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Dear Task Force Members:

Thank you for allowing the Department of Commerce and Consumer Affairs to comment on the proposed amendments to Act 32, SLH 2019, Relating to the Licensure of Midwives, from the Midwives Task Force.

Ahlani Quiogue and Lee Ann Teshima have kept us apprised of the discussions during the Task Force meetings and we are grateful to be involved and appreciate the transparent discussion of the issues being raised.

As a regulatory agency, our mission is to uphold fairness and public confidence in the marketplace, promote sound consumer practices and increase knowledge, opportunity, and justice in our community. Consumer protection is a priority that we must consider. This translates to establishing the minimum qualifications for education and training to ensure that qualified individuals may practice their profession safely.

Consequently, we have reviewed and discussed the proposals from the Task Force and although we may not agree and are unable to support some of the recommendations, we are able to support other recommendations made by the Task Force.

Again, I'd like to thank you for your time and efforts in participation on this Task Force and look forward to our continued collaboration to ensure that women have the right to choose their birthing experience and that the birthing experience they choose is provided by qualified individuals.

Mahalo nui loa,

Catherine P. Awakuni Colón
Director
Department of Commerce and Consumer Affairs

The following is the Department of Commerce and Consumer Affairs' ("DCCA") position in response to proposed amendments from the Hawaii Home Birth Task Force ("Task Force") regarding Act 32, SLH 2019 that was distributed at the September 9, 2019 Task Force meeting.

1. **Proposed new definitions for "community-based midwife" and "Traditional Cultural midwife" in lieu of exempt "birth attendants"; title protection for "midwives"**

Current law: **§ -2 Definitions.** As used in this chapter:

Defines a "Midwife" as "a person licensed under this chapter."

§ ___-5 License required. (a) Beginning July 1, 2020, except as provided in this chapter, no person shall engage in the practice of midwifery, or use the title "midwife", "licensed midwife", or the abbreviation "L.M.", or any other words, letters, abbreviations, or insignia indicating or implying that the person is a licensed midwife without a valid license issued pursuant to this chapter.

(b) Nothing in this section shall preclude a person holding a national certification as a midwife from identifying the person as holding such certification, so long as the person is not practicing midwifery or professing to be authorized to practice midwifery in the State unless that person is licensed in accordance with this chapter.

§ -6 Exemptions. (a) A person may practice midwifery without a license to practice midwifery if the person is:

- (1) A certified nurse-midwife holding a valid license under chapter 457;
- (2) Licensed and performing work within the scope of practice or duties of the person's profession that overlaps with the practice of midwifery;
- (3) A student midwife who is currently enrolled in a midwifery educational program under the direct supervision of a qualified midwife preceptor;
- (4) A person rendering aid in an emergency where no fee for the service is contemplated, charged, or received; or
- (5) A person acting as a birth attendant on or before July 1, 2023, who:
 - (A) Does not use legend drugs or devices, the use of which requires a license under the laws of the State;
 - (B) Does not advertise that the person is a licensed midwife;
 - (C) Discloses to each client verbally and in writing on a form adopted by the department, which shall be received and executed by the person under the birth attendant's care at the time care is first initiated:

- (i) That the person does not possess a professional license issued by the State to provide health or maternity care to women or infants;

- (ii) That the person's education and qualifications have not been reviewed by the State;
- (iii) The person's education and training;
- (iii) That the person is not authorized to acquire, carry, administer, or direct others to administer legend drugs;
- (iv) Any judgment, award, disciplinary sanction, order, or other determination that adjudges or finds that the person has committed misconduct or is criminally or civilly liable for conduct relating to midwifery by a licensing or regulatory authority, territory, state, or any other jurisdiction; and
- (v) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
- (vi) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
- (D) Maintains a copy of the form required by subparagraph (C) for at least ten years and makes the form available for inspection upon request by the department.

(b) Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii.

(c) Nothing in this chapter shall prohibit a person from administering care to a person's spouse, domestic partner, parent, sibling, or child.

Task Force Proposal: **§ -5 License required.** (a) Beginning July 1, 2020, except as provided in this chapter, no person shall engage in the practice of midwifery, or use the title "midwife", "licensed midwife", or the abbreviation "L.M.", or any other words, letters, abbreviations, or insignia indicating or implying that the person is a licensed midwife without a valid exemption, or license issued pursuant to this chapter.

Task Force justification: A precedent has been set in other states, like Utah and Oregon, and other countries like Canada, where midwives, exempt from licensure, are allowed to continue to use the title midwife. The Director, who is the head of DCCA, has the power to allow an exception to the exempt midwives under this chapter to CONTINUE to use their professional title of: midwife, direct entry midwife, or community-based midwife.

A “proprietary title” is defined as someone who holds the title to a thing in their own right.

All direct entry midwives hold the title “midwife”, in their own right, not just CPM’s. A protected-title can be extended to members of a trade association, which is what the HiHBC is, a midwifery trade organization. The protected title is part of the “contract” made between the State and a profession. The State gives the profession exclusive rights to use certain titles and to perform certain roles. In exchange, the State can be assured that anyone using those titles or performing those roles will be appropriately trained and up to date.

The State has the authority to grandfather in all currently practicing midwives as an alternative to demoting women, with decades of experience, to birth attendants against their will.

DCCA’s Position: By adding “exemption” in this section, individuals under the “exemption” will be allowed to use the term “midwife”.

