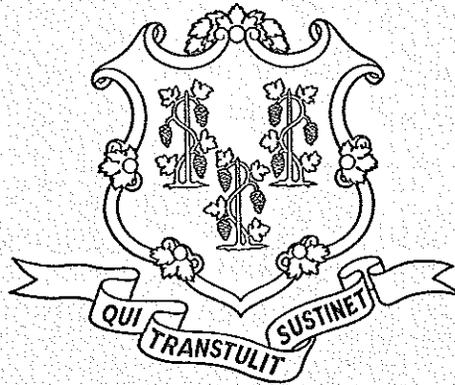


Connecticut General Assembly



Legislative Program Review and Investigations Committee

SUNSET REVIEW

Regulation of Midwives

Vol. I-2

January 1, 1980

CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Re-organization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

This is the first of five annual reviews emerging from the first round of "Sunset" research.

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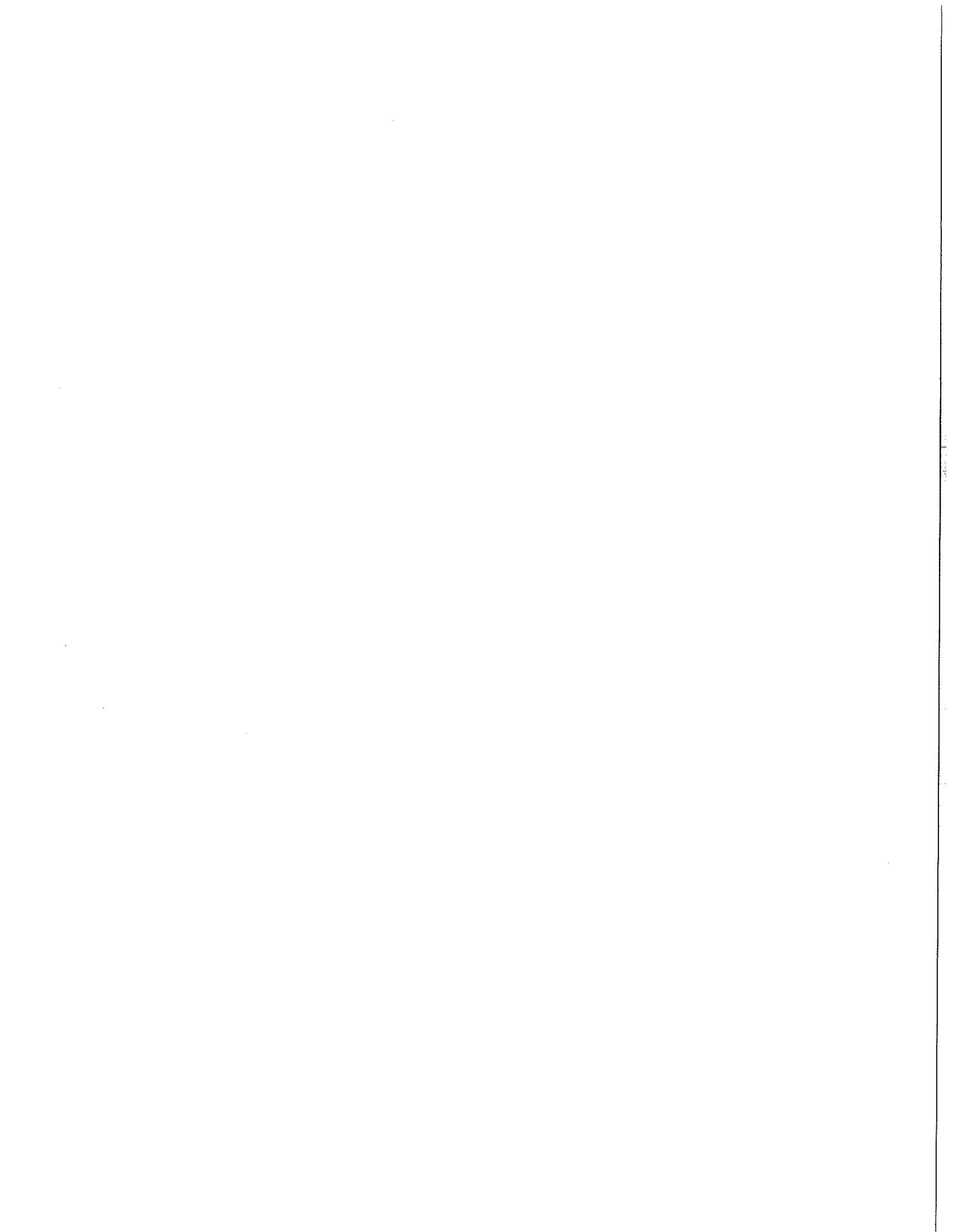
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SUNSET REVIEW 1980

REGULATION OF MIDWIVES

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REGULATION OF MIDWIVES

The Regulation of Midwives was reviewed by the Legislative Program Review and Investigations Committee in compliance with the Sunset mandate of P.A. 77-614. The nine criteria outlined in that act (Title 2c, Chapter 28) provided the basis upon which committee decisions were made. These criteria required legislators to address three fundamental questions in evaluating the boards and commissions slated for 1980 Sunset review:

1. Is regulation of the occupation or profession necessary to protect the public from harm?
2. What is the appropriate level of regulation?
3. Who should regulate the occupation or profession and how should it be regulated?

This board-specific report is supplemental to the Sunset Review 1980 - General Report which contains the background, methods, and recommendations of Sunset Review 1980. To appreciate fully the contents of this board-specific report, it is necessary to review and refer to the General Report, particularly the section "Model Legislation" which provides a single statutory framework to be applied uniformly and consistently to all regulated entities under Sunset review.

