MEMORANDUM

TO: Interested Members of the Public

FROM: California Families for Access to Midwives

DATE: August 31, 2013

RE: Summary Analysis of Recently Proposed Amendments to California Midwifery Bill AB1308

SUMMARY

AB1308, authored by Assemblywoman Susan Bonilla (D-14th) proposes amendments to California's Licensed Midwifery Practice Act of 1993 (LMPA). In drafting this legislation, Bonilla worked closely with American Congress of Obstetricians and Gynecologists (ACOG), the bill sponsor, California Association of Midwives (CAM), and more recently California Families for Access to Midwives (CFAM). The most recent draft of the bill has not been released publicly, as it is not final, but CFAM has obtained a working draft, and is releasing this analysis for public review and discussion.

Upon review and analysis, CFAM concludes that passage of this bill serves the interests of California families, and will be beneficial to California's maternity care system by integrating licensed midwives into the mainstream maternity care system, increasing access to licensed midwife care, and lifting the looming threat of enforcement of physician supervision.

If passed, AB1308 will protect legal access to care for the majority of California women (90-94%), and will pave the way to increased practical access for low income, Medi-Cal eligible women. However, the bill fails to affirm a woman's right to determine the manner and circumstances of her birth, and it explicitly bars licensed midwives from caring for women carrying more than one baby, women whose babies are presenting in breech position, and women whose labors do not commence during the period between 37 and 42 weeks of pregnancy. These scope of practice limitations are indicative of the need for additional public education and awareness regarding licensed midwives' training, expertise, and commitment to providing appropriate care for all women.

AB1308 includes extensive changes to LMPA, and the changes can be grouped broadly into four categories: (1) midwife conduct requirements; (2) physician liability limitations; (3) consumer protection provisions; and (4) previous amendments retained in current proposal.

BILL ANALYSIS

I. MIDWIFE CONDUCT REQUIREMENTS.

A. Scope of Practice.

AB1308 amends current law to remove the requirement of physician supervision. Instead, of requiring supervision, the law will instead provide that: "The license to practice midwifery authorizes the holder to attend cases of normal pregnancy and childbirth" so long as progress "meets criteria accepted as normal." Normal pregnancy and normal birth is, in turn, defined as meeting all of the following criteria:

- There is an absence of either of the following:
  - Any preexisting maternal disease or condition likely to affect the pregnancy
  - Significant disease arising from the pregnancy
- There is a singleton fetus
- There is a cephalic (head down) presentation
- The gestational age of the fetus is greater than 37 weeks and less than 42 completed weeks of pregnancy
- Labor is spontaneous or induced in an outpatient setting

<u>This definition of "normal" explicitly excludes from licensed midwife care, women carrying more than one baby and women whose babies are in breech position. In total, this excludes roughly 6-10% of mothers</u>.

Additionally, AB1308 directs the medical board to draft regulations to define what constitutes a "preexisting maternal disease or condition likely to affect the pregnancy" as well as "significant disease arising from pregnancy." The current midwife standards of practice are likely to be instructive in crafting these regulations, but there will be change. For women who experience diseases or conditions defined by the medical board as likely to affect the pregnancy, licensed midwives will be required to:

> provide the woman with a referral for an examination by a physician and surgeon trained in obstetrics and gynecology. A licensed midwife may assist the woman in pregnancy and childbirth only if an examination by a physician and surgeon trained in obstetrics and gynecology is obtained and the physician and surgeon who examined the woman determines that the risk factors presented by her disease or condition are not likely to significantly affect the course of the pregnancy and childbirth.

The conversation regarding preexisting diseases and conditions inevitably begs the question of what happens with VBACs. Research indicates that vaginal birth after certain types of cesareans have comparable rates of success and health as vaginal delivery with no prior cesareans.

However, additional advocacy will be needed to ensure that the medical board crafts regulations limited to their narrow legislative directive, which is to define conditions that are "likely to significantly affect" the pregnancy and birth.

CFAM Conclusion: Removal of physician supervision from California law this year is critical, particularly in light of the renewed threat of enforcement created by SB304. Moreover, with the ongoing implementation of the Affordable Care Act, it is more important than ever for affordable maternity care options to be made available to all families. Currently, the physician supervision requirement is a barrier to access because it prevents Medi-Cal from recognizing licensed midwives as independent providers capable of providing comprehensive prenatal, birth, and postpartum care. As such, low-income women are prevented from accessing care even though they can benefit greatly.

ACOG's insistence on limiting licensed midwives' scope of practice to a narrow definition of "normal birth" is indicative of their failure to understand the midwifery model of care, their misplaced concern about midwives' willingness to consult and transfer as needed, and their continued lack of respect for a woman's right to self-determination in childbirth. However, the medical model of care is very prevalent, and licensed midwifery care has operated largely on the fringes (in no small part due to the physician supervision requirement). Thus one of the important benefits of removing physician supervision from law is increased visibility of licensed midwives and the important work they do for women and families. In our opinion, the overall benefits of AB1308 significantly outweigh the impact of the new scope of practice limitations, particularly in light of the recent changes to the medical board and the uncertain impact that SB304 will have on enforcement. Removal of the physician supervision requirement from law this year is essential.

There remains, however, a great need for public education and awareness regarding the role of midwives in the maternity care system. Removal of physician supervision will inevitably lead to a greater degree of visibility and respect for what midwives do, and will make midwifery care a viable possibility for women of all income levels. Targeted future legislation is needed to address, and articulate a woman's fundamental human right to determine the manner and circumstances of her birth. However, the conversation about human rights in childbirth is much broader than access to licensed midwives, and must involve a broad coalition of stakeholder organizations and committed citizens.

