



# Regulation and Funding of Alternative Maternity Care Providers

Brazil • Canada • England • France • Germany  
Hong Kong • Israel • Japan  
New Zealand • Sweden

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# Comparative Summary

*Eduardo Soares*  
*Senior Foreign Law Specialist*

This report by the foreign law research staff of the Law Library of Congress's Global Legal Research Directorate includes surveys of the regulation and funding of two types of alternative maternity care providers, midwives and doulas, in ten countries around the world. The jurisdictions covered are Brazil, Canada, Hong Kong, France, Germany, Israel, Japan, New Zealand, Sweden, and the United Kingdom.

All researched jurisdictions regulate the work of midwives, which is not the case when it comes to doula activities. In Brazil legislation is pending in Congress that would also regulate the work of doulas, and states and municipalities have already enacted such laws. Although New Zealand does not regulate the activity, doulas may be required to comply with a code of consumer rights to the extent they provide health services to the public. All other jurisdictions do not regulate doula activities.

To work as a midwife in the countries surveyed usually requires previous qualification or experience. In general, a person needs to have specific education and training, and pass an exam. The exceptions are Sweden and Japan. In the case of Sweden only educated and trained nurses can become midwives and in Japan a woman must first acquire the qualification for the national nursing examination and then receive the education for midwifery to qualify for the national midwifery examination.

Professional educational requirements for doulas in countries that do not regulate the activity are basically nonexistent. Professional classes and voluntary certification for doulas are offered by professional organizations in Germany, Japan, Sweden, and the UK. State law in Brazil requires a person to obtain a certificate of professional training to work as a doula.

Midwifery work in all the surveyed jurisdictions involves, to some degree, maternity care during pregnancy, labor, and the postpartum period. Brazil has also created a subsystem of assistance that allows the parturient to designate a person to accompany her during labor, delivery, and immediate postpartum. In addition a network was created within the country's health system to provide women with health, quality of life, and well-being during pregnancy, childbirth, and the postpartum period, and to provide child development support through the first two years of a child's life.

In the countries that acknowledge their work, the job of doulas focuses on what is considered nonmedical assistance and services, either in the form of physical assistance, emotional support, or therapeutic relief, as is the case in Hong Kong, Israel, and New Zealand, or in the form of housekeeping, cooking, childcare, and mental support for the new mother and her family, as occurs in Japan. In Brazil, state law allows the presence of doulas during labor, delivery, and immediate postpartum. Sweden offers doulas in lieu of other support to women who do not have a support person to accompany them during labor, and in some regions of the country offers

“cultural doulas” to work as interpreters and facilitators for immigrant mothers with limited language skills.

Health care, which includes midwife services, is funded either by the government at the federal, provincial, territorial, or local level, as is the case in Brazil, Canada, Hong Kong, New Zealand, Sweden, and the United Kingdom, or by a national health insurance scheme as occurs in France, Germany, Israel, and Japan. Doula services are not funded in the vast majority of the researched jurisdictions, with the exception of Brazil, which provides funding at the state and municipal levels, and Sweden, where municipal health care services may fund doulas in lieu of other support and cultural doulas. Also, in Canada some private insurance companies have started to cover doula services.

# Brazil

Eduardo Soares  
Senior Foreign Law Specialist

**SUMMARY** In Brazil, the midwife profession, including its educational requirements, is regulated by federal law, while regulation of the activities of doulas is currently under consideration in Congress. In the meantime, states and municipalities have issued their own laws regulating doula activities in their jurisdictions. In 2005, coverage of assistance to women during labor was introduced in the country's health care system, which is funded by the government.

## I. Regulation of Midwives

### A. Law No. 7,498 of June 25, 1986

Law No. 7,498 of June 25, 1986, regulates the exercise of nursing in Brazil. According to article 2, nursing and its auxiliary activities may only be performed by persons legally qualified and enrolled in the Regional Nursing Council with jurisdiction over the area in which the person intends to practice.<sup>1</sup>

Nursing is practiced exclusively by a nurse (*enfermeiro*), nurse technician (*técnico de enfermagem*), assistant nurse (*auxiliary de enfermagem*), or midwife, according to their respective qualifications.<sup>2</sup>

### B. Decree No. 94,406 of June 8, 1987

Law No. 7,498 is regulated by Decree No. 94,406 of June 8, 1987. Article 12 of the Decree determines that midwives are responsible for

- I - providing care for pregnant women and women in childbirth;
- II - attending normal birth, including at home; and
- III - providing postpartum and newborn care.<sup>3</sup>

These activities must be carried out under the supervision of an obstetric nurse when performed in health institutions, and, whenever possible, under the control and supervision of a health unit when performed at home or other necessary location.<sup>4</sup>

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<sup>1</sup> Lei No. 7.498, de 25 de Junho de 1986, art. 2, [http://www.planalto.gov.br/ccivil\\_03/LEIS/L7498.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L7498.htm), archived at <https://perma.cc/7NYG-CB3E>.

<sup>2</sup> *Id.* art. 2(sole para.).

<sup>3</sup> Decreto No. 94.406, de 8 de Junho de 1987, art. 12, [http://www.planalto.gov.br/ccivil\\_03/decreto/1980-1989/D94406.htm](http://www.planalto.gov.br/ccivil_03/decreto/1980-1989/D94406.htm), archived at <https://perma.cc/F49U-X9GV>.

<sup>4</sup> *Id.* art. 12(sole para.).

## II. Professional and Educational Requirements for Midwives

Article 9 of Law No. 7,498 defines a midwife as

I - the holder of a certificate provided for in article 1 of Decree-Law no. 8.778 of January 22, 1946, observing the provisions of Law No. 3,640 of October 10, 1959;

II - a holder of a diploma or certificate of midwife, or equivalent, conferred by a foreign school or course, according to the laws of the country, registered by virtue of cultural exchange or revalidated in Brazil.<sup>5</sup>

Decree-Law No. 8,778 of January 22, 1946, regulates the qualification exams for nurse assistants and practical midwives. Article 1 establishes that nurses (*enfermeiros práticos*) and midwives who have more than two years of effective nursing practice in a hospital may undergo the qualification exams that give them the certificate of practical nurse (*prático de enfermagem*) and practical midwife (*parteira prática*).<sup>6</sup> Decree-Law No. 8,778 further specifies, among other things, the dates and place for the exams,<sup>7</sup> necessary documentation,<sup>8</sup> and the types of exam and exam subjects.<sup>9</sup>

A practical midwife or practical nurse certificate grants the holder the right to serve as a patient attendant in hospitals, maternity hospitals (*maternidades*), nursing homes, and outpatient clinics in the state in which it was issued.<sup>10</sup>

## III. Regulation of Doulas

Brazil has yet to regulate doula activities in the country. Several bills of law regulating such activities are currently under consideration in Congress.<sup>11</sup> In the absence of a federal regulation, many states and municipalities have enacted laws regulating doula activities.

### A. Rio de Janeiro State Law No. 7,314 of June 16, 2016

On June 16, 2016, the State of Rio de Janeiro enacted Law No. 7,314, which obligates maternity hospitals, birth centers (*casas de parto*), and public and private hospitals in Rio de Janeiro to allow

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<sup>5</sup> Lei No. 7,498 *supra* note 2, art. 9.

<sup>6</sup> Decreto -Lei No. 8,778, de 22 de Janeiro de 1946, reinstated by Law No. 3.640, de 10 de Outubro de 1959, art. 1, [http://www.planalto.gov.br/ccivil\\_03/Decreto-Lei/1937-1946/Del8778.htm](http://www.planalto.gov.br/ccivil_03/Decreto-Lei/1937-1946/Del8778.htm), archived at <https://perma.cc/89CW-VSRE>.

<sup>7</sup> *Id.* arts. 2, 3.

<sup>8</sup> *Id.* art. 4.

<sup>9</sup> *Id.* arts. 5-7.

<sup>10</sup> *Id.* art. 13.

<sup>11</sup> *Doula, Busca*, CÂMARA DOS DEPUTADOS, <https://www.camara.leg.br/busca-portal?contextoBusca=BuscaProposicoes&pagina=1&order=relevancia&abaEspecificica=true&q=doula&tipos=PL>.

the presence of doulas during labor, delivery, and the immediate postpartum period, if requested by the mother.<sup>12</sup>

### 1. *Definition of Doulas*

For the purposes of Law No. 7,314, and in accordance with Code 3221-35<sup>13</sup> of the Brazilian Classification of Occupations (Classificação Brasileira de Ocupações, CBO), doulas are birth attendants chosen freely by pregnant women or women who have just given birth, who “aim to provide continuous support to pregnant women in the puerperal pregnancy cycle, favoring the evolution of the delivery and well-being of the pregnant woman,” with proper occupational certification for this purpose.<sup>14</sup>

Article 1(§ 2) of Law No. 7,314 determines that the presence of doulas should not be confused with the presence of an accompanying person as established by Law No. 11,108 of April 7, 2005.<sup>15</sup>

### 2. *Professional/Educational Requirements*

For the regular exercise of the profession, doulas are authorized to enter public and private maternity wards, maternity halls, and similar hospital establishments in Rio de Janeiro with their respective work materials, consistent with safety standards and the hospital environment.<sup>16</sup>

Doulas are forbidden to perform medical or clinical procedures, such as gauging pressure, assessing the progression of labor, monitoring the fetal heart rate, or administering medication, among others, even if they are legally able to do so.<sup>17</sup>

Public and private maternity hospitals, birth centers, and similar hospital establishments in Rio de Janeiro must establish their own methods for admitting doulas, respecting ethical precepts, the individual’s level of competence, and their internal rules of operation, upon presentation of the following documents:

I - letter of presentation, containing full name, address, CPF number, ID, telephone contact and electronic mail;

II - copy of official document with photo;

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<sup>12</sup> Estado do Rio de Janeiro, Lei No. 7.314, de 15 de Junho de 2016, art. 1, <http://alerjln1.alerj.rj.gov.br/contlei.nsf/c8aa0900025feef6032564ec0060dfff/f6a4bdfe5bb46c4383257fd4005a506c?OpenDocument&Highlight=0,7314>, archived at <https://perma.cc/46WL-3ZT6>.

<sup>13</sup> CBO Code 3221-35 states, among other things, that doulas aim to provide continuous support to the pregnant woman in the puerperal pregnancy cycle, favoring the evolution of the delivery and well-being of the pregnant woman. They evaluate the physiological, systemic, energetic, vibrational, and unaesthetic dysfunctions of patients/clients. Classificação Brasileira de Ocupações, MINISTÉRIO DO TRABALHO, <http://www.mteco.gov.br/cbsite/pages/pesquisas/ResultadoOcupacaoMovimentacao.jsf>.

<sup>14</sup> Lei No. 7.314, art. 1(§ 1).

<sup>15</sup> *Id.* art. 1(§ 2).

<sup>16</sup> *Id.* art. 2.

<sup>17</sup> *Id.* art. 3.



III - statement of procedures and techniques that will be used at the time of labor, delivery and immediate postpartum, as well as a description of the planning of the actions that will be developed during the assistance period;

IV - authorization term signed by the pregnant woman for the performance of the doula at the time of labor, delivery and immediate postpartum;

V - copy of the certificate of professional training, according to the Brazilian Occupational Certificate – CBO.<sup>18</sup>

### 3. Certification of Professional Training

Other than several websites offering courses designed to allow a person to become a doula and obtain a certificate,<sup>19</sup> no professional training and certification requirements were identified.

### B. São Paulo Municipal Law No. 16,602 of September 23, 2016

The Municipality of São Paulo enacted Law No. 16,602 of September 23, 2016, which authorizes the presence of doulas, when requested by the mother, during the entire period of labor, delivery, and immediate postpartum, as well as in prenatal consultations and exams, in maternity wards, hospitals, and other facilities of the municipal health network.<sup>20</sup>

## IV. Alternative Care Before, During, and After Childbirth

### A. Subsystem of Assistance

On April 7, 2005, Law No. 11,108 included in the Unified Health System (Sistema Unico de Saúde, SUS) a subsystem of assistance to women during labor, delivery, and the immediate postpartum period.<sup>21</sup> According to the Law, the SUS is obliged to allow the presence of one accompanying person during the labor, delivery, and immediate postpartum periods.<sup>22</sup> Law No. 11, 108 states

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<sup>18</sup> *Id.* art. 4.

<sup>19</sup> *Como Ser uma “Doula”*, DOULAS DO BRASIL, <https://www.doulas.com.br/sejaumadoula.php> (last visited May 2, 2019), archived at <https://perma.cc/S4BZ-ZCAR>.

<sup>20</sup> Município de São Paulo, Lei No. 16.602, de 23 de Dezembro de 2016, <http://legislacao.prefeitura.sp.gov.br/leis/lei-16602-de-23-de-dezembro-de-2016>, archived at <https://perma.cc/EM9U-YBAU>.

<sup>21</sup> Lei No. 11.108, de 7 de Abril de 2005, art. 1, [http://www.planalto.gov.br/ccivil\\_03/\\_Ato2004-2006/2005/Lei/L11108.htm](http://www.planalto.gov.br/ccivil_03/_Ato2004-2006/2005/Lei/L11108.htm), archived at <https://perma.cc/8WZV-F3B6>. Law No. 11,108 amended Law No. 8,080 of September 19, 1990, which provides for the conditions for the promotion, protection, and recovery of health, and the organization and operation of the corresponding services. Article 4 of Law No. 8,080 defines SUS as a set of actions and health services provided by federal, state, and municipal public bodies and institutions of the direct and indirect administration and foundations maintained by the government. Article 4(§ 2) determines that the private sector may participate in the SUS in a supplementary manner. Lei No. 8.080, de 19 de Setembro de 1990, [http://www.planalto.gov.br/ccivil\\_03/LEIS/L8080.htm](http://www.planalto.gov.br/ccivil_03/LEIS/L8080.htm), archived at <https://perma.cc/5RW5-YH58>.

<sup>22</sup> Lei No. 11,108, art. 1.

that such person must be indicated by the mother.<sup>23</sup>

In addition, Law No. 11,108 further determines that the actions intended to enable the full exercise of these rights must appear in a regulation of the law, to be prepared by the competent body of the executive branch of government.<sup>24</sup>

## B. Stork Network

The Ministry of Health created the Stork Network to provide women with health, quality of life, and well-being during pregnancy, childbirth, and the postpartum period, and to support child development through the first two years of life.<sup>25</sup> The Network aims to reduce maternal and infant mortality and ensure the sexual and reproductive rights of women, men, young people, and adolescents.<sup>26</sup>

The Stork Network was created on June 24, 2011, by Administrative Act (Portaria) No. 1,459 issued by the Ministry of Health.<sup>27</sup> According to article 1, the Stork Network was created under the SUS and consists of a network of care aimed at assuring women the right to reproductive planning and humanized attention to pregnancy, childbirth, and the postpartum period, as well as to the child's right to a safe birth and healthy growth and development.<sup>28</sup>

## V. Funding

### A. Social Security

Article 195 of the Brazilian Constitution determines that social security must be financed by the whole society, directly and indirectly, in accordance with the law, through funds from the budgets of the federal government, states, the Federal District and municipalities, and the other social security contributors listed in article 195.<sup>29</sup> Article 198 establishes that the SUS must be

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<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Rede Cegonha*, MINISTÉRIO DA SAÚDE, <http://portalms.saude.gov.br/saude-para-voce/saude-da-mulher/rede-cegonha> (last visited May 2, 2019), archived at <https://perma.cc/YPY8-XVHX>.

<sup>26</sup> *Id.* The Youth Statute, which was enacted by Law No. 12,852 of August 5, 2013, defines “youths” as persons between fifteen and twenty-nine years of age. ESTATUTO DA JUVENTUDE, Lei No. 12.852, de 5 de Agosto de 2013, art. 1(§ 1), [https://www.planalto.gov.br/ccivil\\_03/\\_ato2011-2014/2013/lei/112852.htm](https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2013/lei/112852.htm), archived at <https://perma.cc/4D86-JVHP>. However, the dispositions of the Child and Adolescent Statute are applicable to “adolescents,” meaning those between the ages of fifteen and eighteen, and, exceptionally, the Youth Statute, when it does not conflict with the norms of full protection of adolescents set forth by the Child and Adolescent Statute. ESTATUTO DA CRIANÇA E DO ADOLESCENTE [E.C.A.], Lei No. 8.069, de 13 de Julho de 1990, art. 1(§ 2), [http://www.planalto.gov.br/CCIVIL\\_03/LEIS/L8069.htm](http://www.planalto.gov.br/CCIVIL_03/LEIS/L8069.htm), archived at <https://perma.cc/I4WC-ITZI>.

<sup>27</sup> Portaria No. 1.459, de 24 de Junho de 2011, MINISTÉRIO DA SAÚDE, [http://bvsmms.saude.gov.br/bvs/saude/legis/gm/2011/prt1459\\_24\\_06\\_2011.html](http://bvsmms.saude.gov.br/bvs/saude/legis/gm/2011/prt1459_24_06_2011.html), archived at <https://perma.cc/NZT2-AL93>.

<sup>28</sup> *Id.* art. 1.

<sup>29</sup> CONSTITUIÇÃO FEDERAL, art. 195, [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm), archived at <https://perma.cc/2E3X-IJYX>.

financed, pursuant to article 195 of the Constitution, with resources from the social security budget, the Union, states, the Federal District and municipalities, and other sources.<sup>30</sup>

## **B. Unified Health System**

Article 31 of Law No. 8,080 of September 19, 1990, states that the social security budget must allocate to the SUS, according to the estimated revenue, the resources necessary for the fulfillment of its purposes.<sup>31</sup> According to Law No. 11,108 of April 7, 2005, a subsystem of assistance to women during labor, delivery, and the immediate postpartum period was included in the SUS. Therefore, such assistance is funded by the government.

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<sup>30</sup> *Id.* art. 198.

<sup>31</sup> Lei No. 8.080, *supra* note 12, art. 31.

# Canada

*Tariq Ahmad*  
*Foreign Law Specialist*

**SUMMARY** In Canada, the health care system is primarily the responsibility of the provincial and territorial governments. The system is publicly funded by revenue raised through federal, provincial, and territorial taxes. Canada's Constitution also grants primary regulation of professions to provincial and territorial governments. In Canada, most provinces and territories treat midwives as licensed medical professionals and provide government funding for their services. The doula profession does not appear to be regulated by any law/regulation or official governing body in Canada, nor are doula services covered by provincial health care plans.

## I. Canadian Health Care System

The organization of Canada's health care system is mostly determined by the Canadian Constitution<sup>1</sup>, including the Constitution Acts, 1867 to 1982,<sup>2</sup> "in which roles and responsibilities are divided between the federal, and provincial and territorial governments."<sup>3</sup> The provincial and territorial governments have primary responsibility for "delivering health and other social services."<sup>4</sup> The federal government is also "responsible for some delivery of services for certain groups of people."<sup>5</sup> The law firm McMillan LLP provides the following overview of the complexity of the constitutional allocation of responsibilities in respect to health:

Canada, like the United States, is a federal state with a constitution that divides legal authority between the federal government and, in Canada's case, the provinces. In some areas of the law, however, the Canadian Constitution provides no exhaustive or explicit grant of authority, and health care is one of those amorphous areas. The Constitution allocates direct power over hospitals to the provinces and the remaining authority to regulate health care is derived from more general Constitutional powers that are divided between the federal and provincial governments. The result is that provision of health care in Canada is funded, delivered and regulated under a complex mosaic of rules and rule-makers, and the rules are constantly evolving. Broadly speaking, the federal government is primarily responsible for the regulation of drugs and medical devices, while the provinces and territories are primarily responsible for the delivery of health care and health insurance, and for the regulation of health professionals. The federal government

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<sup>1</sup> *Canada's Health Care System*, HEALTH CANADA, <https://www.canada.ca/en/health-canada/services/health-care-system/reports-publications/health-care-system/canada.html> (last updated Feb. 26, 2018), archived at <https://perma.cc/35FG-M2GD>.

