CHAPTER 33
FORMERLY
HOUSE BILL NO. 70
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 16 AND 24 OF THE DELAWARE CODE RELATING TO MIDWIFERY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 17, Title 24 of the Delaware Code by adding new Subchapter XIII by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter XIII. Midwifery Practitioners

§ 1799FF Definitions.

As used in this subchapter:

(1) "Board" means the Board of Medical Licensure and Discipline.

(2) "Certified Professional Midwife" or "CPM" means a practitioner who has received certification by the North American Registry of Midwives (NARM) or its equivalent or successor.

(3) "Certified Midwife" or "CM" means a practitioner who has received certification by the American Midwifery Certification Board or its equivalent or successor.

(4) "Client" means a woman under the care of a Midwife and, when applicable in the context of care, the newborn.

(5) "Council" means the Midwifery Advisory Council.

(6) "Home Birth" means a birth outside of a hospital or an otherwise accredited or licensed hospital or medical facility.

(7) "License" means, unless the context requires otherwise, a license issued by the Board to practice Midwifery.

(8) "Midwife" means a person who practices Midwifery.

(9) "Midwifery" means the practice of providing supervision, care, and advice to a client during pre-partum, pregnancy, labor, and the postpartum periods, and conducting deliveries on the Midwife's own responsibility or in collaboration with a licensed physician, or licensed Delaware health care delivery system. The licensed practice of Midwifery includes taking certain safety measures and identifying the physical, social and emotional needs of the client. The practice of Midwifery requires that level of education, experience, knowledge, and skill ordinarily expected of an individual who meets the requirements for licensure pursuant to this chapter. In order to practice Midwifery in the state of Delaware, a Midwife must be licensed pursuant to this chapter. For the purposes of this chapter, "Midwifery" does not include the practice of Certified Nurse Midwives, as defined in Chapter 19 of this title, nor does it include the practice of a person licensed to practice medicine pursuant to Chapter 17 of this title.

(10) "Practice of a Certified Midwife" means the management of women's health care, pregnancy, childbirth, postpartum care for newborns, family planning, and gynecological services consistent with the Standards of Practice of the American College of Nurse-Midwives and the education, training, and experience of the certified Midwife.

(11) "Practice of a Certified Professional Midwife" means the provision of continuous care for women throughout the childbearing cycle which CPMs are qualified to provide. The CPM credential requires knowledge about and experience in out-of-hospital settings. The scope of practice of the licensed CPM is further derived from the North American Registry of Midwives Job Analysis, state laws and regulations, and individual practice guidelines developed according to acquired professional skills and knowledge.

§ 1799GG Subchapter exemptions and limitations.

Nothing in this subchapter shall limit, preclude, or otherwise interfere with the professional activities of other individuals and healthcare providers who are allowed to practice obstetrics and gynecology, nor shall this subchapter apply to Certified Nurse Midwives as defined by Chapter 19 of this Title.

§ 1799HH Midwifery Advisory Council.

(a) The Board of Medical Licensure and Discipline shall form the Midwifery Advisory Council (Council) which consists of 7 voting members. The members shall consist of: 4 Midwives, 2 CMs and 2 CPMs, whenever possible; 1 Certified Nurse Midwife (CNM) as described in Chapter 19 of this title; 1 practicing obstetrician with hospital admitting privileges who is a member of the American Congress of Obstetricians and Gynecologists and certified by the American Board of Obstetrics and Gynecology; and 1 practicing pediatrician with hospital admitting privileges and certification from the American Board of Pediatrics. The inaugural Midwife members shall be licensed pursuant to this subchapter no later than July 1, 2016, and all Midwife members thereafter shall be licensed pursuant to this subchapter. The Council may elect officers as necessary. The Chair of the Council shall be a Midwife in good standing.

