



## Virginia Department of Planning and Budget **Economic Impact Analysis**

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### **18 VAC 90-70 Regulations Governing the Practice of Licensed Certified Midwives Department of Health Professions**

**Town Hall Action/Stage: 5801 / 9552**

October 4, 2022 (additional data added on October 11, 2022)

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The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order 19. The analysis presented below represents DPB's best estimate of these economic impacts.<sup>1</sup>

### **Summary of the Proposed Amendments to Regulation**

Pursuant to the identical Chapters 200 and 201 of the *2021 Acts of Assembly* (legislation),<sup>2</sup> the Boards of Nursing and Medicine (Boards) propose to establish criteria for the licensure and renewal of a license as a certified midwife.

### **Background**

#### *Types of Midwives*

Prior to the 2021 legislation, there were two types of licensed midwives in the Commonwealth: licensed professional midwives and licensed certified nurse midwives. The legislation established a third category, licensed certified midwives.

GraduateNursingEDU.org describes the work of each type of midwife as follows:<sup>3</sup>

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<sup>1</sup> Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the analysis should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

<sup>2</sup> See <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0200>

<sup>3</sup> <https://www.graduatnursingedu.org/careers/certified-nurse-midwife/what-is-a-midwife/>, accessed on October 4, 2022.

Professional midwives (PM):

- Monitor a woman's complete (not just physical) well-being from pre-natal through post-natal
- Identify women who need to see an obstetrician and giving them appropriate referrals
- Give each mother individualized education, counseling, and prenatal care, assisting during labor and delivery, and supporting the mother and newborn after the birth
- Use as few technological interventions as possible

Certified Nurse-Midwives (CNMs) and Certified Midwives (CMs) are highly trained health care professionals who provide care for women not only during pregnancy and birth but also from adolescence through the end of life. More specifically:

- CNMs are nurses who have completed a graduate-level nurse-midwife program and passed a certification exam from the American Midwifery Certification Board, while CMs are non-nurses who have complete[d] a graduate-level midwifery degree program and passed a certification exam from the American Midwifery Certification Board.
- CNMs and CMs are qualified to provide the same level of care. All states license CNMs for independent practice but not all states license CMs. The American College of Nurse Midwives reports that CNMs and CMs attended 312,129 births in the U.S. in 2010, representing 11.6% of all vaginal births and 7.8% of total births.

Under Virginia law, PMs cannot prescribe medications. However, Virginia law allows CNMs to prescribe medications. The legislation also established that CMs could prescribe medications. In terms of scope of practice, the only substantial difference between CNMs and CMs under the proposed regulation and statute are practice agreements.<sup>4</sup>

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<sup>4</sup> For CNMs, 18 VAC 90-30-10 *Regulations Governing the Licensure of Nurse Practitioners* defines “practice agreement” as “a written or electronic statement, jointly developed by the collaborating patient care team physician and the licensed nurse practitioner that describes the procedures to be followed and the acts appropriate to the specialty practice area to be performed by the licensed nurse practitioner in the care and management of patients. The practice agreement also describes the prescriptive authority of the nurse practitioner, if applicable. For a nurse practitioner licensed in the category of certified nurse midwife, the practice agreement is a statement jointly developed with the consulting physician or a certified nurse midwife with at least two years of clinical experience.”

For CMs, the proposed regulation defines “practice agreement” as “a written or electronic statement, jointly developed by the consulting licensed physician and the licensed certified midwife, that describes the availability of the physician for routine and urgent consultation on patient care.”

### *Practice Agreements*

Code of Virginia § 54.1-2957 H<sup>5</sup> states that CNMs who have practiced fewer than 1,000 hours must practice in consultation with either a licensed physician or another CNM who has practiced for at least two years, in accordance with a practice agreement between them. Such practice agreement must address the availability of the physician or the experienced CNM for routine and urgent consultation on patient care. A CNM who has completed 1,000 hours of practice as a certified nurse midwife may practice without a practice agreement.<sup>6</sup> A CNM authorized to practice without a practice agreement still should consult and collaborate with and refer patients to such other health care providers as may be appropriate for the care of the patient.