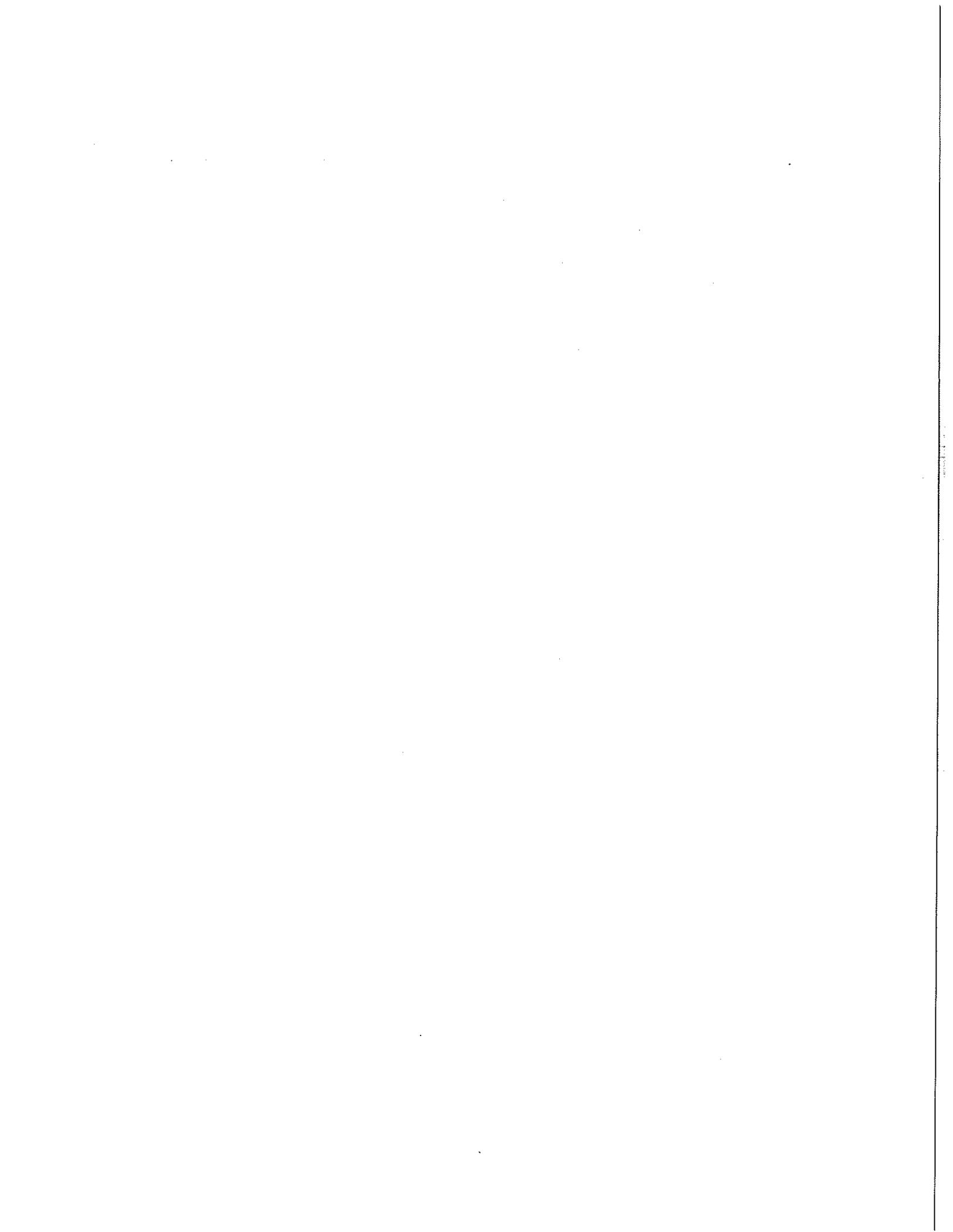
This specific report contains the following sections:

- Description of entity reviewed;
- Recommendations and discussion for entity reviewed; and
- Entity survey and analysis.

SECTION I

DESCRIPTION OF ENTITY

Definition and Background
Structure
Functions
Entry Requirements



Definition and Background

Midwifery was practiced without regulation in Connecticut until 1893. The traditional birth attendant or lay midwife, prior to the early part of this century, was a woman without formal training but with considerable experience in delivering children. When the importance of prenatal care became recognized, Connecticut and other states began licensing lay midwives to protect both mother and child from the serious risks associated with unskilled birthing assistance.

Connecticut's midwifery law not only requires certain qualifications for licensure as a midwife but strictly limits the compensated practice of (lay) midwifery to cases of normal, uncomplicated labor occurring after the seventh month of pregnancy.¹ Licensed midwives are also prohibited by law from using any instruments, performing any versions, removing adherent placenta or prescribing or using any drug other than a disinfectant.

The practice of midwifery flourished in the U.S. until the mid-1920's as hospitals replaced the home as the birthing place for all but the poor and those in rural areas. As recently as 1923, almost 15% of Connecticut births were attended by midwives. The last delivery performed by a licensed midwife occurred in 1952 and at present only two persons, both retired, are licensed to practice midwifery in Connecticut.

Though lay midwifery is not being actively practiced, approximately 40 nurse midwives are practicing in Connecticut. These nurse midwives are licensed RN's who have completed an intensive clinical specialty program and who have been certified by the American College of Nurse Midwives (ACNM).² They are not licensed under the midwifery statutes but instead practice under provisions of the nurse practice act and the physician assistant amendment to the medical practice act.

¹ No one can practice midwifery for compensation received, promised or expected until they obtain a license. It would not be illegal to provide midwifery services without a license if compensation is not involved.

² The ACNM is the nationally recognized professional organization which sets standards for nurse midwifery care, accredits educational programs, and examines individual practitioners for certification.

