

S.18

Introduced by Senators Gulick, Clarkson, Hardy, Harrison, Plunkett, Watson,
Weeks, White and Williams

Referred to Committee on Health and Welfare

Date: January 22, 2025

Subject: Health; health care facilities; birth centers; certificate of need; health
insurance; Medicaid

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

An act relating to licensure of freestanding birth centers

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

~~Section 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;~~

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 \$250.00.

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 as satisfying the
2 requirements for renewal of the birth center's license, upon submission of a
3 copy of the birth center's official accreditation certificate and payment of the
4 application fee.

5 § 2354. LICENSE REQUIREMENTS

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

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

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

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

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

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

~~(c) A birth center may be independently owned and operated by a licensed or certified health care professional whose scope of practice includes the services offered by the birth center, including a midwife licensed under 26 V.S.A. chapter 85 and a nurse midwife certified under 26 V.S.A. chapter 28, subchapter 2.~~

~~(d) No person shall represent itself as a "birth center" or use the term "birth center" in its title or in its advertising, publications, or other form of communication unless the person has been licensed as a birth center in accordance with the provisions of this chapter.~~

§ 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~~

1 ~~hearings authorized by this section shall be in accordance with the usual and~~
2 customary rules provided for such hearings.

3 § 2356. APPEAL

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

14 § 2357. INSPECTIONS

15 The Department of Health shall make or cause to be made such inspections
16 and investigations as it deems necessary. If the Department finds a violation as
17 the result of an inspection or investigation, the Department shall post a report
18 on the Department's website summarizing the violation and any corrective
19 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 align the regulation of birth centers in Vermont with the 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

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

4 § 2360. NO EFFECT ON SCOPE OF SERVICES

5 Nothing in this chapter or in rules adopted pursuant to this chapter shall be
6 construed to limit the scope of the services that a licensed midwife, certified
7 nurse midwife, or other health care professional working within that health
8 care professional's scope of practice may offer or perform in a space that is
9 shared with or adjacent to a birth center.

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

11 § 4099d. MIDWIFERY COVERAGE; HOME BIRTHS

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

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

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

1 ~~Sec. 3. 18 V.S.A. § 9435(a) is amended to read.~~

2 (a) Excluded from this subchapter are offices of physicians, dentists, or
3 other practitioners of the healing arts, meaning the physical places that are
4 occupied by such providers on a regular basis in which such providers perform
5 the range of diagnostic and treatment services usually performed by such
6 providers on an outpatient basis unless they are subject to review under
7 subdivision 9434(a)(4) of this title. The exclusion provisions of this
8 subsection shall also apply to birth centers licensed pursuant to chapter 53 of
9 this title.

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

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

17 Sec. 5. EFFECTIVE DATES

18 This act shall take effect on January 1, 2026, except that the Agency of
19 Human Services shall submit its request for approval of Medicaid coverage of
20 ~~birth center services as set forth in Sec. 4 to the Centers for Medicare and~~

1 ~~Medicaid services on or before July 1, 2025, and the Medicaid coverage shall~~
2 ~~begin on the later of the date of approval or January 1, 2026.~~

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

CHAPTER 53. BIRTH CENTER LICENSING

§ 2351. DEFINITIONS

As used in this chapter:

(1) “Birth center” means a facility the primary purposes of which are to provide midwifery care, low-risk deliveries, and newborn care immediately after delivery, for a stay of generally less than 24 hours. The term does not include a facility that is a hospital, is part of a hospital, or is owned by a hospital; a facility that is an ambulatory surgical center; or the residence of the individual giving birth. A birth center may be located on the grounds of a hospital.

(2) “Certified nurse midwife” means a professional licensed in accordance with 26 V.S.A. chapter 28, subchapter 2.

(3) “Change of ownership” means a change in the majority or controlling interest in an established birth center to another person.

(4) “Corrective action plan” means a written strategy for correcting an issue of partial compliance, deficiency, or violation of this chapter or rules adopted pursuant to this chapter.

(5) “Licensed maternity care provider” means a licensed provider whose professional scope of practice, as established under Vermont law, includes preconception, prenatal, labor, birth, and postpartum care and early care of a newborn and who may be the primary attendant during the perinatal period.

(6) “Licensed midwife” means a professional licensed in accordance with 26 V.S.A. chapter 85.

(7) “Licensed provider” means an individual licensed or certified in Vermont to provide specific health care-related services within a scope of practice defined by licensing statutes and rules, and may include certified nurse midwives, licensed midwives, advanced practice registered nurses, physician assistants, naturopathic physicians with a childbirth endorsement in accordance with 26 V.S.A. §§ 4122(b) and 4125(b), doctors of nursing practice, and physicians.

§ 2352. LICENSE; PROHIBITIONS

(a) 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.

