ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

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September 15, 2006

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,
AND ECONOMIC DEVELOPMENT
BOARD OF CERTIFIED DIRECT-ENTRY MIDWIVES
September 11, 2006

Audit Control Number

08-20044-06

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, or program subject to the sunset review process. Currently under AS 08.03.010(c)(8), the Board of Certified Direct-Entry Midwives is scheduled to terminate on June 30, 2007. The board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Certified Direct-Entry Midwives should be extended. We recommend that the legislature extend the termination date of the board to June 30, 2015.

The audit was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing report conclusion and the analysis presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Certified Direct-Entry Midwives (board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board should be reestablished. Currently, AS 08.03.010(c)(8) requires the board to terminate on June 30, 2007. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.

2. To determine if the board is operating in the public interest.

3. To determine if the board has exercised appropriate regulatory oversight of licensed midwives and apprentice midwives.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and that their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, and complaint investigation and resolution functions for fiscal years ending June 30, 2003, 2004, 2005, and 2006. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.

- Compliance with statutes and regulation related to the licensing of midwives and apprentice midwives. Our evaluation addressed consideration of applications, testing of candidates, and continuing education necessary for an individual to maintain their license in good standing.

- Minutes of board meetings, budget documents, and annual reports related to, or issued by, the board.
- Files related to applicants for, and holders of, licenses issued by the board.
- Complaints filed with the Department of Commerce, Community, and Economic Development, Division of Corporations, Professional and Business Licensing (division).
- Interviews with employees of the division.
- Reading and correspondence files maintained with the division.

ORGANIZATION AND FUNCTION

The Board of Certified Direct-Entry Midwives (board) was established in 1992. The purpose of the board is to protect the health and safety of the public by identifying individuals who are willing to pursue technical training and meet specified technical qualifications necessary for licensure as midwives.

The board establishes educational, experience, and continuing education requirements for licensed midwives. These requirements are intended to provide assurance that licensed individuals provide a minimum standard of care. State law does allow for midwife services to be provided by unlicensed individuals. As stated in AS 08.65.150, the differentiation is that those not certified under state law "may not practice midwifery for compensation."

The current board is composed of five members: two certified direct-entry midwives, one certified nurse midwife, one physician licensed by the Alaska State Medical Board who has an obstetrical practice or has specialized training in obstetrics, and one public member.

Board members are appointed by the governor to serve four-year terms. The board is responsible for appointing a chair and secretary from among its members. Alaska Statute requires that the public member of the board have no direct financial interest nor be engaged in the occupation the board regulates (midwifery).

Board of Certified Direct-Entry Midwives
(As of June 30, 2006)

Dana L. Brown, CDM, CPM, Chair

Barbara Norton, Certified Nurse Midwife

Mark E. Richey, MD

Holly M. Steiner, R.N., CDM

Mila (Melinda) A. Cosgrove
Public Member

Board Duties and Powers

Alaska Statute 08.65.030 establishes the powers of the board. They include:

1. Examine applicants and issue certificates to qualified applicants.
2. Adopt regulations establishing certification and certificate renewal requirements.
3. Issue permits to apprentice direct-entry midwives.

4. Hold hearings and order the disciplinary sanction of a person who violates statutes or regulations governing direct-entry midwives.

5. Supply forms for applications, licenses, permits, certificates, and other papers and records.

6. Enforce statutes relating to midwifery and adopt regulations necessary to carry out statutory provisions.

7. Approve curricula and adopt standards for basic education, training, and apprentice programs.

8. Provide for surveys of the basic direct-entry midwife education programs in the state at the times it considers necessary.

9. Approve education, training, and apprentice programs that meet the requirements of this chapter and of the board, and deny, revoke, or suspend approval of such programs for failure to meet the requirements.

Department of Commerce, Community, and Economic Development (DCCED), Division of Corporations, Business and Professional Licensing (division)

The division provides administrative and investigative assistance to the board. Administrative assistance includes budgetary services and functions such as collecting fees, maintaining files, receiving and issuing application forms, and publishing notices of examinations and meetings.

Alaska Statute 08.01.065 mandates that DCCED adopt regulations to establish the amount and manner of payment of fees for applications, examinations, licenses, registration, permits, investigations, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers the division with the authority to conduct an investigation on its own initiative or in response to a complaint.