<sup>2</sup> Constitution Acts, 1867 to 1982, <https://laws-lois.justice.gc.ca/eng/const/FullText.html>, archived at <https://perma.cc/YMX4-452V>.

<sup>3</sup> *Canada's Health Care System*, *supra* note 1.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

also exerts significant control over provincial health insurance programs through its spending power. Due to the potential conflicts that result from this power sharing, all levels of government rely on the court system to clarify jurisdictional issues.<sup>6</sup>

Section 92 of the Canadian Constitution Act, 1867, assigns jurisdiction to the provinces over making “laws in relation to property and civil rights in the province.”<sup>7</sup> According to one article,

[t]he Supreme Court of Canada and other courts have interpreted property and civil rights under s. 92 of the Canadian Constitution Act, 1867 to include regulation of professions. A fundamental component of these enabling laws made by provincial and territorial governments is the identification of regulatory authorities/bodies that are responsible for protection of the public through the self-regulation of professions and occupations.<sup>8</sup>

The Health Canada website states that “[p]ublicly funded health care is financed with general revenue raised through federal, provincial and territorial taxation, such as personal and corporate taxes, sales taxes, payroll levies and other revenue.” Provinces can also “charge a health premium on their residents to help pay for publicly funded health care services, but non-payment of a premium must not limit access to medically necessary health services.”<sup>9</sup> Essentially, Canada’s healthcare is “funded by a ‘single-payer’ system, but it doesn’t function as one single, unified system. Coverage is publicly-funded, meaning that the funds come from federal and provincial taxes.”<sup>10</sup> Canadians can also purchase private insurance coverage to “help defray from the cost of care which is not covered by the universal services.”<sup>11</sup>

The federal Canada Health Act<sup>12</sup> was enacted to establish the “criteria and conditions in respect of insured health services and extended health care services provided under provincial law that must be met before a full cash contribution may be made”<sup>13</sup> by the federal government to provincial and territorial governments. This is referred to as the Canada Health Transfer (CHT), which is the “largest major transfer to provinces and territories. It provides long-term predictable

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<sup>6</sup> MCMILLAN LLP, HEALTH LAW IN CANADA 3 (Aug. 2010), [https://mcmillan.ca/files/Health\\_Law\\_in\\_Canada.pdf](https://mcmillan.ca/files/Health_Law_in_Canada.pdf), archived at <https://perma.cc/8ZKS-Q5ZL>.

<sup>7</sup> Kris Robinson, *The Professional Framework for Midwifery Practice in Canada*, in COMPREHENSIVE MIDWIFERY: THE ROLE OF THE MIDWIFE IN HEALTH CARE PRACTICE, EDUCATION, AND RESEARCH 8.1 (Karyn Kaufman ed., e-Book Foundry @ McMaster University), <https://ecampusontario.pressbooks.pub/cmroleofmidwifery/chapter/the-professional-framework-for-midwifery-practice-in-canada/> (last visited May 15, 2019), archived at <https://perma.cc/Q8JR-XP49>.

<sup>8</sup> *Id.* (footnotes in original omitted).

<sup>9</sup> *Canada’s Health Care System*, *supra* note 1.

<sup>10</sup> *US vs Canadian Healthcare: What Are the Differences?*, AMERICAN INSTITUTE OF MEDICAL SCIENCES (Mar. 29, 2018), <https://www.aimseducation.edu/blog/us-vs-canadian-healthcare-differences/>, archived at <https://perma.cc/9FG3-8KAY>.

<sup>11</sup> *Id.*

<sup>12</sup> Canada Health Act R.S.C., 1985, c. C-6, <https://laws-lois.justice.gc.ca/eng/acts/c-6/FullText.html>, archived at <https://perma.cc/Q486-23GP>.

<sup>13</sup> *Id.* § 4.

funding for health care.”<sup>14</sup> The provincial and territorial governments “receive equal, per capita funding for health care from the federal government through Canada Health Transfer payments.”<sup>15</sup>

Health Canada, the federal department that is responsible for national public health, provides direct health services to specific groups including certain indigenous peoples.<sup>16</sup>

## II. Regulation and Funding of Midwives

Most Canadian provinces and territories currently treat midwives as licensed medical professionals. In the 1990s, “midwifery began to be legally recognized as a profession in certain Canadian provinces and territories by the introduction of provincial or territorial legislation to regulate midwifery.”<sup>17</sup> In 1994, the Province of Ontario became the first province to implement legislation to regulate midwifery<sup>18</sup> as a “publicly-funded, integrated health service, which can be seen as a turning point in the history of regulated midwifery in Canada.”<sup>19</sup> Regulation in British

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<sup>14</sup> *Canada Health Transfer*, DEPARTMENT OF FINANCE CANADA, <https://www.fin.gc.ca/fedprov/cht-eng.asp> (last updated Dec. 12, 2011), archived at <https://perma.cc/9LLL-TQZ6>.

<sup>15</sup> Annie Wang et al., *Commentary, Medication Access via Hospital Admission*, 63(5) CAN. FAM. PHYSICIAN 344, 345 (May 2017), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5429045/pdf/0630344.pdf>, archived at <https://perma.cc/PR9Y-JHDL>.

<sup>16</sup> *Health Care Services for First Nations and Inuit*, HEALTH CANADA, <https://www.canada.ca/en/indigenous-services-canada/services/health-care-services-first-nations-and-inuit.html> (last updated Aug. 9, 2018), archived at <https://perma.cc/S4V5-WFHU>.

<sup>17</sup> Connie L. Mah, *Midwifery in Canada*, LAW NOW MAGAZINE (Nov. 1, 2013), <https://www.lawnow.org/midwifery-canada/>, archived at <https://perma.cc/H5G3-MXHJ>.

<sup>18</sup> Midwifery is regulated in Ontario under the Regulated Health Professions Act, 1991, S.O. 1991, c. 18, <https://www.ontario.ca/laws/statute/91r18>, archived at <https://perma.cc/BYJ6-H77G>; and the Midwifery Act, 1991, S.O.1991, c. 31, <https://www.ontario.ca/laws/statute/91m31>, archived at <https://perma.cc/FCE3-4CBX>; the following regulations: General, O. Reg. 240/94, <https://www.ontario.ca/laws/regulation/120335> archived at <https://perma.cc/WD4H-WHR6>; Registration, O. Reg. 867/93, <https://www.ontario.ca/laws/regulation/110168> archived at <https://perma.cc/V2PJ-8JHX>; Designated Drugs, O. Reg. 884/93, <https://www.ontario.ca/laws/regulation/930884>, archived at <https://perma.cc/2Z3U-WVHH>; and Professional Misconduct, O. Reg. 858/93, <https://www.ontario.ca/laws/regulation/090388> archived at <https://perma.cc/NKE7-MBQD>; as well as by the College Bylaws, <http://www.cmo.on.ca/resources/by-laws/>, archived at <https://perma.cc/9EXL-4X8J>.

<sup>19</sup> Robinson, *supra* note 7, at 8.2.

Columbia,<sup>20</sup> Alberta,<sup>21</sup> and Quebec<sup>22</sup> followed in the late 1990s. Midwifery was most recently regulated in Newfoundland and Labrador in 2016. Though New Brunswick established midwifery as a regulated profession in 2010, it only began offering midwifery services in 2017.<sup>23</sup>

Midwifery is now regulated in all provinces and territories except for Prince Edward Island and Yukon, “where it is unregulated and unfunded, the only birth option with midwives would be at home, and mothers would pay for services of midwives.”<sup>24</sup> The expected date for midwifery regulation in Yukon is late 2019.<sup>25</sup>

Provincial and territorial legislation regulating midwifery differs slightly but also “possess[es] many common features,” which include

- The identification of midwifery as an autonomous health care profession distinct from other health professions such as medicine or nursing
- The recognition of midwives as primary health-care practitioners. In some cases, a midwife may be the first point of entry for a person seeking maternity care services
- Legal protection regarding who can use the title of midwife. Where the title is protected, only those persons who meet the requirements of midwifery legislation can legally call themselves a midwife
- A defined scope of practice that includes providing maternity care to healthy women and their newborns during pregnancy, labour, birth and up to six weeks postpartum
- The authority to establish procedures for monitoring, enforcing and holding midwives accountable for the legislative requirements of regulated midwifery. This includes the authority to receive and investigate complaints against members, to remove the authority to practice from midwives who are found to be in violation of the standards of practice and finally to establish quality assurance processes that enhance client safety and improve the quality of midwifery care.<sup>26</sup>

Midwifery is a “self-regulated profession in which implementation and enforcement of midwifery legislation is delegated to a professional body referred to as a College of Midwives.

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<sup>20</sup> Health Professions Act [RSBC 1996] c. 183, [http://www.bclaws.ca/Recon/document/ID/freeside/00\\_96183\\_01](http://www.bclaws.ca/Recon/document/ID/freeside/00_96183_01), archived at <https://perma.cc/9WZ4-QUC5>; Midwives Regulation B.C. Reg. 281/2008, [http://www.bclaws.ca/civix/document/id/lc/statreg/281\\_2008](http://www.bclaws.ca/civix/document/id/lc/statreg/281_2008); Bylaws for College of Midwives of British Columbia, <https://www.cmbc.bc.ca/wp-content/uploads/2019/01/Bylaws-20181230.pdf>, archived at <https://perma.cc/CJ3A-N62Q>.

<sup>21</sup> Midwifery is regulated in Alberta under the Health Professions Act, R.S.A.2000, c. H-7, <http://www.qp.alberta.ca/documents/acts/h07.pdf>, archived at <https://perma.cc/5T99-G35B>.

<sup>22</sup> Midwifery is regulated in Quebec under the Midwives Act, L.R.Q., c. S-0.1, <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/S-0.1>, archived at <https://perma.cc/WN8D-8LZD>, and a number of subsidiary regulations.

<sup>23</sup> *Year of Midwifery Regulation*, CANADIAN ASSOCIATION OF MIDWIVES, <https://canadianmidwives.org/2016/10/19/year-of-regulation/> (last visited May 15, 2019), archived at <https://perma.cc/WBK2-237X>.

<sup>24</sup> Mah, *supra* note 17.

<sup>25</sup> *Midwifery in Canada*, CANADIAN MIDWIFERY REGULATORS COUNCIL, <https://cmrc-ccosf.ca/midwifery-canada> (last visited May 15, 2019), archived at <https://perma.cc/H4S3-I5J3>.

<sup>26</sup> Robinson, *supra* note 7, at 8.4.

Such colleges are governed by members of the profession and may include government-appointed public members.”<sup>27</sup> The regulations provide “specific instructions regarding how legislation is to be operationalized and enforced and provide the regulatory body with the authority to set and enforce standards of practice.”<sup>28</sup> Midwifery regulations include “specific authorities and requirements” in areas such as the following:

- Requirements and processes for registration and maintaining registration
- Standards of practice
- Prescription of medications, procedures and devices
- Screening and diagnostic tests that can be ordered, received, and interpreted
- Minor surgical and invasive procedures that can be performed<sup>29</sup>

### III. Regulation of Doulas

The doula profession does not appear to be regulated by any law/regulation or official governing body in Canada,<sup>30</sup> nor are the services of doulas covered by provincial health care plans.<sup>31</sup> Doulas are typically paid out of pocket, but some private insurance companies have started to cover doula care.<sup>32</sup>

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<sup>27</sup> *Id.* at 8.6.

<sup>28</sup> *Id.* at 8.5.

<sup>29</sup> *Id.*

<sup>30</sup> Georgia Morley, *To Doula or Not to Doula?* HUFFINGTON POST (Feb. 23, 2017), [https://www.huffingtonpost.ca/georgia-morley/to-doula-or-not-to-doula\\_b\\_14921396.html](https://www.huffingtonpost.ca/georgia-morley/to-doula-or-not-to-doula_b_14921396.html), archived at <https://perma.cc/8JMG-WLJJ>.

<sup>31</sup> *What Is a Midwife?*, CANADIAN WOMEN’S HEALTH NETWORK (Sept. 2013), <http://www.cwhn.ca/en/FAQmidwife>, archived at <https://perma.cc/DC8X-PSDD>.

<sup>32</sup> *Thinking About Hiring a Doula? Here Are Some Things to Know – Part 1*, SPECTRUM DOULA COLLECTIVE (Apr. 10, 2018), <http://www.spectrumdoulacollective.com/blog/2018/4/5/thinking-about-hiring-a-doula>, archived at <https://perma.cc/BXE4-FM2F>.



# England

Clare Feikert-Ahalt  
Senior Foreign Law Specialist

**SUMMARY** Midwifery has been practiced across England for centuries. It is a regulated profession, with specific educational criteria and registration requirements. Posing as a midwife or health care professional is an offense punishable with an unlimited fine. Doulas are not subject to any formal educational training or registration requirements. A nonprofit organization has been established to list doulas across England, and it has a clear statement that doulas are not medical professionals and do not replace the role of midwives.

## I. Introduction

Antenatal care in England and Wales is provided free of charge to all residents through the National Health Service (NHS). It is typically provided through midwives or doctors. Every pregnant woman is offered two pregnancy ultrasound scans, with the first of these scans occurring between eight to fourteen weeks of gestation and the second occurring between eighteen to twenty-one week of gestation; screening tests to check for conditions such as Down's syndrome; blood tests to check for HIV, hepatitis B, and syphilis; and screening for sickle cell and thalassemia.<sup>1</sup>

Pregnant women typically have their antenatal care led by a midwife or doctor. If a pregnant woman who is seeing a midwife has complications during pregnancy, the midwife will refer her to an obstetrician.<sup>2</sup> It is unlawful for a person other than a registered midwife or a registered medical practitioner to attend to a woman in childbirth, except in emergency situations or if the individual is in training to become a registered midwife or medical practitioner.<sup>3</sup>

## II. Regulation of Midwives

The Nursing and Midwifery Council is a body established by legislation that has four statutory functions: "the education of midwives, registration and revalidation, standards and guidance, and fitness to practise."<sup>4</sup>

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<sup>1</sup> *Your Pregnancy and Baby Guide*, NHS, <https://www.nhs.uk/conditions/pregnancy-and-baby/antenatal-midwife-care-pregnant/> (last visited May 16, 2019), archived at <https://perma.cc/NZD7-5VMT>.

<sup>2</sup> *Id.*

<sup>3</sup> Nursing and Midwifery Order 2001, SI 2001/253, art. 45, [www.legislation.gov.uk/uksi/2002/253/made](http://www.legislation.gov.uk/uksi/2002/253/made), archived at <https://perma.cc/327M-BTU2>.

<sup>4</sup> Nursing and Midwifery Council, *Practising as a Midwife in the UK 2* (updated Jan. 29, 2019), <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/practising-as-a-midwife-in-the-uk.pdf>, archived at <https://perma.cc/C4F7-6DZE>.

## A. Education of Midwives

The educational requirements applicable to midwives are established by the Nursing and Midwifery Council and provided at educational institutions approved in accordance with article 15(6) of the Nursing and Midwifery Order 2001. Individuals must complete a degree-level course or degree apprenticeship before they are eligible for registration as a midwife. These degrees are funded by the student, and a nationwide cap on the cost of university degrees limits the cost to no more than £9,250 per year (approximately US\$12,000).<sup>5</sup> In addition to government student loans that may be available, the NHS provides additional financial support, such as a small fund to help with childcare expenses and travel costs that may be incurred during the course of study.<sup>6</sup>

Upon the successful completion of the degree, midwives must demonstrate they are competent across four areas:

- Effective midwifery practice.
- Professional and ethical practice.
- Developing the individual midwife and others.
- Achieving quality care through evaluation and research.<sup>7</sup>

These are known as the standards of competence, and must be met by midwives before they can be registered, then maintained while they practice midwifery. The Nursing and Midwifery Council is also developing new standards of proficiency for registered midwives.<sup>8</sup>

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<sup>5</sup> 629 PARL. DEB. H.C. (6th ser. 2017) WS145, <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2017-10-09/HCWS145/>, archived at <https://perma.cc/9YA5-WDHY>.

<sup>6</sup> *Financial Support at University*, NHS ENGLAND, <https://www.healthcareers.nhs.uk/career-planning/study-and-training/considering-or-university/financial-support-university> (last visited May 14, 2019), archived at <https://perma.cc/BL23-KFQC>.

<sup>7</sup> Nursing and Midwifery Council, *Standards For Competence For Registered Midwives*, at 2, <https://www.nmc.org.uk/globalassets/sitedocuments/standards/nmc-standards-for-competence-for-registered-midwives.pdf> (last visited May 14, 2019), archived at <https://perma.cc/4A6L-EMKQ>.

<sup>8</sup> *Future Midwife*, NURSING & MIDWIFERY COUNCIL, <https://www.nmc.org.uk/standards/midwifery/education/> (last visited May 14, 2019), archived at <https://perma.cc/C59K-LEDX>. See also *What We Do*, NURSING & MIDWIFERY COUNCIL, <https://www.nmc.org.uk/about-us/our-role/> (last visited May 13, 2019), archived at <https://perma.cc/K5CW-ZKGH>.

## B. Registration of Midwives

All midwives that practice in England must be registered with the Nursing and Midwifery Council<sup>9</sup> and abide by the Code established by the Council, which sets forth professional standards of practice and behavior for midwives.<sup>10</sup>

Midwives have a separate section of the register for nurses, along with separate educational and competence standards. In order to be registered by the Nursing and Midwifery Council, qualified midwives must

[m]eet the NMC's statutory requirements of holding an approved qualification, being capable of safe and effective practice (including meeting the Council's requirements relating to health and character), holding an appropriate indemnity arrangement, having the necessary knowledge of English, and paying a registration fee.<sup>11</sup>

Midwives must meet these criteria every three years to be revalidated and have their registration renewed with the Nursing and Midwifery Council.<sup>12</sup>

## C. Protected Title and Protected Legal Function of Midwives

Midwifery is a protected title with a protected legal function. It is an offense for any person who is not a registered as a midwife to practice as one, or to falsely claim to have a midwifery qualification or be registered as a midwife.<sup>13</sup> This offense is punishable with an unlimited fine.<sup>14</sup>

## D. Role of the Royal College of Midwives

The Royal College of Midwives is a professional organization and trade union<sup>15</sup> that represents the interests of midwives. Its mission "is to enhance the confidence, professional practice and

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<sup>9</sup> Nursing and Midwifery Order 2001, Parts II and III. See also *Midwifery Regulation*, NURSING & MIDWIFERY COUNCIL, <https://www.nmc.org.uk/standards/midwifery/midwifery-regulation/> (last visited May 14, 2019), archived at <https://perma.cc/MF9M-PKFB>.

<sup>10</sup> Nursing and Midwifery Council, *The Code: Professional Standards of Practice for Nurses, Midwives and Nursing Associates* (updated Oct. 10, 2018), <https://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf>, archived at <https://perma.cc/3XGW-XXUF>.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> See further Nursing and Midwifery Council, *Revalidation* (Mar. 2019), <https://www.nmc.org.uk/globalassets/sitedocuments/revalidation/how-to-revalidate-print-friendly.pdf>, archived at <https://perma.cc/ZDX4-5AG9>.

