

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2011

Legislative Fiscal Note

BILL NUMBER: House Bill 522 (First Edition)

SHORT TITLE: Midwifery Licensing Act.

SPONSOR(S): Representatives Carney, Wilkins, Current, and Hurley

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>	<u>FY 2014-15</u>	<u>FY 2015-16</u>
REVENUES					
<u>Non-General Fund</u>			*Exact amount cannot be determined*		
EXPENDITURES					
<u>General Fund</u>					
Office of Admin. Hearings			*None Anticipated: See Assumptions and Methodology*		
Judicial Branch			*Exact amount cannot be determined*		
<u>Non-General Fund</u>					
NC Council of Certified Professional Midwives			*Exact amount cannot be determined*		
POSITIONS (cumulative):					
<u>Non-General Fund</u>					
NC Council of Certified Professional Midwives			*Exact amount cannot be determined*		
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Office of Administrative Hearings, Department of Health and Human Services, and the Judicial Branch.					
EFFECTIVE DATE: When the bill becomes law					

BILL SUMMARY:

House Bill 522 enacts new Article 10B, Certified Professional Midwives, to Chapter 90 of the North Carolina (NC) General Statutes. This bill prohibits any person from practicing or offering to practice midwifery, on or after January 1, 2012, without a license, as provided in new Article 10B. This bill exempts the following circumstances from the licensure requirement: 1) an individual approved to practice midwifery under Article 10A, 2) a physician licensed to practice medicine, 3) the performance of medical acts by a physician assistant or nurse practitioner as specified, 4) the practice of nursing by a registered nurse as allowed under Article 9A (the Nursing Practice Act), 5) the rendering of childbirth assistance in emergency situations, and 6) individuals present or assisting the certified professional midwife during the birth process as specified.

House Bill 522 sets forth the General Assembly's findings and includes definitions applicable to Article 10B. This bill defines certified professional midwife as a person with national certification from the North American Registry of Midwives (NARM). This bill also defines midwifery as the act of providing prenatal, intrapartum, postpartum, newborn and interconceptional care, but not the practice of medicine by a physician licensed to practice medicine when engaged in 1) the practice of medicine, 2) the performance of medical acts by a physician assistant or nurse practitioner when performed in accordance with the rules of the North Carolina Medical Board, 3) the practice of nursing by a registered nurse engaged in the practice of nursing, or 4) the rendering of childbirth assistance in an emergency situation.

House Bill 522 creates a seven-member NC Council of Certified Professional Midwives (Council), with members appointed by the Secretary of Health and Human Services and initial members appointed on or before October 1, 2011. This bill details Council member requirements and term limits, and includes provisions for compensation, meeting procedures and Council administration. This bill enumerates the 13 powers and duties of the Council, in consultation with the Division of Health Service Regulation, Department of Health and Human Services, and with guidance from the National Association of Certified Professional Midwives Standards of Practice.

House Bill 522 lists the following requirements for licensure as a certified professional midwife: 1) a completed application; 2) certification from NARM and currently holds the title of certified professional midwife; 3) graduated from a Midwifery Education and Accreditation Council accredited school, on or after December 31, 2013; 4) submits proof to the Council of current cardiopulmonary resuscitation certification and neonatal resuscitation certification; 5) has read, understands, and agrees to practice under Article 10B and 6) pays required fees.

House Bill 522 lists 10 responsibilities of a licensed certified professional midwife, including the responsibility to provide care for the healthy woman who is expected to have a normal pregnancy, labor, birth, and postpartal phase in the setting of the mother's choice, and the responsibility to order routine antepartal or postpartal screening or lab analysis at a licensed facility and inform the parents about newborn screening. This bill directs a midwife licensed under Article 10B to display the license at all times in a conspicuous place where the midwife is practicing, and sets forth provisions for license renewal, periods of lapsed licensure, and granting inactive status.

House Bill 522 authorizes the Council to grant a license to a person residing in NC licensed, certified, or registered to practice as a certified professional midwife in another jurisdiction if that jurisdiction's standards are substantially equivalent, and the person submits an application and the required fees. This bill directs the Council to set all fees under Article 10B, and to pay all expenditures out of funds from the fees or other funds. This bill allows the Council to discipline applicants or licensees, after a hearing, under seven specified circumstances.

House Bill 522 allows a certified professional midwife licensed under Article 10B to receive third-party reimbursement from private agencies providing coverage for maternity and obstetrical care. This bill specifies that a managed care organization or insurance company may not require a patient to use a certified professional midwife instead of a licensed physician or nurse practitioner. This bill authorizes the Council to apply to superior court to enjoin violations of Article 10B, and provides that no health care provider will be liable for an injury to a woman or infant arising during childbirth and resulting from an act or omission by a licensed certified professional midwife.

