

# LEGAL SERVICES

## DIVISION OF LEGAL AND RESEARCH SERVICES LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA


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### MEMORANDUM

February 11, 2022

**SUBJECT:** Bill relating to midwives (Work Order No. 32-LS1481\A)

**TO:** Senator Scott Kawasaki  
Attn: Joe Hayes  


**FROM:** Theresa Bannister  
Legislative Counsel

This memo accompanies the bill described above.

1. Basis of bill. The bill is based on Work Order No. 32-LS1343\A, which you provided, the changes you requested be made for that work order, and on my conversation with Mr. Hayes.
2. Addition of two provisions. Please be aware that the two requested additions are present already in the bill, although not where or as you would expect them. The language about home birth is found in bill sec. 1 as intent language. That is the standard placement for intent language. The telemedicine language is found in AS 08.65.140(d), but does not use the term, "telemedicine." To avoid repetition, that provision uses the definition that was provided for "telemedicine."
3. Removal of references. As requested, the two references to the National Association of Certified Professional Midwives have been removed from the bill. In addition, as we discussed, the references to the North American Registry of Midwives (NARM) have been removed. This avoids the future problem that would arise if a named organization changed its name, form, or character in the future and required a statutory change. This also avoids the issue of improper delegation of legislative power, which would arise if the board were required to rely on the licensing and practice criteria that a private organization develops.

Instead of these references to NARM, the bill requires the Board of Licensed Midwives (board) to consult with a nationally recognized midwives organization. This gives the board the flexibility to adjust the organizations as necessary or appropriate in the future.

The bill also provides that the organization that issues the certificate required under AS 08.65.050(1) and 08.65.080 be recognized by the board and the requirements for the certificate be consistent with AS 08.65. This also helps avoid the issue of improper delegation of legislative power to a private organization.

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4. Guidelines. The previous version of the bill did not provide the board with many guidelines for taking its actions because their actions were tied to private organizations. Since it is my understanding that you would like to avoid raising legal issues in the bill, this version requires in AS 08.65.030(a)(2) that the board adopt licensing regulations that are in the public interest and in and 08.65.090(a) that the apprenticeship requirements be in the public interest. These additions of "public interest" are made to provide at least a minimal guideline for the board in order to avoid an improper delegation of legislative power.

5. Combined provisions. As discussed, to avoid duplicating material, the draft combined AS 08.65.030(a)(2) and 08.65.040(b) and deleted AS 08.65.040(b).

6. Use of "uniform or random." It is not clear to me what "uniform or random" means as used in AS 08.65.030(b). This is the current language. Do you know what it is intended to mean? Can we adjust it in the bill to say that?

If you would like to discuss or change any of these items, please call me.

TLB:lme

22-047.lme

Attachment