

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF PUBLIC HEALTH

Statutory Authority: 16 Delaware Code, Section 122(3)(h) (16 **Del.C.** §122(3)(h))
16 **DE Admin. Code** 4106

FINAL

ORDER

4106 Practice of Non-Nurse Midwifery

NATURE OF THE PROCEEDINGS:

Delaware Health and Social Services ("DHSS"), Division of Public Health initiated proceedings to repeal regulation 4106 Practice of Non-Nurse Midwifery. These proceedings were initiated pursuant to 29 **Del.C.** Ch. 101 and the authority as prescribed by 16 **Del.C.** §122(3)(h).

On September 1, 2024 (28 **DE Reg.** 202), DHSS published in the *Delaware Register of Regulations* its notice of the proposed repeal, pursuant to 29 **Del.C.** §10115. The Division of Public Health requested that written materials and suggestions from the public concerning the proposed regulation be delivered to DHSS by October 1, 2024, after which time DHSS would review information, factual evidence, and public comment to the proposed regulation.

SUMMARY OF EVIDENCE:

In accordance with Delaware Law, public notice regarding proposed Department of Health and Social Services (DHSS) regulation 4106 Practice of Non-Nurse Midwifery was published in the *Delaware Register of Regulations*. Written comments were accepted on the proposed repeal of the regulation during the public comment period (September 1, 2024, through October 1, 2024).

No comments were received during the public comment period.

IMPACT ON THE STATE'S GREENHOUSE GAS EMISSIONS REDUCTION TARGETS AND RESILIENCY TO CLIMATE CHANGE:

NOTE: Please be aware of Section 10118 (b)(3) of Title 29 of the Delaware Code which requires that each agency address impact on the State's greenhouse gas emissions reduction targets and resiliency to climate change.

Division of Public Health Director Steven Blessing has reviewed the proposed regulation as required by 29 **Del.C.** §10118(b)(3) and has determined that any assessment of the impact of the proposed regulation is not practical.

FINDINGS OF FACT:

No changes were made to the regulation since publication as proposed. The Department finds that the proposed repealed regulation, as set forth in the attached copy, should be adopted in the best interest of the public of the State of Delaware.

THEREFORE, IT IS ORDERED, that the proposed repeal to regulation 4106 Practice of Non-Nurse Midwifery shall become effective December 11, 2024, 10 days after publication of the final regulation in the *Delaware Register of Regulations*.

10/24/2024 | 1:23 PM EDT
Date

Josette D. Manning, Esquire
Cabinet Secretary
Delaware Department of Health and Social Services

4106 Practice of Non-Nurse Midwifery

~~These regulations replace regulations previously adopted on April 17, 1978; amended September 19, 1978, December 22, 1982, and May 15, 1985, by the Delaware State Board of Health. Effective Date: April 10, 2002.~~

4.0 Purpose

~~The purpose of these Regulations is to establish and define conditions under which individuals may be granted permits to practice direct entry/non-nurse midwifery in the State of Delaware. The Department of Health and Social Services, through the Division of Public Health, will recognize and issue a permit to practice midwifery for direct entry/non-nurse midwives.~~

2.0 Authority

Title 16, ~~Del.C.~~ Ch. 1, §122(3)h.

3.0 Definitions

~~“Collaborative Agreement”~~ Written verification of health care facility approved clinical privileges; or health care facility approved job description; or a written document that outlines the process for consultation and referral between a direct entry/non-nurse midwife and a Delaware licensed physician with obstetrical hospital privileges.

~~“Direct Entry /non-nurse Midwife”~~ A midwife that has entered the profession directly through midwifery education and training and not through a prerequisite program of nursing and has met the qualifications and received a permit from the Delaware Division of Public Health to practice midwifery in DE.

~~“Guidelines/Protocols”~~ Suggested pathways to be followed by direct entry/non-nurse midwives for managing a particular medical problem. These guidelines/protocols shall be developed collaboratively by the midwife and a Delaware licensed physician with obstetrical hospital privileges.

