



TEXAS MIDWIFERY BOARD

BASIC INFORMATION AND INSTRUCTOR MANUAL

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Recommended resources not included in this Manual:

DSHS Vital Statistics' [Handbook on Birth Registration](#)
DSHS Health Facility Licensing Group's [Birthing Center Licensing Rules](#)
DSHS Vital Statistics' [Handbook on Paternity](#)
DSHS Communicable Disease Program's [Reportable Conditions in Texas](#)

I. How to Use this Manual

I.1 Purpose

The purpose of this manual is to provide midwives, students, and apprentices with information necessary for the practice of midwifery in Texas. It contains laws, rules and policies that may be useful to you in your practice. The Texas Midwifery Act, Occupations Code Chapter 203, and the Texas Midwifery Board Midwifery Rules, 22 Texas Administrative Code Section 831, are an integral part of this manual.

The Texas Midwifery Board Midwifery Rules implement the Texas Midwifery Act relating to the practice and regulation of direct entry midwifery in Texas. In Subchapter B, the requirements of initial licensure and license renewal are described. Subchapter C establishes an education committee; standards for mandatory basic midwifery education; standards for mandatory continuing midwifery education; procedures for midwifery education course approval, denial and revocation of approval; procedures for appeals of denials of course and comprehensive exam approval applications and revocations of approval; and procedures for investigation and disposition of complaints concerning education courses and comprehensive exams. The Midwifery Practice Standards and Principles are found in Subchapter D., Practice of Midwifery. These sections outline the criteria for safe and competent care, including when referral or transfer of care is required. All of the rules are important, but failure to comply with the Standards of Practice can result in a complaint. Another important rule is Subchapter E Complaint Review. This section defines the procedures for reporting alleged violations of the Act and Rules. It further defines grounds for disciplinary action and procedures to be utilized by the Midwifery Program and Midwifery Board in processing, investigating and resolving complaints against midwives practicing in Texas.

Please note that the descriptions of Texas laws and rules do not contain the complete text of the statute or rules cited. If you are unsure as to whether there has been a change to a specific law or rule since the printing of this Manual, you may refer to the State of Texas web site at: <http://www.texasonline.com>.

The Handbooks produced by other DSHS programs, which are recommended reading, are not translated in conjunction with this Manual. Contact the appropriate DSHS program for any updates to these Handbooks.

The Texas Midwifery Board would like to encourage you to place this Manual in a binder and update it regularly as changes take place in the laws, rules or forms.

I.2 Texas Midwifery Board

Members are appointed by the DSHS Commissioner for six year terms. The Board is composed of five licensed midwives with at least three years experience in the practice of midwifery; one physician certified by the national professional organization of physicians that certifies obstetricians and gynecologists; one physician certified by the national professional organization of physicians that certifies family practitioners or pediatricians; and two public representatives who are not practicing or trained in a health care profession, one of whom must be a parent with at least one child born with the assistance of a midwife. A complete description of the roles and responsibilities of the Board may be found in the Texas Midwifery Act.

The Board meets two times each year, and the standing subcommittees of the Board, the Education Committee and the Complaint Review Committee, meet on an as-needed basis. Other temporary subcommittees may be appointed by the Board Chair as needed.

**Mission Statement of the Texas Midwifery Board
(adopted September 1998)**

Our mission is to preserve and support the right of parents to give birth where and with whom they choose; to regulate midwives fairly, professionally, and with respect so that clients are protected; and to advance the art and science of midwifery through appropriate education and standards of practice, thereby improving the care provided to mothers, babies and families throughout Texas.

I.3 Texas Department of State Health Services Midwifery Program

The DSHS Midwifery Program works with the Texas Midwifery Board (Board) to license midwives, administer the examinations required for licensure, approve basic midwifery education courses and resolve complaints against midwives. A Midwifery Program Director and administrative staff are employed by the Texas Department of State Health Services.

Mission Statement of the DSHS Midwifery Program

The mission of the Texas Department of State Health Services Midwifery Program is to work with the Texas Midwifery Board to promote and protect the health of families, women and children by improving the practice of direct entry midwifery in Texas.

II. What is midwifery?

II.1 Definition of "Midwife", "Midwifery" and "Normal"

Sec. 203.002. DEFINITIONS of the Texas Midwifery Act defines these three terms:

(6) "Midwife" means a person who practices midwifery and has met the licensure requirements established by this chapter and midwifery board rules.

(7) "Midwifery" means the practice of:

(A) providing the necessary supervision, care, and advice to a woman during normal pregnancy, labor, and the postpartum period;

(B) conducting a normal delivery of a child; and

(C) providing normal newborn care.

(9) "Normal" means, as applied to pregnancy, labor, delivery, the postpartum period, and the newborn period, and as defined by midwifery board rule, circumstances under which a midwife has determined that a client is at a low risk of developing complications.

The Midwifery Practice Standards and Principles, 22 TAC 831, Subchapter D. Practice of Midwifery, provides specific guidance on whether a client is "at low risk for developing complications" as determined by the Texas Midwifery Board.

II.2 History of Midwifery in Texas

Prior to the modern era of specialization in medicine -- particularly in prenatal care -- there was always a woman in the village, the small town, or somewhere in the family that people went to for sore throats, who knew a lot about herbs and home remedies, and who was willing to assist in the birth of a baby. Parteras serving the Spanish speaking population and "granny ladies" in rural Texas are part of the traditional folklore and cultural legacy of Texas history, from the time of the Texas Republic and before. In 1925, more than 50 percent of the babies born in Texas were delivered by midwives. This reflected the rural and working poor population in Texas, among whom low income was a barrier to institutional medical care.

