INTERIM STUDY PROPOSAL 2025-104

State of Arkansas
95th General Assembly

A Bill

JMB/JMB
HOUSE BILL

By: Representative Bentley

Filed with: House Committee on Public Health, Welfare, and Labor
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO REPEAL AND REPLACE THE LICENSED LAY MIDWIFE ACT; TO EXPAND THE SCOPE OF PRACTICE FOR CERTIFIED PROFESSIONAL MIDWIVES; TO ESTABLISH THE ARKANSAS STATE BOARD OF MIDWIFERY WITHIN THE DEPARTMENT OF HEALTH; TO ESTABLISH A MIDWIFERY JOINT UNDERWRITING ASSOCIATION; AND FOR OTHER PURPOSES.

Subtitle

TO REPEAL AND REPLACE THE LICENSED LAY MIDWIFE ACT; TO EXPAND THE SCOPE OF PRACTICE FOR CERTIFIED PROFESSIONAL MIDWIVES; AND TO ESTABLISH THE ARKANSAS STATE BOARD OF MIDWIFERY WITHIN THE DEPARTMENT OF HEALTH.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 17, Chapter 85, is repealed.

~~Chapter 85 — Lay Midwives~~

~~17-85-101. Short title.~~

~~This chapter shall be known as the "Licensed Lay Midwife Act".~~

~~17-85-102. Purpose.~~

~~(a)(1) It is the purpose and intent of this chapter to grant the State Board of Health the authority to license lay midwives statewide.~~

~~(2) It is furthermore the intent of this chapter to supersede Acts 1983, No. 838.~~

~~(3) This chapter is to be the sole authority of the board to license midwives.~~

~~(b) Furthermore, it is the intent of this chapter that the board continue its present lay midwife licensure program, but expand that program to be applicable statewide.~~

~~17-85-103. Definition.~~

~~As used in this chapter a "lay midwife" is any person other than a physician, a nurse midwife, or a licensed nurse practicing within the scope of the Arkansas Nurse Practice Act, § 17-87-101 et seq., who performs for compensation those skills relevant to the management of women in the antepartum, intrapartum, and postpartum period of the maternity cycle.~~

~~17-85-104. Construction.~~

~~Neither the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq., nor the Arkansas Nurse Midwifery Act, § 17-87-501 et seq. [repealed], shall be construed as prohibiting the practice of midwifery by persons licensed under this chapter.~~

~~17-85-105. Unlawful actions -- Exception.~~

~~(a) It is unlawful for any person not licensed as a lay midwife by the State Board of Health, excluding licensed nurse midwives and physicians licensed by the State Medical Board, to:~~

~~(1) Receive compensation for attending birth as a lay midwife; or~~

~~(2) Indicate by any means that the person is licensed to practice lay midwifery in Arkansas.~~

~~(b) This chapter shall not prohibit the attendance at birth of the mother's choice of family, friends, or other uncompensated labor support attendants.~~

~~17-85-106. Penalty — Injunctions.~~

~~(a) Anyone unlawfully practicing lay midwifery without a license shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or by imprisonment in the county jail for a period of not less than one (1) week nor more than six (6) months, or by fine and imprisonment.~~

~~(b)(1) The courts of this state having general equity jurisdiction are vested with jurisdiction and power to enjoin the unlawful practice of midwifery in a proceeding by the State Board of Health or any member thereof, or by any citizen of this state in the county in which the alleged unlawful practice occurred or in which the defendant resides, or in Pulaski County.~~

~~(2) The issuance of an injunction shall not relieve a person from criminal prosecution for violation of the provisions of this chapter, but remedy of the injunction shall be in addition to liability to criminal prosecution.~~

~~17-85-107. Power to license.~~

~~(a) The State Board of Health is empowered to license lay midwives in this state pursuant to rules established by the board to include, but not be limited to:~~

~~(1) The qualifications for licensure;~~

~~(2) Standards of practice for prenatal, intrapartum, and postpartum care of mother and baby;~~

