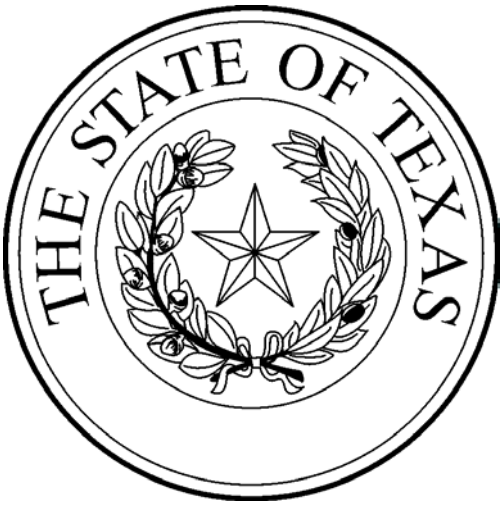
Self-Evaluation Report

Texas Midwifery Board



Presented to the

Sunset Advisory Commission
August 2003

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Texas Midwifery Board
Self-Evaluation Report

I. Key Functions, Powers, and Duties

A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.

The mission of the Texas Midwifery Board 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.

The Texas Midwifery Board is organizationally placed within the Professional Licensing and Certification Division, Texas Department of Health (TDH). TDH employs staff and provides necessary facilities and infrastructure to carry out the board's functions. Midwifery Board members are appointed by the Texas Board of Health (BOH) and the rules of the Texas Midwifery Board are subject to BOH approval.

Key functions, powers, and duties of the Texas Midwifery Board and the Midwifery Program are:

- To adopt and enforce procedural and substantive rules necessary for the documentation of midwives (Occupations Code § 203.151(1))
- To adopt and enforce rules prescribing the standards for the practice of midwifery in Texas (Occupations Code § 203.151(2))
- To adopt and enforce rules prescribing the content of midwifery education courses and continuing education courses and minimum standards for the approval and revocation of approval of basic midwifery education courses and continuing education courses, including instructors and facilities used in education (Occupations Code § 203.151(3))
- To adopt and enforce rules relating to complaint reporting and processing and discipline of midwives determined to be in violation of the Texas Midwifery Act or Texas Midwifery Board rules (Occupations Code § 203.151(4)-(5))
- To issue basic information manuals in English and Spanish for the practice of midwifery (Occupations Code § 203.153)
- To adopt a comprehensive midwifery examination for prospective midwives and establish eligibility requirements for persons taking the examination (Occupations Code § 203.255(a))
- To issue initial and annual letters of documentation to each qualified midwife (Occupations Code §§ 203.251 – 203.303)
- To establish requirements for continuing midwifery education for documentation renewal and to develop a process to evaluate and approve continuing midwifery education courses (Occupations Code § 203.304)
- To maintain a roster of documented midwives to be provided to county clerks and local registrars of birth (Occupations Code § 203.157)
- To prepare and distribute information of public interest describing the functions of the Texas Midwifery Board and the procedures by which complaints are filed with and resolved by the board (Occupations Code § 203.201)

B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?

Yes.

C. Please explain why these functions are needed. Are any of these functions required by federal law?

Public health, safety, and welfare considerations lead to the conclusion that persons practicing direct entry midwifery should be regulated. This includes demonstrating minimum educational achievement and experience, as well as adherence to professional standards in the delivery of midwifery care and services. Educational programs are approved and regulated to ensure that didactic and clinical training meets minimal standards for the safe practice of midwifery. Additionally, midwives should be required to further their knowledge and skill levels annually and report to the board events (such as criminal convictions) that could affect their fitness to practice.

Since each jurisdictional complaint is potentially a situation in which the safety of patients is compromised, each complaint should be investigated. When an investigation indicates that a violation has occurred, it is in the public interest to initiate disciplinary proceedings against the midwife. Depending on the situation, a range of discipline may be imposed, up to and including revocation of the midwife's right to practice in this state.

Public information, including basic midwifery information manuals, in English and Spanish is necessary to inform midwives and Texans of midwifery standards and complaint procedures. A number of documented midwives serve Spanish-speaking populations in the South Texas border area.

With few exceptions, only physicians, certified nurse midwives, hospitals, birthing centers, and documented midwives are authorized to file birth certificates. In an effort to prevent birth certificate fraud, the roster of documented midwives is necessary in order to inform county clerks and local registrars of documented midwives authorized to file birth records. The board is authorized to deny or revoke a midwife's letters of documentation if the person has engaged in birth certificate fraud.

The functions of the Texas Midwifery Board are required and/or authorized by state, not federal, law.

D. In general, how do other states carry out similar functions?

According to the North American Registry of Midwives, 20 states regulate direct-entry midwives, either through licensure, certification, permitting, documentation, or registration programs. In 6 states, direct-entry midwifery is legal by statute, but licensing is not available. In 11 states, direct-entry midwifery is legal by judicial interpretation or statutory inference. In 4 states, the practice is not defined by statute, but is not prohibited. Nine states and the District of Columbia have prohibited the practice by statute, case law, or stricture of safe practices.

E. Describe any major agency functions that are outsourced.

Occupations Code § 203.255 requires the Texas Midwifery Board to adopt a comprehensive midwifery examination and to have an independent testing professional validate any written portion of the examination. TDH, on behalf of the board, contracts with the North American Registry of Midwives for the written portion of their national direct-entry midwifery certification examination. The examination is available in English and Spanish and is offered twice annually in Texas, as well as out-of-state sites by prior arrangement. The examination has been professionally constructed and validated.

F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.

None anticipated.

G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency. Do not include general state statutes that apply to all agencies, such as the Public Information (Open Records) Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1999 - 2003, or earlier significant Attorney General opinions, that affect the agency's operations.

Texas Midwifery Board
Exhibit 1: Statutes/Attorney General Opinions

Statutes	
Citation/Title	**Authority/Impact on Agency** (e.g., "provides authority to license and regulate nursing home administrators")
Occupations Code, Chapter 203 Texas Midwifery Act	Creates the Texas Midwifery Board within the Texas Department of Health and provides authority to regulate and discipline direct-entry midwives.
Occupations Code, Chapter 101 Health Professions Council Act	Creates the Health Professions Council and defines membership to include the licensing boards and programs of the health licensing division of Texas Department of Health (including the Texas Midwifery Board).
Occupations Code, Chapter 53 Consequences of Criminal Conviction	Provides authority to revoke, suspend, or deny a license based on criminal convictions in certain circumstances.
Title IV, Public Law 99-660, Health Care Quality Improvement Act of 1986 and 45 CFR Part 60.	Established the National Practitioners Data Bank. Requires the board to report certain disciplinary actions to the NPDB.
Education Code, § 57.491 Loan Default Ground	Prohibits the board from renewing the documentation of a

for Nonrenewal of Professional or Occupational License	midwife whose name is on a default list provided by the Texas Guaranteed Student Loan Corporation.
Family Code, Chapter 232 Suspension of License	Requires the board to suspend a letter of documentation upon receipt of a court order suspending the letter for failure to comply with the terms of a child custody order or failing to pay child support.
Attorney General Opinions	
Attorney General Opinion No.	**Impact on Agency**
No current opinions impacting the agency.	

H. Please fill in the following chart:

Texas Midwifery Board
Exhibit 2: Agency Contacts

	Name	Address	Telephone & Fax Numbers	E-mail Address
Agency Head	Yvonne Feinleib Program Administrator	1100 West 49th Street Austin TX 78756	(512) 834-4521 (512) 834-6677 fax	yvonne.feinleib@ tdh.state.tx.us
Board Chair	Brent Baylor Public Member			
Agency's Sunset Liaison	Stephen Mills Program Specialist	1100 West 49th Street Austin TX 78756	(512) 834-6628 (512) 834-6677 fax	stephen.mills@ tdh.state.tx.us

II. History and Major Events

Provide a time line discussion of the agency's history, briefly describing the key events in the development of the agency, including:

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events, and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

Brief History of Texas Midwifery Practice

c1836 Midwifery has been practiced in this state since the days of the Republic. Throughout the nineteenth and early twentieth centuries, midwives served diverse populations, including indigenous Indian and Mexican, Anglo, and African-American. (*The Handbook of Texas On-Line*, Texas Historical Commission)

1900 More than half of all births in Texas were attended by midwives.

1921 The Legislature passed the Sheppard-Towner Maternity and Infancy Protection Act, which mandated that hygiene training for midwives be conducted by public health nurses and other health professionals. The Act expired in 1929.