REPORT CONCLUSIONS

In our opinion, the Board of Certified Direct-Entry Midwives (board) is operating in the public's best interest and should continue to regulate midwives. The board is safeguarding public interest by promoting the competence and integrity of those who hold themselves out to the public as qualified and competent direct-entry midwives.

The board serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to propose regulation changes that will improve its effectiveness and ensure that midwives and apprentice midwives are licensed in the State of Alaska.

Alaska Statute 08.03.010(c)(8) requires that the Board of Certified Direct-Entry Midwives be terminated on June 30, 2007. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend that the legislature extend the board's termination date until June 30, 2015.

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ANALYSIS OF PUBLIC NEED

The following analyses of Board of Certified Direct-Entry Midwives (board) activities relate to the public-need factors defined in the sunset review law at AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The board, through its administration of the licensure of midwives and apprentice direct-entry midwives, has endeavored to present competent professionals to the public. To promote continued competence, all licensees must provide proof of continuing education for license renewal and are subject to a full continuing education audit.

The board has issued licenses in a uniform manner, held required meetings, and administered examinations in accordance with statutory requirements.

The board adopted or revised regulations regarding professional licensure and educational requirements. Applicants must show that they have completed the required Midwifery Education Accreditation Council courses of study in midwifery and pharmacology, and have completed their required supervised clinical experience. The board also accepts Midwives Association of Alaska courses and other curricula reviewed by the board. Applicants for certification by examination must pass an examination given by the North American Registry of Midwives, an independent examiner. Applicants for certification by credentials must prove that they were previously licensed in another state and all current required courses of study are up-to-date. All applications are thoroughly reviewed by the board at each meeting.

Throughout the audit period, the board worked to develop regulations that would benefit the public. A self-study course related to state regulations was developed for CPE hours. The board successfully incorporated Certified Professional Midwife standards into Alaska's Certified Direct-Entry Midwives licensing program.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

During the period under review, the board supported passage of Chapter 118, SLA 2004, revised by Chapter 57, SLA 2005 which requires the licensure of midwifery birth centers in a more standardized manner.

During the period under review, the board implemented regulatory changes to benefit the public interest. These changes included:

- Requirement that the applicant hold a current certification in Basic Life Support for Health Care Providers and Neonatal Resuscitation (12 AAC 14.110(b)(5)).

- Including regulations requiring certification in the use of intravenous (IV) therapy for the administration of allowable medicines and IV Therapy for Group B Streptococci;[1] two new developments in the profession (12 AAC 14.110(b)(5)).

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

General licensing statutes require that the Department of Commerce, Community, and Economic Development adopt regulations that establish the amount of fees to be charged to licensees of an occupation. The department must adopt fees that provide for financial self-sufficiency. Additionally, the department must perform an annual review to determine whether the financial self-sufficiency requirement has been met.

A significant issue for this board has been the amount of licensing fees charged to license holders. Currently, Certified Direct-Entry Midwives pay a biennial licensing fee of $2,088. This amount is an increase from $1,350 paid in the previous two-year licensing period. These fees are set by the Division of Corporations, Business, and Professional Licensing. The general licensing statutes at AS 08.01.065(c) require "*that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation*."

The board sets fees based on a two-year cycle, with the majority of the revenue collected in odd-numbered fiscal years. Based upon the financial data presented in Exhibit 1 on the next page licensing fees appear appropriately set at this time.

From Exhibit 1, it is evident contractual expenditures were high in both FY 03 and FY 04. This was the result of legal fees related to a license revocation case. Fiscal prudence by the board is demonstrated by the decrease in personal services and travel expenditures over the four year period. During the same time revenues rose slightly as a result of increased license fees in response to the litigation charges incurred in FY 03 and FY 04. The board had licensing fees set sufficient to cover their annual operating costs; however, the financial impact of litigation charges continue for multiple periods as seen in Exhibit 1.

[1] Group B streptococcus (group B strep) is a type of bacteria that causes illness in newborn babies, pregnant women, the elderly, and adults with certain illnesses. Group B strep is the most common cause of life-threatening infections in newborns.

