



Date of Notice: May 21, 2018

**STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH
PUBLIC NOTICE OF PROPOSED RULE MAKING**

In accordance with Rhode Island General Laws (RIGL) 42-35-2.7, notice is hereby given that the Rhode Island Department of Health (RIDOH) proposes to amend the rules and regulations for Midwives (216-RICR-40-05-23).

REGULATION TITLE:

**RICR Title 216 – Rhode Island Department of Health
Chapter 40 – Professional Licensing and Facility Regulation
Subchapter 05 – Professional Licensing
Part 23 – Midwives**

TYPE OF FILING: Amendment.

RULEMAKING ACTION: Public Notice of Proposed Rule Making.

TIMETABLE FOR ACTION ON THE PROPOSED RULE: The public comment period ends on Thursday, June 21, 2018.

SUMMARY OF PROPOSED RULE: The RIDOH is proposing rulemaking to create Authority and Incorporated Materials sections, remove unused/superfluous definitions, revise qualifications of nurse-midwives to clarify that they must hold a current RI license as a registered nurse/privilege to practice, require submission of a background check as part of licensure, remove superfluous language, align prescription privileges for certified midwives with statute, and add Rhogam and prophylaxis for group beta streptococcus to list of emergency medications which may be carried and administered by certified professional midwives.

COMMENTS INVITED: All interested parties are invited to submit written comments concerning the proposed regulations. Written comments can be submitted by mail to Paula Pullano, Rhode Island Department of Health, 3 Capitol Hill, Providence, RI 02908-5097 or by email at paula.pullano@health.ri.gov by the close of **Thursday, June 21, 2018**. Please note that comments submitted to RIDOH by other means than the prescribed mailing and email address may not be received and addressed in RIDOH's concise explanatory statement. To ensure that your comments are received, please send them to the prescribed mailing and email address.

PUBLIC HEARING: In accordance with R.I. Gen. Laws § 42-35-2.8(c), an oral hearing will be granted if requested by twenty-five (25) persons, by a governmental agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) calendar days of this notice, and must clearly state the name of the regulation for which the hearing is being requested.

WHERE COMMENTS MAY BE INSPECTED: Rhode Island Department of Health, 3 Capitol Hill,

Providence, Rhode Island 02908-5097.

FOR FURTHER INFORMATION CONTACT: Paula Pullano, Rhode Island Department of Health, Division of Policy, Information, and Communications, 3 Capitol Hill, Providence, Rhode Island 02908-5097, 401-222-1042, paula.pullano@health.ri.gov.

AUTHORITY FOR THE RULEMAKING: R.I. Gen. Laws § 23-13-9.

REGULATORY FINDINGS: In the development of the proposed amendment, consideration was given to: 1) alternative approaches; 2) overlap or duplication with other statutory and regulatory provisions; and 3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based on available information. RIDOH has determined that the benefits of the proposed rule justify the costs of the proposed rule.

THE PROPOSED AMENDMENT: RIDOH proposes to amend the rules and regulations for Midwives (216-RICR-40-05-23) as follows in the concise explanatory statement of proposed non-technical amendments.

**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH
CONCISE STATEMENT OF PROPOSED NON-TECHNICAL AMENDMENTS
(AMENDMENTS TO AN EXISTING REGULATION)**

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-3(a)(1), the following is a concise statement of proposed non-technical amendments to the rules and regulations for Midwives (216-RICR-40-05-23).

Amendment Coordinates	Rationale/Summary of Change
§ 23.1: Creates Authority section.	
§ 23.2: Creates Incorporated Materials section.	
§ 23.3: Removes unused/superfluous definitions.	
§ 23.6: Requires that certified nurse-midwives must hold a current RI license as a registered nurse/privilege to practice. Also requires submission of a background check as part of licensure.	
§ 23.8(A): Revised to clarify date.	
§ 23.8.1(A): Revises to add “completion of.”	
§ 23.9(A): Removes superfluous reference to National Association of Certified Professional Midwives, and cites to incorporations by reference in § 23.2.	
§ 23.9(B): Removes reference to repealed statute.	
§§ 23.10(A) and (B): Revised to align with R.I. Gen. Laws § 23-13-9 regarding prescriptive authority for licensed certified midwives.	
§ 23.10(D): Clarifies that certified professional midwives may administer the listed emergency medications, and adds Rhogam and prophylaxis for group beta streptococcus to list of emergency medications which may be carried and administered by certified professional midwives.	
Severability: Removed as superfluous.	