1956 The Texas Court of Criminal Appeals (Banti v. State of Texas, 244 SW2d, Ct. Cr. App.) ruled that the practice of midwifery does not constitute the practice of medicine without a license. The court reasoned that assistance with childbirth, a "normal function of womanhood," was not included in the statutory definition of medical practice as the treatment of a "disease, disorder, or deformity."

1970s Certified nurse midwives are regulated as advanced practice nurses through the Texas Board of Nursing Examiners.

1970s Municipal ordinances are enacted in El Paso and Brownsville requiring training and certification of midwives. (San Antonio had such an ordinance in effect from 1933 to 1952.)

1980 Texas Attorney General John Hill issued Opinion No. H-1293 in response to a request by the Texas State Board of Medical Examiners to clarify the services a midwife or a nurse midwife may perform.

Agency History

1983 The 68th Legislature enacted the Lay Midwifery Act, effective September 1, 1983. The Act was codified in Vernon's Texas Civil Statutes, Article 4512i. The Act created the Texas Lay Midwifery Board, which first met on January 26, 1984. The board was empowered to offer voluntary training to lay

midwives and specify certain aspects of midwifery practice. The board was created within the Texas Department of Health (TDH) and organizationally placed in TDH's Bureau of Maternal and Child Health. The board is appointed by the Texas Board of Health (BOH), reports directly to the BOH, adopts rules and other materials for approval by the BOH, and advises TDH regarding implementation of the midwifery program.

1983 Findings of the Legislature, as detailed in the original and current Midwifery Act, Occupations Code, § 203.003, are that "a parent has the responsibility and right to give birth where and with whom the parent chooses; childbirth is a natural process of the human body and not a disease; and midwifery has been practiced in this state since the days of the Republic."

1991 The 72nd Legislature amended the Texas Lay Midwifery Act, deleting the word "Lay" from the name of the board, Act, and program. The amendments also increased the scope of the program to include mandatory basic education and continuing education beginning in 1993, annual documentation of midwives through the midwifery program instead of county clerks, training to perform newborn screenings, and civil and criminal penalties (Class C misdemeanor). The amended act did not grant enforcement powers to the Texas Midwifery Board.

1997 The 75th Legislature amended the Texas Midwifery Act to grant a range of regulatory and enforcement powers to the Texas Midwifery Board, including revocation, suspension, probation, practice restrictions, agreed orders for additional education, warnings, and administrative penalties.

1998 The Midwifery Board and program were organizationally realigned within TDH and placed in the Professional Licensing and Certification Division (PLCD), Bureau of Licensing and Compliance.

1999 The 76th Legislature recodified the Texas Midwifery Act as Occupations Code, Chapter 203.

2003 The 78th Legislature amended the Texas Midwifery Act to provide the Texas Midwifery Board with the authority to suspend a midwife's letter of documentation without notice or hearing under certain emergency circumstances.

2003 The Midwifery Program staff, along with 19 other regulatory programs housed within TDH's Professional Licensing and Certification Division (PLCD), are reorganized along functional lines, instead of a programmatic arrangement that has been in place since the division's inception in 1985. The PLCD budget (5B508 building block) was reduced by 4.5 FTEs for the biennium. The PLCD Functional Reorganization plan is labeled as Attachment 29. The reorganization is scheduled for implementation on September 1, 2003.

III. Policymaking Structure

Texas Midwifery Board Exhibit 3: Policymaking Body					
Member Name	**6 Year Terms/ Appointment Dates/ Appointed by ___**	**Qualification**	**Address**	**Telephone & Fax Numbers**	**E-mail Address**
Barry E. Schwarz, M.D.	Feb 2003 – Jan 2009 Texas Board of Health	Obstetrician/ Gynecologist			
Lisa R. Nash, O.D.	Jan 2001 – Jan 2007 Texas Board of Health	Pediatrician/ Family Physician			
Carol Martin, CNM	Jan 1999 – Jan 2005 Texas Board of Health	Certified Nurse/Midwife			
Thalia Hufton	Feb 2003 – Jan 2009 Texas Board of Health	Midwife			
Gail Winters Johnson, CPM	Jan 2001 – Jan 2007 Texas Board of Health	Midwife			
Karen Strange, CPM	Jan 1999 – Jan 2005 Texas Board of Health	Midwife			
Cynthia Scott	Jan 1999 – Jan 2005 Texas Board of Health	Public			

Susan Chick	Feb 2003 – Jan 2009 Texas Board of Health	Public			
Brent Baylor Chair	Jan 2001 – Jan 2007 Texas Board of Health	Public/Consumer			

B. How is the chair of the policymaking body appointed?

Occupations Code § 203.056 provides that "The midwifery board shall elect one of the public members of the midwifery board as presiding officer …"

C. Describe the primary role and responsibilities of the policymaking body.

Powers and duties of the Texas Midwifery Board are set out in Occupations Code, §§ 203.151-203.157.

The board's primary role is to adopt and enforce rules relating to the documentation of midwives, standards of midwifery practice, standards of midwifery education, and discipline of documented midwives found to be in violation of the Texas Midwifery Act or board rules.

The board also provides recommendations to TDH regarding the implementation of its rules and the midwifery program.

D. List any special circumstances or unique features about the policymaking body or its responsibilities.

The Texas Midwifery Board is authorized to adopt rules and impose discipline on documented midwives. However, board members are appointed not by the governor, but by the Texas Board of Health. The authority granted to the Texas Midwifery Board to adopt rules is subject to the "approval" of the Texas Board of Health (BOH). The enforcement authority granted to the Texas Midwifery Board is not subject to the approval of the BOH.

E. In general, how often does the policymaking body meet? How many times did it meet in FY 2002? in FY 2003?

Occupations Code § 203.059 requires the Texas Midwifery Board to meet at least semiannually. In FY 2002, the board held two meetings. In FY 2003, the board held three meetings.

F. What type of training do the agency's policymaking body members receive?

Occupations Code § 101.101 requires the Health Professions Council to establish a training program for the governing bodies of state agencies that regulate health professions. The member must complete the training program prior to assuming the member's duties. The training curriculum created by the Health Professions Council was adapted for regulatory programs within the Professional Licensing Division, Texas Department of Health.

The training program includes information regarding the enabling legislation (the Texas Midwifery Act); the functions of the midwifery program; the role of the program and the Midwifery Board; the rules of the Midwifery Board with an emphasis on the rules that relate to disciplinary and investigatory authority; the current budget for the Midwifery Board; the requirements of the open meetings law, Chapter 551, Government Code; the requirements of the open records law, Chapter 552, Government Code; the requirements of the administrative procedure law, Chapter 2001, Government Code; the requirements of the conflict of interest laws and other laws relating to public officials; and any applicable ethics policies adopted by the Texas Ethics Commission. Additionally, board members receive information concerning the board's unique placement within the Texas Department of Health, the board's relationship to the Texas Board of Health, and the staff, structure, and strategic plan of the Professional Licensing and Certification Division.

G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.

Yes. Occupations Code § 203.103 requires the Texas Midwifery Board to develop and implement policies that clearly define the respective responsibilities of the board and the board's staff. The policy delineates 18 responsibilities of the board and 22 responsibilities of the board's staff. A copy of the policy is included as Attachment 22.

H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.

