Sunset Analysis: Regulation of Midwives

A Report to the Governor
and the Legislature of
the State of Hawai‘i

Report No. 25-03
February 2025

OFFICE OF THE AUDITOR
STATE OF HAWAI‘I

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Foreword

This sunset evaluation presents our findings on whether the State's continued oversight over midwives complies with policies in the sunset law and whether there is a reasonable need to protect the health, safety, and welfare of mothers and infants.

We express our sincere appreciation to the Department of Commerce and Consumer Affairs' Professional and Vocational Licensing Division and to the numerous midwives, cultural practitioners, and other interested individuals we contacted for their cooperation and assistance.

Leslie H. Kondo
State Auditor

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Sunset Analysis: Regulation of Midwives

IN 2019, the Legislature enacted a new law to regulate the practice of midwifery, expressly finding that the regulation of the profession "is reasonably necessary to protect the health, safety, and welfare of mothers and their newborns." Chapter 457J, Hawai'i Revised Statutes (HRS), with limited exceptions, requires anyone assisting a woman during her pregnancy and childbirth to possess a license issued by the director of the Department of Commerce and Consumer Affairs (DCCA). Nurse-midwives licensed by the Hawai'i Board of Nursing and other licensed professionals whose scope of practice overlaps with the practice of midwifery are exempt from Chapter 457J, HRS.

Chapter 457J, HRS, will "sunset" on June 30, 2025, after which there will be no state oversight of the midwifery profession unless the Legislature decides to enact legislation to continue regulation. The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, requires the Auditor, prior to the repeal date, to assess whether the regulatory program complies with the State's policies for the regulation of professions and whether the public interest requires that the law establishing the regulatory program be reenacted, modified, or permitted to expire.

Chapter 457J, HRS, will "sunset" on June 30, 2025, after which there will be no state oversight of the midwifery profession unless the Legislature decides to enact legislation to continue regulation.

We conclude that the State's policies established by the Legislature in Chapter 26H, HRS, regarding the regulation of certain professions, require the continued regulation of the practice of midwifery in the form of full licensure.

Midwives: Maternal Health Care Providers

Midwives provide a range of health care services, including care during pregnancy, childbirth, and the postpartum period. Midwives emphasize that they provide highly personalized care that incorporates the pregnant woman's family into counseling and childbirth services. They may help fill shortages of maternal health providers, typically assisting low-risk pregnancies, specializing in natural childbirth, and seeking to limit medical interventions. Midwives are the primary care providers in out-of-hospital birth settings, including attending home births.

During labor and birth, midwives offer physical and emotional support, help manage pain and discomfort, and assess the progress of labor through clinical evaluations such as fetal heart monitoring and assessing cervical dilation. They provide immediate postpartum care to the newborn and mother, including clamping and cutting the umbilical cord, helping facilitate delivery of the placenta, repairing vaginal tears, and monitoring the mother's ongoing blood loss after delivery. Midwives conduct a thorough physical evaluation of the baby after birth, including assessing the baby's muscle tone, heart rate, breathing, and skin tone. They help the mother with breastfeeding and look for signs that the newborn has jaundice or the mother is suffering from a uterine infection, postpartum pre-eclampsia, or separation of her abdominal muscles.

According to an article published in the *American Journal of Obstetrics & Gynecology*, births attended by midwives have fewer interventions, cesarean deliveries, preterm births, inductions of labor, and more vaginal births after cesarean delivery.[1]

While the term midwife is often used as a broad reference to someone who helps deliver babies in home settings, midwives work in hospitals, birthing centers, and homes. They differ in their education, training, and scope of practice. In the United States, most midwives become certified by meeting educational and other requirements established by either the American Midwifery Certification Board (AMCB) or the North American Registry of Midwives (NARM). AMCB provides certification for Certified Nurse Midwives (CNMs) and Certified Midwives (CMs) through a graduate-level academic program accredited by the Accreditation Commission for Midwifery Education. In Hawai‘i, CNMs are advanced practice registered nurses licensed by the Board

[1] Midwifery care during labor and birth in the United States, Combellick, Joan L. et al., American Journal of Obstetrics & Gynecology, Volume 228, Issue 5, S983 - S993.

PHOTO: ISTOCK.COM

What a Midwife Does

MIDWIVES TAKE a holistic approach to pregnancy and childbirth, working closely with pregnant women and their families. They specialize in natural births and seek to limit unnecessary medical interventions. They can practice in hospitals, clinics, birthing centers, and homes. Non-nurse midwives in Hawai‘i typically assist with home births. The scope of services that they provide to pregnant women varies. But typically, they provide prenatal care, assist with delivery, and help care for the mother and her newborn.

