

117TH CONGRESS
1ST SESSION

S. 1716

To require the Secretary of Health and Human Services to establish a Medicaid demonstration program to develop and advance innovative payment models for freestanding birth center services for women with a low-risk pregnancy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 19, 2021

Mr. LUJÁN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To require the Secretary of Health and Human Services to establish a Medicaid demonstration program to develop and advance innovative payment models for freestanding birth center services for women with a low-risk pregnancy, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Birth Access Bene-
5 fitting Improved Essential Facility Services Act” or the
6 “BABIES Act”.

1 **SEC. 2. MEDICAID DEMONSTRATION PROGRAM TO IM-**
 2 **PROVE FREESTANDING BIRTH CENTER SERV-**
 3 **ICES.**

4 Section 1903 of the Social Security Act (42 U.S.C.
 5 1396b) is amended by adding at the end the following:

6 “(cc) DEMONSTRATION PROGRAM TO IMPROVE
 7 FREESTANDING BIRTH CENTER SERVICES.—

8 “(1) AUTHORITY.—The Secretary shall estab-
 9 lish a demonstration program for the purpose of
 10 identifying ways to improve access to, and the qual-
 11 ity and scope of, freestanding birth center services
 12 for women with a low-risk pregnancy.

13 “(2) DEADLINES FOR CENTERS PARTICIPATION
 14 CRITERIA, PROSPECTIVE PAYMENT SYSTEM; PLAN-
 15 NING GRANTS.—

16 “(A) PARTICIPATION AND PROSPECTIVE
 17 PAYMENT SYSTEM DEADLINE.—Not later than
 18 one year after the date of the enactment of this
 19 subsection, the Secretary shall do the following:

20 “(i) PUBLICATION OF PARTICIPATION
 21 CRITERIA FOR FREESTANDING BIRTH CEN-
 22 TERS.—

23 “(I) IN GENERAL.—Publish cri-
 24 teria for a freestanding birth center to
 25 be certified by a State for purposes of
 26 participating in a State demonstration

1 program conducted under this sub-
2 section.

3 “(II) REQUIREMENTS.—The cri-
4 teria required to be published under
5 subclause (I) shall include the fol-
6 lowing:

7 “(aa) ACCREDITATION.—A
8 freestanding birth center must
9 have a current accreditation cre-
10 dential from an approved nation-
11 ally recognized birth center ac-
12 creditation body, as determined
13 by the Secretary.

14 “(bb) LICENSURE AND
15 OTHER REQUIREMENTS.—A free-
16 standing birth center shall—

17 “(AA) be licensed, or
18 otherwise approved, by the
19 State to provide prenatal,
20 labor and delivery, postpar-
21 tum, newborn care, and
22 other ambulatory services
23 that are included in the
24 State Medicaid program;
25 and

1 “(BB) comply with
2 such other requirements re-
3 lating to the health and
4 safety of individuals who re-
5 ceive services furnished by
6 the facility as the State shall
7 establish.

8 “(cc) CARE COORDINA-
9 TION.—A freestanding birth cen-
10 ter shall be able to meet care co-
11 ordination requirements, includ-
12 ing requirements to coordinate
13 care across settings and pro-
14 viders to ensure seamless transi-
15 tions for patients across the full
16 spectrum of health services, and
17 engage in consultation for higher
18 level maternity care services,
19 non-maternity care services, and
20 behavioral health needs, and
21 which may include plans for con-
22 sultation, collaboration and refer-
23 ral, and arrangements with the
24 following:

1 “(AA) Federally-quali-
2 fied health centers (and as
3 applicable, rural health clin-
4 ics) to provide Federally-
5 qualified health center serv-
6 ices (and as applicable, rural
7 health clinic services) to the
8 extent such services are not
9 provided directly through
10 the birth center.

11 “(BB) Other outpatient
12 clinics, including licensed
13 midwifery and physician
14 practices.

15 “(CC) Inpatient acute
16 care facilities with obstet-
17 rical care units.

18 “(dd) SCOPE OF SERV-
19 ICES.—As determined by the Sec-
20 retary, a freestanding birth cen-
21 ter must be able to provide
22 peripartum care for women with
23 a low-risk pregnancy and for
24 newborns, consistent with evi-
25 dence-based guidelines.