The intent of the law is to not only require licensure of “midwives” who meet the licensure requirements, but also to afford these individuals title protection. In addition, allowing an “exempt” practitioner to refer to him or herself as a **midwife, licensed midwife or L.M. or use terms that imply that the practitioner is a licensed midwife** would cause public confusion and the possible misconception and connotation by consumers and the public that these individuals have met the minimum level for licensure as a midwife.

Based on the above, the DCCA would oppose this amendment.

Task Force Proposal: § - 5(b) Nothing in this section shall preclude a person holding a national certification as a midwife from identifying the person as holding such certification, so long as the person is not practicing midwifery or professing to be authorized to practice midwifery in the State unless that person is licensed, or exempt midwife in accordance with this chapter.

DCCA’s Position: The DCCA takes no position on this amendment. This section allows an individual who holds a national certification, that would qualify for licensure as a midwife, to identify that the individual holds such a certification but may not practice midwifery.

Task Force Proposal: § -5(c) Except as provided in this chapter, no person shall engage in the practice of midwifery, or use the title “midwife”, without a valid exemption as defined in subsection 6, pursuant to this chapter.

Task Force Justification: The State is disenfranchising more than half of the currently working midwives, by declaring they now possess the ownership of the ancient title midwife. They may grant an exception to those exempt under “The traditional midwife must be acknowledged as a true midwife, on equal terms as that of the midwife with a formal education.

Exception for aboriginal midwives (3) An aboriginal person who provides traditional midwifery services may, (a) use the title “aboriginal midwife”, a variation or abbreviation or an equivalent in another language; and (b) holds himself or herself out as a person who is qualified to practice in Ontario as an aboriginal midwife”. 1991, c. 31, s. 8 (3).

EXCERPT: The Midwifery Act, Canada: “Restricted titles 8(1) No person other than a member shall use the title “midwife”, a variation or abbreviation or an equivalent in another language.”

DCCA’s Position: This amendment would allow an exempt birth attendant to practice midwifery and use the title or term “midwife”.

The current law allows an exempt birth attendant to practice a limited scope of midwifery. By including this language in the license requirements section is redundant.

Again, regarding the use of the title or term “midwife” by an exempt birth attendant, the intent of the law is to not only require licensure of “midwives” who meet the licensure requirements, but to also afford these individuals title protection. In addition, allowing an “exempt” birth attendant to refer to themselves as a midwife would cause public confusion and the possible misconception and connotation by consumers and the public that these individuals have met the educational, training, and examination requirements to become licensed as a midwife.

Based on the above, the DCCA would oppose this amendment.

Task Force Proposal: In lieu of the term “birth attendants” under the “Exemptions” section in the current law, the Task Force discussed replacing the term “birth attendants” with “**Community-based midwives**” and “**Traditional Cultural midwives**”.

§ -6 Exemptions. (a) A person may practice midwifery without a license to practice midwifery if the person is:

- (5) A person acting as a ~~birth attendant~~ “community-based midwife” or “traditional cultural midwife” on or before July 1, 2023, who:

Task Force Justification: The Task Force members have always referred to themselves as “midwives” and this new law prohibits them from using, referring or identifying themselves as “midwives” and are recommending that the following definitions for “Community-based midwives” and “Cultural Traditional midwives” be used in lieu of “birth attendant”:

“Community-based midwife” means an individual, who for religious, personal, and/or philosophical reasons chose not to become certified or licensed. These midwives are ultimately accountable to the communities they serve; and believe that midwifery is a social contract between the midwife and client/patient, and should not be legislated at all; or that women have a right to choose qualified care providers regardless of their legal status. *(MANA “Types of Midwives”, Proposal from Working Group #2)*

“Traditional Cultural midwife” means an autonomous birth attendant who has acquired the skills to care for pregnant people, babies, and their families throughout pregnancy, birth, and postpartum through a spiritual and/or cultural lineage, and is recognized by Na Pua O Haumea, Council of Traditional Midwives; and who provides care to indigenous persons or members of an indigenous community in accordance with the United Nations Declaration on the Rights of Indigenous People and/or to individuals or members of a community which subscribe to a congruent set of spiritual and/or cultural beliefs or practices, as defined by Na Pua O Haumea, Council of Traditional Midwives.” *(Originally proposed “Indigenous Midwives, however, DOH clarified that Indigenous in Hawaii Revised Statutes refers to “[§10H-8] (b) Consistent with the policies of the State of Hawaii, the members of the qualified Native Hawaii roll, and their descendants, shall be acknowledged by the State of Hawaii as the indigenous, aboriginal, maoli population of Hawaii.”, so this term would only apply to this group and not other indigenous cultures, i.e. Micronesian, Samoan, etc.*

DCCA’s Position: As noted in the prior Task Force proposal, regarding the use of the title or term “midwife” by an exempt birth attendant, the intent of the law is to not only require licensure of “midwives” who meet the licensure requirements, but to also afford these individuals title protection. In

addition, allowing an “exempt” birth attendant to refer to themselves as a midwife would cause public confusion and the possible misconception and connotation by consumers and the public that these individuals have met the educational, training, and examination requirements to become licensed as a midwife.

Therefore, based on the intent of the law, DCCA would oppose this amendment.