Some of the services that they provide can include:

Prenatal Care

- Routine checkups that can include ultrasounds and bloodwork
- Screen for sexually transmitted infections
- Counsel women on nutrition and exercise
- Monitor the growth of the fetus
- Check on the mother’s mental and social well-being

Labor and Delivery

- Help with pain management, which can include breathing exercises, massage, and hydrotherapy
- Monitor the mother’s progress and the baby’s vital signs
- Provide emotional support
- Assist in emergencies, including transport to the hospital if necessary
- Clamp and cut the umbilical cord

After Delivery

- Help with breastfeeding, diaper changes, and bathing the baby
- Examine the newborn
- Use sutures to repair tears to the perineum
- Follow-up with the mother and baby over a period of weeks

of Nursing under Chapter 457, HRS. NARM provides certification for Certified Professional Midwives (CPMs) through educational pathways accredited by the Midwifery Education Accreditation Council (MEAC) or through a competency-based training program working as an apprentice to a preceptor.[2] In Hawai‘i, the scope of practice for CPMs includes cervical and breast cancer screenings, family planning, dispensing of non-hormonal contraceptives, screenings for sexually-

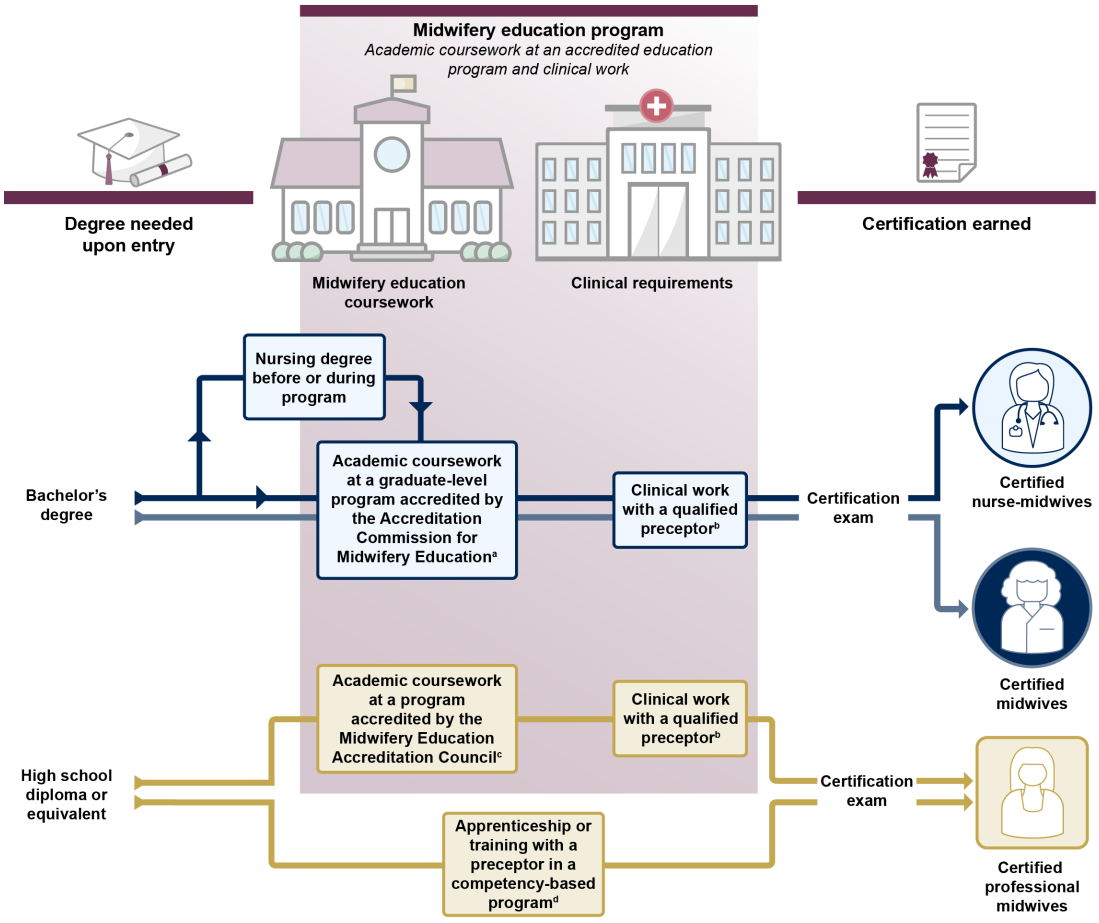
[2] A preceptor is a practicing midwife who teaches students at clinical sites where students apply their knowledge and skills in a clinical setting.

transmitted diseases, and pregnancy and newborn care, according to the Midwives Alliance of Hawai'i, which advocates on behalf of midwives. CMs are trained to care for women from puberty to the end of life. In addition to providing extensive primary and maternity care services, they can assist in cesarean sections and vacuum-assisted deliveries. However, their scope of practice is limited under Hawai'i's midwifery law.

Pathways to Become a Midwife with Certification Vary by the Type of Midwife

Midwifery Education	Pathways to become a midwife with certification vary by the type of midwife. (See fig. 2.)

Figure 2: Pathways for Midwifery Education and Certification, by Type of Midwife



Source: GAO analysis of information from the American College of Nurse-Midwives and North American Registry of Midwives (data); GAO (images). | GAO-105861

Source the U.S. Government Accountability Office

There is another group of midwives, sometimes referred to as traditional midwives, who have not obtained certification through AMCB as a CNM or CM or through NARM as a CPM. Their education is informal, gained through apprenticeships and knowledge that has been passed down through elders or communities. Traditional midwives are currently prohibited from practicing in Hawai‘i under Chapter 457J, HRS, except for “traditional Hawaiian healers” engaged in traditional healing practices of prenatal, maternal, and child care as recognized by a kūpuna council convened by Papa Ola Lōkahi, a federally-funded Hawai’i nonprofit.