1 “(ee) CAPABILITIES.—A
2 freestanding birth center shall
3 have the following:

4 “(AA) The capability
5 and equipment to provide
6 prenatal, labor and delivery,
7 postpartum, and newborn
8 care for women with a low-
9 risk pregnancy, readiness at
10 all times to initiate emer-
11 gency procedures to meet
12 unexpected needs of such
13 women and of newborns
14 within the center, including
15 at least 2 qualified staff on-
16 site at every birth, and the
17 ability to facilitate transport
18 to an acute care hospital
19 with an obstetrical care unit
20 when necessary.

21 “(BB) An established
22 transfer plan with a receiv-
23 ing hospital with an obstet-
24 rical care unit with policies

1 and procedures for timely
2 transport.

3 “(CC) Medical con-
4 sultation available from a li-
5 censed board-certified physi-
6 cian with admitting privi-
7 leges in obstetrics at a near-
8 by hospital.

9 “(DD) Data collection,
10 storage, and retrieval, in-
11 cluding data on intrapartum
12 and postpartum maternal
13 and newborn transfer rates
14 and hospital admissions.

15 “(EE) The ability to
16 initiate and document qual-
17 ity improvement programs
18 as required by accreditation
19 that include efforts to maxi-
20 mize patient safety, such as
21 safety checklists, validated
22 training and competency of
23 staff, and emergency pre-
24 paredness and drills.

1 Nothing in subitem (AA) shall be
2 construed as affecting the State
3 plan requirement specified under
4 section 431.53 of title 42, Code
5 of Federal Regulations, or any
6 successor regulation (relating to
7 assurance of transportation).

8 “(ff) HEALTH CARE PRO-
9 VIDERS.—A freestanding birth
10 center must employ or have care
11 delivery arrangements with both
12 of the following:

13 “(AA) A physician or
14 physicians licensed to prac-
15 tice within the State or ju-
16 risdiction of the birth center.

17 “(BB) A midwife or
18 midwives that meet or ex-
19 ceed the education and
20 training standards of the
21 International Confederation
22 of Midwives and who are li-
23 censed to practice within the
24 jurisdiction of the birth cen-
25 ter.

1 “(gg) NON-DUPLICATION.—

2 In carrying out this subsection,
 3 the Secretary shall, to the great-
 4 est extent practicable, prevent
 5 the duplication of services cov-
 6 ered under this subsection with
 7 services otherwise covered under
 8 the State plan under this title
 9 and prevent payment under a
 10 demonstration program under
 11 paragraph (3) for services for
 12 which payment is otherwise made
 13 under the State plan under this
 14 title.

15 “(ii) GUIDANCE ON DEVELOPMENT OF
 16 PROSPECTIVE PAYMENT SYSTEM FOR
 17 TESTING UNDER STATE DEMONSTRATION
 18 PROGRAMS.—

19 “(I) IN GENERAL.—The Sec-
 20 retary shall issue guidance for States
 21 participating in a demonstration pro-
 22 gram conducted under paragraph (3)
 23 to establish a prospective payment
 24 system that shall only apply to free-
 25 standing birth center services that

1 meet the criteria established under
2 clause (i) furnished by a freestanding
3 birth center participating in such
4 demonstration program.

5 “(II) REQUIREMENTS.—The
6 guidance issued by the Secretary
7 under subclause (I) shall, to the
8 greatest extent practicable, provide
9 for—

10 “(aa) partial facility pay-
11 ment based on units in the case
12 that a pregnant woman is admit-
13 ted in labor and then needs to be
14 transferred to the hospital in
15 labor before the birth of the
16 baby;

17 “(bb) facility payment for
18 observation short stays to rule
19 out labor or for therapeutic rest;

20 “(cc) ensuring payment for
21 the newborn and mother as two
22 facility payment components;

23 “(dd) ensuring payment for
24 nitrous oxide and hydrotherapy
25 supplies costs for pain relief;

1 “(ee) ensuring payment for
2 all professional services of health
3 professionals involved in the de-
4 livery of care in a birth center
5 which may include 3 or more of-
6 fice visits; observation and triage;
7 newborn exam and care; and
8 multiple postpartum, mother, and
9 baby visits, as needed;

10 “(ff) ensuring payment for
11 partial prenatal and postpartum
12 care episodes or for prenatal care
13 only with planned delivery in the
14 hospital and client returning for
15 postpartum care in the birth cen-
16 ter; and

17 “(gg) payment for services
18 provided within—

19 “(AA) in the case of a
20 pregnant woman, the period
21 that commences upon the
22 confirmation of pregnancy
23 when the woman is accepted
24 into care at the freestanding
25 birth center, continues

1 through prenatal care, labor
 2 and delivery, and ends 60
 3 days postpartum, inclusive
 4 of at least 2 postpartum
 5 care visits; and

6 “(BB) in the case of a
 7 newborn, a period that con-
 8 tinues through the first 28
 9 days of life.