In addition to the significant difference in education and training between lay midwives and certified nurse midwives, modern nurse midwifery involves a much broader scope of practice than the midwifery statutes outline. According to the ACNM, nurse midwifery involves the management and care of essentially normal women and newborns before, during, and after birth. Nurse midwives, in delivering babies, may cut cords, perform episiotomies, and repair lacerations and episiotomies using suture and instruments. To meet ACNM practice standards, certified nurse midwives work in a team relationship with physicians. Under this arrangement, a physician is available for medical consultation, collaboration and referral in the event of complications.

Only five years ago, all but one nurse midwife in the state practiced through Yale-New Haven Hospital and Yale University, the only institution in New England with a nurse midwifery program. Now, with growing physician acceptance and increasing consumer demand, nurse midwives are practicing throughout the state in hospital and community clinics, health maintenance organizations, group practices with obstetricians and gynecologists, and in private practice with medical back-up and consultation from OB-GYN physicians.

Structure

In 1971, the Board of Examiners of Midwives was abolished and all its functions, powers, and duties were transferred to the Department of Health Services (P.A. 71-410). Department staff are responsible for implementing the midwifery licensure program.

Functions

In regulating midwifery, the department is responsible for prescribing and administering examinations, issuing licenses to those applicants found qualified to practice, and establishing and enforcing regulations governing the practice of midwifery. The department is authorized to revoke a midwifery license for violation of the practice regulations, conviction of a felony or unprofessional conduct, or any offense punishable by imprisonment in a Connecticut correctional institution.

Requirements for Licensure

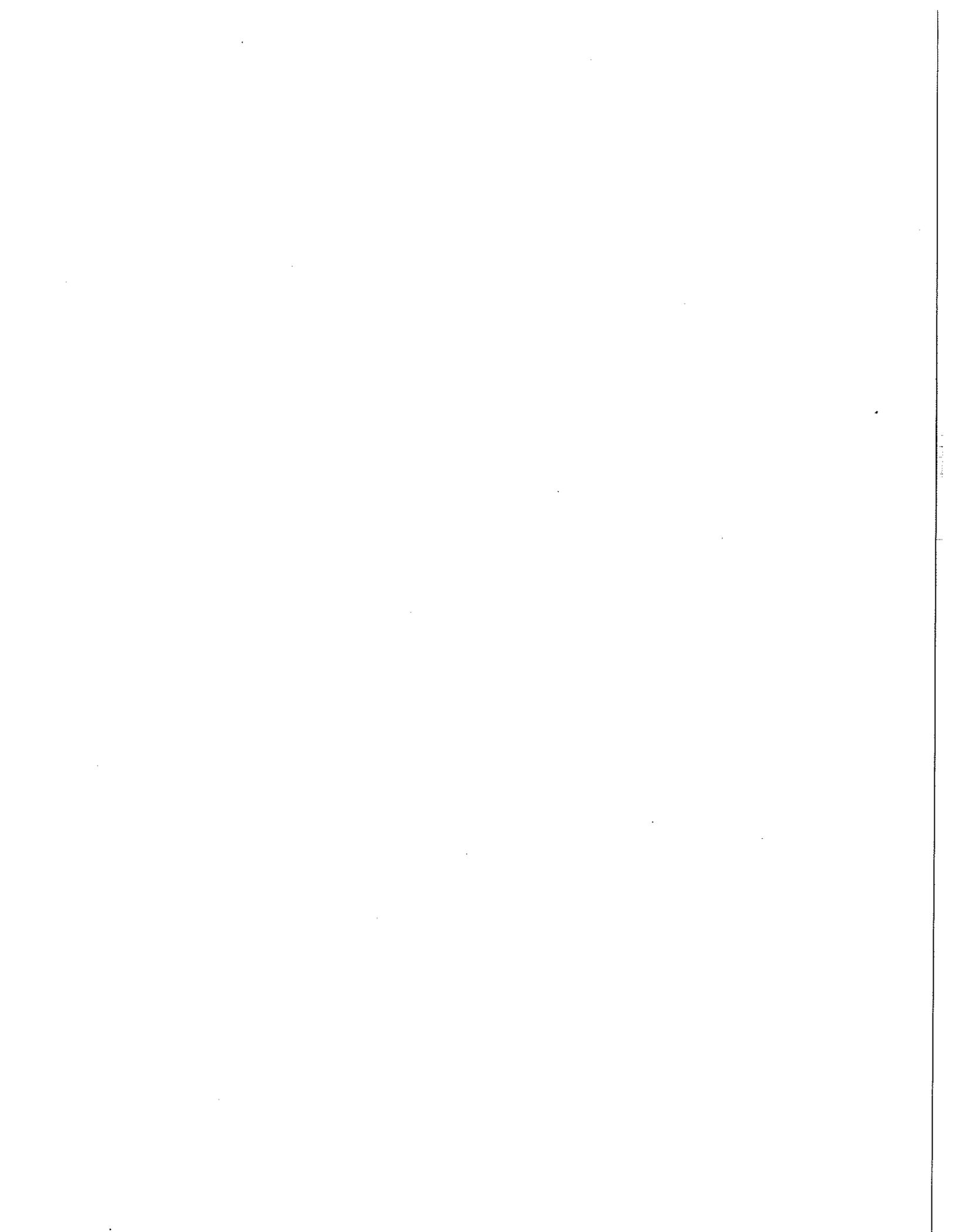
By statute, applicants must be of good moral character, give a sworn statement (which includes the name of the school of midwifery where graduated and any other information the department requires) and pass the prescribed examination in order to

receive a midwifery license. Submission of a \$25.00 fee is also required. The outdated midwifery regulations (which still refer to the board) specifically prohibit acceptance of licensure or examination in another state, in lieu of Connecticut examination.

