



DELAWARE HEALTH  
AND SOCIAL SERVICES  
Division of Public Health

## **Direct-Entry Midwifery Stakeholders Committee Policy & Regulations Subcommittee Report**

**TO:** Karyl Rattay, MD, MS  
Director, Delaware Division of Public Health  
  
Midwifery Stakeholders/ Steering Committee

**FROM:** Midwifery Subcommittee Co-Chairs  
  
Jennifer Antonik  
  
Garrett Colmorgen  
  
Patricia Gallagher  
  
On behalf of the Subcommittee

**SUBJECT:** Report of the Midwifery Policy and Regulations Subcommittee

**DATE:** May 16, 2014

**MEMBERS:** Jennifer Antonik, Consumer

Kristin Bennett, RN, DPH Nursing Director

State Rep. Paul Baumbach

Garrett Colmorgen, MD, Maternal & Fetal Medicine

Jodi Dampeer-Moore, RN, DSU Faculty

Patricia Gallagher, CPM

Ally Heiger, RN, Delawarean for Safe Births

Richard Henderson, MD, OB-GYN;

Kathleen McCarthy, CNM, Birth Center of DE

David Paul, MD, Neonatologist

Bonnie Perratto, RN, Chief Nursing Officer, Bayhealth

Lindsay Robinson, CNM, Dedicated to Women

Jeptha J VanDunk, JD, Consumer, Attorney;

Karen Webster, CPM, NARM

**BACKGROUND:** Public Direct-Entry Midwifery Stakeholders' Meetings were held by the Division of Public Health on the evenings of September 26, 2013 at Providence Creek School in Clayton and November 21, 2013 at Delaware State University in Dover.

Meeting Assumptions:

- All respect the right of women and families to make medically informed decisions about delivery.
- All seek to assure safe, high quality care for mother and infant.

- All support the practice of midwifery within an integrated and regulated health system including ready access to physician consultation and safe and timely transport to a hospital as needed.

In order to better focus on solutions co-chairs for two Subcommittees: 1) Policy & Regulatory Issues and 2) Standards of Care/Relationship Building between the Midwife and Physician were identified and announced at the November 21, 2013 meeting. Subcommittees were subsequently formed with balanced representation from the home birth, midwifery, medical, nursing and legal communities.

**CHARGE:** The Subcommittee on Policy & Regulatory Issues had the following charge:

To examine (and make recommendations on) best governmental practices in regulation of direct-entry non-nurse midwifery/ home birth practice as well as professional liability insurance and quality management systems.

**LEADERSHIP:** The Midwifery Policy & Regulations Subcommittee, as it has come to be known, was led by co-chairs Garrett Colmorgen, MD; Ms. Patricia Gallagher, CPM; and Ms. Jennifer Antonik, Consumer.

**MEETINGS:** Public subcommittee meetings were held on the evenings of January 23, March 11, March 31 and April 10, 2014 at the Division of Public Health Edgehill Shopping Center Offices in Dover.

**PUBLIC ATTENDANCE:** Public attendance ranged from 4-20+ per subcommittee meeting with sign-in optional, but required for public comment. Most public comment was made in respectful discussion and comment within the meetings.

**DISCUSSION:** Summary notes from each subcommittee meeting are available (and will be attached to this report.)

**CONSENSUS:** In working toward consensus, no votes were taken at meetings. The Division of Public Health did not take a position on the Subcommittee's discussions and will review this Report once complete.

**DEFINITION:** (See Direct-entry/ non-nurse midwife definition in current regulations.<sup>1</sup>) Group agreed that the focus for the purpose of committee work was on Nationally Certified Midwives - CPMs and CMs - as defined in current DE regulations:

---

1. Current Delaware regulations (Title 16 HEALTH AND SOCIAL SERVICES, DELAWARE ADMINISTRATIVE CODE, 4100 Family Health Services, 4106 Practice of Non-Nurse Midwifery, see link below) include this definition: "**Direct Entry /non-nurse Midwife**" A midwife that has entered the profession directly through midwifery education and training and not through a prerequisite program of nursing and has met the qualifications and received a permit from the Delaware Division of Public health to practice midwifery in DE.  
<http://regulations.delaware.gov/AdminCode/title16/Department%20of%20Health%20and%20Social%20Services/Division%20of%20Public%20Health/Family%20Health%20Services/4106.pdf>

**“Nationally Certified Midwife”** a direct entry midwife that has met national certification from North American Registry of Midwives (Certified Professional Midwife CPM) or American College of Nurse Midwives (Certified Midwife)

**REGULATORY AUTHORITY:** Subcommittee members supported moving regulatory authority for Direct-Entry Non-nurse Midwifery from DHSS Division of Public Health to DOS Division of Professional Regulation. Group supported a recommendation to establish a Midwifery Council within DPR, under the Board of Medical Licensure and Discipline (BOMLD). It was noted that Midwifery Board or Council under BOMLD would facilitate/satisfy collaboration with physicians without collaborative agreement.

Group discussed possible make-up of Midwifery Board or Council to include:

- Midwives CPM (or CM) 3
- Certified Nurse Midwife (CNM) 1
- Obstetrician-Gynecologist 1
- Pediatrician 1 (non-voting)
- Chair elected by group

It should be noted that the original consensus of the group was to include a consumer on the council. However, after consulting with Mr. Mangler we learned that there is no consumer representation on any other council of the Board.