The legislation requires CMs to practice in consultation with a licensed physician in accordance with a practice agreement between the licensed certified midwife and the licensed physician. The practice agreement must address the availability of the physician for routine and urgent consultation on patient care. It must be with a licensed physician. The practice agreement remains a requirement regardless of how much experience the CM acquires.

### **Estimated Benefits and Costs**

The following table describes the requirements to obtain initial licensure in the proposed regulation for CMs and in existing regulation for CNMs, respectively.

#### Obtaining Initial Licensure

CM (Proposed)	CNM (Existing)
<ul style="list-style-type: none"> <li>Not required to be a registered nurse</li> </ul>	<ul style="list-style-type: none"> <li>Hold a current, active license as a registered nurse (RN) in Virginia or hold a current multistate licensure privilege as an RN;</li> <li>Application fee for RN license is \$190;</li> </ul>
<ul style="list-style-type: none"> <li>Graduate degree in <b>midwifery</b> from a program that is accredited by the Accreditation Commission for Midwifery Education (ACME)</li> </ul>	<ul style="list-style-type: none"> <li>Graduate degree in <b>nurse-midwifery</b> from a program that is accredited by ACME</li> </ul>
<ul style="list-style-type: none"> <li>Current certification as a <b>certified midwife</b> by the American Midwifery Certification Board (AMCB)</li> </ul>	<ul style="list-style-type: none"> <li>Current certification as a <b>certified nurse midwife</b> by AMCB</li> <li>To become certified pass the AMCB Certification Examination in Nurse-</li> </ul>

<sup>5</sup> See <https://law.lis.virginia.gov/vacode/54.1-2957/>

<sup>6</sup> Ibid

<ul style="list-style-type: none"> <li>• To become certified pass the AMCB Certification Examination in Nurse-Midwifery/Midwifery (same exam for both);<sup>7</sup></li> <li>• Pay the \$500 examination fee</li> </ul>	<ul style="list-style-type: none"> <li>• Midwifery/Midwifery (same exam for both);</li> <li>• Pay the \$500 examination fee</li> </ul>
<ul style="list-style-type: none"> <li>• Pay the \$125 application fee</li> </ul>	<ul style="list-style-type: none"> <li>• Pay the \$125 application fee</li> </ul>

The time and fees to earn a master's degree in midwifery and nurse-midwifery are similar.<sup>8</sup> CMs would have to pass the same AMCB certification exam and pay the same \$500 examination fee to AMCB as CNMs. Also CMs would have to pay the same \$125 application fee to the Boards as CNMs. The primary difference is that CMs would not be required to have an RN license. For someone who is not already an RN and wants to do the work of a CNM (or CM), the establishment of CM licensure is substantially beneficial in that the time and cost of acquiring RN licensure could be avoided.

The following table describes the requirements to maintain licensure in the proposed regulation for CMs and in existing regulation for CNMs, respectively.

#### Maintaining/Renewing Licensure

CM (Proposed)	CNM (Existing)
<ul style="list-style-type: none"> <li>• Not required to be a registered nurse (RN)</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain RN licensure</li> <li>• Biennial renewal fee for RN license is \$140</li> </ul>
<ul style="list-style-type: none"> <li>• Maintain AMCB certification by:<sup>9</sup></li> <li>• 1) Successfully completing three AMCB Certificate Maintenance Modules during the five-year certification cycle (there's a \$75 fee to obtain the articles needed to complete the modules);</li> <li>• 2) Obtaining 20 contact hours of approved continuing education units;</li> <li>• and 3) paying the \$70 annual maintenance fee</li> </ul>	<ul style="list-style-type: none"> <li>• Maintain AMCB certification by:</li> <li>• 1) Successfully completing three AMCB Certificate Maintenance Modules during the five-year certification cycle (there's a \$75 fee to obtain the articles needed to complete the modules);</li> <li>• 2) Obtaining 20 contact hours of approved continuing education units;</li> <li>• and 3) paying the \$70 annual maintenance fee</li> </ul>
<ul style="list-style-type: none"> <li>• Virginia regulation specifies that eight hours of the continuing education be in pharmacology or pharmacotherapeutics for each biennium.</li> </ul>	<ul style="list-style-type: none"> <li>• Virginia regulation specifies that eight hours of the continuing education be in pharmacology or pharmacotherapeutics for each biennium.</li> </ul>

<sup>7</sup> See <https://www.amcbmidwife.org/amcb-certification>

<sup>8</sup> Source: Department of Health Professions

<sup>9</sup> AMCB also allows AMCB certification maintenance via taking and passing the current AMCB Certification Examination and paying the \$500 examination fee.

