

WEST VIRGINIA LEGISLATURE
Performance Evaluation and Research Division

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John Sylvia
Director

November 27, 2012

The Honorable Herb Snyder
West Virginia Senate
Room 217W, Building 1

The Honorable Jim Morgan
West Virginia House of Delegates
Room 213E, Building 1

Dear Chairs:

The following report serves as the analysis for the Sunrise application submitted June 1, 2012 by the West Virginia Birth Policy Coalition (Applicant) proposing licensure of Certified Professional Midwives (CPMs). The Legislative Auditor considered an application in 2008 from this group (and two associated organizations) for voluntary licensure of CPMs. The November 2008 Sunrise report concluded that licensing Certified Professional Midwives as proposed would not significantly enhance the health and welfare of the public compared to its costs. The 2012 Sunrise application does not present new information to change this previous finding. Therefore, the current report does not recommend licensure of CPMs as proposed in the 2012 Sunrise application.

Sincerely

A handwritten signature in cursive script that reads "John Sylvia".

John Sylvia

Sunrise Report

Licensing of Certified Professional Midwives

November 2012

Background

The West Virginia Birth Policy Coalition (Applicant) submitted a Sunrise application on June 1, 2012, proposing mandatory licensure for Certified Professional Midwives (CPMs) who assist low-risk women throughout the prenatal, labor and post-partum birth cycle. This is the second Sunrise application the Applicant has submitted concerning CPMs. The first application was submitted in 2008, and it proposed voluntary licensure of CPMs. After review of the 2008 application, the Legislative Auditor concluded that voluntary licensure of CPMs would not enhance safety to the public.

CPMs are non-nurse midwives, also known as “lay” or “direct-entry” midwives who have attained national certification. There are about 1,100 CPMs in the United States. West Virginia currently licenses only certified nurse midwives; however *lay midwives* can voluntarily obtain national certification through the North American Registry of Midwives (NARM). This certification process, examined in the previous Sunrise report, has not changed. There are currently about seven CPMs known to practice in West Virginia (about five was the number given in the 2008 application). However, the Applicant indicates that an unknown number of CPMs routinely practice in West Virginia who are from the bordering states of Ohio, Virginia and Maryland. Although state licensure of CPMs does not currently exist, a legal opinion obtained by the Legislative Auditor in 2008 indicated that West Virginia Code does not prohibit the practice of lay midwifery.

The 2012 Sunrise application indicates that the number of births attended by CPMs in the state has risen, following a national trend of more home births. In 2005 and 2006 respectively, 13 home births attended by CPMs in West Virginia were reported. This number has risen to CPMs attending 37 of 105 home births in 2010, and 50 of 121 home births in 2011.¹ However, all home births for this period are about one-half of one percent of total West Virginia resident births occurring in the State. The number of states providing some form of regulation of lay midwives has changed. In 2008, 22 states had some form of regulation. In 2012, 26 states regulate lay midwives with mandatory licensure in 18 states, and voluntary licensure in 2 states. The remaining six states use other forms of regulation such as state certification, permits or registration. The current application varies from the previous application in that it seeks mandatory rather than voluntary licensure of certified professional midwives, and the creation of a stand-alone board for regulation.

¹ The State Registrar for Vital Statistics notes that the figures for 2011 are incomplete.

The Applicant Does Not Document Harm to the Public From the Unregulated Practice of CPMs.

West Virginia Code §30-1A-3 requires the Performance Evaluation and Research Division (PERD) to evaluate Sunrise applications based on the following criteria:

- Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;
- Whether the practice of the profession requires specialized skill or training which is readily measurable or quantifiable so that examination or training requirements would reasonably assure initial and continuing professional or occupational competence;
- Whether the public can be adequately protected by other means in a more cost-effective manner; and
- Whether the professional or occupational group or organization should be regulated as proposed in the application.

A primary concern in reviewing a Sunrise application is to determine if the unregulated practice or the current state of regulation clearly harms or endangers the health and safety of the public. While it is clear that the practice of this profession requires specialized training, the Applicant does not document any clear examples of harm to the public from the unregulated practice of CPMs or midwifery in general. In fact, the Applicant provided an international review of medical studies published in April 2012 that indicates that planned home birth in many places can be as safe as planned hospital birth, and with less intervention and fewer complications. The Sunrise process is designed to identify existing harm to society from an unregulated or inadequately regulated profession, and the need for regulation of the profession to alleviate the identified harm. **The Applicant in this case made no attempt to demonstrate any harm resulting from practicing CPMs or midwifery in West Virginia.**

The Reasons for Requesting Licensure Are More for Promoting the Growth of CPMs

The Applicant is currently seeking mandatory licensure of CPMs. The 2008 application sought voluntary licensure. Instead of showing clear harm that has resulted from practicing CPMs, the Applicant provides the following reasons for licensure:

1. Licensure would increase the number of certified professional midwives in the state. The Applicant argues that licensure is necessary to meet the increasing demand for CPMs. Although the Applicant shows, and PERD confirmed, that the number of home births attended by CPMs in West Virginia has increased (from 13 in 2005 and 2006, to 37 in 2010 and 50 in 2011), all home births are about one-half of one percent of total West Virginia resident births. In addition, the Applicant argues that the opportunity for licensure would retain students who would attain national certification and practice in the state. Since the 2008 Sunrise review, the Sacred

Mountain Midwifery School, located at Spruce Knob, WV was started to train midwives. Several students are in the process of obtaining national certification as professional midwives. The Applicant also restates the 2008 argument that licensure would allow for third-party insurance reimbursement. The Legislative Auditor was informed by the Deputy Director of Insurance Programs and Services for the Public Employees Insurance Agency (PEIA) that certified professional midwives are covered by PEIA because they are nationally certified.

