Direct Entry Midwives and Professional Liability

- Colorado law states that, "At such time as the director finds that liability insurance is available at an affordable price, the direct-entry midwife shall be required to carry such insurance." C.R.S. 12-37-109
  - Florida has a joint underwriting system. The Florida requirement is being reviewed as applied to midwives, it's not clear that the rule is legal.
  - Typically, other market forces require providers to carry insurance, not their practice act. For example, doctors are not required by their practice act to carry liability insurance, but rather, by hospitals that make it a requirement for admitting privileges, or networks that require it for inclusion. This coincides with the case of Washington state where only DEMs who participate in Medicaid are required to carry liability insurance.
  - The third state with an insurance requirement is Indiana, but this is a new law and rules are not yet in effect, nor are any midwives licensed yet.

- Midwives have been licensed to practice in CO for 17 years and DORA has never determined that such insurance was available, affordable, or otherwise necessary.
  - Professional liability coverage for direct-entry midwives nation-wide is hard to get, not because it's dangerous but because it is such a small profession, and the market is based on large risk pools and the ability to spread out costs.
  - Lloys of London, has nonetheless determined that independent midwifery practices are defensible due to their low risk populations served, screening of clients, credentialing, protocols and regulation through licensing or registration.

- In Colorado, all DEM clients sign 2 forms that clearly disclose that midwives are not currently covered by liability insurance - the public is well informed when make a decision to work with a midwife for their home birth

- **The existing system of professional liability coverage in maternity care isn't working – and there is no reason to believe that it would work any better for DEM consumers than hospital consumers.**[1]

  - Only 1.5%-2.5% of hospital-based maternity-care consumers who sustained negligent injury filed a claim.
  - Only 1% of the hospital-based maternity-care consumers who were negligently injured received compensation.
  - 54%-78% of compensation payments were made to lawyers, experts and courts.
  - "Available evidence, not separately available for maternity care, suggests that the present liability system fails in about 99% of cases to compensate people who are injured as a result of medical error."
  - There is limited evidence that joint underwriting associations, insurance premium subsidies, and patient compensation funds would have any impact on meeting the aims of a high-functioning liability system in maternity care.

- A close, trusting relationship between the care provider and client, and honest and comprehensive exchange of information is known to reduce liability; the midwifery model of care emphasizes these liability-reducing strategies.[2]

[1] Sakala C, Yang YT, Corry MP. Maternity Care and Liability: Pressing Problems, Sunstantive Solutions. New York: Childbirth Connections, January 2013.

[2] Arnold Relman, M.D., Medical Professional Liability and the Relations Between Doctors and Their Patients, Medical Professional Liability and the Delivery of Obstetrical Care: Volume II, An Interdisciplinary Review, 97-103 (1989, Institute of Medicine).

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