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May 5, 2015

The Honorable Lawrence J. Hogan, Jr.
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401

RE: *House Bill 9, "Maryland Licensure of Direct-Entry Midwives Act"*

Dear Governor Hogan:

We have reviewed House Bill 9 for constitutionality and legal sufficiency. We write to point out errors in the title that can be corrected in next year's curative bill and errors in the body of the bill that can be cured in next year's corrective bill.

The errors are:

(1) At page 1, line 11 to page 2, line 7 the title reflects that the bill is "requiring certain midwives to notify certain health care practitioners of certain births, transfer certain records, make certain recommendations, develop certain plans for certain patients, obtain certain informed consent agreements, comply with certain data collection and reporting requirements, complete and submit certain birth certificates, make certain records and information available to certain individuals, and display a certain notice under certain circumstances." Many of these actions are in fact required in the body of the bill. Others, however, such as notifying health practitioners when a birth occurs, transferring records, and making recommendations, are not expressly required, but are included in the scope of practice at page 14, lines 28 and 29 and page 14, line 31 to page 15, line 5. A scope of practice provision sets out the actions that are permitted, not those that are required. In addition, while the provision at page 15, lines 3 to 5 initially included a recommendation to the patient as a part of the scope of practice, it now includes a referral of the newborn to a pediatric health care practitioner instead.

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(2) At page 2, lines 22-24 the title reflects that the bill is “prohibiting the Board from renewing the license of certain licensed direct-entry midwives under certain circumstances, or taking other action against certain licensed direct-entry midwives for the failure to submit certain reports.” Page 27, lines 11-14 says that a “licensed direct-entry midwife who fails to comply with the reporting requirements under this section shall be prohibited from license renewal until the information required under subsection (a) of this section is reported.” There is no prohibition of other actions that the Board might take, and the bill expressly provides for reprimand, probation, suspension, or revocation for violations of the subtitle at page 42, lines 1-4, and page 43, line 11.

(3) Page 21, lines 18-25 of the bill requires that a direct-entry midwife be assisted at the time of delivery by a second individual who has certain qualifications. This requirement is not reflected in the title, though it is arguably covered by the general purpose of “establishing a licensing and regulatory system for the practice of direct-entry midwifery under the State Board of Nursing.”

(4) At page 10, line 4, the word “under” is repeated.

(5) At page 13, line 13, the cross reference should be to § 8-6C-18(e)(2) rather than to 8-6C-18(e)(1)(ii).

(6) Beginning at the top of page 32, and continuing to page 33, line 19, the paragraphs are misnumbered as a result of the deletion of the original paragraph (3). This correction would also require the correction to the cross reference to § 8-6C-12(a)(11) that appears at page 34, lines 7 and 14.

Sincerely,



Brian E. Frosh
Attorney General

BEF/KR/kk

cc: The Honorable John C. Wobensmith
Joseph M. Getty
Karl Aro