MEDICAL BOARD OF CALIFORNIA
LEGISLATIVE ANALYSIS

Bill Number:	AB 1308
Author:	Bonilla
Chapter:	665
Bill Date:	September 6, 2013, Amended
Subject:	Midwifery
Sponsor:	American Congress of Obstetricians and Gynecologists (ACOG), District IX
Position:	Support if Amended

DESCRIPTION OF CURRENT LEGISLATION:

This bill removes the physician supervision requirement for licensed midwives (LMs) and requires LMs to only accept clients that meet the criteria for normal pregnancy and childbirth, as specified in this bill. If a potential client does not meet the criteria for normal pregnancy and childbirth, then the LM can refer that client to a physician trained in obstetrics and gynecology for examination; the LM can only accept the client if the physician examines the client and determines that the risk factors are not likely to significantly affect the course of pregnancy and childbirth.

This bill also allows LMs to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to his or her practice of midwifery and consistent with the LMs scope of practice. This bill requires LMs to obtain informed consent, as specified in this bill.

This bill requires LMs to provide records and speak to the receiving physician if the client is transferred to a hospital. This bill requires the hospital to report each transfer of a planned out-of-hospital birth to the Medical Board of California (Board) and the California Maternal Quality Care Collaborative, using a form developed by the Board.

This bill requires all LMs to complete midwifery education programs and does not allow new licensees to substitute clinical experience for formal didactic education beginning January 1, 2015. This bill allows the Board, with input from the Midwifery Advisory Council (MAC), to look at the data elements required to be reported by LMs, to better coordinate with other reporting systems, including the reporting system of the Midwives Alliance of North America (MANA).

Lastly, this bill allows LMs to attend births in alternative birth centers (ABCs) and changes the standards of certification that must be met by an ABC to those established by the American Association of Birth Centers.

ANALYSIS

Background

Current law requires the Board to adopt regulations defining the appropriate standard of care and level of supervision required for the practice of midwifery. Due to the inability to reach consensus on the supervision issue, the Board bifurcated this requirement and in 2006 adopted Standards of Care for Midwifery. Three previous attempts to resolve the physician supervision issue via legislation and/or regulation have been unsuccessful due to the widely divergent opinions of interested parties and their inability to reach consensus.

Although required by law, physician supervision is essentially unavailable to LMs performing home births, as California physicians are generally prohibited by their malpractice insurance companies from providing supervision of LMs who perform home births. According to these companies, if a physician supervises or participates in a home birth, the physician will lose insurance coverage resulting in loss of hospital privileges. The physician supervision requirement creates numerous barriers to care, in that if the LM needs to transfer a patient/baby to the hospital, many hospitals will not accept a patient transfer from a LM as the primary provider who does not have a supervising physician. California is currently the only state that requires physician supervision of LMs. Among states that regulate midwives, most require some sort of collaboration between the midwife and a physician.

LMs have difficulty securing diagnostic lab accounts, even though they are legally allowed to have lab accounts. Many labs require proof of physician supervision. In addition, LMs are not able to obtain the medical supplies they have been trained and are expected to use (oxygen and medical supplies that are included in approved licensed midwifery school curriculum (CCR section 1379.30)). The inability for a LM to order lab tests often means the patient will not obtain the necessary tests to help the LM monitor the patient during pregnancy. In addition, not being able to obtain the necessary medical supplies for the practice of midwifery adds additional risk to the LM's patient and the fetus or child.

AB 1308 Provisions

This bill removes the physician supervision requirement for licensed midwives (LMs) and requires LMs to only accept clients that meet the criteria for normal pregnancy and childbirth, which this bill defines as meeting the following conditions:

- There is an absence of both of the following:
    - Any preexisting maternal disease or condition likely to affect the pregnancy – this bill requires the Board to adopt regulation specifying these conditions.
    - Significant disease arising from the pregnancy.
- There is a singleton fetus.

- There is a cephalic presentation.
- The gestational age of the fetus is greater than 37 0/7 weeks and less than 42 0/7 completed weeks of pregnancy.
- Labor is spontaneous or induced in an outpatient setting.

This bill specifies that if a potential midwifery client meets the conditions of a normal pregnancy, but has a preexisting maternal disease or condition likely to affect the pregnancy or significant disease arising from the pregnancy, the LM must refer the potential client to a physician trained in obstetrics and gynecology for examination; the LM can only accept the client if the physician examines the client and determines that the risk factors are not likely to significantly affect the course of pregnancy and childbirth. This bill further specifies that, if at any point during the pregnancy, childbirth, or postpartum care a client's condition deviates from normal, the LM shall immediately refer or transfer the client to a physician. The LM may consult and remain in consultation with the physician after the referral or transfer. If the physician determines that the client's condition or concern has been resolved and is not likely to affect the course of pregnancy or childbirth, the LM may resume primary care of the client. If the physician determines that the client's condition or concern is not resolved, the LM may provide concurrent care with the physician, and if the client authorizes, be present during labor and childbirth and resume postpartum care, if appropriate.