Texas Midwifery Board
Exhibit 4: Subcommittees and Advisory Committees

Name of Subcommittee or Advisory Committee	Size/Composition/How are members appointed?	Purpose/Duties	Legal Basis for Committee
Complaint Review Committee	Committee size, composition, and appointments are set out by Midwifery Board rule 25 TAC § 831.161(c): 5 members one midwife member of the Midwifery Board; a physician or certified nurse midwife who is a	The committee's purpose is established by Midwifery Board rule 25 TAC § 831.161(c): To consider all complaints filed against documented midwives and to make recommendations to the Midwifery Board.	No specific authority to establish this committee is granted in the Midwifery Act; however, the Act does grant the Midwifery Board rulemaking

	member of the Midwifery Board; a public member who is a member of the Midwifery Board; and two documented midwives in active practice who are not members of the Midwifery Board to serve as professional consultants on midwifery practice issues. Committee members are appointed by the Chair of the Texas Midwifery Board for one year terms, with the approval of the Midwifery Board.		authority to adopt rules necessary to implement a duty imposed on the board (Occupations Code § 203.151(7)).
Education Committee	Committee size, composition, and appointments are set out by Midwifery Board rule 25 TAC § 831.31(d): 5 members 2 midwife members of the Midwifery Board; a physician or certified nurse midwife who is a member of the Midwifery Board; a public member who is a member of the Midwifery Board; and one documented midwife who is not a member of the Midwifery Board Committee members are appointed by the Chair of the Texas Midwifery Board for one year terms.	The committee's purpose is established by Midwifery Board rule 25 TAC § 831.31: To consider all issues related to mandatory basic and continuing midwifery education. To review all applications for approval of mandatory basic midwifery education courses or comprehensive exams, as well as complaints concerning approved courses or exams.	No specific authority to establish this committee is granted in the Midwifery Act; however, the Act does grant the Midwifery Board rulemaking authority to adopt rules necessary to implement a duty imposed on the board (Occupations Code § 203.151(7)).

I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?

The Texas Midwifery Board uses a variety of mechanisms to obtain and incorporate public input. The board considers obtaining and using public input to be of critical importance in carrying out its duty to protect and promote the public health and safety by regulating the practice of midwifery.

Each committee and board meeting agenda has a public comment item. Controversial or difficult issues and public comments on those issues are comprehensively discussed in both committee and board meetings. The board's stakeholders, including Texas midwives, physicians, and other health care professionals, regularly avail themselves of the opportunity to address the board and its committees.

The board's membership structure and committee composition lend themselves to considerable input from the public and stakeholder groups. Two Midwifery Board members are physicians, one is a certified nurse-midwife, and three members represent the public. Both the Complaint Review Committee and the

Education Committee have a documented midwife member who does not sit on the Texas Midwifery Board, as well as a physician/nurse-midwife member who sits on the board. Additionally, the board establishes *ad hoc* committees for special issues or projects. These committees typically include one or more member who does not sit on the Midwifery Board.

In the area of rulemaking, the board notifies stakeholders of rule issues early in the development phase. Stakeholders are encouraged to participate in committee and board meetings in which rules are drafted, discussed, or approved. Additionally, the board has established, by rule, provisions providing for any person to petition the board for the adoption of a rule. Finally, the board holds public hearings on rules and fully considers all written comments received during the statutory public comment period. Rule proposals and adoptions are posted on the board's website and regularly updated.

As funds allow, the board and its staff attend midwifery statewide conferences and local area meetings to receive direct input from the regulated community, to provide training and information, and to answer questions regarding the board and its functions.

IV. Funding

Introduction

The Texas Midwifery Board is administratively attached to Texas Department of Health (TDH). TDH provides staff, facilities, and infrastructure necessary to accomplish the board's mission and functions. This unique arrangement has implications for much of the information requested in Section IV (Funding) and V (Organization) of this Self-Evaluation Report.

The board is funded through a shared appropriation to TDH to fund the C.1.1. strategy (Health Care Standards). The legislative appropriation is made to TDH, not to the board. The General Appropriations Act (GAA) does not contain a line-item appropriation to the board, in fact, the GAA does not mention the board. Consequently, the board does not prepare a Legislative Appropriations Request. All revenue and expenditures are processed, accounted for, tracked, and audited through the TDH budget, fiscal, and audit structures.

Due to the absence of a legislative appropriation, the board is unable to hire staff or expend funds in its own name. The requested information regarding Equal Employment Opportunity statistics and policy, Historically Underutilized Business purchases, expenditures by strategy, objects of expense from the GAA, and FTE cap is not available by program. The information is available regarding TDH in an agency-wide format. Expenditure allocation tracking by program activity code in the Health and Human Services Accounting System (HHSAS) is the foundation for tracking program costs. Some information requested in Section IV (Funding) and V (Organization) is available in a format that is specific to the board, with some necessary modifications, and the modified information is submitted in this report.

A. Describe the agency's process for determining budgetary needs and priorities.

For each of the 19 programs, TDH Professional Licensing and Certification Division management use the following process to project operating costs for the fiscal year. First salaries are projected using the labor account default percentages as an estimate of salary categories (direct staff, shared staff, investigation,

testing, and general counsel.) Retirement and fringe benefits are projected based on the current percentage. Professional services and per diem (if board members receive it by law) are projected for services that each board will use during the year for special services such as testing, complaint review, and other specialized services. Travel costs are an estimate of the travel needed for board members and staff, based on the amount expended in prior years, current fiscal year needs, and the amount that the division's total allocation can support per program. Other operating costs are projected costs for each program, such as postage, telephone, printing, office supplies, registrations, copier rental, equipment maintenance, training, and membership in the Health Professions Council. This is an estimate based on the amount expended in prior years and the amount that the division's total allocation can support per program. Third party reimbursement is utilized to cover other operating costs for some programs. Information systems charges are an estimate based on a percentage of the prior year's division total cost for infrastructure and direct program support billing. Indirect costs are projected based on the current percentage. Projected revenue is based on the prior year's revenue and last year's third party reimbursement (not all programs collect third party reimbursement.)

PLEASE FILL IN EACH OF THE CHARTS BELOW, USING EXACT DOLLAR AMOUNTS.

B. Show the agency's sources of revenue. Please include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency.

Texas Midwifery Board
Exhibit 5: Sources of Revenue — Fiscal Year 2002 (Actual)

Source	Amount
General Revenue Fund	38,040
TOTAL	38,040

C. If you receive funds from multiple federal programs, show the types of federal funding sources.

Texas Midwifery Board
Exhibit 6: Federal Funds — Fiscal Year 2002 (Actual)

Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				
TOTAL				

D. If applicable, please provide detailed information on fees collected by the agency.

Texas Midwifery Board
Exhibit 7: Fee Revenue and Statutory Fee Levels — Fiscal Year 2002

Description/ Program/ Statutory Citation	Current Fee/ Statutory maximum	Number of persons or entities paying fee	Fee Revenue	Where Fee Revenue is Deposited (e.g., General Revenue Fund)
Initial documentation fee Occupations Code § 203.152	200.00/None	11	2,200	General Revenue Fund
Renewal documentation fee Occupations Code § 203.152	200.00/None	154	30,800	General Revenue Fund
School approval fee Occupations Code § 203.152	150.00/None	7	1,925	General Revenue Fund
School site visit fee Occupations Code § 203.152	400.00/None	7	400	General Revenue Fund

E. Show the agency's expenditures by strategy.

Please see the Section IV introductory information.

Texas Midwifery Board
Exhibit 8: Expenditures by Strategy — Fiscal Year 2002 (Actual)

Goal/Strategy	Amount
GRAND TOTAL:	

F. Show the agency's expenditures and FTEs by program.

Texas Midwifery Board
Exhibit 9: Expenditures and FTEs by Program — Fiscal Year 2002 (Actual)

Program	Budgeted FTEs, FY 2002	Actual FTEs as of August 31, 2002	Federal Funds Expended	State Funds Expended	Total Actual Expenditures
Documentation and Regulation of Midwives	1	1	N/A	67,494	67,494
TOTAL	1	1	N/A	67,494	67,494

G. Show the agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2004-2005.

Please see the Section IV introductory information and also see Attachment 8. The board's funding is within the attached building block.

7

Texas Midwifery Board Exhibit 10: Objects of Expense by Program or Function -- Fiscal Year 2004			
Object-of-Expense Informational Listing	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**
Total, FY 2004 Object-of-Expense Informational Listing			

Objects of Expense by Program or Function -- Fiscal Year 2005			
Object-of-Expense Informational Listing	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**	**Strategy, Program, Division, or Function ___ (insert strategy, division or program name)**
Total, FY 2005 Object-of-Expense Informational Listing			

H. Please fill in the following chart.

Please see the Section IV introductory information.