While the statutory licensure requirements apply to lay midwifery, Public Health Code regulations concerning the practice of midwifery effectively restrict eligibility for licensure to nurse midwives. Under these practice regulations, promulgated by the department in 1971, all new applicants must have at least six months formal preparation in an approved school. The regulations additionally require clinical experience which include extensive antepartum and postpartum experience as well as 20 deliveries and follow-up visits with delivered mothers during hospital stay. All midwives are also required to practice under the direction and supervision of an obstetrician and give a statement that practice will be in accordance with ACNM standards.

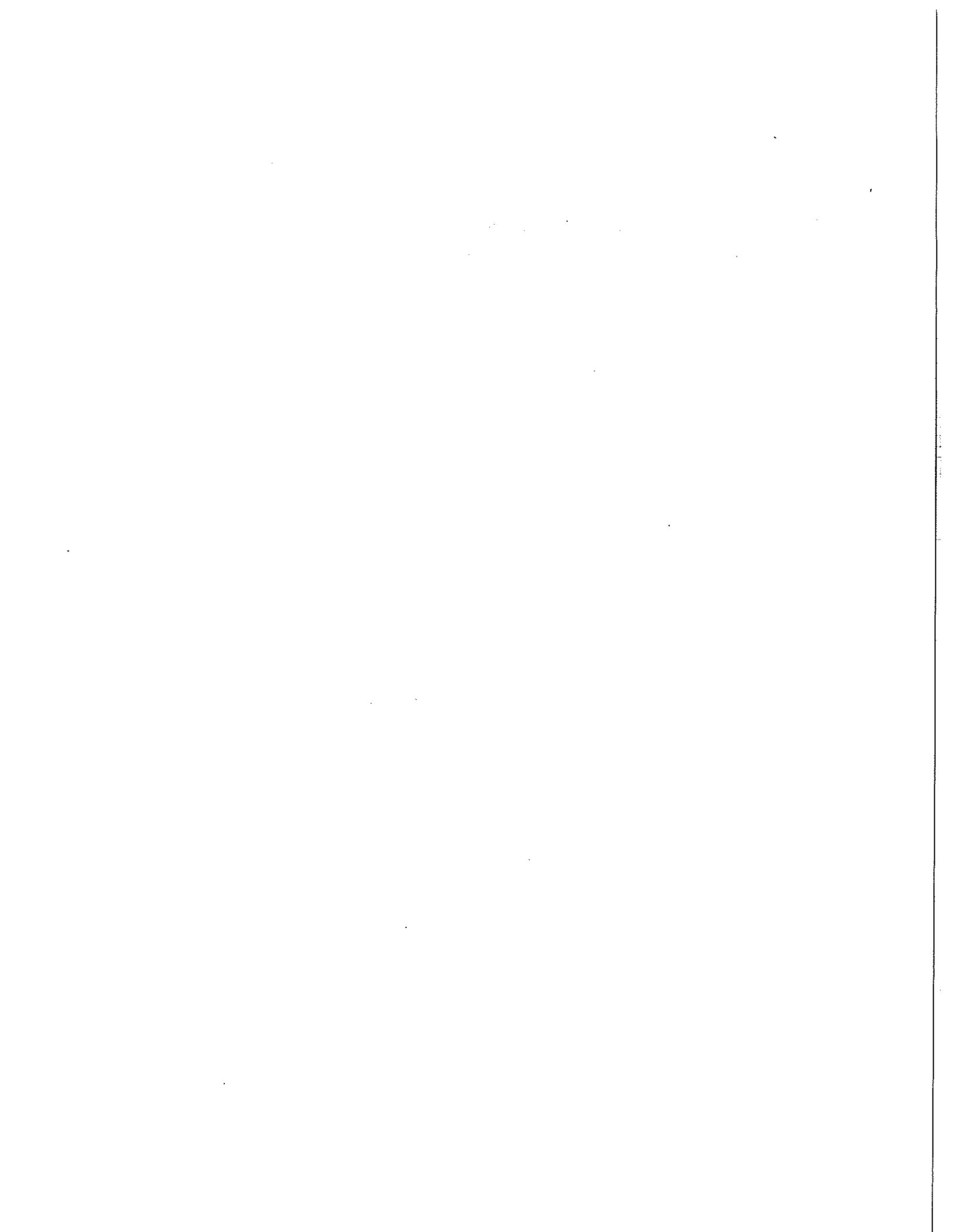
At present, there are no (lay) midwifery schools approved by the Commissioner and it is unlikely a lay midwife would be able to practice in accordance with ACNM standards. It is not surprising, therefore, that the department reports that no eligible candidates have applied for a license to practice midwifery.¹

¹ Nurse midwives, while able to meet the Public Health Code requirements, have not applied for licensure because of the statutory restrictions on practice by licensed (lay) midwives.



SECTION II

RECOMMENDATIONS AND DISCUSSION



Recommendations for the Regulation of
Midwifery (Chapter 377)

