

An Act

ENROLLED SENATE
BILL NO. 1739

By: Thompson (Kristen) of the
Senate

and

McEntire of the House

An Act relating to birthing centers; amending 36 O.S. 2021, Section 6060.3, which relates to maternity benefits; modifying criteria for coverage of certain benefits; conforming language; defining term; amending 63 O.S. 2021, Section 1-701, as amended by Section 1, Chapter 117, O.S.L. 2023 (63 O.S. Supp. 2023, Section 1-701), which relates to hospitals; modifying definitions; conforming language; amending 63 O.S. 2021, Section 1-702a, which relates to voluntary licensing of birthing centers; eliminating license for birthing centers; providing certain construction; amending 63 O.S. 2021, Section 3129, which relates to Lily's Law; defining term; conforming language; updating statutory language; directing the Oklahoma Health Care Authority to seek certain federal approval; providing for codification; and providing an effective date.

SUBJECT: Birthing centers

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 2021, Section 6060.3, is amended to read as follows:

Section 6060.3. A. Every health benefit plan issued, amended, renewed or delivered in this state on or after July 1, 1996, that provides maternity benefits shall provide for coverage of:

1. A minimum of forty-eight (48) hours of inpatient care at a hospital, or a birthing center licensed as a hospital, following a vaginal delivery, for the mother and newborn infant after childbirth, except as otherwise provided in this section;

2. A minimum of ninety-six (96) hours of inpatient care at a hospital following a delivery by caesarean section for the mother and newborn infant after childbirth, except as otherwise provided in this section; and

3. a. Postpartum home care following a vaginal delivery if childbirth occurs at home or in a birthing center ~~licensed as a birthing center~~ that is not licensed as a hospital but that is accredited as a freestanding birth center by the Commission for the Accreditation of Birth Centers. The coverage shall provide for one home visit within forty-eight (48) hours of childbirth by a licensed health care provider whose scope of practice includes providing postpartum care. Visits shall include, at a minimum:

- (1) physical assessment of the mother and the newborn infant,
- (2) parent education, to include, but not be limited to:
 - (a) the recommended childhood immunization schedule,
 - (b) the importance of childhood immunizations, and
 - (c) resources for obtaining childhood immunizations,
- (3) training or assistance with breast or bottle feeding, and
- (4) the performance of any medically necessary and appropriate clinical tests.

b. At the discretion of the mother, visits may occur at the facility of the plan or the provider.

B. Inpatient care shall include, at a minimum:

1. Physical assessment of the mother and the newborn infant;

2. Parent education, to include, but not be limited to:

a. the recommended childhood immunization schedule,

b. the importance of childhood immunizations, and

c. resources for obtaining childhood immunizations;

3. Training or assistance with breast or bottle feeding; and

4. The performance of any medically necessary and appropriate clinical tests.

C. A plan may limit coverage to a shorter length of hospital inpatient stay for services related to maternity and newborn infant care provided that:

1. In the sole medical discretion or judgment of the attending physician licensed by the ~~Oklahoma~~ State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners or the certified nurse midwife licensed by the Oklahoma Board of Nursing providing care to the mother and to the newborn infant, it is determined prior to discharge that an earlier discharge of the mother and newborn infant is appropriate and meets medical criteria contained in the most current treatment standards of the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists that determine the appropriate length of stay based upon:

a. evaluation of the antepartum, intrapartum and postpartum course of the mother and newborn infant,

b. the gestational age, birth weight and clinical condition of the newborn infant,

- c. the demonstrated ability of the mother to care for the newborn infant ~~postdischarge~~ post-discharge, and
- d. the availability of ~~postdischarge~~ post-discharge follow-up to verify the condition of the newborn infant in the first forty-eight (48) hours after delivery.

A plan shall adopt these guidelines by July 1, 1996; and

2. The plan covers one home visit, within forty-eight (48) hours of discharge, by a licensed health care provider whose scope of practice includes providing postpartum care. The visits shall include, at a minimum:

- a. physical assessment of the mother and the newborn infant,
- b. parent education, to include, but not be limited to:
 - (1) the recommended childhood immunization schedule,
 - (2) the importance of childhood immunizations, and
 - (3) resources for obtaining childhood immunizations,
- c. training or assistance with breast or bottle feeding, and
- d. the performance of any medically necessary and clinical tests.

At the mother's discretion, visits may occur at the facility of the plan or the provider.