2. Adding/amending Advisory Committee members to include “exempt” birth attendants

Current law: **§ ___ -4 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the power and duties to:

- (5) Appoint an advisory committee to assist with the implementation of this chapter and the rules adopted pursuant thereto. The advisory committee shall consist of the following:
 - (A) Three midwives who are certified professional midwives or certified midwives;
 - (B) Two members of the public; and
 - (C) A certified nurse midwife; and
- (6) Add, remove, or otherwise modify the authorized non-controlled legend drugs and legend devices listed in ___-11 by rule under chapter 91.

Proposal from Task Force:

- (5) Appoint an advisory committee to assist with the implementation of this chapter and the rules adopted pursuant thereto. The advisory committee shall consist of the following:
 - (A) Three licensed midwives who are certified professional midwives or certified midwives that work exclusively in the community birth setting;
 - (B) Two members of the public who have been consumers of home birth; and
 - (C) ~~A certified nurse midwife~~ One registered community-based midwife; and
 - (D) One traditional cultural midwife.

Task Force Justification: The advisory committee should be made exclusively of the midwives who attend births in the community setting, and the consumer of those midwives. These are the people who can best understand how and what is needed.

In regard to (6), the Task Force provided the following comments: The medications required to safely practice midwifery do not require a DEA number, they are very basic medications, most of which have a very limited scope of use. No prescriptive rights would be given to unlicensed midwives, they would only have the ability to obtain, store and administer very specific medications to be used within the scope of midwifery practice.

DCCA's Position: Non-inclusive of other "exempt" individuals

The DCCA is concerned with the addition of members. The proposal made by the Task Force does not include other exempt individuals (e.g., certified nurse midwife, a licensed professional performing work within the scope of practice or duties of the person's profession that overlaps with the practice of midwifery, etc.). Further, it is the DCCA's understanding that a number of practicing birth attendants are based on the neighbor islands. The Midwifery Program does not have the funding to cover the travel expenses for these additional members.

Adding a representative for all exempted individuals to participate on an advisory committee to "implement" a chapter for which they are exempt from is unreasonable.

Cost:

Assuming that there will be "exempt" individuals from the neighbor islands, there are no budgetary concessions to cover the cost for travel expenses for members of the Advisory Committee if expanded any further.

Based on the above, the DCCA would oppose any amendment to the Advisory Committee.

3. Amendment to "exemptions"

- Current law: § ___ -6 Exemptions. (a) A person may practice midwifery without a license to practice midwifery if the person is:
- (1) A certified nurse-midwife holding a valid license under chapter 457;
 - (2) Licensed and performing work within the scope of practice or duties of the person's profession that overlaps with the practice of midwifery;
 - (3) A student midwife who is currently enrolled in a midwifery educational program under the direct supervision of a qualified midwife preceptor;

- (4) A person rendering aid in an emergency where no fee for the service is contemplated, charged, or received; or
- (5) A person acting as a birth attendant on or before July 1, 2023, who:
 - (A) Does not use legend drugs or devices, the use of which requires a license under the laws of the State;
 - (B) Does not advertise that the person is a licensed midwife;
 - (C) Discloses to each client verbally and in writing on a form adopted by the department, which shall be received and executed by the person under the birth attendant's care at the time care is first initiated:
 - (i) That the person does not possess a professional license issued by the State to provide health or maternity care to women or infants;
 - (ii) That the person's education and qualifications have not been reviewed by the State;
 - (iii) The person's education and training;
 - (iv) That the person is not authorized to acquire, carry, administer, or direct others to administer legend drugs;
 - (v) Any judgment, award, disciplinary sanction, order, or other determination that adjudges or finds that the person has committed misconduct or is criminally or civilly liable for conduct relating to midwifery by a licensing or regulatory authority, territory, state, or any other jurisdiction; and
 - (vi) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
 - (vii) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
 - (D) Maintains a copy of the form required by subparagraph (C) for at least ten years and makes the form available for inspection upon request by the department.

(b) Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii.

(c) Nothing in this chapter shall prohibit a person from administering care to a person's spouse, domestic partner, parent, sibling, or child.

Proposal from Task Force: § ____ -6 Exemptions. (a) A person may practice midwifery without a license to practice midwifery if the person is:

- (1) A certified nurse-midwife holding a valid license under chapter 457;
- (2) Licensed and performing work within the scope of practice or duties of the person's profession that overlaps with the practice of midwifery;
- (3) A student midwife ~~who is currently enrolled in a midwifery educational program~~ under the direct supervision of a qualified licensed or exempt midwife preceptor;

Task Force justification: Due to the length of time it takes a student residing in Hawaii to complete the required number of births to take the NARM exam, student midwives need to be able to attend births without being required to be enrolled in a midwifery educational program. Prior to this bill going into law, there were an average of just over 300 intended home births annual in Hawaii. This bill going into effect means that any/all students working toward their midwifery certificate have even fewer preceptors available to work with. Further limiting the type of midwife a student may work which both narrows her access to a diverse education, and greatly limits the number of people who may receive a midwifery education while residing in Hawaii.

DCCA’s Position: If the intent of this amendment is to “recognize” a student midwife training under an exempt birth attendant affiliated with the Hawaii Home Birth Collective, then the DCCA offers the following language for further clarification:

§ -6(a)(3) A student midwife who is currently enrolled in a midwifery educational program under the direct supervision of a qualified midwife preceptor or who is training and under the direct supervision of one of the exemptions in § ____ -6;

This amendment would recognize both a student training for national certification as a midwife and a student training under an exempted individual.

