

LEGAL SERVICES

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MEMORANDUM

January 18, 2022

SUBJECT: Bill relating to midwives and apprentice midwives
(Work Order No. 32-LS1343\A)

TO: Senator Shelley Hughes
Attn: Buddy Whitt


FROM: Theresa Bannister
Legislative Counsel

This memo accompanies the bill described above.

1. Basis of bill. The bill is based on the material that you provided and on my conversations with Mr. Whitt. Mr. Whitt indicated that, for the purposes of the bill, we were to disregard the regulatory provisions that were found in the material.
2. Use of "successor organization." In the material that you provided, the references to the North American Registry of Midwives (NARM) are followed by "or successor organization." The bill does not contain this language.

The term, "successor organization," is very imprecise. Without a very precise definition, the succeeding organization may be very different from the North American Registry of Midwives. Requiring, for example, the board to adopt regulations that comply with the practice or licensing requirements of an organization that the statute does not identify completely, or to require that a license applicant have a certificate from an organization that the statute does not identify, completely, may be considered to be an improper delegation of legislative power. If you still want "successor organization," I will, of course, insert it in the bill.

I do not recommend using the name of a specific organization in AS 08.65. An organization can change its name, which would require a statutory change, or it can change its character or reputation. Instead of naming a specific organization, you may want to consider substituting something like "a nationally recognized midwifery organization, as determined by the board" for NARM and the other organization identified in the bill. This would give the board the flexibility to adjust the organizations as necessary or appropriate in the future.

3. Guidelines and delegation to private organizations. In the bill, the board is given very little in the way of guidelines for the content of regulations it is to adopt. In

AS 08.65.030(2), the only licensing guideline is that the board allow a person to become a midwife by any method allowed by NARM. Although in AS 08.65.040(c) the board is prohibited from adopting certain specific requirements, the board is only required by AS 08.65.040(b) to adopt regulations that are consistent with the chapter and consistent with the requirements of two private organizations.

The lack of guidelines for adopting these regulations may be considered an improper delegation of legislative power. Do you want to add guidelines for the board to follow?

The requirement that the board adhere to what a private organization allows may also raise an issue of improper delegation of legislative power to a private organization.

4. Two organizations. AS 08.65.040(b) requires that the regulations regarding the knowledge, skills, and job descriptions that the Board of Licensed Midwives adopts be consistent with those of two named organizations. With two organizations, there may be a conflict between them. Do you want to name just one?

5. Use of "uniform or random." It was not clear to me what "uniform or random" meant 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?

6. Insurance provisions. The requested insurance provisions are placed in AS 21.42.355 where the same provisions for advanced registered nurses are located. The provisions for the advanced registered nurses are made applicable to fraternal benefit societies under AS 21.84.335(b). The bill makes the fraternal benefit societies be subject to the new licensed midwife provisions. Is this what you intended?

7. Definitions of "health care provider" and "health care facility." The statutes cited for the definition of "health care provider" provided in your material did not exist, so the bill uses another reference for the definition. There was no definition provided for "health care facility," so the bill uses one from the statutes. Please examine these definitions to determine if they are what you intended.

8. Replacement language. Instead of using "non-hospital based," the bill uses "outside a hospital." Is this what you intended?

9. Basic life support. A reference to "basic life support" is used in AS 08.65.050(4). What do you want this term to mean? Would you like to define it?

10. Neonatal resuscitation. In AS 08.65.050, the bill uses a description of neonatal resuscitation ("interventions used at the time of birth to support the establishment of breathing and circulation of the newborn") instead of the term, "neonatal resuscitation." Please let us know if this does not adequately describe the skill the midwife must be certified in.

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11. Administrative Procedure Act. Although it does not appear in your material, the bill retains in AS 08.65.040 the provision that the Administrative Procedure Act applies to regulations and proceedings under AS 08.65. This is a standard provision for a state agency, but if you intended to delete that provision, please let us know.

12. Transitional provisions. At the end of the bill are transitional provisions to handle the transition from the existing AS 08.65 provisions to the new provisions. Transitional provisions are necessary for this bill. Please examine these particular provisions to determine if they work for you or if you need to adjust them.

13. Effective date. The effective date of the new provisions is January 1, 2023, although the transitional provision for adopting regulations takes effect immediately.

If I may be of further assistance, please advise.

TLB:mjt

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Attachment