

1 **SENATE FLOOR VERSION**

2 February 15, 2024

3 SENATE BILL NO. 1739

By: Thompson (Kristen) of the
Senate

4 and

5 McEntire of the House
6

7
8 An Act relating to birthing centers; amending 36 O.S.
9 2021, Section 6060.3, which relates to maternity
benefits; modifying criteria for coverage of certain
10 benefits; conforming language; defining term;
amending 63 O.S. 2021, Section 1-701, as amended by
11 Section 1, Chapter 117, O.S.L. 2023 (63 O.S. Supp.
2023, Section 1-701), which relates to hospitals;
12 modifying definitions; conforming language; amending
63 O.S. 2021, Section 1-702a, which relates to
13 voluntary licensing of birthing centers; eliminating
license for birthing centers; providing certain
14 construction; amending 63 O.S. 2021, Section 3129,
which relates to Lily's Law; defining term;
15 conforming language; updating statutory language;
directing the Oklahoma Health Care Authority to seek
16 certain federal approval; providing for codification;
and providing an effective date.

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

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

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

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

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

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

19 (1) physical assessment of the mother and the newborn
20 infant,

21 (2) parent education, to include, but not be limited
22 to:

23 (a) the recommended childhood immunization
24 schedule,

1 (b) the importance of childhood immunizations,
2 and

3 (c) resources for obtaining childhood
4 immunizations,

5 (3) training or assistance with breast or bottle
6 feeding, and

7 (4) the performance of any medically necessary and
8 appropriate clinical tests.

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

11 B. Inpatient care shall include, at a minimum:

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

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

14 a. the recommended childhood immunization schedule,

15 b. the importance of childhood immunizations, and

16 c. resources for obtaining childhood immunizations;

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

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

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

23 1. In the sole medical discretion or judgment of the attending
24 physician licensed by the ~~Oklahoma~~ State Board of Medical Licensure

1 and Supervision or the State Board of Osteopathic Examiners or the
2 certified nurse midwife licensed by the Oklahoma Board of Nursing
3 providing care to the mother and to the newborn infant, it is
4 determined prior to discharge that an earlier discharge of the
5 mother and newborn infant is appropriate and meets medical criteria
6 contained in the most current treatment standards of the American
7 Academy of Pediatrics and the American College of Obstetricians and
8 Gynecologists that determine the appropriate length of stay based
9 upon:

- 10 a. evaluation of the antepartum, intrapartum and
11 postpartum course of the mother and newborn infant,
- 12 b. the gestational age, birth weight and clinical
13 condition of the newborn infant,
- 14 c. the demonstrated ability of the mother to care for the
15 newborn infant ~~postdischarge~~ post-discharge, and
- 16 d. the availability of ~~postdischarge~~ post-discharge
17 follow-up to verify the condition of the newborn
18 infant in the first forty-eight (48) hours after
19 delivery.

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

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

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

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

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

18 E. In the event the coverage required by this section is
19 provided under a contract that is subject to a capitated or global
20 rate, the plan shall be required to provide supplementary
21 reimbursement to providers for any additional services required by
22 that coverage if it is not included in the capitation or global
23 rate.
24

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

6 G. As used in this section, ~~“health:~~

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

9 2. “Health benefit plan” means any plan or arrangement as
10 defined in subsection C of Section 6060.4 of this title.

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

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

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

18 1. “Hospital” means any institution, place, building or agency,
19 public or private, whether organized for profit or not, primarily
20 engaged in the maintenance and operation of facilities for the
21 diagnosis, treatment or care of patients admitted for overnight stay
22 or longer in order to obtain medical care, surgical care,
23 obstetrical care, or nursing care for illness, disease, injury,
24 infirmity, or deformity. Except as otherwise provided by paragraph

1 7 of this section, places where pregnant females are admitted and
2 receive care incident to pregnancy, abortion or delivery shall be
3 considered to be a ~~"hospital"~~ hospital within the meaning of this
4 article, regardless of the number of patients received or the
5 duration of their stay. The term ~~"hospital"~~ hospital includes
6 general medical surgical hospitals, specialized hospitals, critical
7 access hospitals, emergency hospitals, and rural emergency
8 hospitals, ~~and~~ but does not include birthing centers except to the
9 extent a birthing center is licensed as a hospital;

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

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

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

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

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

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

10 a. a licensed Advanced Practice Registered Nurse
11 recognized by the Oklahoma Board of Nursing as a
12 Certified Nurse-Midwife,

13 b. a Certified Professional Midwife or Certified Midwife
14 licensed under Section 3040.6 of Title 59 of the
15 Oklahoma Statutes, or

16 c. a licensed allopathic or osteopathic physician.

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

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

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

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

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

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

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

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

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

- 3 (1) a minimum of four inpatient beds,
- 4 (2) the entity's average daily census (ADC),
- 5 (3) the average length of stay (ALOS),
- 6 (4) the number of off-site campus outpatient
7 locations,
- 8 (5) the number of provider-based emergency
9 departments for the entity,
- 10 (6) the number of inpatient beds related to the size
11 of the entity and the scope of the services
12 offered,
- 13 (7) the volume of outpatient surgical procedures
14 compared to the inpatient surgical procedures, if
15 surgical services are provided,
- 16 (8) staffing patterns, and
- 17 (9) patterns of ADC by day of the week.

18 e. Notwithstanding any other provision of this section,
19 an entity shall be considered primarily engaged in
20 providing inpatient hospital services to inpatients if
21 the hospital has had an ADC of at least two (2) and an
22 ALOS of at least two (2) midnights over the past
23 twelve (12) months. A critical access hospital shall
24 be exempt from the ADC and ALOS determination. ADC

1 shall be calculated by adding the midnight daily
2 census for each day of the twelve-month period and
3 then dividing the total number by days in the year. A
4 facility that has been operating for less than (12)
5 months at the time of the survey shall calculate its
6 ADC based on the number of months the facility has
7 been operational, but not less than three (3) months.
8 If a first survey finds noncompliance with the ADC and
9 ALOS, a second survey may be required by the
10 Department to demonstrate compliance with state
11 licensure.

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

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

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

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

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

8 B. As used in this section:

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

11 2. "Fetal death" means:

- 12 a. spontaneous death prior to the complete expulsion or
13 extraction from its mother of an unborn child,
14 irrespective of gestational age. The death is
15 indicated by the fact that, after such expulsion or
16 extraction, the unborn child does not breathe or show
17 any other evidence of life such as beating of the
18 heart, pulsation of the umbilical cord or definite
19 movement of voluntary muscles,
- 20 b. death that occurs as the result of accidental trauma
21 or a criminal assault on the pregnant female or her
22 unborn child, irrespective of gestational age, or
- 23 c. death that occurs, irrespective of gestational age,
24 from the use or prescription of any instrument,

1 medicine, drug or any other substance or device to
2 remove an ectopic pregnancy; and

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

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

20 D. Except as otherwise provided by law, nothing in this section
21 shall be interpreted to prohibit any hospital, birthing center or
22 medical facility from providing additional notification and
23 assistance to the parent of a child delivered as a stillbirth or a
24

1 fetal death event at the hospital, birthing center or medical
2 facility relating to the disposition of the remains of the child.

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

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

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

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

16 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
17 February 15, 2024 - DO PASS

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