

## 56 N.J.R. 781(a)

VOLUME 56, ISSUE 9, MAY 6, 2024

### RULE ADOPTIONS

#### Reporter

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*NJ - New Jersey Register > 2024 > MAY > MAY 6, 2024 > RULE ADOPTIONS  
> LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

#### Agency

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LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > STATE BOARD OF  
MEDICAL EXAMINERS

#### Administrative Code Citation

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Adopted New Rule: N.J.A.C. 13:35-2A.17A

#### Text

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##### Midwifery Early Aspiration Abortion

Proposed: September 18, 2023, at 55 N.J.R. 1983(a).

Adopted: February 14, 2024, by the State Board of Medical Examiners,  
Otto F. Sabando, D.O., President.

Filed: March 27, 2024, as R.2024 d.039, **without change**.

Authority: N.J.S.A. 45:9-2.

Effective Date: May 6, 2024.

Expiration Date: April 3, 2025.

##### Summary of Public Comments and Agency Responses:

The official comment period ended November 17, 2023. The Board of  
Medical Examiners (Board) received comments from the following  
individuals:

1. Karl Benzio, MD, Board Certified Psychiatrist, AACC, Medical Director, Honey Lake Clinic, Co-Founder and Medical Director, American Association of Medical Ethics, NJ State Co-Director

2. James R. Weidner, MD, FAAP, NJ State Co-Director American Academy of Medical Ethics

3. Jackie Cornell, MPAP, Executive Director, Planned Parenthood Action Fund of New Jersey

4. Margarita Beltran Sori, Ph.D.

5. Jennifer Amico, MD, MPH, Associate Professor, Department of Family Medicine and Community Health, Rutgers--Robert Wood Johnson Medical School

6. Noa'a Shimoni, MD, MPH, Association Professor of Family Medicine, Rutgers New Jersey Medical School, Associate Vice President for Student Health and Wellness, Rutgers University, Associate Vice Chancellor for Student Affairs, Health and Wellness, Rutgers New Brunswick

7. Joshua Bengal, Director of Government Relations & Staff Counsel, Medical Society of New Jersey

1. COMMENT: Three commenters support new N.J.A.C. 13:35-2A.17A. One of these commenters appreciates the work that was done so that certified midwives (CMs) and certified nurse midwives (CNMs) will be able to provide early aspiration abortions for patients.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: A commenter contends that advanced practice clinicians, including CMs and CNMs, should be permitted to provide any abortion care services that they have the training and competence to provide. This care should also include the provision of moderate sedation.

RESPONSE: N.J.A.C. 13:35-2A.17A addresses the coursework and clinical education requirements for CMs and CNMs to perform early aspiration abortions. The rule was proposed in response to the adoption of N.J.A.C. 13:35-4A.19, which recognizes that advanced practice clinicians, including CMs and CNMs, can perform early aspiration abortions, consistent with their respective scopes of practice and as addressed within their individual collaborating agreements. Other abortion care services, including those that involve the provision of moderate sedation, are not addressed pursuant to N.J.A.C. 13:35-4A.19, and are not authorized pursuant to N.J.A.C. 13:35-2A.17A.

3. COMMENT: A commenter contends that termination of a pregnancy should only be performed by highly skilled clinicians and that midwives

are not equipped to handle the emergent situations that can occur with early aspiration abortions. The commenter is concerned with the health hazards posed by midwives, whom the commenter characterizes as low-level providers, performing a potentially dangerous procedure. The commenter contends that abortion entails a moral injury that midwives are not professionally trained to handle. The commenter is concerned that the number of individuals authorized to perform abortions has expanded and that society will be sorry that it has allowed more individuals to determine who is valuable, who should live or die, and who can terminate life through abortion, assisted suicide, or euthanasia.

RESPONSE: The Board believes that CMs and CNMs are highly skilled clinicians who, once they have met the education and clinical experience requirements at N.J.A.C. 13:35-2A.17A, are competent to perform early aspiration abortions and to handle emergent situations that may occur with early aspiration abortions.

4. COMMENT: A commenter is concerned that N.J.A.C. 13:35-2A.17A would allow midwives to be trained and certified to perform procedures that they were not trained to do before. The commenter asks what will happen if there is a complication when an early aspiration abortion is performed and if midwives, who are not trained in medical care and resuscitation, will be able to provide adequate emergency care. The commenter contends that the solution to an unwanted pregnancy is adoption not abortion.

