



State of Utah
Department of Commerce

Division of Occupational and Professional Licensing

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MEMORANDUM

TO: HEALTH AND HUMAN SERVICES INTERIM COMMITTEE

FROM: MARK B. STEINAGEL, DIRECTOR DOPL

DATE: SEPTEMBER 14, 2010

RE: RESPONSE TO SUNSET REVIEW QUESTIONS FOR THE DIRECT-ENTRY
MIDWIFE ADMINISTRATIVE RULES ADVISORY COMMITTEE

Issue 1: The public purpose and interest for which the act was originally created.

Response: The 2005 Legislature established the regulation of direct-entry midwives and provided rule making authority to the Licensed Direct-Entry Midwife Board and the Division to "appropriately recommend and facilitate" standards of practice. Physicians and the Utah Medical Association were concerned with some of the standards of practice established in the first set of rules adopted by the Division. During the 2008 Legislative Session, S.B. 93 amended Title 58, Chapter 77 Direct-Entry Midwife Act and created the Direct-Entry Midwife Administrative Rules Advisory Committee to assist the Division with developing administrative rules to address the standards of practice for a licensed direct-entry midwife (LDEM) and to adopt rules regarding conditions that require mandatory consultation and mandatory transfer of care. The Committee was composed of two physicians selected by the Utah Medical Association, one certified nurse midwife recommended by the Utah Chapter of the American College of Nurse Midwives, and three LDEMs selected by the LDEM Board.

The first meeting of the DEM Administrative Rules Advisory Committee was held on July 9, 2008. A total of nine, two-hour meetings were held to develop language to implement the standards established in law and to modify the standards established in the previous rule. Proposed rules were filed August 2009, and a public hearing was held on September 17, 2009. The comment period ran from August 30, 2009 through September 30, 2009. A few parents attended the hearing or provided written comments opposed to the proposed rules indicating they were too restrictive and did not respect the mother's right to self-determination. The unanimous vote of the Committee members was to adopt the rule language as proposed with minor clarifications. The rule became effective October 2008.

Issue 2: Whether the purpose and interest is still relevant.

Response: The Division has not received any comments or concerns regarding the current LDEM Administrative Rule. The language that was eventually adopted was based upon a majority vote of the Committee members in favor of the changes. Most of the motions made, passed unanimously. Based on the input received by Committee members, it appears the professional community is accepting of the current Rule and the need for an Administrative Rules Advisory Committee no longer exists.

Issue 3: The extent to which the Act/Committee has operated in the public interest and areas in which the Act/Committee needs to improve in its ability to operate in the public interest.

Response: The DEM Administrative Rules Advisory Committee members were mindful of the public interest in the issue of home birthing and the right of the parents to choose where to deliver their child. They were also mindful of the public protection interests of the unborn baby and the need to provide the safest environment possible during the pregnancy and birthing experience. The Open and Public Meets Act was followed and public members were encouraged to express their opinions. Although there were a few complaints regarding the rules being too restrictive, Committee members expressed that they tried to carefully balance the interests of the parent with the interests of the unborn baby. Given there have been no further concerns expressed regarding the current rule, no improvements have been identified to either the rule language or the need to continue with the Rules Advisory Committee. At this point in time, no improvements in the Act/Committee are required.

Issue 4: The extent to which existing statutes interfere with or assist the legitimate functions of the Act/Committee, and any other circumstances including budgetary, resource and personnel matters that have a bearing on the capacity of the Act/Committee to serve the public interest.

Response: The Division and LDEM Board will still have their statutory mandate to administer the statute and rule related to the regulation of LDEMs. Should the need arise to amend the current standards, the Division and Board can address the issue and can request input from the public, other licensing boards, or even former members of the Administrative Rules Advisory Committee. The current Act and Rule are effective in the regulation of the profession and provide the regulatory agency with the authority it needs to protect the public interest. Issue 5: The extent to which the public has been encouraged to participate in the adoption of the rules established in connection with the Act/Committee.

Response: The membership of the advisory committee was specifically designated in statute to ensure the professionals participation in the rule-making process. The public was

also encouraged to participate. Agendas were posted in the Heber Wells Building and on the DOPL website. Copies of the minutes are also located on the website. Members of the public who supported home births were in attendance to all the committee meetings, and they were allowed and encouraged to express their opinions. The notice requirements of the Administrative Rulemaking Act and the Open and Public Meetings Act were explicitly followed allowing the public to participate in the discussions.

Issue 6: The extent to which the Act's provisions are duplicative of those offered by other statutes, or the extent to which the Advisory Committee's duties are duplicative of other committees or boards.

Response: The Division in collaboration with the LDEM Board is given the statutory responsibility to write rules to implement the law. Any future changes to the rule can be addressed by the Board and Division. Depending on the nature of the change, assistance from other professionals such as physicians and certified nurse midwives may need to be sought if changes to the practice standards are required.

Issue 7: The extent to which the objectives of the Act/Committee have been accomplished and their public benefit.

Response: The Direct-Entry Midwife Administrative Rules Advisory Committee has completed the objectives set forth in statute. Rules have been written and adopted that implement the statutory changes made in 2008. The rule is based on evidence presented to the Committee balanced with medical self-determination and public protection of an unborn child.

Issue 8: The adverse effect on the public of termination of the Act/Committee.

Response: Given the ongoing statutory responsibility of the Division and LDEM Board to regulate the practice of direct-entry midwifery, there should not be an adverse effect on the public should the DEM Administrative Rules Advisory Committee be terminated.

Issue 9: Any other matters relevant to the review.

Response: Recommend that the Direct-Entry Midwife Administrative Rules Advisory Committee sunset as scheduled on July 1, 2011. If legislators are concerned about continued involvement by the medical community moving forward, the statute could be modified to require the Division to collaborate with different licensing boards when considering rule changes.