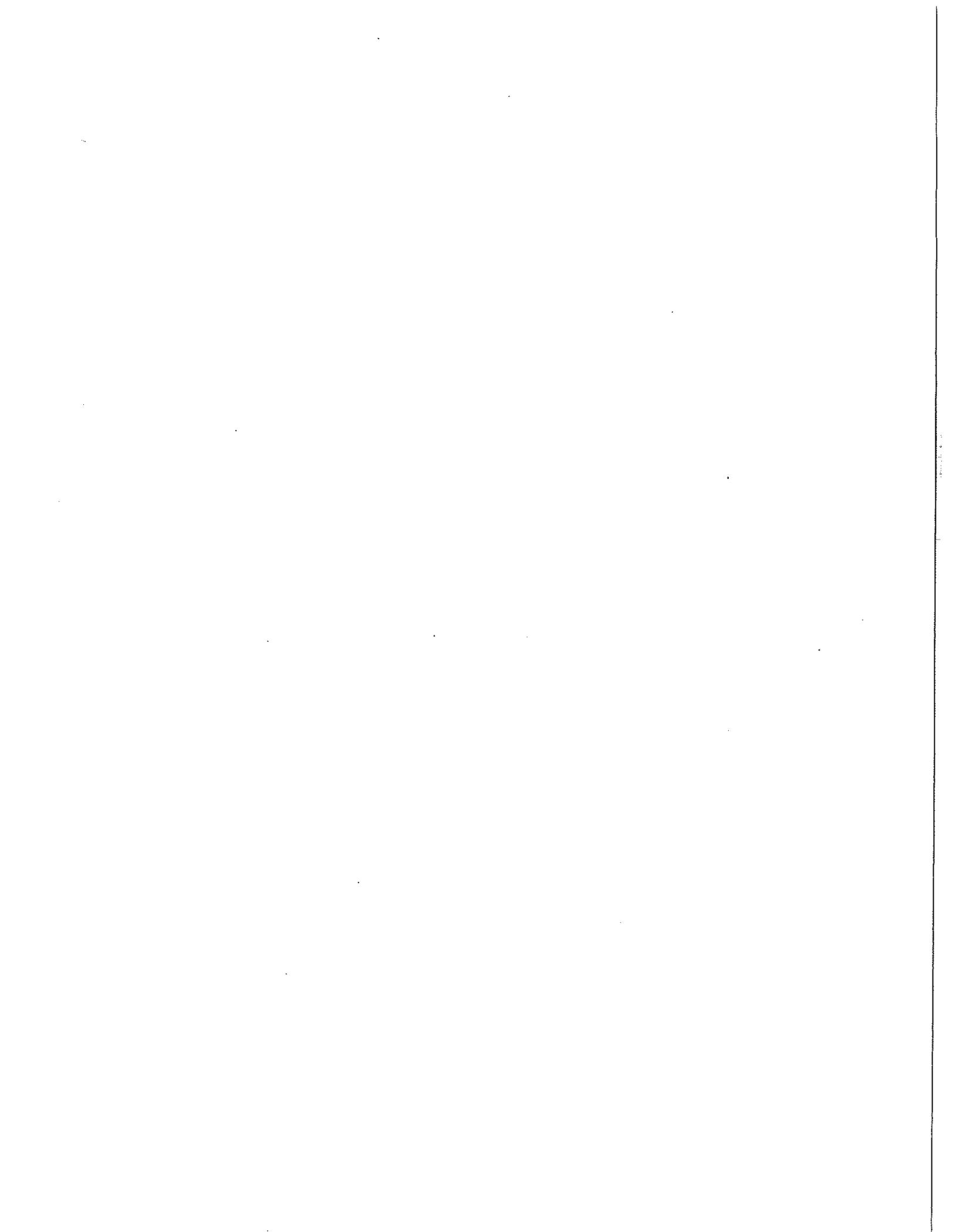
1. Repeal current midwifery statutes, Chapter 377.

The present midwifery statutes were found to be outdated and inappropriate for regulation of modern midwifery practice. No one currently practices under these statutes and the Department of Health Services' midwifery licensure program is inactive. Repeal of Chapter 377 would not affect the practice of nurse midwifery but statutory authorization of the practice of lay midwifery would be eliminated. A new regulatory mechanism for assuring competent practice of lay midwifery needs to be studied and developed (see below).

2. Direct the Public Health Committee to:

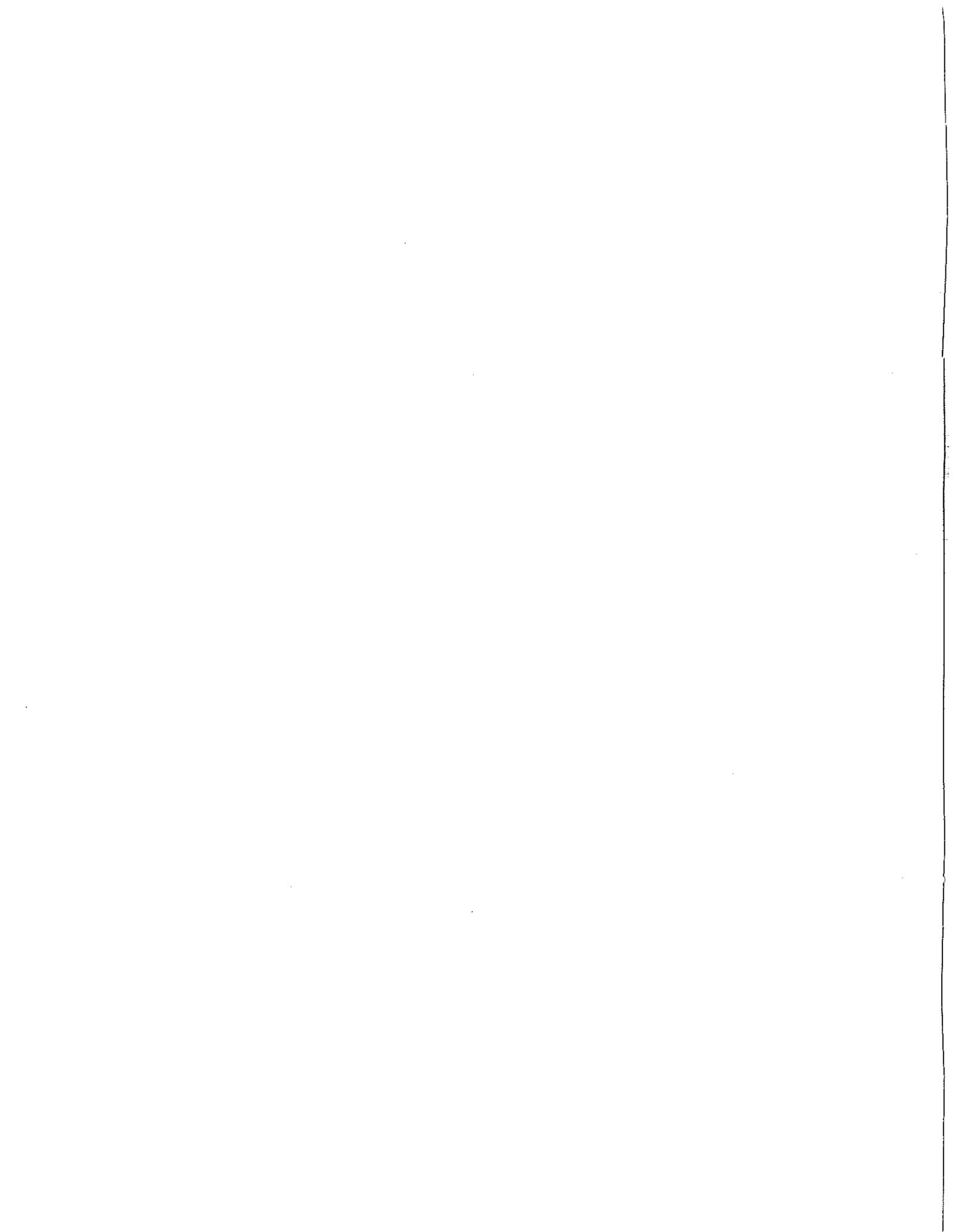
- Study the issues of home birth and lay midwifery practice; and
- Report legislation during the 1980 legislative session to establish an appropriate regulatory mechanism for lay midwifery, consistent with Model Legislation, which would allow consumers the choice of safe home birth and lay midwifery services.

