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To: **Alyssa Black, Chair**
House Committee on Health Care

From: **S. Lauren Hibbert, Deputy Secretary of State**
Jen Colin, General Counsel, Office of Professional Regulation

Re: **S.18, An act relating to licensure of freestanding birth centers**

Dear Committee Members:

Thank you for the opportunity to testify today about S.18, an act relating to the licensure of freestanding birth centers. OPR generally supports the licensure of freestanding birth centers, understanding that the primary purpose of the legislation is to provide perinatal patients with more access to and options for midwifery care.

As you know, the Office of Professional Regulation ("OPR") regulates 53 occupational licensure programs with over 84,000 individual and business licensees. Our professional pool includes various occupations implicated in S.18, including licensed midwives and certified nurse midwives, as well as advanced practice registered nurses ("APRNs") and all other nurses, osteopathic physicians, and naturopathic physicians. OPR is also the entity that regulates the practice of pharmacy in the State, which includes compounding, dispensing, and labeling drugs, as well as properly and safely storing drugs and drug-containing devices, and maintaining records therefor. *See* 26 V.S.A. § 2022(15).

Our understanding of S.18 is that:

- freestanding birth centers are to provide perinatal care during low-risk pregnancies and births;
- epidurals and opioid pain medications will not be available on site;
- surgical services, such as cesarean delivery, will not be offered on site; and

- medication storage and management, similar in scope and scale to what occurs in hospital pharmacies, which must be licensed by OPR, will not be occurring on site.

OPR's Proposed Amendments Related to Clarifications Regarding Scope of Services:

1. Low -Risk:

To ensure the midwifery services offered at a freestanding birth center meet the primary purpose with a scope limited to low-risk deliveries, OPR proposes amending S.18 to include a general definition of "low-risk" in § 2351 of the statute. We also propose a specific exclusion of epidurals and surgical services, such as cesarean deliveries. We recommend the following language:

- In § 2351, add a definition for low-risk: <u>"Low-Risk" means uncomplicated perinatal care provided to healthy patients during the childbearing cycle, including normal pregnancy, labor, childbirth, and the postpartum period.</u>
- In § 2351 (1), exclude epidurals and surgical services:

> "(1) "Birth center" means a facility the primary purposes of which are to provide midwifery care, low-risk deliveries, and newborn care immediately after delivery, for a stay of generally less than 24 hours. The term does not include a facility that is a hospital, is part of a hospital, or is owned by a hospital; a facility that is an ambulatory surgical center; or the residence of the individual giving birth. <u>A birth center does not offer epidurals or surgical services, such as cesarean delivery.</u> A birth center may be located on the grounds of a hospital.

2. Pharmacy:

OPR statutes in Title 26, Chapter 36 govern the regulation of pharmacy in the State, including individuals and entities engaged in the practice of pharmacy. OPR, in collaboration with healthcare stakeholders, has conducted a multiyear study of pharmacy practices occurring outside of licensed pharmacies—for example, the dispensing of drugs directly from a doctor's office. This area requires careful balance between sometimes-competing public-health concerns.

Birth centers, given their limited scope of activity, may not necessarily need institutional pharmacy licenses. However, OPR wishes to flag that pharmacy licensing could be

needed if birth-center dispensing goes beyond what is expected. OPR hopes to be included in any relevant VDH rulemaking discussions.

OPR's Technical Concerns with S.18:

In § 2351, S.18 defines various roles within a birth center. OPR is flagging the following definitions, where amending language may provide added clarity:

- 2351(2) currently defines Certified Nurse Midwife (CNM) as a professional licensed in accordance with 26 V.S.A. chapter 28, subchapter 2. That subchapter includes all nurse practitioners (APRNs), not only those with specialized midwifery training. We recommend that the definition be changed to:

  > <u>"Certified nurse midwife" means an Advanced Practice Registered Nurse ("APRN") with specialized training in childbirth, newborn care, and reproductive care.</u>

  We want to ensure that all Advanced Practice Registered Nurses ("APRNs"), including those with no specialized midwifery training, are not unintentionally included in this definition.

- The different definitions of "Licensed maternity care provider." § 2351(5), and "Licensed provider," § 2351(7), are somewhat confusing.
  - "Licensed maternity care provider" is used once, in § 2352(b), which provides that licensed maternity care providers may independently own and operate birth centers. It is unclear whether *only* licensed maternity care providers may independently own and operate birth centers, or if others may do so.
  - "Licensed provider" seems focused on professionals with perinatal and obstetric scopes of practice, listing certified nurse midwives, licensed midwives, naturopaths with the natural childbirth specialty, etc. The term "Licensed provider" is then used twice: once within the definition of Licensed maternity care provider, and once in § 2360(b), which provides that individuals providing non-birth-center care in spaces adjacent to a birth center must stay within the individuals' scopes of licensed practice. This second use is in tension with the definition because it seems to concern individuals with non-birth-center-related scopes, while the definition focuses on professionals with birth-center-related scopes.

    - Neither term is used within the bill to limit which professionals may work in a birth center.

- OPR suggests clarifying intentions around birth center ownership and staffing, then revising to consolidate “Licensed maternity care provider” and “Licensed provider” into a single definition. OPR is not suggesting revised language because we are not clear on the intention behind these definitions. However, we would like to flag that:
    - Certified nurse midwives are a type of APRN with specialized training. (See above.) All CNMs are APRNs, but not all APRNs are CNMs. Separately listing CNMs and APRNs is confusing. We recommend striking APRNs. If the intent is to include Women’s Health Nurse Practitioners, which is a subset of APRNs, we recommend expressly including them in the same manner as the CNMs.
    - “Doctor of nursing practice” is a type of doctoral degree, not a professional license. A doctor of nursing practice might not hold any professional license. We recommend omitting the term from the bill.