Texas Midwifery Board Exhibit 11: Purchases from HUBs

FISCAL YEAR 2000				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
TOTAL				
FISCAL YEAR 2001				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
TOTAL				
FISCAL YEAR 2002				
Category	**Total $ Spent**	**Total HUB $ Spent**	**Percent**	**Statewide Goal**
Heavy Construction				11.9%
Building Construction				26.1%
Special Trade				57.2%
Professional Services				20.0%
Other Services				33.0%
Commodities				12.6%
TOTAL				

I. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?

Please see the Section IV introductory information.

J. For agency with contracts valued at $100,000 or more:

Not applicable

	Response / Agency Contact
Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available under contracts of $100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)	

K. For agencies with biennial appropriations exceeding $10 million:

Not applicable

	Response / Agency Contact
Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)	
Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)	
Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128)	

V. Organization

Introduction

The Texas Midwifery Board is administratively attached to Texas Department of Health (TDH). TDH provides staff, facilities, and infrastructure necessary to accomplish the board's mission and functions. This unique arrangement has implications for much of the information requested in Section IV (Funding) and V (Organization) of this Self-Evaluation Report.

The board is funded through a shared appropriation to TDH to fund the C.1.1. strategy (Health Care Standards). The legislative appropriation is made to TDH, not to the board. The General Appropriations Act (GAA) does not contain a line-item appropriation to the board, in fact, the GAA does not mention the board. Consequently, the board does not prepare a Legislative Appropriations Request. All revenue and expenditures are processed, accounted for, tracked, and audited through the TDH budget, fiscal, and audit structures.

Due to the absence of a legislative appropriation, the board is unable to hire staff or expend funds in its own name. The requested information regarding Equal Employment Opportunity statistics and policy, Historically Underutilized Business purchases, expenditures by strategy, objects of expense from the GAA, and FTE cap is not available by program. The information is available regarding TDH in an agency-wide format. Expenditure allocation tracking by program activity code in the Health and Human Services Accounting System (HHSAS) is the foundation for tracking program costs. Some information requested in Section IV (Funding) and V (Organization) is available in a format that is specific to the board, with some necessary modifications, and the modified information is submitted in this report.

A. Please fill in the chart below. If applicable, list field or regional offices.

Texas Midwifery Board Exhibit 12: FTEs by Location — Fiscal Year 2002			
Headquarters, Region, or Field Office	**Location**	**Number of Budgeted FTEs, FY 2002**	**Number of Actual FTEs as of August 31, 2002**
Central Headquarters Texas Department of Health	Austin	1	1
	TOTAL	1	1

B. What was the agency's FTE cap for fiscal years 2002 - 2005?

Please see the Section V introductory information.

C. How many temporary or contract employees did the agency have as of August 31, 2002?

None

D. Please fill in the chart below.

Please see Section V introductory information.

Texas Midwifery Board Exhibit 13: Equal Employment Opportunity Statistics							
FISCAL YEAR 2000							
Job Category	**Total Positions**	**Minority Workforce Percentages**					
		Black		**Hispanic**		**Female**	
		Agency	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**

Officials/Administration			5%		8%		26%
Professional			7%		7%		44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals			25%		30%		55%
Administrative Support			16%		17%		84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

FISCAL YEAR 2001							
Job Category	**Total Positions**	**Minority Workforce Percentages**					
		Black		**Hispanic**		**Female**	
		Agency	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**
Officials/Administration			5%		8%		26%
Professional			7%		7%		44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals			25%		30%		55%
Administrative Support			16%		17%		84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

FISCAL YEAR 2002							
Job Category	**Total Positions**	**Minority Workforce Percentages**					
		Black		**Hispanic**		**Female**	
		Agency	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**	**Agency**	**Civilian Labor Force %**
Officials/Administration			5%		8%		26%
Professional			7%		7%		44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals			25%		30%		55%
Administrative Support			16%		17%		84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?

Please see the Section V introductory information.

VI. Guide to Agency Programs

A. Please complete the following chart.

Texas Midwifery Board Exhibit 14: Program or Function Information — Fiscal Year 2002	
Name of Program or Function	Documentation and Regulation of Direct-Entry Midwives
Location/Division	Texas Department of Health/Professional Licensing and Certification Division
Contact Name	Yvonne Feinleib, Program Administrator
Number of Budgeted FTEs, FY 2002	1
Number of Actual FTEs as of August 31, 2002	1

B. What are the key services of this function or program? Describe the major activities involved in providing all services.

Key services and activities are:

- rulemaking
- issuance of new and renewal letters of documentation to qualified midwives
- processing, evaluation, and approval of applications to become a documented midwife
- processing, evaluation, and approval of applicant examination scores
- processing, evaluation, and approval of new and renewal applications for approval of midwifery education and continuing education courses
- processing of consumer complaints against documented midwives
- investigation and presentation of complaints to the Complaint Review Committee
- imposition of enforcement sanctions against documented midwives in violation of the law or rules
- provision of public information concerning midwifery regulation.

The Program Operating Plan (POP) for the Texas Midwifery Board/TDH Midwifery Program (July 2002) is included as Attachment 23. A revised POP will be available in Fall 2003 through the TDH website at <http://www.tdh.state.tx.us/oshp/pop/default.htm>.

C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.

The functions were created in order to protect and promote public health, safety, and welfare. Texas Occupations Code, Chapter 203 sets out requirements for these functions. The functions were set out by legislative action in 1983 and modified in 1993, 1997, and 2003 (see History section.)

D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?

The key functions of the Texas Midwifery Board and the Midwifery Program are ongoing and will continue to be needed as long as Texas parents exercise their right to give birth where and with whom the parent chooses. The regulation of midwives is intended to ensure that parents who exercise this right are availing themselves of the services of a qualified and competent direct-entry midwife.

The services and functions have changed from the original intent of 1983's Lay Midwifery Act. The original intent was to create a master roster of identified midwives from county clerk records and offer voluntary training for midwives. In 1993, the Legislature amended and renamed the Act and required that midwives "document" annually through the Midwifery Program in Austin, instead of "identifying" through the respective county clerks. The amendments also increased the scope of the program to include mandatory basic and continuing education, annual documentation of cardiopulmonary resuscitation training, and training to perform newborn screening.

In 1997, the Legislature amended the Act to authorize the Midwifery Board to investigate consumer complaints and institute enforcement sanctions against midwives found to be in violation of the law or rules. In 2003, the Act was amended again to provide authority for the Midwifery Board to suspend a midwife's letter of documentation on an emergency basis.

In summary, the early years of the program were characterized by public health and public information functions and considerations. Over time, the Legislature has recognized the need to enhance and formalize the program's regulatory functions.

E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.

The functions directly affect Texas consumers of midwifery services and Texas direct-entry midwives. There are 164 documented midwives and 3 approved midwifery education courses. 2,225 infants were born with the assistance of a midwife in 2000.

Qualifications to become a documented midwife are set out in the Occupations Code § 203.252 and Midwifery Board rules 22 TAC § 831. Qualifications include completion of mandatory basic midwifery education and successful completion of the midwifery examination.

F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or

regional services.

Rulemaking processes are carried out in accordance with the Midwifery Act, which requires Board of Health approval of Texas Midwifery Board rules, and the Administrative Procedure Act.

The application process for midwifery documentation is detailed in the flowchart labeled Attachment 24. Applications for midwifery schools follow a similar approval process, with the addition of the on-site inspection.

The renewal process is detailed in the flowchart labeled Attachment 25. Renewals for midwifery schools follow a similar process.

The complaint processing and enforcement processes are detailed in the flowchart labeled as Attachment 26.

G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.

Midwifery Program staff regularly work with local birth registrars to verify whether a particular midwife is currently documented and to assist in ensuring that birth certificates are timely filed. Program staff also provide information to registrars regarding filing complaints against midwives related to birth certificate fraud and undocumented practice.

Staff also cooperates with local, state, and federal authorities, including staff from the Bureau of Vital Statistics Fraud Unit, in pursuing action against midwives suspected of attempting to falsify proof of US citizenship.

H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).

