STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
DIVISION OF CORPORATIONS, BUSINESS
AND PROFESSIONAL LICENSE

BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES
619 E. Ship Creek Ave., Suite 309B
Anchorage, AK

August 22-23, 2013

By authority of AS 08.065.020 and in compliance with the provision of AS 44.62, Article 6, a scheduled meeting of the Board of Certified Direct-Entry Midwives was held August 22-23, 2013 at 619 E. Ship Creek Ave., Suite 309B, Anchorage, AK

Thursday August 22, 2013

Agenda Item 1 - Call to Order/Roll Call

Cheryl Corrick called the meeting to order 9:10 a.m. Present, constituting a quorum of the board were:

Cheryl Corrick, CDM, Chair, Fairbanks
Mary 'Jennie' Grimwood, Public Member, Secretary, Cordova
Sarah Taygan, CNM, Anchorage
Deborah Schneider, CDM, Wasilla
Peggy Downing, MD, Wasilla Arrived at 9:14 A.M

This meeting was public noticed in the Anchorage Daily News on July 16, 2013.

Present from the Division of Corporations, Business & Professional Licensing:

Don Habeger, Director
Sara Chambers, Operations Manager (via Telephone)
Jasmin Bautista, Investigator
Quinten Warren, Chief Investigator
Alvin Kennedy, Investigator
Connie Petz, Licensing Examiner

Public members in attendance on August 22, 2013 were: Dana Brown, Madison Nolan, Autumn Loken, Lena Kilic, Iris Caldentey, Susan Terwilliger, Judi Davidson, Darcy Lucey, Rebecca McKimmey, Onica Sprokkreeff and Stella Lyn.

Public members in attendance on August 23, 2013 were: Dana Brown, Stella Lyn, Laura Gore,Lena Kilic, Susie Terwilliger and Judi Davidson.

53 Agenda Item 2 - Consent Agenda
54
55 1: Final Minutes for February 22, 2013 Board Meeting
56 2: Final Minutes for June 24, 2013 Teleconference
57 3: Update for ALSO course
58 4: Regulation Project – Part A – enacted into law Effective June 29, 2013
59 5: FY13 - Annual Report
60
61 Cheryl Corrick asked to pull item number 3 regarding the ALSO course from the consent
62 agenda and move it to discussion under agenda item 21.
63
64 **ON A MOTION BY JENNIE GRIMWOOD, SECONDED BY DR. DOWNING**
65 **APPROVE CONSENT AGENDA ITEMS 1, 2, 4 & 5. ALL IN FAVOR, NO NAYS.**
66
67 Agenda Item 3 - Review/Approve Agenda
68
69 **ON A MOTION BY DEBORAH SCHNEIDER, SECONDED BY JENNIE GRIMWOOD**
70 **APPROVE AGENDA AS DRAFTED. ALL IN FAVOR, NO NAYS**
71
72 Agenda Item 4 - Ethics Reporting
73
74 There were no ethics violations to report by board members.
75
76 Agenda Item 5 - FY13 Budget Report
77
78 The Board called operations manager, Sara Chambers to discuss the budget. The
79 current budget reflects the 3rd quarter of fiscal year 2013 and the final budget for FY14 will
80 be completed by the end of September. Staff will send that budget report to the board
81 via e-mail.
82
83 Sara Chambers explained to the board that the legislature increased the divisions travel
84 funds by 200K and that money is distributed among all programs in the division.
85
86 Cheryl asked about the ability to increase licensing fees and asked that the Board
87 recommendation for increase apprentice fees to 50% of a CDM fee be considered.
88
89 A follow up letter will be sent to Ms. Chambers reinforcing the boards' authority to
90 recommend a fee increase according to 08.01.065 Establishment of fees.
91
92 Ms. Chambers also told the board that they could consider drafting a disciplinary
93 sanctions matrix to assist the investigators in case management. By adopting the matrix it
94 will help the Board to:
95 - set a standard of expectation for licensees
96 - meet requirements of Statutes and Regulations
97 - licensees will understand what will happen when they do not follow their laws
98 - protection for the Board when they are tasked to uphold the law
99
100 Ms. Chambers reminded the Board that they (board members) can be held liable when
101 they veer from what they are required to do by law. In addition, the more inconsistency,
102 the more work is required by staff. Overall, having a matrix will save costs to licensees.
103

104 The final fiscal year budget will be available in September. Staff was tasked to forward
105 the final FY13 budget to all board members via E-mail once available.
106
107
108
109 Agenda Item 6 - Investigative Report
110
111 Chief Investigator Quinten Warren, investigators Jasmin Bautista and Al Kennedy
112 attended the meeting.
113
114 Mr. Kennedy shared the investigative report with the board. At this time there is one
115 open compliant, five open investigations have been moved to department of law and
116 two investigations have been closed.
117
118 Case files that are moved to the Department of Law are moved out of the Boards
119 investigative cases, meaning future costs are not being incurred by the licensees. The
120 board will still be consulted as the final authority.
121
122 Mr. Warren explained to the Board how the disciplinary sanctions matrix which Ms.
123 Chambers spoke of can be a very good tool to give everyone insight into how the board
124 may want licensing violations managed.
125
126 Break off record at 9:56 a.m. and back on record at 10:25 a.m.
127
128 The board discussed how a disciplinary sanctions matrix could work. Ms. Taygan asked
129 the board to consider what the outcomes would be if the board did not enforce the
130 disciplinary sanctions. Staff explained when people do not follow the regulations then
131 they have broken the law. When the board doesn't address the regulation break then
132 the board has already broken the law as the board. This matrix is a tool which gives the
133 board ability and stability to say this is what happens when you don't follow the law.
134 Two areas staff sees where the law is broken is not submitting to peer review on or before
135 May 1st and not reporting an addition or change of preceptor within 30 days of
136 occurrence. Creating the matrix will outline the consequence of not following the law.
137 This is similar to the fines established for continuing education audits.
138
139 A subcommittee of the board (Deborah Schneider and Jennie Grimwood) was formed
140 to work on developing a proposed disciplinary sanctions matrix to present at the next
141 board meeting.
142
143 **ON A MOTION MADE BY DR. DOWNING AND SECONDED BY TAYGAN. IT WAS RESOLVED**
144 **TO FORM A SUBCOMMITTEE, DEBORAH SCHNEIDER AND JENNIE GRIMWOOD, TO DEVELOP**
145 **A DISCIPLINARY SANCTIONS MATRIX. ALL IN FAVOR, NO NAYS.**
146
147 Agenda Item 7 - Peer Review
148
149 Thirty One Midwives renewed their licenses this last renewal period. On March 8, 2013 they were
150 all sent letters to submit a completed Peer Review Report Form to the Peer Review Committee
151 by May 1, 2013 according to: 12 AAC 14.900(c)(1).
152
153 Peer Review Committee developed a set of outliers to help them have a system for birth
154 summary reviews and determine which midwives they would request charts from for additional
155 review. It had been their practice to complete their reviews and return the original Peer Review

Report Form along with the completed Peer Review Summary Sheet no later than June 15, 2013 to the Division. This is to allow staff time to compile documentation for the fall board meeting.

Peer review found it difficult to meet the June 15th deadline and they sent a short recap in June to staff of the division. Then peer review summary reports were received in the Juneau office on August 19, 2013. Peer Review Chair, Vanessa Jackson submitted a letter on August 20, 2013 asking the board for additional time for the committee to complete Peer Review and submit to the Board, Ms. Corrick read the letter for the record.

> Dear Board Members,
>
> Peer Review reviewed 591 summaries that were submitted by Alaska CDMs this year. We developed a list of outliers as criteria to request charts from the MAA summaries submitted by CDMs. As a result, 27 charts were requested from 14 CDMs. This is a time consuming process that might not have been taken into account when time lines for submission of documentation of the peer review process was developed. As a volunteer member of Peer Review and Peer Review Chair, I am writing to request that the deadline for the submission of documentation of the peer review process be postmarked no later than August 15th. This will allow adequate time for the review of charts and response from peer review members.
>
> Sincerely, Vanessa Jackson, CDM, CPM

The board discussed that allowing additional time would be ok. Therefore, all future peer review reporting should be submitted to the division by August 15th with complete summaries.