~~(3) Physician supervision, physician consultation, licensed nurse-midwife supervision or consultation, or physician and hospital backup;~~

~~(4) Grievance procedures; and~~

~~(5) Recordkeeping and reporting.~~

~~(b) The lawful practice of lay midwifery shall be under the supervision of a physician licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.~~

~~(c) The board may suspend or revoke any licenses issued under this chapter for violations of this chapter or rules promulgated under this chapter.~~

~~17-85-108. Certificates of birth.~~

~~(a) When a birth occurs without a physician in attendance at or immediately after the birth but with a licensed midwife in attendance at or immediately after the birth, it shall then be the responsibility of the midwife to prepare the certificate of birth required by the Vital Statistics Act, § 20-18-101 et seq. and to file the certificate of birth with the Division of Vital Records of the Department of Health in the manner and within the time prescribed by the Vital Statistics Act, § 20-18-101 et seq.~~

~~(b) The failure of the midwife to prepare and file the certificate of birth shall, in addition to the penalties prescribed by § 20-18-105, constitute grounds for the suspension or revocation of the license granted under this chapter.~~

~~17-85-109. Reporting of transfers.~~

~~A hospital or licensed healthcare facility shall report to the Department of Health when a known transfer occurs of a patient from the care of a lay midwife during the labor and delivery process to the hospital or licensed healthcare facility.~~

SECTION 2. Arkansas Code Title 17, is amended to add an additional chapter to replace the chapter repealed in Section 1 of this act to read as follows:

Chapter 85 — Certified Professional Midwives

Subchapter 1 — General Provisions

17-85-101. Title.

This chapter shall be known and may be cited as the “Arkansas Certified Professional Midwife Act”.

17-85-102. Definitions.

As used in this chapter:

(1) "Certified professional midwife" means an independent, autonomous practitioner who is licensed under this chapter to provide midwifery services within the network of interdisciplinary healthcare providers to individuals seeking midwifery care within the scope of practice of this chapter;

(2) "Client" means an individual who is the recipient of midwifery services;

(3) "Comanagement" means an arrangement in which two (2) or more healthcare providers jointly manage the care of a client;

(4) "Community birth" means a birth that occurs outside of a hospital;

(5) "Consultation" means communication occurring between a certified professional midwife and another healthcare provider regarding the risk status of a client in the care of the certified professional midwife;

(6) “Health benefit plan” means an individual, blanket, or group plan, policy, or contract for healthcare services issued or delivered in this state by a healthcare insurer, health maintenance organization, hospital medical service corporation, or self-insured governmental or church plan in this state;

(7) "Informed decision-making" means the collaborative process in which:

(A) A client and healthcare provider discuss risks and benefits of interventions related to the client’s condition;

(B) The healthcare provider provides evidence-based recommendations; and

(C) The client is ultimately responsible for making an informed decision about his or her plan of care including the ability to refuse the healthcare provider’s recommendations;

(8) "Practice of midwifery" means the comprehensive provision of preconception, prenatal, intrapartum, postpartum, gynecologic, and newborn care and preventative primary health screening and education to individuals seeking midwifery services by a certified professional midwife, including without limitation:

(A) Cross-functional healthcare skills;

(B) Gynecological care;

(C) Antepartum care;

(D) Intrapartum care;

(E) Postpartum care;

(F) Newborn care;

(G) Medication management;

(H) Consultation; and

(I) Referral or transfer of care;

(9) "Principal care management" means the role assumed by a healthcare provider who is accountable for addressing the majority of perinatal healthcare needs on his or her own responsibility, including primary clinical responsibility for plan of care recommendations, especially in the context of comanagement of a client; and

(10) "Traditional midwife" means an individual who has received education and training in midwifery care but who does not hold a nationally recognized credential from the North American Registry of Midwives or a successor organization or the American Midwifery Certification Board or a successor organization.

17-85-103. Exemptions.

