CURRENT RULE

A.A.C. R9--16-111. Prohibitive Practice; Transfer of Care

B: A midwife shall not accept for midwifery services **or continue midwifery services** for a client who has or develops any of the following: 1-26 [lists conditions]

1. A previous surgery that involved:
    a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
    b. A previous uterine surgery that enters the myometrium;
2. Multiple fetuses
3. Placenta previa or placenta accreta;
4. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
5. Deep vein thrombosis or pulmonary embolism;
6. Uncontrolled gestational diabetes;
7. Insulin-dependent diabetes;
8. Hypertension;
9. Rh disease with positive titers;
10. Active:
    a. Tuberculosis;
    b. Syphilis;
    c. Genital herpes at the onset of labor;
    d. Hepatitis until treated and recovered, following which midwifery services may resume; or
    e. Gonorrhea until treated and recovered, following which midwifery services may resume;
11. Preeclampsia or eclampsia persisting after the second trimester;
12. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
13. A persistent hemoglobin level below 10 grams or a persistent hematocrit below 30 during the third trimester;
14. A pelvis that will not safely allow a baby to pass through during labor;
15. A serious mental illness;
16. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client;
    a. Alcohol,
    b. Narcotics, or
    c. Other drugs;
17. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
18. Labor beginning before the beginning of 36 weeks gestation;
19. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
20. Gestational age greater than 34 weeks with no prior prenatal care;
21. A gestation beyond 42 weeks;
22. Presence of ruptured membranes without onset of labor within 24 hours;
23. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
24. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;
25. A postpartum hemorrhage of greater than 500 millimetres in the current pregnancy; or
26. A non-bleeding placenta retained for more than 60 minutes

PROPOSED RULE

A.A.C. R9-16-111. Prohibitive Practice; Transfer of Care

B. A midwife shall not **knowingly** accept for midwifery services or continue midwifery services **without documentation of condition treated and resolved, following which midwifery services may resume;** for a client who has or develops any of the following: 1-26 [lists conditions]

27. A previous surgery that involved:
    a. An incision in the uterus, except as provided in R9-16-108(B)(1); or
    b. A previous uterine surgery that enters the myometrium;
28. Multiple fetuses
29. Placenta previa or placenta accreta;
30. A history of severe postpartum bleeding, of unknown cause, which required transfusion;
31. Deep vein thrombosis or pulmonary embolism;
32. Uncontrolled gestational diabetes;
33. Insulin-dependent diabetes;
34. Hypertension;
35. Rh disease with positive titers;
36. Active:
    a. Tuberculosis;
    b. Syphilis;
    c. Genital herpes at the onset of labor;
    d. Hepatitis until treated and recovered, following which midwifery services may resume; or
    e. Gonorrhea until treated and recovered, following which midwifery services may resume;
37. Preeclampsia or eclampsia persisting after the second trimester;
38. A blood pressure of 140/90 or an increase of 30 millimeters of Mercury systolic or 15 millimeters of Mercury diastolic over the client's lowest baseline blood pressure for two consecutive readings taken at least six hours apart;
39. A persistent hemoglobin level below 10 grams or a persistent hematocrit below 30 during the third trimester;
40. A pelvis that will not safely allow a baby to pass through during labor;
41. A serious mental illness;
42. Evidence of substance abuse, including six months prior to pregnancy, to one of the following, evident during an assessment of a client;
    a. Alcohol,
    b. Narcotics, or
    c. Other drugs;
43. Except as provided in R9-16-108(B)(2), a fetus with an abnormal presentation;
44. Labor beginning before the beginning of 36 weeks gestation;
45. A progression of labor that does not meet the requirements of R9-16-108(J)(4), if applicable;
46. Gestational age greater than 34 weeks with no prior prenatal care;
47. A gestation beyond 42 weeks;
48. Presence of ruptured membranes without onset of labor within 24 hours;
49. Abnormal fetal heart rate consistently less than 120 beats per minute or more than 160 beats per minute;
50. Presence of thick meconium, blood-stained amniotic fluid, or abnormal fetal heart tones;

51. A postpartum hemorrhage of greater than 500 millimetres in the current pregnancy; or
52. A non-bleeding placenta retained for more than 60 minutes

JUSTIFICATION - Midwife-led continuity of care is provided in a multidisciplinary network of consultation and referral with other care providers. This contrasts with medical-led models of care where an obstetrician or family physician is primarily responsible for care. In shared-care models, responsibility is shared between different healthcare professionals. Organizations worldwide and in the United States, such as the Homebirth Summit, have concentrated on shared care during a medical transport which recognizes that midwives have proven competency at medical assessment for conditions which would require a transfer of care or consultation. Once consulted or transferred, within a multidisciplinary network, the optimal care for the woman would be the ability to maintain continuity of care by her midwife once the condition necessitating transfer of care or consultation is resolved.

The midwifery prohibited practice section states that "[a] midwife shall not accept for midwifery services or continue midwifery services for a client who *has or develops* any of the following" twenty-six different health conditions. A.A.C. R9-16-111(B). In the past, this provision was interpreted to allow a midwife to resume care once the health condition had been treated or ceased to exist. Since the writing of the new rules, the Department has taken action against midwives and had opined in a training session that this "Prohibited Practice" section does not allow a midwife to resume care. This position is problematic.

First, interpreting the rules in this way arbitrarily excludes healthy, low-risk women from midwifery services. Many of the health conditions within section 111(B) are not permanent conditions and can be resolved. By interpreting these rules to not allow midwives to resume care, the Department is excluding healthy women from the care providers of their choice.

Second, this interpretation is not consistent with the plain language of the rules. When the Department revisited the midwifery rules in 2013, the Department chose to use the words "*has or develops.*" The Department chose to use these words in the present perfect tense, indicating that a midwife cannot accept or continue care when a client *presently* has one of the twenty-six different conditions. The logical leap that the Department has made is that this section also prohibits care when a client *has had* any of these conditions.

Third, midwives are mandated in A.A.C. R9-108-K to provide postpartum care for the mother *and* the newborn. The interpretation of this rule offered by the Department to immediately terminate all midwifery services when the midwifery client experiences any of the conditions within 111(B) ignores that there are two people the midwife is legally tasked with caring for in the days following birth.

Last, as currently interpreted, these rules do not provide guidance on a midwife's responsibilities in the event that her patient does not consent to a transfer of care. Both the Arizona Supreme Court and the United States Supreme Court have held that patients have a right to refuse medical treatment, even when that treatment is lifesaving. *Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261, 277 (1990); *Rasmussen by Mitchell v. Fleming,* 154 Ariz. 207, 215, 741 P.2d 674, 682 (1987).

The Department of Health has been aware for years that the rules place the midwife in an impossible situation if her client exercises her constitutionally protected right to decline treatment: the midwife must choose between keeping her licence and her ethical responsibility to not abandon her patient. This rule change would provide the midwife with the guidance she needs while still protecting public health and safety.

R9-16-101. 30 Definition of 'midwifery services': *"Midwifery services" means health care, provided by a midwife to a mother, related to pregnancy, labor, delivery or postpartum care.*

REFERENCE LIST

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