General revenue fund 38,040

I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.

Overall, current funding resources are appropriate to achieve the program's mission and goals.

J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.

There are no other state government programs engaged in the regulation of direct-entry midwives.

K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.

N/A

L. Please provide any additional information needed to gain a preliminary understanding of the program or function.

M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

The regulation of midwives is necessary as a means to protect and promote public health, safety, and welfare. The regulation of midwives is intended to ensure that parents who exercise the right to give birth where and with whom they choose are availing themselves of the services of a qualified and competent direct-entry midwife.

The Midwifery Act does not provide authority for routine inspections or audits of the worksites of midwives. When a jurisdictional consumer complaint is filed, the matter is investigated. Any violations of law or rule verified through a complaint investigation are presented to the Complaints Review Committee for consideration and the imposition of disciplinary action, if appropriate.

Basic midwifery education courses are inspected within the first year after provisional approval. The site visit is conducted by a member of the Midwifery Program staff and a documented midwife who is a member of the Education Committee. The on-site visit includes an inspection of the course's facilities; a review of its teaching plan, protocols, and materials; a review of didactic and preceptorship instruction; interviews with staff and students; and a review of student files. The review team produces a report concluding with a recommendation to the Education Committee for approval or denial of the course.

When non-compliance is identified, a number of follow-up actions may be taken. In a complaint matter, the midwife may be required to complete additional basic or continuing education or to pay monetary fines. Program staff monitor these enforcement orders for compliance and report non-compliance to the Complaint Review Committee for additional action. If another complaint is received or if there is reason to believe the problem has not been resolved, program staff re-investigate. In a site visit for an education program, minor violations may be corrected at the time they are identified. Other violations may be

corrected and substantiated as corrected prior to the time that full course approval is given by the Education Committee.

The Texas Midwifery Board is authorized to impose a broad range of enforcement sanctions to ensure compliance with the Texas Midwifery Act and midwifery rules. These include application or renewal application denial, administrative penalties, emergency suspension, warnings, suspension, probation, and revocation. Additionally, the board is authorized to resolve contested cases through the use of agreed orders, recommendations or requirements for medical or psychological treatment, and practice limitations. (See Occupations Code §§ 203.151(b), 203.404(a), and 203.451.)

Information regarding the complaint and enforcement process, including the Complaint Review Committee meetings, is provided to respondents. Procedures for handling consumer complaints against midwives are illustrated in the flowchart labeled Attachment 26.

N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.

Texas Midwifery Board
Midwifery Program
Exhibit 15: Complaints Against Regulated Entities or Persons – Fiscal Years 2001 and 2002

	FY 2001	FY 2002
Number of complaints received	7	10
Number of complaints resolved	7	3
Number of complaints dropped/found to be without merit	7	7
Number of sanctions	0	4
Number of complaints pending from prior years	0	1
Average time period for resolution of a complaint	106 days	52 days
Number of entities inspected or audited by the agency	0	2
Total number of entities or persons regulated by the agency	185	180

VII. Agency Performance Evaluation

A. What are the agency's most significant accomplishments?

Regulation The practice of midwifery was unregulated in Texas at the time of the last Sunset Review, unless a midwife's actions or negligence rose to the level that criminal authorities became involved. Responding to legislative mandates in 1997, the board has successfully transitioned from a public health advisory committee to an effective health-occupation regulatory board. Since the adoption of complaint review rules in 1999 (22 TAC § 831.161), the board has imposed disciplinary sanctions including revocation, suspension, and administrative penalties; has accepted a voluntary surrender; has denied applications from two midwives previously convicted of birth certificate fraud; and continues to review and resolve complaints in open public meetings, which both the midwife and the complainant are invited but not required to attend. The board has resolved all complaints to date without requiring the expense and delay of a hearing through the State Office of Administrative Hearings. In the 2003 legislative session, the board was authorized to temporarily suspend the letter of documentation of a midwife on an emergency basis, should evidence or information indicate that continued practice by that midwife constitutes a continuing and imminent threat to public welfare.

Standards of Practice The first state standards of practice for direct entry midwives became effective in 1994 in response to 1993 legislation. These standards were recently (2000-2003) extensively revised to make them clearer and more usable and to reflect current, higher standards for midwifery education and practice in the state. The rules revision process, which lasted 2 ½ years, involved numerous, often contentious, stakeholder meetings. Throughout the process, the Midwifery Board chose to devote the time necessary to fully review and consider all conflicting opinions and comments. The board adopted final rules effective April 24, 2003. The rules will improve the ability of the board to effectively regulate midwives and improve the standard of midwifery practice by imposing a new requirement for individual practice protocols.

Standards for midwifery education Prior to the enactment of the original Midwifery Act in 1983, an individual simply had to remit a $5.00 annual fee to the local registrar of births (usually the county clerk.) He or she was then a "midwife" and authorized to file birth certificates. Over the years, education and training requirements have increased the qualifications to become a midwife, culminating in the education rules adopted by the Midwifery Board in 1999 (22 TAC § 831.31). The midwifery basic education required to enter practice in Texas now corresponds to national norms for certification by the North American Registry of Midwives (NARM). Three midwifery schools are currently approved in Texas. Additionally, in the last two years, two additional schools reached the level of provisional approval, but were denied final approval and are no longer in operation.

Examination. The board currently contracts for the national entry-level midwifery examination offered by NARM. As a part of this contract, the examination and all associated materials are available in both English and Spanish, thereby making not only the state examination, but also the national certification process, accessible to Spanish-speakers. This contract represents a tremendous step forward in ensuring that new midwives are trained to a high standard despite the limited number of midwives practicing in Texas, which would make developing, validating, and translating an in-house examination prohibitively expensive.

Building trust with the regulated community. The board has invested significant time and effort, as well as resources, in considering and including stakeholder input in the development of rules and policies, in holding open public meetings in Austin and throughout the state, and in reassuring the regulated community of midwives that increased regulation to protect public health and safety has the added advantage of benefiting the profession. Positive, open communication between TDH and documented midwives has increased in the last 10 years. Due to the board's consistent willingness to explain its actions in open public forums and through timely communications, this has been to the benefit of both groups.

B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

At each board meeting, members are briefed by the division director on budgetary matters (relating specifically to the board and to the Professional Licensing Division), relevant legislation (proposed or passed), legal opinions, and current policy issues. The program administrator also provides a report regarding programmatic issues at each meeting. As policy or other issues develop (Sunset Review, PLCD reorganization), program staff update board members by e-mail.

Shared performance measure reporting associated with the appropriation to TDH in the C.1.1. strategy (Health Care Standards) is compiled quarterly. This information includes the number of new applications and renewal applications processed, the number of jurisdictional complaints received, the number of jurisdictional complaints resolved, the number and types of disciplinary action taken, and the average number of days required to resolve a complaint. The annual report of the Health Professions Council provides similar information for the Texas Midwifery Board and is distributed to board members. The report is an opportunity for the board to assess its performance in those areas and provides statistical information used for staffing and resource allocations.

Program staff are evaluated by TDH in accordance with agency policy and procedure. The Professional Licensing Division also performs specific activities related to assessing customer service, including a customer comment survey. Survey results in summary form are provided to the staff and board for analysis and improvements.

C. What are the agency's biggest opportunities for improvement?

The board's biggest opportunity for improvement lies in continuing to build trust and increase communication with physician stakeholder groups, such as the Texas Medical Association (TMA). The work should focus on the board's obligation to carry out its statutory duty of midwifery regulation to ensure the safety of midwifery clients, while soliciting, considering, and incorporating meaningful stakeholder input.

TMA is opposed to the "expansion" of midwifery in Texas. (See, e.g., TMA Board of Councilors Opinion No. 41.0, Spring 2002, which states "TMA believes registered nurse midwife practitioners working in association with physicians can provide quality care for expectant mother. However, TMA opposes legislative and regulatory efforts by the State which encourage expansion of lay midwifery."). However, the board has a responsibility to ensure that midwives practice safely no matter how many or few choose to document. The board needs to continue to communicate clearly to all stakeholders that, in

spite of the existence of professional "turf battles", board decisions and actions are firmly rooted in the protection of public health and safety.

