October 28, 2024

Office of the General Counsel

Department of Public Health

250 Washington Street

Boston, MA 02108

RE: Proposed Amendments to 105 CMR 140.000

Dear Mr. Anderson:

Thank you for the opportunity to offer comment on the proposed amendments to 105 CMR 140.000, Licensure of Clinics regarding Birth Centers.

I have the honor of representing Seven Sisters Birth Center in Florence, which means I am especially delighted by the Department of Public Health’s continuing work to support birth centers in our state, a critical node on the network required to uplift birthing individuals, babies, and their families. As such, I want to applaud the Department on some of the proposed amendments to the regulations. These include

* allowing CPMs to serve as primary birth attendants;
* allowing CPMs and CNMs to serve as director of medical affairs, and removing the requirement for obstetrical privileges at a nearby hospital;
* lifting the requirement for birth assistants to have labor and delivery experience within the past year;
* removing the requirement for a transfer incubator;
* updating clinical record keeping;
* updating transfer and referral policies and procedures;
* and adopting gender inclusive language.

These are positive changes that will help our current birth center and facilitate the opening of others.

Indeed, after years of hearing from Seven Sisters about the ways in which the regulations could be updated to better reflect the reality of running a birth center, these changes are very welcome and I’m grateful to the Department and other stakeholders for their work. Yet, in addition to these positive changes, I believe there are ways that we can even further improve the regulations. I have eight suggestions, which I have listed below.

**1) Updating the facility regulations to address onerous guidelines that unnecessarily add to the expense and difficulty of opening a birth center.** The current facility regulations required by 105 CMR 140.103 E are not part of 105 CMR 140. In addition to updating 105 CMR 140, DPH should also update the facility regulations to better match the needs and safety required for birth centers, aligning with AABC model regulations and with input from key stakeholders such as Seven Sisters Birth Center, Neighborhood Birth Center, Worcester Midwifery, and other entities in the process of opening birth centers in Massachusetts.

**2) Removing “abortion” from the list of procedures birth centers are precluded from providing, allowing providers to offer medical or procedural abortions that are within their clinical scope of practice. (105 CMR 140.906 B-1)** Birth centers do and can provide abortions– both medical and procedural– throughout the nation. This included Cambridge Birth Center and North Shore Birth center when they were open. CNMs now have procedural abortion as part of their scope of practice following the ROE Act. Given the state of abortion care in the United States, Massachusetts has a moral obligation to ensure that access remains truly available.

**3) Allowing birth center providers to send clients home with medications as appropriate and within provider scope of practice. (105 CMR 140.906 B-4)** There are a variety of instances where a provider in a birth center may need to send a client home with medication for that client to self-administer. Regulations should be updated to allow for these practices where consistent with provider regulations and standards of practice. My recommendation is to strike 105 CMR 140.906 B-4 which is unnecessary as the regulations set forth in section F of “140.347: Pharmacy Services by Clinics without Clinic Pharmacies” would apply to birth centers.

**4) Consistently integrating Certified Professional Midwives (CPMs) throughout regulations anytime a provider is listed.** The law changed to allow CPMs to be licensed providers in birth centers and to be the Director of Medical Affairs. The proposed amendments to 105 CMR 140.000 are inconsistent where CPMs are listed as providers, including as Administrative Director, Birth Assistant, and in clinical recordkeeping; this should be made consistent with CPMs included throughout all regulations referring to providers and directors of birth centers.

**5) Removing the clinical background requirement for the Administrative Director. (105 CMR 140.902 A)** The regulations should align with AABC, which does not require the administrative director to be a clinician. Indeed, the national regulations state: “The birth center shall appoint an administrative director and a clinical director. Depending upon the structure of the organization, the administrative and clinical directors may be the same person. The administrative director shall be responsible for implementing and overseeing the operational policies of the birth center.”

While clinicians may serve as Administrative Directors in some birth centers, the language proposed by DPH would preclude birth centers from hiring qualified *administrators* with public health, non profit, and business backgrounds, (e.g., Nashira Baril, MPH – Founder and Director of Neighborhood Birth Center would not be allowed serve in this role). Also, DPH should allow the same person to serve as medical and administrative director if they meet the requirements of both roles.

**6) Broadening the definition of a birth assistant beyond “Registered Nurse with L&D experience.” (105 CMR 140.902 C-2)** Regulations should align with AABC, which states: “The birth center shall have at least two persons who are currently certified in basic life support and neonatal resuscitation on premises and immediately available during each delivery.” Requiring RNs with L&D experience massively shrinks the hiring pool– which will be immensely challenging in a time of statewise nursing shortages. We have clear examples from Massachusetts birth centers that maintaining RN birth assistants is close to impossible, and that is why so many birth centers have defaulted to the costly option of two midwives at every birth.

With a licensed midwife or physician required to be the primary birth attendant, birth centers can maintain a safe environment with trained birth assistants without requiring that they be an RN or have hospital labor and delivery experience. AABC establishes such standards for quality birth assistants and offers community birth assistant training not limited to RNs. DPH and MassHealth must honor reproductive justice and make sure that people can access and pay for abortion care in trusted community clinical settings. In conjunction, MassHealth needs to remove “abortion” from “non covered services” from freestanding birth centers in 130 CMR 457.000

**7) Allowing “deemed by accreditation” option wherein a birth center that goes through CABC accreditation process is automatically licensed by the MA DPH.** Birth centers accredited by the CABC can obtain “deemed-by-accreditation” licensure, such as Massachusetts already offers for Ambulatory Surgery Centers. This would reduce cost and paperwork for both the birth center and the state. The state should also maintain a direct licensure pathway for birth centers that do not seek CABC accreditation, which may be more expensive and time consuming than a state license.

**8) Ensuring that birth centers are not subject to determination of need restrictions.** Birth centers should be exempted from any determination of need process (105 CMR 140.108C). Determination of need requirements have been a tremendous barrier to birth center access in many states. AABC opposes such requirements as outlined in their position statement (<https://assets.noviams.com/novi-file-uploads/aabc/pdfs-and-documents/PositionStatements/AABC_PS_-_Certificate_of_Nee-9e20624d.pdf>)

Thank you for considering these suggestions and for your work on these regulations. I am confident that with a few small tweaks, the Commonwealth will have regulations that will facilitate the opening of birth centers and allow for the continued operation of Seven Sisters for many years to come.

Respectfully,



Lindsay N. Sabadosa

State Representative, 1st Hampshire District