ON A MOTION MADE BY DR. DOWNING AND SECONDED BY SCHNEIDER. IT WAS APPROVED TO GIVE PEER REVIEW UNTIL AUGUST 15TH TO SUBMIT THEIR REPORT TO BOARD STAFF. ALL IN FAVOR, NO NAYS.

This year, the summary reports submitted by Peer Review were not fully completed. Staff highlighted all areas that were incomplete on each summary form to assist the Board in review of the report. There were also some discrepancies in reported number of births and the number of summaries received. Staff asked the Board to provide direction on how to proceed.

It was decided to draft a letter to Peer Review to request they go back over and complete all areas on the report forms, contact midwives if needed to clear up birth summary discrepancies. Also, ask them to consider revising some outliers and explain to the board how they (peer review) determines if a midwife is demonstrating competencies in midwifery when they are not practicing in Alaska. Ask peer review to request birth summaries from a licensed midwife who is not currently practicing in AK but who has primary births in another state. Staff drafted a letter during lunch and the board approved it to be sent to Peer Review.

TASK: Forward letter from board to Peer Review along with copies of all incomplete peer documentation requesting completion by peer review.

Agenda Item 8 - Audit Review from Renewal

Four midwives were selected for random audit and the board reviewed the continuing competency and continuing education documentation submitted. At the last board meeting,

206 two of these licensees were reviewed but they had not been signed off by anyone at the board
207 meeting.
208
209 Staff asked the board to consider what constitutes a complete continuing education certificate
210 according to the regulations as it is not clear when reviewing the certificates from MAA.
211 **12 AAC 02.960. AUDIT OF COMPLIANCE WITH CONTINUING COMPETENCY REQUIREMENTS** (e) A
212 licensee selected for audit under (c) or (d) of this section will be notified by the department.
213 Within 30 days of notification, the licensee shall submit to the department, documentation to
214 verify completion of the continuing competency activities claimed on the statement submitted
215 with the application for license renewal. The documentation must include a valid copy of a
216 certificate or similar verification of satisfactory completion of the continuing competency
217 activities claimed that provides
218 (1) the name of the licensee;
219 (2) the amount of continuing competency credit awarded;
220 (3) a description of the continuing competency activity;
221 (4) the dates of actual participation or successful completion; and
222 (5) the name, mailing address and signature of the instructor, sponsor, or other verifier.
223
224 Deborah Schneider was tasked to draft a letter to MAA and forward to staff by October 1st.
225 Staff will put on state letterhead and send to MAA. The letter to MAA will state what makes a
226 complete continuing education certificate. She will inform MAA the need to update their
227 certificates for Group B Strep and IV Therapy to include the actual date the course is completed
228 and date of expiration.
229
230 The Board approved continuing education audits for licensees' number 10, 32 and 51.
231
232 **ON A MOTION MADE BY TAYGAN, SECONDED BY SCHNEIDER to approve continuing**
233 **education audits for licensees numbered 10, 32, 51. All in favor, no nays.**
234
235 Task: staff will send a letter to one midwife requesting additional information for CE's.
236
237 Lunch Recess – off record at 11:57 a.m.
238
239 Agenda Item 9 - Call to Order/Roll Call
240
241 Cheryl Corrick called the meeting to order at 1:16 p.m. All board members were
242 present.
243
244 The board continued with Peer Review discussion as they acknowledged they do not
245 have any way to know how someone is maintaining competency when they do not
246 have any peer review.
247
248 The board held discussion about how they could know when a certified direct-entry
249 midwife is maintaining competency if they are not currently practicing in Alaska but
250 actively practicing in another state. Do they need to submit primary birth summaries.
251
252 It was noted the regulation requires fulfillment of continuing competency and peer
253 review for renewal of a license and the regulation does not state in or out of the state of
254 Alaska for primary responsibility.
255
256 **12 AAC 14.400. CERTIFICATION RENEWAL REQUIREMENTS.** (5) demonstrate continued
257 practical professional competency by verifying (A) fulfillment of the continuing

258 competency requirements in 12 AAC 14.420 - 12 AAC 14.450; and (B) compliance with
259 the peer review requirements in 12 AAC 14.900.
260
261 **12 AAC 14.900. PEER REVIEW** (c) A certified direct-entry **midwife shall submit** to the board
262 or, if an organization has been designated under (a) of this section, to that organization
263 the following information: (1) **a copy of the summary of birth for each labor and delivery**
264 **for which the certified direct-entry midwife had primary responsibility** during the 12-
265 month period that began on April 1 of the preceding year; the copy must be submitted
266 on or before May 1 of each year;.
267
268 Susan Terwilliger spoke up saying she holds a license to practice in Texas. She feels the
269 board should defer to the other state by accepting and assuming they are complying in
270 the other state and exhibiting competency in that state when they hold a license.
271
272 Ms. Schneider asked Ms. Terwilliger what she was required to do to maintain a Texas
273 license. She said she only needed to take the TX ethics course and there is no peer
274 review in TX, nor is she asked about her births in the state of Alaska.
275
276 Dr. Downing told Ms. Terwilliger that the board is very aware that other states do not have
277 the same standards as Alaska. Incoming applicants must meet AK requirements to be
278 issued a license in our state. Dr. Downing said that just showing they hold a license in
279 another state is not showing a person is practicing competently. Perhaps the board
280 needs to find out if the licensee practicing in another state has met peer review in the
281 other state.
282
283 The board decided that it is Peer Review who should be reviewing the competency of
284 every licensee. The Board acknowledged it is in the regulations that all birth summaries
285 are to be reviewed by Peer Review.
286
287 Staff to add to the letter to peer review, "in addition we would like to have the Peer Review
288 committee consider and explain to the board how they can assure someone who does not
289 report assists or primary births in the state of Alaska is demonstrating competencies in midwifery
290 when they are not practicing in Alaska. The board asks because of the licensee who did not
291 submit summaries because she did not have births in Alaska".
292
293 The board determined that they will now ask all licensees to state how many Assists they
294 were involved with on each peer review report.
295
296 Task: Staff to send letter approved by the board to Peer Review along with copies of all
297 incomplete peer documentation requesting completion by peer review. In addition,
298 staff will update the peer review report form to include requesting reporting of number of
299 birth assists.
300
301 Agenda Item 10 - Public Comment
302
303 Dana Brown cares about her profession and public safety. She is concerned with the
304 costs being incurred for investigations. She thinks regulation projects are also a big
305 expense and when the department of law shot down the proposed regulations this was
306 a big waste of money. She said the board needs to find a way to avoid spending money
307 and time by finding out how to make changes that meet statute before trying to make
308 changes that will not be allowed.
309