TITLE 216 - DEPARTMENT OF HEALTH

CHAPTER 40 – PROFESSIONAL LICENSING AND FACILITY REGULATION

SUBCHAPTER 05 – PROFESSIONAL LICENSING

PART 23 - Midwives

23.1 Authority

These regulations are promulgated pursuant to the authority conferred under R.I. Gen. Laws § 23-13-9 for the purpose of adopting prevailing standards for the practice of midwifery in Rhode Island.

23.2 Incorporated Materials

- A. These regulations hereby adopt and incorporate the American College of Nurse-Midwives' "Standards for the Practice of Midwifery" (2011) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- B. These regulations hereby adopt and incorporate the American College of Nurse-Midwives' "The Core Competencies for Basic Midwifery Practice" (2012) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- C. These regulations hereby adopt and incorporate the American College of Nurse-Midwives' "Joint Statement of Practice Relations Between Obstetrician-Gynecologists and Certified Nurse- Midwives/Certified Midwives" (2017) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- D. These regulations hereby adopt and incorporate the American College of Nurse-Midwives' "Position Statement: Collaborative Agreement between Certified Nurse-Midwives/Certified Midwives and Physicians or other Health Care Providers" (2017) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.
- E. These regulations hereby adopt and incorporate the Midwife Alliance of North America's "The Midwives Alliance Core Competencies" (2014) by reference, not including any further editions or amendments thereof and only to the extent that the provisions therein are not inconsistent with these regulations.

23.3 Definitions

- A. Wherever used in this Part the following terms shall be construed to mean:

1. "Act" means R.I. Gen. Laws § 23-13-9 entitled, "Licensing and Regulation of Midwives – Penalty for Violations".
2. "Accredited educational program in midwifery" means an academic and practical program of midwifery accredited by the Accreditation Commission for Midwifery Education (ACME) or the Midwifery Education Accreditation Council (MEAC).
3. "Certified midwife" or "CM" means a person who has successfully completed an accredited educational program in midwifery, holds a current certification as a midwife by the American Midwifery Certification Board (AMCB), and is licensed to practice midwifery in Rhode Island.
4. "Certified nurse-midwife" or "CNM" means a person who has successfully completed an accredited educational program in midwifery, holds a current certification as a nurse- midwife by the American Midwifery Certification Board (AMCB), and is licensed to practice midwifery in Rhode Island.
5. "Certified professional midwife" or "CPM" means a person who has successfully completed an accredited educational program in midwifery, holds a current certification as a certified professional midwife by the North American Registry of Midwives (NARM), and is licensed to practice midwifery in Rhode Island.
6. "Council" means the Advisory Council on Midwifery as established by this Part.
7. "Department" means the Rhode Island Department of Health.
8. "Director" means the Director of the Rhode Island Department of Health.

~~"General supervision" of a newly graduated midwife, pursuant to §7.4 of this Part, means that a licensed midwife, an obstetrician/gynecologist, or a family practice physician is readily available for consultation.~~

9. "Midwife" means a person who has successfully completed an accredited educational program in midwifery, holds a current certification as a certified nurse-midwife (CNM), certified midwife CM), or certified professional midwife (CPM), and is licensed to practice midwifery in Rhode Island as defined in this Part.
10. "Midwifery" means the independent management of cases of normal childbirth, including prenatal, intrapartum, postpartum, and normal newborn care, and well woman care including the management of common health problems.
11. "Physician" means an individual licensed under the provisions of R.I. Gen. Laws Chapter 5-37 to practice medicine with current obstetrical privileges in a licensed hospital.
12. "Regionally accredited" means the official guarantee that a college or university or other educational institution is in conformity with the standards of education prescribed by a regional accrediting commission recognized by the U.S. Commissioner of Education.

~~"RIGL" means the General Laws of Rhode Island, as amended.~~

~~"These Regulations" means mean all parts of the Rhode Island Rules and Regulations for Licensing of Midwives.~~

23.4 License Requirements

- A. Any person practicing or offering to practice midwifery shall be required to submit evidence that such person is qualified to practice and shall be licensed as provided in this Part, in order to safeguard the life and health of the people.
- B. It shall be unlawful for any person to practice or to offer to practice midwifery in Rhode Island or to use any title, abbreviation, sign, card or device to indicate that such a person is practicing midwifery unless such person has been duly licensed as a midwife in accordance with the Act and this Part.