(b) Members shall be appointed so that the terms of 4 members, including no more than 2 Midwives, shall expire 2 years after the initial appointment and that the terms of the remaining 3 members shall expire 3 years after the initial appointment. Thereafter, members are each appointed by the Board of Medical Licensure and Discipline for a term of 3 years, subject to removal by the Governor for neglect of duty, malfeasance, or misfeasance in office, and may succeed himself or herself for 1 additional 3-year term; provided, however, that if a member is initially appointed to fill a vacancy, the member may succeed himself or herself for only 1 additional 3-year term. A person appointed to fill a vacancy on the Council is entitled to hold office for the remainder of the unexpired term of the former member. Each term of office expires on the date specified in the appointment; however, a Council member whose term of office has expired remains eligible to participate in Council proceedings until replaced by the Board. A person who has been twice appointed to the Council or who has served on the Council for 6 years within any 9-year period may not again serve until an interim period of at least 1 year has expired since the person last served.

(c) The Council shall promulgate rules and regulations governing the practice of Midwifery, the scope of practice of CMs and the scope of practice of CPMs, after public hearing and subject to the approval of the Board of Medical Licensure and Discipline. The Board must approve or reject proposed rules or regulations submitted to it by the Council within 60 days. If the Board fails to approve or reject the proposed rules or regulations within 60 days, the proposed rules or regulations are deemed to be approved by the Board. Such rules and regulations shall include, but not be limited to:

(1) procedures for the examination of applicants and issuance of licenses to those applicants it finds qualified;

(2) licensing and licensing renewal requirements;

(3) standards for education, and training programs and the procedures for denial, revocation, or suspension of such program for failure to meet or maintain the standards;

(4) continuing education requirements for licensed midwives;

(5) description of the responsibilities of the Midwife toward the client and her newborn in the antepartum, intrapartum, and the postpartum periods, including newborn assessment and screening consistent with existing statute.

(6) practice standards for licensed midwives that shall include, but shall not be limited to:

i. adoption of ethical standards for licensed midwives;

ii. maintenance of records of care, including client charts and birth statistics;

iii. participation in peer review and continuing education with Midwives, physicians and nurses;

iv. requirement to have a second attendant certified in neonatal resuscitation at birth;

v. description of the tools and equipment a Midwife may and may not use during delivery; and

vi. medications and tests the Midwife is authorized to obtain and administer in various settings as delineated in regulation.

(d) License suspension, revocation, and nonrenewal

(1) The Council, after appropriate notice and hearing, may recommend to the Board of Medical Licensure and Discipline that the Board revoke, suspend, or refuse to issue a license, or place a licensee on probation, or otherwise discipline a licensee found guilty of unprofessional conduct. Unprofessional conduct includes, but is not limited to, fraud, deceit, incompetence, gross negligence, dishonesty, failure to adhere to the

procedures of § 1799JJ below, or other behavior in the licensee's professional activity which is likely to endanger the public health, safety, or welfare. The Council shall recommend that the Board permanently revoke the license of a person who is convicted of a felony sexual offense. The Council may recommend and Board may take necessary action against a Midwife who is unable to practice Midwifery with reasonable skill or safety to clients because of physical or mental illness, impairment or incompetence; including illness, impairment, or incompetence caused by or related to substance abuse. Disciplinary action or other action taken against a Midwife must be in accordance with the procedures for disciplinary and other actions against licensed health professionals, including appeals as set forth in subchapter IV of this chapter except that a hearing panel for a complaint against a Midwife shall be convened as described below.

(2) In the event of a formal or informal complaint concerning the activity of a licensee that the Board determines, exercising its reasonable discretion, presents a clear and immediate danger to the public health, safety or welfare, the Board may temporarily suspend the person's license, pending a hearing, upon the written order of the Secretary of State or the Secretary's designee, with the concurrence of the Council chair or the Council chair's designee.

a. An order temporarily suspending a license to practice may not be issued by the Board, unless the Midwife or the Midwife's attorney received at least 24 hours' written or oral notice prior to the temporary suspension and unless the Secretary of State or the Secretary's designee, and the Council chair or the Council chair's designee concur. At a minimum, the initial oral or written notice will inform the Midwife or the Midwife's attorney of (i) the essential terms of the suspension, (ii) the reason for the suspension, (iii) the Midwife's right to a hearing, and, (iv) the Midwife's right to an expedited hearing.