Historically, Acts of the legislature regarding such public health practices as eye care at birth, registration of birth, detection of sexually transmitted disease, and newborn screening for phenylketonuria or diabetes, have recognized midwives as practitioners. Yet prior to 1983, Texas did not regulate midwives. However, two cities along the Texas-Mexico border, where economic conditions and tradition made lay midwifery a widely accepted practice, adopted municipal ordinances requiring a permit to practice lay midwifery. In *Banti v Texas*, 1956, a midwife was accused of practicing medicine without a license (the baby was stillborn) and unlawfully treating the mother "for a disease and physical disorder". Mrs. Banti argued that childbirth is not a disease or a disorder, but nevertheless was convicted by the local court. However, on appeal, the court overturned the conviction because the state legislature had "not defined the practice of medicine so as to include the act of assisting women in parturition or childbirth".

In 1983, the Texas Legislature passed the Texas Midwifery Act (at the time known as the 'Lay Midwifery Act'), because of rising concern among legislators over the lack of regulation of direct entry midwives. The Texas Midwifery Act was codified in 1999 as Texas Occupations Code, Chapter 203 Midwives, and was most recently amended in 2005.

II.3 MANA Core Competencies for Basic Midwifery Practice

Approved by MANA Board 10/3/94

I. Guiding Principles of Practice:

The midwife provides care according to the following principles:

- A. Midwives work in partnership with women and their chosen support community throughout the caregiving relationship.
- B. Midwives respect the dignity, rights, and the ability of the women they serve to act responsibly throughout the caregiving relationship.
- C. Midwives work as autonomous practitioners, collaborating with other health and social service providers when necessary.
- D. Midwives understand that physical, emotional, psycho-social and spiritual factors synergistically comprise the health of individuals and affect the childbearing process.
- E. Midwives understand that female physiology and childbearing are normal processes, and work to optimize the well-being of mothers and their developing babies as the foundation of caregiving.
- F. Midwives understand that the childbearing experience is primarily a personal, social and community event.
- G. Midwives recognize that a woman is the only direct care provider for herself and her unborn baby; thus the most important determinant of a healthy pregnancy is the mother herself.
- H. Midwives recognize the empowerment inherent in the childbearing experience and strive to support women to make informed decisions and take responsibility for their own well-being.
- I. Midwives strive to insure vaginal birth and provide guidance and support when appropriate to facilitate the spontaneous process of pregnancy, labor, and birth, utilizing medical intervention only as necessary.
- J. Midwives synthesize clinical observations, theoretical knowledge, intuitive assessment and spiritual awareness as components of a competent decision making process.
- K. Midwives value continuity of care throughout the childbearing cycle and strive to maintain continuous care within realistic limits.
- L. Midwives understand that the parameters of "normal" vary widely and recognize that each pregnancy and birth are unique.

II. General Knowledge and Skills:

The midwife provides care incorporating certain concepts, skills, and knowledge from a variety of health and social sciences, including, but not limited to:

- A. Communication, counseling, and teaching skills.
- B. Human anatomy and physiology relevant to childbearing.
- C. Community standards of care for women and their developing infants during the childbearing cycle, including midwifery and bio-technical medical standards and the rationale for and limitations of such standards.
- D. Health and social resources in her community.
- E. Significance of and methods for documentation of care through the childbearing cycle.
- F. Informed decision making.
- G. The principles and appropriate application of clean and aseptic technique and universal precautions.
- H. Human sexuality, including indication of common problems and indications for counseling.
- I. Ethical considerations relevant to reproductive health.
- J. The grieving process.
- K. Knowledge of cultural variations.

- L. Knowledge of common medical terms.
- M. The ability to develop, implement and evaluate an individualized plan for midwifery care.
- N. Woman-centered care, including the relationship between the mother, infant, and their larger support community.
- O. Knowledge and application of various health care modalities as they apply to the childbearing cycle.

III. Care During Pregnancy:

The midwife provides health care, support, and information to women throughout pregnancy. She determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:

- A. Identification, evaluation, and support of maternal and fetal well-being throughout the process of pregnancy.
- B. Education and counseling for the childbearing cycle.
- C. Preexisting conditions in a woman's health history which are likely to influence her well-being when she becomes pregnant.
- D. Nutritional requirements of pregnant women and methods of nutritional assessment and counseling.
- E. Changes in emotional, psycho-social and sexual variations that may occur during pregnancy.
- F. Environmental and occupational hazards for pregnant women.
- G. Methods of diagnosing pregnancy.
- H. Basic understanding of genetic factors which may indicate the need for counseling, testing, or referral.
- I. Basic understanding of the growth and development of the unborn baby.
- J. Indications for, risks, and benefits of bio-technical screening methods and diagnostic tests used during pregnancy.
- K. Anatomy, physiology, and evaluation of the soft and bony structures of the pelvis.
- L. Palpation skills for evaluation of the fetus and uterus.
- M. The causes, assessment and treatment of the common discomforts of pregnancy.
- N. Identification of, implications of, and appropriate treatment for various infections, disease conditions and other problems which may affect pregnancy.
- O. Special needs of the Rh- woman.