An opportunity for improvement in terms of the program's placement within the Professional Licensing and Certification Division (PLCD) is currently underway. In June 2003, division management implemented a functional reorganization plan to better position the licensing and certification programs to implement legislative initiatives, address concerns arising from a reduced budget, and assimilate duties of retiring positions. The division has been organized along programmatic lines since its inception in 1985. The current plan to reorganize division staff (61 FTEs) based on function is scheduled for implementation on September 1, 2003. The reorganization will be closely monitored, evaluated, and adjusted as necessary during a 120-day transition period that ends December 31, 2003. The division's Reorganization Implementation Team, made up of division supervisors, managers, and program administrators is charged with implementation and evaluation. The Reorganization Plan is labeled as Attachment 29.

D. How does the agency ensure its functions do not duplicate those of other entities?

There are no other entities involved in functions related to the regulation of direct-entry midwifery. Program staff regularly communicate with other entities, including TDH staff and other agencies, to coordinate on health issues and mail-outs related to midwives and the practice of midwifery. Open internal communications and clear distinctions of roles and responsibilities based on statutes and rules, assist the board in investigating and resolving jurisdictional complaints cooperatively with other TDH entities, including the Health Facility Licensing Division and the Bureau of Vital Statistics.

E. Are there any other entities that could perform any of the agency's functions?

No. Midwifery is a unique discipline in the field of health care. Related professions serving normal pregnant women (e.g., childbirth educators, doulas, lactation consultants) outside of the hospital setting are not currently regulated by the state.

F. What process does the agency use to determine customer satisfaction and how does the agency use this information?

Customer surveys are provided with renewed letter of documentation. The information is analyzed and maintained by PLCD staff and forwarded to board staff for review by the board. Survey cards bearing a name or identifying information that request or require a response are a high priority for staff.

All specific and general suggestions for improvements or complaints are considered when the survey is received. The information is then provided to the board. The board and staff believe that customer feedback and satisfaction levels are important indicators of the need to clarify or simplify documentation processes.

G. Describe the agency's process for handling complaints <u>against the agency</u>, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving

complaints from the public or other entities, please provide a description.

Due to the Texas Midwifery Board's organizational placement within the larger structure of TDH, the customer services policies and procedures of the oversight agency apply. Please see Attachment 27 (TDH Complaint Resolution Policy and Procedures) and Attachment 28 (TDH Compact with Texans.)

H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency's practices.

The information requested in Exhibit 16 for complaints filed against the Texas Midwifery Board is not available. Due to the board's organizational placement within the larger structure of TDH, the information is not maintained at the program level. Please see Attachment 30 (*Customer Service at the Texas Department of Health for Fiscal Years 2000-2002.*)

Texas Midwifery Board
Exhibit 16: Complaints Against the Agency – Fiscal Years 2001 and 2002

	FY 2001	FY 2002
Number of complaints received		
Number of complaints resolved		
Number of complaints dropped/found to be without merit		
Number of complaints pending from prior years		
Average time period for resolution of a complaint		

I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?

Requests under the Public Information Act are processed in accordance with TDH Operating Procedure OP-1355 (Handling Requests for Public Information), the TDH Procedural Checklist for Public Information Requests, and the Public Information Act. Please see Attachment 21.

J. Please fill in the following chart with updated information and be sure to include the most recent e-mail address if possible.

Texas Midwifery Board
Exhibit 17: Contacts

INTEREST GROUPS
(groups affected by agency actions or that represent others served by or affected by agency actions)

Group or Association Name/ Contact Person	Address	Telephone & Fax Numbers	E-mail Address
Association of Texas Midwives Beth Overton, President	603 West 13th Street, Suite 1A-202 Austin TX 78701	(512) 928-2311	midwife@ texas-midwife.com
Rio Grande Valley Midwifery Association Francisco Tello-Sanchez	2608 West Pecan Blvd McAllen TX 78501		Emmanuel491103@aol.com
Metroplex Area Midwifery Association	3417 Valley View Lane Garland TX 75043		
North Texas Midwives Association	5333 CR 608 Burleson TX 76028		
West Texans for Natural Childbirth	4604 31st Street Lubbock TX 79410		
Texans for Midwifery	6889 Chimney Rock Canyon Lake TX 78133		
San Antonio Birth Doulas	1405 N Main Ave, Suite 200 San Antonio TX 78212		
Texans for Midwifery – Austin Amy Chamberlain	1307 W 40th Street Austin TX 78756		
Maternidad la Luz Deborah Kaley	1308 Magoffin Street El Paso TX 79901	(915) 532-5895	
ATM Midwifery Training Program Linda Myers	Suite 1A MSC202 603 West 13th Street Austin TX 78701	(903) 877-2746	atmed@juno.com
Medical Training Institute of America/Midwifery Program Helen Jolly Nelson or April Talley	1312 S Ervay St Dallas TX 75215	(214) 421-9918	mtia@iblp.org
Texas Nurses Association Jennifer Cook, RN	7600 Burnet Road, Suite 440 Austin TX 78757		cook@satx.rr.com
Texas Medical Association Gayle Harris, Contact and TMA subgroups: Texas Academy of Family Physicians Texas Association of Obstetricians and Gynecologists American College of Emergency Physicians – Texas Chapter Texas Pediatric Society	401 West 15th Street Austin TX 78701		gayle.harris@texmed.org
Texas Consortium of Certified	401 West 15th Street	(830) 833-5603	midwife@mome

Nurse-Midwives Lynne Loeffler, CNM	Austin TX 78701		nt.net
INTERAGENCY, INTRA-AGENCY, STATE, OR NATIONAL ASSOCIATIONS (that serve as an information clearinghouse or regularly interact with the agency)			
Group or Association Name/ Contact Person	**Address**	**Telephone & Fax Numbers**	**E-mail Address**
North American Registry of Midwives Ida Darragh, Director of Testing	PO Box 7703 Little Rock AR 72217	(888) 353-7089 (630) 214-8975 fax	NarmCPM@ Aol.com or testing@narm.org
LIAISONS AT OTHER STATE AGENCIES (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
Agency Name/Relationship/ Contact Person	**Address**	**Telephone & Fax Numbers**	**E-mail Address**
Office of the Attorney General Joan Hutcheson Contact person for Acknowledgement of Paternity	PO Box 12548 Austin TX 78711	460-6317	Joan.hutcheson@ oag.state.tx.us
TDH Bureau of Vital Statistics Albert Rivera, Midwife Contact Ed Mata Fraud Unit	1100 W 49th Street Austin TX 78756	458-7111	Albert.rivera@ tdh.state.tx.us ed.mata@ tdh.state.tx.us
Health Professions Council Charles Horton, Administrative Officer	333 Guadalupe Street, Tower 2, Suite 220 Austin TX 78701-3942	(512) 305-8550 (512) 305-8553	Charles.Horton@ hpc.state.tx.us

VIII. 78th Legislative Session Chart

Texas Midwifery Board Exhibit 18: 78th Legislative Session Chart		
Legislation Enacted - 78th Legislative Session		
Bill Number	**Author**	**Summary of Key Provisions/Intent**
HB 2985	Capelo	Relating to the establishment of an office of patient protection within the Health Professions Council.
HB 2292	Wohlgemuth	Reorganizes the Health and Human Services enterprise, including reorganization and consolidation activities at the Texas Department of Health (TDH.) Requires that all licenses issued by TDH, or any entity attached to TDH, be issued for a term of two years effective January 1, 2005. Requires that all TDH licensing programs set fees in amounts designed to recover from license holders all direct and indirect costs of the licensing program.
SB 161	Nelson	Relating to the granting of certain enforcement sanctions to TDH licensing programs. The bill authorizes the Texas Midwifery Board to suspend a midwife's letter of documentation on an emergency basis, in certain situations.
HB 660	Allen	Grants specific authority to TDH to perform both DPS and FBI criminal history record checks.
SB 1152	Shapleigh	Relating to the use of Texas Online. Requires TDH to participate in online license application and renewal functions.
HB 341	Uresti	Relating to parenting and postpartum counseling information to be provided to a pregnant woman.
Legislation Not Passed - 78th Legislative Session		
Bill Number	**Author**	**Summary of Key Provisions/Intent/Reason the Bill did not Pass**
HB 1483 Floor Amendment 3	Allen Capelo	Relating to the regulation of the practice of nursing. Floor Amendment 3 proposed to move the Midwifery Board and Program under the jurisdiction of the Board of Nurse Examiners. Midwifery interest groups lobbied against the amendment.
SB 161 Floor Amendment 1	Nelson Capelo	Relating to the granting of certain enforcement sanctions to TDH licensing programs. Floor Amendment #1 proposed to move the Midwifery Board and Program under the jurisdiction of the Board of Nurse Examiners. Midwifery interest groups lobbied against the amendment.