b. Within 48 hours of receiving the initial oral or written notice, a Midwife whose license has been temporarily suspended pursuant to this section must be formally notified of the temporary suspension in writing. Formal notification consists of, at minimum, (i) a copy of the complaint, (ii) the order of temporary suspension pending a hearing, and (iii) a description of the hearing including the Midwife's right to request an expedited hearing, personally served upon the Midwife or sent by certified mail, return receipt requested, to the Midwife's last known address.

c. A Midwife whose license to practice has been temporarily suspended pursuant to this section may request, and has a right to, an expedited hearing. The Board shall schedule the hearing on an expedited basis, provided that the Board receives the request within 5 calendar days from the date on which the person received formal notification of the decision to temporarily suspend the person's license.

d. As soon as possible after the issuance of an order temporarily suspending a Midwife's license to practice pending a hearing, the Council Chair shall appoint a 3-member hearing panel consisting of 3 members; 1 of the 3 shall be an unbiased physician member of the Council or Board; 2 of the 3 shall be unbiased Midwife members of the Council; and if possible and no conflict exists, at least 1 of the 2 Council Midwife members shall be of the same licensure type as the Midwife under complaint. The Chair of the hearing panel shall be 1 of the Council Midwife members. After notice to the Midwife pursuant this section, the hearing panel shall convene within 60 calendar days of the date of the issuance of the order of temporary suspension to consider the evidence regarding the matters alleged in the complaint. If a Midwife requests an expedited hearing, the hearing panel shall convene within 15 calendar days of the receipt by the Council of the request. The 3-member panel shall conduct a hearing in accordance with the procedures set forth in § 1734 of this title and shall render a decision within 15 calendar days of the hearing. An order of temporary suspension pending a hearing may remain in effect for no longer than 60 days from the date of the issuance of the order unless the temporarily suspended Midwife requests a continuance of the hearing date. If the Midwife requests a continuance, the order of temporary suspension will remain in effect until the hearing panel convenes and a decision is rendered by the Board.

e. In addition to making findings of fact, the hearing panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found constitute a clear and immediate danger to public health, the order of temporary suspension must remain in effect until the Board, pursuant to § 1734(g) of this title, deliberates and reaches conclusions of law based upon the

findings of fact made by the hearing panel. An order of temporary suspension may not remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended Midwife requests an extension of the order pending a final decision of the Board. Upon the final decision of the Board, an order of temporary suspension is vacated as a matter of law and is replaced by the disciplinary action, if any, ordered by the Board.

(e) The Council shall meet at least quarterly and at such other times as license applications are pending. The Council shall present to the Board the names of individuals qualified to be licensed, shall recommend disciplinary action against licensees as necessary, and shall suggest changes in operations or regulations pursuant to § 1799HH. The Council shall keep minutes of its meetings which shall be available to the public upon FOIA request, except that information discussed by the Council concerning a mother or child which is private in nature or which would tend to reveal the identity of a client of a Midwife shall be discussed in executive session pursuant to 29 *Del. C.* Chapter 100.

§ 1799II Licensure.

(a) To be eligible for licensure by the Board as a Certified Professional Midwife, an applicant shall:

(1) possess a valid CPM credential or another valid credential from an accrediting organization as recommended by the Council and approved by the Board; however; applicants who obtain the CPM credential after December 31, 2019 are required to also have obtained an education accredited by the Midwifery Education and Accreditation Council (MEAC), or another Midwifery education accreditation organization as recommended by the Council and approved by the Board, and training and education which meet the International Confederation of Midwives (ICM) standards and guidelines as applicable to the scope of Midwives licensed under this subchapter;

(2) be at least 21 years of age;