This bill allows LMs to directly obtain supplies and devices, obtain and administer drugs and diagnostic tests, order testing, and receive reports that are necessary to his or her practice of midwifery and consistent with the LMs scope of practice.

This bill also requires LMs to obtain specific informed consent, orally and in writing, and as part of the client care plan, which must be signed and be part of the client's medical record. This information includes the following: the client is retaining a LM; license information for the LM; that many physicians do not have liability insurance coverage for planned out-of-hospital births; failure to consult with a physician, when advised, may affect the client's legal rights in any professional negligence actions; there are conditions outside the scope of a LM that will result in referral to a physician; the specific arrangements for referral to a physician; recommendations for preregistration at a hospital most likely to receive a transfer; if the client is informed that she has a condition mandating a transfer, the LM shall initiate the transfer; the availability of the text laws regulating LMs on the Board's Web site; that consultation with a physician does not alone create a physician-patient relationship or any other relationship with a physician; and that the LM is independently licensed and is solely responsible for the services provided to the client.

This bill requires LMs to provide records and speak to the receiving physician about labor up to the point of transfer if the client is transferred to a hospital. This bill requires the hospital to report each transfer of a planned out-of-hospital birth to the Board and the California Maternal Quality Care Collaborative, using a form developed by the Board.

This bill requires all LMs to complete midwifery education programs and does not allow new licensees to substitute clinical experience for formal didactic education beginning January 1, 2015; this deletes the challenge mechanism from statute.

This bill allows the Board, with input from the MAC, to look at the data elements required to be reported by LM to better coordinate with other reporting systems, including the reporting system of the MANA. This provision does not require any reporting changes, but only allows the Board and the MAC to look at potential changes.

This bill specifies that failure of a LM to consult with a physician, refer a client to a physician, or transfer a client to a hospital when necessary, constitutes unprofessional conduct.

Lastly, this bill allows LMs to attend births in alternative birth centers (ABCs) and changes the standards of certification that must be met by an ABC to those established by the American Association of Birth Centers.

Board Information

The Board, through the MAC, has held many meetings regarding physician supervision of LMs and has attempted to create regulations to address this issue. The concepts of collaboration, such as required consultation, referral, transfer of care, and physician liability have been discussed among the interested parties with little success. There is disagreement over the appropriate level of physician supervision, with LMs expressing concern with any limits being placed on their ability to practice independently. The physician and liability insurance communities have concerns over the safety of midwife-assisted homebirths, specifically delays and/or the perceived reluctance of LMs to refer patients when the situation warrants referral or transfer of care.

The Board, through the MAC, has also held meetings regarding the lab order and medical supplies/medication issues and has attempted to create regulatory language to address this issue. However, based upon discussions with interested parties, the lab order and medical supplies/medication issues needs to be addressed through the legislative process.

This bill addresses the physician supervision issue, which is of utmost importance for protection of consumers, and is the reason for all of the barriers to care that LMs currently face. This bill will only allow LMs to accept clients that meet the conditions of a normal pregnancy, which is more stringent than existing practice, as clients now can consent to receive services from LMs even if they do not meet criteria for a normal pregnancy. This bill requires a client to be examined by a physician and for the physician to approve care by a LM for clients that do not meet the normal pregnancy criteria. This bill also increases communication between LMs, physicians, and hospitals, if referral of care or a hospital transfer is required, which will also help to significantly increase consumer protection. This bill adds many items to the informed consent that LMs must provide to clients in order to increase transparency and provide more information to potential clients. This bill requires all LMs, starting in 2015, to

complete a formal midwifery education program, as this bill deletes the existing challenge mechanism that allows a LM to pass a test in lieu of completing a formal education program. This bill will help to ensure that consumers are protected and provided the best midwifery care possible and will also help the Board to more effectively regulate LMs.

FISCAL: Minimal and absorbable

SUPPORT: ACOG, District IX (sponsor)
Birth Network of Monterey County
California Association of Midwives
California Families for Access to Midwives
Central California Alliance for Health
International Cesarean Awareness Network
Medical Board of California (if amended)

OPPOSITION: None on File

IMPLEMENTATION:

- Newsletter article and notification to LMs
- Notify/Train Board staff
- Update the Board's Web site with changes to the law
- Work with interested parties and stakeholders to develop regulations specifying any preexisting maternal disease or condition likely to affect the pregnancy and any other regulations needed to implement this bill
- Develop processes and procedures for hospital reporting of each transfer of a planned out-of-hospital birth to the Board and develop a form for this reporting
- Place on the MAC's agenda a review of the existing reporting data elements and possible changes to coordinate with other reporting systems, including MANA
- Provide outreach to new LM applicants that the challenge mechanism will no longer be available effective January 1, 2015