IV. Care During Labor, Birth, and Immediately Thereafter:

The midwife provides health care, support, and information to women throughout labor, birth, and the hours immediately thereafter. She determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:

- A. The normal process of labor and birth.
- B. Parameters and methods for evaluating maternal and fetal well-being during labor, birth, and immediately thereafter, including relevant historical data.
- C. Assessment of the birthing environment, assuring that it is clean, safe and supportive, and that appropriate equipment and supplies are on hand.
- D. Emotional responses and their impact during labor, birth, and immediately thereafter.
- E. Comfort and support measures during labor, birth, and immediately thereafter.
- F. Fetal and maternal anatomy and their interactions as relevant to assessing fetal position and the progress of labor.
- G. Techniques to assist and support the spontaneous vaginal birth of the baby and placenta.
- H. Fluid and nutritional requirements during labor, birth, and immediately thereafter.

- I. Assessment of and support for maternal rest and sleep as appropriate during the process of labor, birth, and immediately thereafter.
- J. Causes of, evaluation of, and appropriate treatment for variations which occur during the course of labor, birth, and immediately thereafter.
- K. Emergency measures and transport for critical problems arising during labor, birth, or immediately thereafter.
- L. Understanding of and appropriate support for the newborn's transition during the first minutes and hours following birth.
- M. Familiarity with current bio-technical interventions and technologies which may be commonly used in a medical setting.
- N. Evaluation and care of the perineum and surrounding tissues.

V. Postpartum Care:

The midwife provides health care, support, and information to women throughout the postpartum period. She determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes but is not limited to the following:

- A. Anatomy and physiology of the mother during the postpartum period.
- B. Lactation support and appropriate breast care including evaluation of, identification of, and treatments for problems with nursing.
- C. Parameters and methods for evaluating and promoting maternal well-being during the postpartum period.
- D. Causes of, evaluation of, and treatment for maternal discomforts during the postpartum period.
- E. Emotional, psycho-social, and sexual variations during the postpartum period.
- F. Maternal nutritional requirements during the postpartum period including methods of nutritional evaluation and counseling.
- G. Causes of, evaluation of, and treatments for problems arising during the postpartum period.
- H. Support, information, and referral for family planning methods as the individual woman desires.

VI. Newborn Care:

The entry-level midwife provides health care to the newborn during the postpartum period and support and information to parents regarding newborn care. She determines the need for consultation or referral as appropriate. The midwife uses a foundation of knowledge and/or skill which includes the following:

- A. Anatomy, physiology, and support of the newborn's adjustment during the first days and weeks of life.
- B. Parameters and methods for evaluating newborn wellness including relevant historical data and gestational age.
- C. Nutritional needs of the newborn.
- D. Community standards and state laws regarding indications for, administration of, and the risks and benefits of prophylactic bio-technical treatments and screening tests commonly used during the neonatal period.
- E. Causes of, assessment of, appropriate treatment, and emergency measures for neonatal problems and abnormalities.

VII. Professional, Legal and Other Aspects:

The entry-level midwife assumes responsibility for practicing in accord with the principles outlined in this document. The midwife uses a foundation of knowledge and/or skill which includes the following:

- A. MANA's documents concerning the art and practice of Midwifery.
- B. The purpose and goal of MANA and local (state or provincial) midwifery associations.
- C. The principles of data collection as relevant to midwifery practice.
- D. Laws governing the practice of midwifery in her local jurisdiction.
- E. Various sites, styles, and modes of practice within the larger midwifery community.
- F. A basic understanding of maternal/child health care delivery systems in her local jurisdiction.
- G. Awareness of the need for midwives to share their knowledge and experience.

VIII. Woman Care & Family Planning:

Depending upon education and training, the entry-level midwife may provide family planning and well-woman care. The practicing midwife may also choose to meet the following core competencies with additional training. In either case, the midwife provides care, support, and information to women regarding their overall reproductive health, using a foundation of knowledge and/or skill which includes the following:

- A. Understanding of the normal life cycle of women.
- B. Evaluation of the woman's well-being including relevant historical data.
- C. Causes of, evaluation of, and treatments for problems associated with the female reproductive system and breasts.
- D. Information on, provision of, or referral for various methods on contraception.
- E. Issues involved in decision-making regarding unwanted pregnancies and resources for counseling and referral.

I.4 Midwifery Model of Care

The Texas Midwifery Board endorses the Midwifery Task Force's 'Midwives Model of Care'.

The Midwives Model of Care is based on the fact that pregnancy and birth are normal life events.

The Midwifery Model of Care includes:

monitoring the physical, psychological, and social well-being of the mother throughout the childbearing cycle;

providing the mother with individualized education, counseling, and prenatal care, continuous hands-on assistance during labor and delivery, and postpartum support;

minimizing technological interventions;

identifying and referring women who require obstetrical attention.

The application of this woman-centered model has been proven to reduce the incidence of birth injury, trauma, and cesarean section.

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III. Frequently Asked Questions

What is the difference between laws and rules?

Laws and rules differ only in how they are written and adopted. Both can be used in a legal setting, such as a hearing, to take disciplinary action against an individual.

Laws in Texas, such as the Texas Midwifery Act, are passed by the Texas Legislature. Federal laws, such as CLIA, are passed by Congress. Laws are usually somewhat general, to allow for interpretation by rule or policy. Laws may be passed only through specific processes established by the legislature or Congress, which allow for public input. Laws may be amended (changed) or codified (reorganized into a Code for clarity); laws may also be repealed (permanently removed). Laws generally provide specific guidance on who has the duty to enforce the provisions of the law.

