



Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-130-10 et seq.
Regulation title	Regulations Governing the Practice of Licensed Midwives
Action title	Midwifery practice with high-risk pregnancies
Document preparation date	3/25/08

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The Board's intent is to consider regulations relating to the practice of midwifery to determine whether changes are necessary to address concerns expressed about midwifery care for pregnant women with certain conditions or extenuating circumstances that may be considered "high risk." The goal for any amended regulation would be to ensure that women who have such conditions are thoroughly evaluated for risk and cared for by the appropriate health care practitioner in the appropriate setting to help ensure the health and safety of the mother and infant.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...

The specific statutory authority for the regulation of the practice of midwifery by the Board of Medicine is found in:

§ 54.1-2957.9. Regulation of the practice of midwifery.

The Board shall adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery. The regulations shall (i) address the requirements for licensure to practice midwifery, including the establishment of standards of care, (ii) be consistent with the North American Registry of Midwives' current job description for the profession and the National Association of Certified Professional Midwives' standards of practice, except that prescriptive authority and the possession and administration of controlled substances shall be prohibited, (iii) ensure independent practice, (iv) provide for an appropriate license fee, and (v) include requirements for licensure renewal and continuing education. Such regulations shall not (a) require any agreement, written or otherwise, with another health care professional or (b) require the assessment of a woman who is seeking midwifery services by another health care professional.

The Board has mandatory authority to regulate the practice, including the establishment of standards of care, but those standards cannot be in conflict with the statutory provisions to ensure independent practice and to be consistent with the standards of the National Association of Certified Professional Midwives.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed. Include the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. Delineate any potential issues that may need to be addressed as the regulation is developed.

The Board intends to consider concerns raised about whether licensed midwives should care for women who are considered to be “high risk” for complications in their pregnancies and deliveries. In a letter to the Board of Medicine dated January 2, 2008, four certified nurse midwives expressed their support for licensed midwives and for home births for low-risk women, but noted that there are licensed midwives or certified professional midwives (CPM’s)

advertising and promoting home-birth for women who should, in their opinion, clearly be in a hospital setting. In some states, regulations provide that women with certain conditions cannot be cared for by a CPM, including women with: 1) Gestational diabetes; 2) Morbid obesity; 3) Non-vertex presentation; 4) Twins or multiples; and 5) Vaginal delivery after caesarean (VBAC). In the letter to the Board, the nurse midwives state that CPM's "clearly" should not provide care for these women. Further, they expressed concern that the transfer of one of these women to a hospital when there problems arise places the health and safety of the mother and infant at risk and compromises the integrity of the midwifery profession.

At issue are two matters: 1) whether women who fall into one of the named risk categories are consistently "high risk" and inappropriate for home-birth with a CPM; and 2) whether the Board can set regulatory parameters establishing a CPM standard of practice related to care for women with "high risk" conditions that would be consistent with the profession's standard of practice. In consideration of these issues and concerns, the Board will take whatever regulatory action is essential to protect the health, safety, or welfare of pregnant women and their babies.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.

At its meeting on February 8, 2008, the Advisory Board on Midwifery discussed the letter from a group of Certified Nurse Midwives regarding lack of practice guidelines for Certified Professional Midwives was included on the agenda. Two members of the public in attendance spoke in opposition to any regulatory action by the Board of Medicine.

Sara F. Krivanec, a member of the International Cesarean Awareness Network (ICAN), commented on the letter stating that restricting home VBAC's would undermine women's choices. She also commented that the safety of VBAC specifically and homebirth in general with a licensed CPM is well-documented. Jessica Jordan, a certified nurse midwife, commented that the standards of American College of Nurse Midwives do not prescribe what types of patients they may care for, which varies from practice to practice, depending on many factors. The CPM credential has its own standards and CPM's in Virginia follow the NARM standards which require practice guidelines for their practice.

After a lengthy discussion, the Advisory Board voted to recommend to the Full Board that no changes be made to the regulations for midwifery practice. Dr. Deren Bader, a CPM member of the Advisory Board was asked to present on behalf of the Advisory Board at this meeting.

At a meeting of the Board of Medicine on February 21, 2008, Dr. Bader, gave a brief history of her midwifery background and made an informative presentation that highlighted CPM practice guidelines, risk screening, NARM's requirements for informed choice, and "drop offs". In addition, Dr. Bader provided the Board with statistical data and discussed in detail trends in Cesarean deliveries and VBAC. Dr. Bader then fielded several questions from the Board members.

The Board was also given a letter from the Commonwealth Midwives Alliance supporting the recommendation from the Advisory Board to take no action based on the letters from the certified nurse midwives. After further discussion about the risks involved with such deliveries, the Board voted to develop a NOIRA on the issue of licensed midwives' approach to high-risk pregnancies.

In its consideration of the comment and discussion presented, the Board will review statutory provisions, the regulation of midwifery in other states, and the standards for the profession.

The Midwives Alliance of North America lists regulations from all states that allow CPM's to practice. In comparison with Virginia, some states require a visit with a certified nurse midwife or a medical doctor to recommend suitability for home birth with a licensed midwife, but the Code of Virginia specifically states that regulations shall not "*require the assessment of a woman who is seeking midwifery services by another health care professional.*" Therefore, the Board does not have the option of adopting such a requirement.

In many states, there are limitations on the types of women that can be cared for by a CPM. In Virginia, the Code requires that regulations "*be consistent with the North American Registry of Midwives' current job description for the profession and the National Association of Certified Professional Midwives' standards of practice, except that prescriptive authority and the possession and administration of controlled substances shall be prohibited.*" In its discussion of any regulatory changes, the Board will have to consider the NARM job description and the standards of practice of NACPM.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.