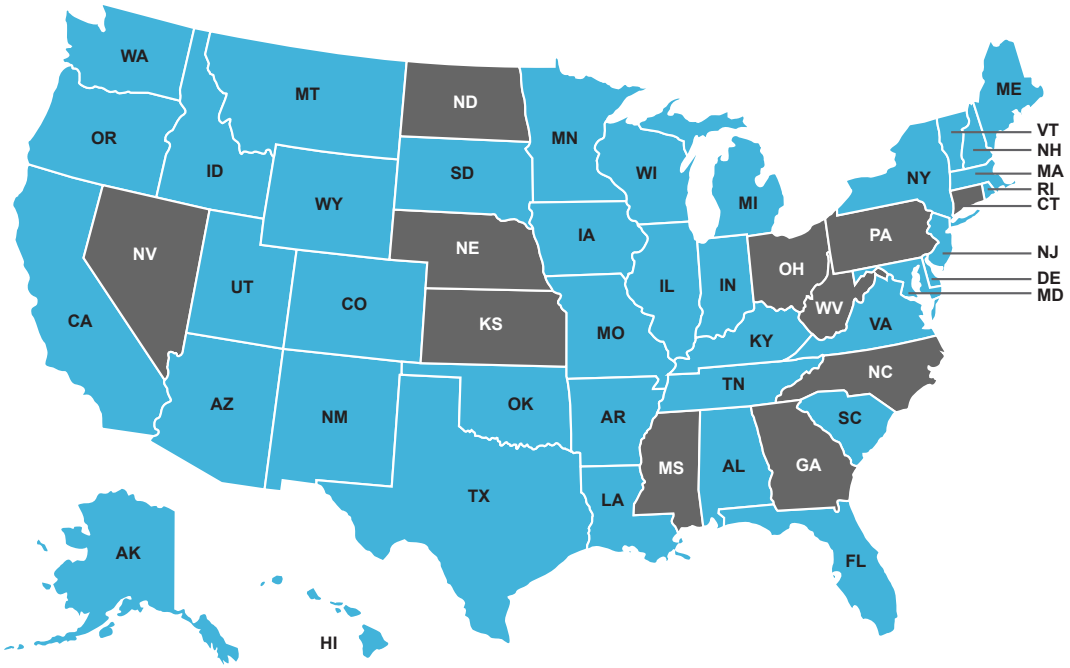
The Government Accountability Office’s (GAO) analysis of data from the U.S. Centers for Disease Control and Prevention, National Center for Health Statistics, determined CNMs and CMs attended 390,203 births in the United States in 2021 (almost 12 percent of all births and almost 90 percent of the total births attended by a midwife), with almost 94 percent of those births in a hospital setting. In contrast, CPMs and noncertified midwives, including traditional midwives, attended 43,770 births that year (about 10 percent of the total births involving midwives), with almost 86 percent of those births occurring outside of a hospital and over 60 percent in a home setting. According to the GAO, in Hawai‘i, there were 1,596 midwife-attended births out of 15,555 births in 2021. However, the GAO does not differentiate the births attended by a midwife in a hospital and those in a home setting.

Regulation of Midwifery in Hawai‘i

Hawai‘i began regulating midwifery in 1931 by requiring individuals assisting women during childbirth to register with the Board of Health (later the Department of Health) and file birth certificates for the babies they delivered. Over time, these regulations evolved to where only registered nurses were eligible for state licensure, effectively making it illegal for anyone without a license, including traditional midwives, to practice midwifery. In 1990, the Legislature created a new chapter in the Hawai‘i Revised Statutes specific to the regulation of midwives, which continued to limit the practice of midwifery to registered nurses licensed under Chapter 457, HRS.

In 1998, the Legislature shifted regulation of nurse midwives from the Department of Health to the Hawai‘i State Board of Nursing, recognizing them as advanced practice registered nurses. Legislative committee reports suggest this change aimed to eliminate what was seen as redundant regulation of nurse midwives. Repealing the regulatory scheme for midwives also, intentionally or unintentionally, removed the prohibition on non-nurse midwives practicing in Hawai‘i, allowing all types of midwives to practice legally. As a result, over the next 20 years, traditional midwifery, including Native Hawaiian practices associated with pregnancy and childbirth, thrived, according to midwives specializing in home births.

Thirty-Nine States License Non-Nurse Midwives, Including CMs and CPMs, as of October 2024.



Source: Office of the Auditor based on information from the National Association of Certified Professional Midwives and American College of Nurse/Midwives.

In 2019, the Legislature sought to resolve the lapse in regulation and enacted a new law that created regulation of non-nurse midwives, providing licensing pathways for non-nurse midwives while making it illegal for unlicensed individuals to provide care during pregnancy and childbirth.

The current regulatory program for the practice of midwifery

Chapter 457J, HRS, requires anyone practicing midwifery in Hawai‘i to first obtain a license issued by the director of the DCCA, with certain limited exceptions. Under the law, midwifery is defined broadly as providing any of the following services:

- Assessment, monitoring, and care during pregnancy, labor, childbirth, postpartum and interconception periods, and for newborns, including ordering and interpreting screenings and diagnostic tests, and carrying out appropriate emergency measures when necessary;
- Supervising the conduct of labor and childbirth; and
- Provision of advice and information regarding the progress of childbirth and care for newborns and infants.

