

41 N.J.R. 2203(a)

NEW JERSEY REGISTER  
Copyright © 2009 by the New Jersey Office of Administrative Law

VOLUME 41, ISSUE 11

ISSUE DATE: JUNE 1, 2009

## **RULE PROPOSALS**

**LAW AND PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF MEDICAL EXAMINERS**

41 N.J.R. 2203(a)

**Proposed Amendments:** [N.J.A.C. 13:35-2A.2](#), [2A.5](#) and [2A.6](#)

[Click here to view Interested Persons Statement](#)

### **Certified Midwives**

#### **Definitions; Independent Practice; Affiliated Physicians; Clinical Guidelines**

Authorized By: State Board of Medical Examiners, William Roeder, Executive Director.

Authority: [N.J.S.A. 45:9-2](#) and [45:10-22](#).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2009-155.

Submit comments by July 31, 2009 to:  
William Roeder, Executive Director  
State Board of Medical Examiners  
P.O. Box 183  
Trenton, NJ 08625

The agency proposal follows:

### **Summary**

Prior to practicing, a licensed midwife is currently required to submit to the Board of Medical Examiners (Board) clinical guidelines that have been signed by the midwife's affiliated physician. Midwives have told the Board that they are having problems finding physicians who are willing to sign clinical guidelines. Physicians are apparently unwilling to sign clinical guidelines due to a perception that physicians

who do so become liable for the midwife's actions. Physicians are also apparently being discouraged from signing clinical guidelines for fear that doing so may expose the physician to increased malpractice insurance premiums. The Board has researched clinical guideline requirements in other states and has found that the vast majority of states do not require signed clinical guidelines (only seven states require physician signed clinical guidelines for midwifery practice). The American College of Nurse-Midwives (ACNM) advocates removing physician signature requirements for midwifery practice. The Board is proposing to amend the definition of "clinical guidelines" in [N.J.A.C. 13:35-2A.2](#) to delete requirements that guidelines be signed by physicians and licensed midwives. The Board is also proposing to amend [N.J.A.C. 13:35-2A.6](#) to delete requirements that a licensee file a notice with the Board identifying the licensee's affiliated physician, the physician's telephone number and business address and the effective date of the clinical guidelines. Clinical guidelines, along with the identity of a licensed midwife's affiliated physician, must still be provided to the Board upon request. Licensed midwives will also still be required to enter into an affiliation with a physician and to have written clinical guidelines with their affiliated physician. The amendment simply seeks to remove potential barriers for midwifery practice.

The Board is also proposing to amend [N.J.A.C. 13:35-2A.5](#) to correct the address for the ACNM.

As the Board has provided a 60-day comment period on this notice of proposal, this notice is exempted from the rulemaking calendar requirement pursuant to [N.J.A.C. 1:30-3.3\(a\)5](#).

### **Social Impact**

The Board believes that the proposed amendments will have a positive impact on patients who seek services from midwives. By removing deterrents for entering into affiliations with licensed midwives, the amendments will encourage physicians to enter into such affiliations. This will increase the number of licensed midwives able to provide services for New Jersey patients.

### **Economic Impact**

The Board does not believe that the proposed amendments will have an economic impact.

### **[page=2204] Federal Standards Statement**

A Federal standards statement is not required because there are no Federal standards or requirements applicable to the requirements of the proposed amendments.

### **Jobs Impact**

The Board does not believe that the proposed amendments will increase or decrease the number of jobs in New Jersey.

### **Agriculture Industry Impact**

The Board does not believe that the proposed amendments will have any impact on

the agriculture industry of this State.

### **Regulatory Flexibility Analysis**

If certified nurse midwives are considered "small businesses" for the purposes of the Regulatory Flexibility Act, [N.J.S.A. 52:14B-16](#) et seq., then the following analysis applies.

There are no costs imposed by the proposed amendments. The proposed amendments impose compliance requirements on licensed midwives that are less onerous than existing requirements as detailed in the Summary. The proposed amendments do not impose any recordkeeping or reporting requirements. The Board believes that since the proposed amendments will remove barriers to midwifery practice while ensuring that the Board will be able to determine a midwife's affiliated physician, the rules should be applied uniformly to all licensees.

### **Smart Growth Impact**

The Board does not anticipate that the proposed amendments will have any impact on the achievement of smart growth and implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

### **Housing Affordability Impact**

The proposed amendments will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed amendments concern clinical guidelines for midwives.

### **Smart Growth Development Impact**

The proposed amendments will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed amendments concern clinical guidelines for midwives.

**Full text** of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 2A. LIMITED LICENSES: MIDWIFERY

##### 13:35-2A.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

. . .

"Clinical guidelines" means a [written agreement, signed by both the licensee and the affiliated physician] **document**, which sets forth patterns of care and which provides for consultation, collaboration, management and referral as indicated by the health status of a woman receiving care from a licensee.

. . .

13:35-2A.5 Independent practice

(a) (No change.)

(b) Certified nurse midwives and certified midwives shall conduct their practice pursuant to standards set forth by the ACNM in Standards for the Practice of Nurse Midwifery (1993), as amended and supplemented, available from the American College of Nurse-Midwives, [818 Connecticut Ave., Suite 900, Washington, DC 20006] **8403 Colesville Rd., Suite 1550, Silver Spring, MD 20910**, which is incorporated herein by reference as part of this rule.

(c)-(d) (No change.)

13:35-2A.6 Affiliated physicians; clinical guidelines

(a)-(b) (No change.)

(c) The clinical guidelines shall set forth:

1.-2. (No change.)

3. Procedures to follow if one of the risk factors from [N.J.A.C. 13:35-2A.9](#) and [2A.11](#) [are] **is** encountered;

4.-8. (No change.)

[(d) Prior to beginning practice, a licensee shall file with the Board a notice identifying the affiliated physician, the physician's telephone number and business address and the effective date of the clinical guidelines. In the event of any change of affiliated physician, the licensee shall notify the Board in writing within 30 days of the change.]

[(e)] **(d)** [Clinical] **A licensee shall provide clinical** guidelines [shall be made available] **and the identity of his or her affiliated physician(s)** to the Board upon request.

Recodify existing (f)-(g) as **(e)-(f)** (No change in text.)