



Periodic Review / Retain Regulation 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
Document preparation date	2/22/13

This form is used when the agency has done a periodic review of a regulation and plans to retain the regulation without change. This information is required pursuant to Executive Orders 14 (2010) and 58 (1999).

Legal basis

Please identify the state and/or federal legal authority for the regulation, including (1) the most relevant law and/or regulation, and (2) promulgating entity, i.e., agency, board, or person.

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:

- 1. To establish the qualifications for registration, certification or licensure in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.*
- 2. To examine or cause to be examined applicants for certification or licensure. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.*
- 3. To register, certify or license qualified applicants as practitioners of the particular profession or professions regulated by such board.*

...
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. ...

Specific authority for regulation of licensed midwives is found in:

§ 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) require midwives to disclose to their patients, when appropriate, options for consultation and referral to a physician and evidence-based information on health risks associated with birth of a child outside of a hospital or birthing center, as defined in subsection E of § [32.1-11.5](#), including but not limited to risks associated with vaginal births after a prior cesarean section, breech births, births by women experiencing high-risk pregnancies, and births involving multiple gestation, (v) provide for an appropriate license fee, and (vi) 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.

Alternatives

Please describe all viable alternatives for achieving the purpose of the existing regulation that have been considered as part of the periodic review process. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving the purpose of the regulation.

The regulation was thoroughly reviewed by staff of the Board of Medicine and the Department of Health Professions to identify any regulation that could be revised pursuant to the Governor's regulatory reform project. There were no problems identified with the understanding of or compliance with the existing regulations. Regulations were also circulated among constituent groups, advisory board members and other interested parties. There were no recommendations for amendments that would repeal regulations or reduce the regulatory burden.

Public comment

Please summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Please indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Notice of Periodic Review was posted on the Virginia Regulatory Townhall and sent to interested parties with comment requested from November 5, 2013 to December 5, 2013. The Commonwealth Midwives Alliance commented that a task force of experience Certified Professional Midwives licensed by the Board was convened for the purpose of conducting a thorough review of regulations. Its review indicated that there is no need to recommend any changes to the current regulations.

Effectiveness

Please indicate whether the regulation meets the criteria set out in Executive Order 14 (2010), e.g., is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable.

Through its review of 18VAC85-130-10 et seq., Regulations Governing the Practice of Licensed Midwives, the Board determined that the regulation is necessary to protect the public by inclusion of criteria for licensure, continued certification as a certified professional midwife for renewal, and standards of conduct for practice. Neither the staff of the Board nor any regulants identified any language that was not clearly written and easily understandable.

Result

Please state that the agency is recommending that the regulation should stay in effect without change.

As a result of the periodic review conducted in accordance with the Governor's regulatory reform project, the Board has determined that the regulation should stay in effect without change.

Small business impact

In order to minimize the economic impact of regulations on small business, please include, pursuant to § 2.2-4007.1 E and F, a discussion of the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation from the public; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, include a discussion of the agency's determination whether the regulation should be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

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- 1) In accordance with the Code of Virginia, the Board is required to promulgate regulations. *"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 shall adopt regulations governing the practice of midwifery, upon consultation with the Advisory Board on Midwifery.* Therefore, there is a continued need for the regulation.
 - 2) There were no complaints or comments received from the public.
 - 3) The regulation is organized and written similarly to all other chapters promulgated by the Board of Medicine; it appears to be clear and easily understood.
 - 4) The regulation does not overlap with federal or state law, which is not specific about the criteria for licensure or the standards of practice. Grounds for unprofessional conduct in § 54.1-2915, which apply to all regulated entities under the Board, are not repeated in the regulations.
 - 5) Initial regulations for the licensure of midwives became effective in 2007. Regulation has not inhibited growth of the profession as there was a growth rate in the number of licensed midwives of 33.3% in the last biennium.

Family impact

Please provide an analysis of the regulation's impact on the institution of the family and family stability.

A mandate for regulations on disclosures to women with high risk pregnancies was passed by the General Assembly in 2009. The final amended regulations, which are necessary to ensure the health and safety of women and their babies receiving services by licensed midwives, have been in the Governor's office for review since March 20, 2012.