*i.e.*, legal, fiscal, and

information technology support). This estimate does not reflect investigative services, postage and printing, board member per diems, or mileage reimbursement. As special fund revenues will not be received until licensure begins in fiscal 2014, Legislative Services assumes that general funds will be used to cover the board's expenditures for fiscal 2013 only.

	General Funds FY 2013	Special Funds FY 2014
New Permanent Position	0.2	
Salary and Fringe Benefits	$11,223	$15,134
Shared Support Staff and Indirect Costs	11,250	15,150
One-time Start-up Costs	4,485	0
Other Operating Expenses	1,988	2,677
Total Board Expenditures	**$28,946**	**$32,961**

Future year expenditures reflect a full-year part-time (20%) salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State Revenues: Under the bill, the board is authorized to set reasonable fees for licensure. Fees charged must be set as to approximate the cost of maintaining the board. Licensed midwives must be licensed to practice midwifery in the State by October 1, 2013; thus, special fund revenues for the board increase beginning in fiscal 2014 from license fees. Licensed midwives will renew their licenses on a biennial basis beginning in fiscal 2016 (by October 1, 2015).

According to Maryland Families for Safe Birth, approximately 30 direct-entry midwives will seek licensure in fiscal 2014 and, based on the experience of other states, the total number of licensees can be expected to double within two to three years. As a point of reference, the Virginia Board of Medicine indicates that approximately 11 *new* midwife licenses are issued in Virginia annually.

Based on 30 anticipated initial midwife licenses in fiscal 2014, license fees will need to be *at least* $2,238 ($1,119 per year) to cover the basic personnel expenditures of the board for the fiscal 2014 and 2015 biennial period. Additional revenues will be required to cover investigative services, board member per diems, travel, and postage, and to provide the board with a fund balance to cover any unanticipated expenditures. To the extent that the number of licensed midwives increases to 60 by the second biennial licensure renewal period (fiscal 2016 and 2017), licensure fees may be able to decline to a minimum of $1,187 ($593 per year). Again, this does not include all board expenses. The highest current health occupations board license fee is $1,050 *every two years* for podiatrists (payable in two annual payments of $525).

Additional Comments: Legislative Services concludes that there may be an insufficient number of midwives in the State to support an independent health occupations board. Given the potential number of licensees, regulation under an advisory committee as part of an existing health occupations board would be a more financially viable option. However, Maryland Families for Safe Birth indicates that midwives are willing to pay this level of licensure fee (or greater) to fund an independent board and obtain licensure.

Legislative Services also notes that, under the bill, five licensed midwives – 17% of the current number of midwives estimated to seek licensure under the bill – would serve on the board. Furthermore, while the bill prohibits the practice of midwifery without a license, there are no civil or criminal penalties for doing so.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): *Midwifery Licensure and Discipline Program in Washington State: Economic Costs and Benefits*, Health Management Associates, October 31, 2007; Virginia Board of Medicine; Maryland Families for Safe Birth; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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