Public hearing testimony and staff research revealed a growing consumer demand for alternative birthing services and providers. However, the complexities of the home birth and lay midwifery issues could not be resolved satisfactorily during the 1979 Sunset process. Therefore, the Legislative Program Review and Investigations Committee recommends that appropriate legislative action be taken by the Public Health Committee after further study.



SECTION III

ENTITY DATA AND ANALYSIS



ENTITY DATA AND ANALYSIS

Section 2c-6 of Connecticut's Sunset Law mandates that the entity reviewed demonstrate a "public need for (its) reestablishment" and that "it has served the public interest and not merely the interests of the persons regulated." All boards, commissions and departments evaluated in Sunset Review 1980 received a questionnaire which addressed the nine statutorily specified Sunset criteria.

This questionnaire, the primary instrument used to evaluate the entity's "burden of proof," was followed by staff interviews with key board members and members of the professional associations for further clarification and amplification.

The following section contains the questionnaire sent to DOHS for the Regulation of Midwives. Where appropriate, Committee staff has edited the agency response without altering or diluting the argument. Committee staff then analysed the agency response. Because of the methodological constraints posed by Sunset evaluation and implementation of Executive Reorganization occurring simultaneously, manageable quantitative data were difficult to obtain. Qualitative analysis, based on relevant information and data derived from a variety of sources, was used primarily in the Committee staff comment. This annotation appears in italics below the agency response.

1. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR YOUR PROFESSION SIGNIFICANTLY ENDANGER THE PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

No. We believe the public can be adequately protected in other ways (see below). [response #2]

While the current statutes (C.G.S. Chapter 377) provide for licensure of midwives, only two persons, both retired, are licensed to practice midwifery in Connecticut. Approximately 40 registered nurses who have been certified by the American College of Nurse Midwives (ACNM) are providing nurse midwifery services in the state.

Certified nurse midwives have not applied for licensure (as midwives) under the current statutes. The present law describes and regulates practice by lay midwives and would prohibit a number of functions professional nurse midwives are qualified to perform. According to an Attorney General's opinion, certified nurse midwives who are licensed RN's, may practice the full scope of nurse midwifery under the provisions of the nurse practice act and the physician assistant amendment (P.A. 71-717) to the medical practice act.

Termination of the midwifery licensure law, therefore, would not affect the practice of nurse midwifery. It would, however, eliminate any legal authorization for the practice of lay midwifery.

The Department's inactive lay midwifery program indicates there are no applicants or consumers interested in this practice. However, committee staff research and public hearing testimony revealed that homebirths are on the increase in Connecticut and most are attended by unlicensed persons who may or may not have midwifery experience.

In general, physicians are unwilling to perform home deliveries or support other professionals (e.g., certified nurse midwives, licensed RN's and LPN's or physician assistants) whose legal practice is dependent on physician supervision (see C.G.S. Sec. 20-9). Lay persons interested in practicing midwifery (and willing to attend home births) are unable to meet the requirements for midwifery license. The department intentionally established regulations limiting the practice of midwifery to nurses (preferably certified nurse midwives) and discouraging home births along with lay midwifery practice.

Strict regulation of this health care area is needed to protect the public since safe, high quality maternal and child care requires considerable skill and knowledge. Home births can involve serious risks to the health and safety of mother and child. However, many child-bearing couples want the opportunity to choose home birth. Under the present situation in Connecticut, consumers who make this choice cannot be assured of competent home birth attendants and safe

deliveries. The following statement is representative of the significant amount of testimony and letters received by the LPR&IC:

"On the issue of qualified attendants for homebirth candidates, it is again an important consumer concern that these people, known as lay midwives, be allowed to practice legally and that their services be clarified with state licenses. Based on Ct. Dept. of Health statistics, it is clear that there is an increasing trend toward homebirth in Connecticut; we respectfully request that the legislature protect the homebirth patient and her child by providing standards which lay midwives would meet to earn licenses.

*We urge this committee to recommend licensing of Certified Nurse Midwives and of qualified lay midwives, and to implement this procedure as swiftly as possible."*¹

2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE, OR PROGRAM? IF SO, WHICH ONE(S)?

- (1) P.A. 717 (Physician Assistants Statute). The Attorney General rendered an opinion that nurse midwives are physician assistants under P.A. 717 (Now Section 20-9 of the General Statute attached).