"Postpartum" is the period immediately after and up to eight weeks following the birth of a child, while "interconception" refers to care provided to mothers between pregnancies intended to improve health outcomes for women, newborns, and children.

Licensed midwives can purchase and administer certain non-controlled legend drugs and devices authorized for use in pregnancy, birth, postpartum care, newborn care, or resuscitation.[3] These legend drugs include prophylactic ophthalmic medication, epinephrine for neonatal resuscitation and anaphylactic reactions, certain antibiotics, postpartum antihemorrhagics, intravenous fluids, amino amide local anesthetic, and oxygen; legend devices include those used to inject medication and administer intravenous fluids, as well as devices used to treat ruptured amniotic membranes, vaginal tears, and postpartum hemorrhage.

To obtain a license to practice midwifery, applicants must (1) have a current certification as a CM; or (2) be a CPM who either (a) completed a formal midwifery education and training program accredited by MEAC, or (b) received a midwifery bridge certificate issued by NARM. For bridge certificates, applicants must have: 1) obtained certification before 2020, through a non-accredited pathway; or 2) maintained licensure in a state that does not require accredited education. Licenses must be renewed triennially.

Anyone practicing midwifery without a license can face civil fines of up to $1,000 per violation as well as criminal penalties, including imprisonment and fines of up to $1,000 per offense. Practicing without a license is a misdemeanor.

CNMs licensed under Chapter 457, HRS, and other licensed professionals who perform work that overlaps with the practice of midwifery, are exempt from licensing requirements. These include licensed professionals such as nurses or naturopaths performing duties within their scope of practice and student midwives enrolled in a midwifery education program who are under the direct supervision of a qualified midwife preceptor. A qualified midwife preceptor is a licensed and experienced midwife or other licensed maternal health care provider who participates in the clinical education of students enrolled in an accredited midwifery education program. The law allows people to provide care that falls within the definition of midwifery for their immediate family members or domestic partners, without a license.[4]

No More Babytalk

The Department of the Attorney General broadly interprets the definition of midwifery in Section 457J-2, HRS, to include providing advice or information about childbirth and newborn care. In response to questions posed by a member of the State House of Representatives, the Attorney General opined that doulas and lactation consultants cannot assist women and their newborn children unless they are licensed under Chapter 457J, HRS. A pregnant woman's friends and relatives, unless they are a spouse, domestic partner, parent, sibling or child, are also prohibited under the statute from providing advice, care, or information.

[3] Legend drugs and devices refer to items approved by the U.S. Food and Drug Administration that can only be dispensed under federal or state law with a prescription and by a licensed provider.

[4] A temporary exemption for "birth attendants," who are not defined under the statute, expired on July 1, 2023. The Legislature's intent, as outlined in the law's preamble, was for birth attendants to define themselves, develop common standards, accountability measures, and disclosure requirements and eventually have a means of practicing. However, the Legislature has not adopted any related laws beyond Chapter 457J, HRS.

Moreover, the statute exempts traditional Native Hawaiian healing practices. Specifically, the law does not prohibit traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care recognized by a kūpuna council convened by Papa Ola Lōkahi or "limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing" recognized by the Hawai'i State Constitution.

Kaho'ohanohano v. State of Hawai'i

Is traditional midwifery a protected Native Hawaiian healing practice?

IN FEBRUARY 2024, a group of nine licensed and unlicensed midwives, midwifery students, and women hoping to use traditional midwives for their pregnancies, filed a lawsuit against the State of Hawai'i challenging Chapter 457J, HRS.

The lawsuit was filed in the First Circuit Court of Hawai'i (City & County of Honolulu) and was followed by a request for a preliminary injunction on three counts. The plaintiffs, represented by the Center for Reproductive Rights, a global advocacy group; the Native Hawaiian Legal Corporation; and the law firm of Perkins Coie argued that Chapter 457J, HRS, violates their reproductive autonomy rights by restricting their ability to choose where they want to give birth and who they want to assist them. Their lawsuit also alleged that the midwifery law violates the State's duty to protect customary and traditional Native Hawaiian practices as required under Article XII of the Hawai'i State Constitution and is unconstitutionally overbroad.

In July, the court partially granted the motion for the preliminary injunction, concluding that the plaintiffs would likely prevail on their argument that the law, in practice, violates constitutionally protected Native Hawaiian customary rights. The court was not persuaded that the law violates a woman's constitutional right to privacy or that it was unconstitutionally overbroad, specifically holding the Papa Ola Lōkahi recognition system under Chapter 457J-6(b), HRS, unconstitutional. The court's decision partially blocked the implementation of Chapter 457J, HRS, allowing those practicing traditional, Native Hawaiian healing practices of prenatal, maternal, and child care to continue those practices.