SOURCE: Bill Digest House Bill 522

ASSUMPTIONS AND METHODOLOGY:

Revenue

Section 1 – § 90-178.14 (Fees)

Section 1 of House Bill 522 creates the NC Council of Certified Professional Midwives and orders that no salary, expense, or other obligation of the Council shall be charged against the State treasury. The bill directs the Council to set the fees for licensure, license renewal, and other services that are deemed necessary to carry out the purposes of Article 10B. The Council would be self-supporting from these fees. Because the rate of the fees would be set at some date in the future, Fiscal Research is not able to provide an estimate of the revenue that would be generated from these fees.

Expected Number of Applicants to File for a License

This bill defines certified professional midwife as a person with national certification from the North American Registry of Midwives (NARM). According to NARM, there are currently 29 midwives in North Carolina who hold a NARM certification. Fiscal Research estimates that there would be at least 29 midwives applying for a license in FY 2011-12. Fiscal Research is not able to estimate the number of applications that would be received in subsequent years.

There is also a probability that out-of-state midwives living along the State border may also apply for a North Carolina license, but Fiscal Research is not able to estimate the number of out-of-state applications due to a lack of data. After December 31, 2013, midwives applying for a license must graduate from a Midwifery Education and Accreditation Council (MEAC) accredited school.

According to NARM, there are currently no MEAC accredited schools in the State. Fiscal Research is not able to estimate the impact of this requirement on the applications submitted to become a licensed midwife.

Please see the Appendix on pages 7 and 8 for a review of the fee schedule set and the number of licenses issued by the Virginia Board of Medicine, which has been issuing licenses for Midwives since 2005.

Expenditures

The Council and the Department of Health and Human Services

House Bill 522 directs the Council to exclusively pay all of its expenditures with 1) funds from the fees for licensure, license renewal, and other necessary services or 2) other sources of funding. These fees would be deposited in the name of the Council in financial institutions selected by the Council. As previously mentioned, the Council would be self-supported by these fees. As a result, the fees need to be set at a schedule that would cover the expenses of the Board.

House Bill 522 authorizes the Secretary of the Department of Health and Human Services (DHHS) to appoint the members of the Council. The bill also directs the Council to report to the Division of Health Service Regulation of DHHS, and requires this division to consult the Council on its power and duties. DHHS reports that these activities would have no fiscal impact on its current operations.

DHHS does not expect the license fees to be collected until sometime in 2012. Until these fees are collected, the Council would have no funds to cover its operating expenses—such as per diem and travel for Council members, staff assistance, lease space if needed, etcetera. These expenses would have to be absorbed by the Council members until the fees are collected and the associated revenue could be used to pay for these expenses.

DHHS reports that House Bill 522 would require a one-time appropriation of \$239,871 to establish and staff the Council during FY 2011-12 prior to the collection of licensure fees. The bill authorizes the Council to employ personnel, investigate complaints, and educate the public and other providers of obstetrical care about the role of the licensed midwife—among other listed duties. In order to administer the bill, DHHS reports that the Council would need 4 staffers: one Staff Director for the Council and Licensing Program; two Facility Survey Consultants to review the license applications, provide required training, and investigate complaints; and one Processing Assistant to provide administrative support to the Council. See Table 1 on page 5 for a summary of this cost.

After FY 2011-12, DHHS assumes that the Council's expenses would be funded by the license fees. However, House Bill 522 provides that no salary, expense, or other obligation of the Council shall be charged against the State treasury. Therefore, Fiscal Research does not concur with DHHS' assessment. Fiscal Research anticipates that the Council would review its needs and revenue availability, and then determine the number of positions needed to staff the Council based on this data.

TABLE 1: DHHS' Estimated Cost for the Council's Administration of HB 522 (Fiscal Research Does Not Concur)	
Description	Cost
1 Staff Director (Salary and Benefits)	\$57,712 R
2 Facility Survey Consultants (Salary and Benefits)	\$111,083 R
1 Processing Assistant (Salary and Benefits)	\$37,476 R
Office Supplies	\$1,000 R
Equipment	\$23,600 NR
Travel for Council Meetings and Investigations	\$5,000 R
Educate the Public/Develop Annual Report	\$4,000 R
TOTAL	\$239,871

Office of Administrative Hearings

House Bill 522 authorizes the Council to issue a letter of reprimand, deny, refuse to renew, suspend, or revoke an application for licensure or a license under certain circumstances. These actions may be ordered by the Council after a hearing is held in accordance with Article 3A, *Other Administrative Hearings*, of Chapter 150B of the General Statutes.