23.5 Advisory Council on Midwifery

- A. Within the Department, the Director shall establish an Advisory Council on Midwifery that shall meet at least once a year, and consist of seven (7) members:
 - 1. Two (2) physicians;
 - 2. Three (3) midwives; and
 - 3. Two (2) consumers.
- B. No member shall be appointed for more than two (2) consecutive full terms. A member appointed for less than a full term (originally, or to fill a vacancy) may serve two (2) full terms in addition to that part of a full term, and a former member shall again be eligible for appointment after a lapse of one (1) or more years. A full term shall be equal to three (3) years.
- C. Successors to members of the Council whose term expires shall be appointed in such year by the Director to hold office for three (3) years or until their respective successors are appointed.
- D. The Director may remove any member of the Council for neglect of duty or incompetency and may fill vacancies that occur for any purpose for the remainder of the unexpired term.

23.5.1 Functions of Advisory Council

The Council shall serve in an advisory capacity to the Director in matters pertaining to the licensing of midwives and the practice of midwifery. The Council shall advise the Director on such matters as policies affecting qualifications, issuance and renewal, denial or revocation of licenses, and the development of rules and regulations.

23.5.2 Administration

The Department shall be responsible for the administrative functions required to implement the provisions of the Act and this Part including such duties as: maintaining a register of all licensed midwives; maintaining all records pertaining to the licensing of midwives; staffing the Council; and discharging such other duties as may be warranted.

23.6 Qualifications of Midwives

- A. An applicant for a license to practice midwifery in Rhode Island shall have successfully completed an accredited educational program in midwifery and has evidence of certification. The Director shall require submission of such information as may be deemed necessary to evaluate the nature and scope of the applicant's academic and clinical preparation in accordance with the requirements of this Part. Such information may include but not be limited to:
1. Transcripts of academic courses or other documented evidence of successful completion of an approved educational program in midwifery;
 2. Documentation of successful completion of a written examination in accordance with the requirements of § 23.7.1 of this Part.
 3. Certified Nurse-Midwives (CNM) must hold a current Rhode Island license as a registered nurse or privilege to practice and shall not hold an encumbered license or privilege to practice as a registered nurse in any state or territory.
 4. Submitting a copy of written notification from the Bureau of Criminal Identification (BCI) indicating that no disqualification information has been found or requesting the BCI provide the Department with a copy of the criminal background report.
 5. Payment of required fee as stipulated in §§ 23.7.2(B) and 23.7.3 of this Part.

23.7 Licensing of Midwives

23.7.1 By Education and Examination:

Applicants for a license to practice midwifery in Rhode Island shall have successfully completed an accredited educational program in midwifery that is accredited by the Accreditation Commission for Midwifery Education (ACME) or the Midwifery Education Accreditation Council (MEAC).²⁷ Further, applicants shall be required to pass an examination that is administered by the American Midwifery Certification Board (AMCB) or the North American Registry of Midwives (NARM).

23.7.2 By Endorsement:

- A. If an applicant was licensed as a midwife in another state or territory, she/he may be issued a license to practice midwifery in Rhode Island, if, in the opinion of the Council, she/he meets the licensure qualifications in place in Rhode Island at the time of licensure in the other state or territory.

- B. An applicant who submits an application along with the non-refundable, non-returnable application fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title), provides acceptable evidence of being currently licensed under the laws of other states of the United States or the District of Columbia and presents evidence of meeting the requirements of § 23.7.1 of this Part shall be provided with a dated receipt to work which shall be valid for ninety (90) days. Provided, however, the applicant shall be duly licensed in Rhode Island within ninety (90) days from the dated receipt to work issued by the Department. This interim work privilege shall not be extended or renewed beyond ninety (90) days.

23.7.3 Foreign Trained Midwives:

All midwives prepared in a midwifery program outside the United States of America shall submit evidence of having graduated from a midwifery program meeting the standard set by the International Confederation of Midwifery (ICM), along with the non-refundable, non-returnable application fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title), and of holding a license in midwifery from the given foreign country. In addition, the applicant shall be required to successfully complete the examination administered by the American Midwifery Certification Board (AMCB) or, if a CPM, attend a Midwifery Education Accreditation Council (MEAC) accredited school and successfully complete the examination administered by the North American Registry of Midwifery (NARM).

23.8 Renewal of License

- A. On or before the first (1st) day of August of every odd-numbered year, the Department shall mail a renewal of license notice to every midwife to whom a license has been issued or renewed for the period ending ~~1~~ September 1. Every person so licensed who intends to engage in the practice of midwifery during each ensuing two (2) years shall apply for a license by application to the Department.
- B. Upon receipt of the application, the non-refundable, non-returnable renewal fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title), and the accompanying attestation of continuing education and continued national certification required by this Part, the accuracy of the application shall be verified and the Director may grant a license renewal effective September 1st and expiring the thirty-first (31st) day of August in the odd- numbered year following the issuance of such license and shall render the holder to be a legal practitioner of midwifery for the period stated on the license renewal unless sooner revoked or suspended.
- C. Any licensee who allows his or her license to lapse by failing to renew the license by the appropriate date may be reinstated upon submission of an application and the non-refundable, non-returnable renewal fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title), along with the accompanying data as required by this Part and as approved by the Director.