IX. Policy Issues

A. Brief Description of Issue

Should the Texas Midwifery Board remain within TDH, be moved to another agency, or reconfigured to serve in an advisory capacity to another board or commission within the Texas Health and Human Services system?

B. Discussion

During the Regular 78th Session, two amendments, one to HB 1483 and one to SB 161, were introduced by Rep. Jaime Capelo which would have amended the Midwifery Act to organizationally place the Texas Midwifery Board under the jurisdiction of the Texas Board of Nursing Examiners. The amendments were opposed by midwives, certified nurse-midwives, and midwifery consumers and were not successful.

Additionally, two recent studies related to the TDH Professional Licensing and Certification Division (PLCD) have examined the different regulatory models housed within PLCD (and state government generally.) See *Report on Texas Department of Health Regulatory Programs, Recommendations for Consolidating, Restructuring, or Moving Health-Related Regulatory Programs, December 15, 2000*, Texas Health and Human Services Commission; and *Texas Department of Health Business Practices Evaluation*, Elton Bomer, Consultant, August 31, 2001.

Both reports examined challenges associated with an umbrella agency housing regulatory boards and programs that possess certain authority independent of the umbrella agency's authority (in the case of the Texas Midwifery Board, this would be the independent authority to discipline documented midwives and to regulate midwifery education courses, and the quasi-independent authority to adopt rules with the "approval" of the Texas Board of Health.) The Bomer report, which focused exclusively on governor-appointed boards housed within PLCD and did not specifically mention the Midwifery Board, found that "independent boards, functioning as quasi-agencies unto themselves, yet operating within the structure of a larger agency, are a fundamental organizational mistake."

The HHSC report examined five models for organizing regulatory programs and identified challenges associated with the TDH administration of PLCD regulatory programs. One of the commission's recommendations was to give "more of a voice" in decisions "related to policy, budget, and Legislative Appropriations Requests" to the licensing, certification, and advisory boards administratively attached to TDH. The commission's rationale for the recommendation follows:

> The programs attached to the Professional Licensing and Certification Division are required to raise the revenue to operate their programs from the professionals they regulate. Yet independent boards have not routinely been involved in major decisions such as Legislative Appropriations Requests, development of the agency Five-Year Strategic Plan, and establishment of annual operating budgets. TDH has established the principle that the executive director of each program will bring any funding needs, issues, or concerns to TDH management. This has not proven to be sufficient in the opinions of members of the boards, committees, advisory bodies, and HHSC. Additional mechanisms should be developed to improve two-way communication – both from TDH to the statutorily established bodies, and from those bodies to TDH. Such mechanisms should include opportunities for the statutorily established bodies to have periodic access to the Board of Health.

The TDH Associate Commissioner for Health Care Quality and Standards (now Consumer Health Protection) formed the Council of Independent Licensing Board Chairs in 2001 in response to recommendations in the HHSC report and as a means to enhance communication between administratively attached boards and TDH senior management. The Council meets several times a year to discuss issues of mutual concern, to directly address problem areas with TDH senior management, and to recommend solutions to common challenges. The Council also met with members of the Texas Board of Health for a luncheon in 2002.

The commission also recommended "TDH should examine its regulatory programs and determine which ones could benefit from being functionally organized. It may be possible in some cases to combine staff in different programs performing similar activities to carry out common practices, such as licensing, investigations, enforcement, and compliance." The commission's rationale was "There may be opportunities for the regulatory programs at TDH to share additional costs and functions by organizing like programs along functional lines. Such arrangements have been demonstrated to be effective and efficient alternatives to having distinct and perhaps duplicative functions when organizing along program lines."

C. Possible Solutions and Impact

The board is functioning effectively within Texas Department of Health. If the boards and programs of the Professional Licensing and Certification Division are transferred to a new or existing licensing agency in the future, the Texas Midwifery Board should be transferred with them at that time.

A recent functional reorganization of the TDH Professional Licensing and Certification Division is anticipated to further reduce the costs of midwifery regulation through the use of shared resources. The Bomer report indicated that independent and quasi-independent boards should be converted to TDH advisory committees, which would result in efficiencies to be achieved through consolidation and uniformity. However, those efficiencies are anticipated through the division's functional reorganization, which is being implemented within the statutory framework.

An examination of the different regulatory models set out in the HHSC Report illustrates the options for placement of regulatory programs within state government. The models include regulatory programs as autonomous boards, boards with shared administrative functions, administratively attached boards with shared authority, administratively attached boards with limited authority, and centralized licensing agencies. Each model has perceived advantages and disadvantages in terms of cost-effectiveness, effective consumer protection, and effective professional regulation.

A. Brief Description of Issue

Should the Midwifery Act be amended so that the Midwifery Board is not required to obtain the approval of the Board of Health in order to adopt rules?

B. Discussion

Occupations Code § 203.151 requires the Texas Midwifery Board to adopt rules relating to various substantive and procedural topics "subject to the approval of the board" [the Texas Board of Health]. This requirement has resulted in a lengthy rulemaking process whereby two policymaking bodies separately review rules, take public comments, and vote on a decision. The rulemaking process, then, becomes more expensive and time-consuming than is necessary to adopt effective rules that protect public health and safety.

In a recent rulemaking process, a stakeholder group which opposed amended midwifery practice rules through the development and proposal phases, chose not to send a representative to attend the Texas Midwifery Board meeting at which final rules were adopted. Instead, the stakeholder group attended the Board of Health meeting at which the final adopted rules were set to be approved and requested that the Board of Health reject the final adopted rules. Had the Board of Health chosen to do so, the rulemaking process would have restarted completely (for a minimum of another 8 months). Requiring two boards to review proposed and adopted rules causes difficulties in meeting the requirement of the Administrative Procedure Act that no more than six months may pass between publication of proposed rules and the adoption of final rules. If the Texas Midwifery Act is not amended to eliminate the requirement of Board of Health approval regarding rules, the potential exists for an even more burdensome review by both the State Health Services Council and the Health and Human Services Commission (see requirements of HB 2292, 78th Leg., that abolish the Texas Board of Health.)

C. Possible Solutions and Impact

The Midwifery Act could be amended to authorize the Midwifery Board to adopt rules without approval of another board or agency. This would bring the Midwifery Board into alignment with other regulatory boards housed within TDH's Professional Licensing and Certification Division, could decrease staff time and expense associated with rulemaking, and could clarify for stakeholders the need to voice concerns to and work collaboratively with the Midwifery Board during a rulemaking process.

The current composition of the Midwifery Board (2 physicians, 1 certified nurse-midwife, 3 documented midwives, and 3 members of the public) provides a pool of outstanding expertise for the Midwifery Board to independently adopt the rules which it is tasked by the Act to enforce.

A. Brief Description of Issue

Should the Midwifery Act be amended to require that members of the Midwifery Board be appointed by the Governor?

B. Discussion

Midwifery Board members are appointed by the Texas Board of Health (Occupations Code § 203.051).

C. Possible Solutions and Impact

Should the Midwifery Board be authorized to adopt rules without the approval of the Texas Board of Health, it would be appropriate for the governor to appoint board members. If the Midwifery Board is

required to adopt rules with the approval of the Health and Human Services Commission, then the commission should also appoint board members.

A. Brief Description of Issue

Should the Midwifery Act be amended to change the term “documentation” to “license”?