Under this regulatory option (which is the current situation) the public is protected from unsafe practice or untrained midwives through the physician's supervision of and liability for providers of midwifery services. ACNM certified nurse midwives, because they are specially trained and have recognized credentials, generally are the only providers physicians will agree to supervise.

- (2) The American College of Nurse Midwives has a national certification program. Some states have accepted this in lieu of a separate state licensing program.

With state acceptance of ACNM certification, the public and medical professionals would be able to more easily identify competent providers of midwifery services. While the state would not limit practice to

¹ Testimony presented to the LPR&IC, September 4, 1979, by Consumers for Choices in Childbirth, a nonprofit consumer interest group representing more than 400 persons.

certified nurse midwives, the special training and demonstrated competence would be officially recognized. It is also assumed that under this option, the level of protection described above would also occur.

- (3) By proposed licensing of nurse midwives, accepting certification by the American College of Nurse Midwifery in lieu of Connecticut examination.

Licensing offers the greatest degree of protection since only persons with a demonstrated, minimum level of competence would be allowed to provide midwifery services. Practice under this proposal would be limited to ACNM certified nurse midwives who also hold a state license.

Any of the alternatives presented above would protect the public in varying degrees from incompetent practitioners of nurse midwifery. However, none of the proposals would address appropriate regulation of lay midwifery or the potential dangers that are involved in the current illegal practice of midwifery (see comment above, #1).

3. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.

Yes. See above. response #2

A small advisory committee to the Commissioner of Health has been considering this issue. (Latest recommendations attached).

The "latest recommendations" would establish a licensure program for nurse midwives as described in the department's third regulatory option (see above, #2). As noted earlier, this would not address the problems associated with lay midwifery practice and home birth (see comment above, #1).

The appropriate level of regulation for both nurse midwives and lay midwives is a complex issue facing all states. A model for midwifery regulation has yet to be presented. Despite extensive staff research and committee discussion, it was felt that further study was needed to develop a mechanism that would both protect the public and allow consumer choice. In addition, while licensure of both lay and nurse midwives was favored by many witnesses at the public hearing, the committee believes that no such action should be taken until a regulatory mechanism which can be consistently applied to all categories of physician extenders is studied and developed.

4. DOES YOUR BOARD OR COMMISSION HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

Any licensing program ultimately has such an effect, since licensing fees are paid (with costs passed on to the consumer), and staff must be paid to carry out the program. In the case of the midwifery program, these costs are currently negligible, as the licensing program is relatively inactive at present.

In public hearing testimony nurse midwives cited legal ambiguities contained in their scope of practice as inhibiting utilization of their services. Nurse midwifery, as an alternative to the traditional approaches to obstetrical care (physician oriented), can be a less costly type of care. Proponents of lay midwifery and home birth also noted the lower consumer cost of alternatives (although cost is not the primary reason for choosing alternative birthing services). State regulation of midwifery, while providing public protection, also makes safe, cost-effective alternatives more readily available to consumers.

5. IF YOUR BOARD HAS THE EFFECT OF INCREASING COSTS, IS THE ADDITIONAL COST JUSTIFIED THROUGH PUBLIC BENEFITS ATTRIBUTABLE TO THE ACTIONS OF THE BOARD? PLEASE EXPLAIN.

We believe the public could best be protected by certified practitioners. In the case of midwifery we believe certification by the American College of Nurse Midwives fulfills this purpose.

See comment above, #4.

6. IS THE EFFECTIVENESS OF YOUR BOARD OR COMMISSION HAMPERED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGET AND PERSONNEL POLICIES. IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.

We believe the existing statutes, regulations and policies could be modified to serve the public more effectively. A small advisory committee to the Commissioner of Health has been considering this issue. (Recommendations attached.) [The recommendations would establish a licensure program, administered by the Department of Health Services, for nurse midwifery.]

The conflicts between the midwifery statutes and regulations (see comment #1) do interfere with the effective regulation of a midwifery licensure program. The midwifery statutes also contain outdated provisions and descriptions of the practice, and have not been revised or modernized in over 30 years.

The legal ambiguities of the nurse midwife's scope of practice may also cause problems when complaints are filed. Responsibility for disciplinary action is not specified. For example, the nursing board, the medical board, the courts or all three authorities may be involved in handling a complaint.

7. WHAT STATUTES AND REGULATIONS IMPINGE DIRECTLY ON THE OPERATIONS OF YOUR BOARD? PLEASE LIST OR ATTACH COPIES.

Not applicable. There is no midwifery board. Copies of P.A. 410 and the administrative regulations of our agency and the Public Health Code Regulations re midwifery are attached.

8. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE PROFESSION(S) OR OCCUPATION(S) LICENSED BY YOUR BOARD? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.

Not applicable. The two practitioners currently licensed no longer engage in the practice. No new qualified applicants have applied for licensure. The practice of midwifery is engaged in by approximately 30 nurse midwives in Connecticut; certified by the American College of Nurse Midwifery, and not licensed under the Connecticut Midwifery statute. They practice as physician assistants within the scope of Sec. 20-9-G.S (The Medical Practice Act) as ruled by the Attorney General.

While the intent of the midwifery statutes is to provide for licensure of qualified lay midwives, the department's midwifery regulations have the effect of limiting practice of the profession to ACNM certified nurse midwives (see comment #1). Persons trained as lay midwives in other states or countries or with midwifery experience have not been eligible for licensure because of the requirements contained in the regulations (e.g., applicants must have graduated from a school approved by the commissioner but no list of approved schools is maintained by the department; applicants must agree to practice in accordance with ACNM standards, etc.).

9. WHAT ACTIONS HAS YOUR BOARD OR COMMISSION TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION POLICIES AND TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO YOUR PROFESSION?

Not applicable. The State Department of Health Services does not recruit into the profession. This is done by schools of midwifery. In Connecticut there is one such school--the Yale School of Nursing.