<sup>13</sup> Nursing and Midwifery Order 2001, SI 2001/253, art. 44, [www.legislation.gov.uk/uksi/2002/253/made](http://www.legislation.gov.uk/uksi/2002/253/made), archived at <https://perma.cc/327M-BTU2>.

<sup>14</sup> *Id.*

<sup>15</sup> *About Us*, THE ROYAL COLLEGE OF MIDWIVES, <https://www.rcm.org.uk/about-us/> (last visited May 14, 2019), archived at <https://perma.cc/D7AB-XCN7>.

influence of midwives for the benefit of childbearing women and their families.”<sup>16</sup> The Royal College of Midwives has produced standard guidelines<sup>17</sup> for midwifery led care during labor that aim to “outline what the RCM sees as the key features that any midwifery service can use to measure its delivery of compassionate, well-led, professional, evidence-based midwifery care.”<sup>18</sup> The Guidance notes that midwifery units are available, but that many women prefer midwifery led care in a hospital setting and those “who prefer midwifery units and home births can encounter obstacles to these choices.”<sup>19</sup>

### III. Doulas

Doulas in England and Wales are not required to register with a formal professional body.<sup>20</sup> A nonprofit organization, known as Doula UK, aims to “promote life-changing support for women in the childbearing year, regardless of circumstance; nurture the doula community; protecting parents and health professionals; and advocate for better support for UK families.”<sup>21</sup> Doula UK notes that “[d]oulas are not healthcare professionals and do not take the role of a midwife.”<sup>22</sup> In order to be registered with the organization, Doula UK requires all members to complete an approved course following the core curriculum it has established.<sup>23</sup>

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<sup>16</sup> *Who We Are*, THE ROYAL COLLEGE OF MIDWIVES, <https://www.rcm.org.uk/about-us/who-we-are> (last visited May 14, 2019), archived at <https://perma.cc/WN27-DUVC>.

<sup>17</sup> The Royal College of Midwives, *Midwifery Care in Labour Guidance for all Women in all Settings* (No. 1, Nov. 2018), <https://www.rcm.org.uk/media/2539/professionals-blue-top-guidance.pdf>, archived at <https://perma.cc/U6DB-GDCB>.

<sup>18</sup> The Royal College of Midwives, *Midwifery Care in Labour Guidance for All Women in All Settings: Information for Women and Families* (2018), <https://www.rcm.org.uk/media/2540/mothers-blue-top-guidance.pdf>, archived at <https://perma.cc/D9Z6-TT9F>.

<sup>19</sup> *Id.* at 6.

<sup>20</sup> *Information for the Press*, DOULA UK, <https://doula.org.uk/information-for-the-press/> (last visited May 13, 2019), archived at <https://perma.cc/39QN-GH5M>.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

# France

Nicolas Boring  
Foreign Law Specialist

## I. Legal Status of Doulas

Doulas are not recognized as a profession under French law.<sup>1</sup> The services that doulas can legally provide in France are strictly limited to nonmedical assistance, or else they risk being charged with the illegal practice of medicine.<sup>2</sup> The charter of the main doula organization in France, the Association Doulas de France (Doulas of France Association), includes the following statement:

Our care complements those of the midwife or doctor and in no way replaces the medical monitoring of the mother during her pregnancy and childbirth. We are not therapists and do not perform any medical acts. We do not give any kind of medical consultations, or exams, or advice. Doulas do not have the competence required for the medical monitoring of a pregnancy or birth.<sup>3</sup>

Additionally, the Charter states that a doula may not assist a mother or parents who are not also being monitored by a doctor or midwife, nor may doulas be present during labor and birth without a midwife or doctor also being present.<sup>4</sup> Since the services of doulas are not recognized as health care services in France, they are not covered by the French national health insurance scheme.<sup>5</sup>

## II. Legal Status and Regulation of Midwives

In contrast to doulas, midwives (*sage-femmes*) are a recognized medical profession in France. Indeed, the Public Health Code states that the medical monitoring of any pregnant woman, including prenatal and postnatal medical examinations, should be conducted by a medical doctor

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<sup>1</sup> Roger Henrion, *Les Doulas: une profession émergente ?* [Doulas: An Emerging Profession?], Rapport au nom de la Commission X (Maternité – Enfance – Adolescence) [Report in the Name of Commission X (Maternity – Childhood – Adolescence)], ACADEMIE NATIONALE DE MÉDECINE [NATIONAL ACADEMY OF MEDICINE] 8 (June 10, 2008), [http://www.cngof.fr/briefcase/Juridique/Obstetrique/080619\\_doulas\\_acad-med.pdf](http://www.cngof.fr/briefcase/Juridique/Obstetrique/080619_doulas_acad-med.pdf), archived at <https://perma.cc/UA75-RSRR>.

<sup>2</sup> *Id.*

<sup>3</sup> *Charte* [Charter], ASSOCIATION DOULAS DE FRANCE [DOULAS OF FRANCE ASSOCIATION] (Mar. 3, 2008), <https://doulas.info/association/charte/>, archived at <https://perma.cc/7K3R-62YL>.

<sup>4</sup> *Id.*

<sup>5</sup> *Maternité : déclaration, prise en charge et feuille de soins* [Maternity: Declaration, Coverage, and Treatment Form], AMELI.FR (website of Assurance Maladie, the French national health insurance scheme) (May 7, 2019), <https://www.ameli.fr/sage-femme/exercice-liberal/prescription-prise-charge/situation-patient-maternite/maternite>, archived at <https://perma.cc/3382-H8EC>.

or a midwife.<sup>6</sup> Midwives must refer to a doctor in cases where there is a maternal, fetal, or neonatal pathology, and in cases of obstructed labor,<sup>7</sup> but otherwise, midwives are authorized to diagnose and monitor a pregnancy, to prepare the mother for birth, to deliver the baby, and to dispense postnatal care.<sup>8</sup> They may also administer vaccinations and prescribe certain medicine within the scope of their authorized medical practice.<sup>9</sup> The services of midwives are paid for by the French national health insurance scheme.<sup>10</sup>

Midwives must be admitted to the *tableau de l'Ordre* (board of the Order) of their geographic area to legally be able to practice.<sup>11</sup> The *tableau de l'Ordre* is a list of authorized practitioners maintained by the *Ordre des sages-femmes* (Order of Midwives), the professional organization of midwives.<sup>12</sup> Midwives are thus organized and regulated in the same way as medical doctors, who also must be admitted to the *tableau de l'Ordre* of their own professional organization, the *Ordre des médecins* (Order of Physicians), to legally practice medicine.<sup>13</sup> Midwives are also legally required to have a midwife diploma, or an equivalent diploma from another European Union Member State.<sup>14</sup> Possession of this diploma is a requirement to be admitted to the *tableau de l'Ordre* mentioned above.<sup>15</sup> A midwife diploma represents at least five years of post-secondary education. The curriculum begins with the *Première Année commune aux Etudes de Santé* (PACES) (Common First Year of Healthcare Studies), which is a year of studies common to future midwives, doctors, and pharmacists.<sup>16</sup> If their grades are good enough by the end of this first year, aspiring midwives must successfully complete at least four years in a midwife school.<sup>17</sup>

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<sup>6</sup> CODE DE LA SANTÉ PUBLIQUE [PUBLIC HEALTH CODE], art. L2122-1, <https://www.legifrance.gouv.fr/affichCode.do?cidTexte=LEGITEXT000006072665&dateTexte=20190513>, archived at <https://perma.cc/DC4V-XCMV>.

<sup>7</sup> *Id.* art. L41-51-3.

<sup>8</sup> *Id.* art. L4151-1.

<sup>9</sup> *Id.* arts. L4151-2, L4151-4.

<sup>10</sup> *Maternité : déclaration, prise en charge et feuille de soins* [Maternity: Declaration, Coverage, and Treatment Form], *supra* note 5.

<sup>11</sup> C. SANTÉ PUBLIQUE, arts. L4111-1, L4112-1, L4112-5.

<sup>12</sup> *Missions et structures* [Missions and Structures], ORDRE DES SAGES-FEMMES [ORDER OF MIDWIVES], <http://www.ordre-sages-femmes.fr/ordre/fonctionnement/missions-structures/> (last visited May 14, 2019), archived at <https://perma.cc/8RZF-3CY4>.

<sup>13</sup> C. SANTÉ PUBLIQUE, arts. L4111-1, L4112-1, L4112-5; *Qu'est-ce que l'Ordre* [What Is the Order?], CONSEIL NATIONAL DE L'ORDRE DES MÉDECINS [NATIONAL COUNCIL OF THE ORDER OF PHYSICIANS] (Oct. 2, 2012), <https://www.conseil-national.medecin.fr/qu-est-ce-que-l-ordre-1206>, archived at <https://perma.cc/47BW-BQ6Q>.

<sup>14</sup> C. SANTÉ PUBLIQUE, arts. L4111-1, L4151-5.

<sup>15</sup> *Id.* art. R4112-1.

<sup>16</sup> *Les études de santé* [Healthcare Studies], MINISTÈRE DE L'ENSEIGNEMENT SUPÉRIEUR, DE LA RECHERCHE ET DE L'INNOVATION [MINISTRY OF HIGHER EDUCATION, RESEARCH AND INNOVATION] (Feb. 4, 2019), <http://www.enseignementsup-recherche.gouv.fr/cid53276/les-etudes-de-sante.html>, archived at <https://perma.cc/54VK-Z7ZZ>.

<sup>17</sup> *Id.*

# Germany

Jenny Gesley  
Foreign Law Specialist

**SUMMARY** Health insurance in Germany is compulsory. Among the covered basic services are pregnancy-related and maternity care services, which include, among other things, midwife assistance. Obstetric care in Germany can only be performed by doctors and midwives. Doctors are required by law to consult a midwife for the delivery of a child.

The profession of midwife is regulated by law. Only people who fulfill the educational requirements and receive an authorization may practice as midwives. The education and practice of doulas on the other hand is not regulated by law. Voluntary doula classes are offered by various doula organizations in Germany. Doulas are a fairly recent phenomenon in Germany. They provide nonmedical services, which are therefore not covered by health insurance.

## I. Overview of the German Health Insurance System

Health insurance in Germany is compulsory.<sup>1</sup> Everyone whose annual income is below a statutorily defined threshold must purchase statutory health insurance (*gesetzliche Krankenversicherung, GKV*), whereas everyone who earns more than that may instead elect to purchase private insurance (*private Krankenversicherung, PKV*).<sup>2</sup> The statutory income threshold is recalculated every year. For the year 2019, it is set at €60,750 (about US\$68,304).<sup>3</sup> Unemployed persons are also subject to the insurance requirement.<sup>4</sup> Self-employed persons may choose to purchase private insurance instead of statutory health insurance, as they are not subject to the insurance requirement.<sup>5</sup>

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<sup>1</sup> Sozialgesetzbuch (SGB) Fünftes Buch (V) – Gesetzliche Krankenversicherung [SGB V] [Social Code Fifth Book – Statutory Health Insurance], Dec. 20, 1988, BUNDESGESETZBLATT [BGBl.] [FEDERAL LAW GAZETTE] I at 2477, as amended, § 5, [http://www.gesetze-im-internet.de/sgb\\_5/SGB\\_5.pdf](http://www.gesetze-im-internet.de/sgb_5/SGB_5.pdf), archived at <https://perma.cc/7WQT-RVCL>.

<sup>2</sup> *Id.* § 5, para. 1, no. 1, § 6, para. 1, no. 1.

<sup>3</sup> Verordnung über maßgebende Rechengrößen der Sozialversicherung für 2019 [Sozialversicherungs-Rechengrößenverordnung 2019] [SVBezGrV 2019] [Social Security Operand Regulation 2019], Nov. 27, 2018, BGBl. I at 2024, § 4, para. 1, [http://www.gesetze-im-internet.de/svbezgrv\\_2019/SVBezGrV\\_2019.pdf](http://www.gesetze-im-internet.de/svbezgrv_2019/SVBezGrV_2019.pdf), archived at <https://perma.cc/B4YE-3SNU>.

<sup>4</sup> SGB V, § 5, para. 1, nos. 2, 2a.

<sup>5</sup> *Id.* § 5, para. 5.

Even though insurance is compulsory, people who are subject to the insurance requirement may freely choose their insurance company.<sup>6</sup> The selected insurance company must accept the person as a member.<sup>7</sup>

All health insurance companies are required by law to offer certain basic services, but they may cover additional services.<sup>8</sup> Covered basic services include pregnancy and maternity care, which include, among other things, midwife assistance, the prevention of illnesses and the aggravation of illnesses, birth control, sterilizations, abortions, the assessment of health risks and early detection of diseases, treatment for diseases, and medical rehabilitation.<sup>9</sup> The law contains an exhaustive list of permissible additional reimbursable services—for example, additional midwife services for pregnancy and maternity care beyond the already covered basic services.<sup>10</sup>

## II. Pregnancy and Maternity Care

The covered pregnancy-related and maternity care services<sup>11</sup> include medical care and midwife assistance; the supply of medicines, bandages, therapeutic products, and assistive devices; delivery of the baby; in-home care; home help; and maternity pay.<sup>12</sup> The law further clarifies that the right to midwife assistance applies to pregnancy and the time during and after delivery, including the diagnosis of pregnancies and prenatal appointments. In addition, there is a right to midwife assistance postpartum for up to twelve weeks after the birth; any postpartum care services beyond the twelve weeks must be prescribed by a doctor.<sup>13</sup> If the mother as the insured cannot take care of the child after the birth, for example because she died, the right to midwife assistance is transferred to the child.<sup>14</sup>

What falls under midwife assistance is further specified in a contract concluded between the Central Federal Association of Health Insurance Funds (GKV-Spitzenverband) and the professional associations that represent midwives (Midwife Assistance Agreement).<sup>15</sup> It includes

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<sup>6</sup> *Id.* § 173, para. 1.

<sup>7</sup> *Id.* § 175, para. 1.

<sup>8</sup> *Id.* § 2, para. 1, §§ 11-68.

<sup>9</sup> *Id.* § 11, paras. 1, 2.

<sup>10</sup> *Id.* § 11, para. 6 in conjunction with § 24d.

<sup>11</sup> *Id.* § 24c.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* § 24d.

<sup>14</sup> *Id.* § 24d, sentence 2.

<sup>15</sup> *Id.* § 134a; Vertrag über die Versorgung mit Hebammenhilfe nach § 134a SGB V [Hebammenhilfvertrag] [Agreement on the Provision of Midwife Assistance According to § 134a SGB V] [Midwife Assistance Agreement], Sept. 25, 2015, as amended, [https://www.gkv-spitzenverband.de/media/dokumente/krank\\_versicherung\\_1/ambulante\\_leistungen/hebammen/aktuelle\\_dokumente/1\\_Vertragstext\\_Hebammenhilfvertrag\\_09-2017.pdf](https://www.gkv-spitzenverband.de/media/dokumente/krank_versicherung_1/ambulante_leistungen/hebammen/aktuelle_dokumente/1_Vertragstext_Hebammenhilfvertrag_09-2017.pdf), archived at <https://perma.cc/5PSA-V7YZ>; Anlage 1.2 Leistungsbeschreibung zum Vertrag über Hebammenhilfe nach § 134a SGB V [Annex 1.2 Description of Services for the Agreement on Midwife Assistance According to § 134a SGB V], Dec. 11, 2017, <https://www.gkv-spitzenverband.de/media/doku>



prenatal services and care, obstetrics, services during postpartum care, and help to deal with breastfeeding difficulties or feeding problems in babies.<sup>16</sup>

For delivery of the child, women have a choice between outpatient or inpatient delivery.<sup>17</sup> A child can be delivered either in a hospital, in an institution run by midwives, in a midwife practice, or at home.<sup>18</sup> In 2017, 98.72% of babies in Germany were born in a hospital; only 1.28% were born at home or in birth centers.<sup>19</sup> Doctors are obligated to consult a midwife for delivery of the baby.<sup>20</sup> With the exception of emergencies, only midwives and doctors may provide obstetric care.<sup>21</sup> Obstetric care is defined as monitoring of the birth process from the start of the first contractions on, assistance with the birth itself, and monitoring of the postpartum period.<sup>22</sup>

### III. Regulation of the Profession of Midwife

The German Midwife Act regulates who can use the professional title “midwife.” It provides that anyone who wants to use that title requires an authorization.<sup>23</sup> Such an authorization will be granted to persons who have fulfilled the educational requirements and passed a state exam, who have not exhibited any behavior that would make them untrustworthy to perform the job, who are not unsuitable health-wise to perform the job, and who have the required German language skills to perform the job.<sup>24</sup> Currently, the German Midwife Act provides that midwives must complete a three-year apprenticeship consisting of theoretical and practical study and practical training. Courses and training are provided at accredited midwife schools in hospitals. The apprenticeship concludes with a state exam.<sup>25</sup> In order to be admitted to a midwife apprenticeship, the person must have completed either ten years of general school education; nine years of general school education followed by two years at a nursing school or followed by an apprenticeship of at least two years; or have an authorization to work as a nurse.<sup>26</sup>

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[mente/krankenversicherung\\_1/ambulante\\_leistungen/hebammen/aktuelle\\_dokumente/Hebammen\\_Lesefassung\\_Leistungsbeschreibung\\_ab\\_2018-01-01.pdf](#), archived at <https://perma.cc/LC4W-H3RG>.

<sup>16</sup> Midwife Assistance Agreement, *supra* note 15, preamble.

<sup>17</sup> SGB V, § 24f.

<sup>18</sup> *Id.*

<sup>19</sup> *Geburtenzahlen in Deutschland [Birth Numbers in Germany]*, GESELLSCHAFT FÜR QUALITÄT IN DER AUßERKLINISCHEN GEBURTSHILFE E.V. [QUAG] [SOCIETY FOR QUALITY IN OUT-OF-HOSPITAL OBSTETRIC CARE, <http://www.quag.de/quag/geburtenzahlen.htm> (last visited May 6, 2019), archived at <https://perma.cc/66GH-8HC5>.

<sup>20</sup> Gesetz über den Beruf der Hebamme und des Entbindungspfleger [Hebammengesetz – HebG] [Act on the Profession of Midwife] [Midwife Act], June 4, 1985, BGBL. I at 902, § 4, para. 1, sentence 2, [http://www.gesetze-im-internet.de/hebg\\_1985/HebG.pdf](http://www.gesetze-im-internet.de/hebg_1985/HebG.pdf), archived at <https://perma.cc/H8V2-37RT>.

<sup>21</sup> *Id.* § 4, para. 1, sentence 1.

<sup>22</sup> *Id.* § 4, para. 2.

<sup>23</sup> *Id.* § 1, para. 1.

<sup>24</sup> *Id.* § 2, para. 1.

<sup>25</sup> *Id.* § 6, para. 1.

<sup>26</sup> *Id.* § 7.

