

1 S.204

2 Introduced by Senators Lyons, Hooker, Hardy, Perchlik and Ram Hinsdale

3 Referred to Committee on Health and Welfare

4 Date: January 6, 2022

5 Subject: Health; health care facilities; birth centers; health insurance;

6 Medicaid; certificate of need

7 Statement of purpose of bill as introduced: This bill proposes to establish a
8 licensing structure for freestanding birth centers. It would also require
9 prenatal, maternity, postpartum, and newborn coverage under health insurance
10 plans and Medicaid to include birth center services and would specify that
11 birth centers are not subject to certificate of need review.

12 An act relating to licensure of freestanding birth centers

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 ~~1. 18 V.S.A. chapter 53 is added to read.~~

15 CHAPTER 53. BIRTH CENTER LICENSING

16 § 2351. DEFINITION

17 As used in this chapter, "birth center" means a facility.

18 ~~(1) that is not a hospital or part of a hospital.~~

1 ~~(2) at which births are planned to occur away from the pregnant~~
2 ~~individual's residence following a low-risk pregnancy; and~~

3 ~~(3) that provides prenatal, labor and delivery, or postpartum care, or a~~
4 ~~combination of these, as well as other related services in accordance with the~~
5 ~~scopes of practice of the health care professionals practicing at the birth center.~~

6 § 2352. LICENSE

7 No person shall establish, maintain, or operate a birth center in this State
8 without first obtaining a license for the birth center in accordance with this
9 chapter.

10 § 2353. APPLICATION; FEE

11 (a) An application for licensure of a birth center shall be made to the
12 Department of Health on forms provided by the Department and shall include
13 all information required by the Department.

14 (b)(1) Each application for a license shall be accompanied by a licensing
15 fee of \$300.00.

16 (2) Fees collected under this section shall be credited to the Hospital
17 Licensing Fees Special Fund and shall be available to the Department of
18 Health to offset the costs of licensing birth centers.

19 (c) Notwithstanding any provision of this chapter to the contrary, for an
20 application for renewal of a birth center's license, the Department of Health
21 shall deem a licensed birth center that is currently accredited by the

1 ~~Commission for the Accreditation of Birth Centers or by another accrediting~~
2 entity that complies with the national birth center standards published by the
3 American Association of Birth Centers as satisfying the requirements for
4 renewal of the birth center's license, upon submission of a copy of the birth
5 center's official accreditation certificate and payment of the application fee.

6 § 2354. LICENSE REQUIREMENTS

7 (a) Upon receipt of an application for a license and the licensing fee, the
8 Department of Health shall issue a license if it determines that the applicant
9 and the birth center facilities meet the following minimum standards:

10 (1) The applicant shall demonstrate the capacity to operate a birth center
11 in accordance with rules adopted by the Department.

12 (2) The applicant shall demonstrate that its facilities comply fully with
13 standards for health, safety, and sanitation as required by State law, including
14 standards set forth by the State Fire Marshal and the Department of Health,
15 and municipal ordinance.

16 (3) The applicant shall have a clear process for responding to patient
17 complaints.

18 (4) The applicant shall participate in the Patient Safety Surveillance and
19 Improvement System established pursuant to chapter 43A of this title.

1 ~~(5) The birth center facilities, including the buildings and grounds, shall~~
2 ~~be subject to inspection by the Department, its designees, and other authorized~~
3 ~~entities at all times.~~

4 ~~(b) A license is not transferable or assignable and shall be issued only for~~
5 ~~the premises and persons named in the application.~~

6 ~~§ 2355. REVOCATION OF LICENSE; HEARING~~

7 ~~The Department of Health, after notice and opportunity for hearing to the~~
8 ~~applicant or licensee, is authorized to deny, suspend, or revoke a license in any~~
9 ~~case in which it finds that there has been a substantial failure to comply with~~
10 ~~the requirements established under this chapter. Such notice shall be served by~~
11 ~~registered mail or by personal service, shall set forth the reasons for the~~
12 ~~proposed action, and shall set a date not less than 60 days from the date of the~~
13 ~~mailing or service on which the applicant or licensee shall be given~~
14 ~~opportunity for a hearing. After the hearing, or upon default of the applicant~~
15 ~~or licensee, the Department shall file its findings of fact and conclusions of~~
16 ~~law. A copy of the findings and decision shall be sent by registered mail or~~
17 ~~served personally upon the applicant or licensee. The procedure governing~~
18 ~~hearings authorized by this section shall be in accordance with the usual and~~
19 ~~customary rules provided for such hearings.~~