B. Discussion

Since the Midwifery Act regulates both the practice of midwifery and the use of protected titles, the term “documentation” as it is used in the Act is synonymous with “license.” Currently, a lengthy explanation of what the word "documentation" means is required to explain to the public, including applicants, midwifery clients, and individuals attempting to verify a midwife's documentation, exactly what it means to be a "documented midwife." No other profession in Texas uses this regulatory term, and no other state uses the term to regulate midwives. The original term applied to midwives was "identified", which reflected the original intent of the Act in 1983 to create a list of midwives and determine what actions by the Texas Department of Health would best improve the practice of midwifery in the state. When the statute was amended in 1991 to strengthen the requirements to practice midwifery the term was changed to "documentation."

C. Possible Solutions and Impact

The Act could be amended to change the terms "documentation and "documented" to "license" and "licensed".

This change could clarify the intent of the Act, assist the public, and be consistent with the categories of regulation described in the Sunset Occupational Licensing Model. One legislative concern (reflected in Sections 203.402 and 203.403 of the Act) has been to ensure that the public can distinguish between certified nurse-midwives (who are registered nurses) and the midwives regulated by the Midwifery Board. The terms "registered" or "certified" are therefore not preferable to "licensed".

A. Brief Description of Issue

Should the Midwifery Act be amended to delete § 203.005 relating to Effect on Local Ordinances?

B. Discussion

Occupations Code § 203.005 (Effect on Local Ordinances) provides that “This chapter does not prohibit a municipality from adopting a local ordinance or rule to regulate the practice of midwifery in the municipality if the ordinance or rule is compatible with and at least as strict as this chapter and board rules.”

At the time of the enactment of the Act in 1983, two cities, Brownsville and El Paso, had ordinances regulating the practice of midwifery. The El Paso ordinance established a regulatory commission and issued permits to midwives. After the passage of the Midwifery Act, these local ordinances were

repealed. The Midwifery Board is not aware of any ordinances in effect at this time.

The provision reflects the original intent of the Texas Midwifery Act, which was to provide information and voluntary training to midwives. In 1991, the Act was amended to require all Texas direct-entry midwives to document at the state level, through the Midwifery Program in Austin, instead of registering with the county clerk.

Since the Legislature amended the Act in 1997 and 2003 to provide the Midwifery Board with a broad range of enforcement powers and sanctions, it is unnecessary to authorize local units of government to regulate midwifery. Such authority could lend itself to unique, contradictory, or confusing circumstances for a regulated midwife and the public. For example, if a city were to regulate local midwives, the city could require more stringent qualifications for practice than is required by state law and board rule to practice elsewhere in Texas. Additionally, in the same scenario, a midwife regulated by a city could be subject to differing enforcement sanctions in a contested case (action taken by a local regulatory authority and the action taken by the Texas Midwifery Board could differ based on each authority's regulatory standards and practices).

The board is not aware of other regulated health care practitioners who are, or may be, subject to local regulatory authority in addition to the regulation imposed by the state.

C. Possible Solutions and Impact

Ensure the continued centralization of midwifery regulation by amending the Act to repeal Occupations Code § 203.005. Since no local regulatory ordinances are in effect at this time, there would be no impact to local units of government.

A. Brief Description of Issue

Should the Act be amended to authorize the regulation of "midwifery assistants"?

B. Discussion

Midwives have always been assisted by apprentices in the practice of midwifery. Some midwifery apprentices are enrolled in basic midwifery education courses approved by the board and some are training in the apprenticeship model and will eventually apply for national certification as a means to become documented. In the course of investigating a complaint, the board learned that a midwife was employing individuals as "assistants". Those individuals were not midwifery students and did not intend to become documented midwives. The board's legal counsel advised that the Act does not grant authority to promulgate rules relating to assistants.

C. Possible Solutions and Impact

The Act could be amended to authorize the board to adopt and enforce rules regulating both midwifery apprentices and assistants and to collect fees to cover the cost of regulation. This change would increase regulation of the profession. No complaints are currently on file against apprentices or assistants. The board has established a policy that a documented midwife is responsible for all actions taken by an

apprentice. Any practice of midwifery by an individual who is not in compliance with the policy is therefore treated by the board as the undocumented practice of midwifery and available sanctions are applied.

A. Brief Description of Issue

Should the Legislature require that documented midwives be eligible for Medicaid reimbursement?

B. Discussion

Not all midwives would choose to serve Medicaid clients. Additionally, some clients would need to be referred to a physician's care if they developed complications beyond the scope of midwifery practice. The initial cost of implementing the inclusion of documented midwives in the health care safety net should be offset by cost savings resulting from lower costs for prenatal care, labor and delivery services, and postpartum care.

C. Possible Solutions and Impact

The Health and Human Services Commission could be directed to study the fiscal and health care implications of approving Medicaid reimbursement for midwifery services. Factors studied should include whether midwives could provide improvement in access to prenatal care, access to culturally and linguistically competent care on the border, services in underserved areas with no hospital, decreasing morbidity associated with lack of hospital admission and minimal use of medications, decreasing rates of caesarean section, and increasing rates of breastfeeding.

A. Brief Description of Issue

Should the Act be amended to grant prescriptive authority to midwives to carry and administer Vitamin K shots and Rhogam?

B. Discussion

Midwives possess prescriptive authority only for oxygen and eye prophylaxis, and the board's rules address the use of these substances by documented midwives. Currently a client who wants a Vitamin K shot for her infant (routinely given in hospital after birth) or prophylactic Rhogam at 28 weeks must see a physician (in addition to her midwife) for no other care than the shot (unless the midwife has been granted delegated authority by a physician). In addition, because Rhogam must be given to the Rh- mother of an Rh+ infant within 72 hours of birth, a normal woman with a normal delivery must journey to a physician's office or, more commonly, the emergency room, for the shot to avoid the severe health consequences for future pregnancies of isoimmunization.

Vitamin K shots, routinely given to newborns in hospital, protect infants against internal bleeding (rate of 1 in 350). Midwifery clients who want their newborns to receive vitamin K shots cannot access them routinely through their pediatrician, because most infants are born in hospital and have therefore already

received the shots, so Vitamin K is not routinely stocked.

Rhogam is given to Rh- mothers (approximately 15% of the population) to prevent isoimmunization, which would jeopardize future pregnancies. The mother should be offered the shot during pregnancy (routinely at 28 weeks and also if she bleeds or miscarries at any time during the pregnancy), and then within 72 hours of birth if her baby is Rh+. Barriers to physician access include client lack of insurance, unwillingness of many physicians to provide care to a midwife's client, and the cost of the shots ($150 - $300/shot).

C. Recommendation(s) and Impact

Not all midwifery clients would choose to avail themselves of access to these shots, which are standard practice in hospitals. Some physicians are already willing to work collaboratively with midwives and issue them standing delegation orders to carry and administer Vitamin K and Rhogam, neither of which is a controlled or high-risk medication. Authorizing midwives to possess and carry Vitamin K and Rhogam would standardize the availability of this care for women by avoiding the added expense and barriers to care. If so authorized, the board would need to amend its rules to require appropriate training for all documented midwives on administering the shots and address their use by midwives. Midwives are already required to test for Rh status, because Rh- women who are already isoimmunized may not be cared for by a midwife, but must be transferred to the care of a physician.

X. Comments{tc \l2 "X. Comments}

How should the board effectively serve the declining number of applicants and midwives whose primary language is Spanish and who speak little or no English?

Of 159 documented midwives, there are 26 who report that Spanish is their primary language. The examination for midwifery documentation is available in Spanish, but only one applicant has taken the Spanish-language examination (August 1999). Recent board action denied approval to a basic midwifery education course in McAllen, Texas. The matter raised the question of the extent to which the board should assist individuals who do not speak English in their interactions with the board. The TDH Office of Language Services provides free translation services for meetings and correspondence, but cannot complete large or rush jobs because of staffing shortages. The financial impact on the program of contracting for Spanish translations of essential board publications (Midwifery Act, Midwifery Rules, Midwifery manual, public information brochure, guidance letters) is already significant. Translation services are also required for Complaint Review Committee meetings, if the respondent or others involved do not speak English. The board continues to experience difficulties involving contested cases with non-English speakers, despite providing translated documents and translation services, possibly due to cultural and linguistic barriers.