310 When she was on the board they created a list of approved continuing education
311 providers and she said that the board may want to look at the list of approved providers.
312 The board acknowledged 12 AAC 14.430 identifies those approved. She did not think
313 the list on page 37 (12 AAC 02.960) made sense and thought the board should try to
314 change it. Staff reminded the board this law is from centralized regulations and applies
315 to all professional licensing continuing education certificates.
316
317 Ms. Brown also wanted the board to understand that when other states allow voluntary
318 licensure for midwives they still have regulations. Voluntary only means the midwife
319 voluntarily chooses to hold license so they can bill to insurance companies and to
320 Medicaid.
321
322 Susan Terwilliger said she backs up what Ms. Brown said about continuing education and
323 she thinks it is a slippery slope to require the certificate define what was part of any
324 course. The board should just accept that if it's an approving agency then they should
325 not have to define the exact hours on a subject such as 'pharmacology'. Just accept it,
326 not requiring hours stated on the certificate. Staff explained the issue was when a title
327 just says "Mana Conference" it does not identify the content. Ms. Corrick said it is her
328 understanding it is the board who approves the certificates as they are the experts in
329 midwifery.
330
331 Stella Lyn asked the board as they go forward with the Medicaid audit to remember their
332 midwifery roots and the NARM job analysis and that they continue to see babies beyond
333 the second PKU test and to be able to bill for this service. Midwives cannot separate
334 follow up with the mother and the baby by not asking about the baby. She was
335 concerned that the post partum care should be mother and baby all the way to 6
336 weeks.
337
338 Ms. Corrick said 6 to 8 weeks is what they want as the standard.
339
340 Agenda Item 11 - Nitrous Oxide
341
342 Nitrous Oxide was brought up at the February 2013 board meeting. It was decided to look at it
343 during the August board meeting. Information for the Board packet was submitted by Judi
344 Davidson, Certified Direct-Entry Midwife. She is not promoting nitrous oxide but bringing
345 information to the board.
346
347 Mary "Jennie" Grimwood, Public Member also provided research and she shared their thoughts
348 saying it would be a good option during delivery. She said she researched the 'abuse of nitrous
349 oxide' and said it's something that is on the rise. In that way, it is very dangerous, it can cause
350 immediate death, or other serious injury. The Board determined they were concerned about the
351 appropriate use not the abuse of it. The board said they would want to make sure it was stated
352 they would only want the 50/50 blend not the pure nitrous oxide.
353
354 Susie Terwilliger was concerned that if the board moved towards allowing nitrous oxide and she
355 was not going to use it that the board would require mandatory education for its use.
356
357 The Board will continue to pursue discussion on Nitrous Oxide at the next board meeting. They
358 agreed there would need to be both training and protocols for use of Nitrous Oxide.
359
360 TASK: Staff to find out if the board has statutory authority to proceed with adding Nitrous Oxide
361 to their regulations.

362
363
364
365
366 Agenda Item 12 - Review Applications for Licensure
367
368 1: Madison Nolan application by Exam
369
370 **ON A MOTION MADE BY DR DOWNING, SECONDED BY SCHNEIDER TO APPROVE Madison**
371 **Nolan FOR CERTIFIED DIRECT-ENTRY MIDWIFE LICENSE PENDING PASSING NARM EXAM. ALL**
372 **IN FAVOR, NO NAYS.**
373
374 2: Heather Forbes application by Credentials
375
376 **ON A MOTION MADE BY TAYGAN, SECONDED BY SCHNEIDER APPROVE HEATHER FORBES**
377 **FOR CERTIFIED DIRECT-ENTRY MIDWIFE LICENSE WITH SUBMISSION OF THE FIVE CONTINUITY**
378 **OF CARE CLIENTS, INCLUDES SIX PRENATAL VISITS, THE IMMEDIATE NEW BORN EXAM AND**
379 **IV THERAPY AND GROUP B STREP DOCUMENTATION. ALL IN FAVOR, NO NAYS.**
380
381 3: Rebecca McKimmey License # 57 – Reinstatement application - lapsed December 31, 2010
382
383 **ON A MOTION MADE BY TAYGAN, SECONDED BY SCHNEIDER TO APPROVE FOR**
384 **REINSTATEMENT OF CERTIFIED DIRECT-ENTRY MIDWIFE LICENSE. ALL IN FAVOR, NO NAYS.**
385
386 Agenda Item 13 - Discussion for Preceptor Regulation
387
388 The Board decided they will not make any changes in regulations for preceptors at this time.
389
390 Cheryl Corrick recessed the meeting at 4:15 p.m., reconvene August 23, 2013 at 9:00 a.m.
391
392 Friday - August 23, 2013
393
394 Agenda Item 14 - Call to Order/Roll Call
395
396 Cheryl Corrick called meeting to order 9:05 a.m. Roll call was taken. Jennie Grimwood, Sarah
397 Taygan, Dr. Downing, Deborah Schneider and Cheryl Corrick were in attendance.
398
399 Agenda Item 15 - Xerox Audit
400
401 At the June 24, 2013 teleconference, Cheryl Corrick and Deborah Schneider were
402 appointed to work on drafting a letter to submit to Health and Social Services to explain
403 the position of the Board on interpretation of Certified Direct-Entry Midwives law. Cheryl
404 read the entire letter and the position statement of the board to have on the record and
405 in the minutes.
406
407 TO:
408
409 William J. Streur, Commissioner
410 Margaret Brodie, Director
411 Division of Health Care Services
412 Health Care Services Officials
413 4501 Business Park Blvd., Bldg. L

414 Anchorage, AK 99503-7167
415
416 Re: Scope of Practice of Certified Direct-Entry Midwives under Alaska's Midwifery Practice Law
417 and Regulations of the Alaska Certified Direct-Entry Midwifery Board
418
419 Dear Commissioner Streur and Ms. Brodie:
420
421 I write to you in my official capacity as Chairperson of the Alaska Certified Direct-Entry Midwifery
422 Board to provide the enclosed official Position of the Alaska Certified Direct-Entry Midwifery
423 Board ("Board") with respect to the legally-authorized scope of practice of Certified Direct-Entry
424 Midwives (CDMs) under the laws and regulatory program of the State of Alaska.
425
426 This Position is being provided because it has come to the attention of the Board that your
427 agency has denied payment for certain services, routinely provided by CDMs in Alaska, under
428 the mistaken impression that these services are not within the state-authorized scope of practice
429 for CDMs. Specifically, our Board has been provided with a Medicaid Compliance Notice
430 (Notice) dated April 22, 2013, which states that the Alaska Medicaid Surveillance and Utilization
431 Review Team (Team) conducted a review of Certified Direct-Entry Midwife (CDM) billing
432 practices in the context of adherence to provider participation requirements. The Board was
433 reliably informed that the issues selected for review by this Team and conducted by your
434 contractor, Xerox State Healthcare, LLC (Xerox), were based upon the Team's limited
435 understanding of CDM scope of practice, giving rise to certain enrollment and billing concerns
436 on the part of Xerox/the Team..
437
438 We have also been informed that at least nine (9) CDM's have been audited in connection with
439 this process and subsequently issued a demand that they refund monies paid for certain health
440 care services that they provided. Some or all of these CDM's were also ordered to perform a
441 self-review with respect to prior occasions when the indicated services were provided for
442 Medicaid enrollees, and to refund any payments identified by Xerox as being paid in
443 compensation for one of these identified services. By order of your agency, certain of these
444 demands were voided, but the underlying issues remain unresolved.
445 The other documents provided to the Board in relation to this matter are correspondence from
446 Xerox to the CDMs identified as Findings of Desk Level Reviews (Findings Letter). According to
447 these Findings Letters and the Medicaid Compliance Notice, Xerox and/or the Review Team
448 raised questions about the following:
449
450 1. Services provided to enrollees in which an apprentice or student midwife performed
451 ***any*** services for the client. Xerox claims that the CDM who is acting as the apprentice/student's
452 supervising preceptor is not permitted to bill for services performed by an apprentice or student
453 direct-entry midwife.
454
455 2. Services provided for an infant who is older than one week of age. The Findings Letter
456 states that "Alaska Medicaid will not reimburse for services which a direct-entry midwife is
457 prohibited under AS 08.65 from performing, including but not limited to the following diagnoses
458 or conditions: care to an infant beyond one week of age."
459
460 3. Services provided for women who are or would be 35 years of age or older at the
461 expected date of delivery. The Findings Letter states that Alaska Medicaid will not reimburse for
462 services which a direct-entry midwife is prohibited under AS 08.65 from performing, including
463 services for a recipient with any condition determined by the board to be of high-risk. The
464 Medicaid Compliance notice does not specifically list this alleged exclusion but, rather, states

"any other condition determined by the board to be of high risk to the woman and/or newborn."

It appears from these documents that the rejection of payment for these services is based upon Xerox's/the Team's interpretation of the parameters of the legal scope of practice for CDMs under Alaska law and regulations. This matter has been brought to the Board's attention and our position regarding the scope of practice and legally-approved services was requested.