However, the current version of the European Union (EU) directive that regulates midwifery education and practice in the EU, among other professions, requires that midwives complete at least twelve years of general school education.<sup>27</sup> In March 2019, the German Federal Ministry of Health (Bundesministerium für Gesundheit, BMG) published a draft act that would amend the Midwife Act to improve the education of midwives and to implement the requirements of the 2013 EU Directive.<sup>28</sup>

Midwives work either as employees at a hospital or as freelancers. In 2017, around 11,230 midwives were employed at hospitals.<sup>29</sup> Around 20,070 of the freelance midwives were organized in the German Midwives Association, the Federation of Freelance Midwives in Germany, and in the Professional Association for Home Birth Assistance. However, as membership in a professional organization is not mandatory for freelance midwives, actual numbers might be higher. In addition, membership might overlap.<sup>30</sup>

#### IV. Doulas

Until a few years ago, doulas were not very common in Germany. According to statistics published by the association Doulas in Germany (Doulas in Deutschland e.V.), in 2008, seventeen women had a doula present during the birth.<sup>31</sup> The education and practice of doulas is not regulated by law in Germany. However, three organizations offer doula classes that women can take voluntarily to get certified as a doula.<sup>32</sup>

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<sup>27</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications, 2005 O.J. (L 255) 22, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32005L0036&from=en>, archived at <https://perma.cc/S5EX-5DSD>; Directive 2013/55/EU of the European Parliament and of the Council of 20 November 2013 Amending Directive 2005/36/EC on the Recognition of Professional Qualifications and Regulation (EU) No. 1024/2012 on Administrative Cooperation Through the Internal Market Information System (“the IMI Regulation”), 2013 O.J. (L 354) 132, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0055&from=EN>, archived at <https://perma.cc/SR7B-X8SM>.

<sup>28</sup> Referentenentwurf des Bundesministeriums für Gesundheit. Entwurf eines Gesetzes zur Reform der Hebammenausbildung (Hebammenreformgesetz – HebRefG) [Draft of the Federal Ministry of Health. Draft Act to Reform the Education of Midwives] [Midwives Reform Act], Mar. 20, 2019, [https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3\\_Downloads/Gesetze\\_und\\_Verordnungen/GuV/H/Referentenentwurf\\_Hebammenreformgesetz\\_HebRefG.pdf](https://www.bundesgesundheitsministerium.de/fileadmin/Dateien/3_Downloads/Gesetze_und_Verordnungen/GuV/H/Referentenentwurf_Hebammenreformgesetz_HebRefG.pdf), archived at <https://perma.cc/L65Z-IXZP>.

<sup>29</sup> DESTATIS, GESUNDHEIT. GRUNDDATEN DER KRANKENHÄUSER [HEALTH. BASIC DATA OF HOSPITALS] 49 & 51 (2017), [https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Krankenhaeuser/Publikationen/Downloads-Krankenhaeuser/grunddaten-krankenhaeuser-2120611177004.pdf?\\_\\_blob=publicationFile&v=4](https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Gesundheit/Krankenhaeuser/Publikationen/Downloads-Krankenhaeuser/grunddaten-krankenhaeuser-2120611177004.pdf?__blob=publicationFile&v=4), archived at <https://perma.cc/F3J4-B6WY>.

<sup>30</sup> QUAG, QUALITÄTSBERICHT 2017. AUßERKLINISCHE GEBURTSHILFE IN DEUTSCHLAND [QUALITY REPORT 2017. OUT-OF-HOSPITAL BIRTH ASSISTANCE IN GERMANY] 10 (2017), [http://www.quag.de/downloads/QUAG\\_bericht\\_2017.pdf](http://www.quag.de/downloads/QUAG_bericht_2017.pdf), archived at <https://perma.cc/7JP7-3689>.

<sup>31</sup> DOULAS IN DEUTSCHLAND E.V. [ASSOCIATION OF DOULAS IN GERMANY], STATISTISCHE AUSWERTUNG DER IM JAHR 2008 BEGLEITETEN GEBURTEN [STATISTICS ON ACCOMPANIED BIRTHS IN 2008] (MAY 2009), [http://s246153258.online.de/dl/statistik\\_did-begleitungen\\_2008.pdf](http://s246153258.online.de/dl/statistik_did-begleitungen_2008.pdf), archived at <https://perma.cc/2KGG-8QGL>.

<sup>32</sup> These organizations are the Doula Netzwerk (the umbrella organization of Doulas in Germany), Doulas in Deutschland e.V., and the Gesellschaft für Geburtsvorbereitung, Familienbildung und Frauengesundheit e.V.. See DEUTSCHER HEBAMMENVERBAND E.V. [GERMAN MIDWIVES ASSOCIATION], POSITIONSPAPIER ZUM THEMA

Doulas provide services considered nonmedical in nature and therefore do not qualify as pregnancy and maternity care services covered by health insurance; only midwife assistance qualifies as outlined above. Anyone who wants to use doula services therefore must pay for it out-of-pocket. A position paper published by the German Midwives Association in 2010 stated that “doulas do not perform medical services for a birth; those are reserved for midwives alone.”<sup>33</sup> In addition, “midwives are generally not liable for the work of a doula. The doula has the status of an accompanying person.”<sup>34</sup>

The paper points out that “the common goal of midwives and doulas is to achieve appropriate and comprehensive one-on-one care that allows for a low level of intervention during the birth assistance.”<sup>35</sup> However, it criticizes the fact that the tasks and costs of doulas are transferred to the woman, even though a lot of the services that midwives and doulas perform overlap and are covered by health insurance.<sup>36</sup> It therefore suggests improving information about nonmedical services performed by midwives and ensuring the nationwide provision of midwives.<sup>37</sup>

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DOULAS IN DEUTSCHLAND [POSITION PAPER ON DOULAS IN GERMANY] 6 (2010), [https://hebammenverband.de/pressespiegel/datum/2013/07/30/artikel/doulas-was-tun-die-dienerinnen-der-geburt/index.php?eID=tx\\_nawsecuredl&u=0&g=0&t=1565017108&hash=4eb41df69f0fa1444ffb6e823f52aece7b88ea84&file=/fileadmin/user\\_upload/pdf/Stellungnahmen/PositionspapierDoulas.pdf](https://hebammenverband.de/pressespiegel/datum/2013/07/30/artikel/doulas-was-tun-die-dienerinnen-der-geburt/index.php?eID=tx_nawsecuredl&u=0&g=0&t=1565017108&hash=4eb41df69f0fa1444ffb6e823f52aece7b88ea84&file=/fileadmin/user_upload/pdf/Stellungnahmen/PositionspapierDoulas.pdf), archived at <https://perma.cc/NP65-2VWE>.

<sup>33</sup> *Id.* at 1. Translation by author.

<sup>34</sup> *Id.* at 7. Translation by author.

<sup>35</sup> *Id.* at 8. Translation by author.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 9.

# Hong Kong

Laney Zhang  
Foreign Law Specialist

**SUMMARY** In Hong Kong, local residents pay no or nominal fees when using public healthcare services. In addition to the public hospitals, there are maternal and child health centers in the public sector, where prenatal and postnatal services are provided for free to local residents.

Midwifery is a regulated healthcare profession in Hong Kong. Any person who wishes to practice as a registered midwife in Hong Kong must be registered with the Midwives Council of Hong Kong. In order to register as a midwife, a person must complete an eighteen-month midwifery diploma program and pass the examinations. Doulas do not appear to be regulated or funded by the government in Hong Kong.

## I. Public Healthcare System and Maternity Care in Hong Kong

Hong Kong has the most efficient healthcare system in the world, according to the 2018 Bloomberg Health-Efficiency Index.<sup>1</sup> In Hong Kong, the government provides subsidized healthcare services to local residents. When using public healthcare services, Hong Kong identity card holders and resident children under eleven years of age pay no or nominal fees and therefore generally do not need medical insurance.

The Hospital Authority is the statutory body responsible for managing Hong Kong's public hospital services. It currently manages forty-three hospitals and institutions, forty-nine specialist out-patient clinics, and seventy-three general out-patient clinics.<sup>2</sup> According to the fee schedule published by the Hospital Authority, public hospitals charge local residents around HK\$100 (about US\$13) per day for inpatient stay.<sup>3</sup>

In addition to the public hospitals where maternity care is available at a low cost, the Department of Health manages maternal and child health centers where prenatal and postnatal services are provided for free to local residents.<sup>4</sup> The centers monitor the pregnancy and delivery process in

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<sup>1</sup> Lee Miller & Wei Lu, These Are the Economies with the Most (and Least) Efficient Health Care, BLOOMBERG (Sept. 19, 2018, by subscription).

<sup>2</sup> Hospital Authority, *Introduction*, [http://www.ha.org.hk/visitor/ha\\_visitor\\_index.asp?Parent\\_ID=10004&Content\\_ID=10008&Ver=HTML](http://www.ha.org.hk/visitor/ha_visitor_index.asp?Parent_ID=10004&Content_ID=10008&Ver=HTML) (last visited May 13, 2019), archived at <https://perma.cc/IDW6-LFJK>.

<sup>3</sup> Hospital Authority, *Fees and Charges* (effective June 18, 2017), [http://www.ha.org.hk/visitor/ha\\_visitor\\_index.asp?Content\\_ID=10045&Lang=ENG&Dimension=100&Parent\\_ID=10044&Ver=HTML](http://www.ha.org.hk/visitor/ha_visitor_index.asp?Content_ID=10045&Lang=ENG&Dimension=100&Parent_ID=10044&Ver=HTML), archived at <https://perma.cc/PWX7-M8MN>.

<sup>4</sup> Family Health Service, Department of Health of the Government of the Hong Kong Special Administrative Region, *Fees and Charges – For General Public* (effective June 26, 2017), [https://www.fhs.gov.hk/english/fee\\_cha/general\\_pub/general\\_pub.html](https://www.fhs.gov.hk/english/fee_cha/general_pub/general_pub.html), archived at <https://perma.cc/AV9G-5GWM>.

collaboration with the public hospitals. The centers also provide advice on family planning and help postnatal mothers adapt to changes in life through individual counselling.<sup>5</sup>

Women in Hong Kong may also choose to use private hospitals and clinics that provide more personalized maternity care services, where they must pay for the services. Considering the high cost of delivery in the private sector, some women choose to use private services for prenatal healthcare and to then give birth in a public hospital.<sup>6</sup>

## II. Midwives

Midwifery is a regulated healthcare profession in Hong Kong. Under the Midwives Registration Ordinance, any person who wishes to practice as a registered midwife in Hong Kong must be registered as a midwife with the Midwives Council of Hong Kong (MCHK).<sup>7</sup> A registered midwife must hold a current practicing certificate in order to practice.<sup>8</sup> As of December 31, 2018, there were a total of 4,445 registered midwives in Hong Kong.<sup>9</sup>

In order to register as a midwife, a person must have completed such training as may be prescribed by the MCHK and passed the examinations.<sup>10</sup> At present, the only midwifery training program approved by the MCHK is an eighteen-month diploma in midwifery program. A person must be a registered nurse in Hong Kong in order to fulfill the entry requirement for the program.<sup>11</sup>

It appears that registered midwives may choose to work in the public or private sectors. The MCHK issues the Code of Professional Conduct and Practice for Midwives in Hong Kong, aiming to provide general guidance to registered midwives on the conduct and practice of midwifery.<sup>12</sup>

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<sup>5</sup> Family Health Service, Department of Health of the Government of the Hong Kong Special Administrative Region, Maternal Health (last revised Apr. 12, 2019), [https://www.fhs.gov.hk/english/main\\_ser/process.html](https://www.fhs.gov.hk/english/main_ser/process.html), archived at <https://perma.cc/95SW-KRDS>.

<sup>6</sup> *Maternity in Hong Kong: Public VS Private Hospitals*, APRIL INTERNATIONAL (June 4, 2019), <https://fr.april-international.com/en/healthcare-expatriates/maternity-hong-kong-public-vs-private-hospitals>, archived at <https://perma.cc/8J7Q-OP5F>.

<sup>7</sup> Midwives Registration Ordinance (Cap. 162) s 8, <https://www.elegislation.gov.hk/hk/cap162>, archived at <https://perma.cc/N3Q8-XHFS>.

<sup>8</sup> *Id.* s 22.

<sup>9</sup> Midwives Council of Hong Kong (MCHK), *Statistics and List of Registered Midwives*, [https://www.mwchk.org.hk/english/statistics/statistics\\_of\\_registered.html](https://www.mwchk.org.hk/english/statistics/statistics_of_registered.html) (last visited May 16, 2019), archived at <https://perma.cc/J2ZH-B836>.

<sup>10</sup> Midwives Registration Ordinance s 7, <https://www.elegislation.gov.hk/hk/cap162>, archived at <https://perma.cc/N3Q8-XHFS>.

<sup>11</sup> MCHK, *Midwifery Training in Hong Kong* (last revised Mar. 3, 2016), <https://www.mwchk.org.hk/english/training/index.html>, archived at <https://perma.cc/UTU2-KB4P>.

<sup>12</sup> MCHK, *Code of Professional Conduct and Practice for Midwives in Hong Kong* (3d ed., Mar. 2016), [https://www.mwchk.org.hk/docs/conduct\\_practice\\_e.pdf](https://www.mwchk.org.hk/docs/conduct_practice_e.pdf), archived at <https://perma.cc/YY5T-H9U4>.

According to the Code, midwives may practice “in hospitals, clinics, health units, and domiciliary conditions or in any other service.”<sup>13</sup>

Midwives in Hong Kong may provide services during the pregnancy, labor, and the postpartum period. In fact, at public hospitals, babies may be delivered by a midwife, with a doctor on hand to assist in case of complications.<sup>14</sup> The MCHK defines the roles and responsibilities of midwives as follows:

The midwife is recognized as a responsible and accountable professional who works in partnership with women to give the necessary support, care and advice during pregnancy, labour and the postpartum period, to conduct births on the midwife’s own responsibility and to provide care for the newborn and the infant. This care includes preventative measures, the promotion of normal birth, the detection of complications in mother and child, the accessing of medical care or other appropriate assistance and the carrying out of emergency measures.<sup>15</sup>

### III. Doulas

Doulas do not appear to be regulated or funded by the government in Hong Kong. A doula may assist women before, during, or after childbirth by providing physical assistance and emotional support, but may not independently attend women in childbirth. According to the Midwives Registration Ordinance, only a registered medical practitioner or registered midwife may attend women in childbirth, except for a person in training to become a registered medical practitioner or midwife, or in the case of an emergency.<sup>16</sup>

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<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Maternity in Hong Kong: Public VS Private Hospitals*, *supra* note 6.

<sup>15</sup> MCHK, HANDBOOK FOR MIDWIVES 3 (May 2014), [https://www.mwchk.org.hk/docs/Handbook\\_for\\_Midwives\\_e.pdf](https://www.mwchk.org.hk/docs/Handbook_for_Midwives_e.pdf), archived at <https://perma.cc/H9B5-U7XK>.

<sup>16</sup> Midwives Registration Ordinance (Cap. 162) s 8, <https://www.elegislation.gov.hk/hk/cap162>, archived at <https://perma.cc/N3Q8-XHFS>.

<sup>16</sup> *Id.* s 22.

<sup>16</sup> MCHK, Statistics and List of Registered Midwives, [https://www.mwchk.org.hk/english/statistics/statistics\\_of\\_registered.html](https://www.mwchk.org.hk/english/statistics/statistics_of_registered.html) (last visited May 16, 2019), archived at <https://perma.cc/1ZZH-B836>.

<sup>16</sup> Midwives Registration Ordinance s 18, <https://www.elegislation.gov.hk/hk/cap162>, archived at <https://perma.cc/N3Q8-XHFS>.

# Israel

Ruth Levush  
Senior Foreign Law Specialist

**SUMMARY** Health insurance in Israel is compulsory. Among the covered basic services are pregnancy-related and maternity care services, which include, among other things, midwifery assistance.

The profession of midwifery is regulated by law. The practice of midwifery generally requires a license issued by the Ministry of Health based on the defined criteria of good character, education, citizenship or permanent resident status, and publication of identification in the official gazette.

Unlike midwifery, the education and practice of doulas is not regulated by law. Doula classes are available but are not recognized by the Ministry of Health. Doulas' services do not appear to be covered by Israeli Health Funds.

## I. Overview of the Israeli Health Insurance System

Israel maintains a system of national health care. In accordance with the National Health Insurance Law, 5754-1994,<sup>1</sup> as amended, Israeli residents must register with one of the Health Funds that are approved by the Ministry of Health. The Health Funds are required to provide services listed in “a basket of basic health services,” which includes specific reproductive and prenatal health services and products.<sup>2</sup> Health Funds may provide services in addition to those included in the “basket of basic health services.” The funding of services derives from health insurance fees collected by the Institute of Social Security, annual budget allocations to the Ministry of Health for specific services, taxes, fees and premiums paid by members, among other sources.<sup>3</sup>

## II. Pregnancy and Maternity Care

The National Health Insurance Law lists the minimal requirements of insurance coverage for prenatal health services, such as doctor visits and certain procedures.<sup>4</sup>

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<sup>1</sup> National Health Insurance Law, 5754-1994, SEFER HA-HUKIM [SH] [BOOK OF LAWS, Official Gazette] No. 5754, p. 156, *as amended*.

<sup>2</sup> *Id.* § 4 & 7 & 2d Supp. Up-to-date text is available in the Nevo Legal Database (NLD) at <http://www.nevo.co.il> (in Hebrew; all NLD links below last visited May 14, 2019), *archived at* <https://perma.cc/WHL8-I8J2>.

<sup>3</sup> *Id.* § 14.

<sup>4</sup> *Id.* § 7 & 2d Supp. §7.

The Institute of National Insurance pays for hospitalization following childbirth and provides the mother and the newborn with a grant in an amount that is updated regularly.<sup>5</sup> In accordance with the National Insurance Law, the hospitalization grant is to be paid to the hospital or to the medical institution in which the insured was hospitalized in connection with the birth. If the birth occurred outside of Israel in a hospital or medical institution for which the hospitalization grant claim cannot be submitted, the hospitalization grant will be paid to the insured in an amount equal to the hospitalization expenses that she incurred in connection with the birth.<sup>6</sup>

The Law provides as follows:

In return for the hospitalization grant, the following services will be given to the mother and child:

- (1) All services and medical treatments related to birth including laboratory tests, imaging and other tests of any kind, surgeries or any matters related to them;
- (2) hospitalization of the mother in the maternity ward for the period required by the birth and its results, and hospitalization ... within 3 days preceding the date of birth;
- (3) hospitalization of the newborn until the mother leaves the hospital;
- (4) hospitalization of the newborn after the mother leaves the hospital for a period of time as the medical condition requires due to hepatitis, pneumonia, as a result of drinking amniotic fluid or any other infectious disease;
- (5) hospitalization of premature babies in an appropriate medical unit;
- (6) anti-immunoglobulin injections in the case of negative RH and any injection or other treatment required by the mother and newborn according to the doctor's decision;
- (7) Hearing screening tests for the newborn.<sup>7</sup>

### III. Regulation of the Profession of Midwives

The Midwives Ordinance 1930, as amended, regulates the practice of midwifery in Israel.<sup>8</sup> Midwives are required to be authorized under the Ordinance. Accordingly,

Anyone who presents herself, whether directly or indirectly, as willing to examine a woman in connection with birth, to diagnose her, to prescribe her medicine, to treat her or birth her, is considered engaged in the midwifery profession.<sup>9</sup>

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<sup>5</sup> National Insurance Law [Consolidated Version], 5755-1995, SH 5755 No. 1522 p. 210, *as amended*, § 43, NLD, archived at <https://perma.cc/LY72-RQH9>.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* table B1.

<sup>8</sup> Midwives Ordinance 1930, 2 LAWS OF PALESTINE, cap. 93 p. 931, *as amended*, NLD, archived at <https://perma.cc/MR5N-BJGZ>.

<sup>9</sup> *Id.* § 3(2).



