



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
25 BEAVER STREET
NEW YORK, NEW YORK 10004

George E. Pataki
Governor

Howard Mills
Acting Superintendent

The Office of General Counsel issued the following opinion on April 13, 2005 representing the position of the New York State Insurance Department.

RE: Maternity Care Coverage

Questions Presented:

- 1) Must health insurance policies cover maternity care provided by a midwife?
- 2) Is such coverage available in policies issued under the Healthy New York program?
- 3) What type of services may be provided by a nurse-midwife?

Conclusions:

- 1) The services of a nurse midwife must be covered by a health insurer, including a Health Maintenance Organization.
- 2) Such coverage is available through the Healthy New York program.
- 3) The practice of midwifery is regulated by the Education and Health Departments.

Facts:

A married couple submitted an inquiry, advising that they are eligible for Healthy New York and desire to secure health insurance through a Health Maintenance Organization that will provide coverage for home births which are supervised by a midwife.

Analysis:

New York Insurance Law § 4303(c)(1) (McKinney 2000 and 2005 Supplement), made applicable to HMOs by New York Public Health Law § 4406(1) (McKinney 2002) provides:

(A) Every contract issued by a corporation subject to the provisions of this article which provides hospital service, medical expense indemnity or both shall provide coverage for maternity care including hospital, surgical or medical care to the same extent that hospital service, medical expense indemnity or both are provided for illness or disease under the contract. Such maternity care coverage, other than coverage for perinatal complications, shall include inpatient hospital coverage for mother and for newborn for at least forty-eight hours after childbirth for any delivery other than a caesarean section, and for at least ninety-six hours following a caesarean section. Such coverage for maternity care shall include the services of a midwife licensed pursuant to article

one hundred forty of the education law, practicing consistent with a written agreement pursuant to section sixty-nine hundred fifty-one of the education law and affiliated or practicing in conjunction with a facility licensed pursuant to article twenty-eight of the public health law, but no insurer shall be required to pay for duplicative routine services actually provided by both a licensed midwife and a physician.

(B) Maternity care coverage also shall include, at minimum, parent education, assistance and training in breast or bottle feeding, and the performance of any necessary maternal and newborn clinical assessments.

While home births are not specifically mentioned in New York Insurance Law § 4303(c)(1), if supervision of a home birth is within the scope of practice of a midwife, the HMO would have to provide coverage for such services.

New York Insurance Law § 4326(d) (McKinney 2002), which establishes the requirements for Healthy New York subscriber contracts, provides:

The contracts issued pursuant to this section by health maintenance organizations, corporations or insurers and approved by the superintendent shall only provide in-plan benefits, except for emergency care or where services are not available through a plan provider. Covered services shall include only the following: . . . (6) maternity care; . . .

Since coverage of a midwife is included within maternity care, New York Insurance Law § 4303(c)(1), it is covered under Healthy New York. If an HMO does not have a midwife who assists in home births in its network, it must allow the prospective mother to access such a midwife, so long as that provider meets the minimum requirements of the plan, who is not in the HMO's network.

Regulation of midwifery is primarily under the auspices of the New York State Education Department, pursuant to the New York Education Law (McKinney 2001 and 2005 Supplement) and the regulations promulgated thereunder. New York Education Law § 6951 (McKinney 2001) provides:

1. The practice of the profession of midwifery is defined as the management of normal pregnancies, child birth and postpartum care as well as primary preventive reproductive health care of essentially healthy women as specified in the written practice agreement, and shall include newborn evaluation, resuscitation and referral for infants. Midwifery shall be practiced in accordance with a written agreement between the midwife and (i) a licensed physician who is board certified as an obstetrician-gynecologist by a national certifying body or (ii) a licensed physician who practices obstetrics and has obstetric privileges at a general hospital (licensed under article twenty-eight of the public health law) or (iii) a hospital (licensed under article twenty-eight of the public health law) that provides obstetrics through a licensed physician having obstetrical privileges at such institution. The written agreement shall provide for physician consultation, collaboration, referral and emergency medical obstetrical coverage, and shall include written guidelines and protocols. The written agreement shall provide guidelines for the identification of pregnancies that are not considered normal and address the procedures to be followed. The written agreement shall also provide a mechanism for dispute resolution and shall provide that the judgment of the appropriate physician shall prevail as to whether the pregnancy, childbirth or postpartum care is normal and whether the woman is essentially healthy in the event the practice protocols do not provide otherwise.

2. A licensed midwife shall have the authority, as necessary, and limited to the practice of midwifery, and subject to limitations in the written agreement, to prescribe and administer drugs, immunizing agents, diagnostic tests and devices, and to order laboratory tests, as established by the board in accordance with the commissioner's regulations. . . .

The final determination as to whether a home birth is appropriate resides, in accordance with New York Education

Law § 6951(1), with the affiliated physician. Questions concerning the scope of practice of midwifery should be addressed to:

Lawrence H. Mokhiber
Secretary
State Board of Midwifery
Education Department
Cultural Education Center
Empire State Plaza
Albany, NY 12230

For further information you may contact Principal Attorney Alan Rachlin at the New York City Office.