



## ***Expanding Options in Maryland: The Birth Options Preservation Act***

by Amy Polk, Communications Director, Birth Options Alliance

### **The Problem**

The closures of two popular midwifery practices in Montgomery County, Maryland in the spring of 2007 – the Maternity Center in Bethesda and Takoma Midwives in Takoma Park – compelled many to ask: "What is causing these excellent practices to close?" and "What is keeping alternatives, such as independent home birth practices, from opening up to take their place?"

Among many factors is the requirement of certified nurse midwives (CNMs) to have a written collaborative agreement (WCA) signed by Maryland physician and approved by the State Board of Nursing. While many Maryland physicians, most notably obstetricians (OBs), welcome the opportunity to work with midwives, many are reluctant to sign these agreements. Many OBs fear that these agreements will make them liable for the actions of the midwives, when in fact these agreements simply codify the practice guidelines midwives are already bound by according to the standards set by their professional association: the American College of Nurse Midwives. In the age of ever increasing malpractice insurance costs for both doctors and midwives, the fear of increased liability, even if unwarranted, is a serious problem.

### **Attempting a Solution through Legislation**

The requirement that these agreements be signed by an OB and approved by the Board of Nursing creates an imbalance of power in what should be a collaboration between peers, each with different and complementary expertise and skills. Introduced in the 2008 Maryland legislative session by Del. Heather Mizeur (D-Takoma Park), the *Birth Options Preservation Act* (H.B. 1407) would have eliminated written collaborative agreements as a requirement of practice for CNMs. (Original bill as introduced: [mlis.state.md.us/google\\_docs\\$/2008rs/bills\\_noln/hb/fhb1407.pdf](http://mlis.state.md.us/google_docs$/2008rs/bills_noln/hb/fhb1407.pdf))

Supporters of birth options showed the power of this grass roots movement by turning out in large numbers for a rally in support of the bill in February and a hearing on the bill by the House of Delegates' Health and Government Operations Committee in April. Birth Options Alliance (BOA) Co-President Mary Beth Hastings, BOA member Diana Mayer, noted CNM Mairi Breen Rothman, and well-known author and Maryland resident Marsden Wagner (author of *Born in the U.S.A.* and many other books) were among those who testified in favor of the bill.

Unfortunately, in order to attain passage of the bill, it had to be amended to become the *Birth Options Preservation Study*, which required five organizations – the State Board of Nursing, the State Board of Physicians, the Obstetrical and Gynecological Society of Maryland, the Maryland Hospital Association, and the Maryland chapter of the American College of Nurse Midwives (ACNM) – to come together to find an "alternative to the existing requirement for a physician-signed practice agreement." The amended bill was passed by both chambers and signed by the Governor. (Version of the bill that was passed and signed: [mlis.state.md.us/google\\_docs\\$/2008rs/chapters\\_noln/Ch\\_319\\_hb1407e.pdf](http://mlis.state.md.us/google_docs$/2008rs/chapters_noln/Ch_319_hb1407e.pdf))

Convened by Del. Heather Mizeur, the five-member study group met throughout the remainder of 2008 and early 2009, but could not come to consensus on a change in the WCA requirement.



However, through the tireless fact gathering and persuasive arguments put together by a team of activists and interns lead by Mairi Breen Rothman, who represented the Maryland ACNM, many members of the group went from opposed to a change to neutral and others went from neutral to positive. As the study group's work drew to a close, it became apparent that the best way to eliminate the WCA requirement was through a regulatory change, not additional legislation.

## **Attempting a Solution through Regulation**

### *Step 1*

A change in the regulations governing CNMs in Maryland requiring them to adhere to the requirements of their profession (which CNMs are doing anyway) was proposed and approved by four of the five study group members, including the State Board of Nursing. The State Board of Nursing has indicated that it is likely to approve the regulatory change at its meeting in late May.

### *Step 2 – Grass Roots Support Needed (Probably)*

If the Board of Nursing Approves the regulatory change, the regulatory change then goes to a special joint committee of the Maryland General Assembly called the Joint Committee on Administrative, Executive, and Legislative Review (AELR). The AELR is comprised of 10 Delegates and 10 state Senators. (Visit page 34 of the document [mlis.state.md.us/Other/Roster/Committee.pdf](http://mlis.state.md.us/Other/Roster/Committee.pdf) for a list of committee members and House and Senate chairs.) This committee can choose to approve the change without a hearing (unlikely), reject the change without a hearing (unlikely) or hold a hearing to gauge public support for the bill (most likely).

At that time, birth supporters who live in the districts of these Delegates and Senators will be needed to lobby committee members. The Maryland chapter of ACNM and BOA will be making arrangements for this lobbying effort. The game plan is to get at least one midwife and at least one consumer from each of these key districts to lobby their Delegate and/or Senator. **Stay tuned over the summer and early fall for details.**

### *Step 3 – Grass Roots Support Needed (Maybe)*

If the AELR approves the regulatory change, the proposal then goes to the Secretary of the Maryland Department of Health and Mental Hygiene (DHMH) John Colmers. (Secretary Colmer's official bio: [dhmh.md.gov/html/abouttheseecretary.htm](http://dhmh.md.gov/html/abouttheseecretary.htm)) Secretary Colmers could then reject the change without a hearing (unlikely), approve the change without a hearing (possible) or hold a hearing to gauge public support for the bill (possible). If a hearing is to be held at the DHMH level (probably in the fall 2009 timeframe), birth supporters would again be needed to show the passionate grass roots support for expanded birth options.

### *Step 4 – Light at the End of the Tunnel*

If Secretary Colmers approves the regulatory change, the proposal then goes to Maryland Governor Martin O'Malley. (Governor O'Malley's official bio: [www.governor.maryland.gov/biography.asp](http://www.governor.maryland.gov/biography.asp)) If the proposal gets this far, it is likely that the Governor will approve the change. If so, certified nurse midwives will no longer be required to have a written collaborative agreement signed by a Maryland physician in order to practice. This will make it easier to CNMs to practice in the state.



**Success! (Hopefully)**

If Governor O'Malley approves the regulatory change, birth activists should hold a well-deserved celebration to congratulate ourselves on this significant accomplishment.