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FREESTANDING BIRTH CENTERS

House Bill 5636 as introduced
Sponsor: Rep. Laurie Pohutsky
Committee: Health Policy
Complete to 11-14-24

SUMMARY:

House Bill 5636 would amend the Public Health Code to define and provide for the licensure of freestanding birth centers, which would provide midwifery care, reproductive and sexual health care, and newborn and postpartum care as described below. The bill would provide parameters for these facilities, prescribe licensing fees, and require the Department of Licensing and Regulatory Affairs (LARA) to develop and issue rules addressing them. The bill also would add new requirements to the code for determining the place of birth to be listed on a birth certificate under certain circumstances.

Freestanding birth centers

The bill would add Part 207 (Freestanding Birth Centers) to Article 17 (Facilities and Agencies) of the Public Health Code. The new part would require ***freestanding birth centers*** to be licensed under Article 17 and would prohibit use of the term "freestanding birth center" (or a similar term or abbreviation) to refer to any ***health facility or agency*** that is *not* licensed under Article 17.

Freestanding birth center would, for purposes of Article 17, be defined to mean a facility that provides (within the scope of practice of the applicable ***health care provider***) ***midwifery care*** for normal deliveries, well-person reproductive and sexual health care, extended postpartum care, and newborn care. A hospital or freestanding surgical outpatient facility, or a facility owned by and operated as part of a hospital or freestanding surgical outpatient facility, would not be considered a freestanding birth center under the bill.

Health facility or agency means any of the following:[1]

- An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.
- A county medical care facility.
- A freestanding surgical outpatient facility.
- A health maintenance organization.
- A home for the aged.
- A hospital.
- A nursing home.
- A facility or agency listed above that is located in a university, college, or other educational institution.
- A hospice or hospice residence.

[1] This is the current definition of the term *health facility or agency* as it applies to Article 17 of the code. The bill would add *freestanding birth centers* to this definition. Section 20115 of the code contains additional relevant provisions: https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-333-20115

Midwifery care would mean either of the following:

- Maternity care provided to women and neonates during the periods before, during, and after birth by a *midwife* licensed under Part 171 of the code that is consistent with the midwife's training, education, and experience.[2]
- The practice of nursing by a *certified nurse midwife* (someone licensed as a registered professional nurse under Part 172 of the code who has been granted a specialty certification in the health profession specialty field of nurse midwifery by the Michigan Board of Nursing under section 17210).[3]

Health care provider would mean any of the following as licensed under the code:

- A physician.
- A physician's assistant.
- A certified nurse midwife.
- A midwife.

Freestanding birth centers would be subject to a $2,000 initial licensure application fee for each initial license and an annual $500 fee for each facility license.

A freestanding birth center would not have to get a certificate of need under the code.

Duties, responsibilities, requirements

A freestanding birth center would have to provide quality perinatal care[4] that promotes physiologic birth (commonly called natural birth), including at least all of the following:

- Respectful, supportive care during labor, for which the patient has provided consent.
- Minimization of stress-inducing stimuli.
- Freedom of movement.
- Oral intake, as appropriate.
- Availability of nonpharmacologic pain relief methods.
- Regular and appropriate assessment of the patient and fetus throughout labor.

A freestanding birth center would have to ensure all of the following:

- That the following information is provided to a patient at the start of care:
  - A written description of the training, philosophy of practice, qualifications, and license or specialty certification of a health care provider employed by or under contract with the facility.
  - A written description of the facility's patient practice policies.
  - Whether a complaint process is available for state and national credentialing organizations for a health care provider employed by or under contract with the facility.
- That a patient is notified of each health care provider in the facility who maintains a malpractice liability insurance policy and of each one who does not.
- That a health care provider is present or available to a patient at all times when the patient is admitted to facility and until the patient and the newborn are determined to be clinically stable, based on criteria established by the facility.

[2] Part 171: https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-368-1978-15-171.
[3] Part 172: https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-368-1978-15-172
[4] Care addressing the time immediately before and after birth.

- That a health care provider monitors the progress of a patient's labor and the condition of the patient and fetus or newborn at intervals established in the facility's policies and procedures.
- That at least two individuals are on the premises and immediately available during a delivery who meet both of the following:
    - They are certified in basic life support from the American Heart Association (AHA) or an equivalent organization as determined by LARA.
    - They are certified in neonatal resuscitation from the AHA, the American Academy of Pediatrics, or an equivalent organization as determined by LARA.
- That services are provided in a community setting with adequate space for furnishings, equipment, supplies, and accommodations for patients and the families of patients.
- That both of the following are always available to a patient at any time of day or night:
    - Consultation by telephone with a health care provider.
    - Intrapartum care provided by an on-call health care provider or other personnel.
- That a program for follow-up care and postpartum evaluation is planned for each patient.
- That a patient is not discharged until they are clinically stable and have met discharge criteria established by the facility.

A freestanding birth center would have to have the personnel and equipment necessary to ensure patient safety, meet the demands for services that are routinely provided in the facility, provide coverage during an emergency or periods of high demand, and respond to potential patient health emergencies, including at least basic life support, neonatal resuscitation, and the initial management of postpartum complications.

The owner, operator, and governing body of a freestanding birth center would be responsible for the operation of the facility, the selection of health care providers, and the quality of care provided, including requiring that health care providers and other facility employees are appropriately licensed or registered. As appropriate given the facility's size and caseload, they would have to ensure that there are enough health care providers to maintain safety and quality of care and that those providers have the qualifications, training, and skills necessary to meet both patient needs and the operational needs of the facility.