10 “(B) PLANNING GRANTS.—

11 “(i) IN GENERAL.—Not later than 18
 12 months after the date of the enactment of
 13 this subsection, the Secretary shall award
 14 planning grants to States for the purpose
 15 of developing proposals to conduct a dem-
 16 onstration program described in paragraph
 17 (3).

18 “(ii) USE OF FUNDS.—A State award-
 19 ed a planning grant under this subpara-
 20 graph shall use the funds awarded under
 21 such grant to—

22 “(I) solicit input with respect to
 23 the development of the demonstration
 24 program from patients, providers (in-

cluding certified nurse-midwives and
physicians) and other stakeholders;

“(II) secure participation of free-
standing birth centers that meet the
criteria established under subpara-
graph (A)(i), including by providing
support for such centers to meet that
criteria in order to maximize the num-
ber of freestanding birth centers par-
ticipating in the demonstration pro-
gram; and

“(III) in accordance with the
guidance issued under subparagraph
(A)(ii), establish a prospective pay-
ment system which States must use
for making payments to freestanding
birth centers participating in the dem-
onstration program.

“(3) STATE DEMONSTRATION PROGRAMS.—

“(A) IN GENERAL.—Not later than 24
months after the date of the enactment of this
subsection, from among the States awarded a
planning grant under paragraph (2)(B), the
Secretary shall select not more than 6 such

1 States to conduct demonstration programs that
2 meet the requirements of this paragraph.

3 “(B) APPLICATION REQUIREMENTS.—

4 “(i) IN GENERAL.—The Secretary
5 shall solicit applications to conduct a dem-
6 onstration program under this subsection
7 from States awarded planning grants
8 under paragraph (2)(B).

9 “(ii) REQUIRED INFORMATION.—A
10 State application to conduct a demonstra-
11 tion program under this paragraph shall
12 include the following:

13 “(I) A description of the target
14 Medicaid population to be served
15 under the demonstration program.

16 “(II) A list of the participating
17 freestanding birth centers in the
18 State.

19 “(III) Verification that each par-
20 ticipating freestanding birth center
21 meets the participation criteria estab-
22 lished in paragraph (2)(A)(i).

23 “(IV) A description of the scope
24 of the freestanding birth center serv-
25 ices available under the State Med-

1 icaid program for women with a low-
2 risk pregnancy that will be paid for
3 under the prospective payment system
4 tested in the demonstration program.

5 “(V) Verification that the State
6 has agreed to pay for such services at
7 the rate established under the pro-
8 spective payment system.

9 “(VI) An assurance that the
10 State will require freestanding birth
11 centers to submit to the State, and
12 that the State will submit to the Sec-
13 retary, such information and data as
14 the State or Secretary may require re-
15 lating to the demonstration program
16 or an episode of care for such a preg-
17 nant woman or newborn.

18 “(VII) Such other information as
19 the Secretary may require relating to
20 the demonstration program, including
21 with respect to determining the
22 soundness of the proposed prospective
23 payment system.

24 “(C) LENGTH OF DEMONSTRATION PRO-
25 GRAMS.—A State selected to conduct a dem-

1 onstration program under this paragraph shall
2 conduct the program for a 4-year period.

3 “(D) REQUIREMENTS FOR SELECTING
4 DEMONSTRATION PROGRAMS.—In selecting
5 States to conduct demonstration programs
6 under this paragraph, the Secretary shall—

7 “(i) ensure States meet the criteria
8 described in paragraph (2)(A)(i)(II);

9 “(ii) ensure that the States represent
10 a diverse selection of geographic areas, in-
11 cluding rural and underserved areas; and

12 “(iii) give preference to States that
13 demonstrate the potential to expand the
14 availability of and access to maternity care
15 services in a demonstration area and in-
16 crease the quality of services provided by
17 freestanding birth centers without increas-
18 ing net Federal spending.