In its written decision granting the motion, the court stated that Native Hawaiian midwives and birth practitioners were "stuck in a regulatory catch-22" as a result of the law. While Native Hawaiian midwives and birth practitioners need the approval of Papa Ola Lōkahi to continue their traditional pregnancy and childbirth practices, the court noted that Papa Ola Lōkahi maintained that it does not have legal authority to recognize practices such as pale keiki and ho'ohānau. Those practices include assisting women during pregnancy, attending their births, and providing postpartum care. However, the executive director of Papa Ola Lōkahi told our office during an interview that kūpuna councils recognized by Papa Ola Lōkahi can recognize traditional healers who perform these practices.

The court's injunction preliminarily enjoins the State from enforcing the midwifery law against Native Hawaiians engaging in traditional healing practices relating to prenatal, maternal, and child care who have no meaningful pathway of obtaining an exemption under Chapter 457J, HRS.

The injunction is in place until a kūpuna council that can recognize pale keiki, ho'ohānau, and hānau practices and its practitioners is recognized by Papa Ola Lōkahi, or alternatively, until another tenable pathway is created that allows for the protection of traditional Native Hawaiian practices relating to pregnancy care and childbirth.

"The Court also makes clear that HRS Chapter 457J is *not* unconstitutional on its face," the court wrote in its decision. "Specifically, the Court holds the Papa Ola Lōkahi recognition system under HRS 457J-6(b), in practice is unconstitutional."

Papa Ola Lōkahi

Congress established Papa Ola Lōkahi through the Native Hawaiian Health Care Act of 1988. Papa Ola Lōkahi's mission is to improve the health of Native Hawaiians.

PAPA OLA LŌKAHI oversees five "Native Hawaiian Health Care Systems" covering all the main Hawaiian Islands. Each system provides a variety of health care services at clinics and locations throughout the islands. The types of health services vary by system, but include services such as primary care, dental care, nutrition, fitness and traditional Native Hawaiian healing, such as lomilomi, a type of massage therapy.

The five health care systems include:

- Hoʻola Lāhui Hawaiʻi (Kauaʻi and Niʻihau)
- Ke Ola Mamo (Oʻahu)
- Nā Puʻuwai (Molokaʻi and Lānaʻi)
- Hui No Ke Ola Pono (Maui)
- Hui Mālama Ola Nā ʻŌiwi (Hawaiʻi Island)

In 2002, Papa Ola Lōkahi also began establishing kūpuna councils, organized groups of Native Hawaiian healing and cultural practitioners. The role of the council is to distinguish practitioners of Hawaiian healing traditions from medical clinicians in Hawaiʻi and provide ways for these traditional practices to be protected and integrated into services for Native Hawaiians.

According to Papa Ola Lōkahi, there were six recognized kūpuna councils as of Dec. 2024, none of which were located on Maui, Molokaʻi, or Lānaʻi. Papa Ola Lokahi said that only two kupuna councils have recognized practitioners - four practitioners are recognized by Hui Malama Ola Na Oiwi on Hawaii Island and five practitioners are recognized by Hoʻola Lahui Hawaii on Kauai. Papa Ola Lōkahi did not have a breakdown of the areas of practice for the practitioners.

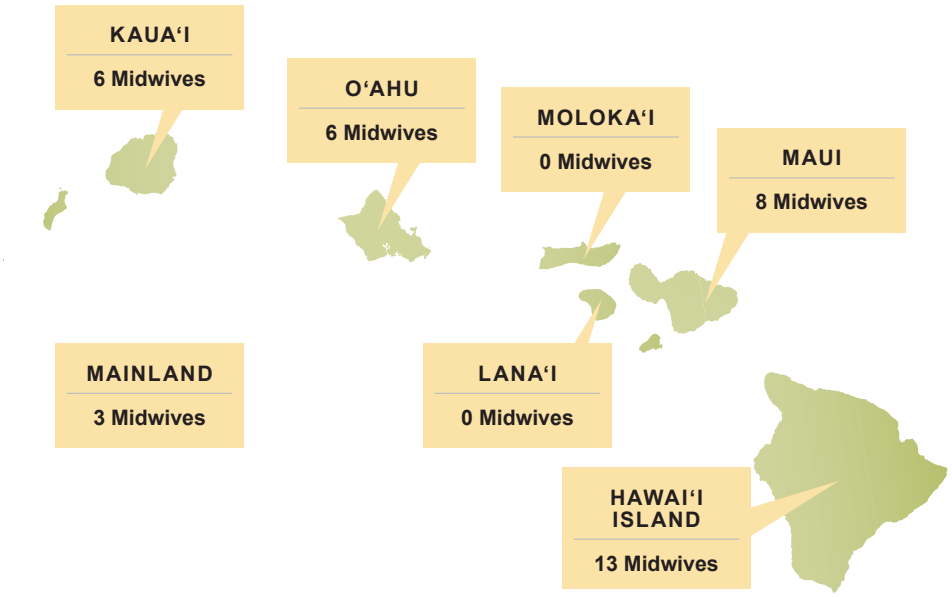
Recognition of hānau, or birthing, practices by existing Papa Ola Lōkahi-approved kūpuna councils is complex. The Court in Kahoʻohanonano v. State of Hawaiʻi described challenges faced by a practitioner who applied for kūpuna council recognition and found the Papa Ola Lōkahi recognition system under Section 457J-6(b), HRS, to be unconstitutional. An injunction is in place until a kūpuna council that can recognize pale keiki, hoʻohānau, and hānau practices and its practitioners is recognized by Papa Ola Lōkahi, or alternatively, until another tenable pathway is created that allows for the protection of traditional Native Hawaiian practices relating to pregnancy care and childbirth.