This chapter does not prohibit or require the following persons to be licensed under this chapter:

(1) A healthcare provider providing care consistent with the practice of midwifery if the care falls within his or her scope of practice;

(2) Other persons providing emergency care, including care of a precipitous delivery;

(3) A trained birth assistant, registered nurse, or medical assistant working under the direct supervision of a certified professional midwife carrying out clinical tasks at the direction of the certified professional midwife if:

(A) The certified professional midwife is physically present; and

(B) The tasks are within:

(i) The skills and training of the trained birth assistant, registered nurse, or medical assistant; and

(ii) The scope of practice of the certified professional midwife;

(4) Any person performing tasks related to the practice of midwifery under the direct and immediate supervision of a certified professional midwife, certified nurse midwife, certified midwife, or licensed physician or licensed osteopath during completion of North American Registry of Midwives requirements to achieve a certified professional midwife credential; or

(5) The practice of midwifery by traditional midwives if the person practicing midwifery:

(A) Does not advertise that he or she is a certified professional midwife; and

(B) Discloses his or her education, training, and licensure status to his or her clients.

17-85-104. Scope of practice and settings.

(a) A certified professional midwife shall:

(1) Provide midwifery services to individuals who are from adolescence throughout the lifespan as well as newborns up to six (6) weeks:

(A) Comprehensive wellness and risk assessment;

(B) Health screenings;

(C) Diagnosis and treatment; and

(D) Principal care management of:

(i) Pregnant clients who are expected to have uncomplicated, physiologic deliveries; and

(ii)(a) Clients who are not pregnant.

(b) A certified professional midwife shall consult with a physician licensed in this state before providing services to a client who is not pregnant and has complex chronic medical conditions that may impact his or her sexual or reproductive healthcare needs;

(2) Order and perform laboratory screenings and diagnostic tests, ultrasounds, and fetal surveillance;

(3)(A) Obtain, carry, administer, order, and prescribe medications and devices consistent with the practice of midwifery.

(B) Subdivision (a)(3)(A) of this section does not permit:

(i) A certified professional midwife to prescribe, order, administer, or prescribe a controlled substance to a client; or

(ii) A certified professional midwife to obtain, carry, administer, order, or prescribe medications or devices in which he or she is not qualified by education, training, or licensure to obtain, carry, administer, order, or prescribe; and

(4) Practice in all settings including without limitation:

(A) A home;

(B) A birth center;

(C) A federally qualified health center;

(D) A community health center;

(E) A physician's office;

(F) A clinic;

(G) A school;

(H) A correctional facility;

(I) An United States Indian Health Service facility;

(J) An ambulance; and

(K) An ambulatory surgical center.

(b) A certified professional midwife who holds a credential from the National Association of Certified Professional Midwives or the American Midwifery Certification Board shall practice in alignment with competencies of the appropriate organization in which he or she holds a credential.

(c) The Arkansas Board of Midwifery shall establish a list of medical conditions that require a certified professional midwife to recommend consultation, referral, or transfer of care.

(d) A certified professional midwife shall honor at all times the right of a client to informed consent, informed decision-making, and the right to refuse treatment.

(e) This section does not:

(1) Require a certified professional midwife to practice under the supervision of or in collaboration with another healthcare provider; or

(2) Create liability of any kind for a licensed healthcare provider or pharmacist licensed in this state who provides care or distributes medication to a client of a certified professional midwife for personal injury or death resulting from an act or omission by the certified professional midwife, unless the professional negligence or malpractice of the healthcare provider or pharmacist was a proximate cause of the injury or death.

17-85-105. Title and practice protection.

(a) A person not licensed under this chapter is guilty of a Class A misdemeanor and is subject to penalties applicable to the unlicensed practice of midwifery if he or she:

(1) Holds himself or herself out as a certified professional midwife or licensed midwife;

(2) Uses any combination or abbreviation of the terms "certified professional midwife" or “licensed midwife” to indicate or imply that he or she is a certified professional midwife; or

(3) Holds an active credential from the Association of Certified Professional Midwives or the American Midwifery Certification Board without being licensed under this chapter.

