ACOG STATE LEGISLATIVE UPDATE
YEAR IN REVIEW (AUGUST 2007)

'Lay' Midwives & Home Birth
Troubling Trends in State Legislation:

- **Home birth bills on the rise.**
- **Least qualified direct-entry midwives gaining licensure.**
- **The midwives' advantage.**
- **ACOG on the defensive.**

Home Birth Bills on the Rise

We are seeing an increase in 'lay' midwifery bills in the states. Backed by individual *State Midwifery Guilds* and by the *Midwives Alliance of North America* (MANA) and its credentialing unit, the *North American Registry of Midwives* (NARM), these bills are being introduced – and passed – in more and more states.

For example, in **Virginia** in 2005, certified professional midwives (CPMs) finally prevailed in what had been a decade-long campaign for licensure and legalization of home birth. New Republican majorities in the **Virginia** General Assembly helped assure the midwives' victory. This year, it was the **Missouri** midwives who prevailed in their perennial battle for licensure. (A lawsuit has been filed to block the new **Missouri** law.)

What's behind this trend?
A legislative handbook developed by MANA provides insight into the midwives' strategy. The 96-page handbook is full of lobbying advice, tactics and propaganda. It includes a detailed step-by-step primer on getting a home birth bill passed.

The American Legislative Exchange Council (ALEC), an influential 2,400 member organization of conservative state lawmakers, recently endorsed a model bill for the licensure of certified professional midwives (CPMs) which was crafted by MANA/NARM. Model legislation developed by ALEC gets wide attention in state legislatures across the country.

The 'lay' midwives' internal philosophy on state regulation and licensure appears to have shifted. In the past, their position on licensure reflected the dominance of midwives who did not want to be regulated, opposed state licensure, and defended within their individual guilds the right to stay unlicensed and practice underground. While there are midwives who still do not want to be regulated and who do not support the current licensure campaign, for the most part you don't see them speaking publicly against licensure in the legislature or elsewhere. Even the nurse-midwives no longer can be counted on to speak publicly against home birth or lesser trained midwives.

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Least Qualified Direct-Entry Midwives Gaining Licensure

- More states are adopting the CPM credential for midwife licensure, not CM.
- Only **New York** has one unified framework for licensing all midwives.
- ACOG does not support midwives who are not certified by ACNM.

The term *direct-entry* is used to refer to midwives who enter the profession of midwifery *directly* without earning a nursing degree. Both certified professional midwives (CPMs) and certified midwives (CMs) are considered direct-entry midwives, although their level of education and training varies markedly.

CPMs are largely self-taught and their training is typically through apprenticeship. CPM was the title chosen by MANA and NARM in the mid-1990s for their credentialed direct-entry midwives.

By comparison, CMs must undergo three years of university-affiliated training, and while there is no nursing prerequisite, these direct-entry midwives must complete the same science requirements and sit for the same certification exam as a nurse-midwife. (See, ACOG Statement of Policy, *Midwifery Education and Certification*, February 2007)

New York is one of the few states that recognizes the CM credential and requires all midwives to meet this minimum level of education and training. **New York** has one unified framework for licensing all midwives – both nurses and direct-entry midwives. But this is the exception to the current trend, and, in fact, the **New York** rules pre-date the establishment of the CPM credential.

More states are adopting the CPM credential as a requirement for midwifery licensure, and not the CM credential which both ACOG and ACNM recognize. Of the roughly 21 states that license midwives to attend home births, all use the CPM credential. By their lack of training and because they do not work collaboratively with hospital-based obstetric providers, CPMs are the least qualified midwives to attend a home birth.

The Midwives' Advantage

- Strong support among conservative lawmakers.
- Different titles for midwives & different levels of training foster public confusion and work to the midwives' advantage in the legislative arena.
- Legislators respond to the home birth "choice" message.

A clear trend shows support for home birth among conservative and Republican lawmakers who don't see much difference between home schooling and home birthing. Where these lawmakers hold the majority, home birth bills get passed.

The American Legislative Exchange Council (ALEC), an influential 2,400 member organization of conservative state lawmakers, recently endorsed a model bill for the licensure of CPMs. Model legislation developed by ALEC gets wide attention in state legislatures across the country.

Legislators often cannot distinguish between different types of midwives.
The different titles for midwives – direct-entry, independent, certified midwives, certified professional midwives – foster public confusion. This tends to work to the midwives' advantage in the legislative arena. Legislators often cannot distinguish among different categories of midwives and have a distorted impression of the actual qualifications of these practitioners.

The different credentialing standards for nurse-midwives, certified midwives, and certified professional midwives are not well understood by legislators. ACOG's joint statement of policy on nurse-midwives and certified midwives is being misused by midwifery advocates to support other midwives and home birth.