Rules are adopted by various governmental entities, such as the Texas Midwifery Board, to implement existing or new laws. Rules adopted under a particular law may not exceed the scope permitted by that law - e.g. the Texas Midwifery Act authorizes the Texas Midwifery Board, with the approval of the Executive Commissioner of HHSC, to adopt rules related to midwifery, but not to medicine or nursing. Rule making follows a specific policy, which requires public notice of proposed rules through publication in the Texas Register with a minimum 30 day public comment period before final rules can be adopted. Rules can be amended or repealed and replaced with new rules through this process. Often rules define how to comply with a specific requirement of law.

Laws and rules are also subject to judicial (court) interpretation. The legal opinion rendered by an individual judge or the Supreme Court may change how a law or rule is interpreted or enforced. If a law or rule is unclear, an opinion may be requested from the Office of the Attorney General.

Who is approved to provide continuing education for midwives?

The Education rules specifically list who may approve continuing education that is acceptable for the licensed midwives. The list of approved accrediting bodies is found in rule and currently includes: (i) a professional midwifery association, nursing, social work, or medicine; (ii) an approved midwifery school, a college or university; (iii) a nursing, medical, or health care organization; (iv) a state board of nursing or medicine; (v) a department of health; or (vi) a hospital. A professional midwifery association may be a national, state or local midwifery association. The continuing education must relate to the practice of midwifery.

How do I become an apprentice in Texas?

If you are enrolled as a student in an approved basic midwifery education course, contact your course supervisor. If you wish to serve as an apprentice to a licensed midwife while not enrolled in a course, you may contact the Midwifery Program for a list of midwives currently licensed in Texas, and then make individual arrangements to work under the supervision of a particular midwife. If you intend to apply for licensure, you might wish to contact the North American Registry of Midwives (NARM) for information on becoming a Certified Professional Midwife (CPM). You will then be better prepared to provide evidence of your training and experience acceptable to NARM.

The Midwifery Board has adopted an Apprentice/Student Policy concerning issues related to the training and supervision of midwifery students/apprentices/assistants whether or not they are enrolled in approved basic midwifery education courses.

How do I become licensed for the first time?

1. Successfully complete a course on midwifery (either on-site or correspondence course) approved by the Texas Midwifery Board AND successfully pass the state approved comprehensive written exam;

OR

2. Successfully complete a MEAC-accredited course on midwifery AND successfully pass the state approved comprehensive written exam AND successfully complete a continuing education course on the current Texas Midwifery Basic Information and Instructor Manual;

OR

3. Qualify for certification by NARM and complete the NARM certification process, thereby becoming a Certified Professional Midwife (CPM) AND successfully complete a continuing education course on the current Texas Midwifery Basic Information and Instructor Manual.

You would then send proof of successful completion of one of the three alternatives listed above, along with an application for a midwife license in Texas; copy of current CPR card (both sides) issued by either the Red Cross or American Heart Association; a copy of a Neonatal Resuscitation training card (both sides) issued by the American Academy of Pediatrics; either a Newborn Screening Plan, or evidence of approved training in Newborn Screening; and an application fee of \$280. Once licensed, you renew your license every two years, paying a \$562 fee and providing any other information required under current rules. The requirement for continuing education is presently 20 hours/two-year renewal. In addition, you must familiarize yourself with Texas law and rules governing the practice of midwifery.

How do I renew after a lapse in licensure?

Midwives have up to one year after their license expires to renew late. Otherwise, they must reapply for licensure and meet the current requirements.

What if a complaint is filed against me?

Any person may file a complaint with the Midwifery Program by filling out a complaint form. The complainant is permitted to remain anonymous, so you may never know who complained about the midwifery care you provided. Carefully read all letters mailed to you by the Midwifery Program regarding the complaint, and call if you have any questions. Be aware that the goal of the Complaint Review process is to protect the health and safety of the people of Texas by ensuring that midwifery is practiced in accordance with the law and rules.

The complaint will first be presented to the Complaint Review Committee, which you will be invited to attend. Bring your original midwifery records and any other information you believe might be helpful in explaining the events in question. This is an opportunity to convince the Committee to recommend to the Texas Midwifery Board that the complaint against you be closed without disciplinary action.

If, after the Complaint Review Committee reviews the complaint, your midwifery records, your response, and any other information presented (investigation report, hospital records etc.), the Committee decides that you have committed a violation of the law or rules for which you should be disciplined, you will receive a letter specifically stating the charges against you, and informing you of your options, including your right to request a hearing and/or a settlement conference. It is imperative that you respond to this letter in a timely fashion. Any final decision, whether to close the complaint or to take disciplinary action, must be made by the Texas Midwifery Board.

Disciplinary action may only be taken against you in accordance with the Administrative Procedure Act (APA). Remember that you always have the right to consult with other midwives or an attorney regarding the care you provided. Peer review reports may also be submitted to the Complaint Review Committee, if available.

For more information, please read the Complaint Review rules, 22 TAC §831 Subchapter E. In addition to the rules, the Midwifery Board has approved specific information on the complaint review process. It may be found on the Board's website.

How do I write my protocols?