(3) shall not have been assessed any administrative penalties regarding the applicant's practice of Midwifery, including but not limited to fines, formal reprimands, license suspension or revocation—except for license suspension or revocation for non-payment of license renewal fee or unlicensed practice penalties assessed prior to the establishment of the Council—and/or probationary limitations;

(4) shall not have been convicted of or may not have admitted under oath to having committed a crime substantially related to the practice of Midwifery or any felony or violent misdemeanor or crime involving dishonesty;

(5) be a graduate of a high school or its equivalent;

(6) meet minimum educational requirements as required for attainment of the CPM credential, including pre-partum, prenatal, intrapartum, and postpartum care of the mother and baby, and risk assessment for the mother and baby during this period; and

(7) shall not have been convicted of a felony sexual offense.

(b) To be eligible for licensure by the Board as a Certified Midwife, an applicant shall:

(1) possess a valid CM credential, or another valid credential from an accrediting organization as recommended by the Council and approved by the Board;

(2) be at least 21 years of age;

(3) shall not have been assessed any administrative penalties regarding the applicant's practice of Midwifery, including but not limited to fines, formal reprimands, license suspension or revocation—except for license suspension or revocation for non-payment of license renewal fee or unlicensed practice penalties assessed prior to the establishment of the Council—and probationary limitations;

(4) shall not have been convicted of or shall not have admitted under oath to having committed a crime substantially related to the practice of Midwifery or any felony or violent misdemeanor or crime involving dishonesty;

(5) be a graduate of a high school or its equivalent;

(6) meet the minimum educational requirements as required for attainment of the CM credential including successful completion of a Midwifery education program accredited by the Accreditation Commission for

Midwifery Education (ACME) or meet the education standards approved by the International Confederation of Midwives (ICM); and

(7) shall not have been convicted of a felony sexual offense.

(c) The Council may waive requirements (3) and (4) of subsections (a) and (b) of this section if its finds all of the following by clear and convincing evidence:

(1) The applicant's education, training, qualifications, and conduct have been sufficient to overcome the deficiency or deficiencies in meeting the requirements of this section;

(2) The applicant is capable of practicing Midwifery in a competent and professional manner;

(3) The granting of the waiver will not endanger the public health, safety, or welfare;

(4) For waiver of a misdemeanor conviction or violation, and for waiver of a felony for the practice of unlicensed Midwifery after June 30, 2016, at the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service.

(5) For waiver of any other felony conviction, more than 5 years have elapsed since the date of the conviction. At the time of the application the applicant may not be incarcerated, on work release, on probation, on parole or serving any part of a suspended sentence and must be in substantial compliance with all court orders pertaining to fines, restitution and community service; and

(d) Any termination, revocation, or suspension of a certification from NARM, AMCB, or other Midwifery certifying organization, or discipline from the same must be promptly reported to the Council.

(e) Licensure must be renewed every two years.

(f) An applicant for licensure to practice midwifery shall submit a certified criminal background check pursuant to § 1720(b)(6) of this title. An applicant may not be certified until the applicant's criminal history reports have been produced. An applicant whose record shows a disqualifying prior criminal conviction pursuant to § 1799II(a)(4) or (7) or § 1799II(b)(4) or (7) of this title may not be certified by the Board unless a waiver is granted pursuant to subsection (c) of this section. The State Bureau of Identification may release any subsequent criminal history to the Board and Council.

(g) Except for unlicensed practice of Midwifery established prior to June 30, 2016, the information obtained thereby may be used by the Board and Council to determine the applicant's eligibility for licensing under this chapter.

(h) It shall be unlawful for any person to engage in the practice of midwifery after June 30, 2016, unless such person is licensed under the provisions of this chapter.

§ 1799JJ. Client screening for homebirth delivery services.

The provisions of this section shall apply only to a Midwife while providing Home Birth delivery services. For the purposes of obtaining informed consent as governed by this section, the mother that is part of the client shall give informed consent on behalf of herself and the newborn.

