

# EXHIBIT G

## DEPARTMENT OF HEALTH, CENTER FOR HEALTH ADVANCEMENT

### **SUBJECT: Licensed Lay Midwifery**

**DESCRIPTION:** The State Board of Health has delegated the authority to administer the Lay Midwifery program, including the regulating and licensing of Lay Midwives to the Arkansas Department of Health (ADH). The Rules and Regulations for Governing the Practice of Lay Midwifery in Arkansas were last revised in 2007 with forms added in 2008.

The order of the material has been restructured to allow for a more user friendly format. The 2017 proposed revisions seek to elevate the profession of licensed lay midwifery in Arkansas by requiring new minimum standards for licensure. The license requirements have been modified to include mandatory national certification for all newly licensed lay midwives (LLM). These revisions would expand the scope of practice for midwives who hold certain additional certifications. An “informed refusal” process has been created based on the LLM’s educational level and credentials.

Revisions have been made to ensure Arkansas LLMs practice under the most current nationally recognized, evidence based standards of care. New sections have been added to clarify or expand minimum requirements of midwifery care. In addition, a required standard disclosure form has been created in order to eliminate any discrepancy of information provided to clients who engage the services of an LLM.

Language has been added to require the use of the title “Licensed Lay Midwife” on any professional or advertising materials in an effort to avoid public confusion regarding the education and credential of a “Licensed Lay Midwife” versus other professional titles, such as “Certified Nurse Midwife”. The investigation and disciplinary process was also clarified.

**PUBLIC COMMENT:** A public hearing was held on September 21, 2017, and the public comment period expired on that date. The department submitted a public comment summary, attached hereto, detailing all of the comments received regarding these rules. The proposed effective date is March 1, 2018.

**FINANCIAL IMPACT:** There is no additional cost to the state.

It could cost entities affected by the rule \$0-600 for the current fiscal year and \$0-950 for the next fiscal year.

### **Costs to LLM or Apprentice:**

Costs that are additional to those incurred under the current rule will vary depending on whether the individual will be starting an apprenticeship, already has a Certified Professional Midwife (CPM) credential, or is being grandfathered in and does not plan to become a CPM. The timing of license renewal is also a factor and some LLMs may have no additional costs in the current or next fiscal year if their renewal is not due during that time period.

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Costs are greatest for the new apprentice: The process of NARM apprenticeship evaluation and certification is broken down into 4 parts: Phase 1 (\$200), Phase 2 (\$400), Phase 3 (\$400) and Phase 4 (\$100) plus additional course costs for a total of about \$1,385. However, according to NARM, the average apprenticeship takes three to five years so it is not anticipated that the cost for any fiscal year would be greater than \$400 although it is possible an apprentice might complete Phase 1 and Phase 2 within one year for a cost of \$600. A different scenario could have an apprentice completing Phase 2 and Phase 3 in one year for a total cost of \$950 (Phase 2 and 3 fees plus the estimated neonatal resuscitation certification course fee).

For the LLM that already has a CPM, if their 3 year renewal of that certification is due during the current or next fiscal year, the fee will be \$150.

All LLMs will also now be required to have neonatal resuscitation certification and renew that every 2 years at an estimated cost of \$75-\$150 each time.

Current apprentices will not have any additional costs in the current or next fiscal year unless they complete their apprenticeship and apply for licensure. The required neonatal resuscitation certification required before licensure is estimated at \$150 for initial certification.

## **Costs to Consumers of Midwifery Care:**

As part of their initial risk assessment, consumers will now be required to get a urine culture instead of a urine test; and at the 36 week risk assessment, a complete blood count (CBC) with platelets will be required instead of a Hemoglobin and Hematocrit (H&H). The maximum additional cost of these tests varies from \$30 to \$130 depending on the lab and the level of insurance.

## **Savings to LLMs:**

The requirement for proof of rubella immunity upon initial licensure and a negative TB test for initial licensure and renewal every two years has been removed in the proposed revisions. This will be an estimated potential savings to LLMs at each licensure renewal ranging from \$5 to \$400 (if a chest x-ray was indicated and dependent on insurance coverage.)

The agency also provided the following information:

(a) How the additional benefits of the more costly rule justify its additional cost:  
The additional cost to Licensed Lay Midwives (LLMs) to become (and maintain) a CPM (Certified Professional Midwife) in order to be licensed will result in a higher level of professionalism and conformity to the standards set by the national certifying body.

The additional cost to consumers for the new tests are to provide better and timelier assessment of medical issues that may affect their prenatal care.

(b) The reason for adoption of the more costly rule:  
To raise the level of professional services provided by LLMs to the standards set by the national certifying organization NARM (North American Registry of Midwives).

The two new tests that are proposed for consumers will bring the requirement I keeping with the national standards for prenatal care.

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(c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain:

Yes. Requiring certification by a national body will assure the public that all licensed lay midwives have met the national standards for their training, resulting in better care and safety for the clients of the LLMs. In addition, the new rules allow a greater level of client autonomy by providing the option of informed refusal based on the level of the LLM's certification and training.