Based on the above, the DCCA offers comments only.

Task Force Proposal: § -6(a)(4) A person rendering aid in an emergency where no fee for the service is contemplated, charged, or received; or

- (5) A person acting as a ~~birth attendant on or before July 1, 2023,~~ community-based midwife (or traditional cultural midwife?) who:

Task Force justification: This date should be extended to match the Act 32 repeal date of June 30, 2025.

DCCA’s Position: The repeal date of 2023 is to allow the Legislative Auditor the appropriate amount of time to conduct a report of the last 3 years the program was in effect to determine if the exemption should be extended or repealed.

In addition, this proposed amendment is not necessary pursuant to the language contained in in section 1, page 3, lines 5 – 11, which states:

“This Act also exempts a separate category of birth attendants for a three-year period, to allow this community to define themselves and develop common standards, accountability measures, and disclosure requirements. By the end of the three-year period, the legislature intends to enact statutes that will incorporate all birth practitioners and allow them to practice to the fullest extent under the law. The legislature also notes that practicing midwifery according to this Act does not impede one’s ability to incorporate or provide cultural practices.”

Therefore, based on the above the DCCA offers comments only.

In regard to the reference of a “community-based midwife” and “Traditional cultural midwife” in this section, again, the DCCA reiterates its earlier-stated position regarding title protection.

Therefore, DCCA would oppose the amendment to specifically include “community-based midwife” and “Traditional cultural midwife”.

Task Force Proposal: § -6(a)(6) A midwife assistant under the direction (direct?) supervision of a qualified or exempt midwife; or

Task Force justification: For the safety of the birthing parent and their new born, it is important to not limit an exempt midwife’s ability to legally have someone assist them in their duties.

DCCA’ Position: This amendment would allow yet another “exempt” individual to practice midwifery by recognizing a “midwife assistant” to assist a licensed midwife or exempt individual.

The DCCA has concerns that there is an implication that the midwife assistant is capable of practicing midwifery.

Furthermore, the “midwife assistant” may not have the appropriate education and training to assist an exempt birth attendant as their qualifications and scope of practice are not defined.

Therefore, DCCA is unable to support this amendment.

Task Force Proposal: The Task Force had 2 recommendations for the following section:

Recommendation #1:

§ -6(5)(A) Does not use legend drugs or devices, the use of which requires ~~a license under the laws of the State; is~~ registered with the Hawaii Home Birth Collective;

Task Force justification: The use of uterotonics for prevention of PPH during the third stage of labour is recommended for all births.

- Oxytocin (10 IU, IV/IM) is the recommended uterotonic drug for the prevention of PPH. (Strong recommendation, moderate-quality evidence)
- In settings where oxytocin is unavailable, the use of other injectable uterotonics (if appropriate ergometrine/methylergometrine or the fixed drug combination of oxytocin and ergometrine) or oral misoprostol (600 ug) is recommended.
- “In settings where skilled birth attendants are not present and oxytocin is unavailable, the administration of misoprostol (600 ug PO) by community health care workers and lay health workers is recommended.

Oxygen is required to be able to follow the American Academy of Pediatrics guidelines for Neonatal Resuscitation.

DCCA’s Position: This amendment would 1) allow exempt birth attendants to use legend drugs and devices and 2) **require** registration under the Hawaii Home Birth Collective.

Regarding the deletion of language in the law that would prohibit an exempt birth attendant from using legend drugs and devices, the DCCA would oppose allowing any unlicensed health professional to obtain or administer any prescription drug or device.

With regard to the requirement that exempt birth attendants be registered with the Hawaii Home Birth Collective, the DCCA would oppose this “requirement” for several reasons, including:

a. The inclusion of the “Hawaii Home Birth Collective” in to the law may cause the public to assume that the DCCA has oversight or authority over this organization and recognizes this organization as the only entity of its kind that is capable of registering all birth attendants in the State.

If the Hawaii Home Birth Collective for some reason ceases to exist, then exempt birth attendants would fail to meet this “registration” requirement and would therefore not qualify to practice midwifery.

b. Requiring **all** exempt birth attendants to register with the Hawaii Home Birth Collective is restrictive. There may be exempt birth attendants who choose not to be registered or affiliated with the Hawaii Home Birth Collective.

The DCCA is not opposed to the Hawaii Home Birth Collective’s registration, but would oppose the mandatory requirement that all exempt birth attendants register with it.

c. The current law does not prohibit an exempt birth attendant from “registering” with the Hawaii Home Birth Collective voluntarily.

For reasons previously stated, the DCCA would oppose this amendment.

Recommendation #2:

§ -6(5)(A) Does not use legend drugs or devices, the use of which requires a license under the laws of the State; except for an approved antihemorrhagic medication and oxygen;

Task Force justification: The use of uterotonics for prevention of PPH during the third stage of labour is recommended for all births.

- Oxytocin (10 IU, IV/IM) is the recommended uterotonic drug for the prevention of PPH. (Strong recommendation, moderate-quality evidence)
- In settings where oxytocin is unavailable, the use of other injectable uterotonics (if appropriate ergometrine/methylegometrine or the fixed drug combination of oxytocin and ergometrine) or oral misoprostol (600 ug) is recommended.
- “In settings where skilled birth attendants are not present and oxytocin is unavailable, the administration of misoprostol (600 ug

PO) by community health care workers and lay health workers is recommended.

