



Emergency Regulation and 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 |
| Regulation title | Regulations Governing the Practice of Licensed Midwives |
| Action title | Initial licensure |
| Document preparation date | 9/20/05 |

This form is used when an agency wishes to promulgate an emergency regulation (to be effective for up to one year), as well as publish a Notice of Intended Regulatory Action (NOIRA) to begin the process of promulgating a permanent replacement regulation.

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*.

Preamble

The APA (Code of Virginia § 2.2-4011) states that an “emergency situation” is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.

- 1) Please explain why this is an “emergency situation” as described above.
- 2) Summarize the key provisions of the new regulation or substantive changes to an existing regulation.

The adoption of an “emergency” regulation by the Board of Medicine is required to comply with amendments to Chapter 29 of Title 54.1, mandating the licensure of midwives and the third enactment clause in Chapters 719 and 917 of the 2005 Acts of the Assembly, which states: “That the Board of Medicine shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

The key provisions of the new regulation include the qualifications for licensure (which are established in the Code), the requirements for disclosure to a client seeking midwifery care (which are largely set out in the Code), and the standards for ethical practice (which are taken from the standards of the North American Registry of Midwives and the standards set for all professions licensed by the Board).

Legal basis

Other than the emergency authority described above, 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 authority to regulate and license midwives is in Chapter 29 of Title 54.1:

§ [54.1-2957.8](#). Licensure of midwives; requisite training and educational requirements; fees.

A. It shall be unlawful for any person to practice midwifery in the Commonwealth or use the title of licensed midwife unless he holds a license issued by the Board. The Board may license an applicant as a midwife after such applicant has submitted evidence satisfactory to the Board that he has obtained the Certified Professional Midwife (CPM) credential pursuant to regulations adopted by the Board and in accordance with the provisions of §§ [54.1-2915](#) and [54.1-2916](#).

B. Persons seeking licensure as a midwife shall submit such information as required in the form and manner determined by the Board.

C. Persons seeking licensure shall pay the required license fee as determined by the Board.

§ [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.

License renewal shall be contingent upon maintaining a Certified Professional Midwife certification.

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 purpose of the regulatory action is compliance with a statutory mandate for the licensure of midwives. The goal is to adopt the minimal requirements for licensure and practice within the parameters set in law, but to add those provisions and disclosures that encourage the client to make an informed choice for midwifery care. Regulations also establish standards for ethical practice, including provisions for client confidentiality, informed consent for care, responsible action by the midwife in emergency situations, collaboration with other professions, record-keeping, sexual contact and other standards consistent with a licensed professional.

Substance

Please detail any changes that are proposed. Please outline new substantive provisions, all substantive changes to existing sections, or both where appropriate. Set forth the specific reasons why the regulation is essential to protect the health, safety, or welfare of Virginians. Delineate any potential issues that may need to be addressed as a permanent final regulation is developed.

| Current section number | Proposed new section number | Current requirement | Proposed change and rationale |
|------------------------|-----------------------------|---------------------|---|
| n/a | 10 | n/a | Section 10 establishes definitions for words and terms used in this chapter. Subsection A lists those that have the meanings ascribed to them in § 54.1-2957.7 of the Code of Virginia. “Midwife” “Practicing midwifery” Subsection B defines other terms that are used in this chapter, including: “Board” means the Virginia Board of Medicine. “Client” means a person receiving midwifery care and shall be considered synonymous with the word “patient.” |

| | | | |
|-----|----|-----|---|
| | | | <p>“Controlled substance” means a drug, substance or immediate precursor in Schedules I through VI as set out in the Drug Control Act.</p> <p>“CPM” means the Certified Professional Midwife credential issued by the North American Registry of Midwives.</p> <p>“NARM” means the North American Registry of Midwives.</p> |
| n/a | 20 | n/a | <p>Section 20 identifies the public participation guidelines in 18VAC85-10-10 et seq. as the regulation that provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.</p> |
| n/a | 30 | n/a | <p>Section 30 sets out the fees for regulation of the profession. It provides that fees are not refundable.</p> <ol style="list-style-type: none"> 1. The application fee for a license to practice as a midwife is set at \$277. 2. The fee for biennial active license renewal is \$312; the additional fee for late renewal of an active license within one renewal cycle is \$105. <p><i>The application and renewal fees are the same as the lowest fees for an independent practitioner regulated by the Board (chiropractors). Doctors of medicine, osteopathic medicine and podiatry have to report on the physician profile system, so their fees include the additional cost of that program. Since the law specifically establishes licensed midwives as independent practitioners without medical supervision or direction, it is appropriate that fees are consistent. All other professions regulated by the Board have some dependent or supervised relationship with another practitioner, so fees for those professions are consistent. In addition, there may be less than 10 individuals who will be eligible for licensure as midwives within the next two years. During that time, fees for the profession must support the Advisory Board (composed of five gubernatorial appointees), which meets a minimum of 4 times per year. Even without the expenses relating to licensure and discipline, it is doubtful that fees generated by licensed midwives will be sufficient to offset the costs of an advisory board. The late fee is set at approximately 1/3 of the renewal fee for all professions. Fees will be reviewed during the process of replacing emergency regulations to determine whether revenue is sufficient to offset expenditures.</i></p> <ol style="list-style-type: none"> 3. The fee for biennial inactive license renewal is \$168; the additional fee for late renewal of an inactive license within one renewal cycle is \$55. <p><i>Fees for inactive licensure are set at approximately 1/2 of the active fee for all professions.</i></p> <ol style="list-style-type: none"> 4. The fee for reinstatement of a license that has expired for a period of two years or more is \$367, in addition to the late fee for each year in which the license has been lapsed, not to exceed a total of four years. The fee must be submitted with an application for licensure reinstatement. |

