

A bill for an act

relating to health; establishing licensure for birthing centers; limiting liability for hospitals and physicians in certain situations; establishing fees; designating licensed birthing centers as essential community providers; amending Minnesota Statutes 2008, sections 62Q.19, subdivision 1; 256B.0625, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 144.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **INTENT.**

Nothing in sections 2 to 6 requires a pregnant woman enrolled in medical assistance to deliver at a birthing center.

Sec. 2. Minnesota Statutes 2008, section 62Q.19, subdivision 1, is amended to read:

Subdivision 1. **Designation.** (a) The commissioner shall designate essential community providers. The criteria for essential community provider designation shall be the following:

(1) a demonstrated ability to integrate applicable supportive and stabilizing services with medical care for uninsured persons and high-risk and special needs populations, underserved, and other special needs populations; and

(2) a commitment to serve low-income and underserved populations by meeting the following requirements:

(i) has nonprofit status in accordance with chapter 317A;

(ii) has tax exempt status in accordance with the Internal Revenue Service Code, section 501(c)(3);

(iii) charges for services on a sliding fee schedule based on current poverty income guidelines; and

(iv) does not restrict access or services because of a client's financial limitation;

(3) status as a local government unit as defined in section 62D.02, subdivision 11, a hospital district created or reorganized under sections 447.31 to 447.37, an Indian tribal government, an Indian health service unit, or a community health board as defined in chapter 145A;

(4) a former state hospital that specializes in the treatment of cerebral palsy, spina bifida, epilepsy, closed head injuries, specialized orthopedic problems, and other disabling conditions; ~~or~~

(5) a sole community hospital. For these rural hospitals, the essential community provider designation applies to all health services provided, including both inpatient and outpatient services. For purposes of this section, "sole community hospital" means a rural hospital that:

(i) is eligible to be classified as a sole community hospital according to Code of Federal Regulations, title 42, section 412.92, or is located in a community with a population of less than 5,000 and located more than 25 miles from a like hospital currently providing acute short-term services;

(ii) has experienced net operating income losses in two of the previous three most recent consecutive hospital fiscal years for which audited financial information is available; and

(iii) consists of 40 or fewer licensed beds; or

(6) a birthing center licensed under section 144.566.

(b) Prior to designation, the commissioner shall publish the names of all applicants in the State Register. The public shall have 30 days from the date of publication to submit written comments to the commissioner on the application. No designation shall be made by the commissioner until the 30-day period has expired.

(c) The commissioner may designate an eligible provider as an essential community provider for all the services offered by that provider or for specific services designated by the commissioner.

(d) For the purpose of this subdivision, supportive and stabilizing services include at a minimum, transportation, child care, cultural, and linguistic services where appropriate.

Sec. 3. [144.566] BIRTHING CENTERS.

Subdivision 1. **Definition.** For purposes of this section, "birthing center" means a health care facility that is licensed for the primary purpose of performing low-risk deliveries and that is not a hospital or in a hospital and where births are planned to occur away from the mother's usual residence following a normal uncomplicated pregnancy.

3.1 Subd. 2. **License required.** (a) No person may establish, conduct, or maintain a
3.2 birthing center without first obtaining a license from the commissioner of health according
3.3 to this section. The license is effective for one year following the date of issuance.

3.4 (b) A license issued under this section is not transferable or assignable and is subject
3.5 to suspension or revocation at any time for failure to comply with this section.

3.6 (c) A birthing center licensed under this section shall not assert, represent, offer,
3.7 provide, or imply that the center is rendering or may render care or services other than the
3.8 services it is permitted to render within the scope of the license issued.

3.9 (d) The license must be conspicuously posted in an area where patients are admitted.

3.10 Subd. 3. **Application.** An application for a license to operate a birthing center and
3.11 the applicable fee under subdivision 6 must be submitted to the commissioner on a form
3.12 provided by the commissioner and must contain:

3.13 (1) the name of the applicant;

3.14 (2) the location of the birthing center;

3.15 (3) the name of the person in charge of the center;

3.16 (4) documentation that the standards described under subdivision 5 have been
3.17 met; and

3.18 (5) any other information the commissioner deems necessary.

3.19 Subd. 4. **Suspension, revocation, and refusal to renew.** The commissioner may
3.20 refuse to grant or renew, or may suspend or revoke, a license on any of the grounds
3.21 described under section 144.55, subdivision 6, and the applicant or licensee is entitled to
3.22 notice and a hearing as described under section 144.55, subdivision 7.

3.23 Subd. 5. **Standards for licensure.** To be eligible for licensure under this section,
3.24 a birthing center must meet the following requirements:

3.25 (1) a governing body or person must be clearly identified as being legally responsible
3.26 for setting policies and procedures and ensuring that they are implemented;

3.27 (2) care must be provided by a physician, advanced practice registered nurse, or
3.28 licensed traditional midwife during labor, birth, and puerperium; and

3.29 (3) all standards for a licensed birthing center set out by the commissioner in
3.30 Minnesota Rules.

3.31 Subd. 6. **Fees.** The annual license fee for a birthing center is \$..... and shall be
3.32 collected and deposited according to section 144.122. The commissioner may adjust the
3.33 annual license fee for the first four years of the licensing program to include the costs
3.34 of rulemaking required under this section.

Subd. 7. **Inspections.** The commissioner shall annually conduct an inspection of each licensed birthing center for the purpose of determining compliance with this section and any rules adopted under subdivision 8.

Subd. 8. **Rules.** (a) The commissioner must adopt rules to establish standards for licensing birthing centers by July 1, 2010, and may adopt any other rules necessary to implement this section.

(b) In adopting rules for birthing centers, the commissioner must consider the American Association of Birth Centers standards for freestanding birth centers; the American Academy of Pediatrics/American College of Obstetricians and Gynecologists guidelines for perinatal care; the American College of Nurse-Midwives standards; and the American Public Health Association guidelines.

Sec. 4. **[144.567] INTEROPERABLE ELECTRONIC HEALTH RECORDS.**

Birthing centers licensed under section 144.566 must have in place an interoperable electronic health records system that is compliant with the requirements of section 62J.495.

Sec. 5. **[144.568] LIMITED LIABILITY FOR HOSPITAL TRANSFERS.**

Subdivision 1. **Hospital liability is limited.** A hospital licensed under section 144.55 that receives a patient transferred from a birthing center, as defined in section 144.566, due to complications of labor or delivery is not liable for acts or omissions that occurred at the birthing center prior to the transfer of the patient to the hospital. A hospital is liable to a patient who is transferred from a birthing center for damages not to exceed \$1,000,000.

Subd. 2. **Physician liability is limited.** A licensed physician who receives a patient transferred to a hospital from a birthing center, as defined in section 144.566, due to complications of labor or delivery is not liable for acts or omissions that occurred at the birthing center prior to the transfer of the patient to the physician's care.

Subd. 3. **Birthing center liability.** Nothing in this section limits the liability of a birthing center, as defined in section 144.566.

Sec. 6. Minnesota Statutes 2008, section 256B.0625, is amended by adding a subdivision to read:

Subd. 53. **Services provided in birthing centers.** Medical assistance covers services provided by a birthing center licensed under section 144.566. The commissioner of human services shall apply for any necessary waiver from the Centers for Medicare and Medicaid Services to allow birthing centers to be reimbursed.