(a) When accepting a client for care, a Midwife shall obtain the client’s informed consent, which shall be evidenced by a written statement signed by both the Midwife and the client which shall contain the following elements, in a form drafted by the Council and adopted by the Board, if the Midwife offers Home Birth services:

(1) An acknowledgement that Home Birth can include increased risk of death and disability for mother and child;

(2) A clear statement that the risks have been explained and understood by the client;

(3) A clear statement that the client is aware that the Midwife is not a licensed physician or nurse, nor are they seeking the services of one for their Home Birth;

(4) A newborn checklist describing the services and care of the newborn; and

(5) Information regarding procedures in the event a transfer becomes necessary and that a transfer may be required to protect the safety of the client if signs or symptoms are observed by the Midwife that necessitate such transfer that includes (i) estimated distance between the planned birth site and the receiving facility and (ii)

information regarding concurrent care policies at the receiving facility. The statement on concurrent care will be repeated orally to the Client or, if the Client is incapacitated, the Client's designated agent, in the event of a transfer.

(b) When accepting a Client for care, a Midwife shall obtain in addition to the Client's informed consent, a written statement in a form proposed by the Council and adopted by the Board, and signed by both the Midwife and the client. The form shall certify that full disclosure has been made and acknowledged by the client as to each of the following items, with the client's acknowledgement evidenced by a separate signature adjacent to each item in addition to the client's signature and the date at the end of the form:

(1) the name, address, telephone number, and license number of the Licensed Midwife;

(2) a description of the Midwife's education, training, and experience in Midwifery in relation to both the mother and the newborn;

(3) the nature and scope of the care to be given, including a description of the ante partum, intrapartum, and postpartum conditions requiring consultation, transfer of care, or transport to a hospital;

(4) a copy of the written plan described in (c) below which is particular to each client;

(5) an explanation that in the event of an emergency or voluntary transfer that no liability from the actions of the Midwife are assignable to the receiving facility or medical professional;

(6) an explanation of the right of the client to file a complaint with the Council and instructions on how to file a complaint with the Council;

(7) a statement indicating that the client's records and any transaction with the Midwife are confidential pursuant to the Federal Health Insurance Portability and Accountability Act;

(8) a disclosure of whether the Midwife carries malpractice or liability insurance; and

(9) any further information as required by the Council.

(c) A Midwife shall prepare, in a form proposed by the Council and adopted by the Board, a written plan for the appropriate delivery of emergency care and provide the Client with a copy of the plan as provided in subsection (b). The plan shall address the following:

(1) consultation with other health care providers;

(2) emergency transfer;

(3) access to neonatal intensive care units and obstetrical units or other patient care areas;

(d) A Midwife shall provide an initial screening to ensure that each client receives safe and appropriate care and to determine whether any contraindications are present. A Midwife will also perform ongoing screening and maintain, beginning at the time of the initial screening, a detailed health history in a form prescribed by the Council and adopted by the Board.

(e) Upon transfer of a Client, emergency or otherwise, a Midwife shall provide all records described in this section to the receiving care provider or facility and remain available to speak with the receiving health care provider at the point of transfer about the course of care provided to the Client.

(f) A Midwife offering Home Birth services shall only accept and provide care to those women who are classified as eligible for a Home Birth or Midwife-assisted birth in accordance with evidence based standards proposed by the Council and adopted by the Board as being low risk pregnancy, labor, and delivery, which includes but is not limited to:

(1) There is no preexisting maternal disease or condition likely to affect the pregnancy, such as uterine surgeries including Caesarean procedures and others, as recommended by the Council and approved by the Board;

(2) There is no significant disease arising from the pregnancy;

(3) There is a singleton fetus;

(4) There appears to be a cephalic presentation prior to delivery;

(5) The onset of labor occurs when the fetus has a gestational age greater than 37 weeks and less than 42 weeks, which period can be expanded or contracted if the Council and Board determine that it would be in the best interests of Clients to do so; and

(6) Labor is most likely to be spontaneous.