(b) A traditional midwife shall not be permitted to use the title of certified professional midwife or licensed midwife or to practice as a certified professional midwife unless he or she fulfills the requirements of this chapter.

Subchapter 2 — Arkansas Board of Midwifery

17-85-201. Creation — Membership.

(a) There is created the Arkansas Board of Midwifery within the Department of Health.

(b) The Arkansas Board of Midwifery shall consist of seven (7) members appointed by the Governor, subject to confirmation by the Senate:

(1) Four (4) certified professional midwives;

(2) One (1) certified nurse midwife licensed by the Arkansas State Board of Nursing and who has worked in community birth settings or has experience collaborating with community midwives;

(3) One (1) obstetrician, maternal fetal medicine specialist, or family medicine physician licensed by the Arkansas State Medical Board and who has experience collaborating with community midwives; and

(4) One (1) member of the public who is not a midwife or healthcare provider and who has received community midwifery birth services.

(c)(1) The Governor shall designate the terms of the initial appointees so that four (4) members shall serve four-year terms and three (3) members shall serve three-year terms.

(2)(A)(i) Except as provided in subdivision (c)(2)(A)(ii) of this section, each successor member shall serve four-year terms.

(ii) An individual appointed to fill a vacancy resulting in an unexpired term shall only serve for the remainder of the unexpired term.

(B) The Governor shall fill any vacancy on the Arkansas

Board of Midwifery in the same manner as appointed under this section.

(3) A member shall not serve more than two (2) consecutive terms.

(d) Upon recommendation of the Arkansas Board of Midwifery made after notice and hearing, the Governor may remove any member for incompetence, neglect of duty, or malfeasance in office.

17-85-202. Organization and proceedings.

(a)(1) Within forty-five (45) days after the initial appointment of the members of the Arkansas Board of Midwifery, the Governor shall call the first meeting of the board for the purpose of organization.

(2)(A) The board shall elect a chair and secretary at its first regularly scheduled meeting of each biannual year.

(B) The Chair of the Arkansas Board of Midwifery shall be a licensed midwife.

(3)(A) The board shall meet at least quarterly at such times and places as the board designates.

(B) Additional meetings may be held upon call of the Chair of the Arkansas Board of Midwifery.

(b)(1) A quorum of the board shall consist of four (4) members

(2) A quorum is required to conduct board business.

(c)(1) The members of the board shall serve without compensation but may receive expense reimbursement in accordance with § 25-16-901 et seq.

(2) The expenses under subdivision (c)(1) of this section shall not exceed funds the available to the board.

(d) All proceedings of the board shall be conducted in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) The Department of Health shall provide staff support for the board.

17-85-203. Powers and duties.

(a) The Arkansas Board of Midwifery shall adopt rules in accordance with this chapter and the Arkansas Administrative Procedure Act, § 25-15-201 et seq., to:

(1) Establish:

(A) A code of professional standards and ethics in

alignment with the National Association of Certified Professional Midwives, or a successor organization;

(B) Procedure for application for initial licensure and renewal of licensure under this chapter;

(C) Reasonable fees for renewal applications;

(D) Disciplinary procedures including without limitation:

(i) Complaint mechanism for members of the public; and

(ii) Quality improvement requirements for licensees subject to disciplinary action;

(E)(i) Requirements for data collection using the Community Birth Data Registry, American Association of Birth Centers' Perinatal Data Registry, or another data registry endorsed by the National Association of Certified Professional Midwives, or a successor organization, and approved by the board.

(ii) The board shall conduct an annual assessment of statewide data and make publicly available an annual report on the data obtained; and

(F)(i) Peer review requirements under disciplinary procedures.

(ii) All records from a peer review shall be sealed, confidential, and privileged to promote continuing quality improvement objectives.

(iii) A record from a peer review shall not be:

(a) Disclosed for the purpose of litigation, disciplinary action, or complaint; or

(b) Subject to discovery, subpoena, or introduction into evidence in any civil action in any court, including without limitation medical malpractice actions.

