Rebecca Hart Holder

President

Reproductive Equity Now

70 Franklin Street, Floor 5

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October 28, 2024

Dr. Robert Goldstein, Commissioner

Massachusetts Department of Public Health

250 Washington Street

Boston, MA 02108

RE: Reproductive Equity Now Written Comments in support of proposed amendments to 105 CMR 140, *Licensure of Clinics* regarding birth centers and 105 CMR 130, *Hospital Licensure* regarding birth centers.

Dear Commissioner Goldstein:

On behalf of Reproductive Equity Now, I write to commend you for your ongoing and steadfast commitment to protecting and expanding reproductive equity in Massachusetts, as demonstrated today by the Massachusetts Department of Public Health’s swift advancement of proposed amended regulations for freestanding birth centers that will implement recommendations from the report of the 2022 Special Commission on Racial Inequities in Maternal Health, the Executive Office of Health and Human Services’ 2023 Review of Maternal Health Services and, most recently, *An Act promoting access to midwifery care and out-of-hospital birth options*, signed into law as Chapter 186 of the Acts of 2024 on August 23, 2024.[[1]](#footnote-0) Reproductive Equity Now works to make access to the full spectrum of reproductive health care a reality for all people in New England regardless of their race, ethnicity, income, zip code, gender, age, immigration status, ability, sexual orientation, or religion. Advancing reproductive equity to achieve reproductive justice and eliminating barriers to abortion care are central to our mission.

Reproductive Equity Now strongly supports the proposed amendments to 105 CMR 140.000, *Licensure of Clinics*, and 105 CMR 130.000, *Hospital Licensure*, regarding birth centers, as well as the proposed rescission of 105 CMR 142.000 *Operation and maintenance of birth centers*. These proposed amendments will bring Massachusetts’ regulation of freestanding birth centers in line with national standards and evidence-based guidelines set forth by the American Association of Birth Centers, considered the gold standard for birth center practice, to ensure that current and future birth centers operating and opening in Massachusetts can thrive and be sustainable without insurmountable and unnecessary administrative and financial barriers.[[2]](#footnote-1) Specifically, Reproductive Equity Now is pleased to see amendments made to 105 CMR 140.902-905, which:

1. Allow Certified Professional Midwives (CPMs) to serve as primary birth attendants. This will ensure that the licensure of CPMs in Massachusetts, the midwifery workforce trained in out-of-hospital births, can practice the birthing care they are trained to provide at the top of their license.
2. Allow CPMs and Certified Nurse Midwives (CNMs) to serve as directors of medical affairs at freestanding birth centers. Obsolete regulations requiring a birth center’s director of medical or clinical affairs to be an OB/GYN with full obstetrical privileges at a nearby hospital are out of line with best practices for birth center care, do not advance patient safety, and are incongruous with birth centers being predicated on a midwifery-led model of care.
3. Remove requirements for a written agreement with an obstetrician with full obstetrical privileges at a nearby or parent hospital. Instead, proposed amendments ensure that written policies and procedures for the coordination of ongoing care and transfer of patient care as needed are adopted by birth centers.

Additionally, Reproductive Equity Now strongly encourages the Massachusetts Department of Public Health to consider two further amendments to 105 CMR 140 and 105 CMR 130 which will ensure current regulations governing freestanding birth center and hospital birth center care align with the 2020 legislation, *An Act providing for access to reproductive health services*, commonly known as the ROE Act.[[3]](#footnote-2) We encourage these amendments to: (1) strike the current restriction on the provision of abortion care at birth centers in 105 CMR 140.906 (B)(1) and 105 CMR 130.815 (B)(1), and (2), strike the current restriction on the provision of controlled substances for self-administration outside of the birth center in 105 CMR 140.906 (B)(4) and 105 CMR 130.815 (B)(4). We recommend this for the following reasons:

1. The ROE Act, renowned for its seminal provision which codified the right to abortion into Massachusetts state statute, also expanded abortion access by authorizing Advanced Practice Clinicians, including Certified Nurse Midwives, to provide abortion care prior to 24 weeks within their scope of practice.[[4]](#footnote-3) This provision, further implemented by the Board of Registration in Nursing’s 2021 Advisory, *Certified Nurse Midwives and Certified Nurse Practitioners as Providers of Abortion for Pregnancies of Less than 24 weeks*, has been a tangible way to expand access to abortion care in the Commonwealth.[[5]](#footnote-4) To prohibit abortion care from being provided at freestanding and hospital birth centers would be out of line with the intent of the ROE Act to expand the scope of practice for Advanced Practice Clinicians and overall expand access to the provision of abortion care. Provision of abortion care, as well as counseling for all pregnancy options and offering referrals, are key core competencies of basic midwifery practice as established by the American College of Nurse Midwives.[[6]](#footnote-5)
2. 105 CMR 140.904 (B)(4) restricts the practice of providing controlled substances for self-administration outside of the birth center. Because all prescription drug products are considered controlled substances in Massachusetts, this unnecessarily restricts the dispensing of mifepristone and misoprostol, the two drugs used in the most common two-drug regimen for medication abortion, by clinicians who provide medication abortion within their scope of practice and are certified to prescribe mifepristone as required by the FDA.[[7]](#footnote-6) While the FDA currently allows for mifepristone to be mailed to patients or for a prescription of mifepristone to be sent to a certified pharmacy to be picked up by a patient, Reproductive Equity Now is aware of very few, if any, pharmacies in Massachusetts that have gone through the process of being certified to dispense this drug. Accordingly, prohibiting clinicians at birth centers who may provide medication abortion within their scope of practice, like Certified Nurse Midwives, from prescribing mifepristone directly to patients will inhibit essential abortion access. Instead of carving out and treating this care at birth centers as different, Reproductive Equity Now recommends ensuring that birth centers be held to the existing regulatory requirements in 105 CMR 140.347, governing Pharmacy Services by Clinics without Clinic Pharmacies. 105 CMR 140.347 (F), Administration of Medications, stipulates: “All drugs administered directly to patients in the clinic shall be administered by appropriately licensed personnel. Prescriptions shall be issued for all drugs not administered within the clinic. However, drugs may be dispensed by a prescribing practitioner for immediate treatment until such time as a prescription can be filled at a pharmacy.”