(g) The Midwife must be able at all times to recognize the warning signs of conditions that render the woman ineligible for a Midwife-assisted Home Birth. If a Midwife determines at any time during the course of the pregnancy that a woman's condition may preclude attendance by the Midwife, the client shall be informed that she should transfer to an appropriate, licensed, health care provider. A Midwife may and shall, at any time, terminate a relationship with a client if that Midwife deems the woman is or has become ineligible for a Midwife-assisted birth or Home Birth. The cause for termination must be documented and included in the health history described in subsection (d). Such Midwife shall inform the client of such termination in writing and recommend transfer to an appropriate licensed health care provider.

(h) If a Midwife identifies that the client demonstrates a high risk condition as defined by the Council and approved by the Board, the Midwife shall refer the client to a physician with obstetrical hospital privileges for client assessment and/or screening, at the time the condition is noted by the Midwife. In the event of an emergency, if the Midwife determines that immediate termination of the relationship pursuant to the foregoing paragraph would increase or create risk of death or injury to the mother or her infant, the Midwife will immediately engage emergency medical services, and may continue to assist in the emergency.

§ 1799KK. Physician Midwife relationship.

(a) No healthcare provider or facility shall be vicariously liable for an injury resulting from an act or omission by a Midwife unless an employment and/or agency relationship has been established between the Midwife and the healthcare provider or facility.

(b) Upon the successful transfer of care of a client from a Midwife to a licensed physician in accordance with § 1799JJ(a), if authorized by the client, physician, and facility the licensed Midwife may provide concurrent care with a physician and surgeon and, be present during the labor and childbirth, and resume postpartum care, if appropriate.

§ 1799LL Treatment or examination of minors.

(a) A parent, guardian or other caregiver, or an adult staff member, shall be present when a person licensed to practice Midwifery under this chapter provides outpatient treatment to a minor client who is disrobed or partially disrobed or during an outpatient physical examination involving the breasts, genitalia or rectum, regardless of sex of the licensed person and client, except when rendering care during an emergency. When using an adult staff member to observe the treatment or examination, the adult staff member shall be of the same gender as the client when practicable. The minor client may decline the presence of a third person only with consent of a parent, guardian or other caregiver. The minor client may request private consultation with the person licensed to practice Midwifery without the presence of a third person after the physical examination. Every hospital and nursing facility and similar facility that provides treatment to minors shall develop and implement policies regarding the treatment of minor clients that are consistent with the purposes of this section and will submit those policies for approval by the Department of Health and Social Services. Violations of approved policies will be treated as a violation of this section.

(b) When a minor client is to be disrobed, partially disrobed or will undergo a physical examination involving the breasts, genitalia or rectum, a person licensed to practice Midwifery under this chapter shall provide notice to the person providing consent to treatment of the rights under this section. The notice shall be provided in written form or be conspicuously posted in a manner in which minor clients and their parent, guardian or other caregiver are made aware of the notice. In circumstances in which the posting or the provision to the client of the written notice would not convey the right to have a chaperone present, the person licensed to practice Midwifery shall use another means to ensure that the client or person understands the right under this section.

(c) For the purposes of this section, "minor" is defined as a person 15 years of age or younger, "adult staff member" is defined as a person 18 years of age or older who acting under the direction of the licensed person or the employer of the licensed person or who is otherwise licensed under this chapter, "hospital" has the meaning prescribed by Chapter 10 of Title 16, and "nursing facility and similar facility" has the meaning prescribed by Chapter 11 of Title 16.

(d) The person licensed under this chapter that provides outpatient treatment to a minor pursuant to this section shall, contemporaneously with such treatment, note in the child's medical record the name of each person present when such treatment is being provided.

§ 1799MM Record Keeping

(a) A person licensed under this chapter who is discontinuing practice in this State or who is leaving this State and who is not transferring client records to another person licensed to practice midwifery or medicine shall notify that person's clients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practices. The notice must be published at least 1 time per month over a 3-month period in advance of discontinuing the business or leaving the State and must explain how a client can procure that client's records. All clients of record who have not requested their records 30 days before the person discontinues the practice or leaves the State must be notified by first class mail by the person to permit that person's clients to procure their records. Any client records that have not been procured within 7 years after the person discontinues practice or leaves the State may be permanently disposed of in a manner that ensures confidentiality of the records.