(b) A birth center may be independently owned and operated by a licensed maternity care provider.

(c) No person shall represent itself as a "birth center" or use the term "birth center" in its title or in its advertising, publications, or other form of communication unless the person has been licensed as a birth center in accordance with the provisions of this chapter.

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

§ 2353. APPLICATION; FEE

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

(b)(1) Each application for an initial license, renewal of a license, or a change of ownership shall be accompanied by a fee of \$250.00.

(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.

§ 2354. LICENSE REQUIREMENTS

Upon receipt of an application for a license and the licensing fee, the Department of Health shall issue a license if it determines, after an inspection conducted by the Department or its designee, that the applicant is able to operate a birth center in accordance with rules adopted by the Department.

§ 2355. REVOCATION OF LICENSE; HEARING

The Department of Health, after notice and opportunity for hearing to the applicant or licensee, is authorized to condition, 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 set forth in the rules adopted pursuant to section 2359 of this chapter and shall not be subject to the contested case provisions of 3 V.S.A. chapter 25, subchapter 2.

§ 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 appeal the decision in accordance with section 128 of this title. Pursuant to section 129 of this title, an appeal pursuant to this section shall not stay the effectiveness of an order entered in accordance with section 2355 of this chapter, but any party is permitted to seek a stay order in the Superior Court in which the appeal is being heard.

§ 2357. INSPECTIONS

(a) The Department of Health or its designee shall make or cause to be made such inspections and investigations as the Department or its designee deems necessary.

(b) A birth center, including its building and grounds and, in accordance with applicable law, its records, shall be subject to inspection by the Department and its designee at all times.

(c) If a birth center is found to be out of compliance with any requirement of this chapter or rules adopted pursuant to this chapter, the Department may condition, deny, suspend, revoke, or refuse to renew the birth center's license or may ask the birth center to develop and implement a corrective action plan.

(d) 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 be based on the national birth center standards published by the American Association of Birth Centers and shall, at a minimum, include provisions regarding:

(1) requirements for operating a birth center, including requirements for safety, sanitation, and health;

(2) obtaining, storing, and dispensing pharmaceuticals consistent with State and federal laws;

(3) requirements for notice to the Department of Health when there is a change in ownership of a birth center and any additional licensing requirements related to a change in ownership;

(4) the scope of services that may be provided at a birth center, including risk factors that preclude a patient from receiving labor and delivery services at a birth center;

(5) appropriate staffing for a birth center, including the types of licensed providers who may practice at a birth center;

(6) birth center complaint processes;

(7) birth center facility, equipment, and supply requirements, including requirements for the maintenance of safety, sanitation, and health;

(8) record retention and confidentiality;

(9) quality assurance and improvement;

(10) processes for the development, submission, approval, and implementation of corrective action plans; and

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

§ 2360. NO EFFECT ON SCOPE OF SERVICES

(a) Nothing in this chapter or in rules adopted pursuant to this chapter shall be construed to expand or limit the scope of the services that a licensed midwife, certified nurse midwife, or other provider may offer at a birth center or perform in a space that is shared with or adjacent to a birth center.

(b) A birth center may serve as a location for additional services offered in shared or adjacent spaces, including outpatient gynecologic care, primary care, and education and support services, provided that any licensed provider providing services in those spaces shall only provide those services that are within the licensed provider's authorized scope of practice.

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, including birth center facility fees.

* * *

Sec. 3. 18 V.S.A. § 9435(a) is amended to read:

(a) Excluded from this subchapter are offices of physicians, dentists, or other practitioners of the healing arts, meaning the physical places that are occupied by such providers on a regular basis in which such providers perform the range of diagnostic and treatment services usually performed by such providers on an outpatient basis unless they are subject to review under subdivision 9434(a)(4) of this title. The exclusion provisions of this subsection shall also apply to birth centers licensed pursuant to chapter 53 of this title.

Sec. 4. 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, including birth center facility fees, and for professional services.

Sec. 5. EFFECTIVE DATES

(a) Sec. 1 (birth center licensing) shall take effect on January 1, 2027 or the effective date of the birth center rules adopted by the Department of Health, whichever comes first.

(b) Sec. 2 (8 V.S.A. § 4099d) shall take effect on January 1, 2027.

(c) Sec. 3 (18 V.S.A. § 9435a) shall take effect on July 1, 2025.

(d) Sec. 4 (Agency of Human Services; Medicaid; request for federal approval) shall take effect on passage and the Agency of Human Services shall submit its request for approval of Medicaid coverage of birth center services to the Centers for Medicare and Medicaid Services on or before July 1, 2025, and the Medicaid coverage shall begin on the later of the date of approval or the effective date of the birth center rules adopted by the Department of Health.

(e) This section shall take effect on passage.