Oxygen is required to be able to follow the American Academy of Pediatrics guidelines for Neonatal Resuscitation.

DCCA's Position: This amendment would permit an exempt birth attendant to obtain and administer specific drugs.

The Task Force members stated that these legend drugs/devices are vital to ensure the safety of their patients, both mother and infant, especially in rural areas where the nearest hospital can be hours away. Therefore, DCCA offers the following comments but takes no position:

A limited/restricted formulary for certain drugs to be administered by an exempt midwife during an "emergency" situation only.

Recommended language:

Task Force Proposal: § -6(5)(A) Does not use legend drugs or devices, the use of which requires a license under the laws of the State except for oxygen in an emergency situation. Emergency situation means imminent danger or death or serious physical harm for the mother or infant;
(B) Does not advertise that the person is a licensed midwife;
(C) Discloses to each client verbally and in writing on a form adopted by the department, which shall be received and executed by the person under the ~~birth attendant's~~ community-based midwife's (or traditional cultural midwife's?) care at the time care is first initiated:

DCCA's Position: In regard to the reference of a "community-based midwife" and "Traditional cultural midwife" in this section, again, the DCCA notes its previously-mentioned position regarding title protection.

Therefore, based on the intent of the law, DCCA would oppose this amendment.

Task Force Proposal: § -6(a)(C)(i) That the person does not possess a professional midwifery license issued by the State to provide health or maternity care to women or infants;

Task Force Justification: I did not see a justification for this proposed amendment.

DCCA’s Position: The insertion of the word “midwifery” under this section would require an exempt birth attendant to disclose that he/she does not possess a “midwife” professional license to provide health or maternity care.

The purpose of this section is to require that the individual providing midwifery care under the exemption section discloses to the patient that he/she does not hold **any** license to provide health or maternity care to women, not only a midwife license. The current language affords more disclosure for the patient.

Therefore, this amendment is not necessary and the DCCA would oppose.

Task Force Proposal: § -6(a)(5)(C)(ii) That the person's education ~~and qualifications and training~~ have not been reviewed by the State. That the person’s education and training have been verified through the registry process with the HIHBC;

Task Force justification: We feel that in order to practice safely, registered midwives who report their education in pharmacology, administration of injected medication, and treatment of shock should be granted limited access to obtain, store and administer a specific list of medications.

DCCA’s Position: The amendment to this section refers to the Hawaii Home Birth Collective registration process that would include that an exempt birth attendant’s education and training be “verified” through the Hawaii Home Birth Collective’s registration process.

Reference to the “Hawaii Home Birth Collective” in the law would assume that the DCCA has some kind of oversight or authority over this organization and that the DCCA recognizes and accepts this organization’s review and registration for an exempt birth attendant.

Furthermore, the current law does not prohibit an exempt birth attendant from disclosing that he/she is registered with the Hawaii Home Birth Collective and that his/her education and training has been “verified” with that organization.

Therefore, DCCA would oppose this amendment.

Task Force Proposal: § -6(a)(5)(C)(iii) (iv) The person's education and training; ~~That the person is not authorized to acquire, carry, administer, or direct others to administer legend drugs;~~ If the person is, or is not authorized to obtain, carry, administer, or direct others to administer legend drugs;

Task Force justification: We feel that in order to practice safely, registered midwives who report their education in pharmacology, administration of injected medication, and treatment of shock should be granted limited access to obtain, store and administer a specific list of medications.

DCCA's Position: DCCA offers the following comments but takes no position.

DCCA previously discussed the limited use of specific drugs to be administered by an exempt birth attendant to be administered in an emergency situation and offered the following comments to section ___-6(A).

Task Force Proposal: § -6(a)(5)(C)(v) Any judgment, award, disciplinary sanction, order, or other determination that adjudges or finds that the person has committed misconduct or is criminally or civilly liable for conduct relating to midwifery by a licensing or regulatory authority, territory, state, or any other jurisdiction; and
(vi) A plan for transporting the client to the nearest hospital if a problem arises during the client's care; and
(vii) Midwife shall use the appropriate HIHBC hospital transport form; and

Task Force Justification: I did not see a justification to use the HIHBC form?

DCCA's Position: This amendment would require exempt birth attendants to use a specific transport form. Currently, the law does not require a specific form or list criteria to be included to capture certain information.

By referencing Hawaii Home Birth Collective's transport form is restrictive and would imply that the DCCA has some kind of oversight or authority over this organization and that DCCA recognizes and accepts this organization's forms when this is not the case.

The Department of Health's administrative rules for ambulatory transport includes records/information on patients transported by ambulance.

Consequently, the current law does not prohibit exempt birth attendants from utilizing Hawaii Home Birth Collective's transport form, so this amendment is not necessary and the DCCA would oppose.

Task Force Proposal: § -6(a)(5)(C)(viii) That clients will have recourse through the HIHBC complaint process and that the midwife has agreed to cooperate with the Hawaii Elders Council should a complaint be filed against them; and

Task Force justification: The kupuna council will oversee all complaints filed directly with the HIHBC by home birth consumers.

DCCA’s Position: Reference in the law to the Hawaii Home Birth Collective as the appropriate agency for which a patient can file a “complaint” and/or have recourse is not necessary.