Midwifery practice requires a license issued by the Ministry of Health based on the following conditions:

1. Proof of good character;
2. The study of midwifery for at list six months and receipt of a diploma from an institution recognized by the Ministry of Health;
3. Israeli citizenship or permanent resident status; and
4. Publication of the name and residence of the midwife in the official gazette.<sup>10</sup>

Temporary permits to engage in midwifery may be issued under the conditions prescribed by the Ordinance.<sup>11</sup>

#### IV. Doulas

According to a portal advertising doulas' services in Israel,

Doula supports birth – usually a woman trained to support and accompany pregnant women and couples in the delivery room. Support is given in the emotional and therapeutic aspects through complementary medicine methods such as shiatsu, reflexology, massage and more.<sup>12</sup>

Doula services are not regulated and do not appear to be funded by Israeli Health Funds. Institutions advertising training for doulas in Israel exist<sup>13</sup> but similarly appear to not been recognized by the Ministry of Health.

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<sup>10</sup> *Id.* §§ 3(1) & 5.

<sup>11</sup> *Id.* § 5A.

<sup>12</sup> *What Is a Doula? What Is Her Role in Childbirth?*, PORTAL DOULA FOR THE FAMILY AND THE FUTURE PARENTS, <http://doula.co.il/דולה-תומכת-לידה> (in Hebrew; last visited May 14, 2019), archived at <https://perma.cc/U4WA-KDUR>.

<sup>13</sup> See, e.g., *To Give Birth*, NATIONAL COLLEGE FOR BIRTHING SERVICES, <https://laledetschool.co.il/אודות-מכללת-> [ללדה/](https://perma.cc/V8VE-HM8P) (in Hebrew; last visited May 14, 2019), archived at <https://perma.cc/V8VE-HM8P>.

# Japan

Sayuri Umeda  
Senior Foreign Law Specialist

**SUMMARY** Japan's Act on Public Health Nurses, Midwives and Nurses regulates the midwife profession. Only midwives and medical doctors may assist labor and provide health guidance for pregnant women, women in labor, or newborn babies. A midwife must be licensed, which requires a specified education and successful passage of a national examination.

A woman who has given birth to a child receives a lump-sum childbirth allowance from her health insurance. She can use the allowance for any purpose, including payment of a midwife.

Private institutions have established certification systems for doulas and other supporters of women before and after childbirth. As a part of measures being taken to reverse the declining birth rate, the government has initiated programs to subsidize the fees of these childbirth supporters.

## I. Alternative Childbirth Care by Midwives

Japan's Act on Public Health Nurses, Midwives and Nurses states that midwives may assist labor and provide health guidance for pregnant women, women in labor, or newborn babies.<sup>1</sup> No person other than a midwife or medical doctor may practice the profession.<sup>2</sup> If a midwife discovers an abnormality in a pregnant woman or woman in labor, or in the fetus or a newborn baby, the midwife is required to refer the woman or baby to a physician for medical care. A midwife may not personally provide treatment in such cases, other than emergency first aid.<sup>3</sup>

A midwife may work in a hospital, clinic, or birthing center,<sup>4</sup> or provide service at the client's location.<sup>5</sup> Birthing centers are places exclusively for midwives to perform their services,<sup>6</sup> and must be managed by midwives.<sup>7</sup> Birthing centers may not have in-patient facilities for more than

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<sup>1</sup> 保健師助産師看護師法 [Act on Public Health Nurses, Midwives and Nurses], Act No. 203 of 1948, amended by Act No. 83 of 2014, art. 3. The Act in English translation as amended by Act No. 78 of 2009 is available at <http://www.japaneselawtranslation.go.jp/law/detail/?printID=&ft=2&re=02&dn=1&yo=nurse&ia=03&ph=&x=0&y=0&ky=&page=1&vm=02>, archived at <https://perma.cc/37XG-2PNR>.

<sup>2</sup> *Id.* art. 3.

<sup>3</sup> *Id.* art. 38.

<sup>4</sup> 医療法 [Medical Care Act], Act No. 205 of 1948, amended by Act No. 79 of 2018, art. 2.

<sup>5</sup> See *id.* art. 19, para. 2.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* art. 12.

nine pregnant women, women in labor, or women resting after childbirth.<sup>8</sup> They must have contracts with physicians and hospitals or clinics in case clients need to be directed to such places.<sup>9</sup> A midwife who only provides services by visiting clients in their homes must also have a contract with a hospital or clinic.<sup>10</sup> Birthing centers must follow building, facility, and cleanliness standards similar to hospitals and clinics.<sup>11</sup>

To be a midwife, a woman<sup>12</sup> must receive a midwife license from the Minister of Health, Labor and Welfare (MHLW).<sup>13</sup> The MHLW registers midwife licensures in the Midwife Registry.<sup>14</sup> To be licensed as midwife, a woman must acquire the qualification for the national nursing examination and then receive the education for midwifery to qualify for the national midwifery examination.<sup>15</sup> Further, the woman must pass the national nursing examination and the national midwifery examination.<sup>16</sup>

The following persons may sit for the national nurse examination:

- (i) A person who has completed the required course of studies for becoming a nurse at one of universities designated by the Minister of Education, Culture, Sports, Science and Technology (MEXT) and graduated from it;
- (ii) A person who has acquired credits for becoming a nurse for at least three years at one of schools designated by the Minister of MEXT;
- (iii) A person who has graduated from a qualified nurse training school designated by a prefectural governor;
- (iv) An assistant nurse<sup>17</sup> who has practiced for at least three years after obtaining the assistant nurse license, or who has graduated from a high school or junior high school and has been trained for at least two years at a university, school or training school provided for in one of the preceding three items; and
- (v) A person who has graduated from a foreign school for nursing or who has received licensure for nurse in a foreign country and whom the Minister of MHLW finds to have knowledge and skill equal to or greater than the persons in items (i) to (iii).<sup>18</sup>

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<sup>8</sup> *Id.* art. 2, para. 2 & art. 14.

<sup>9</sup> *Id.* art. 19, para. 1.

<sup>10</sup> *Id.* art. 19, para. 2.

<sup>11</sup> *Id.* arts. 20 & 23.

<sup>12</sup> The Act on Public Health Nurses, Midwives and Nurses states that a midwife is a “woman” while a nurse is a “person” (gender neutral).

<sup>13</sup> Act on Public Health Nurses, Midwives and Nurses art. 3.

<sup>14</sup> *Id.* art. 12, para. 2.

<sup>15</sup> 助産師になりたい方へ [For Persons Who Want to Be Midwives], JAPAN SOCIETY OF MIDWIFERY EDUCATION, [http://www.zenjomid.org/qa\\_01/](http://www.zenjomid.org/qa_01/) (last visited May 13, 2019), archived at <https://perma.cc/6EGU-EF6E>.

<sup>16</sup> Act on Public Health Nurses, Midwives and Nurses art. 7, para. 2.

<sup>17</sup> To be an assistant nurse, a certain educational background, passage of the assistant nurse examination, and licensure by a governor are required. *Id.* arts. 8 & 22.

<sup>18</sup> *Id.* art. 21.

The following persons may sit for the national midwifery examination:

- (i) A person who has followed a course of studies in midwifery for at least one year at one of schools designated by the Minister of MEXT;
- (ii) A person who has graduated from one of a midwife training schools designated by the governor; and
- (iii) A person who has graduated from a foreign school for the midwifery practice or who has been licensed as midwife in a foreign country and whom the Minister of MHLW finds to have knowledge and skill equal to or greater than the persons in the preceding two items.<sup>19</sup>

## II. Health Insurance Coverage

In Japan, all legal residents subscribe to one of two types of medical insurance systems.<sup>20</sup> Normal delivery of a child is not regarded as an illness under the Japanese health insurance system, therefore health insurance does not pay medical benefits for normal childbirth.<sup>21</sup> However, under any insurance system, when an insured or dependent gives birth to a child, she is eligible to receive the childbirth lump-sum allowance.<sup>22</sup> In addition, when a child is born by cesarean section, the operation fee, anesthesia fee, medication fee, and in-patient management fee are covered by medical insurance.<sup>23</sup>

The basic amount of the childbirth lump-sum allowance is 404,000 yen (approximately US\$3,700). When a woman gives birth at a hospital, clinic, or birthing center that is enrolled in a specified obstetric compensation insurance system, the amount is increased to 420,000 yen (approximately US\$3,850).<sup>24</sup> The woman who receives this allowance may use it to cover the bill for the childbirth or any other purpose. If the woman so chooses, the insurance organization may pay the amount

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<sup>19</sup> *Id.* art. 20.

<sup>20</sup> Health Insurance Bureau, MHLW, <https://www.mhlw.go.jp/english/org/policy/p34-35.html> (last visited May 10, 2019), archived at <https://perma.cc/ES8X-797E>. See 国民健康保険法 [National Health Insurance Act], Act No. 192 of 1958, amended by Act No. 45 of 2017, arts. 5 & 6.

<sup>21</sup> 出産に関する給付 [Benefits Regarding Child Delivery], JAPAN HEALTH INSURANCE ASSOCIATION (Mar. 8, 2019), <https://www.kyoukaikenpo.or.jp/g3/cat320/sb3170/sbb31712/1948-273>, archived at <https://perma.cc/6RXZ-M3EA>.

<sup>22</sup> 健康保険法 [Health Insurance Act], Act No. 70 of 1922, amended by Act No. 79 of 2018, art. 101; National Health Insurance Act art. 58.

<sup>23</sup> 出産時の健康保険適用診療費 [Medical Fees of Childbirth Covered by Health Insurance], NATATSU CITY, <https://www.city-nakatsu.jp/categories/kosodatemokuteki/okane/jikofutangendogaku/> (last visited May 13, 2019), archived at <https://perma.cc/TJU2-AQT7>.

<sup>24</sup> 健康保険法施行令 [Enforcement Order of Health Insurance Act], Cabinet Order No. 243 of 1926, amended by Cabinet Order No. 213 of 2017, art. 36. See also 平成 23 年 4 月以降の出産育児一時金制度について [Regarding Lump-sum Allowance for Childbirth System after April 2011], MHLW, <https://www.mhlw.go.jp/file/06-Seisakujouhou-12400000-Hokenkyoku/0000075020.pdf> (last visited May 10, 2019), archived at <https://perma.cc/M6QJ-K28R>.

of the allowance directly to the hospital, clinic, or childbirth center in order to prevent the women from paying the childbirth bill out of pocket before the allowance is paid.<sup>25</sup>

### III. Supporters for Women Before and After Childbirth

Some private organizations and business have established certification programs for supporters for women before and after childbirth.<sup>26</sup> For example, the Japan Doula Association provides training and issues certifications for doulas, who support women before and after childbirth.<sup>27</sup> Doulas cannot assist in the labor or provide health guidance to women before or after the birth, but may provide housekeeping, cooking, childcare, and mental support for the new mother and her family.<sup>28</sup>

As one of the measures being taken to reverse Japan's declining birthrate, the Japanese government has initiated support programs for marriage, pregnancy, childbirth, and parenting.<sup>29</sup> The national government gives subsidies to prefectural and municipal governments that implement measures to support those programs.<sup>30</sup> Many municipal governments also have programs to pay partial fees to supporters for women before and after childbirth.<sup>31</sup>

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<sup>25</sup> MHLW,「出産育児一時金等の医療機関等への直接支払制度」実施要綱 [Practice Manual for “Direct Payment of Childbirth Lump-sum Allowance to Medical Institutions and the Like”] (Jan. 31, 2011, amended Dec. 16, 2016), <https://www.mhlw.go.jp/file/06-Seisakujouhou-12400000-Hokenkyoku/0000152341.pdf>, archived at <https://perma.cc/49TT-U4PA>.

<sup>26</sup> 「みんなで子育て」が人気！産前産後のママを支える資格3選 [Popular Concept “Child Rearing by Community”! 3 Best Qualifications to Support Mamas before and after Child Birth], WOMORE (Oct. 21, 2016), <https://shikaku.hoiku-me.com/guide/archives/2276/>, archived at <https://perma.cc/K3T7-RWBB>.

<sup>27</sup> About Japan Doula Association, JAPAN DOULA ASSOCIATION, <https://www.doulajapan.com/about-doulajapan/> (last visited May 10, 2019), archived at <https://perma.cc/QFX5-2GQX>.

<sup>28</sup> See 産後ドゥーラって、なに？ [What Is a Doula?], JAPAN DOULA ASSOCIATION, <https://www.doulajapan.com/howto-doula/> (last visited May 10, 2019), archived at <https://perma.cc/4A4U-YA5T>.

<sup>29</sup> 少子化対策 [Measures against Declining Birth], CABINET OFFICE, <https://www8.cao.go.jp/shoushi/shoushika/index.html> (last visited May 10, 2019), archived at <https://perma.cc/FKT2-ZYR8>.

<sup>30</sup> 平成31年度地域少子化対策重点推進交付金交付要綱 [Summary of Issuance of Subsidies for Promotion of Regional Countermeasures against Declining Birth for Fiscal Year 2019], <https://www8.cao.go.jp/shoushi/shoushika/meeting/koufukin/h31/pdf/tousho/31youkou.pdf> (last visited May 10, 2019), archived at <https://perma.cc/GVZ6-YMUX>.

<sup>31</sup> For example, 産前・産後の日常生活のお世話 [Daily Life Support before and after Child Birth], SUGINAMI CITY, <http://www.city.suginami.tokyo.jp/kosodate/ouenken/service/oya/osewa/index.html> (last visited May 10, 2019), <https://perma.cc/2435-DZG2>.

# New Zealand

*Kelly Buchanan*  
*Foreign Law Specialist*

**SUMMARY** New Zealand has a midwifery-led maternity services system, with four out of five births attended by midwives as the lead maternity carer (LMC). Primary maternity services are provided by self-employed, community-based midwives, as well as by hospital-employed midwives. Midwives are regulated under the Health Practitioners Competence and Assurance Act 2003, with the Midwifery Council establishing rules and processes related to education requirements, registration, recertification, and conduct.

Primary maternity services provided by midwives are funded by the government, with women paying no additional fees. Secondary and tertiary services provided by practitioners at public hospitals are also free. Women can choose to give birth at home, in a birthing unit, or in a hospital. Midwives also provide government-funded care to women and newborn babies for up to six weeks postpartum, including at least five home visits.

Issues related to payment levels and working conditions for midwives have been raised with the government during the past year and ongoing work is being conducted in relation to funding models and workforce shortages.

Doulas, who expressly provide nonmedical maternity support, are not regulated under the current system and do not receive any government funding. They may be subject to the code of consumer rights that applies to all providers of health services.

## I. Maternity Services Model

New Zealand's maternity services model is referred to as a midwife-led system. Midwives are a regulated part of New Zealand's public health care system, with specific education and registration requirements applying and all midwifery services funded by the government.

Under this system, most pregnant women in New Zealand choose to use the services of a midwife, who are the lead maternity professionals (lead maternity carers, LMCs) in four out of five births in the country.<sup>1</sup> Women can instead choose a specialist doctor (i.e., an obstetrician or a specially-trained general practitioner (GP)) as their LMC. Obstetricians are able to charge fees on top of the standard government subsidy for maternity services; midwifery and GP care is always provided free of charge to eligible women, which includes all women who are eligible for public

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<sup>1</sup> Ellie Wernham et al., *A Comparison of Midwife-Led and Medical-Led Models of Care and Their Relationship to Adverse Fetal and Neonatal Outcomes: A Retrospective Cohort Study in New Zealand*, 13(9) PLOS MED. (Sept. 2016), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5038958/>, archived at <https://perma.cc/KPC4-3HHG>.

health services as well spouses and partners of New Zealand citizens, permanent visa holders, or other visa holders.<sup>2</sup> Regardless of who the LMC is, specialist care will be provided if needed at any stage. Such care is usually provided free of charge through local hospitals.<sup>3</sup>

LMC midwives “work with midwife partners (mostly in small group practices) and alongside midwives who are employed to work in maternity units.”<sup>4</sup> That is, LMC midwives are generally self-employed (i.e., community-based), rather than hospital-employed. District Health Boards (DHBs) also employ midwives (“core midwives”) to “provide 24-hour, rostered shift cover in a maternity facility,” or to provide continuity of care.<sup>5</sup> Self-employed LMCs access DHB maternity facilities under the Maternity Facility Access Agreement, which applies nationwide.<sup>6</sup> LMCs are

responsible for organising women’s maternity care. They may provide all of the care or share the care with one, or more, other practitioners. They also provide information to assist with decision-making during pregnancy, preparation of the birth and for parenting. Information will include a wide range of matters such as nutrition, exercise, the risks of smoking and drinking alcohol when pregnant, labour and the birth process, pain relief, breastfeeding, baby care, immunisation, community services, contraception and many other matters.<sup>7</sup>

Women can choose to give birth “at home, in a birthing centre or small maternity unit, or in a hospital.”<sup>8</sup> Most women give birth in a hospital, although the Ministry of Health expressly states that “[h]ome birth is a safe choice for many women.”<sup>9</sup> The Ministry states that

[i]f you chose a midwife as your main carer, she will usually be with you during labour and birth. She will have another midwife available to support you and her during and after

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<sup>2</sup> *Maternity Care*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/services-and-support-during-pregnancy/maternity-care> (last updated Apr. 10, 2019), archived at <https://perma.cc/LBX2-BJXV>; *Pregnancy Services*, MINISTRY OF HEALTH, <https://www.health.govt.nz/new-zealand-health-system/publicly-funded-health-and-disability-services/pregnancy-services> (last updated Aug. 2, 2018), archived at <https://perma.cc/BR5M-ZS8T>.

<sup>3</sup> *Choosing a Midwife or Specialist Doctor*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/services-and-support-during-pregnancy/choosing-midwife-or-specialist-doctor> (last updated July 24, 2015), archived at <https://perma.cc/4AHX-SMJ7>.

<sup>4</sup> *About Lead Maternity Carer (LMC) Services*, NEW ZEALAND COLLEGE OF MIDWIVES (NZCOM), <https://www.midwife.org.nz/women/for-women/about-midwives/about-lead-maternity-carer-lmc-services/> (last visited May 1, 2019), archived at <https://perma.cc/QDN6-TN6T>.

<sup>5</sup> *New Zealand Midwifery*, NZCOM, <https://www.midwife.org.nz/midwives/midwifery-in-new-zealand/> (last visited May 1, 2019), archived at <https://perma.cc/BU2V-RH7N>.

<sup>6</sup> *Primary Maternity Services*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/life-stages/maternity-services/primary-maternity-services> (last updated June 29, 2018), archived at <https://perma.cc/2ZPH-KVST>.

<sup>7</sup> *Pregnancy Services*, *supra* note 2.

<sup>8</sup> *Where to Give Birth*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/services-and-support-during-pregnancy/where-give-birth> (last updated June 30, 2015), archived at <https://perma.cc/XKU2-V6T3>.

<sup>9</sup> *Id.*

the birth. They'll work alongside other midwives or doctors if you need additional care. If a specialist doctor is your main carer, they will usually be involved at the time of the birth and you will have a midwife or midwives to care for you during your labour (ask your doctor about this).

Your midwife (or one working on behalf of your specialist doctor) will stay with you for at least 2 hours after the birth.

If you have pregnancy complications or need specialist support, you will be encouraged to give birth in hospital. In some cases, you may need to be under the care of a medical specialist.