Limitations

A freestanding birth center could not do any of the following:

- Use general or regional anesthesia (including epidural anesthesia). However, local anesthesia, nitrous oxide, and other forms of pain relief could be administered at the facility as long as all of the following are met:
    - A health care provider determines it to be clinically necessary.
    - A health care provider administers it within their scope of practice.
    - It is used in accordance with the facility's policies and procedures and the professionally recognized standards of practice described in section 20727 of the code.
- Use pharmacologic agents during the delivery of a placenta and in the postpartum period.
- Perform surgical procedures, other than episiotomies, repairs of perineal lacerations, circumcisions, newborn frenulum revisions, or any other surgical procedure authorized by LARA by rule.

- Use vacuum extractors or vaginal forceps.
- Allow a patient to deliver at the facility if any of the following limiting factors apply:
    - Fetal gestation is less than 36 weeks and 0 days.
    - Labor has not started before fetal gestation of 42 weeks and 1 day.
    - The clinical needs of the patient fall outside the scope of practice of a health care provider at the facility.
    - Any other limiting factor established by LARA by rule.

However, a patient who meets a limiting factor described above could be allowed to deliver at the facility if there is not enough time before the birth to transfer them to a hospital.

Plans and policies

A freestanding birth center would have to have a plan to identify needs caused by *social determinants of health* (the social and economic conditions that influence individual and group differences in health status) and to refer a patient, with their consent, to a *support service* (such as a food assistance program, counseling service, early childhood development resource, housing assistance program, or intimate partner violence support group) to address their needs.

A freestanding birth center would have to develop, implement, and enforce written policies and procedures for its operations and make them available to health care providers and others employed by or under contract with the facility. All of the following would apply to those policies and procedures:

- They would have to be administered in a way that provides for quality health care services in a safe environment.
- They would have to identify a process for hiring, credentialing, and training staff.
- They would have to uphold the right of a patient to informed consent and to refuse treatment at every stage of care.
- They would have to include a process that health care providers employed by or under contract with the facility would have to comply with when doing any of the following:
    - Referring a patient to services that the freestanding birth center does not directly provide, such as outside laboratory testing services, lactation support services, and childbirth education.
    - Consulting with another health care provider.
    - Referring a patient to another health care provider.
    - With the patient's informed consent, transferring the care of a patient to another health care provider.
    - Initiating patient transport when needed through 9-1-1, an ambulance operation, or another means.

A freestanding birth center also would have to develop policies and procedures for assessing a patient seeking perinatal care to determine whether it is appropriate for the patient to deliver at the facility (see the description of limiting factors under "Limitations," above).

Immunizations and testing

A freestanding birth center would have to recommend that health care providers and other personnel employed by or under contract with the facility receive an annual vaccination against influenza and recommend that they are fully vaccinated against COVID-19. Upon request, the facility would have to provide evidence of immunization, evidence of positive titer result, or

documentation of refusal for health care providers and other personnel employed by or under contract with the facility for rubella, Tdap, hepatitis B, and varicella. A freestanding birth center would have to conduct tuberculosis testing before employing or entering into a contract with an individual who will work there.

Departmental rules and limitations

LARA, in consultation with representatives of all of the following, would have to develop and issue rules to implement the bill:

- Freestanding birth centers.
- The Michigan Affiliate of the American College of Nurse-Midwives.
- The Michigan Midwives Association.
- The Michigan Board of Nursing.
- The Michigan Board of Licensed Midwifery.
- The State of Birth Justice.

The rules would have to include professionally recognized standards of practice based on standards issued by the following entities:

- The American Association of Birth Centers.
- The American College of Nurse-Midwives.
- The National Association of Certified Professional Midwives.

If any of the above entities revise their standards after the bill takes effect, LARA would have to take notice of the revision and could, in consultation with entities in either bulleted list above, develop and issue rules to incorporate by reference any revision.

The rules described above also would have to include limiting factors that, when present, would preclude a patient from delivering at the freestanding birth center because the patient is not considered a patient with a normal delivery. The rules also would have to allow a freestanding birth center to develop policies that include additional limiting factors to preclude delivery at the facility.

LARA could not require a freestanding birth center to do either of the following:

- Maintain a collaborative agreement with another health facility or agency or with a health care provider who is not employed by or under contract with a freestanding birth center.
- Provide care other than midwifery care.

Determination of place of birth

Finally, the bill would provide that, when a live birth occurs in this state, the place of birth must be listed on the birth certificate as follows:

- If the live birth occurs in or on the way to an ***institution***, the place of birth must be listed as the institution.
- If the live birth occurs in or on the way to a freestanding birth center, the place of birth must be listed as the freestanding birth center.
- If the live birth occurs in a home, the place of birth must be listed as "home."

Institution means a public or private establishment that provides inpatient medical, surgical, or diagnostic care or treatment or nursing, custodial, or domiciliary care to

two or more unrelated individuals, including an establishment to which individuals are committed by law.

However, the above provisions would not apply to a child of unknown parentage who is found.

MCL 333.2811 et seq. and proposed MCL 333.20701 et seq.

FISCAL IMPACT:

House Bill 5636 would have an indeterminate net fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would create a new licensure classification for freestanding birth centers and would require the assessment of a $2,000 initial license fee followed by a $500 annual assessment. LARA would likely experience a revenue increase from the collected assessments, which would depend on the number of centers seeking licensure. Preliminary estimates from LARA indicate that the department would likely incur modest costs under the bill. The department estimates that staffing costs of $75,000 and one-time IT costs of $360,000 would be incurred.

The bill would also have an indeterminate fiscal impact on local units of government. Under section 20199 of the Public Health Code, a person who violates provisions of the bill would be guilty of a misdemeanor punishable by a fine of not more than $1,000 for each day the violation continues. The number of violations that would result from this bill is unknown. The fiscal impact on local court systems would depend on how provisions of the bill affect court caseloads and related administrative costs. It is difficult to project the actual fiscal impact to courts, due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

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