RESPONSE: N.J.A.C. 13:35-2A.17A would allow CMs and CNMs to perform early aspiration abortions after they have completed the required education and clinical experience. Such procedures were not previously recognized as within the scope of practice for CMs or CNMs. The requirements at N.J.A.C. 13:35-2A.17A ensure that CMs and CNMs have the education and experience to safely and effectively provide early aspiration abortions and address complications that may arise when such procedures are performed.

5. COMMENT: A commenter points out that N.J.A.C. 13:35-2A.17A permits a CM or CNM to provide early aspiration abortions independently after completing the required education and clinical experience. The commenter contends that N.J.A.C. 13:35-2A.17A(e) allows a CM or CNM to perform an early aspiration abortion after performing only one of these procedures as part of their clinical experience. According to the commenter, this requirement is inadequate to establish that a CM or CNM is competent to perform an early aspiration abortion and that this would increase risks for women receiving abortions. The commenter recommends that the Board not adopt N.J.A.C. 13:35-2A.17A.

RESPONSE: N.J.A.C. 13:35-2A.17A(e) requires a CM or CNM to retain documentation indicating that the CM or CNM completed the education requirements at N.J.A.C. 13:35-2A.17A(c) and the clinical experience requirements at N.J.A.C. 13:35-2A.17A(d). This clinical experience is the completion of the Core Competencies for Early Abortion Care included in the Training in Early Abortion for Comprehensive Healthcare (TEACH), Abortion Training Curriculum. The Board believes that completion of the Core Competencies will ensure that a CM or CNM has the clinical experience to safely and effectively provide early aspiration abortions.

6. COMMENT: A commenter contends that, in order to protect women's health and the lives of babies, the Board should repeal all of the rules regarding abortions that were adopted in 2021.

RESPONSE: The Board does not believe it is necessary or appropriate to repeal N.J.A.C. 13:35-4A as the commenter recommends. In addition, this comment is outside the scope of this rulemaking.

7. COMMENT: A commenter recommends that N.J.A.C. 13:35-2A.17A be amended to require that early aspiration abortions performed by CMs and CNMs be performed under the supervision of a licensed physician. The commenter contends that the potential complications associated with early aspiration abortions are best addressed by physicians who have the education and training to manage such complications. Physician supervision also ensures continuity of care allowing the physician to easily provide follow-up assessments, address post-procedural concerns, and offer additional medical support. The commenter also contends that requiring physician supervision will foster inter-professional collaboration and team-based care.

RESPONSE: N.J.A.C. 13:35-2A.17A(h) requires a CM or CNM who intends to provide early aspiration abortions to amend the clinical guidelines the CM or CNM has with a consulting physician with whom the CM or CNM consults and collaborates. Neither a CM nor a CNM is supervised by a physician for other procedures within the CM's or CNM's scope of practice and it would not be appropriate to require such supervision for early aspiration abortions.

8. COMMENT: Two commenters are concerned that N.J.A.C. 13:35-2A.17A does not allow for consideration of the expertise and experience of CMs or CNMs who provided early aspiration abortions in other states. [page=782] The commenters contend that some CMs and CNMs in other states have completed education in early aspiration abortions through methods other than the course required pursuant to N.J.A.C. 13:35-2A.17A(c) and have shown they are competent to perform early aspiration abortions. The commenters recommend that N.J.A.C. 13:35-2A.17A be

amended so that a CM or CNM who is permitted to provide early aspiration abortions in another state could qualify to do so in New Jersey by completing just the clinical experience requirements at N.J.A.C. 13:35-2A.17A(d) and the documentation requirements at N.J.A.C. 13:35-2A.17A(e)2.

RESPONSE: The Training in Early Abortion for Comprehensive Healthcare (TEACH) Abortion Training Curriculum required pursuant to N.J.A.C. 13:35-2A.17A(c) is a nationally recognized program that provides the education necessary to provide early aspiration abortions in a safe and effective manner. The Board believes that this course, or one of comparable scope and rigor, is the best way to ensure that CMs and CNMs are adequately prepared to provide early aspiration abortions. The Board points out that N.J.A.C. 13:35-2A.17A(f) recognizes that a CM or CNM who completed education and clinical experience in another state that is substantially similar to the requirements at N.J.A.C. 13:35-2A.17A(c) and (d) will be authorized to perform early aspiration abortions, but the Board does not believe that it would be appropriate to provide such authorization to a CM or CNM who has not completed substantially similar education and clinical experience.

