

Legislative Report 2014

The Board of Directors of the Midwives' Association of Washington State is pleased -and relieved- to announce that HB 1773 received overwhelming bipartisan support in the Washington legislature and was signed into law by Governor Inslee on April 2, 2014. We are grateful to our exceptional Lobbyist, Amber Ulvenes, the hardworking Legislative Committee and all of you for making this possible.

The purpose of this letter is to shed light on the long and complicated decision making process behind HB 1773, participation in the rules writing process ahead and the implications of the new law for licensed midwives in WA according to our current understanding. (You can find the full text of HB 1773 by clicking [here](#).)

To be very clear, the MAWS Board recognizes and values the elegant simplicity of RCW 18.50 and the professional autonomy it represents and protects. It is our intention to be diligent in preventing Washington State from adopting specific and restrictive language regulating the practice of midwifery as other states have done. RCW 18.50 has served us beautifully for nearly 36 years and we hope the additions of HB 1773 will allow it to serve for the next 36.

As you are aware, MAWS has been working for over two years to address the logjam in the midwifery program of the Department of Health and expedite the licensing process for CPMs. This new law will direct the Department of Health to write rules implementing MAWS' recommendations for additional coursework and clinical experience CPMs need in order to meet WA state licensure requirements; known to many as CPM+. The arduous process of developing the recommendations, educating and building support from the Midwifery Advisory Committee (MAC) and key legislators was led by CPMs with support and participation from the MAWS Board. Special thanks go to **Charlene Campbell, LM CPM, Jodilyn Owen, LM CPM, and Kat Barron, LM CPM** for hours of work and tireless commitment to this project. Their persistence has made it possible for numerous CPMs to become licensed in recent months—we eagerly anticipate that many more CPMs will join the licensed midwifery community before long. A warm welcome - and a free MAWS membership - to you all! (To access your free membership, send an email to info@washingtontmidwives.org.)

The second aspect of the law relates to three of MAWS' top priorities; increasing the number of professional midwives in Washington, ensuring that all childbearing women have access to the high-quality services of licensed midwives and appropriate third party reimbursement for midwifery services. As such, MAWS is committed to professional accountability, quality assurance and demonstrating midwives' excellent outcomes, values that are reflected in the new license renewal requirements for peer review, continuing education, and data collection. How midwives will be required to provide documentation with their license renewal applications will be determined by the Department of Health. Community input will be absolutely necessary. MAWS will advocate for user-friendly, efficient and cost effective rules.

Thirdly, the law closes the loop created in 2012 when LMs were added to the list of providers who could direct orders to nurses. This issue was originally raised by LMs seeking hospital privileges in rural areas

of WA and nurses wishing to birth assist for LMs at home or in birth centers. It is intended to protect these two licensed professions with legislated scope of practice from liability, not to suggest that LMs should now only utilize nurses as birth assistants.

Finally, and without a doubt the most challenging provision of HB 1773, is the language that establishes our scope of practice regarding newborn care.

This is a long story.

While midwives in Washington State, indeed around the world, have historically provided care for babies up to 6-8 weeks of age, there was, in fact, no language in our regulating statute RCW 18.50 specifying that we could provide, let alone be compensated for, care of newborns. Legally, the term scope of practice is a “term of art” referring specifically and exclusively to exactly what is written in statute.

The complete absence of language representing and protecting our customary care of newborns was brought to our attention in the middle of the 2013 legislative session. A licensed midwife approached MAWS for help after a major insurance carrier audited her practice. They concluded that newborn care was not in the legal scope of practice for LMs and were moving to recoup thousands of dollars in newborn care fees paid to her practice over more than a decade. It was made abundantly clear to this midwife that the carrier intended to take similar action against the LM community as a whole and set a precedent for other carriers to do the same.

In response to this urgent situation, the MAWS Board conferred, sought legal counsel from the Office of the Insurance Commissioner, obtained the support of our House sponsor, and drafted additional language to HB 1773 stating that licensed midwives could provide care to newborns for up to 6-8 weeks of age virtually overnight. In an equally swift and decisive response, representatives from the instigating insurance carrier, the WA State Medical Association, and the state chapter of the American Academy of Pediatrics communicated intent to oppose our bill in its entirety (CPM+ and all) unless we removed the newborn care language. Our House sponsor was unwilling to move ahead in the face of this powerful opposition and MAWS was left with a ticking time bomb and an urgent need to find an alternative solution. In response to community concern, MAWS conferred with the Assistant Attorney General for the DOH regarding the notion of “grandfathering” in our customary care. We were told in no uncertain terms that this was a fictitious notion not supported by WA law.

At this point, Representative Eileen Cody, Chair of the House Health Care Committee and a long-term supporter of midwifery, offered to sponsor a Department of Health Sunrise Review to address the issue of adding newborn care to LMs legal scope of practice. As a side benefit, the Sunrise Review would forestall all attempts on the part of the insurance carrier to go after other licensed midwives for the duration of the review. Cautiously optimistic that the Sunrise Review would decide in favor of “expanding” our scope of practice to include and protect midwives’ customary care of newborns, we omitted the newborn care language from HB 1773 for the 2013 session. In spite of bipartisan support, HB 1773 died on the Senate floor at the close of the session simply because members ran out of time to vote on it.