Since the enactment of Chapter 457J, HRS, the number of licensed midwives has steadily increased from 21 in 2021 to 36 as of 2024.

Just one of those licensed under Chapter 457J, HRS, is a certified midwife, according to the Hawai‘i affiliate of the American College of Nurse-Midwives.

Number of Midwives Licensed under Chapter 457J, HRS, in 2024

* This does not include nurse-midwives licensed to practice under Chapter 457, HRS.



Source: Office of the Auditor

State Policy Regarding the Regulation of Professions

The Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, HRS, requires the Auditor to assess whether Hawai‘i's midwifery law complies with state policies for the regulation of professions, and in particular, whether regulation is necessary to protect the health, safety, and welfare of consumers. In enacting the Hawai‘i Regulatory Licensing Reform Act, Chapter 26H, HRS, the Legislature established that the purpose of regulation is to protect the public, not the profession. Accordingly, state policy is to impose professional regulation "only where reasonably necessary to protect the health, safety, or welfare of the consumers of the services." Where the health, safety, or welfare of the consumer may be jeopardized by the nature of the services offered by the provider, the Legislature directed that *"[r]egulation in the form of full licensure . . . shall be retained...."* (Emphasis added.)

Our review of the current regulation of midwives under Section 26H-5, HRS, is narrow but clear – we are tasked with assessing the profession of midwifery and the current regulation of that profession against the criteria in the statute. Specifically, that criteria requires us to determine whether the practice of midwifery, which is defined to include providing care during pregnancy, labor, and childbirth, among other things, may jeopardize the health, safety, and welfare of the mother and newborn. We also review whether the current regulation of the profession of midwifery unreasonably restricts entry of qualified persons into the profession.

State Licensing is Required to Protect the Health, Safety, and Welfare of Consumers

In enacting the current regulation of midwives in 2019, the Legislature determined that the regulation of the profession was reasonably necessary to protect the health, safety, and welfare of mothers and their newborns, noting that "[t]he improper practice of midwifery poses a significant risk of harm to the mother or newborn, and may result in death."[5] The Legislature recognized that mothers seek out alternatives to hospital births and the significant value in community or home birth

[5] In 1990, when it continued the regulation of midwives that was to sunset on June 30 of that year, the Legislature made a similar finding, expressly stating that "the interests of public health require the regulation of the practice of midwifery in this State for the purpose of protecting the health and welfare of mothers and infants." That law required anyone practicing midwifery to be licensed by the Department of Health to do so; only registered nurses licensed under Chapter 457, HRS, who were certified to practice midwifery by the American College of Nurse-Midwives qualified for licensing. However, in 1998, the Legislature repealed the midwifery law, the result of which was that non-nurse midwives could practice without licensing requirements or other state regulation.

services provided by non-nurse midwives. According to the Legislature, regulation of the midwifery profession was intended to allow women to continue to choose where and with whom to give birth. However, the Legislature found "the term 'midwife' connotes an expectation of a minimum level of care by consumers and the community" and the profession met the criteria requiring state regulation under the Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS.

Our assessment of the regulatory scheme and our review of the profession found nothing to suggest that the Legislature's findings about the practice of midwifery in 2019 – specifically, the risk to the health, safety, and welfare of the mother, the newborn, or both – were erroneous then or today. Pregnancy and childbirth inherently carry certain risks to mothers and newborns, and midwives – often serving as primary health care providers for pregnant women – can significantly influence maternal and neonatal health outcomes.

According to a report issued in April 2023 by the GAO, each year in the United States "hundreds of individuals die from complications related to pregnancy or childbirth." In addition, the GAO reported that "tens of thousands experience unexpected outcomes related to labor and delivery, such as heart failure, which in turn can lead to significant short- or long-term health consequences (known as severe maternal morbidity)." While not specific to intended home births or births attended by midwives, the unexpected health outcomes described by the GAO serve to confirm that pregnancy and childbirth are not without actual risks that may jeopardize mothers and newborns.

Maternal mortality rates have also been rising, according to data from the U.S. Centers for Disease Control and Prevention (CDC). The rate for 2021 was 32.9 deaths per 100,000 live births, up from a rate of 23.8 in 2020 and 20.1 in 2019. Maternal mortality is defined as a death of a woman while pregnant or within 42 days following the termination of a pregnancy; accidental and incidental causes are excluded.

The Hawai'i Home Birth Task Force, which was created by the same act that established the regulation of midwives, reported that data from the Hawai'i Department of Health for fetal and infant morbidity in 2017 and 2018 reflect lower rates of assisted ventilation and Neonatal Intensive Care Unit (NICU) admissions associated with planned home births in comparison to planned hospital births. Specifically, regarding the planned home births, the Department of Health reported that six and nine newborns required assisted ventilation after delivery in 2017 and 2018 respectively; three and four newborns were admitted to the NICU in 2017 and 2018, respectively.