D. The plan shall include, but is not limited to, notice of the coverage required by this section in the evidence of coverage of the plan, and shall provide additional written notice of the coverage to the insured or an enrollee during the course of the prenatal care of the insured or enrollee.

E. In the event the coverage required by this section is provided under a contract that is subject to a capitated or global rate, the plan shall be required to provide supplementary reimbursement to providers for any additional services required by that coverage if it is not included in the capitation or global rate.

F. No health benefit plan subject to the provisions of this section shall terminate the services of, reduce capitation payments for, refuse payment for services, or otherwise discipline a licensed health care provider who orders care consistent with the provisions of this section.

G. As used in this section, ~~"health:~~

1. "Birthing center" has the same meaning as provided by Section 1-701 of Title 63 of the Oklahoma Statutes; and

2. "Health benefit plan" means any plan or arrangement as defined in subsection C of Section 6060.4 of this title.

H. The Insurance Commissioner shall promulgate any rules necessary to implement the provisions of this section.

SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-701, as amended by Section 1, Chapter 117, O.S.L. 2023 (63 O.S. Supp. 2023, Section 1-701), is amended to read as follows:

Section 1-701. For the purposes of Section 1-701 et seq. of this title:

1. "Hospital" means any institution, place, building or agency, public or private, whether organized for profit or not, primarily engaged in the maintenance and operation of facilities for the diagnosis, treatment or care of patients admitted for overnight stay or longer in order to obtain medical care, surgical care, obstetrical care, or nursing care for illness, disease, injury, infirmity, or deformity. Except as otherwise provided by paragraph 7 of this section, places where pregnant females are admitted and receive care incident to pregnancy, abortion or delivery shall be considered to be a ~~"hospital"~~ hospital within the meaning of this article, regardless of the number of patients received or the

duration of their stay. The term ~~"hospital"~~ hospital includes general medical surgical hospitals, specialized hospitals, critical access hospitals, emergency hospitals, and rural emergency hospitals, and but does not include birthing centers except to the extent a birthing center is licensed as a hospital;

2. "General medical surgical hospital" means a hospital maintained for the purpose of providing hospital care in a broad category of illness and injury;

3. "Specialized hospital" means a hospital maintained for the purpose of providing hospital care in a certain category, or categories, of illness and injury;

4. "Critical access hospital" means a hospital determined by the State Department of Health to be a necessary provider of health care services to residents of a rural community;

5. "Emergency hospital" means a hospital that provides emergency treatment and stabilization services on a twenty-four-hour basis that has the ability to admit and treat patients for short periods of time;

6. "Rural emergency hospital" means a hospital that provides emergency treatment and stabilization services for an average length of stay of twenty-four (24) hours or less;

7. "Birthing center" means any facility, place or institution, ~~which that~~ is maintained or established primarily for the purpose of providing services of a certified midwife or licensed medical doctor to assist or attend a woman in delivery and birth, and where a woman is scheduled in advance to give birth following a normal, uncomplicated, low-risk pregnancy. Such services are performed by:

- a. a licensed Advanced Practice Registered Nurse recognized by the Oklahoma Board of Nursing as a Certified Nurse-Midwife,
- b. a Certified Professional Midwife or Certified Midwife licensed under Section 3040.6 of Title 59 of the Oklahoma Statutes, or

c. a licensed allopathic or osteopathic physician.

Provided, however, licensure ~~for a birthing center~~ shall not be ~~compulsory~~ available or required for birthing centers unless the birthing center is a hospital, in which case the hospital shall be licensed as a hospital under Section 1-702 of this title;

8. "Day treatment program" means nonresidential, partial hospitalization programs, day treatment programs, and day hospital programs as defined by subsection A of Section 175.20 of Title 10 of the Oklahoma Statutes; and

9. a. "Primarily engaged" means a hospital shall be primarily engaged, defined by this section and as determined by the State Department of Health, in providing to inpatients the following care by or under the supervision of physicians:

(1) diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons, or

(2) rehabilitation services for the rehabilitation of injured, disabled or sick persons.

b. In reaching a determination as to whether an entity is primarily engaged in providing inpatient hospital services to inpatients of a hospital, the Department shall evaluate the total facility operations and consider multiple factors as provided in subparagraphs c and d of this ~~subsection~~ paragraph.

c. In evaluating the total facility operations, the Department shall review the actual provision of care and services to two or more inpatients, and the effects of that care, to assess whether the care provided meets the needs of individual patients by way of patient outcomes.