The DCCA does not have any authority or oversight over the Hawaii Home Birth Collective.

The current law does not prohibit the Hawaii Home Birth Collective from receiving complaints for their registrants, so it is not necessary to include the language in the law.

Exempt birth attendants are not prohibited from “disclosing” that they are registered with the Hawaii Home Birth Collective and that a patient may file a complaint with the Hawaii Home Birth Collective.

Therefore, the DCCA would oppose this amendment.

Task Force Proposal:	§ -6(a)(D)	Maintains a copy of the form required by subparagraph (C) for at least ten years and makes the form available for inspection upon request by the department.
	§ -6(b)	Nothing in this chapter shall prohibit healing practices by traditional Hawaiian healers engaged in traditional healing practices of prenatal, maternal, and child care as recognized by any council of kupuna convened by Papa Ola Lokahi. Nothing in this chapter shall limit, alter, or otherwise adversely impact the practice of traditional Native Hawaiian healing pursuant to the Constitution of the State of Hawaii.
	§ -6(c)	Nothing in this chapter shall prohibit a person from administering care to a person's spouse, domestic partner, parent, sibling, or child.
	<u>§ -6(d)</u>	<u>No exemption shall be extended to any person whose health professional license has been revoked within the State, any other state, or any other jurisdiction of the United States.</u>

Task Force justification: No midwife who has had their license revoked by any state should not be able to practice midwifery in the state of Hawaii. This statement ensures that no dangerous or rogue midwives move to Hawaii to practice.

DCCA's Position: DCCA supports this amendment subject to the following revisions:

§ -6(d) No exemption shall be extended to any person whose health professional license has been revoked within the State, any other state, or any other territory of the United States.

4. Amendment to Application for a license as a midwife; delete January 1, 2020 date

Current law: **§ -8 Application for license as a midwife.** To obtain a license under this chapter, the applicant shall provide:

- (1) An application for licensure;
- (2) The required fees;
- (3) Proof of current, unencumbered certification as a:
 - (A) Certified professional midwife; or
 - (B) Certified midwife;
- (4) For certified professional midwives, proof of a successful completion of a formal midwifery education and training program that is either:
 - (A) An educational program or pathway accredited by the Midwifery Education Accreditation Council; or
 - (B) A midwifery bridge certificate issued by the North American Registry of Midwives for certified professional midwife applicants who either obtained certification before January 1, 2020, through a non-accredited pathway, or who have maintained licensure in a state that does not require accredited education;
- (5) If applicable, evidence of any licenses held or once held in other jurisdictions indicating the status of the license and documenting any disciplinary proceedings pending or taken by any jurisdiction;
- (6) Information regarding any conviction of any crime which has not been annulled or expunged; and
- (7) Any other information the department may require to investigate the applicant's qualifications for licensure.

Proposal from Task Force:

§ -8 Application for license as a midwife. To obtain a license under this chapter, the applicant shall provide:

- (1) An application for licensure;
- (2) The required fees;
- (3) Proof of current, unencumbered certification as a:
 - (A) Certified professional midwife; or
 - (B) Certified midwife;
- (4) For certified professional midwives, proof of a successful completion of a formal midwifery education and training program that is either:
 - (A) An educational program or pathway accredited by the Midwifery Education Accreditation Council; or
 - (B) A midwifery bridge certificate issued by the North American Registry of Midwives for certified professional midwife applicants who either obtained certification ~~before January 1, 2020~~, through a non-accredited pathway, or who have maintained licensure in a state that does not require accredited education;

Task Force justification: There will be certified professional midwives that receive their CPM credential AFTER January 1, 2020, from midwifery schools that are not associated with MEAC. These midwives will have gone through the same training, and have passed the same NARM exam as other CPMs that will be legally licensed and recognized by the State. ALL CPM midwives have met the requirements to be recognized by the North American Registry of Midwives, including passing their credentialing national exam, and thus should be recognized by the state as eligible to apply for a license.

DCCA's Position: DCCA supports with amendments.

The DCCA also recommends the recognition of a CPM who completed the NARM Entry-Level Portfolio Evaluation Process ("PEP") as this will allow another option to meet the midwife licensure requirements and recommends the following:

- (4) For certified professional midwives, proof of a successful completion of a formal midwifery education and training program that is either:
 - (A) An educational program or pathway accredited by the Midwifery Education Accreditation Council; ~~or~~

- (B) A midwifery bridge certificate issued by the North American Registry of Midwives for certified professional midwife applicants who either obtained certification ~~before January 1, 2020~~, through a non-accredited pathway, or who have maintained licensure in a state that does not require accredited education; or
- (C) The North American Registry of Midwives entry-level portfolio evaluation program.

5. **Add, remove or otherwise modify the authorized non-controlled legend drugs and devices listed in § -11 Authority to purchase and administer certain legend drugs and devices**

Current law:

§ ___ -11 Authority to purchase and administer certain legend drugs and devices. (a) A midwife licensed under this chapter may purchase and administer non-controlled legend drugs and devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation, and that are deemed integral to providing care to the public by the department.