(iv) Subdivision (a)(1)(F)(iii) of this section does not prevent an individual client's medical records or information, testimony, or materials that are external to the peer review from being discoverable for the purpose of litigation, disciplinary action, or complaint;

(2) Define:

(A) The scope of practice in alignment with the scope for a certified professional midwife credential from the National Association of

Certified Professional Midwives;

(B) Risk assessment and conditions requiring consultation, referral, collaborative care, and transfer; and

(C) Requirements for termination of care of a client by a certified professional midwife that clearly defines the rights and responsibilities of the client and the certified professional midwife;

(3) Review and approve or deny applications for initial licensure and renewal;

(4)(A) Conduct investigations, hearings, and disciplinary actions.

(B) The board may issue a temporary suspension of licensure to a certified professional midwife who is under investigation and may revoke the license of a certified professional midwife who is in severe violation of this chapter or rules adopted under this chapter as determined by the board;

(5) Develop or adopt clinical practice guidelines in alignment with National Association of Certified Professional Midwives standards, competencies, and scope of practice; and

(6) Maintain a publicly available list of all licensed midwives.

(b) The board shall not promulgate rules that prohibit a certified professional midwife from continuing to provide care or to forcibly transfer a client who has refused a recommended consultation, referral, or transfer if:

(1) The certified professional midwife's evidence-based recommendation and the client's informed refusal are clearly documented in the medical record;

(2) The risk status of the client or newborn is not emergent; and

(3)(A) The certified professional midwife has the knowledge, skills, training, ability, and desire to provide the client's chosen course of care.

(B) Subdivision (b)(3)(A) of this section does not require a certified professional midwife to:

(i) Provide care that is outside of his or her scope or practice or his or her clinical, professional, or ethical judgement; or

(ii) Continue to provide care in a setting that puts

his or her own physical health or safety or the physical health or safety of his or her staff at risk.

Subchapter 3 — Licensing

17-85-301. Certified professional midwife — Licensure.

(a) An applicant for a license to be a certified professional midwife shall submit to the Arkansas Board of Midwifery the following written evidence that the applicant:

(1) Is at least eighteen (18) years of age;

(2) Has completed a midwifery training program approved by the North American Registry of Midwives or a successor organization or by the American Midwifery Certification Board or a successor organization;

(3) Holds:

(A)(i) An active certified professional midwife credential from the North American Registry of Midwives.

(ii) The Arkansas Board of Midwifery shall require an applicant under subdivision (a)(3)(A) of this section to demonstrate additional education and training to practice to the full scope of the certified professional midwife credential from the North American Registry of Midwives;

(B) An active American Midwifery Certification Board-issued credential; or

(C) An active licensed lay midwife license from the State Board of Health on the effective date of this chapter; and

(4)(A) Submits an application with a reasonable application fee.

(B) A person who holds an active licensed lay midwife license from the State Board of Health on the effective date of this chapter shall not be required to submit an application or an application fee but shall automatically be issued a certified professional midwife license.

(b)(1) A license under this section is valid for three (3) years after the date of issuance.

(2) To renew a license, a certified professional midwife shall:

(A) Provide evidence of an active certified professional midwife credential from North American Registry of Midwives or an active American Midwifery Certification Board-issued credential; and

(B) Submit a renewal application with a renewal application fee as determined by the Arkansas Board of Midwifery.

(c) The Arkansas Board of Midwifery shall create and maintain a registry of certified professional midwives to be made available to the public.

17-85-302. Reciprocity.

(a) The Arkansas Board of Midwifery shall provide a license to be a certified professional midwife to an individual who holds an active, unencumbered license in another state that requires substantially equivalent licensing criteria as defined by the board.

(b) The board shall produce a guidance document identifying states that shall be considered substantially equivalent on or before January 1, 2028.

17-85-303. Inactive status.

(a) A certified professional midwife may voluntarily or through disciplinary act place his or her license on inactive status by notifying the Arkansas Board of Midwifery in writing.