More recent data published by the CDC for the four-year period 2020 through 2023 reflect similar statistics: of 1,294 planned home births in Hawai‘i during the four-year period, 15 newborns required assisted ventilation and 11 were admitted to the NICU.[6]

However, we do not interpret either the Department of Health data or that published by the CDC to mean that the risk to the mother and newborn is inconsequential or even low; we believe reported data simply reflects that, the risk to the health, safety, and welfare of the mother and newborn is not greater in cases of home births as compared to hospital births. Also, the population of mothers who choose to give birth at home typically have low risk pregnancies, while women of all risk profiles give birth in hospitals. We are unaware of any data published or other reporting by a recognized authority suggesting that pregnancy and childbirth are without risk to the health, safety, and welfare of the mother and newborn.

Licensing Policies Do Not Unreasonably Restrict Entry Into the Midwifery Profession

Chapter 457J, HRS, provides two pathways to licensure as a midwife, the most common of which is for those credentialled as a CPM by NARM. Those applicants must (a) have completed a formal education program or pathway accredited by the MEAC and pass NARM's midwifery exam; or (b) have a midwifery bridge certificate issued by NARM for CPMs who obtained the credential before 2020 through a non-accredited pathway or who have maintained licensure in a state that does not require accredited education.[7]

The other pathway to licensure requires current certification as a CM. CMs are credentialled by the AMCB, the national certifying body for both CMs and CNMs. CMs must graduate from a midwifery education program that is accredited by the American College of Nurse-Midwives Accreditation Commission for Midwifery Education and fulfill clinical experience requirements. According to the Hawai‘i Affiliate of the American College of Nurse-Midwives, there is just one CM licensed in Hawai‘i.

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[6] The CDC includes another category of home births in its data: "unknown if intended." For that category of home births, the CDC reports 16 and 12 newborns required assisted ventilation and admission to a NICU, respectively.

[7] Chapter 457J, HRS, eliminated a secondary path to obtaining the CPM credential, which NARM refers to as its Portfolio Evaluation Process or the PEP pathway. The PEP pathway is an apprenticeship-based route to obtaining the CPM credential and requires the applicant to pass NARM's written exam. One CPM licensed in Hawai'i believes it involved better training than NARM's school-based training. "PEP midwives have a better education because it's more thorough," she said. "It's more hands-on; it's more well-rounded."

The Hawai‘i Home Birth Task Force, in its 2019 report to the Legislature, noted the lack of locally based schools and public concerns about education costs. According to the report, there are no schools in Hawai‘i offering the CM credential. There also are no MEAC-accredited programs in Hawai‘i; according to the MEAC website, there are nine accredited midwifery schools, some of which offer distance learning options. Most programs are at least three years long.

We randomly selected three of the accredited schools – the Commonsense Childbirth School of Midwifery, the Florida School of Traditional Midwifery, and the National Midwifery Institute – and, based on information posted on their respective websites, calculated the tuition and fees for their education programs.

Commonsense Childbirth School of Midwifery

Tuition and fees: $33,075

Florida School of Traditional Midwifery

Tuition and fees: $39,168

National Midwifery Institute

The National Midwifery Institute charges a flat, monthly rate that provides access to the curriculum. Tuition depends on how long it takes to complete the program.

Estimated tuition for three years: $20,700
Estimated tuition for five years: $34,500
Fees total approximately $2,000

We also note that the programs require clinical experience, as mandated by NARM for graduates of MEAC-accredited schools. According to the Hawai‘i Home Birth Task Force, student midwives are required to attend at least 55 births under the supervision of a NARM-approved midwife preceptor. The task force reported that there were fewer than 10 NARM-approved preceptors across the state and about 300 home births in Hawai‘i per year. “Limiting approved preceptors to those 10 NARM-approved preceptors creates an apprenticeship bottleneck which further limits the student midwife’s access to required education,” the task force wrote in its report. A midwife told us that, due to a lack of preceptors and clinical opportunities, Hawai‘i residents have to travel to the mainland to attend enough births to obtain certification as a CPM.

In its 2023 report on midwifery, the GAO also reported about the challenges students may face in accessing midwifery education, including the costs and limited availability of clinical training placements. The GAO referred to a stakeholder from a midwifery

accrediting organization saying that the lack of funding is cited by students as the most common reason for not enrolling in or completing midwifery education programs.

While we acknowledge the reported challenges to licensure, we also recognize that licensing laws implemented to protect the health and safety of consumers *purposely* create barriers to employment in professions determined to be sufficiently dangerous through requirements such as mandated testing, training, and education. In Hawai‘i, the policy is that regulation shall not *unreasonably* restrict entry into professions by qualified persons. Accordingly, requirements for licensure that include education and clinical experience, such as those imposed by Chapter 457J, HRS, that may be limited and costly do not, by themselves, compel the conclusion that the regulation is unreasonable.

We do *not* conclude that the licensing requirements *unreasonably* restrict the entry into the profession of midwifery. Balanced against the risk to the mother and newborn under the care of a midwife, the requirements to practice midwifery in Hawai‘i are not arbitrary and, in fact, are consistent with the requirements imposed by other states that regulate midwives. Hawai‘i’s requirement that a non-nurse midwife be credentialed as a CPM or CM is the same as many other jurisdictions. Three-fourths of states license CPMs and eleven states, including Hawai’i, license CMs.