Lists of approved textbooks and references from each midwifery education course approved by the Texas Midwifery Board are available on the DSHS website at:

http://www.dshs.state.tx.us/midwife/mw_protocols.shtm

Please remember that in order to comply with the rules 22 TAC §831.54 each midwife must review all protocols, and document that review at least annually. Copies of protocols should also be kept for at least five (5) years, since the Complaint Review Committee will ask to see a copy of the protocols in use at the time midwifery care was provided, along with a copy of midwifery records, if a complaint is filed with the Board.

IV. Texas Midwifery Act

Place the most recent copy of the law behind this tab.

V. Texas Midwifery Board Rules for Midwifery Practice

Place the most recent copy of the rules behind this tab.

VI. Other Laws and Rules Relevant to the Practice of Midwifery in Texas

VI. Summary of Topics Covered

The practice of midwifery in Texas requires that midwives and apprentices familiarize themselves with a variety of federal and state laws, rules and policies related to the provision of health care. The primary topics are summarized below.

Newborn Screening

Midwives are required either to perform the two required newborn screening tests; to refer the infant for screening; or to document the client's refusal to permit screening in midwifery records.

HIV/STD Testing

Midwives are required to comply with applicable state laws on communicable diseases, including those which require testing for HIV, syphilis, and Hepatitis B, both at the first prenatal visit and at birth. Depending on individual circumstances, a midwife may perform the tests; refer the client for testing; or document refusal of the test(s) in midwifery records.

Eye Prophylaxis

Midwives must administer eye prophylaxis approved by the department to all newborns, or cause it to be administered, unless the parent refuses medical treatment for religious reasons, or the newborn is immediately transferred to a hospital. Possession of eye prophylaxis by a midwife is not a violation of the Health and Safety Code, Chapter 483. Dangerous Drugs.

Communicable Diseases

Midwives are required by the Communicable Disease Prevention and Control Act to report suspected cases of any reportable communicable disease, if not already being reported by a physician or laboratory.

Abuse/Family Violence

Midwives must report abuse or neglect which affects a child.

Birth and Death Certificates

Midwives file birth and death certificates in accordance with the requirements established by the Texas Department of State Health Services Health Information & Vital Statistics Section.

Birthing Center Licensing

Midwives who wish to establish a birthing center must apply for a license. Midwives owning or working in a licensed birthing center are required by the Texas Midwifery Act to comply with birthing center rules.

Deceptive Trade Practices

Midwives must comply with the Business and Commerce Code regarding business practices, including those regarding advertising.

Clinical Laboratory Improvement Act (CLIA)

This federal legislation requires that all types of lab testing be performed in accordance with federal standards.

Paternity Acknowledgment

Midwives filing birth certificates must be prepared to file the appropriate forms, and to appropriately inform men wishing to acknowledge paternity regarding their rights and responsibilities under the state laws implementing federal welfare reform legislation.

Universal Precautions

Midwives must comply with both federal and state laws, rules and policies related to preventing the transmission of pathogens.

Other Health Related Professions

The laws which govern the regulation of health professions (including medicine, nursing, etc.) in Texas can now be found in the Occupations Code. Each regulatory board then establishes rules to implement its enabling statute.

Newborn Hearing Screening

Texas law requires hospitals and large birthing centers to provide newborn hearing screening. Midwives practicing in small birthing centers or the home birth setting may wish to refer their clients for this service.

Provision of a Reference List

State law requires midwives to provide a reference list on pregnancy, parenting and depression prepared by the Department of State Health Services to all clients.

HIPAA

This federal law, the Health Insurance Portability and Accountability Act, imposes specific requirements on covered health care providers.

VI.2 Newborn Screening

The Texas Newborn Screening Program (NBS) currently tests for five disorders which, if not treated very early in life, can cause severe mental retardation, illness or death. The two inborn errors of metabolism, phenylketonuria (PKU) and galactosemia, are treated by diet; congenital hypothyroidism and congenital adrenal hyperplasia (CAH), are treated by medication; and sickle cell disease complications may be prevented through a program of medical supervision and antibiotics administered at an early age. The Newborn Screening Program will be expanded to test for other disorders in future.

All babies born in Texas are mandated by law to have two screening tests. The specimens are submitted to the DSHS laboratory. An active follow-up system is maintained by the DSHS Newborn Screening (NBS) Staff on all abnormal reports. Health care providers are contacted by mail or telephone with instructions for further testing. Public health nurses and social workers are often utilized to help locate families and assist with follow-up procedures.

Texas Newborn Screening Program : A Practitioner's Guide and other literature and patient education materials are available from the Texas Department of State Health Services, Newborn Screening Case Management Program at 1-800-252-8023.

With the initial application for licensure, midwives are required to submit one of two forms to the Midwifery Program - either the *Midwife Training Certification Form Newborn Screening Specimen Collection* or the *Newborn Screening Agreement for Newborn Babies of Midwife Clients*. These forms may be found on the board's website.

A copy of the *Newborn Screening Test Objection Form* approved by the Midwifery Board is located in the [Forms] section of this manual. Please retain this document in your midwifery records if your client refuses to permit the newborn screening tests.

Midwives should also refer to the Midwifery Rules on Newborn Screening, 22 Texas Administrative Code §831.121, for guidance on performing these tests.

The law on the requirement for testing and the parent's right to refuse the test is Health and Safety Code, Subchapter B Newborn Screening, Section 33.

VI.3 HIV/STD/Hepatitis B

Health and Safety Code Sec. 81.090 requires testing for syphilis, Hepatitis B and HIV both during pregnancy and after birth, no longer provides the option of submitting cord blood after birth. Instead, the blood must be drawn from the mother [on admission for delivery].