The Board has been advised by its legal counsel, Assistant Attorney General Harriett Dinegar, Esq., that it has the authority to provide a position with respect to the correct interpretation and construction of the statutes and regulations that relate to the scope of practice for CDMs in the State of Alaska. This letter is intended to provide your office and the general public with the enclosed Position that has been published by the Board with respect to each of the three issues set forth above.

The Board will be glad to consult with officials of your agency or representatives of Xerox if you or they have any questions or wish to discuss these matters any further.

Thank you for your attention to this matter.

Sincerely yours, Cheryl Corrick, CDM, CPM

POSITION OF ALASKA BOARD OF
CERTIFIED DIRECT-ENTRY MIDWIVES

This Position of the Alaska Board of Certified Direct-Entry Midwives ("Board") is provided to assist officials and staff of the Alaska Department of Health and Social Services ("Department") in making decisions regarding payment for certain Certified Direct-Entry Midwife ("CDM") services. The Board has jurisdiction to do so pursuant to its statutorily-delegated authority with respect to the legally-authorized scope of practice and legally-approved CDM services under the Direct-Entry Midwives Statute (AS 08.65) ("CDM Statute"), and the Regulations promulgated by the Board (12 AAC 14.100 through 12 AAC 14.990) pursuant to that statute.

Authority and Expertise of Board of Certified Direct-Entry Midwives

When the Alaska Legislature established the Alaska Board of Certified Direct-Entry Midwives by statute [AS 08.65.010] (Board), it also explicitly delegated to this Board the authority to "enforce the provisions of this chapter and adopt regulations necessary to make the provisions of this chapter effective" [AS 08.65.030(6)]. The statute also defines the scope of practice of Certified Direct Entry Midwifery – the "practice of midwifery" under this State's laws – as follows:

> 08.65.190 Definitions (3) "practice of midwifery" means providing necessary supervision, health care, and education to women during pregnancy, labor, and the postpartum period, conducting deliveries on the midwife's own responsibility, and providing immediate postpartum care of the newborn; "practice of midwifery" includes preventative measures, the identification of physical, social, and emotional needs of the newborn and the woman, and arranging for consultation, referral, and continued involvement when the care required extends beyond the abilities of the midwife, and

513 the execution of emergency measures in the absence of medical assistance, ***as***
514 ***specified in regulations adopted by the board*** (emphasis added).
515
516 As the regulatory agency to which the Alaska Legislature has delegated authority over the
517 practice of Direct-Entry Midwifery, as well as the responsibility to make that statute effective, the
518 Board's jurisdiction and expertise are entitled to a high level of deference with respect to its
519 interpretation of the statute it enforces and effectuates and the rules it has promulgated. In
520 accordance with recent state and federal court rulings, an administrative agency's
521 determination of the scope of its own jurisdiction is likewise entitled to deference.
522
523 Under the terms of the CDM Statute, as cited above, the Board has explicit authority to enforce
524 the provisions of that Statute, including the scope of practice for CDMs; to develop and
525 promulgate regulations that will make the provisions of the statute effective; and to specify the
526 elements of the "practice of midwifery" scope of practice through regulations [AS 08.65.030(7)],
527 among other powers and responsibilities. The Board has exercised that authority by developing
528 and promulgating regulations and by enforcing the provisions of statute, specifically including
529 defining, regulating, and enforcing CDM scope of practice through creating and carrying out
530 regulations, through disciplinary proceedings, and by closely regulating midwifery education,
531 examinations, and eligibility for certification (AS 08.65.030; 12 AAC Chapter 14]. The Board's
532 authority includes the power to discipline any CDM who has been found to have provided
533 services beyond the Board-approved scope of practice [AS 08.65.030(4); 12 AAC Chapter 14,
534 Articles 5 and 6}.
535
536 Thus, as an initial matter, the Board wishes to point out, with respect to all three issues discussed
537 in this Position, that the Board has comprehensive authority to discipline any CDM who might
538 have provided services that would exceed or fall outside of the approved scope of practice for
539 CDMs under the CDM Statute or regulations, or who might have engaged in fraudulent billing
540 practices. No such disciplinary proceedings are on record with respect to any of the issues
541 raised in the Compliance Review or Findings Letter, however, for any CDM at any time, and no
542 such proceedings are presently contemplated against any of the CDMs who have been subject
543 to the present audit. Specifically, the Board does not consider it a violation of the statute or
544 regulation for a CDM who is acting as a supervising preceptor for an apprentice/student
545 midwife to bill for services personally supervised by that CDM as the preceptor in accordance
546 with the statute and relevant rules. Neither would the Board consider it a violation for a CDM to
547 provide services for a newborn who is more than one week old, or to provide midwifery care
548 and services – prenatal, intrapartum, or postpartum – for women over the age of 35. Not only
549 does the board not consider any of these activities a violation of the scope of CDM practice
550 under the statute or regulations, but the Board would like to clarify that it is well within the scope
551 of practice for CDMs to provide services to both the mothers and newborns through the 6 week
552 postpartum period. Each of these issues will be considered separately.
553
554 **A. Supervision of services provided by apprentices.**
555
556 The State of Alaska comprehensively regulates the education of Certified Direct-Entry midwives,
557 including both the academic component and the clinical experience component of that

558 education. Apprenticeship is one of the required routes to becoming a CDM in Alaska. Section
559 08.65.030 confers authority on the Board to:
560
561 • "issue permits to apprentice direct-entry midwives"
562 • "approve curricula and adopt standards for basic education, training,
563 and apprentice programs;"
564 • "provide for surveys of the basic direct-entry midwife education programs
565 in the state at the times it considers necessary;"
566 • "approve education, training, and apprentice programs that meet the
567 requirements of this chapter [that is, the statute] and of the board, and deny,
568 revoke, or suspend approval of such programs for failure to meet the
569 requirements."
570
571 Section 08.65.060 orders the Board to conduct an examination for certifying CDMs at least once
572 a year and specifically directs and empowers it to utilize and approve a national certifying
573 examination of a national certifying body. There is only one such examination and organization
574 at the time the statute was enacted and at present time still - the North American Registry of
575 Midwives, which administers the examination for Certified Professional Midwives, which is the
576 examination we, as the Board, have adopted for Alaska midwives.
577
578 Section 08.65.090 authorizes the Board to "issue a permit to practice as an apprentice direct-
579 entry midwife to a person who satisfies the requirements of AS 08.65.050(1) - (3) and who has
580 been accepted into a ***program of education, training, and apprenticeship approved by the***
581 ***board*** under AS 08.65.030." This section of the Statute also requires that a "permit application
582 under this section must include ***information the board may require***. The permit is valid for a term
583 of two years and ***may be renewed in accordance with regulations adopted by the board.***"
584 (emphasis added).
585
586 Subsection (b) of AS 08.65.090 permits an apprentice direct-entry midwife to ***"perform all the***
587 ***activities of a certified direct-entry midwife if supervised in a manner prescribed by the board***
588 by (1) a certified- direct-entry midwife who has been licensed and practicing in this state for at
589 least two years; [or] (2) a certified direct-entry midwife who has been licensed for at least two
590 years in a state with licensing requirements at least equivalent in scope, quality, and difficulty to
591 those of this state at the time of licensing, who is certified in this state, and who has practiced
592 midwifery for the last two years."
593
594 Additionally, subsection (5) of section 08.65.110, Grounds for Discipline, would require the Board
595 to discipline a licensee who had "intentionally engaged in or permitted performance of client
596 care by a person under the CDM's supervision that does not conform to standards."
597 Additionally, under section 08.65.170, it is an explicitly prohibited practice for "a person who is
598 not certified under this chapter as a certified direct-entry midwife [to] practice midwifery for
599 compensation." Therefore, if the apprentices were actually providing midwifery services – and,
600 thus, practicing midwifery – and the preceptor were being compensated for such services, it
601 would violate this provision, which would then have the unintended effect of making this section

