October 28, 2024

**RE: Proposed amendments to 105 CMR 140.000 Licensure of Clinics regarding birth centers**

To Whom it may concern:

This testimony is submitted on behalf of the team at Neighborhood Birth Center (NBC), the community-led nonprofit working to open Boston’s first freestanding birth center. **We also contributed to and endorse the “Mark Up Table” submitted today by the Bay State Birth Coalition** with a detailed line edit of these regulations and proposed language changes. When we open our doors in 2026, we will be only the second birth center in Massachusetts and the only Black-led birth center in New England. We are writing to express our deep appreciation for the commitment to expanding access to community birth, also known as out-of-hospital birth, by the Department of Public Health and the Healey-Driscoll Administration.

We want to commend the thoroughness, deliberateness, and inclusiveness of the DPH’s maternal-child team in bringing our state’s birth center regulations more in line with national standards and responsive to community needs. There are major changes in these draft regulations that we strongly support as they will make it easier for NBC to open and thrive. These include

* Allowing Certified Professional Midwives to serve as primary birth attendants
* Allowing CPMs and CNMs to serve as director of medical affairs, and removes the requirement for obstetrical privileges at a nearby hospital
* Lifting requirement for birth assistants to have labor and delivery experience within the past year
* Removing requirement for a transfer incubator
* Updating to clinical record keeping
* Updating to transfer and referral policies and procedures
* Adopting gender-inclusive language

In addition to these changes, we have identified *critical changes* still needed to better align with the new law and adhere to the American Association of Birth Center (AABC), the Commission on the Accreditation of Birth Centers (CABC) national standards, safety, and feasibility for birth centers.

1. **Consistently integrate 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.
   * 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.
2. **Remove the clinical background requirement for the Administrative Director.**
   * The AABC 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 proposed DPH language would preclude birth centers from hiring qualified *administrators* with public health, nonprofit, and business backgrounds.
   * This is especially concerning to us because it would preclude our founder and Executive Director, Nashira Baril, from serving in this role. This is *in spite* of the fact Nashira has led NBC for a decade, is the co-founder of Birth Center Equity, a national organization to increase the number of BIPOC-led birth centers, and has a Master’s in Public Health with extensive work in maternal child and racial justice.
3. **Broaden the definition of a birth assistant beyond “Registered Nurse with L&D experience.”**
   * Requiring RNs with L&D experience massively shrinks the hiring pool as many hospital-based RN’s are not looking to leave either shift-work or take a pay cut to work at birth centers. Finding or maintaining this staffing will be further challenging, if not impossible, with the historic nursing shortages we are facing after the pandemic.
   * Every single Massachusetts birth center– even prior to the pandemic– has struggled to maintain a full-time cadre of RN birth assistants, and that is why so many birth centers have defaulted to the costly option of 2 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**](https://www.birthcenters.org/CBA) not limited to RNs.
4. **Update facility regulations to address onerous guidelines that unnecessarily add to the expense and difficulty of opening a birth center.** 
   * NBC and Seven Sisters have had to build facilities from the ground up because the current facilities regulations make it almost impossible to retrofit existing buildings. This adds unbelievable cost– for NBC, it will be almost $12 million– and time.
   * 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 and CABC model regulations. Our architects at MASS Design Group have submitted testimony with specific recommendations to this.
5. **Remove “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. Also remove “abortion” for list of “non covered services” under MassHealth 130 CMR 457.000** 
   * Birth centers do and can provide abortions– both medical and procedural– throughout the nation. This includes both Cambridge Birth Center and North Shore Birth Center prior to their closures. And nationally renowned CHOICES Birth Center in Tennessee is submitting testimony to this point.
   * CNMs now have procedural abortion as part of their scope of practice following the ROE Act.
   * Following the overturn of Roe v Wade, DPH and MassHealth need to be ensuring that we are increasing access and coverage of abortion care in trusted, qualified settings like birth centers
6. **Allow birth center providers to use medications in labor and send clients home with medications as appropriate and within provider scope of practice.**
   * There is language in the regulations prohibiting: “Inhibition, stimulation or augmentation of the first or second stage of labor with controlled substances.” This is too restrictive and not clinically appropriate or accurate. We encourage this to be changed to “Induction or augmentation of labor using pharmacologic uterotonics.”
   * There is also language in these current regulations prohibiting “The provision of controlled substances for self-administration outside of the birth center.”
   * There are a variety of instances where birth center provider maysend a client home with a medication to self-administer, such as antibiotics, anti-nausea medication, emergency contraception or medications for the management of miscarriage.
   * Regulations should be updated to allow for these practices where consistent with provider regulations and standards of practice.
7. **Allow “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.
   * NBC is facing the long and expensive road of going through both CABC accreditation AND DPH licensure. If we could just focus on CABC, it would reduce cost and paperwork for both the birth center and the state.
8. **Ensure 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 opening up birth centers 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>)

We thank you for the time in reviewing our above written testimony. We know birth centers are a central solution to our maternal health crisis and midwives are primed to provide the highest quality reproductive and sexual health care across the lifespan.

Sincerely,

Neighborhood Birth Center

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