~~“Midwifery Practice”~~ is the management of women’s health care, focusing particularly on pregnancy, childbirth, the postpartum period, care of the newborn, and the family planning and gynecological needs of women, including the prescription of appropriate medications and devices within this defined scope of practice. The midwife practices within a health care system that provides for consultation, collaborative management or referral as indicated by the health status of the client.

~~“Nationally Certified Midwife”~~ a direct entry midwife that has met national certification from North American Registry of Midwives (Certified Professional Midwife CPM) or American College of Nurse Midwives (Certified Midwife)

~~“Referral”~~ The process whereby a direct entry/non-nurse midwife directs the client to a physician or another health care professional for management of a particular problem or aspect of the client’s care.

4.0 Qualifications

To receive a permit to practice direct entry/non-nurse midwifery in the State of Delaware, an applicant must submit documentation to the Division of Public Health that they meet the following qualifications:

- 4.1 ~~Demonstration of completion of an accredited midwifery education program and is a Nationally Certified Midwife as demonstrated by possessing a valid certification of Certified Professional Midwives (CPM) from the North American Registry of Midwives or Certified Midwife (CM) from the American College of Nurse Midwives Certification Council or an equivalent certification.~~
- 4.2 ~~Submits a sworn statement that he/she has not been convicted of a felony; been professionally penalized or convicted of substance addiction; had a professional midwifery license suspended or revoked in this or another state; been professionally penalized or convicted of fraud; and is physically and mentally capable of engaging in the practice of midwifery.~~
- 4.3 ~~Establishes a collaborative agreement with a Delaware licensed physician with obstetrical hospital privileges which includes at a minimum:~~
 - 4.3.1 ~~a minimum number of medical provider prenatal visits.~~
 - 4.3.2 ~~guidelines and protocols that must include access and use of oxygen, medications (including Intravenous medications), emergency protocols for labor, delivery, and postpartum for both mother and neonate.~~
- 4.4 ~~Submits to the Division of Public Health a sample contract between the midwife and the pregnant women outlining the scope of practice and potential risk factors and complications.~~

5.0 Application

Any person who wishes to obtain a permit to practice direct entry/non-nurse midwifery shall make a written application to the Division of Public Health. Such application shall be accompanied by the necessary documents demonstrating that the applicant possesses the qualifications in Section IV. If, after investigation of the application by the Division of Public Health, it appears the applicant is qualified to practice direct entry/non-nurse midwifery, a permit to practice midwifery in the State of Delaware will be issued.

6.0 Maintenance of Permit

No person granted a permit under these regulations shall engage in active practice of direct entry/non-nurse midwifery without continuously meeting the qualifications in Section IV. Changes that occur during the permit period (one year) must be reported to the Division of Public Health.

7.0 Renewal of Permit

~~Any permit granted to practice direct entry/non-nurse midwifery in the State of Delaware shall terminate annually on December 31. The fee for such annual permit shall be determined annually (in July) by the Division of Public Health and not be less than \$15.00. Permits shall be renewable annually with the filing of an application and documentation setting forth continued qualifications as specified in Section IV. Should a permit not be renewed by January 31, the permit is considered lapsed and the direct entry/non-nurse midwife shall apply according to Section V.~~

8.0 Complaints

~~Any person may make a complaint in writing to the Division of Public Health concerning failure to comply with these regulations. The Division of Public Health will investigate complaints about direct entry/non-nurse midwives.~~

9.0 Illegal Practice

~~Any person who practices as a direct entry/non-nurse midwife, as defined in Section III, in the State of Delaware without a permit issued by the Division of Public Health shall be subject to a fine pursuant to 16 Del.C. 107.~~

10.0 Severability

~~Should any section, sentence, clause, or phase of these Rules and Regulations be legally declared unconstitutional or invalid for any reason, the remainder of these Rules and Regulations shall not be affected.~~

5 DE Reg. 1918 (04/01/02)

28 DE Reg. 455 (12/01/24) (Final)