Education Requirements.

AB1308 sets forth a new limitation on midwife training and education. It states that after January 1, 2015, new licensees shall not substitute clinical experience for formal didactic education. This means that for midwives-in-training seeking to participate in the California challenge mechanism, clinical training alone will no longer suffice.

CFAM has consulted with a number of midwives regarding the impact of this provision, and are under the impression that the overwhelming majority of new midwives meet this requirement.

CFAM Conclusion: CFAM is not in the best position to provide a thorough analysis of the potential impact of this provision. However, we have consulted with California Association of Midwives, and they endorse this legislative change because the overwhelming majority of new midwives meet this requirement.

II. PHYSICIAN LIABILITY LIMITATIONS.[1]

There is quite a bit of language in the bill stating in a number of different ways that physicians are not responsible for midwives or their clients, and that no legal relationship is created as a result of a licensed midwife's consultation with a physician. The bill also limits the liability for negligent acts or omissions for on-call emergency room medical licensees who "in good faith render[] emergency obstetrical services" following a transfer from an out-of-hospital birth. However, it expressly excludes from protection licensees who act in bad faith, and those whose behavior constitutes "gross negligence, recklessness, or willful misconduct," and therefore does not protect physicians who delay or deny care.

CFAM Conclusion: While limiting liability for physicians may seem unreasonable, the unfortunate reality is that it is not uncommon for licensed midwives and their clients to be met with hostility upon transfer, and for care to be delayed or denied, in part, due to fear of liability. This liability language made ACOG more comfortable with the bill, but it is largely a theoretical concern because negligence-based lawsuits against physicians for providing care to home birth families are exceedingly rare (perhaps even nonexistent). The limitations of liability are unlikely to have a significant practical impact, except to the extent that they make physicians more comfortable accepting referrals and transfers. As such, the net outcome is likely to be positive.

III. CONSUMER PROTECTION PROVISIONS.

A. Informed Consent and Disclosure.

AB1308 reiterates and adds to the list of disclosures midwives are required to provide to their clients, and the informed consents they are required to obtain. The list includes without limitation, disclosure of:

- Whether or not the licensed midwife has liability coverage

[1] The extent of the liability-limiting provisions is the primary focus of the judiciary committee, and may be responsible for the delay in releasing the recent amendments. If there are any additional changes between the preparation of this summary analysis and the public release of the amended bill, the changes are likely to be in this area.

- Specific arrangements for referral and transfer of care, as well as recommendations for preregistration at the hospital of likely transfer, if needed
- The fact that the midwife is not supervised by a physician and that many physicians' insurance plans do not cover care provided to clients of licensed midwives
- The fact that the licensed midwife is not a certified nurse midwife
- The procedure for reporting complaints to the medical board
- The requirement that certain conditions will result in referral, consultation or transfer, and that failure to comply may compromise a client's available legal rights

CFAM Conclusion: Because the midwifery model of care is based on large part on informed consent, CFAM has no problem with the additional disclosures.

B. Statistical Reporting.

AB1308 updates the form reporting requirements such that the medical board will have increased flexibility to pattern California's statistical reporting system with that of the Midwives Alliance of North America. Hospitals will similarly be required to disclose information regarding all transfers to the medical board and the California Maternal Quality Care Collaborative (a maternity care research and policy institute). Such disclosures already occur but will be given additional uniformity.

CFAM Conclusion: CFAM is comfortable with this provision, which, if applied appropriately, will generate increased statistical information to support future advocacy regarding the tremendous value of midwifery care.

IV. PREVIOUS AMENDMENTS RETAINED IN CURRENT PROPOSAL.

A. Birth Center Licensure.

Current California law allows for state licensure for "alternative birth centers," more commonly referred to as freestanding birth centers. Pursuant to law, one of the requirements for such licensure is for all births to be attended by at least two attendants, including at least one certified nurse midwife and one physician and surgeon.

AB1308 revises that provision of law so that licensed midwives will also be considered acceptable primary attendants at births taking place in state licensed freestanding birth centers. This will allow licensed midwives who own and operate birth centers to obtain state licensure and all the accompanying benefits, including, in many cases, insurance reimbursement for facility fees.

CFAM Conclusion: This will result in increased access to care. We do not anticipate any negative impact of this provision.

B. Drugs, Tests, and Devices.

In many parts of California, licensed midwives have difficulty obtaining appropriate drugs (such as pitocin needed, at times, to prevent postpartum hemorrhage), and devices (such as oxygen tanks), and ordering diagnostic tests (such as ultrasounds). Some laboratories refuse to provide licensed midwives with these materials because they do not have supervising physicians as required by law. This creates a safety problem for clients of licensed midwives who need access to these drugs, tests, and devices, sometimes on a time-sensitive basis, as part of their care.

CFAM Conclusion: This will increase convenience for licensed midwives and increase safety for women in their care. We do not anticipate any negative impact of this provision.

CONCLUSION

Based on the foregoing analysis of the anticipated benefits and shortcomings of this bill, and in light of the renewed concerns of enforcement of the physician supervision requirement, CFAM strongly supports AB1308. We encourage all interested members of the public to educate themselves and engage their representatives on the relevant issues. With less than two weeks remaining in the legislative session, we are hopeful that this interim analysis will assist the midwifery community in conducting an informed analysis of the bill, and will inspire them to act quickly in support of the bill (by contacting their state senators and assemblymembers).