602 of the statute internally inconsistent with the extensive statutory provisions through the other
603 sections of AS 08.65 that set up, and provide for the regulation of, an apprenticeship-based
604 educational program designed to train CDMs in Alaska.
605
606 Clearly, education of apprentice midwives in Alaska is not some casual matter taken on by a
607 CDM to lighten her practice workload. Rather, this program is a comprehensively-regulated
608 component of CDM practice in Alaska, and one that was clearly of great significance to the
609 legislature. As directed by the Legislature [AS 08.65.030(3), (7), (8), (9), and (10)]; 08.65.090], the
610 Board has been diligent in developing regulations governing apprenticeship education, clinical
611 experience, and preceptorship (12 AAC Chapter 14, Article 2), as those subsections of the
612 statute require.
613
614 **Comprehensive Regulation of Apprenticeships and the Apprentice-Preceptor Relationship.**
615 Portions of Article 1 and all of Article 2 of the Board's regulations fulfill the Legislature's directives
616 regarding apprenticeships and education of student midwives, and are based upon the
617 delegated authority conveyed by the Legislature. Rule 12 AAC 14.110(b)(7) requires applicants
618 for CDM certification to have successfully completed the course of study requirements set forth
619 in section 12 AAC 14.210 of the rules. Section 12 AAC 14.130(c)(5) requires the Board to verify
620 the acceptance of applicants for apprenticeship into "an apprenticeship program the Board
621 has approved." Subsection (d) of that section requires the applicant to provide the Board with
622 "written documentation of a relationship with an apprenticeship program," while subsection (g)
623 defines an "apprenticeship program preceptor" as "an individual who meets the supervisory
624 requirements of AS 08.65.090(b). AS 08.65.090 reads as follows:
625
626 (a) The board shall issue a permit to practice as an apprentice direct-entry midwife to a
627 person who satisfies the requirements of AS 08.65.050(1) - (3) and who has been
628 accepted into a program of education, training, and apprenticeship approved by the
629 board under AS 08.65.030. A permit application under this section must include
630 information the board may require. The permit is valid for a term of two years and may
631 be renewed in accordance with regulations adopted by the board.
632 (b) An apprentice direct-entry midwife may perform all the activities of a certified direct-
633 entry midwife if supervised in a manner prescribed by the board by
634 (1) a certified-direct-entry midwife who has been licensed and practicing
635 in this state for at least two years;
636 (2) a certified direct-entry midwife who has been licensed for at least two
637 years in a state with licensing requirements at least equivalent in scope, quality,
638 and difficulty to those of this state at the time of licensing, who is certified in this
639 state, and who has practiced midwifery for the last two years.
640 (3) a physician licensed in this state with an obstetrical practice at the
641 time of undertaking the apprenticeship; or
642 (4) a certified nurse midwife licensed by the Board of Nursing in this state
643 with an obstetrical practice at the time of undertaking the apprenticeship.
644
645 Article 2 of the CDM Board regulations, as noted above, provides comprehensive and detailed
646 standards and other requirements which apprentices, preceptors, and apprenticeship programs
647 are required to meet. Rule 12 AAC 14.200 deals with the academic components of

648 apprentice/student midwife education, while Rule 12 AAC 14.210 specifies the requirements for
649 the apprentice's supervised clinical experience; subsection (a) of this section specifies: "the
650 applicant must have completed all clinical experience requirements of this section under the
651 supervision of a preceptor."
652
653 Rule 12 AAC 14.210(b) sets forth the specific minimum numbers of clinical experiences that must
654 be documented by all apprentices, including 100 prenatal visits, 10 labor and delivery
655 observations, 20 assisted labor managements, primary responsibility for 30 labors/deliveries, 30
656 newborn examinations, and 30 postpartum visits with the mother. Furthermore, all these
657 experiences must be documented on a form provided by the Department of Commerce,
658 Community, and Economic Development, and carry the signature of the supervising preceptor
659 verifying that these experiences were all personally supervised by the preceptor. The Form in
660 question, according to subsection (f) of this rule, "Practical Skills List for Alaska CDM"[1] was
661 adopted by the Board and Department from the list created by the North American Registry of
662 Midwives (NARM) in 2002, and has been explicitly adopted into the CPM regulations by
663 reference. Rule 12 AAC 14.220 sets forth the requirements for an apprenticeship program to
664 qualify for approval by the Board.
665
666 As the statute and rules make clear, the mandated clinical experience requirements for
667 apprentices regulated under these rules must all be directly supervised by a CDM who has been
668 approved as a preceptor. Within this comprehensive regulatory program, the Board views the
669 supervising preceptor as the provider of midwifery services, not the apprentice or student. The
670 terms "preceptor" and "supervision" are defined as follows in rule 12 AAC 14.990 (4) and (5):
671
672 (4) "Preceptor" means a person qualified under AS 08.65.090(b) or 12 AAC 14.210(a) who
673 supervises a person training to be a direct-entry midwife or supervises a lapsed certificate
674 holder in the process of reinstatement under 12 AAC 14.470(b)(6)(B);
675 (5) "supervision" means the direct observation and evaluation by the preceptor of the
676 clinical experiences and technical skills of the apprentice direct-entry midwife or other
677 supervised person while present with the supervised person in the same room"
678
679 The Board notes that the Medicaid program itself already recognizes and allows for the fact that
680 a CDM may not always provide services for eligible recipients directly or personally. The Provider
681 Billing Manual for Direct-Entry Midwives, dated May 2, 2013, contains the following provision and
682 explanation:
683
684 "Direct-Entry Midwife Services: Alaska Medical Assistance reimburses enrolled providers
685 for medically necessary services for eligible recipients *when delivered, ordered or*
686 *prescribed by a provider within the scope of the provider's license or certification.*
687 *Services rendered based on a prescription, order or referral is reimbursable only if the*
688 *prescribing, ordering or referring provider is enrolled* as an Alaska Medical Assistance

[1] A note to this rule offers the information that copies of the Form may be obtained from the Alaska Department of Commerce, Community, and Economic Development, Division of Corporations, Business & Professional Licensing, Board of CDMs..

689 provider (emphasis added).[2]
690
691 This provision runs directly counter to Xerox Health's claim that CDMs cannot be reimbursed for
692 services provided with the involvement of apprentices. The essence of the preceptor/
693 apprentice relationship is that the preceptor midwife orders the student/apprentice to either
694 observe or provide some aspect of the care and services for the client. Apprentices don't simply
695 take it upon themselves to decide to provide services for the preceptor's client, but are
696 instructed by the preceptor regarding what aspects of care the apprentice might provide and
697 when that care might be provided. The client - the Medicaid enrollee - remains the client of the
698 preceptor at all times and does not become the client of the apprentice. Furthermore, the
699 apprentice may provide care only to the extent instructed by the supervising preceptor and
700 only under direct in-person supervision of the preceptor. This is analogous to CMS rules regarding
701 payment for services provided by medical students, interns, or residents under the direct in-
702 person supervision of a physician. It is also analogous to Medicaid rules governing payment to
703 practitioners for services provided in part by other providers that are "incident to" the services of
704 the practitioner.[3]
705
706 The Position is being provided because it is important, as a matter of public policy, that the two
707 agencies involved in this matter – the Department of Health and Social Services and the
708 Department of Commerce, Community, and Economic Development– find common ground
709 and a common understanding on these issues. Communications from Xerox Health and
710 Medicaid officials appear to be premised upon the belief that the agency is being billed for the
711 services of an apprentice/student midwife. This is not the case, however, because the services
712 being provided and billed for are the services of the Certified Direct-entry Midwife who is in the
713 room directly supervising at all times and who never relinquishes control over the midwife-client
714 relationship to the apprentice. As with "incident to" billing by physicians and by other NPPs, the
715 CDM performs at least part of the care for the client on every occasion. In the great majority of
716 cases, the care is done by the CDM and she directs the apprentice to do some of the care
717 under her supervision.
718
719 This is a necessary element of the overall statutory plan to educate certified direct-entry
720 midwives right here within the State of Alaska, as discussed above with respect to the statutory
721 and regulatory background of this program. In this respect, apprentices and apprenticeship

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[2] Alaska Medical Assistance Provider Billing Manuals, Section I: Direct-Entry Midwife Services, Policies and Procedures (Xerox State Healthcare, LLC) (May 2, 2013), p. 1-6.