(b) The board shall establish:

(1) A mechanism for a return to practice for a certified professional midwife who has been out of practice for a period of time as determined by the board; and

(2) A procedure for a certified professional midwife to reactivate his or her license.

17-85-304. Data collection.

(a) The Arkansas Board of Midwifery shall:

(1)(A) Require a certified professional midwife who serves as the primary midwife or supervising midwife to submit data using the Community Birth Data Registry, American Association of Birth Centers' Perinatal Data Registry, or other registry endorsed by the North American Registry of Midwives and approved by the board.

(B) A certified professional midwife shall submit annually the full summary of his or her data report and receipt of submission to the board for the previous year no later than January 31;

(2) Annually, obtain a deidentified state aggregate report of data from the Community Birth Data Registry, American Association of Birth Centers' Perinatal Data Registry, or other registry endorsed by the North American Registry of Midwives and approved by the board; and

(3)(A) No later than March 1 of each year, send a written notice of noncompliance to a certified professional midwife who fails to meet the reporting requirement under subdivision (a)(1) of this section.

(B) A certified professional midwife shall have thirty (30) days upon receipt of the notice under subdivision (a)(3)(A) of this section to submit the data.

(C) If a certified professional midwife fails to comply after the thirty-day period under subdivision (a)(3)(B) of this section, the board shall suspend the license of the certified professional midwife until the data is submitted and the board has acknowledged the submission.

(b) The board shall include the deidentified state aggregate data report on its website where names of licensees can be obtained by the public.

(c) The board may use the data collected under this section to make decisions regarding continuing education and quality improvement measures.

17-85-305. Compensation — Pay parity.

(a) A certified professional midwife licensed under this chapter shall receive compensation for services provided from:

(1) The Arkansas Medicaid Program; and

(2) A health benefit plan.

(b) The Arkansas Medicaid Program and a health benefit plan shall not discriminate based on healthcare provider type or location of service when contracting with a certified professional midwife.

(c) The Arkansas Medicaid Program and a health benefit plan shall set a reimbursement rate for services provided by:

(1) A certified professional midwife that is, at a minimum, the same amount reimbursed to physicians for the same healthcare services when acting within his or her scope of practice; and

(2) A licensed freestanding birth center including newborn care and care provided before an intrapartum transfer to another facility, at no less than the reimbursement rate for the same services if performed at a hospital, regardless of site of services or length of stay.

(d) The Arkansas Medicaid Program shall issue billing guidance for supplies and equipment fees associated with births and postpartum care occurring in the home setting for all health plans in the state.

SECTION 3. Arkansas Code § 17-95-203(10), concerning the exemptions for licensure related to the practice of medicine, is amended to read as follows:

(10) The practice of ~~lay~~ midwifery as defined in the ~~Licensed Lay~~ Arkansas Certified Professional Midwife Act, § 17-85-101 et seq.;

SECTION 4. Arkansas Code § 20-9-405 is amended to read as follows:

20-9-405. Practice of midwifery.

Nothing in this subchapter shall be construed to prohibit the lawful practice of ~~lay~~ midwifery in any location under the ~~Licensed Lay~~ Arkansas Certified Professional Midwife Act, § 17-85-101 et seq.

SECTION 5. Arkansas Code § 20-15-1103(b)(3) and (4), concerning the creation of the Newborn Infant Hearing Screening Program, are amended to read as follows:

(3) Development of a hearing impairment at-risk questionnaire. The instrument shall be provided by the department to hospitals, birthing centers, and ~~lay~~ certified professional midwives for use in the program;

(4) Development of appropriate written materials regarding hearing impairment. The materials shall be provided to hospitals, birthing centers, and ~~lay~~ certified professional midwives for their use in the program;

SECTION 6. Arkansas Code § 20-15-1104 is amended to read as follows:

20-15-1104. Screening of newborns.

(a)(1) All hospitals, birthing centers, and ~~lay~~ certified professional midwives shall complete a hearing impairment at-risk questionnaire for each newborn infant before discharge or, in the case of a ~~lay~~ certified professional midwife, within seventy-two (72) hours of the birth of the infant.