2. Licensure would enhance public safety through increased consumer information. The Applicant states that regulation would allow consumers to understand the basic skills and core competencies of the licensed provider and therefore would provide safety to the consumer. The Applicant does not present specific examples of how the public as a consumer has been harmed through a lack of understanding of the basic skills and core competencies of certified professional midwives.

3. Licensure of CPMs could provide cost-savings to the State. The Applicant hypothesizes that the State's Medicaid program would save \$6 million in 5 years or \$19 million over 10 years if licensed certified professional midwives provided maternity services and attended home births. The Applicant's analysis for these estimates is unclear and insufficient, and is hypothetically based on West Virginia's home-birth rate matching that of the states of Vermont and Virginia.

4. Licensure of certified professional midwives could provide needed services in the under-served regions of the state. The Applicant argues that the lack of regulation stands in the way of providing adequate care to women in rural counties, and also subjects women to the risk of costly and often unnecessary medical intervention. The Applicant did not provide evidence that licensing CPMs would affect either the frequency or the type of medical interventions. However CPMs adhere to the *Midwives Model of Care* which stresses minimizing technological interventions.² The Applicant provided a map of the state showing areas where shortages of maternity services exist. The Applicant also provided a report by the Perinatal Partnership³ that recommends that an interdisciplinary team composed of maternity care providers including certified professional midwives provide maternity services in under-served areas in West Virginia.

Further Considerations

During the examination of the request for licensure of CPMs, the Legislative Auditor found that there are further considerations regarding licensure. They are:

1. Disagreement over credentialing. There is a debate within the medical profession in the United States concerning the qualifications and certification of midwives providing care to

² *The Midwives Model of Care is a set of practice standards used by the North American Registry of Midwives.*

³ *A coalition of maternity service providers in West Virginia.*

mothers. Many professionals in the medical field do not feel that CPMs are qualified to provide care. In February 2011, the American College of Obstetricians and Gynecologists (ACOG) issued an opinion on planned home birth that stated that their group “*does not support the provision of care by lay midwives or other midwives who are not certified by the American Midwifery Certification Board* [emphasis added].” The American Midwifery Certification Board certifies nurse-midwives, and certified midwives. There are currently about 8,000 nurse-midwives in the United States. The opinion statement by ACOG specifically excludes CPMs who are certified by the North American Registry of Midwives. The Legislative Auditor presents this information to acknowledge that there is professional disagreement on the certification standard for midwives. The Legislative Auditor concludes that the Legislature should avoid licensing members of an occupational group when medical professionals have reservations regarding their competency. Licensure of Certified Professional Midwives could place the State at risk by licensing an occupational group that some medical professionals do not feel is qualified.

2. Medicaid acceptance of licensed CPMs would not be automatic. Currently, Medicaid does not cover the services of CPMs. If CPMs were to be licensed by the State, Medicaid coverage would not be automatic but would depend on state licensure requirements including the scope of practice, nationally recognized credentials, budgetary implications and member access to health care. The WV Medicaid Plan would have to be amended, and the amended plan would have to be approved by the Centers for Medicare and Medicaid Services. In addition, there would have to be changes made to Medicaid’s claim processing system (MMIS), the development of provider enrollment criteria for CPMs and the establishment of Medicaid policy.

Conclusions

The reasons enumerated by the Applicant for licensure of CPMs draw attention to possible benefits to the profession, the public, and to the State but are tenuous and unquantifiable as they relate to enhancing safety and accessibility to the public, or cost savings to the State. **More importantly, seeking licensure or any form of regulation to promote the growth of a profession is not the intended purpose of the Sunrise process.** The motivation for regulation of an unregulated profession is clear evidence that the unregulated practice is jeopardizing the well-being of the public. Instead, the Applicant is arguing that unregulated CPMs pose no threat to the public, but if they became regulated they would provide a greater service to the public. The Legislative Auditor is statutorily confined to evaluating a Sunrise application based on:

Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument (§30-1A-3(c)(1)).

Another problem with the Sunrise application is that the proposed legislation would require licensees to obtain certification through the North American Registry of Midwives (NARM). However, the CPMs are currently certified by NARM. Therefore, establishing a state licensing board for CPMs that uses NARM’s credential will not enhance their competency,

which in turn means that state licensing would not be directly addressing a need for greater public safety. This is further evidence that the Applicant is seeking licensure for reasons that are not primarily for enhancing public safety. In addition, given the small number of identified certified professional midwives located in the state, the establishment of an independent regulatory board is not financially feasible. In order to comply with the statutory requirement (§ 30-1-6 (c)) to establish fees that are sufficient to enable the board to carry out its functions effectively, the Board's fees would have to be set relatively high. Therefore, the Legislative Auditor does not recommend state licensure of certified professional midwives.

Recommendation

The Legislative Auditor does not recommend state licensure of certified professional midwives.