[3] Please see the CMS Fact Sheet: Guidelines for Teaching Physicians, Interns, and Residents (http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/downloads/gdelinesteachgresfctsht.pdf); and see also the Medicare Benefits Manual, Chapter 15, Section 60.1, which defines " incident to services "as those furnished as an integral, although incidental, part of the physician's [or non-physician provider's] personal professional services in the course of diagnosis or treatment of an injury or illness." To qualify for "incident to" billing, the services must be medically necessary and appropriate to the clinical setting, and directly supervised by the physician or NPP."

722 programs are an essential element of regulated CDM practice in Alaska. At the time that CDMs
723 were added to the Alaska State Medicaid Plan, the comprehensive apprenticeship program for
724 midwives had already been in place for several years. If the legislature had wanted to shut it
725 down so that CDMs could not bill Medicaid for services if apprentices were involved, it could
726 easily have repealed or revised the apprenticeship provisions of AS 08.65, but it has not done so.
727 Likewise, HSS should be presumed to have been aware of the scope of practice of CDMs and
728 the statutory regime under which they practice when, in the State Medicaid Plan, it defined
729 CDM services as "care that a Direct-Entry Midwife is authorized to provide under the scope of
730 practice of her state license."
731
732 In the short time since then, Medicaid-eligible pregnant women now make up at least fifty
733 percent (50%) of CDM clients in our state. Alaska CDMs provide maternity services in many
734 areas where there are few if any other maternity care providers. If CDMs are not permitted to bill
735 Medicaid for services ordered and supervised by CDMs but observed or participated in by
736 apprentices, the statutory plan for growing additional midwives in-state will break down, with the
737 probable results that CDMs would no longer be able to serve Medicaid clients and that fewer
738 apprentices would be able to qualify as CDMs in Alaska. Each of these results would be
739 contrary to the obvious legislative intent underlying the Direct-Entry Midwifery law, and also
740 contrary to Alaska public policy.
741
742 **B. Care and Services for Newborns**
743
744 As discussed above, the Alaska Medicaid State Plan defines Direct-Entry Midwife services as
745 "care that a Direct-Entry Midwife is authorized to provide under the scope of practice of her
746 state license." This language is similar to the language of the federal Medicaid laws and rules
747 that were brought to the Board's attention by an expert witness that testified at a Board
748 emergency meeting on June 24, 2013. The federal law, section 1905(a)(6) of the Social Security
749 Act [42 U.S.C. § 1396d (a)(6) includes in the definition of "medical assistance" provided to
750 Medicaid-eligible enrollees, "care recognized under State law furnished by a licensed
751 practitioner within the scope of their practice as defined by State law." This language is echoed
752 by the CMS rule that implements the statute, 42 CFR § 440.60 (a) ("Medical care or any other
753 type of remedial care provided by licensed practitioners" means any medical or remedial care
754 or services, other than physicians' services, provided by licensed practitioners within the scope
755 of practice as defined under State law").
756
757 Xerox Health has taken the position that "care to an infant beyond one week of age" is beyond
758 the scope of practice of CDMs under state law. Based upon its interpretation of the Board
759 regulations, Xerox has demanded refunds for past payment for newborn services provided for
760 neonates after that first week. The apparent reason for taking this position is that Xerox health
761 seems to have misinterpreted rule 12 AAC 14.540(e), which reads: "A certified direct-entry
762 midwife shall recommend to the client an evaluation of the infant by a physician within one
763 week of birth or sooner if it becomes apparent that the infant needs medical attention."
764
765 This recommendation is just that – a recommendation from the CDM to the client to have the
766 newborn evaluated by a physician by one week of age. The purpose of the rule is simply to
767 advise the parents to schedule an appointment with a physician for the baby and to permit the

768 family to establish a relationship with a physician. This provision does not, nor was it intended to,
769 preclude the family from deciding to continue care for their infant with the CDM, whether the
770 family chooses to follow the recommendation by also seeking an evaluation by a physician or
771 not. This provision does not mean "make the recommendation and stop providing care" but,
772 rather, simply offers the parents another option for care. The parents are free to accept or reject
773 the recommendation.
774
775 The interpretation adopted by Xerox Health is inconsistent with several other provisions of the
776 statute and regulations. These inconsistences include:.
777
778 1. The definition of midwifery in AS 08.65.190 includes "care of the newborn" and the
779 "practice of midwifery" is defined as including "the identification of physical, social, and
780 emotional needs of the newborn and the woman, and arranging for consultation, referral, and
781 *continued involvement when the care required extends beyond the abilities of the midwife*."
782 The term "care of the newborn" is expansive, not limited to services during the first week of life;
783 likewise, "the identification of physical, social, and emotional needs of the newborn" could
784 occur at any time during the newborn period. The most significant language in this definition,
785 however, is the provision calling for "continued involvement when the care required extends
786 beyond the abilities of the midwife. The Board interprets this as having its plain meaning, that is,
787 even when a CDM determines it appropriate to seek consultation with another provider or to
788 refer a client to another provider, it remains part of the practice of midwifery to continue to be
789 involved in the care of the referred client.
790
791 2. AS 08.65-200(5) requires the education of apprentices and student midwives to
792 include the following care and services: A) anatomy and physiology of the newborn as they
793 relate to the newborn's adaptation and stabilization in the first days of life; (B) methods for
794 assessing newborn status including relevant historical data and gestational age; (C) nutritional
795 needs of the newborn; (D) administration of prophylactic treatments commonly used during the
796 neonatal period, including state laws applicable to that administration; (E) common screening
797 tests for the newborn, including indications, risks, benefits, and methods of performing those
798 tests; (F) neonatal abnormalities, including the etiology and assessment of those abnormalities,
799 and the screening and diagnostic tests, emergency measures, appropriate transport, referral,
800 and treatment necessary as a result of those abnormalities. These areas of knowledge, care,
801 and services are not limited to the first week of life. In fact, as required by rule 12 AAC 14.530,
802 certain of these diagnostic tests and prophylactic treatments are not appropriately performed
803 until later in the newborn period.
804
805 3. Rule 12 AAC 14.530 is entitled "Infant Care" which is a broader term than "newborn".
806 Subsection (d) of this rule requires a CDM to ensure that the baby receives metabolic blood
807 disorder screening in accordance with 7 AAC 27.510 – 7 AAC 27.580. The first PKU screening is to
808 be done within 24-72 hours of birth and the second is supposed to be done within 7-21 days of
809 birth. CDM's usually perform the second PKU at about 14 days of age, which is the
810 recommendation of pediatricians and the Oregon Public Health Labs who perform the
811 laboratory testing on the samples. At times parents do not make it to the 14 day visit and then
812 CDMs make every effort to get the sample by 21 days.
813

4. The American Academy of Pediatrics (AAP) defines "infant" as a baby during the first year (<365 days) of life. The term "infant" is further subdivided into early neonatal (<7 days), late neonatal (7–27 days), neonatal (<28 days), or post-neonatal (28–364 days) periods. Rule 12 AAC 14.530 is entitled "Infant Care." "Newborn" is simply the anglicized word for "neonate" or "neonatal." Thus, according to the acknowledged experts in child health care, an infant can be termed "newborn" for at least the first 28 days of life, not only the first 7.

5. Continuity of care is very important during the first 8 weeks of life and CDM's have great success in caring for babies as the new mothers will typically bring their babies when they come in for their own postpartum visits. Thus, midwives are able to continue to observe and care for the mother/baby unit throughout the post-partum period. The importance of monitoring new mothers and babies during this critical adjustment period cannot be overstated. Midwives closely monitor breastfeeding, the infant's weight gain, signs of jaundice, temperature, respirations, and heart rate, and the mother-baby relationship and bonding, as well as detecting possible problems for consultation or referral. It would be unfortunate if women who were Medicaid enrollees and their babies were deprived of this careful oversight that all other midwife clients enjoy simply because of an inaccurate interpretation of the CDM statute and rules by Xerox Health.