(2) All hearing impairment at-risk questionnaires shall be completed by a designee of the hospital or birthing center or by the

certified professional midwife.

(3) However, no infant shall be screened for hearing impairment whose parent presents a written statement that he or she objects to the screening of his or her child.

(b) The hospital, birthing center, or ~~lay~~ certified professional midwife shall forward to the Department of Health a copy of all completed questionnaires.

(c) The hospital, birthing center, or ~~lay~~ certified professional midwife shall provide the parents or guardians of all newborn infants with written materials provided by the department concerning hearing impairment.

SECTION 7. Arkansas Code § 20-15-1105(a), concerning the provisions of services under the Newborn Infant Hearing Screening Program, is amended to read as follows:

(a) The hospital, birthing center, or ~~lay~~ certified professional midwife may elect to provide for the screening of infants for hearing impairment but is not required to do so by this subchapter.

SECTION 8. Arkansas Code Title 23, Chapter 61, Subchapter 1, is amended to add an additional section to read as follows:

23-61-118. Midwife joint underwriting association.

(a)(1) On or before January 1, 2028, the Insurance Commissioner shall establish a reasonable plan for the establishment of a nonprofit, midwife joint underwriting association for midwifery and birth center malpractice insurance subject to the conditions and limitations contained in this section.

(2) The plan under subdivision (a)(1) of this section shall include a market assistance plan to be used before activating a joint underwriting association.

(b)(1) The midwife joint underwriting association established under this section shall:

(A) Be comprised of:

(i) All insurers possessing a certificate of authority to write, and are engaged in writing, medical malpractice insurance within this state; and

(ii) General casualty companies; and

(B) Offer a policy to certified professional midwives, certified nurse midwives, and licensed birth centers with liability limits of one million dollars ($1,000,000) per claim and three million dollars ($3,000,000) per annual aggregate, or such other minimum level of mandated coverage as determined by the commissioner.

(2) Every insurer shall be a member of the midwife joint underwriting association and shall remain a member as a condition of its authority to continue to transact business in this state.

(c)(1) The commissioner shall require the use of a rating plan for malpractice insurance under this section that permits rates to be modified according to practice volume.

(2) Any rating plan for malpractice insurance under this section shall be based on sound actuarial principles.

(3) Coverage under malpractice insurance under this section shall not exclude midwives who engage in home birth or birth center deliveries.

(4) Premiums for malpractice insurance under this section shall be reasonable and affordable based on the anticipated annual net earnings of the certified professional midwife, certified nurse midwife, or licensed birth center.

(d)(1) The commissioner may select an insurer to administer a plan established under this section.

(2) The insurer selected under subdivision (d)(1) of this section shall be admitted to transact the business of insurance of this state.

(e) The commissioner shall not approve a policy written on a claims-made basis by an insurer doing business in this state unless the insurer guarantees to the commissioner the continued availability of suitable liability protection for certified professional midwives or certified nurse midwives subsequent to the discontinuance of professional practice by the certified professional midwife or certified nurse midwife or the sooner termination of the insurance policy by the insurer for so long as there is a reasonable probability of a claim for injury for which the certified professional midwife or certified nurse midwife might be liable.

(f)(1) A risk management program for insureds of the joint midwife underwriting association shall be established as a part of the plan under

subsection (a) of this section.

(2) The risk management program under subdivision (f)(1) of this section shall include without limitation:

(A) Investigation and analysis of frequency, severity, and causes of adverse or untoward outcomes and development of measures to control these injuries;

(B) Systematic reporting of incidents;

(C) Investigation and analysis of patient complaints; and

(D) Education of midwife joint underwriting association members to improve quality of care and risk reduction.

(g) The commissioner may adopt all rules necessary to ensure the efficient, equitable operation of the midwife joint underwriting association, including without limitation rules requiring or limiting certain policy provisions.

Referred by Representative Bentley

Prepared by: JMB/JMB