While some with whom we spoke about the current regulation of midwives may have wanted us to offer recommendations about the requirements for licensure, we do not have the expertise to assess, for instance, whether the NARM-accredited midwifery education is appropriate and provides a sufficient foundation to minimize the risk to the mother and newborn or whether the law should recognized different categories of midwives; we do not have the expertise to assess the clinical training required by NARM or to understand the considerations necessary to establish state policy with respect to the regulation of midwifery. We simply note, as we describe above, that the requirements for licensure as a midwife under Chapter 457J, HRS, are substantively similar to those of other states that regulate the profession. Ultimately, the Legislature will determine the appropriate training and education requirements to practice midwifery in Hawai‘i as well as other policy considerations.

Fees Do Not Cover the Costs of the State's Midwifery Licensing Program

The Hawai'i Regulatory Licensing Reform Act, Chapter 26H, HRS, provides that the State shall impose fees on all vocations and professions subject to regulation and that the sum of those fees for any given regulatory program shall not be less than the full cost of administering the program. As of June 2024, DCCA reported that application fees are $1,368 per applicant and that total revenues generated from for the program to date total $64,367. The application fees paid provide for a three-year license period. Fees are less if the applicant is applying one or two years into a three-year period and includes a $50 application fee assessed to every applicant. According to DCCA, revenues are not sufficient to cover the cost of the program. However, DCCA does not track its specific expenditures by profession given that many of its overhead costs are shared across different licensing areas. Therefore, the agency can only estimate the actual cost to administer the midwives program.

Conclusion

In 2019, the Legislature found that the practice of midwifery poses a significant risk of harm to mothers and their babies and that the regulation of midwifery was reasonably necessary to protect their health, safety, and welfare. Nothing we obtained during the course of our assessment, including from research and interviews, suggests that the Legislature's findings are incorrect, unsupported, or out of date.

Midwives are health care providers who care for women during pregnancy, assist with labor and delivery, and provide aftercare for the mother and child. We conclude that regulation of the practice of midwifery is reasonably necessary to protect the health, safety, and welfare of mothers and newborns under the care of a midwife. We also do not find that the current regulation unreasonably restricts entry into the profession.

The State's policy with respect to professional regulation requires regulation of the practice of midwifery in the form of full licensure, and for that reason, we recommend that a regulatory program for the midwifery profession be retained. However, we offer no recommendation about amendments to the current regulatory scheme or exceptions to the licensing requirement to practice midwifery. Those policy considerations are beyond our expertise.

Lastly, we note that the Legislature conferred on the director of the DCCA the authority to adopt administrative rules pursuant to Chapter 91, HRS, to carry out the purposes of the regulatory program. Almost six years later, the director still has not promulgated rules. We suggest that rules can provide practitioners and consumers greater clarity as to how the department interprets and implements the licensing requirements. For that reason, we recommend that, if regulation of midwives continues, the department adopt administrative rules for the program forthwith.

Comments About the Current Licensing Program

WE OBTAINED COMMENTS about the current licensing requirements from numerous individuals including licensed midwives, cultural practitioners, and other interested individuals.

Home birth advocates say the law has effectively barred dozens of traditional midwives in Hawai‘i from continuing their practice, making it harder to fill gaps in care, particularly in rural areas of the state where there is a shortage of maternal health care providers. According to news articles, Maui County which includes Moloka‘i and Lāna‘i is particularly underserved.

The Hawai‘i Home Birth Task Force estimated that a total of 60 traditional midwives and birth attendants who were practicing in Hawai‘i in 2019 are ineligible for state licensure. “The traditional midwives in today’s era are the kūpuna; they are our elders; they are our teachers. They are the ones who gave us the knowledge, and the fact that they can’t get a license or practice legally is really not cool in my book,” according to a licensed midwife. “The midwives have different modalities, and traditional midwives are not school learned,” she said. In her opinion, “…licensure has been great for the CPMs. It has been terrible for the traditional midwife.”

Other stakeholders told our office that Hawai‘i’s midwifery licensing law has pushed unlicensed midwives underground, making it more dangerous for women and their babies because midwives may be hesitant to send them to the hospital in an emergency for fear that they will get in legal trouble. Some women are also choosing to give birth alone, without a midwife, rather than put a traditional midwife in legal jeopardy, they said.

“People are birthing alone also because they feel forced to, not because they choose to,” said the chair of the Hawai‘i Home Birth Task Force. “Birthing people will just go underground and it is dangerous.” The majority of the task force recommended that Hawai‘i exempt traditional midwives from licensing requirements for traditional midwives.

The Hawai‘i Affiliate of the American College of Nurse Midwives, however, communicated its support of recommendations in earlier reports that regulation of midwifery continue. The organization urged us to recommend that the current regulation be amended to distinguish between the types of non-nurse midwives – CMs and CPMs – and their respective credentials. According to the Hawai‘i Affiliate, if the regulation recognizes that CMs must adhere to the standards established by American College of Nurse-Midwives, CMs may be able to, among other things, obtain malpractice insurance and be eligible for Medicaid credentialing and reimbursement under private insurance policies.