As we approached the Sunrise Review hearing in the summer of 2013, MAWS representatives were in contact with our House sponsor, Representative Morrell, House Healthcare Committee Chair, Representative Cody and representatives from the instigating insurance carrier, the WA State Medical

Association and state chapter of the Pediatric Association to garner support, gauge opposition and ensure our best success. MAWS met with legal staff from the Office of the Insurance Commissioner, drafted a **statement about newborn care** and prepared **exhaustive documentation and testimony** for the DOH Sunrise Review.

At this point, MAWS was challenged with a difficult decision: push for language that would allow LMs to provide newborn care for up to 6-8 weeks in the face of powerful opposition from the Association of Washington Health Plans, Washington State Medical Association and state chapter of the American Academy of Pediatrics determined to block the “expansion” of LMs scope of care or accept a compromise that would allow licensed midwives to provide care for newborns for up to 2 weeks. MAWS made the difficult strategic decision to compromise in our application to the Sunrise Review with the understanding that midwives would continue to provide support and advice about the mother/baby dyad throughout the mother’s course of care but would not provide direct clinical care to newborns after 2 weeks of age.

In August 2013, MAWS Board members Valerie Sasson, LM CPM, and Elias Kass, ND LM, represented MAWS at the Sunrise Review hearing in Olympia. Many members of the midwifery community attended this public meeting and dozens more submitted written statements of support. We clarified that LMs in Washington have been routinely and safely providing care for mothers and their newborns up to 6-8 weeks postpartum for over 35 years consistent with national midwifery education and practice standards (a conservative estimate of over 100,000 newborn encounters). We pointed out that since 1996 LMs have routinely been reimbursed for newborn care and noted that **MAWS documents recommend that newborns be seen by a pediatric provider at two weeks of age** but that midwives model of care is to support the mother baby dyad through the full postpartum period. The transcript of the testimony will confirm our verbal request that LMs be allowed to provide supportive care to well newborns up to the customary 6-8 weeks of age and that this issue is of particular concern to midwives practicing in rural areas of the state. Unfortunately, it was made clear to us by the panel that we were constricted by the language in our original application to 2 weeks of age regardless of our copious documentation and detailed testimony. PLEASE understand what was at stake, had MAWS chosen not to compromise and the Sunrise Review failed or we had lost our legislative support, ALL licensed midwives in Washington would have been at risk for EVERY insurance company to take back payment for newborn care provided over the last decade AND we would have been legally barred from continuing to provide care to newborns at all.

As a result of MAWS decision to pursue “care of newborns up to 2 weeks”, the Washington Medical Association and the state chapter of the American Academy of Pediatrics agreed to remain neutral and abstained from commenting on the Sunrise Review. The WA ARNP chapter generously wrote in support. The lone opposition came from the Association of Washington Health Plans representing the carrier who had instigated this issue in the first place. Their statement was filled with misleading inaccuracies which were successfully refuted in verbal testimony by MAWS Board member, Audrey Levine, LM CPM. The favorable recommendations made to the Secretary of the Department of Health by the Sunrise Review committee empowered us to re-introduce HB 1773 for the 2014 legislative session with an amendment to expand LMs scope of practice to provide newborn care up to 2 weeks of age. Again, the Association of WA Health Plans provided weak testimony against our bill at the Senate Health Care

committee hearing but the WA State Medical Association and the state chapter of the American Academy of Pediatrics remained neutral. The bill passed through the House 91 – 5, and through the Senate unanimously. It is now law in the State of Washington but rules have yet to be written, and many questions have yet to be answered.

MAWS intends to seek an Attorney General opinion in the coming weeks about the legal implications for LMs in continuing to offer support and advice to mothers about the mother/baby dyad through the full course of postpartum care. Essentially, they can stop paying us but they cannot stop us supporting our families to the best of our ability. And we need to know what that will look like in legal terms. The results of this inquiry will be distributed to members as soon as we have something to share.

We urge you to participate in the rules-writing process that will guide the implementation of all aspects of HB 1773 including the CPM+ and required documentation of peer review, continuing education and data collection. MAWS will post notification of the public meetings on this website but you are encouraged to contact midwifery@listserv.wa.gov to be added to the list of stakeholders for direct notifications. We do not currently have any information regarding expected timeline for rules writing.

Stakeholder meetings will be held at the Department of Health offices in Olympia or you can participate by video conference from either of the remote DOH sites in Shoreline and Spokane. Written comments can be submitted directly to Cathy Weeks (who has assumed Kendra Pitzler's position) at the DOH Midwifery program.

The emphases of MAWS' lobbying efforts for the 2015 Legislative session will be on achieving a fair and permanent solution to our disproportionately high licensing fees and supporting birth assistants as they navigate pressure to become certified from the Department of Health.

We hope you find this information useful. Please continue your involvement in MAWS. As a volunteer Board, we are only as effective and representative as those who participate.

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