



6 May 2011

Nursing and Midwifery Board of Australia
G.P.O. Box 9958
Melbourne VIC 3001
By email: nmba-consultations@ahpra.gov.au

Dear Chair,

Professional indemnity insurance consultation

Maternity Coalition welcomes the opportunity to comment on the various draft documents relating to professional indemnity insurance requirements for midwives.

'Quantum of cover' for professional indemnity insurance for midwives guideline

Maternity Coalition does not support approach 1 with regard to quantum of cover.

Maternity Coalition main concern with approach 1 is the means by which the quantum would be determined by the insurance industry. Maternity Coalition submits that the advice given by the insurance industry is likely to be based on their experience in relation to obstetrics based claims rather than midwifery claims (as there has been no insurance product for privately practising midwives for more than a decade and thus no claims history on which to make assessments about the cover needed). Maternity Coalition maintains that any requirements placed upon midwives (which then flow on to the women they care for) should be evidence based. This evidence should be drawn from outcomes relevant to midwives and the care they provide and not based on the obstetric model which invariably carries greater risk due to a greater scope of practice, much larger client volume and a wider range of potentially catastrophic complications.

It is for these reasons that Maternity Coalition believes that at this time, approach 2 is the most appropriate requirement.

Maternity Coalition continues to have concerns regarding the lack of insurance options for midwives as there are currently only 2 insurance providers. Requirements for unreasonable/non evidence based quantum cover could significantly restrict midwives' practice, women's options and their right to make informed choices regarding maternity care.

Draft of professional indemnity insurance for midwives guideline

Maternity Coalition submits that this guideline does not adequately recognise women's rights to make informed decisions about their care and to refuse to follow recommendations and guidelines if they so choose. Little consideration appears to be given to the fact that consumers are making deliberate and considered choices as to where and with whom they will give birth. The Australian College of Midwives (ACM) Guidelines explicitly recognise that women can and do make choices that run contrary to the recommendations contained in that document. As the disclaimer at the start of the ACM Guidelines provides:

The Guidelines should in no way be interpreted and/or be used as a substitute for an individual midwife's decision making and judgment in situations where care has been negotiated within the context of informed decision making by the individual woman.

In the current regulatory environment privately practising midwives are being punished for

respecting women's decision making autonomy and refusing to withdraw care when a woman makes a choice outside of the ACM guidelines. In other situations midwives (fearful of losing their registration) are withdrawing care from women in the final stages of their pregnancy because a woman refuses referral. The decrease in the number of available midwives (due to suspension) and the increasing number who feel forced to withdraw care from women does not necessarily lead to these women then making a choice to birth in hospital settings. Maternity Coalition is aware that a number of women who would otherwise choose to have a registered midwife present at their birth find themselves in a situation where they feel they have no choice other than to birth unassisted or with unregistered attendants. This surely runs contrary to the intention of the national registration scheme.

Women have a legal right to make decisions about their maternity care including where they will give birth and who will care for them when they do. Maternity Coalition believes that this right is futile if the NMBA produces guidelines which fail to respect this right and fail to acknowledge all of the provisions of the ACM Guidelines when it comes to informed refusal.

Maternity Coalition is also disappointed to see "collaborative arrangements" or provision of a care plan listed on page 11 of this guideline as a requirement for midwives exercising the insurance exemption for intrapartum care. Maternity Coalition strongly submits that it is inappropriate for such a requirement to be included in this guideline. Maternity Coalition notes that this requirement was deliberately not included in the document provided to the NMBA (after extensive national consultation) by the Victorian Department of Health.

"Collaborative arrangements" are a formal requirement in only two contexts – for midwives to provide MBS-rebatable services and to purchase the government subsidised professional indemnity insurance. Regulations gazetted in July last year defined collaborative arrangements for the purpose of obtaining a Medicare rebate for midwifery care. "Collaborative arrangements" are also an option, along with "communication of a care plan", as conditions for Commonwealth-subsidised professional indemnity insurance. If an eligible, private practice midwife's clients are not claiming an MBS rebate, and the midwife has purchased an alternative insurance product (e.g. Mediprotect), then there is no legislated requirement for her to enter into a "collaborative arrangement" as defined in the regulation or provide a care plan.

Formal requirements for collaborative arrangements are especially problematic in the context of an insurance exemption for homebirth. Maternity Coalition is concerned that midwives in private practice who attend homebirths will find it impossible to find medical practitioners who are willing to enter into collaborative arrangements with them. This is especially so given the strong anti-homebirth position taken by the AMA and RANZCOG. Even if a midwife were to find a willing collaboration partner that practitioner's insurer is highly unlikely to agree to such an arrangement. Finding an insurer who would allow a practitioner to enter into a collaborative arrangement with an uninsured party (for the purposes of allowing them to remain uninsured) would be an impossible task given the fears that doctors and insurers have around liability.

Women who have planned homebirths and midwives who have taken on clients in recent months have not expected that collaborative arrangements or communication of a care plan would be a part of the requirements for accessing the insurance exemption. It is not acceptable that this additional requirement is being imposed at this late stage (10 months into the exemption period) creating anxiety and uncertainty for women.

Maternity Coalition submits that there are already numerous provisions in the guideline that encourage midwives to consult and refer as needed. This additional requirement is unnecessary and will only have the effect of limiting women's access to homebirth.

Yours faithfully



Sarah Kerr
National President