Once your baby is born you can stay in hospital for a couple of days and receive care from the hospital-based midwives to assist you to breastfeed your baby and to recover from the birth. Your midwife (or specialist doctor) will visit you every day that you stay in hospital. Your midwife (or one working on behalf of your specialist doctor) will visit within 24 hours of your going home.<sup>10</sup>

As discussed below, LMCs receive funding to provide care for mothers for four to six weeks after the birth, including at least five home visits.<sup>11</sup>

## II. Regulation of Midwives

Midwives are primarily regulated under the Health Practitioners Competence Assurance Act 2003 (HPCA Act),<sup>12</sup> which applies to all health practitioners.<sup>13</sup> The Act established separate regulatory authorities, including the Midwifery Council,<sup>14</sup> to regulate each health profession.

Practicing as a midwife requires registration with the Midwifery Council.<sup>15</sup> In order to be registered, "applicants must hold the prescribed midwifery qualification and meet other stringent requirements."<sup>16</sup> Following registration, midwives must apply for an annual practicing

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<sup>10</sup> *Id.*

<sup>11</sup> *Maternity Care after the Birth*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/services-and-support-during-pregnancy/maternity-care-after-birth> (last updated Sept. 6, 2016), archived at <https://perma.cc/S2TQ-YL85>.

<sup>12</sup> Health Practitioners Competence Act 2003, <http://www.legislation.govt.nz/act/public/2003/0048/latest/whole.html>, archived at <https://perma.cc/YAX5-SP4H>.

<sup>13</sup> *Understanding the Legislation*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/about-us/legislation> (last visited May 1, 2019), archived at <https://perma.cc/H9R9-DSR9>.

<sup>14</sup> Health Practitioners Competence Act 2003 s 114(3).

<sup>15</sup> *Becoming Registered to Practise*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/midwives/becoming-registered-practise> (last visited May 1, 2019), archived at <https://perma.cc/7RUX-GV8J>.

<sup>16</sup> *Why Are Midwives Regulated?*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/professional-standards/why-are-midwives-regulated> (last visited May 1, 2019), archived at <https://perma.cc/VY3Q-VXJD>. See also *How to Become a Midwife*, NZCOM, <https://www.midwife.org.nz/midwives/midwifery-in-new-zealand/how-to-become-a-midwife/> (last visited May 6, 2019), archived at <https://perma.cc/MD2N-R63S>.



certificate<sup>17</sup> at the start of each year and must “meet requirements to maintain and enhance competence and practise in accordance with the Code of Conduct.”<sup>18</sup>

In addition to the Code of Conduct, the Midwifery Council has established various policies and processes to regulate midwives, including an auditing process to assess midwives’ engagement in its Recertification Programme. Furthermore, in terms of professional standards and conduct, the Code of Conduct should be read in conjunction with a list of competencies and the New Zealand College of Midwives’ Philosophy and Code of Ethics.<sup>19</sup> Midwives are also subject to the complaint and disciplinary processes under the HPCA Act.<sup>20</sup>

The legal definition of midwifery is provided by the Midwifery Council’s Midwifery Scope of Practice.<sup>21</sup>

### III. Funding of Midwives

#### A. Government Funding

Maternity services, like other parts of New Zealand’s health and disability system, are funded from general taxation through the annual appropriation process.<sup>22</sup> In Budget 2018, the total appropriation under Vote Health for National Maternity Services was around NZ\$181 million (approx. US\$119.6 million) (about 1% of the Vote).<sup>23</sup> In the previous fiscal year, around

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<sup>17</sup> *Practising Certificates*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/midwives/practising-certificates> (last visited May 1, 2019), archived at <https://perma.cc/246E-Q9H2>. See also *What Are the Ongoing Practice Requirements?*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/professional-standards/what-are-going-practice-requirements> (last visited May 1, 2019), archived at <https://perma.cc/53XZ-9ZCG>.

<sup>18</sup> *Why Are Midwives Regulated?*, *supra* note 16. See also MIDWIFERY COUNCIL OF NEW ZEALAND, CODE OF CONDUCT (Dec. 2010), [https://www.midwiferycouncil.health.nz/sites/default/files/documents/midwifery\\_code\\_of\\_conduct\\_feb\\_2011.pdf](https://www.midwiferycouncil.health.nz/sites/default/files/documents/midwifery_code_of_conduct_feb_2011.pdf), archived at <https://perma.cc/NYE5-SXH9>.

<sup>19</sup> *What Is the Conduct Expected of Midwives?*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/professional-standards/what-conduct-expected-midwives> (last visited May 1, 2019), archived at <https://perma.cc/MXA3-F8J4>; Midwifery Council, Competencies for Entry to the Register of Midwives, [https://www.midwiferycouncil.health.nz/sites/default/files/professional-standards/Competencies\\_for\\_Entry\\_to\\_the\\_register\\_of\\_Midwives\\_2007\\_new\\_form.pdf](https://www.midwiferycouncil.health.nz/sites/default/files/professional-standards/Competencies_for_Entry_to_the_register_of_Midwives_2007_new_form.pdf) (last visited May 1, 2019), archived at <https://perma.cc/CMM6-3KLF>; *Philosophy and Code of Ethics*, NZCOM, <https://www.midwife.org.nz/midwives/professional-standards/philosophy-and-code-of-ethics/> (last visited May 1, 2019), archived at <https://perma.cc/5TMC-W5SR>.

<sup>20</sup> See *What to Expect if a Complaint Is Made About You*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/midwives/what-expect-if-complaint-made-about-you> (last visited May 1, 2019), archived at <https://perma.cc/U2HG-NF6S>.

<sup>21</sup> *Keeping Women and Babies Safe*, MIDWIFERY COUNCIL, <https://www.midwiferycouncil.health.nz/about-us/scope-practice-defined> (last visited May 1, 2019), archived at <https://perma.cc/T4SG-LCOX>.

<sup>22</sup> *Funding*, MINISTRY OF HEALTH, <https://www.health.govt.nz/new-zealand-health-system/overview-health-system/funding> (last updated July 11, 2016), archived at <https://perma.cc/Z7UK-CD2Y>.

<sup>23</sup> *Vote Health – Health Sector – Estimates 2019/2019*, THE TREASURY, <https://treasury.govt.nz/publications/estimates/vote-health-health-sector-estimates-2018-2019-html#section-44> (last updated May 17, 2018), archived at <https://perma.cc/64FJ-9CDQ>; NEW ZEALAND GOVERNMENT, VOTE HEALTH: THE ESTIMATES OF

NZ\$161.3 million of the total maternity services appropriation of around NZ\$166.7 million was spent on funding midwives.<sup>24</sup> A government statement regarding the funding increase in Budget 2018 explained that

“[b]udget 2018 includes \$103.6 million of new operating funding over the next four years to support community midwifery services, plus \$9.0 million in 2017/18. About half of that funding will go towards an 8.9 per cent ‘catch-up’ increase in fees for over 1,400 lead maternity carers.

“There is no question that over the last decade the fees paid to community-based midwives have not kept pace with the pay increases of their colleagues employed by District Health Boards (DHBs). That is simply not fair, and the 8.9 per cent increase will address that gap,” says [Minister of Health] David Clark.

The increase has been calculated using a range of factors, including CPI and DHB collective agreement increases, and means that average annual increases over the last decade for community midwives are now in line with average increases for DHB midwives.

...

The funding will also provide \$10.0 million over two years to recognise the self-employed nature of community midwifery and the costs associated with that model.

...

The remaining \$27.6 million over four years recognises population and demand pressures.<sup>25</sup>

LMC midwives claim payments<sup>26</sup> from the government for maternity services under the Primary Maternity Services Notice 2007,<sup>27</sup> which was made pursuant to section 88 of the New Zealand Public Health and Disability Act 2000.<sup>28</sup> The Notice sets out the terms and conditions for payment of LMCs, as well as the fees for the various services provided during pregnancy, birth, and the postpartum period.<sup>29</sup> The fee schedule of the Notice was most recently amended in 2018.<sup>30</sup>

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<sup>24</sup> *Id.*

<sup>25</sup> Press Release, David Clark & Julie Anne Genter, Government Acts to Support Midwives (May 17, 2018), <https://www.budget.govt.nz/budget/2018/releases/r5-la-clark-government-acts-to-support-midwives.htm>, archived at <https://perma.cc/AD2H-TW9N>.

<sup>26</sup> *Primary Maternity Services*, *supra* note 6.

<sup>27</sup> Primary Maternity Services Notice 2007, NEW ZEALAND GAZETTE, No. 41 (Apr. 13, 2007), <https://www.health.govt.nz/system/files/documents/publications/s88-primary-maternity-services-notice-gazetted-2007.pdf>, archived at <https://perma.cc/JB8Y-5C99>.

<sup>28</sup> New Zealand Public Health and Disability Act 2000 s 88, <http://legislation.govt.nz/act/public/2000/0091/72.0/whole.html>, archived at <https://perma.cc/LJ6V-FLUK>.

<sup>29</sup> *Primary Maternity Services Notice 2007*, MINISTRY OF HEALTH, <https://www.health.govt.nz/publication/primary-maternity-services-notice-2007> (last updated Aug. 23, 2018), archived at <https://perma.cc/GH5L-F7EB>.

<sup>30</sup> Primary Maternity Services Amendment Notice 2018, NEW ZEALAND GAZETTE (June 28, 2018), <https://gazette.govt.nz/notice/id/2018-go3087>, archived at <https://perma.cc/LKB7-KKHE>.

From July 1, 2018, community midwives can also claim for services provided to support LMC midwives in their provision of primary labor and birth services. The Second Midwife Support Supplement “is an interim measure while the Ministry of Health continues to review future primary maternity services.”<sup>31</sup>

In addition, under Budget 2018, the Ministry of Health is making a one-time payment, the Business Contribution payment, to eligible LMC midwives.<sup>32</sup> This payment is intended to contribute to the costs of being self-employed.<sup>33</sup>

Hospital-employed midwives who provide primary maternity care are paid through funding provided to DHBs. In addition,

[m]aternity facilities are funded by the Government for all women who use them. There is an additional budget for the secondary and tertiary level services they are required to provide for women who need them. The services that they are required to provide are described in the Secondary and Tertiary Maternity Services Specification.<sup>34</sup>

According to the government’s career website, midwives employed by DHBs earn between NZ\$49,000 (approx. US\$32,400) and NZ\$115,000 (approx. US\$76,000) per year, depending on their experience and roles.<sup>35</sup> Self-employed midwives, paid directly by the Ministry of Health, earn around NZ\$53,000 (approx. US\$35,000) per year after expenses, depending on the number of women they assist.

## B. Current Issues and Discussions

In early 2018, media articles began reporting on a “midwifery crisis” in New Zealand, related to issues associated with pay and conditions and a consequent shortage of community-based midwives in various parts of the country.<sup>36</sup> The New Zealand College of Midwives released a

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<sup>31</sup> *Second Midwife Support*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/life-stages/maternity-services/second-midwife-support> (last visited Sept. 13, 2018), archived at <https://perma.cc/SWY2-QWVQ>.

<sup>32</sup> *Lead Maternity Care Midwives: Business Contribution Payment*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/life-stages/maternity-services/lead-maternity-care-midwives-business-contribution-payment> (last updated Feb. 20, 2019), archived at <https://perma.cc/WG8B-74AY>.

<sup>33</sup> *Review Process – Business Contribution Payment*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/life-stages/maternity-services/lead-maternity-care-midwives-business-contribution-payment/review-process-business-contribution-payment> (last updated Oct. 15, 2018), archived at <https://perma.cc/F8AJ-DBFJ>.

<sup>34</sup> *New Zealand Midwifery*, *supra* note 5. See also *Maternity Service Specifications*, NATIONWIDE SERVICE FRAMEWORK LIBRARY, MINISTRY OF HEALTH, <https://nsfl.health.govt.nz/service-specifications/current-service-specifications/maternity-service-specifications> (last updated May 11, 2015), archived at <https://perma.cc/U5F9-GT72>.

<sup>35</sup> *Midwife*, CAREERSNZ, <https://www.careers.govt.nz/jobs-database/health-and-community/health/midwife/about-the-job> (last updated Apr. 9, 2019), archived at <https://perma.cc/68RL-CI9F>.

<sup>36</sup> Kimberley Davis, *What Is Going On with New Zealand’s Midwives*, THE SPINOFF (Mar. 14, 2018), <https://thespinoff.co.nz/parenting/14-03-2018/what-is-going-on-with-new-zealands-midwives/>, archived at <https://perma.cc/S5XU-8L6A>; Emily Writes, *We Have Two Lives in Our Hands and We’re Paid Less Than Minimum Wage*, THE SPINOFF (Mar. 19, 2018), <https://thespinoff.co.nz/parenting/19-03-2018/we-have-two-lives-in-our-hands-and-were-paid-less-than-minimum-wage/>, archived at <https://perma.cc/27XZ-6BUC>; Kimberley Davis, *Who Pays the Midwife? And Why Isn’t It Enough?*, THE SPINOFF (Apr. 9, 2018), <https://the>

statement titled “Midwifery in Crisis” in which it appealed to the government to deal with an unfolding crisis in the midwifery workforce.<sup>37</sup> According to the statement, the College began court action against the government in relation to pay equity for midwives three years prior, and this led to a settlement agreement between the College and the Ministry of Health that involved designing a new funding model for community-based midwives.<sup>38</sup>

The Ministry’s website contains information related to the process of developing a new funding model. An update provided in January 2019 stated that,

[w]hile the Co-design process proceeded as agreed, the Ministry did not prepare a Budget bid that reflected the findings of the Co-design process. Accordingly, the Ministry acknowledges that it breached the May 2017 agreement that it had reached with the College.

Representatives of the Ministry and the College met in mediation on 14 December 2018. As a result of that mediation, the Ministry and the College have reached further agreement. Some, but not all, of the matters agreed are recorded in this statement.

...

The Ministry has reaffirmed its commitment to the Co-design principles, including a Blended Payment Model for LMC midwives.<sup>39</sup> The Ministry has also reiterated its support for the continuity of midwifery model of care as central to maternity services in New Zealand.

The Ministry has agreed to a process to ensure a ‘fair and reasonable’ service price for LMC midwives. The College and the Ministry will work on this together throughout 2019.

The Ministry and the College have agreed to work together in early 2019 on structural changes to the way LMC midwives are funded and contracted.<sup>40</sup>

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[spinoff.co.nz/parenting/09-04-2018/who-pays-the-midwife-and-why-isnt-it-enough---/](https://spinoff.co.nz/parenting/09-04-2018/who-pays-the-midwife-and-why-isnt-it-enough---/), archived at <https://perma.cc/7Y5C-RQFJ>; Te Ahua Maitland, ‘The Midwife Crisis is Real’: Pleas for Help to Stop Burn-outs, Shortages and Pay Problems, STUFF (Mar. 3, 2018), <https://www.stuff.co.nz/national/health/101856126/midwife-shortage-highlighted-by-facebook-campaign>, archived at <https://perma.cc/5YRW-DHFF>.

<sup>37</sup> Press Release, NZCOM, Midwifery in Crisis (Feb. 16, 2018), <http://www.scoop.co.nz/stories/PO1802/S00174/midwifery-in-crisis.htm>, archived at <https://perma.cc/TYE4-2Q8W>.

<sup>38</sup> *Id.*

<sup>39</sup> See NZCOM, Co-design Recommendations: What is the Blended Payment Model, <https://www.midwife.org.nz/wp-content/uploads/2019/02/Co-design-recommendations-what-is-the-blended-payment-model-3.pdf> (last visited May 1, 2019), archived at <https://perma.cc/NV9C-8NH9>.

<sup>40</sup> *Updates on Work with the Maternity Services Sector*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/life-stages/maternity-services/updates-work-maternity-services-sector> (last updated Jan. 14, 2019), archived at <https://perma.cc/YJA5-YV9R>.

In October 2018, the Ministry and the College agreed to the following principles applying in the development of any new maternity system:

- Primary maternity care will continue to be free to all eligible women.
- The midwifery led model of continuity of care will be maintained.
- The right for community midwives to choose self-employment will remain under any new contract arrangements.
- A National Community Midwifery Organisation will be developed.
- A national primary midwifery contract will be developed as an alternative to Section 88.
- The new contract will protect, strengthen and integrate the existing model of care, and will include a regular review clause, thus affording community midwives the right to regular renegotiation of the terms and conditions of the contract.
- The on call and 'self-employed' nature of community midwifery will be accounted for in the new funding framework to enable flexible service delivery based on individual need.<sup>41</sup>

In addition to the funding issues concerning community-based midwives, DHB-employed midwives conducted strike actions in November 2018 and again February 2019, following failed negotiations over pay.<sup>42</sup> In April 2019, the midwives' union, DHBs, and the Ministry of Health agreed a joint accord "to help ensure safe and sustainable staffing levels" in public hospitals.<sup>43</sup> This followed DHB midwives voting to accept a new Multi-Employer Collective Agreement. Under the terms of the accord the parties will

- Explore options to support and encourage new midwifery graduates to choose DHB employment,
- Develop a strategy for retention of the existing midwifery workforce, and workforce development,
- Develop a strategy to better support midwives in training, with a particular focus on Māori and Pacific midwives,
- Agree to progress the implementation of the safe staffing tool 'Care Capacity Demand Management' (CCDM) in maternity services.<sup>44</sup>

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<sup>41</sup> *Id.*

<sup>42</sup> Kiri Gillespie, *Striking Midwives Say Profession at 'Crisis Point'*, NZ HERALD (Nov. 21, 2018), [https://www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=12163051](https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12163051), archived at <https://perma.cc/X75M-CCBW>; Hannah Martin & Hamish McNeilly, *More Than Two Thousand Midwives Kick Off Two Weeks of Strike Action*, STUFF (Nov. 22, 2018), <https://www.stuff.co.nz/national/health/108774479/more-than-a-thousand-midwives-kick-off-two-weeks-of-strike-action>, archived at <https://perma.cc/7ZSM-SEB2>; Press Release, Midwifery Employee Representation & Advisory Service, *DHB-Employed Midwives to Strike Again*, <https://www.midwife.org.nz/news/dhb-employed-midwives-to-strike-again/> (last visited May 1, 2019), archived at <https://perma.cc/6GWG-X8KN>.

<sup>43</sup> Press Release, David Clark, *Midwifery Workforce Accord Welcomed* (Apr. 14, 2019), <https://www.beehive.govt.nz/release/midwifery-workforce-accord-welcomed>, archived at <https://perma.cc/RV8M-K7B9>.

<sup>44</sup> *Id.*

#### IV. Postpartum and Newborn Care

As noted above, LMCs provide care to the mother for four to six weeks postpartum. This includes at least five home visits during this period.<sup>45</sup> During such visits, the midwife will also check on the baby's development "and arrange for extra support if this is needed."<sup>46</sup> After this period, women will be returned to the care of their family doctor, the baby's care will be transferred to a Well Child/Tamariki Ora nurse, and the child will also need to be enrolled with a general practice.<sup>47</sup>

An organization called Plunket is the leading provider contracted by the Ministry of Health to deliver certain services under the Well Child/Tamariki Ora program;<sup>48</sup> more than 90% of newborn babies are seen by Plunket nurses each year.<sup>49</sup> Plunket nurses provide free home and clinic visits, provide mobile clinics, and operate PlunketLine, "a free telephone advice service for parents."<sup>50</sup> In addition to Plunket, there are a number of Māori health providers contracted to deliver the program,<sup>51</sup> as well as other practitioners who provide certain services, such as hearing screeners, pediatricians, and nurses.<sup>52</sup> Various services are provided free of charge under the Well Child/Tamariki Ora program between the child's birth up to five years of age.<sup>53</sup>

#### V. Doulas

The use of pregnancy, childbirth, and postpartum doulas appears to be increasing in popularity in New Zealand. Doulas expressly provide nonmedical services and are not regulated under the HPCA Act. There is no government funding for doula-provided services.

