Nurse-midwives face difficulty in obtaining liability insurance

By Michael Rivers
Of the Emerald

Editor's note: This is the second article in a two-part series examining the practice of midwifery. Tuesday's article featured midwifery from the perspective of direct-entry midwives, their former clients and supporters. Today's article presents the perspective of certifed nurse-midwives and the Oregon Medical Association.

The biggest problem certified nurse-midwives face today is that of obtaining medical malpractice insurance.

Hospitals require nurse-midwives to be covered by insurance — usually about $1 million — if the midwives want hospital privileges, said Marion Toepke, a nurse-midwife who graduated in 1984 from the Frontier Nursing Service School in Kentucky.

Toepke, who works at the Nurse-Midwifery Birthing Service and Clinic, 291 W. 12th Ave., worked as a lay midwife for about 13 years prior to receiving certification as a nurse-midwife.

"Hospital privileges means you can go into the hospital, admit the woman and deliver the baby there," she said.

Direct-entry midwives can't get hospital privileges because they can't get malpractice insurance, Toepke said. Nurse-midwives have a much larger degree of legal acceptance, she said.

"Being a nurse-midwife gives you a certain legitimacy," she said.

Nurse-midwives differ from lay, or direct-entry, midwives mainly in the amount of training they have, Toepke said. Nurse-midwives must study one to three years at an accredited nursing school, and most schools require students to be registered nurses with a college degree or four years of nursing experience, she said.

Some schools require students to be both a registered nurse with a college degree and to have nursing experience, she added.

In Oregon, nurse-midwives are licensed by the State Board of Medicine.

Direct-entry midwives, on the other hand, can be anyone who has delivered a baby outside of a hospital setting. Because they don't have any formal training, direct-entry midwives don't have the legitimacy of nurse-midwives. But they have tried to change this through the establishment of the Oregon Midwifery Council, which provides education, testing and certification for lay midwives.

Malpractice insurance rates for obstetricians have risen tremendously in the past few years, Toepke said, with a resulting increase in rates for nurse-midwives.

"Some small-town doctors, like those on the coast, are paying $20,000 to $30,000 per year even though they deliver maybe 15 babies a year," Toepke said. "And nurse-midwives have had to scramble to even be covered."

Northwest Physicians Mutual Insurance Co. in Salem is one of four companies in Oregon that insure obstetricians and midwives. It offers insurance to nurse-midwives only if they are employed by one of the physicians insured by the company, said Executive Vice President Jim Dorigan. In addition, nurse-midwives must meet educational and licensing requirements, he said.

"I think the trend you see with midwives across the country goes hand-in-hand with the problems obstetricians are having with birth-related injuries," Dorigan said.

Insurance rates have risen because of the increasing number of malpractice suits, Toepke said. And malpractice suits are expensive because if something happens to the baby at birth, it affects the person for his or her entire life, she said.

When nurse-midwives go into a hospital to do a birth, they work in a consultive situation with a doctor, Toepke said. The malpractice situation is making it difficult for nurse-midwives to practice because of the doctor's "responsibility" for the birth in terms of the "deep pockets" theory, she said.

Legally, whoever has the most insurance can be made most responsible if an accident were to occur, Toepke said. In most cases, this is the doctor, she said. As a result, some doctors are reluctant to act as backup doctors in midwifery birth situations, she added.

And lawyers are more likely to take cases on a contingency basis if there's a large sum of money involved, Toepke said.

When a lawyer takes a case on a contingency basis he expects to earn a percentage of the settlement and doesn't usually require an up-front fee.

Northwest Physicians will provide midwife malpractice coverage of $100,000 per occurrence and $300,000 aggregate for a premium of $2,277, Dorigan said. For a $5,820 premium, the company will provide $2 million per occurrence and a $5 million aggregate, he said. The aggregate is the total amount the company will pay out in one year.

The doctor-owned company was set up to provide coverage for doctors because they were worried that coverage would be discontinued by other companies, Dorigan said. It currently insures about 10 nurse-midwives and about 20 percent of Oregon physicians, he said.

Obtaining malpractice insurance is not the only obstacle midwives face. Some doctors believe midwives, particularly lay midwives, are unnecessary.

"Doctors are real educated and feel they know how to do things best," Toepke said. "They're real protective of their turf."

Many midwives believe their primary opposition comes from the Oregon Medical Association. But Karen Whitaker, OMA associate director of public affairs, said the organization actually doesn't have a stance on midwifery.

"There seems to be some feeling among lay midwives that physicians are out to get them," Whitaker said. "That's not the case at all."

Continued on Page 10