| | | | |
|-----|----|-----|--|
| | | | <p><i>Fees for reinstatement are set to include the unpaid renewal fee and an administrative fee for review of a reinstatement application, plus the late fees for the years in which the license is lapsed, not to exceed 4 years, so the total costs will not become prohibitive..</i></p> <p>5. The fee for a letter of good standing/verification of a license to another jurisdiction is \$10. <i>Standard fee for this activity.</i></p> <p>6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied is \$2,000. <i>This is the fee for all professions regulated by this Board and is intended to offset the costs associated with an investigation and preparation of document to support or deny the application.</i></p> <p>7. The fee for a duplicate wall certificate is \$15. <i>Standard fee for this activity.</i></p> <p>8. The fee for a duplicate renewal license is \$5. <i>Standard fee for this activity.</i></p> <p>9. The fee for a returned check is \$25. <i>Standard fee for this activity.</i></p> |
| n/a | 40 | n/a | <p>Section 40 establishes the qualifications for licensure</p> <p>A. An applicant for board licensure shall submit:</p> <ol style="list-style-type: none"> 1. The required application on a form provided by the board and the application fee as prescribed in 18VAC85-130-30; 2. Evidence satisfactory to the board of current certification as a CPM; and 3. A report from NARM indicating whether there has ever been any adverse action taken against the applicant. <p>B. If an applicant has been licensed or certified in another jurisdiction, he shall provide on the application information on the status of each license or certificate held and on any disciplinary action taken or pending in that jurisdiction. 18VAC85-130-45. Practice while enrolled in an accredited midwifery education program.</p> <p>A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathy, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until he has taken and received the results of any examination required for CPM certification or for a period of three years, whichever occurs sooner. For good cause shown, a person may request that the Board grant any extension of time beyond the three years, for a period not to exceed one additional year.</p> |

| | | | |
|-----|----|-----|--|
| n/a | 50 | n/a | <p>Section 50 establishes the requirements for biennial renewal of licensure.</p> <p>A. A licensed midwife must renew his license biennially during his birth month in each odd-numbered year by:</p> <ol style="list-style-type: none"> 1. Paying to the board the renewal fee as prescribed in section 30; and 2. Attesting to having current, active CPM certification by NARM. <p>B. A licensed midwife whose license has not been renewed by the first day of the month following the month in which renewal is required shall not be considered licensed in Virginia.</p> <p>C. An additional fee to cover administrative costs for processing a late application renewal is imposed by the board as prescribed in section 30.</p> <p><i>All licensees of the Board renew biennially, either in even or odd years, so the rule is consistent. There is also a late fee imposed for all licensees who fail to renew by the expiration date on the license. The law specifically mandates an active CPM certification for renewal: “License renewal shall be contingent upon maintaining a Certified Professional Midwife certification.” (§54.1-2957.9)</i></p> |
| n/a | 60 | n/a | <p>Section 60 establishes regulations for inactive licensure.</p> <p>A. To be issued an inactive license, a licensed midwife who holds a current, unrestricted license in Virginia can make a request on the renewal application and submit the required fee.</p> <ol style="list-style-type: none"> 1. The holder of an inactive license is not be required to maintain current, active certification by NARM 2. An inactive licensee is not entitled to perform any act requiring a license to practice midwifery in Virginia. <p>B. An inactive licensee can reactivate his license by paying the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure for the biennium in which the license is being reactivated and submitting documentation of having current, active certification by NARM.</p> <p>C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of §54.1-2915 of the Code of Virginia or any provision of this chapter.</p> <p><i>The rules for inactive licensure are similar to those for other professions. An inactive license does not entitle a midwife to practice, so does not require continuing education or current certification. In order to resume active practice, a license midwife must document that certification has been made current and active as evidence of competency to engage in active practice.</i></p> |
| n/a | 70 | n/a | <p>Section 70 establishes regulations for reinstatement of a license.</p> |