- (b) Legend drugs authorized under subsection (a) are limited for:
 - (1) Neonatal use to prophylactic ophthalmic medications, vitamin K, epinephrine for neonatal resuscitation per neonatal resuscitation guidelines, and oxygen; and
 - (2) Maternal use to antibiotics for Group B Streptococcal antibiotic prophylaxis per guidelines adopted by the Centers for Disease Control and Prevention, postpartum antihemorrhagics, Rho(D) immune globulin, epinephrine for anaphylactic reaction to an administered medication, intravenous fluids, amino amide local anesthetic, and oxygen.
- (c) Legend devices authorized under subsection (a) are limited to devices for:
 - (1) Injection of medications;
 - (2) The administration of intravenous fluids;
 - (3) Adult and infant resuscitation;
 - (4) Rupturing amniotic membranes;
 - (5) Repairing vaginal tears; and
 - (6) Postpartum hemorrhage.
- (d) A pharmacist who dispenses drugs and devices to a midwife as authorized by this section and in conformity with chapter 461 is not liable for any adverse reactions caused by the midwife's administration of legend drugs and devices.

Task Force recommendations:

§ ___ -11 Authority to purchase and administer certain legend drugs and devices. (a) A midwife licensed under this chapter may purchase and administer non-controlled legend drugs and devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation, and that are deemed integral to providing care to the public by the department.

- (b) Legend drugs authorized under subsection (a) are limited for:
 - (1) Neonatal use to prophylactic ophthalmic medications, vitamin K, epinephrine for neonatal resuscitation per neonatal resuscitation guidelines, and oxygen; and
 - (2) Maternal use to antibiotics for Group B Streptococcal antibiotic prophylaxis per guidelines adopted by the Centers for Disease Control and Prevention, postpartum antihemorrhagics, Rho(D) immune globulin, epinephrine for anaphylactic reaction to an administered medication, intravenous fluids, amino amide local anesthetic, and oxygen.

(b) Registered midwives. who have reported to the Hawai'i Home Birth Collective their completion of a minimum of () continuing education units. in the last triennium, of appropriate continuing education as specifically related to the practice of midwifery, which shall include:

- (1) suturing.
- (2) pharmacology. And
- (3) phlebotomy

Task Force justification: The hours of specific education listed here are the suggested requirements for continuing education units that would be required of all registered midwives, every 3 years, the actual number of CEU's is still a work in progress TBD by working group 2.

DCCA's Position: This amendment inserts language under the section for "licensed Midwives" that would require "exempt birth attendants" registered with the Hawaii Home Birth Collective to complete continuing education in suturing, pharmacology and phlebotomy.

The amendment to this section is inappropriate. This section is for "licensed midwives" and the insertion of language for an exempt birth attendant's continuing education requirement does not belong here.

Also, reference to suturing, pharmacology and phlebotomy continuing education would imply that exempt birth attendants are able to perform these invasive procedures and prescribe or administer prescription drugs.

Finally, the law does not recognize registration of exempt birth attendants by the Hawaii Home Birth Collective, so inserting requirements for "registered" exempt birth attendants is not necessary.

Therefore, DCCA would oppose this amendment.

Task Force Proposal: The Task Force had 2 recommendations for section 11 of the Act:

Recommendation #1

§-11(c) Legend devices authorized under subsection (a) are limited to devices for:

- (1) Injection of medications;
- (2) The administration of intravenous fluids;
- (3) Adult and infant resuscitation;
- (4) Rupturing amniotic membranes;
- (5) Repairing vaginal tears; and
- (6) Postpartum hemorrhage.

May purchase, store and administer specific non-controlled legend drugs or devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation during the practice of Midwifery.

(c) Legend drugs authorized under this section are limited for:

- (1) Oxygen for neonatal resuscitation per neonatal Resuscitation guidelines;
- (2) Neonatal eye prophylaxis per American Academy of Pediatrics;
- (3) Anti-hemorrhagic agents and devices for postpartum per WHO guidelines;
- (4) Vitamin K per the American Academy of Pediatrics;
- (5) Group beta streptococcus prophylaxis antibiotics per guidelines by the centers for disease control and prevention;
- (6) Intravenous fluids for blood loss per ACOG;

Task Force justification: The need to place an IV and administer fluids to a laboring or recently delivered person can be lifesaving in rural places where EMS response and/or transport times can take 2 hours or more depending on many factors like; road conditions, congested traffic, and weather.

DCCA's Position: It is unclear why the Task Force would recommend the proposed language as it specifically pertains to "licensed" midwives and would not allow/authorize exempt birth attendants from possessing/administering these additional legend drugs, therefore, DCCA would oppose.

DCCA previously discussed the limited use of specific drugs to be administered by an exempt birth attendant to be administered in an emergency situation and offered the following comments to section ___-6(A).

Task Force Proposal: § -11(c)(7) Rho (D) immune globulin per ACOG:

Task Force justification: Birthing persons with a negative blood type are recommended to receive an injection of Rhogam if they give birth to a child with a positive blood type, within 72 hours of giving birth. There is no non-invasive way to know a baby's blood type before their birth. This medication has a short shelf life and would only be obtained as needed. The alternative, and what we have to do right now is send the person who just gave birth to the closest hospital emergency room, with their

newborn baby in tow, which is not a very clean, or controlled area when compared to a hospital labor and delivery unit.

DCCA's Position: "Rho (D) globulin" is already included in the current law; therefore, this amendment is not necessary.

