

## INDIANA'S NEW CERTIFIED DIRECT ENTRY MIDWIFE LAW TAKES EFFECT JULY 1, 2013

On July 1, 2013, House Bill 1135 takes effect. The bill amends several current statutes and creates Ind.Code §25-23.4-1 *et seq.* for certified direct entry midwives ("CDEM"). The new law includes the following provisions that could potentially affect hospitals and claims involving CDEM.

Amendments to existing statutes include:

- IC §16-37-2-9 is amended to require additional information on a birth certificate. The birth certificate must also now include the person in attendance at the birth and the location of the birth, including whether the birth occurred at a hospital, licensed health care facility, home, or other non-health care facility.
- IC §16-38-4-9 is amended to require CDEMs to report known birth problems to the birth problems registry.
- IC §25-1-2-6(b)(40) requires a Midwifery Committee be established to issue licenses to CDEMs and IC §25-1-5-3 is amended to have the IPLA serve as the statutory administrator of midwifery committee.

The new statute includes the following provisions:

- Physicians, certified nurse midwife and individuals providing emergency services are specifically excluded from the CDEM statute.
- CDEM will be under the Medical Licensing Board but a Midwifery Committee will be created to provide recommendations and information to the Board.
- CDEM must maintain "sufficient" liability insurance.
- CDEM must provide informed consent to each client including the emergency plan or the care of the client.
- CDEM must have a collaborative agreement with a physician to provide for consultation and care for the client. The physician must examine the client at least one time during the client's first trimester and one time during the client's third trimester. The collaborating physician should be located in an area close to where the delivery will occur. The collaborating physician shall review the patient encounters when requested by the physician and at the time of the client's visit with the physician during the first and third trimesters. The statute sets forth the percentage of charts that must be reviewed based upon years CDEM has been in practice.
- CDEM must provide a written informed disclosure of practice form to each client that must contain a statement that the client is waiving the right to sue a physician or health care provider (i.e., hospital) for the acts or omissions of the client's certified direct entry midwife.
- CDEM's physician collaborating agreement does not require the physical presence of the physician at the time and the place at which the CDEM renders services.
- CDEM is required to refer an at risk client to a licensed physician and consult with the physician concerning the client's care.
- A CDEM may carry and administer specific medications under a protocol issued and agreed to by a physician.
- A Hospital is not required to extend clinical privileges to a certified direct entry midwife.
- A Hospital may not be held jointly or severally liable for the acts or omissions of a certified direct entry midwife.

Of importance are the provisions which state hospitals are not required to extend clinical privileges to a certified direct entry midwife and that a hospital may not be held jointly or severally liable for the acts or omissions of a certified direct entry midwife. Further, the statute requires the client to waive the right to sue another healthcare provider for the actions or omissions of the CDEM. This appears to be an attempt to avoid claims of vicarious liability. Obviously, the collaborating physician can be held responsible for the care/treatment s/he

provides directly to the patient and (arguably) if his/her review of the record ignored information that could have affected the patient's care/treatment.

Should you have any questions, please contact your regular Hall Render attorney.