| | | | |
|-----|----|-----|---|
| | | | <p>A licensed midwife who allows his license to lapse for a period of two years or more and chooses to resume practice must submit a reinstatement application, information on practice and licensure in other jurisdictions for the period in which the license was lapsed in Virginia, proof of current, active certification by NARM, and the fee for reinstatement of his license as prescribed in section 30.</p> <p>B. A licensed midwife whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, hold current, active certification by NARM, and pay the fee for reinstatement of a revoked license as prescribed in section 30.</p> <p><i>Requirements for reinstatement entail payment of specified fees, as necessary to conduct a background investigation and hearing, and proof of current competency to practice safely in Virginia.</i></p> |
| n/a | 80 | n/a | <p>Section 80. Disclosures.</p> <p>A licensed midwife is required to provide written disclosures to any client seeking midwifery care. The licensed midwife must review each disclosure item and obtain the client’s signature as evidence that the disclosures have been received and explained. Required disclosures include:</p> <ol style="list-style-type: none"> 1. A description of the licensed midwife's qualifications, experience, and training; 2. A written protocol for medical emergencies, including hospital transport, particular to each client; 3. A statement as to whether the licensed midwife has hospital privileges; 4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances; 5. A description of the midwives' model of care; 6. A copy of the regulations governing the practice of midwifery; 7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage, and if so, the extent of that coverage; 8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the Fund; and 9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint. <p><i>The Code of Virginia mandates that a licensed midwife provide disclosure in writing to anyone seeking care. The law specifies the following elements of disclosure:</i></p> <p><i>§ 54.1-2957.11. Requirements for disclosure.</i></p> |

| | | | |
|-----|-----|-----|---|
| | | | <p><i>Any person practicing as a licensed midwife shall provide disclosure of specific information in writing to any client to whom midwifery care is provided. Such disclosure shall include (i) a description of the midwife's qualifications, experience, and training; (ii) a written protocol for medical emergencies, including hospital transport, particular to each client; (iii) a description of the midwives model of care; (iv) a copy of the regulations governing the practice of midwifery; (v) a statement concerning the licensed midwife's malpractice or liability insurance coverage; (vi) a description of the right to file a complaint with the Board of Medicine and the procedures for filing such complaint; and (vii) such other information as the Board of Medicine determines is appropriate to allow the client to make an informed choice to select midwifery care.</i></p> <p><i>The "other information" determined by the Advisory Board and the Board of Medicine to be necessary and appropriate to allow the client to make informed choice includes:</i></p> <ul style="list-style-type: none"> • <i>A statement about whether the midwife has hospital privileges (none does at this time)</i> • <i>A statement that the midwife cannot prescribe, possess or administer drugs</i> • <i>An explanation of the Birth Injury Fund and an explanation that the midwife is not covered</i> • <i>A description of the right to file a complaint with NARM (the credentialing body that can take action against a midwife's credential)</i> |
| n/a | 90 | n/a | <p><i>Sections 90 through 130 are standards for professional conduct. They are identical to those adopted for all professions regulated by the Board, with language that is applicable to the profession of midwifery. For example, midwives refer to women they serve as "clients" rather than "patients"</i></p> <p>Section 90 establishes the rule for confidentiality.</p> <p>A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.</p> |
| n/a | 100 | n/a | <p>Section 100 specifies regulations for client records.</p> <p>A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.</p> <p>B. Practitioners shall provide client records to another practitioner or to the client or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.</p> <p>C. Practitioners shall properly manage client records and</p> |

| | | | |
|-----|-----|-----|---|
| | | | <p>shall maintain timely, accurate, legible and complete client records. Practitioners shall clearly document objective findings, decisions and professional actions based on continuous assessment for on-going midwifery care.</p> <p>D. Practitioners shall document a client’s decisions regarding choices for care, including informed consent or refusal of care. Practitioners shall clearly document when a client’s decisions or choices are in conflict with the professional judgment and legal scope of practice of the licensed midwife.</p> <p>E. Practitioners shall maintain a client record for a minimum of six years following the last client encounter with the following exceptions:</p> <ol style="list-style-type: none"> 1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention six years from the last client encounter regardless of the age of the child ; 2. Records that have previously been transferred to another practitioner or health care provider or provided to the client or his personal representative; or 3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time. <p>F. From (insert effective date of regulations) practitioners shall in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.</p> <p>G. When a practitioner is closing, selling or relocating his practice, he shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client.</p> |
| n/a | 110 | n/a | <p>Section 110 sets the rules for practitioner-client communication and for the termination of a relationship.</p> <p>A. Communication with clients.</p> <ol style="list-style-type: none"> 1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a client or his legally authorized representative of the client’s assessment and prescribed plan of care. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner’s skill or the efficacy or value of a treatment or procedure directed by the practitioner. 2. A practitioner shall present information relating to the client’s care to a client or his legally authorized representative in understandable terms and encourage |