6. Infant care through at least the first 8 weeks of life is part of the recognized scope of practice of Certified Professional Midwives as determined by the North American Registry of Midwives (NARM) Job Analysis dated January 2010. This Job Analysis was developed and is regularly updated to ensure relevant content for the national NARM examination. Passing this examination is required for certification as an Alaska CDM by Rule 12 AAC 14.300; therefore, all Alaska candidates for that examination must be educated and have relevant clinical experience to comprehend and pass exam questions related to infant care through the 8th week. Section VI B (The Postpartum Period) of the NARM Job Analysis requires, with respect to infant care, the ability to perform a postpartum reevaluation of mother and baby at the following times: day-one to day-two; day-three to day-four; one to two weeks; three to four weeks; and six to eight weeks. Since Alaska CDM candidates are tested on these requirements and are expected to have been educated to provide these services, it would be unreasonable to interpret their scope of practice under Alaska practice law and rules as being limited to only the first week of the infant's life.

7. A significant comparative use of language can be found in AS 08.65.140 (a), which states that "a certified direct-entry midwife may not assume the care or delivery of a client unless the certified direct-entry midwife has recommended that the client undergo a physical examination performed by a physician, physician assistant, advance nurse practitioner, or certified nurse midwife, who is licensed in this state." This provision is similar in requiring that the midwife "recommend" to her client an examination by another provider. Although there is here a "recommendation" for the woman to see a physician (or other provider), this provision in no way requires that the midwife discontinue care. In fact, the recommendation is to be made ***prior to*** but not ***instead of*** assuming care or delivery of the client. Similarly, the mere requirement that the midwife make a "recommendation" for a baby to be examined by another provider does not automatically preclude the midwife continuing care, whether or not the family accepts and acts upon the recommendation. In either case, the woman or family has the

860 absolute right to decide not to see another provider but to remain with the midwife as the sole
861 provider or, alternatively, to continue parallel care from the midwife and a physician at the
862 same time. The Board believes that Xerox Health has misconstrued the provision regarding
863 newborn examinations and should defer to the Board's interpretation of its own regulations and
864 legislatively-delegated authority.
865
866 **C. Care and Services for Women Aged 35 or Older**
867
868 Nothing in the plain language of the CDM statute or regulations prohibits CDMs from providing
869 care for women aged 35 or older. Nothing in the statute or regulations defines giving birth at
870 age 35 as "high risk to the pregnant woman and newborn" as that term is used in subsection (d)
871 of AS 08.65.140. This sub-section lists 17 conditions that were identified by the legislature as being
872 beyond the statutory scope of practice of Alaska CDMs. One of these (17) specifically classifies
873 women 16 years or younger as outside that scope. Maternal age of 35 or older is not one of the
874 identified preclusive factors.
875
876 Xerox Health is apparently basing its refusal to pay for services provided to women in this
877 category on the language of paragraph (14), which reads as follows: "has any condition
878 determined by the board to be high risk to the pregnant woman and newborn." Significantly, in
879 this paragraph, the legislature explicitly deferred to the Board's expertise, allowing it to
880 determine whether any other "conditions" should be deemed preclusive of CDM-attended out-
881 of-hospital birth. The Board, in all its years of regulating direct-entry midwifery in Alaska, has never
882 considered giving birth at 35 years old, without more explicit conditions or problems, to involve a
883 high-risk of complications. Furthermore, paragraph (14) begins with the phrase "has any
884 condition," but for a woman to have reached the age of 35 is not "having a condition" – it is
885 merely being a particular age. Thus, based upon the language choice and syntax used by the
886 legislature in paragraph (14), it is clear that it did not view any particular age cut-off, other than
887 women 16 or younger, as sufficiently "high risk" to be banned. In fact, by expressing only the
888 "under 16" exclusion, and by using the term "has any condition" for its catch-all delegation to
889 the Board, the legislature has given a strong indication that it did not wish to bar out-of-hospital
890 midwife-attended birth based upon an "older than" factor.
891
892 The Board recognizes, of course, that women 35 years and older may be at higher risk of
893 developing certain conditions such as high blood pressure or diabetes, but this is not the case for
894 all 35-year old women across the board. Should one of those conditions develop, the approved
895 CDM scope of practice would permit the CDM to either consult with, or refer the client to, a
896 physician or other health professional, in accordance with AS 08.65.140. The fact is that Board of
897 Certified Direct-entry Midwives has never found it necessary or appropriate to promulgate a rule
898 that would deem 35 years of age or older as being at a high risk for complications during labor
899 and delivery, and it is certain that the Board would not consider or express the fact of reaching
900 a particular age as "having a condition."
901
902 **Policy Implications.** If the Xerox Health interpretations or, rather, misinterpretations of the CDM
903 statute and regulations are not corrected and overruled by the Department of Health and
904 Social Services, it is likely to result in highly unfortunate consequences, not only for CDMs but
905 more particularly, for women and babies who use midwifery services in the State of Alaska.
906 Alaska has one of the highest rates of Midwifery care in the country. Midwifery clients, in Alaska

907 and elsewhere, also have excellent outcomes, with much lower rates of costly medical
908 interventions and C-sections, and extremely high rates of breastfeeding, all of which helps to
909 improve the health of future generations of Alaskans. Midwifery care is an effective, low-cost
910 method to provide quality care for underserved, including rural, populations.
911
912 Furthermore, many of the CDMs in Alaska own or work as professional midwife staff members in
913 freestanding birth centers (FSBCs). In 2010, as part of the PPACA, the Congress amended the
914 federal Social Security Act to add FSBC services as a mandated Medicaid service for pregnant
915 women enrolled in Medicaid. Since that time, the Centers for Medicare and Medicaid Services
916 have awarded a grant to the American Association of Birth Centers (AABC), as part of the CMMI
917 Strong Start for Mothers and Newborns Initiative, to determine whether midwife-led prenatal
918 care in FSBCs will improve outcomes for Medicaid enrollees with respect to low birth weight and
919 prematurity. At least four Alaska FSBCs, each of which is owned by or has CDMs on its staff, will
920 participate in this study. If, however, CDMs are arbitrarily precluded from caring for certain
921 categories of Medicaid patients, and if HSS forces these practices to refund payments that were
922 billed in good faith, these FSBCs may be unable to participate.[4]
923
924 If HSS adopts and continues to enforce Xerox Health's misinterpretation, it is likely to result in the
925 inability of CDMs to continue to provide care for Medicaid clients, which is what has happened
926 with the Dental profession and others in our state. This would limit access by Medicaid enrollees
927 to affordable mother- and baby-friendly care. Regardless of referrals made by CDMs, the fact is
928 many babies of Medicaid enrollees would not be seen for well-baby visits beyond the first week;
929 many of these infants would fall through the cracks in pediatric care in this State, and have only
930 sporadic, limited care during that important first two months. This would also affect the
931 immunization statistics, as midwives refer clients to pediatricians for continuing care beyond 8
932 weeks, which is typically when immunizations are begun by pediatricians. Finally, adoption of the
933 Xerox Health misinterpretations would limit or destroy the apprenticeship programs, which would
934 limit the growth of Certified Direct-Entry Midwifery in our State, denying access to midwifery care
935 for future generations of Alaskans. This would ultimately cost Medicaid and the State of Alaska
936 hundreds of thousands of dollars more each year to provide prenatal, intrapartum, and
937 postpartum care to the 500+ women who use the more affordable services of midwives. If we
938 factor in the increase in expensive interventions these women would be subjected to in the
939 hospital, the toll would be in the millions. The Board of Certified Direct-Entry Midwifery urges the
940 Department of Health and Social Services and the Department of Commerce, Community, and
941 Economic Development to work collaboratively to resolve this matter.
942
943 This Position is provided on behalf of the Board of Certified Direct-Entry Midwives. Please contact
944 me or the Board staff if you have any questions or would like further clarification.
945
946
947 Cheryl Corrick, CDM, CPM
948 Chairperson, Board of Certified Direct-entry Midwives
949
950 **ON A MOTION BY TAYGAN, SECONDED BY SCHNEIDER, RESOLVES THE**
951 **BOARD HAS STATUTORY AUTHORITY PER 08.65.030 TO INTERPRET**
952 **REGULATIONS AND DEFINE SCOPE OF PRACTICE FOR CERTIFIED DIRECT-**
953 **ENTRY MIDWIVES. SCOPE OF PRACTICE INCLUDES CARE FOR WOMEN AGE**