19 “(E) PAYMENT FOR SERVICES PROVIDED
20 BY FREESTANDING BIRTH CENTERS.—

21 “(i) IN GENERAL.—Amounts ex-
22 pended by a State to conduct a demonstra-
23 tion program under this paragraph shall be
24 treated as medical assistance for purposes
25 of subsection (a) of this section. Under a

1 demonstration program conducted under
2 this paragraph by a State, payments shall
3 be made by the State for freestanding
4 birth center services that meet the criteria
5 established under paragraph (2)(A)(i) fur-
6 nished by a freestanding birth center in ac-
7 cordance with the prospective payment sys-
8 tem for such services established pursuant
9 to the guidance issued under paragraph
10 (2)(A)(ii).

11 “(ii) LIMITATIONS.—Payments shall
12 be made under this subparagraph to a
13 State only for freestanding birth center
14 services that are—

15 “(I) described in the demonstra-
16 tion program application submitted by
17 the State and approved by the Sec-
18 retary; and

19 “(II) provided to an individual
20 who is eligible for medical assistance
21 under the State Medicaid program.

22 “(iii) PROHIBITED PAYMENTS.—Un-
23 less included as part of a payment pro-
24 vided under a prospective payment system
25 established by a State for the demonstra-

1 tion program pursuant to the guidance
2 issued under paragraph (2)(A(ii), no pay-
3 ment shall be made under this subpara-
4 graph for inpatient care or other non-am-
5 bulatory services, as determined by the
6 Secretary.

7 “(F) WAIVER OF STATEWIDENESS RE-
8 QUIREMENT.—The Secretary shall waive section
9 1902(a)(1) (relating to statewideness) as may
10 be necessary for a State to conduct a dem-
11 onstration program in accordance with the re-
12 quirements of this paragraph.

13 “(G) ANNUAL REPORTS.—

14 “(i) IN GENERAL.—Not later than 2
15 years after the date on which the first
16 State is selected to conduct a demonstra-
17 tion program under this paragraph, and
18 annually thereafter, based on information
19 and data submitted by States in accord-
20 ance with the assurance provided under
21 subparagraph (B)(ii)(VI), the Secretary
22 shall submit to Congress an annual report
23 on all State demonstration programs con-
24 ducted under this paragraph. Each such

1 report shall include with respect to each
2 such State demonstration program—

3 “(I) an assessment of clinical
4 outcomes for maternity services pro-
5 vided by freestanding birth centers
6 participating in the demonstration
7 program compared to outcomes for
8 low-risk pregnancy Medicaid patients
9 in comparable demographic and geo-
10 graphic areas, including with respect
11 to the number of births and data on
12 intrapartum and postpartum maternal
13 and newborn transfer rates and hos-
14 pital admissions; and

15 “(II) an assessment of the im-
16 pact of all the State demonstration
17 programs conducted under this para-
18 graph on the Federal and State costs
19 relating to providing freestanding
20 birth center services for women with a
21 low-risk pregnancy (including with re-
22 spect to the provision of inpatient,
23 emergency, and ambulatory services)
24 and newborn care, compared to the
25 Federal and State costs related to the

1 provision of freestanding birth center
2 services by freestanding birth centers
3 outside of such demonstration pro-
4 grams.

5 “(ii) RECOMMENDATIONS.—Not later
6 than the end of the third year of the dem-
7 onstration program established under this
8 subsection, the Secretary shall submit to
9 Congress recommendations concerning
10 whether the demonstration programs under
11 this paragraph should be continued, ex-
12 panded, modified, or terminated.

13 “(4) FUNDING.—

14 “(A) IN GENERAL.—Out of any funds in
15 the Treasury not otherwise appropriated, there
16 is appropriated to the Secretary—

17 “(i) for purposes of carrying out para-
18 graph (2)(B), \$2,000,000; and

19 “(ii) for purposes of carrying out the
20 demonstration programs under paragraph
21 (3), \$25,000,000.

22 “(B) AVAILABILITY.—Funds appropriated
23 under subparagraph (A) shall remain available
24 until expended.

25 “(5) DEFINITIONS.—In this subsection:

1 “(A) FREESTANDING BIRTH CENTER
2 SERVICES.—The term ‘freestanding birth center
3 services’ has the meaning given that term under
4 section 1905(l)(3)(A) and includes such other
5 services as the Secretary shall determine for
6 purposes of the demonstration programs con-
7 ducted under paragraph (3).

8 “(B) LOW-RISK PREGNANCY.—The term
9 ‘low-risk pregnancy’ means an uncomplicated
10 singleton term pregnancy with a vertex presen-
11 tation with an expected uncomplicated birth.”.

○