



Board of Directors

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HOW TO PROMOTE BIRTH RIGHTS-FRIENDLY REGULATIONS

Changing Governance through Regulation

When advocates think about engaging with government to promote change, mostly they imagine enacting laws through a legislative body. However, regulatory law - rules written by administrative agencies under the authorization of a legislative body - often has a greater impact on those being governed, and can be more accessible to change by the general public, too!

Birth is political

Regulations that govern the midwifery profession and maternity care services can sometimes present obstacles to birthing people's full enjoyment of constitutional rights in pregnancy, childbirth, and postpartum. For example, some health care professional regulations prohibit practitioners from providing maternity services outside hospitals to pregnant women with previous cesarean sections or to pregnant women older than 35. In some cases these regulations are *not* rooted in scientific evidence around childbirth and health. These regulations may be based, for instance, on cultural beliefs, social stereotypes, or motivated by the interests of a professional group.

Regulations can be changed

If you are concerned about such overly restrictive regulatory regimes, you can encourage rule makers to issue new regulations or to modify the current ones - this is called a *rulemaking*. Similar processes exist for the issuance or modification of interpretive rules, such as compliance materials, technical assistance manuals, and policy statements.

Most health care regulation is the responsibility of state, rather than federal, governments. In the majority of states, midwifery services are regulated by licensing boards (this is true of both Certified Nurse Midwives and Certified Professional Midwives - for more on the regulation of these providers we recommend [this study](#)).

Facilities, like hospitals and birth centers, are also subject to regulations. Facilities are often overseen by boards that license health care facilities, similar to professional licensing boards, like the State Board of Health, for example. Facilities can also be subject to health and safety, and building code regulations handled by other agencies (but often incorporated in their licensing requirements).



In some states boards are fully autonomous, with the power to set standards and issue regulations that carry the force of law. In other states, board autonomy may be limited by other administrative bodies to various extents, ranging from the performance of administrative functions up to the power of complete licensure authority. Federal agencies may also affect pregnancy and birth, often through regulation of public payors, such as Medicaid.

We describe below three key steps for changing rules. But the overarching thing to keep in mind is that there is a process for making and changing all the rules set by agencies. This process is established Federally, in the Administrative Procedures Act, and at the State level, by the State's version of an Administrative Procedures Act.

Three-Step Guide to Regulation

You do not have to be a lawyer or an expert in the Administrative Procedures Act in order to participate in the process of making or changing rules. One of the requirements of the rulemaking process is that there be an opportunity for public comment. Based on the Administrative Procedures Act, the agency is required to issue rules that take public comments into account (or not issue rules that are arbitrary or capricious). There are some common and accessible steps that individual citizens or groups can undertake to participate. To begin we recommend three steps: determine the who the rulemaker is, determine the existing stage of the rules in their process, and then figure out how best to get your message across.

1. Find the rulemaker

The first step is to identify the rule maker in your jurisdiction and for your issue. Often the easiest way is to ask the provider or facility type being regulated. Regulation of health care professions is typically situated under an executive agency of the state - for example, a licensing department or health department. A look at your state's official website may help you to gain a big picture view of the agency system. You might also contact a librarian at your local law school or public library and ask for help in locating the rules for a profession or facility type.

2. Participate in the rulemaking process

After you've identified the relevant agency or board rules, you can participate in the rulemaking process in two ways. A) If rulemaking is already underway, you can participate through writing a formal comment on the proposed rule change. B) If no rulemaking is active, you may be able to petition the agency or board for rulemaking.

Whatever the case, you must present facts and data to support your position. A main purpose of rulemaking is to take into account the expertise of the community affected by the rules. We recommend you: (i) identify your proposed or preferred rules; (ii) summarize the issues and why the rule/modification is necessary; and (iii) cite relevant data and information that support your proposal. The agency must consider whether alternate solutions might be more cost effective,



so backing up your proposal with a discussion of the pros and cons of possible alternatives is advisable. You may also want to be ready to alert your community and those you think may be interested in supporting your proposal. Encourage them to make comments or submit a petition as well.

3. *Get your message across*

In some ways, engaging the rulemaking process as a consumer is similar to legislative work and lobbying. It is important to communicate your issues in ways that are understandable and organized, and in ways that are persuasive to the decision-makers. The difference between advocating for legislative change and advocating through rulemaking lies in the vastly greater number of rules as compared to bills or laws. As a result, rules are less visible, and consequently receive less input from the general public, especially on uncommon issues. The rulemaking process also features a more complex and varied group of decision makers, making it hard to coordinate advocacy efforts. Finally, rulemaking involves different political pressures, as administrative agencies may well have their own agendas in addition to negotiating their grant of authority from the legislature. BRBA may be able to collaborate on aspects of your effort by providing research and data, making public comments, or helping you find an attorney who can help you.

Next Steps

The following links provide additional information:

This site is no longer updated but provides information about how regular citizens can participate in federal rulemakings:

<http://regulationroom.org/>

This video provides a good introduction to rulemakings:

<https://www.youtube.com/watch?v=SOey9yfkZ3k&feature=youtu.be>

We also recommend the Citizen Advocacy Center; it specializes in supporting public members of regulatory boards:

<http://www.cacenter.org/>

The appendix of CAC's Training Toolkit provides an overview of how the regulatory process works:

<http://www.cacenter.org/files/TrainingToolkit.pdf>