- D. Any person practicing midwifery after lapse of licensure shall be considered an illegal practitioner and subject to the penalties of the provisions of the Act.

23.8.1 Continuing Education Requirements

- A. An application for renewal shall include an attestation statement of completion of twenty (20) hours of continuing education in a two (2) year period, including four (4) hours in pharmacology.
- B. It shall be the sole responsibility of the midwife to obtain documentation (e.g., course descriptions, proof of attendance) from the sponsoring organization, agency, or institution of his/her participation in a continuing education program and/or activity. These documents shall be retained by each licensee for no less than two (2) years and are subject to random audit by the Department.
- C. A licensee who fails to complete the continuing education requirements described in this Part may be subject to disciplinary action pursuant to § 23.12 of this Part.
- D. A license may be denied to any applicant who fails to provide satisfactory evidence of completion of continuing education relevant to the practice of a midwife as required by this Part.
- E. A midwife initially licensed by examination after the August 31st renewal date shall be exempt from the continuing education requirements stated in this Part until the date of the next renewal cycle (i.e., September 1st of the next odd-numbered year).
- F. An extension of time to complete the continuing education requirements may be granted to a midwife solely at the discretion of the Council for reasons of hardship or other extenuating circumstances.

23.9 Practice of Midwifery

- A. The license to practice midwifery authorizes the holder to practice the independent management of cases of ~~normal~~ childbirth, including prenatal, intrapartum, postpartum, and normal newborn care, and well woman care including the management of common health problems that provides for consultation, collaborative management, or referral as indicated by the health status of the client in accordance with standards established by the American College of Nurse-Midwives and Midwives Alliance of North America incorporated by the National Association of Certified Professional Midwives referenced in § 23.2 of this Part.
- B. Licensed midwives shall conform to all state laws pertaining to the conduct of childbirth and management of the newborn, including, but not limited to, the provisions of R.I. Gen. Laws § 23-13-4, "Ophthalmia Neonatorum"; ~~RIGL §23-13-12, "Phenylketonuria";~~ R.I. Gen. Laws § 23-13-19 "HIV"; R.I. Gen. Laws § 23-13-13 "Testing for Hearing Impairments"; R.I. Gen. Laws § 23-13-14 "Newborn Screening"; and R.I. Gen. Laws § 23-3-10, "Birth Registration".

23.10 Prescription Privileges of Licensed Nurse-Midwives

- A. Pursuant to the provisions of the Act, a licensed nurse-midwife or licensed certified midwife is permitted to prescribe all legend medications and those controlled substances cited in § 23.10(B) of this Part.
1. The licensed nurse-midwife or licensed certified midwife shall prescribe any medication(s) referenced in § 23.10(A) of this Part in accordance with the guidelines available at the practice site.
- B. Licensed nurse-midwives or licensed certified midwives may apply for authorization to prescribe drugs classified under R.I. Gen. Laws Chapter 21-28 as controlled substances in schedules II, III, IV, and V only. In order to prescribe such drugs, a licensed nurse-midwife or licensed certified midwife must:
1. Obtain a state registration for prescribing controlled substances by completing the application for registration, and submitting it with its specified filing fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title) to:

Rhode Island Department of Health, Pharmacy Unit

Three Capitol Hill, Room 205 Providence, RI 02908-5097
 2. Obtain a federal registration for controlled substances by completing application form DEA-224, or its successor form, and submitting it with its specified filing fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title).
- C. The Director will determine whether issuance of a registration is consistent with the public interest, and may refuse registration where the issuance of said registration would be inconsistent with the public interest, according to the provisions of R.I. Gen. Laws Chapter 21-28.
- D. A certified professional midwife (CPM) shall not have the ability for prescriptive authority but may carry and administer emergency medications essential to care ~~carry-~~ for a safe out-of-hospital birth. These are to include:
1. Intravenous solution and equipment.
 2. Misoprostol.
 3. Oxygen.
 4. Pitocin.
 5. Vitamin K.
 6. Erythromycin ophthalmic ointment.