The law requires the midwife to draw the mother's blood for testing at the time of first examination and visit, and again on admission for delivery. The law also requires the midwife to provide the mother with DSHS printed materials about HIV, AIDS, hepatitis B, and syphilis; to explain the difference between confidential and anonymous testing, and to chart that the materials were provided.

A mother can object to the HIV test, which is confidential and not anonymous. A confidential test means that the mother's real name is associated with the results. Anonymous testing means that the mother does not have to provide her real name to be tested for HIV. If the mother objects to the HIV test, the midwife should not perform the test, but instead is required by law to provide the mother with information on anonymous testing sites or methods.

DSHS information for distribution to clients is available in English and Spanish from the DSHS HIV/STD Training and Public Information Division at (512)490-2535 or the Immunization Division (Hepatitis B) at (512)458-7284.

Midwives should also refer to their protocols for guidance on recommended laboratory testing during pregnancy. A positive test result may require referral or transfer of the client to another health care provider. It must also be reported in accordance with the Communicable Disease Prevention and Control Act (see [Communicable Diseases] in this section of the Manual).

The rule which implements the law is 25 Texas Administrative Code §97.135.

VI.4 Eye Prophylaxis

Midwives are required by state law to administer eye prophylaxis to newborns unless the infant is immediately transported to hospital. Midwives may obtain, carry and administer eye prophylaxis without a standing delegation order from a physician. Midwives should also refer to the Midwifery Rules on Eye Prophylaxis, 22 TAC §831.111.

The Texas law which requires eye prophylaxis is the Communicable Disease Prevention and Control Act, Health and Safety Code Section 813.091. A midwife has prescriptive authority for eye prophylaxis granted by the Dangerous Drug Act, Health and Safety Code Chapter 483.001(13) and 483.041(c)(9).

VI.5 Communicable Diseases

For the protection of the public, certain diseases and health conditions must be reported to the Texas Department of State Health Services and/or local health departments. A midwife must report each client he or she examines who has or is suspected of having any reportable disease or health condition, or any outbreak, exotic disease, or unusual group expression of illness of any kind whether or not the disease is known to be communicable or reportable.

For more information on reporting requirements, please contact the DSHS Infectious Disease Control Unit at (800) 252-8239 (press 1). An information sheet on "Reportable Conditions in Texas" is available on the DSHS website at: <http://www.dshs.state.tx.us/idcu/>

25 Texas Administrative Code §97.2 includes legal requirements related to Communicable Diseases and 25 Texas Administrative Code §97.132 describes who is mandated to report Sexually Transmitted Diseases.

VI.6 Family Violence, Child Abuse and Mandatory Reporting Laws

Family violence and sexual abuse bring up many threatening and uncomfortable issues for health care professionals. Screening for abuse history is not a common practice during pre-natal care, and yet statistics indicate that abuse is more common than placenta previa or gestational diabetes and has potentially as negative a result for mother and child. In fact, abuse during pregnancy is indicative of a relationship prone to more severe and possibly life threatening abuse throughout. Intrauterine bruising, fetal bone fractures and joint dislocations secondary to abuse have been reported as well as the more common incidence of miscarriage and low birth weight associated with battering during pregnancy. Such consequences could be and most certainly should be described as pre-natal child abuse.

A report of child abuse can be made to your local child protection agency or to state or local law enforcement. If the minor was abused by a person not responsible for the child's' care, custody or welfare, then the report cannot be taken by the Department of Protective and Regulatory Services or their local agencies. Those reports should be made to the local law enforcement. The identity of the individual making the report is confidential and cannot be disclosed except to law enforcement or by order of the court.

Abuse is also defined as sexual conduct harmful to a child's mental, emotional or physical welfare. A child is defined as an unmarried person under the age of 18 who has not been emancipated. (If the patient who discloses abuse is an adult or an emancipated child, you are not required to report the abuse but you are required by another state law to thoroughly document and refer.) For more information, definitions of terms, reporting requirements, and penalties for offenses, refer to Texas Family Code, Section 261, and Texas Penal Code, Section 21.11.

A person who knowingly fails to report has committed an offense classified as a Class B misdemeanor. The 1996 Texas Family Code, Title 5, subtitle E, Section 261.101, Subchapter B, Subsections a, b, and c, states that a professional who has cause to believe that a child has been or may be abused or neglected is required to report the abuse within 48 hours. Section 261 defines abuse as (among other things) physical injury that results in substantial harm to a child, or the genuine threat of substantial harm from physical injury.

The Family Violence/Sexual Abuse Family Planning Service Enhancement Project has produced a training manual for social workers and others who work directly with clients and patients in clinic settings who may be victims of abuse. This manual, *NOBODY'S BUSINESS - a Family Planning Prevention Training Manual for Health Care Professionals*, is available by calling the Texas Department of State Health Services, Women's Health Unit at (512) 458-7444. It contains a sample protocol which may be helpful to you in your practice

VI.7 Birth and Death Certificates

Midwives file birth and death certificates in accordance with the rules of the DSHS Vital Statistics Unit. Local registrars in each Texas county are responsible for ensuring that the birth certificates they accept and send on to the DSHS Vital Statistics Unit office in Austin are accurate and complete. Midwives should be prepared to provide proof of current licensure from the Midwifery Program when obtaining or filing birth certificates. Birth certificates should be obtained from the registrar with whom the certificate will be filed; or births may be filed electronically through the TER system.