There is wide variability in the legal status and level of practice authority of midwives across the country. States in the northeast and northwest, along the southern border, and in the Appalachian region have long-recognized lay midwives in some legal or quasi-legal capacity. This situation complicates our advocacy. For example, in their testimony before state legislatures, midwives frequently cite **Washington State** because it has relatively liberal laws on lay midwife practice as compared to the rest of the country.

Legislators respond to the home birth pitch — "choice" and "safety".
To bolster their case for licensure, midwives like to cite European countries' experience with midwives and home birth. This may play well with an *un*informed public, but the analogy is flawed. The conditions that make home birth relatively safe in some countries – the Netherlands for example – do not pertain to much of the US. The Netherlands is a geographically small, densely populated country where everyone lives within 20 minutes of a hospital.

In their recent testimony to state legislators, midwives have been citing a 2005 study on the safety of home births by direct entry midwives in the US. (Johnson KC, Daviss B. Outcomes of planned home births with certified professional midwives: large prospective study in North America. BMJ 2005;330;1416) This study concluded, *"certified professional midwives achieve good outcomes among low risk women without routine use of expensive hospital interventions."* ACOG continues to assert that studies comparing the safety and outcome of births in and out of the hospital are problematic, not scientifically rigorous, and unconvincing. (See, ACOG Statement of Policy, *Home Births In The United States*, May 2007.)

Midwifery proponents in the state legislatures don't fit any single profile.

Recently, we've seen some odd-ball coalitions. **Missouri** exemplifies a nascent trend among the states. In 2005, a midwife bill (HB 36) was championed by an unusual coalition – Republicans, including the Speaker of the House, home schooling proponents, the religious right, and the state's Amish and Mennonite communities. The bill language was deceptive in its simplicity. It said,

> *"Nothing in **Missouri** law shall encroach on a mother's right to give birth in the setting and with any caregiver of her choice."*

ACOG on the Defensive

- Bills don't get defeated on the merits.
- Midwives show-up in huge numbers & their testimony plays to a sympathetic public and press.
- Nurse-midwives are a fickle ally.
- Physician back-up and declining availability of VBAC complicates ACOG's advocacy.

ACOG is playing defense on most of these bills. It's the rare situation where we can defeat these bills on the merits.

For example, in **Missouri,** 'lay' midwife bills get introduced year after year. These bills have been stopped – up to now – mainly by deft political maneuvering and hardball tactics employed by the State Medical Society, not by any persuasive testimony about comparative safety or quality of care.

In more and more states, doctors have been out-maneuvered in the legislative hearing room. Midwives tend to show up in huge numbers (and not just on the day of the hearing but almost on a daily basis throughout the session) and their testimony plays to a sympathetic public and press. In a few states, a show of force by the medical community might clinch victory; but in most it only reinforces a perception among lawmakers that this is just a turf battle between doctors and non-doctors and the final vote tends to favor the latter.

Nurse-midwives – a fickle ally.

The American College of Nurse-Midwives (ACNM) and its state chapters are divided on their response to state legislation that would license CPMs and legalize home birth. This complicates ACOG's advocacy. Whereas nurse-midwives have been ACOG's front-line defense against these bills, that's no longer a sure thing. Today, you don't see nurse-midwives speaking with any consistency against home birth or the certified professional midwives (CPMs). There is a widening internal debate within the American College of

Nurse-Midwives over education and training standards for midwives, and ACNM and MANA do not agree on certain aspects of education and practice.

Physician back-up.
Physician back-up for midwives and out-of-hospital deliveries is a growing concern in some states. In **Wisconsin,** the professional medical ethics of physicians who choose to back-up CPM-trained midwives were in dispute over home birth legislation that got approved in 2006 over the objections of the **Wisconsin** ACOG Section, the state AAP Chapter, and the State Medical Board. The bill passed with the support of the State Medical Society and an ob-gyn serving in the state legislature.

Another example is **California.** In 1993, **California** licensed midwives to do home deliveries under physician supervision. But implementing regulations for the 1993 law were only recently finalized after years of wrangling over key issues including the physician supervision requirement in the authorizing legislation. Medical liability insurers in the state were refusing to cover physicians who back-up midwives and midwifery proponents in the legislature threatened to waive the requirement for physician supervision altogether.

Declining availability of VBAC.
The situation with hospitals declining to do VBAC deliveries has complicated our advocacy efforts on midwives. ACOG Fellows in **California, Washington** and other Western and Rocky Mountain states report that women are seeking out alternatives, including home birth with midwives, in their desire for a VBAC. The VBAC issue was one of several sticking points in **California** as stakeholders weighed-in on regulations to implement a midwife licensure law.