Exhibit 1

Board of Certified Direct-Entry Midwives Schedule of License Revenues and Board Expenditures FY03 – FY 06 (Unaudited)				
	FY 06	**FY 05**	**FY 04**	**FY 03**
Revenue	$ 8,271	$ 51,087	$ 15,055	$33,120
Direct Expenses				
Personal Services	12,105	12,099	18,958	19,750
Travel	1,767	2,960	2,951	7,825
Contractual	3,923	2,302	28,537	18,224
Supplies	71	0	47	109
Equipment	0	0	0	0
	17,866	17,361	50,493	45,908
Indirect Expense	1,800	1,700	1,400	1,300
Total Expenses	$ 19,666	$ 19,161	$ 51,893	$47,208
Annual Surplus (Deficit)	(11,395)	32,026	(36,838)	(14,088)
Beginning Cumulative Surplus (Deficit)	(13,000)	(45,026)	(8,188)	5,900
Ending Cumulative Surplus (Deficit)	$(24,395)	$(13,000)	$(45,026)	$(8,188)

The Board of Certified Direct-Entry Midwives has discussed with the Division of Corporations, Business and Professional Licensing a proposal to set up a fund to cover legal costs for all professional organizations. Such a fund would be supported by an annual fee from each licensee. The board feels that this would help alleviate the financial burden of investigative and legal costs for smaller occupational boards. At this time, no such fund has been created.

Looking prospectively, the board will likely eliminate the cumulative deficit if annual expenditures, licensing fees, and the number of licensees remain relatively constant over the next biennial licensing period. Given this scenario, the Division of Corporations, Business and Professional Licensing should maintain the current license fee for the next licensing period. Following that period, the division should reevaluate the need for a fee change to ensure occupational fees are set to avoid an operational surplus or deficit.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The locations, dates, and times of upcoming board meetings and proposed changes in regulations were published in the *Anchorage Daily News*, as well as posted on the board's website. Adequate time was provided for interested individuals to plan to attend or to submit written comment for review.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

Public notices of proposed regulations are published in the *Anchorage Daily News* and the Alaska Online Public Notice System. The board meeting minutes show that unlimited time was allotted for the scheduled public comment period. All proposed regulation changes are subject to the public participation process.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

For the period July 2002 through June 2006, the division opened nine investigative cases related to six different individuals licensed by the Board of Certified Direct-Entry Midwives.

The types of complaints filed included:

- Incompetence (5)
- Negligence (2)
- Unlicensed practice (1)
- Other (1)

Approximately 67% of the cases were filed by a Peer Review Committee member, the remaining were filed by another government agency (22%) and patients (11%).

Seven, or 78%, of the cases closed in a reasonable period of time. Only one case (11%) remained open for a period greater than 120 days. That case complaint related to an unlicensed practice; the case was closed due to insufficient evidence. We found it reasonable that one case remained open at June 30, 2006 given that the case opened less than two months prior to that date.

We have reviewed the nature and extent of the complaints filed involving midwives. The division, in conjunction with the board, took appropriate investigative action, prioritized

complaints in a reasonable manner, and proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

No complaints or investigations specifically involving the actions and activities of the Board of Certified Direct-Entry Midwives were received, or undertaken by, either the Office of the Ombudsman or the Office of Victims' Rights within the past four fiscal years.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Continuing education is required and adequately monitored by the board to promote a high level of quality performance and to help ensure the integrity of the profession.

Each applicant is required to satisfy the requirements for licensing. Board meeting minutes reflect that the board considers each application and verifies the licensing requirements are satisfied prior to issuing a license.

Exhibit 2

New Licenses and Permits Issued (exclusive of renewals)	FY 03	FY 04	FY 05	FY 06	Current Licenses (as of June 30, 2006)
Midwives	2	6	4	2	28
Apprentices	4	0	5	3	8
Total licensees at end of year	**31**	**35**	**32**	**36**	

Exhibit 2 is a summary of new licenses and permits issued by the board for FY 03 through FY 06.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action, in qualifying applicants.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Since inception of the board in 1992, biennial licensing fees for this occupation have ranged from an initial fee of $350 to the current fee of $2,088. During this audit review period, the licensing fees increased 55% from $1,350 to $2,088 and are not expected to decease for the

next licensing period.