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<sup>45</sup> *Maternity Care after the Birth*, *supra* note 11.

<sup>46</sup> *Health Checks – The First Six Weeks*, MINISTRY OF HEALTH, <https://www.health.govt.nz/your-health/pregnancy-and-kids/first-year/first-6-weeks/health-checks-first-6-weeks> (last updated May 17, 2018), archived at <https://perma.cc/Q823-6CEB>.

<sup>47</sup> *Id.*

<sup>48</sup> *The Well Child Tamariki Ora Programme*, CONNECTUS, <https://www.wellchild.org.nz/> (last visited May 1, 2019), archived at <https://perma.cc/Q8Y8-ADQQ>.

<sup>49</sup> *What We Offer*, PLUNKET, <https://www.plunket.org.nz/what-we-do/what-we-offer/> (last visited May 1, 2019), archived at <https://perma.cc/JT95-ET4M>.

<sup>50</sup> *Id.*

<sup>51</sup> *Well Child Tamariki Ora Programme*, KIDSHEALTH, <https://www.kidshealth.org.nz/well-child-tamariki-ora-programme> (last updated Aug. 13, 2018), archived at <https://perma.cc/9HVP-TAGY>.

<sup>52</sup> *What Is the Well Child Programme?*, CONNECTUS, <https://www.wellchild.org.nz/what-well-child-programme> (last visited May 2, 2019), archived at <https://perma.cc/KL94-BS7M>.

<sup>53</sup> *See Plunket Visits*, PLUNKET, <https://www.plunket.org.nz/what-we-do/what-we-offer/plunket-visits/> (last visited May 2, 2019), archived at <https://perma.cc/P76W-PYUX>; *Well Child/Tamariki Ora Programme Practitioner Handbook 2013 (Revised 2014)*, MINISTRY OF HEALTH, <https://www.health.govt.nz/publication/well-child-tamariki-ora-programme-practitioner-handbook-2013> (last updated Mar. 31, 2017), archived at <https://perma.cc/Q645-UD8M>.

One article on the role and use of doulas in New Zealand states that the role is “a fairly new phenomenon in New Zealand” and that “[a]s yet there are no mandatory qualifications required to practise as a doula.”<sup>54</sup> It further clarifies that childbirth doulas support women throughout childbirth—“not with clinical or medical tasks, but with things such as massage, positioning, breathing exercises and aromatherapy.”<sup>55</sup> It also outlines the role of postpartum doulas and states that “[d]oulas will work alongside (but not replace) the work of your midwife or doctor.”<sup>56</sup>

Any nonregulated provider of health services in New Zealand (i.e., professions to which the HPCA Act does not apply) must still comply with a Code of Consumers’ Rights set out in regulations made under the Health and Disability Commissioner Act 1994.<sup>57</sup> This Code, and the related complaint procedures,<sup>58</sup> would apply to doulas if they “provide, or hold [themselves] out as providing, health services to the public or any section of the public, whether or not any charge is made for those services.”<sup>59</sup> “Health services” under the Act includes services to promote or protect health.<sup>60</sup>

In November 2009, the New Zealand College of Midwives (NZCOM) adopted a “consensus statement” on the role of nonregulated support people in maternity services.<sup>61</sup> The document states that

NZCOM encourage every pregnant woman to have the birth support people of her choice. Physical, emotional and psychological support during labour is an important part of intrapartum care and can be provided by a partner and/or close family/ whanau members depending on the woman’s relationships. Midwives provide continuous support during labour and facilitate the involvement of the partner/supporters as appropriate and as discussed in the care plan (NZCOM Handbook for Practice 2008).

NZCOM believes that doulas, health care assistants and maternity assistants are not a substitute for midwives or an appropriate alternative for midwifery workforce shortages.

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<sup>54</sup> Kimberley Paterson, *Doula*, KIWI FAMILIES, <https://www.kiwifamilies.co.nz/articles/doula/> (last visited May 2, 2019), archived at <https://perma.cc/L8ZS-8L7M>.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* See also Samantha Thurlby-Brooks, *What Is a Birth Doula?*, OHBABY! (Issue 12, Summer 2011), <https://www.ohbaby.co.nz/pregnancy/your-antenatal-guide/what-is-a-birth-doula/>.

<sup>57</sup> Health and Disability Commissioner (Code of Health and Disability Services Consumers’ Rights) Regulations 1996, <http://www.legislation.govt.nz/regulation/public/1996/0078/latest/whole.html>, archived at <https://perma.cc/A7EN-QNU3>; *Non-Regulated Health Professions*, MINISTRY OF HEALTH, <https://www.health.govt.nz/our-work/regulation-health-and-disability-system/health-practitioners-competence-assurance-act/non-regulated-health-professions> (last updated Apr. 22, 2014), archived at <https://perma.cc/Q9BW-YEJQ>.

<sup>58</sup> Health and Disability Commissioner Act 1994 pt 4, <http://www.legislation.govt.nz/act/public/1994/0088/latest/whole.html>, archived at <https://perma.cc/5Y2Z-S38C>.

<sup>59</sup> *Id.* s 3(k).

<sup>60</sup> *Id.* s 2 (definition of “health services”).

<sup>61</sup> NZCOM, Consensus Statement: The Role of Non-Regulated Support People in Maternity Services (Nov. 5, 2009), <https://www.midwife.org.nz/wp-content/uploads/2018/08/28-The-Role-of-Non-Regulated-Support-People-in-Maternity-Services.pdf>, archived at <https://perma.cc/84N2-YX8T>.

...

... It is not appropriate for health authorities to replace a proven, regulated, fully funded midwifery workforce that enjoys the confidence and support of consumers with an inferior service provided by a less educated, non funded maternity workforce.

The statement further notes that the role of doulas in other countries has developed in the context of obstetric services often excluding support people from attending the woman during childbirth, whereas, in New Zealand, the “midwifery model of partnership” “assumes and encourages discussions prior to labour with partners and support people with the woman around the role the support person will have.”<sup>62</sup>

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<sup>62</sup> *Id.*



# Sweden

*Elin Hofoerberg  
Foreign Law Specialist*

**SUMMARY** Midwives have been used in Sweden for hundreds of years. Midwives are the primary point of contact throughout pregnancy, birth, and postpartum care of women. Midwifery is a protected profession and requires four-and-a-half years of combined university education and practical training. Midwives are funded by the public health care system.

Doulas are only sparsely provided for by the health care system. Doulas are currently only publicly funded when the expectant mother either does not have a support person such as a spouse, or when a “cultural doula” is needed because of the expectant mother’s weak Swedish-language skills. The use of private doulas is increasing but is still uncommon.

Alternative birthing methods, such as home births, may be funded by the municipality in certain regions. Home births were common until the mid-twentieth century.

## I. Health Care System Funding in Sweden

Health care services in Sweden are provided and funded at the local level.<sup>1</sup> Under Swedish law local regions, which are distinct legal entities that operate at the municipal level, must provide health care to their residents.<sup>2</sup> Thus, all legal registered residents are guaranteed health care.<sup>3</sup> In addition, asylum seekers and undocumented immigrants have a right to a limited number of services including urgent health care, maternity care, care in connection with abortions, and contraceptives.<sup>4</sup> The municipality may also be financially responsible for certain care received

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<sup>1</sup> 8 kap. 1, 2 §§ HÄLSO- OCH SJUKVÅRDSLÄG [HEALTH CARE ACT] (SFS 2017:30), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/halso--och-sjukvardslag\\_sfs-2017-30](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/halso--och-sjukvardslag_sfs-2017-30), archived at <https://perma.cc/YLB4-ACP8>.

<sup>2</sup> *Id.*

<sup>3</sup> 4 § LAG OM LÄKEMEDELESFÖRMÅNER [ACT ON MEDICINE BENEFITS ETC.] (SFS 2002:160), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002160-om-lakemedels-formaner-mm\\_sfs-2002-160](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2002160-om-lakemedels-formaner-mm_sfs-2002-160), archived at <https://perma.cc/ZN7W-LWJY>. For an explanation of Regions in English see *Municipalities and Regions*, SVERIGES KOMMUNER OCH LANDSTING, <https://skl.se/tjanster/english/pages/municipalitiesandregions.1088.html> (last visited May 9, 2019), archived at <https://perma.cc/QK5E-G6RM>.

<sup>4</sup> 7 § LAG OM HÄLSO- OCH SJUKVÅRD TILL VISSA UTLÄNNINGAR SOM VISTAS I SVERIGE UTAN NÖDVÄNDIGA TILLSTÅND [ACT ON HEALTH CARE FOR CERTAIN ALIENS WHO ARE PRESENT IN SWEDEN WITHOUT NECESSARY DOCUMENTS] (SFS 2013:407), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2013407-om-halso--och-sjukvard-till-vissa\\_sfs-2013-407](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2013407-om-halso--och-sjukvard-till-vissa_sfs-2013-407), archived at <https://perma.cc/L2ZS-TCTQ>.

abroad.<sup>5</sup> The municipality funds the health care it provides through municipal taxes.<sup>6</sup> Maternal care, delivery care, and postpartum care are provided through the public health care service.<sup>7</sup> The regions have their own programs for how pregnancy related care should be organized.<sup>8</sup>

As many as 650,000 Swedes have private insurance in addition to the public health care available to them.<sup>9</sup> Out of the ten million residents of Sweden, that means that approximately 6.5% of Swedes have private insurance. Doulas may be used by mothers outside of the public and private insurance framework. No insurance provides doulas as part of their private health insurance.

During 2014 to 2016 a private hospital was operating in Stockholm (BB Sophia at Sophiahemmet) but it was closed in 2016,<sup>10</sup> following a maternal death subsequent to the birth of the child.<sup>11</sup> Its main concept was that the expectant mother should be able to have one midwife with her for the entire pregnancy, and including the whole delivery, thus not sharing midwives between patients on the same ward.<sup>12</sup>

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<sup>5</sup> LAG OM LANDSTINGENS OCH KOMMUNERNAS KOSTNADSANSVAR FÖR VISS VÅRD I UTLANDET [ACT ON THE COUNTY COUNCILS [NOW REGIONS] AND THE MUNICIPALITIES' FINANCIAL RESPONSIBILITY FOR CERTAIN CARE ABROAD] (SFS 2013:514), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2013514-om-landstingens-och-kommunernas\\_sfs-2013-514](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/lag-2013514-om-landstingens-och-kommunernas_sfs-2013-514), archived at <https://perma.cc/4NU9-LFDF>.

<sup>6</sup> See, e.g., *Kommunalskatten*, STOCKHOLMSSTAD (Apr. 24, 2019), <https://stad.stockholm/sa-anvands-dina-skattepengar/kommunalskatten/>, archived at <https://perma.cc/QHZ5-3SGZ>.

<sup>7</sup> See, e.g., *Mödravård, preventivmedel och massor av erfarenhet*, STOCKHOLMS LÄNS SJUKHUSOMRÅDE, <https://barnmorskemottagningar.sll.se/> (last visited May 9, 2019), archived at <https://perma.cc/PU3P-DJX8>.

<sup>8</sup> See, e.g., ÖSTERGOTLANDS REGION, BASPROGRAM FÖR MÖDRAHÄLSOVÅRDEN, DOK-NR 26350 (Jan. 4, 2019), <http://ledsys.lio.se/Document/Document.aspx?DocumentNumber=26350>, archived at <https://perma.cc/5PPA-Y26F>.

<sup>9</sup> *Så här fungerar en privat sjukvårdsförsäkring*, SVENSK FÖRSÄKRING, <https://www.svenskforsakring.se/om-forsakring/vad-ar-och-hur-funkar-det/sa-har-fungerar-en-privat-sjukvardsforsakring/> (last visited May 8, 2019), archived at <https://perma.cc/RJ8D-ZUS2>.

<sup>10</sup> Sanna Björkman, *Sorg och ockupation när BB Sophia stänger idag*, VÅRDFOKUS (May 16, 2016), <https://www.vardfokus.se/webbnyheter/2016/maj/sorg-och-ockupation-nar-bb-sophia-stanger-idag/>, archived at <https://perma.cc/RW4L-MH8Y>.

<sup>11</sup> Maria Ejd, *Nyförlost kvinna dog efter förlossning på BB Sophia*, VÅRDFOKUS (Sept. 3, 2014), <https://www.vardfokus.se/webbnyheter/2014/september/nyforlost-kvinna-dog-efter-forlossning-pa-bb-sophia/>, archived at <https://perma.cc/U3ZW-JQZQ>.

<sup>12</sup> Björkman, *supra* note 10.

## II. Legal Framework Regulating Midwives

### A. The Role of the Midwives

Annually, approximately 115 to 120 thousand children are born in Sweden.<sup>13</sup> Primary pregnancy care (including prenatal care, birth services, and postpartum services) is provided by midwives.<sup>14</sup> Nevertheless, approximately half of all expectant mothers in Sweden see a doctor during their pregnancy.<sup>15</sup> Postpartum visits are typically scheduled with a doctor only if there was a traumatic event during the birth.<sup>16</sup> Giving birth by cesarean section is becoming more common in Sweden. In 2017 the total percentage of births by cesarean section was 17%, up from 5% during the 1970s.<sup>17</sup>

In addition to pregnancy care, midwives may also assist in abortions, but under current legislation may not administer the abortion-inducing drug.<sup>18</sup>

### B. History of Midwifery in Sweden

Sweden has a long history of employing midwives in the birth of children. The first Church Ordinance that mentions midwives (or “earth mothers” as they were called) was the 1571 kyrkoordning.<sup>19</sup> In 1663 Collegium Medicum was formed to control the earth mothers.<sup>20</sup> This function is now performed by the National Board on Health and Welfare.<sup>21</sup>

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<sup>13</sup> *Statistik om graviditeter, förlossningar och nyfödda*, SOCIALSTYRELSEN, [https://www.socialstyrelsen.se/statistik/statistikefteramne/graviditeter\\_forlossningarochnyfodda](https://www.socialstyrelsen.se/statistik/statistikefteramne/graviditeter_forlossningarochnyfodda) (last visited May 8, 2019) archived at <https://perma.cc/8HFU-YYZQ>.

<sup>14</sup> *Mödravård, MVC, VÅRDGIVARGUIDEN* (Dec. 18, 2018), <https://www.vardgivarguiden.se/patient-administration/patientavgifter/avgiftshandboken/oppnvard/modravard-mvc/>, archived at <https://perma.cc/6778-2YTF>.

<sup>15</sup> GRAVIDITETSREGISTRET, ÅRSRAPPORT 2016 [ANNUAL REPORT] at 10 (2017), [https://www.medscinet.com/GR/uploads/hemsida/dokumentarkiv/GR\\_%C3%85srrapport\\_2016\\_2.1.pdf](https://www.medscinet.com/GR/uploads/hemsida/dokumentarkiv/GR_%C3%85srrapport_2016_2.1.pdf), archived at <https://perma.cc/3H2G-U2M8>.

<sup>16</sup> See, e.g., ÖSTERGOTLANDS REGION, *supra* note 8.

<sup>17</sup> *Andelen kejsarsnitt och allvarliga bristningar varierar stort i landet*, SOCIALSTYRELSEN (Mar. 21, 2017) <https://www.socialstyrelsen.se/nyheter/2017/andelenkejsarsnittochbristningarvarierarstortilandet>, archived at <https://perma.cc/4KLD-PMF8>.

<sup>18</sup> *Barnmorskor och medicinsk abort [Midwives and Medicinal Abortions]*, Svar på skriftlig fråga [Reply to Written Question] 2002/03:741 besvarad, [https://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/barnmorskor-och-medicinsk-abort\\_GQ12741](https://www.riksdagen.se/sv/dokument-lagar/dokument/svar-pa-skriftlig-fraga/barnmorskor-och-medicinsk-abort_GQ12741), archived at <https://perma.cc/6TT2-PQB5>.

<sup>19</sup> *Historia*, BARNMORSKEFÖRBUNDET (June 14, 2017), <https://www.barnmorskeforbundet.se/barnmorskan/historia/>, archived at <https://perma.cc/6TLE-Q2HL>.

<sup>20</sup> *Id.*

<sup>21</sup> *Förordning med instruktion för Socialstyrelsen [Regulation with Instruction for the National Board on Health and Welfare]* (SFS 2015:284), [https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2015284-med-instruktion-for\\_sfs-2015-284](https://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/forordning-2015284-med-instruktion-for_sfs-2015-284), archived at <https://perma.cc/8A16-R4L8>.

The first legislation on midwives was passed in 1711.<sup>22</sup> The legislation required that midwives receive practical training prior to working as a midwife.<sup>23</sup> The Midwife Regulation of 1777 included a midwife oath.<sup>24</sup> By 1771 all use of equipment by midwives was prohibited.<sup>25</sup> The prohibition was reversed during the 1800s.<sup>26</sup> Further legislation was passed during the 1900s; legislation from 1955, including amendments, was in force until the 1990s.<sup>27</sup>

Historically, most births in Sweden took place in the home. Between 1920 and 1960 more and more children were born in hospitals instead of the home, and by 1962 mothers that wished to give birth at home were sent to hospitals.<sup>28</sup> Midwives that had previously worked in the homes were now instead included in the births at birth centers and later hospitals.<sup>29</sup>

### C. Education and Licensing of Midwives

Midwives must have a *barnmorskeexamen* (midwife degree),<sup>30</sup> which only nurses may apply to complete.<sup>31</sup> Thus, midwives are first educated and trained as nurses and then as midwives as a subspecialty, for a total of four-and-a-half years of combined university education and practical training.<sup>32</sup>

Following completion of the midwife specialization course midwives must also be licensed (*legitimerade*).<sup>33</sup> Licenses are obtained through an application filed with the National Board on

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<sup>22</sup> Pia Höjeberg, *Från jordemor till barnmorska*, POPULÄRHISTORIA (Apr. 23, 2017), <https://popularhistoria.se/vetenskap/medicin/fran-jordemor-till-barnmorska>, archived at <https://perma.cc/SA67-MJ79>.

<sup>23</sup> *Id.*

<sup>24</sup> Reglemente for Jorde-Gummorne Af Kong. Maj:t Rådigt Stadfästadt den 14 Okt. 1777 [Regimen for Earth-Mothers of His Royal Highness on Oct. 14, 1777], available at <https://www.barnmorskeforbundet.se/barnmorskan/historia/>, archived at <https://perma.cc/6TLE-Q2HL>.

<sup>25</sup> “Maskinen” barnaföderska, <https://barbatech.wordpress.com/fran-jordemoder-till-legitimerad-barnmorska/> (last visited May 8, 2019), archived at <https://perma.cc/DEW4-HAM8>.

<sup>26</sup> *Id.*

<sup>27</sup> Reglemente för barnmorskor [Regimen for Midwives] (SFS 1955:592), [http://riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/reglemente-1955592-for-barnmorskor\\_sfs-1955-592](http://riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/reglemente-1955592-for-barnmorskor_sfs-1955-592), archived at <https://perma.cc/D3TS-T2X4>.

<sup>28</sup> *Barnmorskor 1920-1960*, BENGT DAHLIN, [http://www.bengtdahlin.se/HoSstoryn1/filer\\_del\\_1C/barnmorskor\\_1920-1960.html](http://www.bengtdahlin.se/HoSstoryn1/filer_del_1C/barnmorskor_1920-1960.html) (last visited May 8, 2019), archived at <https://perma.cc/K8BG-9ZUT>.