**LICENSURE REQUIREMENTS:** There was group consensus to support licensure requirements in keeping with Title 16 4106 4.1 (excerpted below) except for requirement of accredited program under the current regulations (See attached.)

Demonstration of completion of ~~an accredited~~ midwifery education program and is a Nationally Certified Midwife as demonstrated by possessing a valid certification of Certified Professional Midwives (CPM) from the North American Registry of Midwives or Certified Midwife (CM) from the American College of Nurse–Midwives Certification Council or an equivalent certification.

In addition there was discussion with regard to the fact that Certified Midwife (CM) education/training focused on facility vs. home births. (Consensus was that it would be better to be required by regulation to serve apprenticeship or period of supervised deliveries in home prior to independent home deliveries for certified midwives.) It was noted academic requirements are higher for CMs than CPMs.

---

Group discussed regulations (as per current regulations) which follow CPM and CM national certifying body (NARM or ACNM respectively) requirements. Regulations would, however, be developed by the Midwifery Council.

**CRIMINAL BACKGROUND CHECK:** Group discussed the need for revision of Section 4.2 (see attachment – current regulations, excerpt below) in keeping with standards of Division of Professional Regulation, including child abuse registry checks.

Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional midwifery license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; and is physically and mentally capable of engaging in the practice of midwifery.

**DISCIPLINE:** Group discussed desire to use NARM or ACNM disciplinary process. Ultimately, it was decided that the disciplinary process must be consistent with that of the Division of Professional Regulation and will be established by the Council. (For reference, the NARM process requires that a complaint needs to be made within 18 months.

<http://narm.org/accountability/how-to-file-a-complaint/> ,

<http://narm.org/accountability/greivance-mechanism/>

The ACNM disciplinary process was identified:

<http://www.amcbmidwife.org/docs/default-document-library/discipline-policy-procedures---updated-november-2012.pdf?sfvrsn=2>)

**REGULATIONS: SCOPE OF PRACTICE/GUIDELINES/RECORD-KEEPING:** The group anticipates that the appointed Council will establish scope of practice, standard guidelines and protocols. (The BOMLD provides the licensure and disciplinary process. When presented with complaints the council will adjudicate the complaint in a fashion similar to the current practice of other councils reporting to the Board, then the Board reviews/disciplines if not within standard of practice.)

Discussion took place regarding how midwives might be able to access and use medications without collaborative agreement and comply with code/regulations including DEA/Board of Pharmacy. The group explored the range of formularies used by other states but came to no conclusion, however the group recommends that an appropriate formulary needs to be established. A final decision will likely require regulations by the Board and the Board of Pharmacy, if not legislation. The group recommends that the council discuss this further and make appropriate recommendations to the Board.

**INFORMED CONSENT:** The group explored the possible use of NARM informed consent materials/boiler plate which were shared with committee verbally/single hard copy (link below). In addition, informed consent discussion included clarification of the relationship between midwife/client and MD/client and not Midwife/MD and that clarification needs to be in statute. <http://narm.org/accountability/informed-consent/>

**VICARIOUS LIABILITY:** The group expressed the need for designation of vicarious liability to be codified. This was seen as important for the transition to new system of care. The fact that “consultations don’t count” needs to be explicit in liability. In effect, it was decided that the usual standards of liability will apply. There were some differences of opinion regarding where liability starts and stops when transferred from home to hospital. The group understands that this situation is analogous to the transfer of a patient from one facility to another and will result in similar liability issues. The group agreed that this will be an issue presented to the council.

**LEGISLATION:** During the course of the last meetings various drafts of possible legislation were discussed with sample legislation having been proposed by the physician (Medical Society of Delaware/American College of Obstetricians and Gynecologists) and the midwifery group. The versions were described as being “97% the same” and those areas where there were differences were discussed and recommendations for edits were made. (See Summary Notes attached.) At the request of Representative Baumbach, the Division of Professional Regulation, under the leadership of Director David Mangler, made edits to the draft legislation consistent with other (Title 24) councils that have been established under the Board of Medical Licensure and Discipline. (Attached.) Representative Baumbach revised legislation based on these edits and subsequently introduced legislation (HB 319) to the General Assembly on May 1, 2014.

**CONCLUSION:** Over the course of several months and four meetings, the Midwifery Policy and Regulations Subcommittee worked together to develop a degree of consensus, and we believe respect, among its members and the community affected by these changes so that draft legislation could be developed and a path forward could be established for a safe plan to implement services by certified professional midwives and certified midwives in Delaware. The general consensus of the subcommittee members was that the midwives who have recently been disciplined by the Board of Medical Licensure and Discipline have access to Delaware licensure when it becomes becomes available. The committee feels that it is imperative to the furtherance of civil discourse that all parties involved validate one another and seek common intellectual ground.

**Attachments:** Summary Notes for Subcommittee meetings (1/23/2014, 3/11/2014, 3/31/2014 and 4/10/2014)

Title16: Health and Social Services/ Delaware Administrative Code, Section 4106, Practice of Non-Nurse Midwifery

Direct-Entry Midwifery Draft Legislation: David Mangler 4/20/14