10. WITHIN THE PAST FIVE (5) YEARS, WHAT CHANGES IN STATUTE, RULES OR REGULATIONS HAS YOUR BOARD OR COMMISSION RECOMMENDED WHICH WOULD BENEFIT THE PUBLIC AS OPPOSED TO LICENSEES?

See attached advisory committee recommendations for draft of proposed changes in legislation. [proposed changes would establish a licensure program for nurse midwifery.]

11. WHAT HAS YOUR BOARD OR COMMISSION DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF YOUR RULES, REGULATIONS AND POLICIES?

How to involve consumers is an issue the advisory committee plans to consider in the future.

Committee staff found no evidence of department efforts to involve consumers interested in lay midwifery and home birth in the formulation of the advisory committee's statutory proposal.

12. WHAT HAS BEEN YOUR PROCESS THROUGH DECEMBER 31, 1978 TO RESOLVE PUBLIC COMPLAINTS CONCERNING PROFESSIONALS REGULATED BY YOUR BOARD OR COMMISSION?

Not applicable.

Since no one is currently practicing under the midwifery statutes, no complaints have been filed against licensed midwives. There is no evidence that complaints against practicing, certified nurse midwives have been received by the department, the nurse midwives' professional association, the state nursing board or the state medical board (see comment #6).

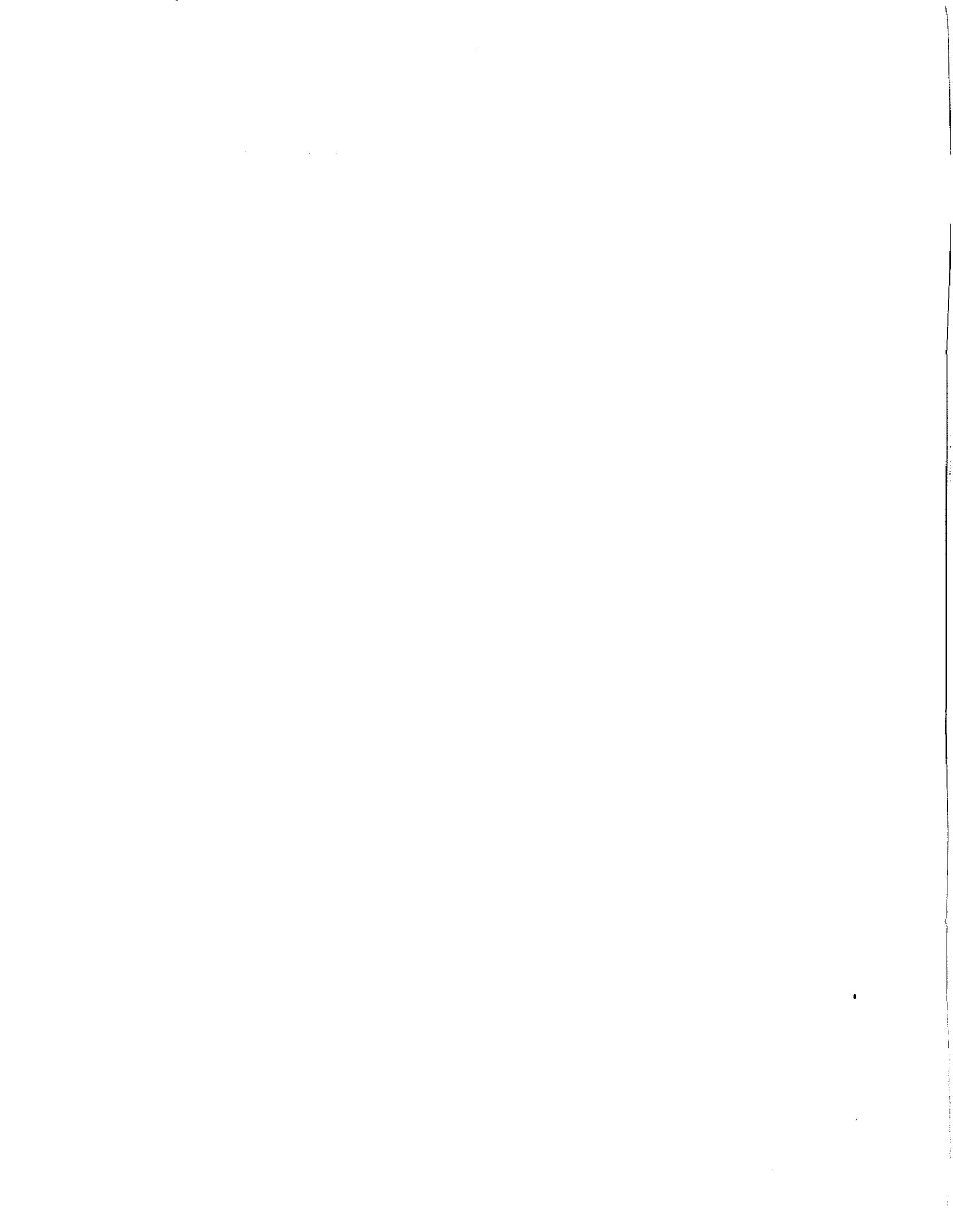
In addition, the outdated midwifery statutes do not provide for a disciplinary process in accordance with the provisions of C.G.S. Chapter 54.

13. WITHIN THE PAST FIVE (5) YEARS, WHAT STATUTES, RULES, OR REGULATIONS HAS YOUR BOARD OR COMMISSION PROPOSED OR ADVOCATED TO PROTECT YOUR PROFESSION FROM THE LICENSURE OF UNQUALIFIED PERSONS?

See draft of proposed revision of statute. [proposed revision would establish a licensure program for nurse midwifery.]

SECTION IV

APPENDIX



Bibliography

Staff reviewed the following sources in addition to the information gathered from interviews, public hearings, special meetings, and the board and the Department of Health Services files.

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