<sup>29</sup> *Id.*

<sup>30</sup> 4 kap. 1 § PATIENTSÄKERHETSLAGEN [PATIENT SAFETY ACT] (SFS 2010:659), [http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/patientsaker-hetslag-2010659\\_sfs-2010-659](http://www.riksdagen.se/sv/dokument-lagar/dokument/svensk-forfattningssamling/patientsaker-hetslag-2010659_sfs-2010-659), archived at <https://perma.cc/UN2Z-4A7H>.

<sup>31</sup> *Barnmorskeutbildning*, BARNMORSKEFÖRBUNDET (Mar. 6, 2019), <https://www.barnmorskeforbundet.se/barnmorskan/barnmorskeutbildning/>, archived at <https://perma.cc/RN57-LLDJ>.

<sup>32</sup> *Id.*

<sup>33</sup> 4 kap. 4 § PATIENTSÄKERHETSLAGEN; *Legitimation*, SOCIALSTYRELSEN, <https://www.socialstyrelsen.se/ansokaomlegitimationochintyg/legitimation> (last visited May 8, 2019), archived at <https://perma.cc/CF7X-HQSV>.

Health and Welfare.<sup>34</sup> Licensing also requires previous medical practical training.<sup>35</sup> Statistics from 2017 published by the National Board on Health and Welfare show that 100% of licensed midwives are women.<sup>36</sup> Midwives educated and trained outside the European Union may also be licensed, subject to special requirements, including a review of the underlying midwife education, a theoretical and practical test as a nurse, and a theoretical and practical test as a midwife.<sup>37</sup> In addition, a foreign midwife must also demonstrate her Swedish language skills and take a knowledge course in Swedish laws and regulations pertaining to midwifery.<sup>38</sup>

The Barnmorskeförbundet (Association of Midwives) has issued a *kompetensbeskrivning* (description of competency) of the midwife profession.<sup>39</sup> Previously the *kompetensbeskrivning* was issued by the National Board on Health and Welfare.<sup>40</sup> It addresses how a midwife should conduct herself in the profession.<sup>41</sup>

A proposal was made in the Swedish Parliament in 2018 to change the current educational requirements for midwives.<sup>42</sup> The proposal suggested the establishment of a stand-alone midwifery program, so that women could get directly educated as midwives without first having to complete a nursing program.<sup>43</sup> The Members of Parliament suggesting the change argued that this would lead to a greater number of women choosing the midwife profession.<sup>44</sup> The proposal

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<sup>34</sup> *Ansök om legitimation*, SOCIALSTYRELSEN (Apr. 18, 2018), <https://legitimation.socialstyrelsen.se/sv/utbildad-i-sverige/barnmorska/ansok-om-legitimation>, archived at <https://perma.cc/6ZWH-LZB9>.

<sup>35</sup> 4 kap. 5 § PATIENTSÄKERHETSLAGEN.

<sup>36</sup> SOCIALSTYRELSEN, STATISTIK OM LEGITIMERAD HÄLSO- OCH SJUKVÅRDSPERSONAL 2017 SAMT ARBETSMARKNADSSSTATUS 2016 (Jan. 31, 2019), <https://www.socialstyrelsen.se/Lists/Artikelkatalog/Attachments/21218/2019-1-15.pdf>, archived at <https://perma.cc/HT2U-FHZ4>.

<sup>37</sup> *Barnmorska*, SOCIALSTYRELSEN (Apr. 17, 2019), <https://legitimation.socialstyrelsen.se/sv/utbildad-utanfor-eu-och-ees/barnmorska>, archived at <https://perma.cc/HS99-YCP9>; *Nytt system för ansökan om legitimation för barnmorskor*, SOCIALSTYRELSEN, <https://legitimation.socialstyrelsen.se/sv/utbildad-utanfor-eu-och-ees/barnmorska/nytt-system-for-ansokan-om-legitimation-for-barnmorskor> (last visited May 9, 2019), archived at <https://perma.cc/3NS6-WZ5E>.

<sup>38</sup> *Id.*

<sup>39</sup> SVENSKA BARNMORSKEFÖRBUNDET, KOMPETENSBEKRIVNING FÖR LEGITIMERAD BARNMORSKA (2018), <https://storage.googleapis.com/barnmorskeforbundet-se/uploads/2018/05/Kompetensbeskrivning-for-legitimerad-barnmorska-Svenska-Barnmorskeforbundet-2018.pdf>, archived at <https://perma.cc/E4P2-5EN2>.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Direktutbildning till barnmorska, Motion 2018/19:1158 av Anna Vikström och Ingela Nylund Watz (båda S), (Nov. 27, 2018), [https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/direktutbildning-till-barnmorska\\_H6021158](https://www.riksdagen.se/sv/dokument-lagar/dokument/motion/direktutbildning-till-barnmorska_H6021158), archived at <https://perma.cc/ULR6-E53S>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

has received general support in Parliament, and has been referred to the government for further investigation.<sup>45</sup>

#### D. Funding of Midwives

As mentioned above, midwives are employed and funded by the health care system—i.e., through the payment of local taxes. In areas where it is difficult to employ full-time midwives, the responsible regions have used contract midwives who have been offered as much as SEK 90,000 (about US\$9,300) per month in salaries (approximately three to four times the salary of a normal midwife).<sup>46</sup> Resident expectant mothers do not pay anything for midwives during prenatal, birth, and postpartum care.<sup>47</sup>

#### E. Challenges Facing Midwives

A number of challenges have surfaced in relation to the midwifery in Sweden. The greatest problem facing Swedish midwives is understaffing and overcrowded hospitals. This has led to initiatives such as Midwife the Whole Way (*Barnmorska hela vägen*)<sup>48</sup> and the use of expensive contract midwives.<sup>49</sup> Most providers of health care in Sweden have a plan that allows the expectant mother to see the same midwife for all of her appointments, from prenatal through birth and postpartum care. However, this typically does not work out in practice.<sup>50</sup> The Midwife the Whole Way initiative was meant to create a situation where expectant mothers could contact a midwife that she knew any time of the day throughout her pregnancy.<sup>51</sup> The region therefore tried to hire additional staff, but in the end three midwives were employed on part-time basis (75%) instead of the intended four full-time midwives, and therefore services could only be provided between 7:00 a.m. and 11:00 p.m.<sup>52</sup> In the end, 49% of the expectant mothers had a known midwife at the time of delivery.<sup>53</sup>

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<sup>45</sup> Utbildningsutskottets betänkande [Education Committee on Education Report] 2018/19:UbU13, at 125, <https://data.riksdagen.se/fil/61E0733C-1932-4048-99F0-141D41434A0E>, archived at <https://perma.cc/XS2D-DFZF>.

<sup>46</sup> Sanna Björkman, *Hyrbarnmorskor får 95000 kronor i Västernorrland*, VÅRDFOKUS (Apr. 12, 2019), <https://www.vardfokus.se/webbnyheter/2019/april/hyrbarnmorskor-erbjuds-90-000-kronor-i-vasternorrland/>, archived at <https://perma.cc/32DS-CL7E>.

<sup>47</sup> 4 § LAG OM LÄKEMEDELESFÖRMÅNER.

<sup>48</sup> Susanna Pagels, *"Barnmorska hela vägen" kom bara halvvägs*, VÅRDFOKUS (Jan. 23, 2019), <https://www.vardfokus.se/webbnyheter/2019/januari/barnmorska-hela-vagen-nadde-bara-halvvags/>, archived at <https://perma.cc/4YSC-CUE4>.

<sup>49</sup> Björkman, *supra* note 46.

<sup>50</sup> See, e.g., Gudrun Abascal & Nina Campioni, *Sveket mot de födande är ett brott mot lagen*, EXPRESSEN (Nov. 3, 2017), <https://www.expressen.se/debatt/sveket-mot-de-fodande-ar-ett-brott-mot-lagen/>, archived at <https://perma.cc/8HWL-YRC2>.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

### III. Regulation and Funding of Doulas

#### A. Doula Profession Largely Unregulated

Historically, doulas have not been commonly used in Sweden and no legislation exists governing their practices. The use of the professional title “doula” is not protected through legislation and can be used by anyone, unlike the title “midwife,” which can only be used by persons who have completed required midwifery education and obtained a license.<sup>54</sup>

#### B. Use of Privately Funded Doulas

Statistics on the use of privately funded doulas is very limited. The Organization for Doulas and Birth Pedagogues in Sweden (ODIS) performed a survey in a doula group on Facebook with thirty-six doulas responding showed that those doulas had together performed 172 doula assignments.<sup>55</sup> There are no official statistics on either the number of doulas in Sweden or the number of birthing mothers that use doulas. Media reports suggest that there are as many as 250 registered doulas in Sweden.<sup>56</sup>

#### C. Education of Privately Funded Doulas

Doulas are generally educated over two weekends for a total of four days of training.<sup>57</sup> The main education provider is ODIS.<sup>58</sup> The education costs approximately SEK 6,500 (about US\$670), excluding taxes.<sup>59</sup> No prior education is needed.<sup>60</sup>

#### D. Certification of Privately Funded Doulas

Swedish doulas (not cultural doulas, see below) are certified using a private certification service, through ODIS.<sup>61</sup> ODIS is a nonprofit association that was founded in 1999.<sup>62</sup> Currently there are

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<sup>54</sup> 4 kap. 1, 4 §§ PATIENTSÄKERHETSLAGEN.

<sup>55</sup> Statistik, ODIS, <https://www.doula.nu/odis/statistik/> (last visited May 8, 2019), archived at <https://perma.cc/8DQG-9TQR>.

<sup>56</sup> Jan Färingö, *Mammor betalar dyra pengar för stöd vid förlossningen*, SVT (Nov. 21, 2017), <https://www.svt.se/nyheter/lokalt/vasterbotten/radslan-har-blivit-business>, archived at <https://perma.cc/4649-9WW3>.

<sup>57</sup> See *Utbildningar*, ODIS, <http://www.doula.nu/utbildningar/> (last visited May 8, 2019), archived at <https://perma.cc/4CZC-AJ5R>.

<sup>58</sup> *Id.*

<sup>59</sup> For an example of ODIS education provided in Gothenburg see *Doulautbildning i Göteborg*, EN BRA START..., <http://enbrastart.se/kurser/doulautbildning-i-goteborg/> (last visited May 9, 2019), archived at <https://perma.cc/KSR5-EHVT>.

<sup>60</sup> *Id.*

<sup>61</sup> *ODIS-certifiering*, ODIS, <https://www.doula.nu/odis/odis-doulaprovett/> (last visited May 8, 2019), archived at <https://perma.cc/H7PL-TPKV>.

<sup>62</sup> *Historien bakom ODIS*, ODIS, <http://www.doula.nu/odis/> (last visited May 8, 2019), archived at <https://perma.cc/RD78-3D9E>.

251 registered (active and inactive) doulas with ODIS.<sup>63</sup> Of these, thirty-five are ODIS-certified doulas, and about 140 of them are doulas that have undergone the ODIS education.<sup>64</sup> ODIS is also part of the European Doula Network.<sup>65</sup>

## E. Municipal-Funded Doulas

Typically, two forms of public doula services are provided by municipal health care services in Sweden—doulas in lieu of other support (for example instead of a significant other) and cultural doulas (doulas that function as cultural bridges between immigrant women and hospital staff). In addition, mothers may opt to privately fund a doula.<sup>66</sup>

### 1. *Doulas in Lieu of Other Support*

In Stockholm, women may choose not to bring a family member to the delivery room and instead have Stockholm Region (formerly Stockholm Landsting) pay for a doula.<sup>67</sup> This service was initially introduced to support mothers who did not have a social network or a support person (such as a spouse) who could accompany them to the delivery.<sup>68</sup>

If an expectant mother wants to bring a doula in addition to a family member she must pay for the service herself.<sup>69</sup> Such services may be expensive; reports indicate that an experienced doula may charge as much as SEK 15,000 (about US\$1,600).<sup>70</sup> One reported reason for the increase in demand for doulas is that Swedish midwives currently cannot provide the continuous care that mother seeks—i.e., one person of contact throughout the prenatal, birth, and postpartum stages of a pregnancy.<sup>71</sup>

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<sup>63</sup> Statistik, ODIS, *supra* note 55.

<sup>64</sup> *Id.*; see also *Våra Doulor*, ODIS, <http://www.doula.nu/vara-doulor/> (last visited May 8, 2019), archived at <https://perma.cc/HFL8-KW5G>.

<sup>65</sup> *Member's List*, EUROPEAN DOULA NETWORK, [http://european-doula-network.org/member-list/?wpv-country=sweden&wpv\\_aux\\_current\\_post\\_id=317&wpv\\_view\\_count=326-TCPID317](http://european-doula-network.org/member-list/?wpv-country=sweden&wpv_aux_current_post_id=317&wpv_view_count=326-TCPID317) (last visited May 9, 2019), archived at <https://perma.cc/7RX7-L8L4>.

<sup>66</sup> See Part I, above.

<sup>67</sup> Frida Claesson, *Födande i Stockholm får doulastöd*, SVT (Nov. 2, 2017), <https://www.svt.se/nyheter/lokalt/stockholm/fodande-i-stockholm-far-doulastod>, archived at <https://perma.cc/2HH6-N5HD>.

<sup>68</sup> *Id.*

<sup>69</sup> The service is not included in the covered health services provided by the Region. STOCKHOLMS LÄNS LANDSTING, BASPROGRAM FÖR VÅRD UNDER GRAVIDITET (Feb. 4, 2018), <https://www.vardgivarguiden.se/globalassets/behandlingsstod/barnmorskemottagning/basprogram.pdf?IsPdf=true>, archived at <https://perma.cc/GKM7-RRB9>; see also ÖSTERGOTLANDS REGION, *supra* note 8.

<sup>70</sup> Jan Färingö, *Mammor betalar dyra pengar för stöd vid förlossningen*, SVT (Nov. 21, 2017), <https://www.svt.se/nyheter/lokalt/vasterbotten/radslan-har-blivit-business>, archived at <https://perma.cc/4649-9WW3>.

<sup>71</sup> Anna Bergh & Estrid Wagersten, *Allt fler anlitar doula vid förlossning*, SVERIGES RADIO (Feb. 19, 2018), <https://sverigesradio.se/sida/artikel.aspx?programid=128&artikel=6889386>, archived at <https://perma.cc/PL6G-2NG8>.



## 2. Cultural Doulas

Local Regions also fund cultural doulas for immigrant mothers.<sup>72</sup> These cultural doulas have area-specific knowledge from the country of origin of the mother as well as knowledge of Swedish culture – specifically, language skills that will enable Swedish hospital staff to communicate with the mother.<sup>73</sup> Not all Regions provide this service, thus not all mothers are guaranteed the same service throughout the country. The website Doulakulturfolk.se provides examples of places where cultural doulas are used.<sup>74</sup>

In total more than 1,200 assignments have been performed by cultural doulas,<sup>75</sup> representing twenty-three languages.<sup>76</sup> Doulas that work in the province of Sörmland undergo limited (eight-day) education that focuses on a number of issues, including female anatomy, etc.<sup>77</sup> Cultural doula education is provided by midwives.<sup>78</sup> When introduced the hope was that cultural doulas would also create more equal access to health care.<sup>79</sup> Currently, there is no national legislation mandating the use of cultural doulas.

## IV. Home Birth Services

Home births are on the rise in Sweden, particularly in the capital region of Stockholm.<sup>80</sup> In 2018 a total of eighty home births were recorded, up from thirty in recent years.<sup>81</sup> However, doctors have voiced criticism of home births, questioning how safe they are.<sup>82</sup> Some statistics from

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<sup>72</sup> Jan Kallenberg, *Doulor stödjer föräldrar från främmande kulturer*, 1177 (May 2, 2018), <https://www.1177.se/Vastra-Gotaland/barn--gravid/forlossning/forberedelser-infor-forlossningen/doulor-stodjer-foraldrar-fran-frammande-kulturer/>, archived at <https://perma.cc/A36F-428S>.

<sup>73</sup> *Id.*

<sup>74</sup> DOULA KULTURFOLK, <https://www.doulakulturfolk.se/> (last visited May 8, 2019), archived at <https://perma.cc/LDW7-6V73>.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Sörmlands förlossningsvård görs mer säker med doulor*, VÅRDFOKUS (Nov. 1, 2018), <https://www.vardfokus.se/webbnyheter/2018/november/sormlands-forlossningsvard-gors-mer-saker-med-doulor/>, archived at <https://perma.cc/66JT-HVVG>.

<sup>78</sup> *Id.*

<sup>79</sup> Satens Offentliga Utredningar [SOU] 2013:44 Ansvarsfull hälso- och sjukvård [Government Official Report 2013:44 Responsible Health and Hospital Care], at 161-62, <https://data.riksdagen.se/fil/2D3A369C-6A97-4A0F-ADBF-D6907B20D3FA>, archived at <https://perma.cc/TW36-8WPI>.

<sup>80</sup> Sanna Björkman, *Hemförlossningar kan bli en del av vårdvalet*, VÅRDFOKUS (May 25, 2018), <https://www.vardfokus.se/webbnyheter/2018/maj/hemforlossningar-kan-bli-en-del-av-vardvalet/>, archived at <https://perma.cc/VRS9-LXA5>.

<sup>81</sup> *Id.*

<sup>82</sup> "Karin Petterson, *För riskfyllt" – läkare kritiska till hemförlossning*, SVD (Aug. 29, 2018), <https://www.svd.se/for-riskfyllt-manga-lakare-kritiska-till-hemforlossning>, archived at <https://perma.cc/UL9P-9TX2>.

Sweden show that home births may result in fewer birth injuries to the mother,<sup>83</sup> but statistics also show that women who choose home births are healthier to begin with and could therefore be expected to suffer fewer injuries in the hospital as well.<sup>84</sup>

Currently, only Stockholm and Västerbotten fund home births.<sup>85</sup> In some areas of Sweden, home births may become part of the *vårdvalet*—i.e., the services that the Region may provide to the patient if so elected.<sup>86</sup> Stockholm has provided that service since 2002 and currently twenty-two home-birth midwives are registered with the municipality.<sup>87</sup> Home-birth midwives working in Stockholm are compensated at the rate of SEK 22,000 (US\$2,300).<sup>88</sup> Other regions consider it a separate form of health care, which it does not provide.<sup>89</sup> Swedish insurance companies insure home births in the same manner as other births.<sup>90</sup>

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<sup>83</sup> *Färre kvinnor spricker eller klipps vid hemförlossning*, GÖTEBORGS UNIVERSITET (May 4, 2017), <https://sahl.grenska.gu.se/forskning/aktuellt/nyhet/farre-kvinnor-spricker-eller-klipps-vid-hemforlossning.cid1461437>, archived at <https://perma.cc/2AE7-ZAR8>.

<sup>84</sup> *Id.*

<sup>85</sup> Björkman, *supra* note 80.

<sup>86</sup> *Id.*

<sup>87</sup> *Hemförlossning kan bli egen vårdform*, MITTI STOCKHOLM (May 24, 2018), <https://mitti.se/nyheter/sjukvard/hemforlossning-egen-varldform/>, archived at <https://perma.cc/6J34-4EZ4>.

<sup>88</sup> *Id.*

<sup>89</sup> See, e.g., ÖSTERGOTLANDS REGION, *supra* note 8.

<sup>90</sup> *Hemförlossning - ett allt mer populärt alternativ*, LÄNSFÖRSÄKRINGAR, <https://www.lansforsakringar.se/stockholm/privat/forsakring/personforsakring/gravidforsakring/hemforlossning/> (last visited May 6, 2019), archived at <https://perma.cc/MDC9-XELG>.