Again, we applaud DPH for further cementing Massachusetts’ leadership in reproductive equity by moving swiftly to advance revised regulations governing freestanding and hospital birth centers in the Commonwealth. With worsening severe maternal morbidity rates and access to out-of-hospital birthing options in Massachusetts at an all-time low, the time is now to advance policies that will support the ecosystem of maternal care in the Commonwealth, and the proposed amendments to 105 CMR 140 and 105 CMR 130 will be critical to improving maternal and infant health outcomes. Thank you for the opportunity to submit written comments.

Sincerely,



Rebecca Hart Holder

President

Reproductive Equity Now

1. *See* Special Comm’n on Racial Inequities in Maternal Health, *Report of the Special Commission on Racial Inequities in Maternal Health* (May 2022); *See also* [https://malegislature.gov/Reports/13607/(10)%20Racial%20Inequities%20in%20Maternal%20Health%20Commission%20-%20Final%20Report.pdf](https://malegislature.gov/Reports/13607/%2810%29%20Racial%20Inequities%20in%20Maternal%20Health%20Commission%20-%20Final%20Report.pdf)*;* Mass. Exec. Office of Health and Human Services, *Review of Maternal Health Services* (Nov. 15, 2023), <https://www.mass.gov/doc/maternal-health-report/download>; *See also* Mass. Acts ch. 186 § 40. [↑](#footnote-ref-0)
2. *See* American Assoc. of Birth Centers, *Standards for Birth Centers* (Revised 2017) <https://assets.noviams.com/novi-file-uploads/aabc/downloads/AABC-STANDARDS-RV2017.pdf>. [↑](#footnote-ref-1)
3. 2020 Mass Acts ch. 263. [↑](#footnote-ref-2)
4. Mass. Gen. Laws ch. 112 § 12M. [↑](#footnote-ref-3)
5. *See* Mass. Board of Registraion in Nursing, *Advisory Ruling on Nursing Practice: Certified Nurse Midwives and Certified Nurse Practitioners as Providers of Abortion for Pregnancies of Less than 24 weeks* (Sept. 8, 2021), <https://www.google.com/url?q=https://www.mass.gov/doc/ar2102-certified-nurse-midwives-and-certifed-nurse-practitioners-as-providers-of-abortion-for-pregnancies-of-less-than-24-weeks/download&sa=D&source=docs&ust=1730124452700043&usg=AOvVaw0t4oEyBtjd7FkZwsp5TcT4>; *See also* The American Coll. of Obsterricians and Gynecologists , *Issue Brief: Advanced Practice Clinicians and Abortion Care Provision* (Oct. 2023), <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-advanced-practice-clinicians-and-abortion-care-provision#:~:text=Integrating%20advanced%20practice%20clinicians%20>. [↑](#footnote-ref-4)
6. *See* The American College of Nurse-Midwives , *Position Statement: Midwives as Abortion Providers* (March 2018), <https://www.google.com/url?q=https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000314/ps-midwives-as-abortion-providers-final-19-mar-18.pdf&sa=D&source=docs&ust=1730124452701103&usg=AOvVaw2dTqQUyUdyBsYS52TSXP59>; *See also* The American Coll. of Nurse-Midwives ,  *ACMN Core Competencies for Basic Midwifery Practice* (March 2020), <https://www.google.com/url?q=https://www.midwife.org/acnm/files/acnmlibrarydata/uploadfilename/000000000050/ACNMCoreCompetenciesMar2020_final.pdf&sa=D&source=docs&ust=1730124452696367&usg=AOvVaw2sBcFcRKy_boOlQjohLkms>. [↑](#footnote-ref-5)
7. U.S. Food & Drug Admin. Center for Drug Evaluation and Research, *Mifepristone Summary*

*Revie*w, (Jan. 3, 2023). [↑](#footnote-ref-6)