d. The factors that the Department shall consider for determination of whether an entity meets the

definition of primarily engaged include, but are not limited to:

- (1) a minimum of four inpatient beds,
 - (2) the entity's average daily census (ADC),
 - (3) the average length of stay (ALOS),
 - (4) the number of off-site campus outpatient locations,
 - (5) the number of provider-based emergency departments for the entity,
 - (6) the number of inpatient beds related to the size of the entity and the scope of the services offered,
 - (7) the volume of outpatient surgical procedures compared to the inpatient surgical procedures, if surgical services are provided,
 - (8) staffing patterns, and
 - (9) patterns of ADC by day of the week.
- e. Notwithstanding any other provision of this section, an entity shall be considered primarily engaged in providing inpatient hospital services to inpatients if the hospital has had an ADC of at least two (2) and an ALOS of at least two (2) midnights over the past twelve (12) months. A critical access hospital shall be exempt from the ADC and ALOS determination. ADC shall be calculated by adding the midnight daily census for each day of the twelve-month period and then dividing the total number by days in the year. A facility that has been operating for less than (12) months at the time of the survey shall calculate its ADC based on the number of months the facility has been operational, but not less than three (3) months. If a first survey finds noncompliance with the ADC and

ALOS, a second survey may be required by the Department to demonstrate compliance with state licensure.

SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-702a, is amended to read as follows:

Section 1-702a. A. ~~By January 1, 1992, the State Board of Health shall promulgate and adopt rules for the voluntary licensing of birthing centers~~ On and after the effective date of this act, the State Department of Health shall cease licensing birthing centers. No new license shall be issued, and no current license shall be renewed upon expiration. Provided, however, this subsection shall not be construed to exempt a hospital that operates a birthing center from the requirement to obtain a hospital license under Section 1-702 of this title.

B. The State ~~Board~~ Commissioner of Health shall promulgate rules establishing standards for day treatment programs other than those operated by community mental health centers.

SECTION 4. AMENDATORY 63 O.S. 2021, Section 3129, is amended to read as follows:

Section 3129. A. This section shall be known and may be cited as "Lily's Law".

B. As used in this section:

1. "Birthing center" has the same meaning as provided by Section 1-701 of this title;

2. "Fetal death" means:

- a. spontaneous death prior to the complete expulsion or extraction from its mother of an unborn child, irrespective of gestational age. The death is indicated by the fact that, after such expulsion or extraction, the unborn child does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles,

- b. death that occurs as the result of accidental trauma or a criminal assault on the pregnant female or her unborn child, irrespective of gestational age, or
- c. death that occurs, irrespective of gestational age, from the use or prescription of any instrument, medicine, drug or any other substance or device to remove an ectopic pregnancy; and

~~2.~~ 3. "Stillbirth" shall have the same meaning as provided by subparagraph a of paragraph 1 of this subsection.

C. Every licensed hospital, birthing center, or licensed medical facility in this state shall maintain a written policy for the disposition of the remains of a child from a stillbirth or fetal death event at such hospital, birthing center or medical facility. A parent of the child shall have the right to direct the disposition of the remains, except that disposition may be made by the hospital, birthing center or medical facility if no direction is given by a parent within fourteen (14) days following the delivery of the remains. The policy and the disposition shall comply with all applicable provisions of state and federal law. Upon the delivery of a child from a stillbirth or a fetal death event, the hospital, birthing center or medical facility shall notify at least one (1) parent of the parents' right to direct the disposition of the remains of the child and shall provide at least (1) one parent with a copy of its policy with respect to disposition.

D. Except as otherwise provided by law, nothing in this section shall be interpreted to prohibit any hospital, birthing center or medical facility from providing additional notification and assistance to the parent of a child delivered as a stillbirth or a fetal death event at the hospital, birthing center or medical facility relating to the disposition of the remains of the child.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5029.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, "birthing center" has the same meaning as provided by Section 1-701 of Title 63 of the Oklahoma Statutes.

B. The Oklahoma Health Care Authority shall seek federal approval to allow a birthing center that is not licensed by the state but has been accredited as a freestanding birth center by the Commission for the Accreditation of Birth Centers to receive reimbursement under the state Medicaid program for services provided.

SECTION 6. This act shall become effective November 1, 2024.

Passed the Senate the 4th day of March, 2024.

Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2024.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____