Yes, for consumers, the requirement for the two new tests will provide a better assessment of their health status and guide their prenatal care.

**LEGAL AUTHORIZATION:** The State Board of Health is empowered to license lay midwives in this state pursuant to regulations established by the Board to include, but not be limited to (1) the qualifications for licensure; (2) standards of practice for prenatal, intrapartum, and postpartum care of mother and baby; (3) physician supervision, physician consultation, licensed nurse-midwife supervision or consultation, or physician and hospital backup; (4) grievance procedures; and (5) recordkeeping and reporting. Ark. Code Ann. § 17-85-107(a).

**QUESTIONNAIRE FOR FILING PROPOSED RULES AND REGULATIONS  
WITH THE ARKANSAS LEGISLATIVE COUNCIL AND JOINT INTERIM COMMITTEE**

DEPARTMENT/AGENCY Arkansas Department of Health  
DIVISION Center for Health Advancement  
DIVISION DIRECTOR Cristy Sellers  
CONTACT PERSON Bradley Planey, Family Health Branch Chief  
ADDRESS 4815 W. Markham St, Slot-16  
PHONE NO. 501-661-2531 FAX NO. 501-661-2464 E-MAIL Bradley.Planey@arkansas.gov  
NAME OF PRESENTER AT COMMITTEE MEETING Dr. Namvar Zohoori, Deputy Chief Science Officer  
PRESENTER E-MAIL Namvar.Zohoori@arkansas.gov

**INSTRUCTIONS**

- A. Please make copies of this form for future use.
- B. Please answer each question **completely** using layman terms. You may use additional sheets, if necessary.
- C. If you have a method of indexing your rules, please give the proposed citation after "Short Title of this Rule" below.
- D. Submit two (2) copies of this questionnaire and financial impact statement attached to the front of two (2) copies of the proposed rule and required documents. Mail or deliver to:

Donna K. Davis  
Administrative Rules Review Section  
Arkansas Legislative Council  
Bureau of Legislative Research  
One Capitol Mall, 5<sup>th</sup> Floor  
Little Rock, AR 72201

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1. What is the short title of this rule? Licensed Lay Midwifery

2. What is the subject of the proposed rule? Regulating the practice of Licensed Lay Midwifery

3. Is this rule required to comply with a federal statute, rule, or regulation? Yes  No   
If yes, please provide the federal rule, regulation, and/or statute citation. \_\_\_\_\_

4. Was this rule filed under the emergency provisions of the Administrative Procedure Act? Yes  No   
If yes, what is the effective date of the emergency rule? \_\_\_\_\_

When does the emergency rule expire? \_\_\_\_\_

Will this emergency rule be promulgated under the permanent provisions of the Administrative Procedure Act? Yes  No

5. Is this a new rule? Yes  No   
If yes, please provide a brief summary explaining the regulation. \_\_\_\_\_

Does this repeal an existing rule? Yes  No   
If yes, a copy of the repealed rule is to be included with your completed questionnaire. If it is being replaced with a new rule, please provide a summary of the rule giving an explanation of what the rule does.  
\_\_\_\_\_

Is this an amendment to an existing rule? Yes  No   
If yes, please attach a mark-up showing the changes in the existing rule and a summary of the substantive changes. **Note: The summary should explain what the amendment does, and the mark-up copy should be clearly labeled "mark-up."**

6. Cite the state law that grants the authority for this proposed rule? If codified, please give the Arkansas Code citation. A.C.A. §§17-85-101 et seq. and A.C.A. §§20-7-109

7. What is the purpose of this proposed rule? Why is it necessary? To update the Rules governing the practice of Licensed Lay Midwifery, bringing them in accord with current standards and certifications.

8. Please provide the address where this rule is publicly accessible in electronic form via the Internet as required by Arkansas Code § 25-19-108(b).  
<http://www.healthy.arkansas.gov/aboutADH/Pages/RulesRegulationsProposed.aspx>

9. Will a public hearing be held on this proposed rule? Yes  No   
If yes, please complete the following:

Date: 9/21/2017  
Time: 10:00 a.m.  
Auditorium, Arkansas Department of Health, 4815 West Markham St, Little Rock, AR 72205

10. When does the public comment period expire for permanent promulgation? (Must provide a date.)  
9/21/2017

11. What is the proposed effective date of this proposed rule? (Must provide a date.)  
3/1/2018

12. Do you expect this rule to be controversial? Yes  No   
If yes, please explain. Consumers of midwifery care have voiced through protests and the media that the Rules should allow VBACs (Vaginal Birth After Cesarean) at home deliveries

13. Please give the names of persons, groups, or organizations that you expect to comment on these rules?

Please provide their position (for or against) if known.

Midwifery Advisory Board (MAB), Licensed Lay Midwives, Consumers of midwifery care, Nurses,  
Physicians

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**FINANCIAL IMPACT STATEMENT**

**PLEASE ANSWER ALL QUESTIONS COMPLETELY**

**DEPARTMENT** Arkansas Department of Health  
**DIVISION** Center for Health Advancement  
**PERSON COMPLETING THIS STATEMENT** \_\_\_\_\_  
**TELEPHONE NO.** \_\_\_\_\_ **FAX NO.** \_\_\_\_\_ **EMAIL:** \_\_\_\_\_

To comply with Ark. Code Ann. § 25-15-204(e), please complete the following Financial Impact Statement and file two copies with the questionnaire and proposed rules.