Currently, the licensing fees established for this board are the highest of any other licensed profession.[2] The fees are high because of the limited number of licensed midwives and unpredictable legal and investigative costs.

High licensing fees may, to some individuals, represent a barrier of entry into a profession. In the case of direct-entry midwives, Exhibit 2 shows that the licensing fees have not stopped the growth in the number of individuals being licensed as midwives or entering into the apprenticeship program. However, as long as the fees remain high the board should monitor for any substantial negative impact the fees have on the number of direct-entry midwives practicing in Alaska.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Broad objectives identified by the board included:

- Proposing regulation changes.
- Clarify the current rules and regulations to benefit the public.
- Increase professional and public awareness of direct-entry midwifery.
- Approve additional avenues for study to gain licensure.
- Approve new curriculums for continuing education.
- Work towards lowering license fees.

It appears that the board has effectively and efficiently obtained its objectives and purposes. In proposing regulatory changes, the board has worked to ensure the objective of the regulation is clearly defined. They have provided for consistent language throughout the Certified Direct-Entry Midwives regulations and have updated the regulations and statutes to reflect new changes in the professional environment. Evidence suggests the board establishes and meets its operational objectives annually.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

The board does not duplicate any activities of other government agencies or private sector organizations. The board is solely responsible for drafting regulations to carry out the laws governing the practice of direct-entry midwifery. The board makes final licensing decisions and takes disciplinary action against people who violate the licensing laws. The board, along with the licensing examiner from the Division of Corporations, Business and Professional

[2] For the biennial licensing period January 2005 through December 2006.

Licensing, are responsible for overseeing all the regulations, codes of conduct, continuing education requirements, and investigating complaints related to the midwifery profession.

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DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT
Office of the Commissioner

Frank H. Murkowski, Governor
William C. Noll, Commissioner

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September 29, 2006

Ms. Pat Davidson, CPA
Legislative Auditor
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

Dear Ms. Davidson,

Thank you for the opportunity to comment on the preliminary audit report for the Board of Certified Direct-Entry Midwives.

The department concurs with the audit findings. There are two items in the report that I would like to bring to your attention:

On page 8, the second to the last paragraph begins "The board sets fees…" should be corrected as identified in the previous paragraph, it is the "Department" who sets fees after consulting with the Board.

Additionally, on page 9, the first paragraph under Exhibit 1 discusses a proposal to set up a fund to cover legal costs. In FY05, the Division of Corporations, Business and Professional Licensing did propose the idea of creating a Legal Defense Fund patterned after a similar fund in the State of Colorado. However, there was strong opposition to that proposal by OMB and by members of the Legislature. Such a fund could help to avoid large increases in licensing fees when litigation costs arise.

Thanks again for the opportunity to comment on your findings.

Sincerely,

William C. Noll
Commissioner

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Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P.O. Box 113300
Juneau, AK 99811-3300

October 26, 2006

To Whom It May Concern:

This is written in response to the preliminary audit report concerning the Board of Certified Direct-entry Midwifes. I concur with the recommendation that legislature extend the termination date of the board to June 30, 2015. My conclusions are the same as those in the audit report. In the Analysis of Public Need section on page 8, it implies that the board increased certification requirements for apprentice direct-entry supervisors. We tried to do this but were unable to change regulation because of wording in statute. Someday the Midwives Association of Alaska will need to go to legislature and try to get legislation passed to change wording in statute so that certain regs. can be addressed. I concur with the rest of the report. I am very pleased with the report.

Sincerely,

Dana Brown

Dana Brown
CDM Board Chair

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ALASKA STATE LEGISLATURE
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October 26, 2006

Members of the Legislative Budget
and Audit Committee:

We have reviewed the response to our preliminary audit from the Board of Certified Direct-Entry Midwives. The response points out that the board was unsuccessful in their attempt to effect regulatory changes to 12 AAC 14.210 to increase certification requirements for apprentice direct-entry supervisors due to statutory language (AS 08.65.090(b)). We agree that certification requirements for apprentice direct-entry supervisors did not increase during the audit period, and that section of the report has been corrected.

Pat Davidson, CPA
Legislative Auditor

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