1 § 2356. APPEAL

2 Any applicant or licensee, or the State acting through the Attorney General,
3 aggrieved by the decision of the Department of Health after a hearing may,
4 within 30 days after entry of the decision as provided in section 2355 of this
5 title, appeal to the Superior Court for the district in which the appellant is
6 located. The court may affirm, modify, or reverse the Department's decision,
7 and either the applicant or licensee or the Department or State may appeal to
8 the Vermont Supreme Court for such further review as is provided by law.
9 Pending final disposition of the matter, the status quo of the applicant or
10 licensee shall be preserved, except as the court otherwise orders in the public
11 interest.

12 § 2357. INSPECTIONS

13 The Department of Health shall make or cause to be made such inspections
14 and investigations as it deems necessary. If the Department finds a violation as
15 the result of an inspection or investigation, the Department shall post a report
16 on the Department's website summarizing the violation and any corrective
17 action required.

18 § 2358. RECORDS

19 (a) Information received by the Department of Health through filed reports,
20 inspections, or as otherwise authorized by law shall.

1 (1) not be disclosed publicly in a manner that identifies or may lead to
2 the identification of one or more individuals or birth centers;

3 (2) be exempt from public inspection and copying under the Public
4 Records Act; and

5 (3) be kept confidential except as it relates to a proceeding regarding
6 licensure of a birth center.

7 (b) The provisions of subsection (a) of this section shall not apply to the
8 summary reports of violations required to be posted on the Department's
9 website pursuant to section 2357 of this chapter.

10 § 2359. RULES

11 The Department of Health shall adopt rules in accordance with 3 V.S.A.
12 chapter 25 as needed to carry out the purposes of this chapter. The rules shall
13 regulate birth centers in accordance with national birth center standards
14 published by the American Association of Birth Centers and may include
15 provisions regarding:

16 (1) the scope of services that may be provided at a birth center;

17 (2) appropriate staffing for a birth center, including the types of licensed
18 health care professionals who may practice at a birth center; and

19 (3) a requirement for written practice guidelines and policies that
20 include procedures for transferring a patient to a hospital if circumstances
21 warrant.

1 ~~Sec. 2. 18 V.S.A. § 4099d is amended to read:~~

2 § 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

3 (a) A health insurance plan or health benefit plan providing maternity
4 benefits shall also provide coverage:

5 (1) for services rendered by a midwife licensed pursuant to 26 V.S.A.
6 chapter 85 or an advanced practice registered nurse licensed pursuant to
7 26 V.S.A. chapter 28 who is certified as a nurse midwife for services within
8 the licensed midwife's or certified nurse midwife's scope of practice and
9 provided in a hospital, birth center, or other health care facility or at home; and

10 (2) for prenatal, maternity, postpartum, and newborn services provided
11 at a birth center licensed pursuant to 18 V.S.A. chapter 53.

12 * * *

13 Sec. 3. 18 V.S.A. § 9435 is amended to read:

14 § 9435. EXCLUSIONS

15 (a) Excluded from this subchapter are offices of physicians, dentists, or
16 other practitioners of the healing arts, meaning the physical places that are
17 occupied by such providers on a regular basis in which such providers perform
18 the range of diagnostic and treatment services usually performed by such
19 providers on an outpatient basis unless they are subject to review under
20 ~~subdivision 9434(a)(4) of this title. The exclusion provisions of this~~

1 ~~subsection shall also apply to birth centers licensed pursuant to chapter 53 of~~
2 ~~this title.~~

3 * * *

4 Sec. 4. AGENCY OF HUMAN SERVICES; MEDICAID; REQUEST FOR
5 FEDERAL APPROVAL

6 The Agency of Human Services shall seek approval from the Centers for
7 Medicare and Medicaid Services to allow Vermont Medicaid to cover prenatal,
8 maternity, postpartum, and newborn services provided at a licensed birth
9 center and to allow Vermont Medicaid to reimburse separately for birth center
10 services and for professional services.