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|---|---|
| • Pay the \$80 biennial licensure renewal fee | • Pay the \$80 biennial licensure renewal fee |
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Other than maintaining RN licensure, the requirements for CM license renewal under the proposed regulation are the same as the requirements for CNM license renewal in 18 VAC 90-30-10 *Regulations Governing the Licensure of Nurse Practitioners*. The establishment of the CM license would allow a CNM who does not mind maintaining a practice agreement with a licensed physician to choose to abandon RN and CNM licensure, and obtain CM licensure instead. Instead of paying \$220 in biennial license renewal fees to the Boards, she would only have to pay \$80. Additionally, the \$120 application fee for CM licensure would still be less than the \$140 RN license renewal fee. As stated above, other than practice agreements, the scope of practice for CMs is essentially the same as for CNMs.

### **Businesses and Other Entities Affected**

The proposed regulation potentially affects people who wish to become CMs, the 443 licensed CNMs in the Commonwealth,<sup>10</sup> and potential employers of CMs. The 51 licensed inpatient hospitals that have obstetric services in the Commonwealth may be particularly affected.<sup>11</sup> As mentioned above, outside of being able to work without a practice agreement, the scope of practice for CNMs and CMs is essentially the same. Other than solo private practice, seeing where CNMs work may indicate where licensed CMs would work. According to survey data from a December 2021 report (the most recent available) from the Virginia Healthcare Workforce Data Center,<sup>12</sup> the primary employers of CNMs in the Commonwealth are distributed as follows:

Establishment Type	Percentage of CNMs
Hospital, Inpatient Department	19%
Private practice, group	19%
Other Practice Setting	15%
Clinic, Primary Care or Non-Specialty	13%
Physician Office	13%

<sup>10</sup> Data source: Department of Health Professions

<sup>11</sup> Data source: Virginia Department of Health

<sup>12</sup> See <https://www.dhp.virginia.gov/media/dhpweb/docs/hwdc/nurse/2021NPComparison.pdf>

Academic Institution (Teaching or Research)	8%
Clinic, Non-Surgical Specialty	6%
Hospital, Outpatient Department	3%
Private practice, solo	3%

The Code of Virginia requires DPB to assess whether an adverse impact may result from the proposed regulation.<sup>13</sup> An adverse impact is indicated if there is any increase in net cost or reduction in net revenue for any entity, even if the benefits exceed the costs for all entities combined. The proposed regulation neither increases net costs nor reduces net revenue. Thus, no adverse impact is indicated.

### **Small Businesses<sup>14</sup> Affected:<sup>15</sup>**

The proposed regulation does not adversely affect small businesses.

### **Localities<sup>16</sup> Affected<sup>17</sup>**

The proposed regulation neither disproportionately affects particularly localities, nor introduces costs for local governments.

<sup>13</sup> Pursuant to Code § 2.2-4007.04(D): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance. Statute does not define “adverse impact,” state whether only Virginia entities should be considered, nor indicate whether an adverse impact results from regulatory requirements mandated by legislation.

<sup>14</sup> Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

<sup>15</sup> If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

<sup>16</sup> “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulatory change are most likely to occur.

<sup>17</sup> § 2.2-4007.04 defines “particularly affected” as bearing disproportionate material impact.

**Projected Impact on Employment**

By making it less costly to obtain licensure to provide CNM-type services, the establishment of the CM license may increase the number of individuals who pursue this type of employment.

**Effects on the Use and Value of Private Property**

As mentioned above, by making it less costly to obtain licensure to provide CNM-type services, the establishment of the CM license may increase the number of individuals who pursue this type of employment. A larger labor pool of qualified practitioners may reduce labor costs for their employers, moderately increasing their value. The proposed regulation does not affect real estate development costs.