(b) If a person licensed under this chapter dies and has not transferred client records to another person licensed to practice midwifery or medicine and has not made provisions for a transfer of client records to occur upon the person's death, a personal representative of the person's estate shall notify the person's clients of record by publishing a notice to that effect in a newspaper of daily circulation in the area where the person practiced. The notice must be published at least 1 time per month over a 3-month period after the person's death and must explain how a former client can procure the client's records. All former clients who have not requested their records 30 days after such publication must be notified by first class mail by the personal representative of the estate to permit the clients to procure their records. Any client records that have not been procured within 7 years after the death of the person may be permanently disposed of in a manner that ensures confidentiality of the records.

(c) If a client changes from the care of 1 person licensed to practice midwifery or medicine to another person certified to practice midwifery or medicine, the former person shall transfer a copy of the records of the client to the current person upon the request of either the current person or the client. The former person may charge for the reasonable expenses of copying the client's records, according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed. Alternatively, if the client and current person agree, the former person may forward to the current person a summary of the client's record, in lieu of transferring the entire record, at no charge to the client. If a client changes care from 1 person certified to practice midwifery or medicine to another and fails to notify the former person, or leaves the care of the former person for a period of 7 years from the last entry date on the client's record and fails to notify the former person, or fails to request the transfer of records to the current person, then the former person shall maintain the client's records for a period of 7 years from the last entry date in the client's medical record, after which time the records may be permanently disposed of in a manner that insures confidentiality of the records.

(d) Clients, on their own behalf, shall have the right to obtain a copy of their records from any person certified to practice midwifery or medicine according to a payment schedule established by the Board of Medical Licensure and Discipline. The actual cost of postage or shipping may also be charged if the records are mailed.

§ 1799NN Duty to report conduct that constitutes grounds for discipline or inability to practice.

(a) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider has engaged in or is engaging in conduct that would constitute grounds for disciplinary action under this chapter or the other healthcare provider's licensing statute.

(b) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation in writing information that the licensee reasonably believes indicates that any other practitioner licensed under this chapter or any other healthcare provider may be unable to practice with reasonable skill and safety to the public by reason of: mental illness or mental incompetence; physical illness,

including deterioration through the aging process or loss of motor skill; or excessive abuse of drugs, including alcohol.

(c) Every person to whom a license to practice has been issued under this subchapter has a duty to report to the Division of Professional Regulation any information that the reporting person reasonably believes indicates that a person certified and registered to practice medicine in this State is or may be guilty of unprofessional conduct or may be unable to practice medicine with reasonable skill or safety to clients by reason of: mental illness or mental incompetence; physical illness, including deterioration through the aging process or loss of motor skill; or excessive use or abuse of drugs, including alcohol.

(d) All reports required under subsections (a), (b) and (c) of this section must be filed within 30 days of becoming aware of such information. A person reporting or testifying in any proceeding as a result of making a report pursuant to this section is immune from claim, suit, liability, damages, or any other recourse, civil or criminal, so long as the person acted in good faith and without gross or wanton negligence; good faith being presumed until proven otherwise, and gross or wanton negligence required to be shown by the complainant.

Section 2. Amend §3121(e), Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

(e) When a birth occurs outside an institution, the certificate shall note whether such a birth was pre-planned to occur outside of an institution, the type of license held by any Midwife in attendance, and the certificate shall be prepared and filed by one of the following in the indicated order of priority:

(1) The physician in attendance at or immediately after the birth, or in the absence of such a person;

(2) The Midwife in attendance at or immediately after the birth; or in the absence of such a person;

Section 3. This Act shall take effect immediately after its enactment into law.

Approved June 09, 2015