11 Sec. 5. EFFECTIVE DATES

12 This act shall take effect on January 1, 2023, except that the Agency of
13 Human Services shall submit its request for approval of Medicaid coverage of
14 birth center services as set forth in Sec. 4 to the Centers for Medicare and
15 Medicaid Services on or before July 1, 2022, and the Medicaid coverage shall
16 begin on the later of the date of approval or January 1, 2023.

Sec. 1. 18 V.S.A. chapter 53 is added to read:

CHAPTER 53. BIRTH CENTER LICENSING

§ 2351. DEFINITION

As used in this chapter, "birth center" means a facility:

(1) that is not a hospital or part of a hospital;

(2) at which births are planned to occur away from the pregnant individual's residence following a low-risk pregnancy; and

(3) that provides prenatal, labor and delivery, or postpartum care, or a combination of these, as well as other related services in accordance with the scopes of practice of the health care professionals practicing at the birth center.

§ 2352. LICENSE

No person shall establish, maintain, or operate a birth center in this State without first obtaining a license for the birth center in accordance with this chapter.

§ 2353. APPLICATION; FEE

(a) An application for licensure of a birth center shall be made to the Department of Health on forms provided by the Department and shall include all information required by the Department.

(b)(1) Each application for a license shall be accompanied by a licensing fee of \$300.00.

(2) Fees collected under this section shall be credited to the Hospital Licensing Fees Special Fund and shall be available to the Department of Health to offset the costs of licensing birth centers.

(c) Notwithstanding any provision of this chapter to the contrary, for an application for renewal of a birth center's license, the Department of Health shall deem a licensed birth center that is currently accredited by the Commission for the Accreditation of Birth Centers or by another accrediting entity that complies with the national birth center standards published by the American Association of Birth Centers as satisfying the requirements for renewal of the birth center's license, upon submission of a copy of the birth center's official accreditation certificate and payment of the application fee.

§ 2354. LICENSE REQUIREMENTS

(a) Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines that the applicant and the birth center facilities meet the following minimum standards:

(1) The applicant shall demonstrate the capacity to operate a birth center in accordance with rules adopted by the Department.

(2) The applicant shall demonstrate that its facilities comply fully with standards for health, safety, and sanitation as required by State law, including standards set forth by the State Fire Marshal and the Department of Health, and municipal ordinance.

(3) The applicant shall have a clear process for responding to patient complaints.

(4) The applicant shall participate in the Patient Safety Surveillance and Improvement System established pursuant to chapter 43A of this title.

(5) The birth center facilities, including the buildings and grounds, shall be subject to inspection by the Department, its designees, and other authorized entities at all times.

(b) A license is not transferable or assignable and shall be issued only for the premises and persons named in the application.

§ 2355. REVOCATION OF LICENSE; HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to deny, suspend, or revoke a license in any case in which it finds that there has been a substantial failure to comply with the requirements established under this chapter. Such notice shall be served by registered mail or by personal service, shall set forth the reasons for the proposed action, and shall set a date not less than 60 days from the date of the mailing or service on which the applicant or licensee shall be given opportunity for a hearing. After the hearing, or upon default of the applicant or licensee, the Department shall file its findings of fact and conclusions of law. A copy of the findings and decision shall be sent by registered mail or served personally upon the applicant or licensee. The procedure governing hearings authorized by this section shall be in accordance with the usual and customary rules provided for such hearings.

§ 2356. APPEAL

Any applicant or licensee, or the State acting through the Attorney General, aggrieved by the decision of the Department of Health after a hearing may, within 30 days after entry of the decision as provided in section 2355 of this title, appeal to the Superior Court for the district in which the appellant is located. The court may affirm, modify, or reverse the Department's decision, and either the applicant or licensee or the Department or State may appeal to the Vermont Supreme Court for such further review as is provided by law. Pending final disposition of the matter, the status quo of the applicant or licensee shall be preserved, except as the court otherwise orders in the public interest.

§ 2357. INSPECTIONS

The Department of Health shall make or cause to be made such inspections and investigations as it deems necessary. If the Department finds a violation as the result of an inspection or investigation, the Department shall post a report on the Department's website summarizing the violation and any corrective action required.