| | | | |
|-----|-----|-----|--|
| | | | <p>participation in the decisions regarding the client’s care.</p> <p>3. Before any invasive procedure is performed, informed consent shall be obtained from the client. Practitioners shall inform clients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent licensed midwife practicing in Virginia would tell a client. In the instance of a minor or a client who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.</p> <p>B. Termination of the practitioner/client relationship.</p> <p>1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make a copy of the client record available, except in situations where denial of access is allowed by law.</p> <p>2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make his services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.</p> |
| n/a | 120 | n/a | <p>Section 120 sets out rules for practitioner responsibility.</p> <p>A. A practitioner shall:</p> <p>1. Transfer care immediately in critical situations that are deemed to be unsafe to a client or infant and remain with the client until the transfer is complete;</p> <p>2. Work collaboratively with other health professionals and refer a client or an infant to appropriate health care professionals when either needs care outside the midwife’s scope of practice or expertise; and</p> <p>3. Base choices of interventions on empirical and/or research evidence that would indicate the probable benefits outweigh the risks.</p> <p>B. A practitioner shall not:</p> <p>1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;</p> <p>2. Knowingly allow apprentices or subordinates to jeopardize client safety or provide client care outside of the apprentice’s or subordinate’s scope of practice or area of responsibility. Practitioners shall delegate client care only to those who are properly trained and supervised; and</p> <p>3. Exploit the practitioner/client relationship for personal gain.</p> |
| n/a | 130 | n/a | <p>Section 130 establishes rules for ethical advertising.</p> <p>A. Any statement specifying a fee, whether standard, discounted or free, for professional services which does not include the cost of all related procedures, services and</p> |

| | | | |
|-----|-----|-----|---|
| | | | <p>products which, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.</p> <p>B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment which is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the client and the practitioner.</p> <p>C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.</p> <p>D. A licensee shall disclose the complete name of the board which conferred the certification when using or authorizing the use of the term “board certified” or any similar words or phrase calculated to convey the same meaning in any advertising for his practice.</p> <p>E. A licensee of the board shall not advertise information which is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.</p> |
| n/a | 140 | n/a | <p>Section 140 sets out rules for vitamins, minerals and food supplements in a midwife’s practice.</p> <p>A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable client outcome, including preventive practices,</p> |

| | | | |
|-----|-----|-----|--|
| | | | <p>and that a greater benefit will be achieved than that which can be expected without such use.</p> <p>B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual client’s overall medical condition and medications.</p> <p>C. The practitioner shall conform to the standards of his particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.</p> |
| n/a | 150 | n/a | <p>Section 150 prohibits solicitation or remuneration in exchange for referral.</p> <p>A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in §37.1-179 of the Code of Virginia, or hospital as defined in §32.1-123 of the Code of Virginia.</p> <p>Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by Title 42, §1320a-7b(b) of the United States Code, as amended, or any regulations promulgated thereto.</p> |
| n/a | 160 | n/a | <p>Section 160 sets out the rules for sexual contact.</p> <p>A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior which:</p> <ol style="list-style-type: none"> 1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or 2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it. <p>B. Sexual contact with a client.</p> <ol style="list-style-type: none"> 1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated. |

| | | | |
|-----|-----|-----|--|
| | | | <p>2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.</p> <p>C. Sexual contact between a practitioner and a former client.</p> <p>Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.</p> <p>D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client shall mean: spouse or partner, parent or child, guardian, or legal representative of the client.</p> <p>E. Sexual contact between a supervisor and a trainee or apprentice shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.</p> |
| n/a | 170 | n/a | <p>Section 170 prohibits the midwife from refusing to provide information.</p> <p>A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.</p> |

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.

There were no viable options to the adoption of regulations; it was mandated by legislation passed by the 2005 General Assembly. Requirements for initial licensure, continuing competency for renewal of licensure, disclosure to clients and exceptions for apprentices and unlicensed persons were all specified in the Code of Virginia.

The Board had the discretion to add disclosure requirements, such as information about hospital privileges, prescribing privileges and the Birth Injury Fund. The Advisory Board and the full Board all agreed that disclosure were important to ensure that a client understands that she is seeking a non-medical model of care with minimal interventions in a non-hospital birth setting. The client should also understand that the Birth Injury Fund will not be available to her, and that the midwife does not have malpractice liability insurance.

Family impact

Please assess the impact of the emergency regulatory action on the institution of the family and family stability.

Since there are families that choose midwifery care instead of care by a licensed doctor or certified nurse midwife, these regulations will provide those families a standard for that care, minimal qualifications for licensure and accountability for practice.