House Bill 1604 (2005 Regular Session) has changed the deadline for filing birth certificates. Birth certificates should be filed within five (5) days of the birth, unless the parents have not named the child. In that case, the midwife may wait up to 15 days to file the birth certificate.

Information on filling out and filing birth certificates in Texas, and access to the TER system, may be obtained from the DSHS Vital Statistics Unit by calling 512-458-7692. Obtaining and reviewing a copy of the [Handbook on Birth Registration] is recommended.

The law related to birth certificates is Health and Safety Code §192.003 and §192.004.

VI.8 Birthing Center Licensing

Health and Safety Code Chapter 244 requires birthing centers to be licensed by the Texas Department of State Health Services. A "Birthing Center" means a place, facility, or institution at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth. It does include the personal residence of the midwife.

The staff of the Facility Licensing Group is responsible for licensing birthing centers. The Group develops rules adopted by the Executive Commissioner of HHSC which establish minimum standards for birthing center licensing procedures, for inspections; for the conditions of a license; for denying, suspending, and revoking a license; for operational standards; for clinical standards; for license fees; and for access to records.

Midwives owning or working in birthing centers are required to comply both with the Texas Midwifery Board rules governing midwifery practice, and with the Texas Department of State Health Services rules governing licensed birthing centers.

The Texas Department of State Health Services may suspend, revoke or deny a birthing center license for violating the Birthing Center Licensing Act or the rules adopted by the department. In addition, if the birthing center has violations which create an immediate threat to the health and safety of its patients, a temporary restraining order may be imposed, a civil penalty may be assessed, and/or injunctive relief may be granted by a district court. Compliance with applicable statutes and rules is monitored by means of surveys.

There are approximately 50 licensed birthing centers in Texas.

License Fees : Initial / Renewal \$1,000 / year

Applications for licensure may be obtained by writing to:

Facility Licensing Group - Birthing Centers
Texas Department of State Health Services
1100 West 49th Street
Austin, TX 78756-3199

Obtaining and reviewing a copy of the Birthing Center Licensing Rules (25 TAC §§137.1 - 137.55) is recommended.

VI.9 Deceptive Trade Practices

In addition to the specific restrictions on how a licensed midwife may represent him/herself to the public found in the Texas Midwifery Act, Sections 203.402-203.403, 'false, misleading, or deceptive acts or practices' are prohibited by law in the conduct of any trade or commerce.

The specific law is found in the Business and Commerce Code, §17.12, Deceptive Advertising, and §17.46 Deceptive Trade Practices Unlawful.

VI.10 CLIA Certificate of Waiver

Midwives who perform specific tests, including urine dipsticks, which are listed at the lowest category of complexity called 'waived tests', must register with the Health Care Financing Administration (HCFA) and apply for a Certificate of Waiver, which costs \$150 every 2 years. The information required, including application and correct office to which to send the paperwork (Texas is divided into 'zones'), can be obtained from the Facility Licensing Group, Texas Department of State Health Services, at (512) 834-6686. Request a CLIA application packet, which includes Form HCFA-116.

VI.11 Paternity Acknowledgment

As a part of welfare reform legislation, federal law (42 United States Code §666(a)(5)) and federal regulations (45 Code of Federal Regulations §302.70(a)(5)(iii) and §303.5(g)) require that states adopt regulations related to the establishment of paternity. The Texas Office of the Attorney General and the DSHS Vital Statistics Unit are collaborating to ensure that all persons filling out birth certificates provide appropriate guidance to parents who may be required to file an Acknowledgment of Paternity (AOP) form in order to list a father on a birth certificate. Trainings are provided throughout the state to midwives, registrars, hospital personnel, and other interested parties. After completing the mandatory training, each individual will be given a number for use in completing the AOP.

A person who is certified to complete an AOP must attend an annual training to remain certified.

In general, an AOP is required before a father's name may be listed on the birth certificate if: the parents are not married; if the woman is married to someone other than the person wishing to be listed as the father on the birth certificate; or if the woman was previously divorced or widowed within 12 months prior to the birth (another man might be presumed to be the father).

More information may be obtained from the DSHS Vital Statistics Unit by calling 512-458-7692. Obtaining and reviewing a copy of the *Handbook on Paternity* is recommended.

VI.12 Universal Precautions

A number of laws, rules and policies, including federal regulations, address the issue of preventing the transmission of various pathogens, including HIV and Hepatitis B. OSHA (Occupational Safety and Health Administration) rules are particularly concerned with health risks faced by employees who may be exposed in the course of employment to potentially infectious materials.

The Midwifery Practice Standards and Principles, 22TAC §831.51(f)(2) requires that midwives follow accepted infection control procedures regarding equipment, examinations and procedures, and be familiar with and practice universal precautions established by OSHA guidelines.

For the latest information and/or guidelines, please contact your local OSHA office, the appropriate DSHS Program, or the Centers for Disease Control and Prevention (CDC) at (800) 311-3435.

VI.13 Other Health Related Professions

The Texas Occupations Code contains laws related to the licensing, regulation and scope of practice of many health professionals. Each of these professions may have standards or requirements that restrict the use of certain professional titles, or the types of activities that may be provided by unlicensed persons.