**SHORT TITLE OF THIS RULE** Licensed Lay Midwifery

1. Does this proposed, amended, or repealed rule have a financial impact?      Yes       No
2. Is the rule based on the best reasonably obtainable scientific, technical, economic, or other evidence and information available concerning the need for, consequences of, and alternatives to the rule?      Yes       No
3. In consideration of the alternatives to this rule, was this rule determined by the agency to be the least costly rule considered?      Yes       No

If an agency is proposing a more costly rule, please state the following:

- (a) How the additional benefits of the more costly rule justify its additional cost;  
The additional cost to Licensed Lay Midwives (LLMs) to become (and maintain) a CPM (Certified Professional Midwife) in order to be licensed will result in a higher level of professionalism and conformity to the standards set by the national certifying body.

The additional cost to consumers for the new tests are to provide better and more timely assessment of medical issues that may affect their prenatal care.

- (b) The reason for adoption of the more costly rule;  
To raise the level of professional services provided by LLMs to the standards set by the national certifying organization NARM (North American Registry of Midwives).

The two new tests that are proposed for consumers will bring the requirement in keeping with the national standards for prenatal care.

- (c) Whether the more costly rule is based on the interests of public health, safety, or welfare, and if so, please explain; and;

Yes. Requiring certification by a national body will assure the public that all licensed lay midwives have met the national standards for their training, resulting in better care and safety for the clients of the LLMs. In addition, the new rules allow a greater level of client autonomy by providing the option of informed refusal based on the level of the LLM's certification and training.

Yes, for consumers, the requirement for the two new tests will provide a better assessment of their health status and guide their prenatal care.

- (d) Whether the reason is within the scope of the agency's statutory authority; and if so, please

explain.

Yes, the Licensed Lay Midwife Act directs the Arkansas State Board of Health to administer the provision of the Act and the Board has delegated the authority to administer the program to the Arkansas Department of Health.

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4. If the purpose of this rule is to implement a federal rule or regulation, please state the following:

(a) What is the cost to implement the federal rule or regulation?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
Federal Funds \_\_\_\_\_  
Cash Funds \_\_\_\_\_  
Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

General Revenue \_\_\_\_\_  
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Special Revenue \_\_\_\_\_  
Other (Identify) \_\_\_\_\_

Total 0 Total 0

(b) What is the additional cost of the state rule?

**Current Fiscal Year**

**Next Fiscal Year**

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total 0

General Revenue \_\_\_\_\_  
 Federal Funds \_\_\_\_\_  
 Cash Funds \_\_\_\_\_  
 Special Revenue \_\_\_\_\_  
 Other (Identify) \_\_\_\_\_  
 Total 0

5. What is the total estimated cost by fiscal year to any private individual, entity and business subject to the proposed, amended, or repealed rule? Identify the entity(ies) subject to the proposed rule and explain how they are affected.

**Current Fiscal Year**

**Next Fiscal Year**

\$ 0-600

\$ 0-950

**Costs to LLM or Apprentice:**

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**Costs to Consumers of Midwifery Care:**

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Savings to LLMs

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6. What is the total estimated cost by fiscal year to state, county, and municipal government to implement this rule? Is this the cost of the program or grant? Please explain how the government is affected.

**Current Fiscal Year**

\$ none

**Next Fiscal Year**

\$ none

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7. With respect to the agency's answers to Questions #5 and #6 above, is there a new or increased cost or obligation of at least one hundred thousand dollars (\$100,000) per year to a private individual, private entity, private business, state government, county government, municipal government, or to two (2) or more of those entities combined?

Yes  No

If YES, the agency is required by Ark. Code Ann. § 25-15-204(e)(4) to file written findings at the time of filing the financial impact statement. The written findings shall be filed simultaneously with the financial impact statement and shall include, without limitation, the following:

- (1) a statement of the rule's basis and purpose;
- (2) the problem the agency seeks to address with the proposed rule, including a statement of whether a rule is required by statute;
- (3) a description of the factual evidence that:
  - (a) justifies the agency's need for the proposed rule; and
  - (b) describes how the benefits of the rule meet the relevant statutory objectives and justify the rule's costs;
- (4) a list of less costly alternatives to the proposed rule and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (5) a list of alternatives to the proposed rule that were suggested as a result of public comment and the reasons why the alternatives do not adequately address the problem to be solved by the proposed rule;
- (6) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule and, if existing rules have created or contributed to the problem, an explanation of why amendment or repeal of the rule creating or contributing to the problem is not a sufficient response; and

(7) an agency plan for review of the rule no less than every ten (10) years to determine whether, based upon the evidence, there remains a need for the rule including, without limitation, whether:

- (a) the rule is achieving the statutory objectives;
- (b) the benefits of the rule continue to justify its costs; and
- (c) the rule can be amended or repealed to reduce costs while continuing to achieve the statutory objectives.