Task Force Proposal: § -11(c)(8) Epinephrine for neonatal resuscitation per neonatal Resuscitation guidelines and treatment of anaphylactic reaction to an administered medication:

Task Force justification: What alternative would be recommended by ACOG for a newborn while awaiting EMS to arrive, it can take EMS an hour or more to reach the place of birth.

DCCA's Position: "Epinephrine for neonatal resuscitation per neonatal resuscitation guidelines," and "epinephrine for anaphylactic reaction to an administered medication," are already included in the current law; therefore, this amendment is not necessary.

Task Force Proposal: § -11(c)(9) Local anesthetics without epinephrine:

Task Force justification: This allows simple perineal lacerations to be humianly repaired, at the place where the birth occurred. It is safest for the birthing person and the newborn to not go to the ER for something so simple to fix at home.

DCCA's Position: The current law lists "amino amide local anesthetic," as a legend drug authorized to be administered by a "licensed" midwife.

It is unclear if "local anesthetics without epinephrine" is equivalent to "amino amide local anesthetic".

Therefore, based on the above, the DCCA takes no position.

Task Force Proposal: § -11(c)(10) (~~Non-hormonal contraceptives~~) Barrier methods of birth control;

DCCA's Position: The Task Force is proposing that the "licensed" midwife be able to provide "barrier methods of birth control" that is not included in the current law.

It is unclear if "Barrier methods of birth control" is equivalent to "Non-hormonal contraceptives".

Therefore, based on the above, the DCCA takes no position.

Task Force Proposal: § -11(c)(11) Mebendazole per The WHO:

Task Force Justification: Many outer islands have large communities that do not have access to a municipal water source and rely on water catchment tanks. Many pregnant people present with intestinal parasites that are easily treated with the administration of mebendazole.

DCCA's Position: The Task Force is proposing that the "licensed" midwife be able to purchase and administer "mebendazole", medication used to treat a number of parasitic worm infestations, including ascariasis, pinworm disease, hookworm infections, guinea worm infections, hydatid disease, and giardia.

DCCA takes no position.

Task Force Proposal: § -11(c)(12) Magnesium sulfate; and

Task Force Justification: Outer island transport times can be greater than 2 hours, it has been verified that local EMS on multiple outer islands DO NOT carry these medications. They confirmed that their policy, even for people in labor, is to administer diazepam to all seizing persons, which can lead to serious respiratory complications of the newborn.

We are not advocating for the use of these medications in the community birth setting. The point is, there are other areas in the transport process that need revision. Many EMS rigs also do not carry a newborn size ambu-bags, laryngeal airway masks, and many of the responders lack the skill set to place an IV in a newborn.

DCCA's Position: The Task Force is proposing that "licensed" midwives be able to purchase and administer magnesium sulfate, also known as Epsom salt, which is an OTC product, accessible to anyone.

Therefore, this amendment is not necessary and DCCA would oppose.

Task Force Proposal: (13) Calcium gluconate (the antidote for magnesium sulfate)

Task Force justification: Outer island transport times can be greater than 2 hours, it has been verified that local EMS on multiple outer islands DO NOT carry these medications. They confirmed that their policy, even for people in labor, is to administer diazepam to all seizing persons, which can lead to serious respiratory complications of the newborn.

We are not advocating for the use of these medications in the community birth setting. The point is, there are other areas in the transport process that need revision. Many EMS rigs also do not carry a newborn size ambu-bags, laryngeal airway masks, and many of the responders lack the skill set to place an IV in a newborn.

DCCA's Position: The Task Force is proposing that "licensed" midwives be able to purchase and administer calcium gluconate.

There is an IV preparation for this product that would require a prescription but also an OTC version as a calcium supplement.

DCCA takes no position.

Recommendation #2

§ -11(c) Legend devices authorized under this subsection (a) are limited to devices for:

- (1) Injection of authorized medications;
- (2) The administration of intravenous fluids;
- (3) Adult and infant resuscitation;
- (4) Rupturing ~~of~~ amniotic membranes;
- (5) ~~Repairing vaginal tears~~ perineal lacerations; and
- (6) Postpartum hemorrhage.

Task Force justification: These parameters are very reasonable and concise.

The medications required to safely practice midwifery do not require DEA number, they are very basic medications, most of which have a very limited scope of use. No prescriptive rights would be given to unlicensed midwives, they would only have the ability to obtain, store and administer very specific medications to be used within the scope of midwifery practice.

DCCA's Position: The Task Force is proposing to amend this section by clarifying the use of specific devices for specific procedures that a "licensed" midwife can utilize.

DCCA takes no position on these recommendations.

6. Amendment to Section 26H-4, HRS

Current law: **§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed as specified in this section. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.
(d) Chapter (midwives) shall be repealed on June 30, 2025.

Task Force Proposal: §26H-4(e) PARENTS' RIGHTS; Nothing in this law shall abridge, limit, or change in any way the right of the birthing parent to deliver their baby where, when, how, and with whom they choose, regardless of licensure under this chapter.

Task Force justification: This was copied directly from the latest version of Utah's midwifery law. The addition of this statement further supports a birthing person's right to birth and personal autonomy.

DCCA's Position: DCCA has concerns that this is not the appropriate section for this language. Section 26H-4 lists the repeal dates for newly enacted professional and vocational regulatory programs.

Furthermore, this law includes both “licensed” midwives and exempt birth attendants, and as currently drafted, would completely eviscerate the chapter.

Therefore, the DCCA would oppose this amendment to this section.