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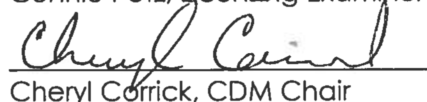
[4] *See* http://innovation.cms.gov/initiatives/strong-start/

954 **35 OR OLDER INFANTS THROUGH THE 6 WEEK POSTPARTUM PERIOD AND**
955 **SERVICES PROVIDED BY THE CDM DURING DIRECT SUPERVISION OF AN**
956 **APPRENTICE MIDWIFE. ALL IN FAVOR, NO NAYS.**
957
958 **ON A MOTION BY SCHNEIDER, SECONDED BY TAYGAN, TO ADOPT THE**
959 **LETTER AS READ DEFINING THE BOARDS POSITION STATEMENT AND TO MAIL**
960 **TO THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES AS ADDRESSED. ALL**
961 **IN FAVOR, NO NAYS.**
962
963 Director Habeger was in attendance at the meeting and explained to the board why he
964 asked Ms. Dinegar to wrap up her work on the HSS audit. This is due to the costs incurred
965 by the Board and current deficit. He recommends the board contact licensing staff first.
966 The Board understands they may have access to Department of Law in the future.
967
968 Task: Staff to forward the above drafted letter and position statement to Health and
969 Social Services and ask Department of Law AAG Dinegar for any correspondence which
970 Ms. Dinegar may have received from attorney Tiemessen or attorney Jenkins and forward
971 to all board members.
972
973
974 Agenda Item 16 - HB187
975
976 Director Habeger attended the meeting to explain House Bill 187 to the board. Current
977 law requires legal fees under investigations to be paid by license fees. Investigative costs
978 can be substantial and cause dramatic license fee increases in any given year.
979
980 Director Habeger asked the board to consider supporting the division in HB187.
981
982 Break at 11:24 a.m. and back on the record at 11:33 a.m.
983
984 The board discussed HB187 and agreed it could be beneficial to licensees and identified
985 three benefits. A recap of House Bill 187:
986
987 1. Average expenses over a period of licensing cycles to minimize fee spiking for
988 licensees and therefore average out the costs for more licensing cycles. The
989 board understands this requires conversations and input from the board about
990 how their fees could be averaged to absorb the costs incurred. The ability to
991 average costs for an investigation over several licensing periods to avoid an
992 extremely high increase over one licensing period could help a license certified
993 direct-entry midwife to absorb those costs easier.
994 2. Consolidate the over 400 licensing program fees to streamline administrative
995 handling, meaning reducing administrative handling and increasing efficiency
996 and reducing overall licensing costs.
997 3. Asking the legislature for 1.7 million from the general fund to cover costs related to
998 investigations.
999
1000 **ON A MOTION BY DR. DOWNING, SECONDED BY GRIMWOOD RESOLVES TO**
1001 **SUPPORT HOUSE BILL 187. ALL IN FAVOR, NO NAYS.**
1002
1003 Task: Staff will forward this motion for board support of HB187 to Sara Chambers for
1004 Director Habeger.
1005

1006 Lunch Recess 12:10 p.m. Reconvene at 1:15 p.m.
1007
1008 Agenda Item 17 - Cheryl called the meeting to order at 1:15 p.m. Roll call, all board members
1009 were in attendance except Dr. Downing who arrived at 1:18 p.m.
1010 Agenda Item 18 - Renewal - Open Book Self Study review
1011
1012 The Board reviewed the open book self study, completed by licensees for renewal of
1013 their license. It was determined in the future the board will not need to see the renewal
1014 application jurisprudence questions as long as division staff was reviewing and making
1015 sure all the questions are fully answered by the renewal applicant.
1016
1017 Agenda Item 19 - Revision of Open Book Self Study
1018
1019 The Board reviewed the Open Book Self Study and revised some of the questions. Staff will
1020 update the document and add it to application form 08-4198 (Credentials) and form 08-4590
1021 (Reinstatement).
1022
1023 Agenda Item 20 - On-Line BLS/CPR
1024
1025 The Board reviewed the certificate for on-line BLS and agreed this specific course does not meet
1026 the requirement for health care provider. All courses must meet the content equivalent.
1027
1028 Agenda Item 21 - Old Business/New Business/Tasks
1029
1030 Cheryl Corrick explained the response she received for the request for Midwives to be allowed
1031 to attend the ALSO course. She learned it was up to the provider of the course to decide who
1032 could attend. Ms. Corrick said she has the information on holding a course and it could be
1033 worked on if the midwives were interested in asking MAA to host their own course.
1034
1035 The Board again discussed the word Delivery and agreed they do not want to define it.
1036
1037 Staff asked the Board how to handle the applications by exam which are being submitted to
1038 the division in pieces and they are not complete. The board agreed that if an applicant does
1039 not have a 'complete' application in time to be approved to take the NARM exam (60 days)
1040 before the NARM, then they will not be approved to take the NARM.
1041
1042 Staff TASKS:
1043
1044 • Post final minutes to web for February 2013 and June 2013 board meetings.
1045 • Forward final FY13 budget to all board members via E-mail once available.
1046 • Sent letter to one audited midwife requesting additional information for CE's.
1047 • Send letter drafted by board to Peer Review along with copies of supporting
1048 documentation.
1049 • Update peer review report form to include requesting reporting of number of birth
1050 assists.
1051 • Forward letter to MAA on state letterhead once received from Ms. Schneider
1052 • Find out if the board has statutory authority to proceed with adding Nitrous Oxide to their
1053 regulations.
1054 • Issue license to all licensees as motioned.
1055 • Forward board drafted letter and position statement to Health and Social Services
1056 • Contact DOL for any correspondence they may have received from attorney Tiemessen
1057 or attorney Jenkins and forward to all board members.

1058 • Forward board motion in support of HB187 to Director Habeger.
1059 • Update jurisprudence and add to application forms 08-4198 08-4590
1060
1061 Board Member Tasks:
1062
1063 Subcommittee - Deborah Schneider and Jennie Grimwood to develop a proposed
1064 disciplinary sanctions matrix to present at the next board meeting.
1065
1066 Deborah Schneider draft a letter to MAA providing what makes a complete continuing
1067 education certificate and forward to staff by October 1st to put on state letter head. Also
1068 request MAA update their certificates for Group B Strep and IV Therapy to include the actual
1069 date the course is completed and date of expiration.
1070
1071 Agenda Item 22 - Schedule Meetings
1072
1073 Ms. Corrick asked the board to consider holding fall meetings after tourist season and to reduce
1074 expenses for the board.
1075
1076 February 27-28, 2014 in Anchorage
1077 October 2-3, 2014 in Anchorage
1078
1079 **ON A MOTION BY SCHNEIDER, SECONDED BY DR. DOWNING NOMINATE**
1080 **CHERYL CORRICK FOR RE-ELECTION AS CHAIR. ALL IN FAVOR, NO NAYS.**
1081
1082 **ON A MOTION BY DR. DOWNING, SECONDED BY SCHNEIDER NOMINATE**
1083 **JENNIE GRIMWOOD FOR RE-ELECTION AS SECRETARY. ALL IN FAVOR, NO**
1084 **NAYS.**
1085
1086 Agenda Item 23 - Adjourn Meeting
1087
1088 Meeting adjourned and off the record at 2:55 P.M.
1089
1090 Respectfully Submitted:
1091
1092
1093 Connie Petz, Licensing Examiner
1094
1095 
1096 Cheryl Corrick, CDM Chair
1097