

Report of Preliminary Assessment for State Regulation
of
Certified Lay Midwives

Office of Professional Regulation
November 1, 1999

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I. Introduction

Pursuant to 26 V.S.A. § 3105(d) and Part I, Administrative Rules for Procedure for Preliminary Sunrise Review Assessments of the Secretary of State's Office of Professional Regulation, the application for certification of certified lay midwives was received by the Office on July 1, 1999. A public hearing was noticed for and convened at 1:00 p.m. on August 10, 1999, to take testimony and receive supporting documentation. A deadline of August 24, 1999, was established for submission of any additional written comments or documentation, after which the record in this proceeding was closed.

The purpose of this proceeding was to evaluate and report on the appropriateness of professional regulation of certified lay midwives according to the statutory criteria provided by 26 V.S.A. § 3105(d). That provision requires that:

26 V.S.A. § 3105(a)

(a) A profession or occupation shall be regulated by the state only when:

(1) it can be demonstrated that the unregulated practice of the profession or occupation can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative;

(2) the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability; and

(3) the public cannot be effectively protected by other means.

II. Findings

1. On July 1, 1999, an application for preliminary sunrise assessment was submitted by the Vermont Midwives Alliance through Judy Luce, CPM, of Barre, Vermont.

2. Certified Professional Midwives (CPM) are certified by the North American Registry of Midwives (NARM). Certified Professional Midwives are not certified nurse midwives (CNM). Certified nurse midwives are licensed nurses with additional education and training in midwifery. Certified nurse midwives are currently licensed by the Vermont Board of Nursing.

3. Certified Professional Midwives and other lay midwives are autonomous practitioners who provide pregnancy, education, and health screening during the childbearing cycle, including newborn evaluation and postpartum care. They offer nutritional instruction, childbirth

preparation, and counseling for pregnancy, birth, and early parenting. They identify complications in pregnancy and consult with or make referrals to obstetrical personnel when appropriate. They attend home births and provide breastfeeding education and support and well-woman care.

4. Not all direct-entry, lay midwives are CPM's certified by NARM. The application does not seek regulation of lay midwives who are not CPM's. Under the application, lay midwives who are not CPM's would be able to continue to practice midwifery but could not present themselves to consumers as being certified or regulated in any way by the State.

5. Applicant estimates that approximately two percent of Vermont births annually are home births. Applicant testified that home births are under-reported, however, because parents do not always obtain birth certificates.

6. Applicant asserts that low income patients in Vermont (e.g., Medicaid and Dr. Dinosaur patients) are currently unable to obtain third-party reimbursement for home births but would be able to obtain reimbursement if CPM's were regulated by the State.

7. Applicant also asserts that harm to the public can be directly related to this lack of third-party reimbursement for home births. According to applicant, low income Vermonters currently must pay for home births themselves and therefore will use unattended home births to save money.

8. Furthermore, applicant cites anecdotal evidence of harm to Vermont patients caused by lack of access to qualified home birth practitioners. Applicant also cites a North Carolina study comparing planned home births attended by midwives and unattended planned home births. According to applicant, the study found that the neonatal mortality rate for planned home births attended by midwives was three per thousand, while the neonatal mortality rate for unattended planned home births was 30 per thousand. C. Burnett, et al., "Home Delivery and Neonatal Mortality in North Carolina," Journal of the American Medical Association (Dec. 19, 1980).

9. In their April 1999 report, The Future of Midwifery, the Pew Health Professions Commission and the University of California, San Francisco Center for the Health Professions found that "the midwifery model of care is an essential element of comprehensive health care for women and their families that should be embraced by, and incorporated into, the health care system and made available to all women." Id. at i.

10. There are approximately 20 candidates who would be eligible for certification as CPM's in Vermont at this time.

11. Currently, 16 states regulate the practice of direct-entry, lay midwifery, with varying regulatory requirements.

12. Certification as a CPM by NARM does not require institution-based education. An individual may become a CPM through apprenticeship or by completion of a program of study

accredited by the Midwifery Education Accreditation Council (MEAC). Midwifery education may also be obtained through self-study, approved correspondence courses, and distance learning programs. A period of supervised practice is also required for certification as a CPM by NARM.

13. The Vermont Board of Nursing (Board) does not oppose regulation of direct-entry, lay midwives but believes that, to protect the public, they should be licensed rather than certified, so that no one could practice midwifery unless regulated by the State. The Board also believes that the CPM designation would confuse the public because it is similar to the CNM designation.

14. Applicant asserts that certification is preferable to licensure, so that patients may have freedom of choice in who attends them at home births. Applicant also asserts that consumers are not confused by the CPM and CNM designations.

15. Because only anecdotal evidence of harm to Vermont patients using midwifery services has been demonstrated, this profession should not be regulated at the license level. Regulation at the certification level would be sufficient to protect consumers by making them aware of those practitioners regulated by the State and subject to requirements for initial eligibility and biennial renewal of certification.

16. If regulated, this profession should be required to participate in continuing education as a requirement for biennial renewal of certification and to maintain proficiency in infant and adult CPR.

III. Conclusions

A. Pursuant to the findings set forth above, it can be demonstrated that the unregulated practice of lay midwifery can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is recognizable and not remote or speculative, because the number of unattended home births appears to be positively influenced by the lack of regulated lay midwives and the lack of insurance coverage for their services. 26 V.S.A. § 3105(a)(1).

B. Pursuant to the findings set forth above, the public can reasonably be expected to benefit from an assurance of initial and continuing professional ability of lay midwives through standard education and training requirements for certification. 26 V.S.A. § 3105(a)(2).

C. Pursuant to the findings set forth above, the public cannot be effectively protected by other means, because government regulation is required to enforce education and training requirements effectively. 26 V.S.A. § 3105(a)(3).

D. Pursuant to the findings set forth above, it is necessary to regulate the practice of lay midwifery under the least restrictive method of regulation consistent with the public interest. 26 V.S.A. § 3105(b).

E. Pursuant to the findings set forth above, the consumer may have a substantial interest in relying on the qualifications of the practitioner of lay midwifery; therefore, regulation should

be through a system of certification. 26 V.S.A. § 3105(b)(4).

IV. Recommendations

1. Because of the small number of potential applicants and to keep regulatory costs as low as possible, this profession should be regulated by the Office of Professional Regulation as a Director-regulated profession, with two practicing, certified lay midwives as advisors.

2. The level of regulation should be certification, because consumers have a substantial interest in relying on the qualifications of the practitioner, while remaining free to choose their home birth attendants.

3. The education and training requirement for eligibility for certification of lay midwives should be based upon the CPM credential issued by NARM.

4. The designations CNM and CPM are deceptively similar. If regulated by the Office, the members of this profession should be designated "Certified Lay Midwives."

5. Regulation of this profession should include requirements for continuing education and maintenance of infant and adult CPR training.

Respectfully submitted this 1st day of November, 1999.

Thomas J. Lehner
Director, Office of Professional Regulation