VI.14 Newborn Hearing Screening

Two babies with hearing loss are born each day in Texas. In fact, the annual number of infants with hearing loss is more than twice that of all the genetic and metabolic disorders identified by blood screens. Early detection of hearing loss enables clients to be referred for further evaluation as needed and early intervention services. Infants who are hard of hearing or deaf and receive intervention before 6 months of age maintain language development almost equal to their cognitive abilities through age 5.

The DSHS Texas Early Hearing Detection and Intervention (TEHDI) Program is the State's universal newborn hearing screening, tracking and intervention program.

Texas law requires that certain birth facilities offer newborn hearing screening (NBHS) to all families of newborns during the birth admission. Facilities that must offer NBHS are:

- (a) Hospitals licensed under Chapter 241 that offer obstetrical services and are located in counties with populations greater than 50,000, and
- (b) Birthing Centers licensed under Chapter 244 that are located in counties with populations greater than 50,000 and that have 100 or more births per year.

Facilities that are legislatively mandated to offer NBHS are certified by DSHS. You may contact the DSHS Texas Early Hearing Detection and Intervention (TEHDI) Program at 1-800-252-8023 to locate a facility to which your clients can be referred for newborn hearing screening, and for information on hearing loss and resources available to assist your clients.

VI.15 Provision of a Reference List

The Texas Legislature passed HB 341, Parenting and Postpartum Counseling Information, in the 78th Regular Legislative Session (2003). This law, effective Sept. 1, 2003, requires physicians, midwives, hospitals and birthing centers who provide prenatal care to a pregnant woman during gestation or at delivery to provide the woman with a current resource list of professional organizations that provide postpartum counseling and assistance to parents.

The list, the "Pregnancy, Parenting and Depression Resource List", is maintained by the Texas Department of State Health Services (DSHS). In addition, it must be documented in the client's chart that she received this information and the documentation must be retained for a minimum of three years. It is recommended that the information be given twice, once at the first prenatal visit and again after delivery.

This list contains the names and addresses of professional organizations that can help pregnant and postpartum women find a local resource that meets their needs. There are also some toll-free assistance phone lines. The list is updated regularly.

To view and print an updated resource list, you should visit the DSHS website at: <http://www.dshs.state.tx.us/mch/depression.shtm>. The list is available in English and in Spanish.

For more information on HB341 or postpartum depression, please contact Chan McDermott, Perinatal Health Program, by phone at 512-458-7796 or by e-mail at: chan.mcdermott@dshs.state.tx.us.

VI.16 HIPAA

What is HIPAA?

HIPAA is the acronym of the Health Insurance Portability and Accountability Act of 1996. The main purpose of this federal statute was to help consumers maintain their insurance coverage, but it also includes a separate set of provisions called **Administrative Simplification**, which include:

- Standardized electronic transmission of common administrative and financial transactions (such as billing and payments)
- Unique health identifiers for individuals, employers, health plans, and health care providers
- Privacy and security standards to protect the confidentiality and integrity of individually identifiable health information

Penalties for Failure to Comply with HIPAA

The legislation carries heavy civil and criminal penalties for failure to comply. US DHHS Office for Civil Rights will enforce civil penalties that may include penalties from \$100 per violation to \$25,000 per calendar year. US Department of Justice will enforce criminal penalties which may include up to 10 years imprisonment and a \$250,000 fine.

Can I release midwifery records to DSHS under HIPAA?

You can continue to provide protected health information to DSHS investigators, inspectors, and licensing and enforcement divisions under this exception in the HIPAA Privacy Standards:

Section 164.512(d) permits covered entities to disclose private health information to a health oversight agency for oversight activities including audits, civil, administrative or criminal investigations, inspections, licensure or disciplinary actions, or other activities necessary for the oversight of the health-care system, government benefit programs, compliance with governmental regulation or compliance with civil rights laws.

VI.17 Use of Oxygen

Midwives are authorized to purchase and possess oxygen in the state of Texas only for the purpose of administering it to mothers and babies in accordance with board rules, located at 22 TAC § 831.101 Administration of Oxygen. These rules do not require midwives to use oxygen.

State law and rules also authorize midwives to purchase and possess oxygen and the supplies necessary to administer it.

Health and Safety Code Chapter 483.001(a) authorizes a midwife to write a "prescription", and 483.041(9) specifies that the only dangerous drugs for which a midwife may write a prescription are eye prophylaxis and oxygen.

Midwifery Board rules at 22 TAC § 831.101 (d) states that "Midwives are authorized to purchase equipment and supplies listed in the American Heart Association Cardiopulmonary Resuscitation Guidelines and the American Academy of Pediatrics Neonatal Resuscitation Guidelines for the administration of oxygen."

VI.18 Standing Orders

Midwives who administer medications under standing orders from a physician must ensure that those orders are current (reviewed at least annually) and comply with the rules of the Texas Medical Board. Midwives have the responsibility not to follow an outdated order.

In addition, the Texas Midwifery Act TOC 203.401 specifically prohibits using a medicine to advance or retard labor or delivery.

Rules of the Texas Medical Board: 22 TAC Chapter 193 Standing Delegation Orders.

VII. Standard Forms

Place forms behind this tab:

- Application for Licensure
- Informed Choice
- Newborn Screening Agreement
- Newborn Screening Training Certification
- Newborn Screening Test Objection Form

VIII. Other Information

Place other materials here behind this tab:

- List of Midwifery Board Members
- List of Approved Basic Midwifery Education Courses
- List of Licensed Midwives in Texas
- Midwifery Board Information on the Complaint Review Process
- Board Policies