§ 2358. RECORDS

(a) Information received by the Department of Health through filed reports, inspections, or as otherwise authorized by law shall:

(1) not be disclosed publicly in a manner that identifies or may lead to the identification of one or more individuals or birth centers;

(2) be exempt from public inspection and copying under the Public Records Act; and

(3) be kept confidential except as it relates to a proceeding regarding licensure of a birth center.

(b) The provisions of subsection (a) of this section shall not apply to the summary reports of violations required to be posted on the Department's website pursuant to section 2357 of this chapter.

§ 2359. RULES

The Department of Health shall adopt rules in accordance with 3 V.S.A. chapter 25 as needed to carry out the purposes of this chapter. The rules shall regulate birth centers in accordance with national birth center standards published by the American Association of Birth Centers and may include provisions regarding:

(1) the scope of services that may be provided at a birth center;

(2) appropriate staffing for a birth center, including the types of licensed health care professionals who may practice at a birth center; and

(3) a requirement for written practice guidelines and policies that include procedures for transferring a patient to a hospital if circumstances warrant.

Sec. 2. 8 V.S.A. § 4099d is amended to read:

§ 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

(a) A health insurance plan or health benefit plan providing maternity benefits shall also provide coverage:

(1) for services rendered by a midwife licensed pursuant to 26 V.S.A. chapter 85 or an advanced practice registered nurse licensed pursuant to 26 V.S.A. chapter 28 who is certified as a nurse midwife for services within the licensed midwife's or certified nurse midwife's scope of practice and provided in a hospital, birth center, or other health care facility or at home; and

(2) for prenatal, maternity, postpartum, and newborn services provided at a birth center licensed pursuant to 18 V.S.A. chapter 53.

* * *

Sec. 3. 18 V.S.A. § 9432 is amended to read:

§ 9432. DEFINITIONS

As used in this subchapter:

* * *

(15) “Freestanding birth center” has the same meaning as “birth center” in section 2351 of this title.

Sec. 4. 18 V.S.A. § 9434 is amended to read:

§ 9434. CERTIFICATE OF NEED; GENERAL RULES

(a) A health care facility other than a hospital shall not develop or have developed on its behalf a new health care project without issuance of a certificate of need by the Board. For purposes of this subsection, a “new health care project” includes the following:

* * *

(6) The construction, development, purchase, lease, or other establishment of an ambulatory surgical center or a freestanding birth center.

* * *

*Sec. 5. GREEN MOUNTAIN CARE BOARD; NEEDS ASSESSMENT;
HEALTH RESOURCE ALLOCATION PLAN; REPORT*

(a) In connection with its responsibility for developing and maintaining the State’s Health Resource Allocation Plan pursuant to 18 V.S.A. § 9405, the Green Mountain Care Board, in consultation with the Department of Health’s Maternal and Child Health Division and the Blueprint for Health’s Women’s Health Initiative, shall conduct an assessment of the need in this State for the obstetric and midwifery services offered by freestanding birth centers. The assessment shall include evaluating the need for the services in particular regions of the State and for certain populations of Vermont residents.

(b) On or before April 1, 2023, the Board shall provide to the House Committee on Health Care and the Senate Committee on Health and Welfare its findings and recommendations regarding the need for the services of freestanding birth centers in Vermont, along with a recommendation for whether persons seeking to establish a birth center should be required to obtain a certificate of need pursuant to 18 V.S.A. chapter 221, subchapter 5.

*Sec. 6. AGENCY OF HUMAN SERVICES; MEDICAID; REQUEST FOR
FEDERAL APPROVAL*

The Agency of Human Services shall seek approval from the Centers for Medicare and Medicaid Services to allow Vermont Medicaid to cover prenatal, maternity, postpartum, and newborn services provided at a licensed birth center and to allow Vermont Medicaid to reimburse separately for birth center services and for professional services.

Sec. 7. EFFECTIVE DATES

(a) Secs. 1 (18 V.S.A. chapter 53) and 2 (8 V.S.A. § 4099d) shall take effect on January 1, 2024.

(b) Secs. 3 and 4 (18 V.S.A. §§ 9432 and 9434) shall take effect on July 1, 2023.

(c) Sec. 5 (Green Mountain Care Board; needs assessment; Health Resource Allocation Plan; report) and this section shall take effect on passage.

(d) Sec. 6 (Agency of Human Services; Medicaid; request for federal approval) shall take effect on January 1, 2023 for Medicaid coverage beginning on January 1, 2024.