9. COMMENT: Three commenters are concerned that there is a lack of courses available that meet the requirements at N.J.A.C. 13:35-2A.17A(c). The rule allows an accredited college or university, or an organization that is recognized by the American College of Obstetrics and Gynecology (ACOG), the American College of Nurse Midwives (ACNM), or the National Association of Nurse Practitioners in Women's Health (NANPWH), to provide the required course. Two of the commenters recommend that the rule be amended to allow a course to be provided by a Board-approved continuing education provider and to allow a course approved for Category I continuing medical education or offered by a State or national health care professional or accrediting organization to satisfy the education requirements at N.J.A.C. 13:35-2A.17A(c). Another commenter recommends that N.J.A.C. 13:35-2A.17A(c) be amended so that a course could be provided through an employer-based training program.

RESPONSE: The Board understands that there are at least two schools in New Jersey that will provide courses that meet the requirements at N.J.A.C. 13:35-2A.17A(c) and anticipates that, once the rule is effective and demand for the courses increases, there will be sufficient opportunity to satisfy the education requirements at N.J.A.C. 13:35-2A.17A. The accreditation and recognition requirements at N.J.A.C. 13:35-2A.17A ensure that a course is adequate and focused on the education of CMs and CNMs and the Board does not believe it is appropriate or necessary to recognize the entities recommended by the commenters.

**Federal Standards Statement**

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rule.

**Full text** of the adoption follows:

SUBCHAPTER 2A. LIMITED LICENSES: MIDWIFERY

13:35-2A.17A Early aspiration abortion

(a) The following words and terms, when used in this section, shall have the following meanings:

"Authorized practitioner" means:

1. A physician;
2. A CNM or CM who has met the requirements of this section; or
3. An advanced practice nurse or physician assistant whose scope of practice includes the provision of early aspiration abortions.

"Early aspiration abortion" means a procedure that terminates a pregnancy in the first trimester of pregnancy (defined as up to 14 completed weeks as calculated by an estimate of gestational age that utilizes the last menstrual period, ultrasound, and/or physical examination, as appropriate to the standard of care) utilizing manual or electric suction to empty the uterus.

(b) A CNM or CM who has successfully completed a course as required pursuant to (c) below and clinical experience as required pursuant to (d) below, or who has met the requirements at (f) below, may perform an early aspiration abortion.

(c) A CNM or CM who intends to perform an early aspiration abortion shall complete a course, given by a college or university accredited by an accrediting association recognized by the U.S. Department of Education or given by an organization recognized by either the American College of Obstetrics and Gynecology, the American College of Nurse Midwives, or the National Association of Nurse Practitioners in Women's Health, that covers the topics included in the Training in Early Abortion for Comprehensive Healthcare (TEACH), Abortion Training Curriculum, 7th Edition, 2022, incorporated herein by reference, as amended and supplemented, published by the Bixby Center for Global Reproductive Health, University of California San Francisco, 1001 Potrero Avenue, UCSF Box 0842, San Francisco, CA 94110, or a curriculum of comparable scope and rigor.

(d) A CNM or CM who intends to perform an early aspiration abortion independently shall complete, under the supervision of an authorized practitioner, the Core Competencies for Early Abortion Care included in the Training in Early Abortion for Comprehensive Healthcare (TEACH), Abortion Training Curriculum, 7th Edition, 2022, incorporated herein by reference, as amended and supplemented, published by the Bixby Center for Global Reproductive Health, University of California San Francisco, 1001 Potrero Avenue, UCSF Box 0842, San Francisco, CA 94110, or a program of comparable scope and rigor.

(e) A CNM or CM who intends to perform an early aspiration abortion shall retain:

1. A certificate from the sponsor of the early aspiration abortion course indicating that the CNM or CM has completed the course required at (c) above; and

2. A certificate or a letter indicating that the CNM or CM has completed the clinical experience required at (d) above from either:

i. An authorized practitioner who has observed the CNM or CM perform an early aspiration abortion under their supervision; or

ii. An organization, site of care, or facility at which the CNM or CM performed an early aspiration abortion.

(f) A CNM or CM who has completed the education and clinical experience in another state that are substantially similar to those required at (c) and (d) above shall be authorized to perform early aspiration abortions, provided the CNM or CM satisfies the other requirements of this section.

(g) A CNM or CM who intends to perform early aspiration abortions pursuant to (f) above shall retain documentation of the education and clinical experience the CNM or CM completed in another state which is substantially similar to the requirements at (c) and (d) above.

(h) A CNM or CM who intends to perform early aspiration abortions shall amend the clinical guidelines to indicate that early aspiration abortions are within the CNM's or CM's scope of practice.