The Office of Administrative Hearings (OAH) cannot determine the number of referrals that would be received under Article 3A. As the number of license applications increases, OAH reports that there is a greater chance that an appeal would be filed. Assuming that the number of appeals would be no greater than 30 per year, OAH does not anticipate a substantial fiscal impact on OAH's operations. If the number of appeals were to exceed 30 applications, OAH would re-evaluate this assessment and there would possibly be a cost to the State.

Judicial Branch

The Administrative Office of the Courts (AOC) reports that they have no historical data from which to estimate how many petitions for injunctions may be filed under this bill. The majority of these cases will likely involve an ex parte injunctive request for an ex parte order, then a return hearing to determine if the injunction would remain in effect. There is also the possibility for a second return hearing to remove the injunction. AOC estimated that an average of two hours of in-court time will be required to handle each of the cases arising from this bill. The total fiscal impact for each case (two hours of Superior Court judge time and two and one-half hours of Deputy Clerk time) would be \$323.

Each petition for an injunction would be accompanied with a \$160 civil superior court filing fee. From this fee, the General Fund receives \$125.40 per case. Table 2 on page 6 contains detail on this fee.

TABLE 2: Superior Court Civil Filing Fee		
Fee:	Revenue to:	Amount per case:
General Court of Justice	General Fund	\$122
	State Bar*	\$3
Phone	Court System	\$4
Facilities	Local Government*	\$16
Service of Civil Process	Local Government*	\$15
Collection Assistance Fee	General Fund*	*
TOTAL TO GENERAL FUND		\$160

*Ten percent (10%) of the State Bar, Facilities, and Process Served fee is remitted to the General Fund as a collection assistance fee.

Because of indigency cases, AOC assumed that less than 100% of the applicable fees will be collected. There is no available data to estimate the percentage of cases that will be considered indigent for purposes of fee collection.

Overall, in FY 2009-10, a typical felony case took approximately 216 days to dispose in Superior Court. A typical misdemeanor case took approximately 91 days to dispose in District Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

SOURCES OF DATA: North American Registry of Midwives, Office of Administrative Hearings, Department of Health and Human Services, and Judicial Branch.

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION: (919) 733-4910

PREPARED BY: Tazra Mitchell; Sarah Stone

APPROVED BY: Lynn Muchmore, Director
Fiscal Research Division

DATE: May 31, 2011



Signed Copy Located in the NCGA Principal Clerk's Offices

APPENDIX

A Review of the Fees Charged & Licenses Issued by the Virginia Board of Medicine

As previously mentioned, House Bill 522 grants the Council the authority to set the fee schedule for the Midwifery License. Although Fiscal Research does not assume that the Council would adopt another state's fee schedule, this section of the fiscal note outlines the midwifery licensure fee schedule set by Virginia.

Since 2005, the Virginia Board of Medicine has issued licenses to Certified Professional Midwives. According to the *Regulations Governing the Practice of Licensed Midwives* published by Virginia, the Virginia Board of Medicine charges the following fees to practice as a midwife:

- Application fee: \$277
- Biennial active license renewal fee: \$312
- Late renewal fee for an active license: \$105
- Biennial inactive license renewal fee: \$168
- Late renewal fee for an inactive license: \$55
- Letter of verification of a license fee: \$10
- Reinstatement fee of an expired license for two years or more: \$367 (plus the late fee)
- Application fee for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied: \$2,000
- Duplicate wall certificate fee: \$15
- Duplicate renewal license fee: \$5¹

Table 3 on page 8 provides a summary of the number of applications received and the number of licenses issued/renewed by the Virginia Board of Medicine from FY 2005-06 to 2010-11.² As a caveat, Fiscal Research does not assume that Virginia's statistics are a good predictor of what to expect in North Carolina if House Bill 522 were to pass.

¹ The Virginia Board of Medicine. *Regulations Governing the Practice of Licensed Midwives*. August 19, 2009. www.dhp.virginia.gov/medicine/leg/Midwives%208-19-09.doc.

² The Virginia Department of Health Professions. *DHP Quarterly Reporting*. May 19, 2011. http://www.dhp.virginia.gov/about/quarterly_stats.htm.

TABLE 3: The Number of Applications Received & the Number of Licenses Issued and Renewed by the Virginia Board of Medicine from FY 2005-06 to FY 2010-11			
Fiscal Year	Applications	Licenses Issued	Renewed Licenses
2005-06	16	14	/
2006-07	14	13	/
2007-08	11	11	/
2008-09	8	7	20
2009-10	11	12	9
2010-11 ³	7	7	2
TOTAL	67	61	34

³ The data for this row is for the period July 2010 to December 2010.