7. Methergine.
8. Lidocaine.
9. Epi-Pen (adult).

10. Rhogam.

11. Prophylaxis for group beta streptococcus.

23.11 Records and Reports

- A. A medical record for each mother and newborn shall be maintained and shall include documentation of all care rendered.
- B. All medical records shall be retained for a period of five (5) years in accordance with the provisions of R.I. Gen. Laws § 23-3-26 except in the case of minors [seventeen (17) years of age or under] which medical records shall be kept at least five (5) years after such minor has reached the age of eighteen (18) years.

23.12 Discipline of Licensees

- A. The Director is authorized to deny or revoke any license to practice midwifery or otherwise discipline a licensee upon proof that the person is guilty of unprofessional conduct which shall include, but not be limited to:
 1. Fraudulent or deceptive procuring or use of a license;
 2. All advertising of midwifery business which is intended or has a tendency to deceive the public;
 3. Conviction of a crime involving moral turpitude; conviction of a felony; conviction of a crime arising out of the practice of midwifery;
 4. Abandonment of patient;
 5. Dependence upon controlled substances, habitual drunkenness or rendering professional services to a patient while the midwife is intoxicated or incapacitated by the use of drugs;
 6. Promotion by the sale of drugs, devices, appliances, or goods or services provided for a patient in such a manner as to exploit the patient for the financial gain of the midwife;
 7. Immoral conduct of a midwife in the practice of midwifery;
 8. Willfully making and filing false reports or records in the practice of midwifery;
 9. Willful omission to file or record, or willfully impeding or obstructing a filing or recording, or inducing another person to omit to file or record medical or other reports as required by law;

10. Solicitation of professional patronage by agents or persons or profiting from acts of those representing themselves to be agents of the midwife;
 11. Division of fees or agreeing to split or divide the fees received for professional services for any person for bringing to or referring a patient;
 12. Willful misrepresentation in treatments;
 13. Practicing midwifery with an unlicensed midwife or aiding or abetting such unlicensed persons in the practice of midwifery;
 14. Gross and willful overcharging for services; including filing of false statements for collection of fees for which services are not rendered or willfully making or assisting in making a false claim or deceptive claim or misrepresenting a material fact for use in determining rights to health care or other benefits;
 15. Professional or mental incompetency;
 16. Incompetent, negligent or other willful misconduct in the practice of midwifery, which shall include the rendering of medically unnecessary services and/or any departure from or the failure to conform to the minimal standards of acceptable and prevailing midwifery practice. The Director need not establish actual injury to the patient in order to adjudge a midwife guilty of the named conduct;
 17. Surrender, revocation, suspension, limitation of privilege based on quality of care provided or any other disciplinary action against a license or authorization to practice midwifery in another state or jurisdiction, or surrender, revocation, suspension or any other disciplinary action relating to a membership on any medical staff or in any medical or professional association or society while under disciplinary investigation by and of those authorities or bodies for acts or conduct similar to acts or conduct which would constitute grounds for action as set forth in R.I. Gen. Laws Chapter 21-28 and this Part;
 18. Failure to furnish the Director, his/her investigator or representatives, information legally requested;
 19. Violation of any provision(s) of R.I. Gen. Laws Chapter 23-13 or any rules or regulations promulgated by the Director or of an action, stipulation or agreement of the Director;
 20. Cheating on or attempting to subvert the licensing examination;
 21. Violating any state or federal law or regulation relating to controlled substances;
 22. Malpractice.
- B. If national certification is withdrawn for reason during licensure, current license would be automatically placed in license hold status after notice to the licensee and not renewed until national certification is reinstated.

1. Complaints charging a person with violation of any rule in this Part or state law, shall be maintained on file by the Department and shall be considered in rendering determination to deny or revoke the license of a midwife.
- C. Upon receipt of a complaint charging a person with violations of the provisions of the Act and this Part, an investigation of the charges shall be initiated by the Department or the Director, thence referred to the Council for recommendation to the Director for appropriate action.
- D. Whenever an action shall be proposed to deny or revoke the license, the Department shall notify the person by certified mail setting forth the reasons for the proposed action and the applicant or licensee shall be given an opportunity for a prompt and fair hearing in accordance with the provisions of R.I. Gen. Laws Chapter 42-35 and the rules and regulations pertaining to Practices and Procedures Before the Rhode Island Department of Health (Part 10-05-4 of this Title).
- E. Furthermore, when it appears to the Director after due process that a person is violating any provisions of the Act or any of this Part, the Director may initiate an action in accordance with the provisions of such statute.

Severability

~~If any provision of these Regulations or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions or application of these Regulations which can be given effect, and to this end the provisions of these Regulations are declared to be severable.~~