

**Zero-Based Regulation
Prospective Analysis
[State Board of Midwifery]
[24-0000-2201F]**

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code § 54-5505	Mandatory

2. Define the specific problem that the proposed rule is attempting to solve? Can it be solved through non-regulatory means?

The rules are designed to protect the public from harm from untrained and incompetent midwives and from midwives that are violating the rules of practice as a midwife. In addition, licensure provides licensees with access to prescription drugs that would not be accessible without the legitimacy and controls provided through licensure. Finally, licensure allows access to payment and reimbursement from third party payees.

Non-regulatory means would not accomplish these same goals. Jurisdictions without licensure or with voluntary licensure restrict the tools that are available to Idaho licensees. Also, those jurisdictions foreclose the option of clients without the ability to choose the services of a midwife without payment by a third-party payee.

Further, licensure ensures that minimum qualifications are met for all practitioners engaging in midwifery with the risk to life of both mother and child incident to childbirth. Licensure, also provides a regulatory disciplinary framework to ensure that licensees are practicing competently and within the prescribed scope of practice.

The Benenson Strategy Group (BSG) conducted a recent national study to understand public opinion toward professional licensing standards. BSG conducted interviews with 952 “likely voters”— individuals who are registered to vote and have voted in the 2016 or 2018 elections or indicated that they are likely to vote in the 2020 election. This was a national opinion study with a diverse respondent pool—mix of gender, age, race, and political ideology. Research was conducted from October 25 through November 6, 2019.

BSG’s critical finding were that the public overwhelmingly supports licensing regulations for complex, highly technical professions that have a direct impact on public health, safety, and welfare. Research found that 75% of voters believe it is important to ensure qualifications for professionals in certain industries. And a majority of voters believe current professional licensing requirements protect the public and should not be reformed.

The public expects that professions tasked with safeguarding their physical and financial wellbeing are regulated. More than 70% of voters believe that regulating professionals in accounting, engineering, architecture, and related fields with high impact on public safety and welfare is important. Licensing standards are the public’s preferred default position with 71% of voters believing professional licensing should be required unless it can be proven that

eliminating licensing will not have a negative impact on public health and safety. The public is wary of the alternative approach: requiring licensing only when it is proven necessary for health and safety.

Professional licensing boards are also viewed favorably and are seen as critical regulatory entities. 67% of voters believe that consumers are best protected by a system that regulates education, examination, and experience standards—all of which are overseen by a professional licensing board. And the public intuitively understands what roles the boards play and why those roles are important. A majority of the public believes that it is “very important” that the boards oversee qualifications to enter a profession and regulate continuing education and certification standards.

Also, The Alliance for Responsible Professional Licensing (ARPL) commissioned Oxford Economics to produce a first-of-its-kind quantitative research study, *Valuing Professional Licensing in the U.S.*, which explored the impacts of professional licensing in highly complex, technical fields.

The study produced the following findings: Across all professions and occupations, licensing is associated with a 6.5% average increase in hourly earnings, even after accounting for the job holder’s educational attainment, gender, and racial demographics. Among professionals in technical fields requiring significant education and training, a license narrows the gender-driven wage gap by about one third and the race-driven wage gap by about half. Minority CPAs can expect an 8.1% hourly wage increase on average after becoming licensed in their field. Female CPAs can expect a 6.1% hourly wage increase on average after becoming licensed in their field. Both white professionals and male professionals were shown to benefit from licensing too, but to a lesser degree. White CPAs can expect a 2.9% hourly wage increase after becoming licensed; and males in the profession can expect a 0.7% hourly wage increase after becoming licensed. Those in a profession requiring advanced education and training such as a CPA can expect a 3.6% wage increase after becoming licensed.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
	N/A	

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho

		rule more stringent? (if applicable)
Washington	https://app.leg.wa.gov/rcw/default.aspx?cite=18.50 https://app.leg.wa.gov/wac/default.aspx?cite=246-834	More stringent
Oregon	http://www.oregon.gov/oha/hlo/Pages/Board-Direct-Entry-Midwifery.aspx	More stringent
Nevada	No Licensing or Regulation of Direct Entry Midwives	Less stringent
Utah	https://le.utah.gov/xcode/Title58/Chapter1/58-1.html https://www.law.cornell.edu/regulations/utah/Utah-Admin-Code-R156-77-102	Comparable to Idaho
Wyoming	http://midwifery.wyo.gov	Comparable to Idaho
Montana	http://boards.bsd.dli.mt.gov/ah https://leg.mt.gov/bills/mca/title_0370/chapter_0270/parts_index.html https://boards.bsd.dli.mt.gov/alternative-health-care/regulations/2019-MCA-Title-37-Ch-1-All-boards.pdf	Comparable to Idaho
Alaska	Certified Direct-Entry Midwives Statutes and Regulations	Comparable to Idaho
South Dakota	<ul style="list-style-type: none"> • South Dakota Board of Certified Professional Midwives • Statute 36-9C • Administrative Rule 20:86 	Comparable to Idaho

- c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

Idaho's regulation of Midwives is similar to or less restrictive than the comparison jurisdictions that license midwives. Jurisdictions that do not license midwives are not able to provide practicing midwives with valuable tools such as access to certain defined prescription medications that are useful to provide a safer experience for clients.

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4. What evidence is there that the rule, as proposed, will solve the problem?

The Midwifery Board has been in existence since 2009. The Board prosecutes licensees that violate the Board’s rules regarding competency and scope of practice. These violations of the Board’s laws and rules result in tragic consequences including the death and disability of newborns under the care of noncomplying midwives.

Additionally, the assistance of the Board has been sought from law enforcement agencies prosecuting licensee for payment fraud.

Licensed midwives have access to the support of the Board in reviewing practice standards through peer review requirements that are part of the Board’s rules for continuing education. Idaho midwives through licensure have access to tools such as prescription medicine not available to non-licensed counterparts in other jurisdictions.

5. What is the anticipated impact of the proposed rule on various stakeholders?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	No impact on the state general fund.
Impact to Idaho businesses, with special consideration for small businesses	Minimal impact of licensure costs passed on to those that choose to practice in the profession.
Impact to any local government in Idaho	No impact to local government.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	1495 less words
Net change in restrictive word count	No restrictive words in original rules.