

Date: Feb. 5, 2023

From: Dolores J. Polito, DNP, APRN, CNM, FACNM
Vice President, Kentucky Affiliate of the American College of Nurse Midwives
3257 Brighton Place Drive
Lexington, Ky 40509
Dpolito99@outlook.com
859-619-2302

Subject: Support for: An Act Relating to Freestanding Alternative Birthing Centers

This letter expresses the Kentucky Affiliate of ACNM's strong support for SB67 and HB129. This bill achieves two important objectives:

- 1) Relieves freestanding birth centers (FSBCs) of the requirement to obtain a **Certificate of Need (CON)** to be licensed and operate in Kentucky. Currently, FSBC's do not exist in Kentucky in great part due to the restriction of the CON process. A woman and family in KY desiring birth center care must leave the state to obtain these services (in IN, OH, WV, or TN).
- 2) Requires existing state regulations to be made consistent with the **American Association of Birth Centers (AABC)** standards and requires any birth center to be accredited by the **Commission for the Accreditation of Birth Centers (CABC)**.

The rationale for our support of FSBC's is as follows:

- Research has consistently demonstrated freestanding birth centers (FSBCs) have a **record of providing high-quality care for low-risk patients** given by qualified, licensed providers with excellent maternal/newborn outcomes and high patient satisfaction in a home-like setting. In fact, studies have shown **better outcomes** (including lower c-section rates, less preterm birth, and low birthweight newborns) when comparing **low-risk patients** cared for in hospitals to those cared for in FSBCs.^{3,4}
- **FSBCs are not hospitals.**¹ FSBCs provide a primary care service to low-risk women and their families with a focus on primary care, extensive patient education, support throughout pregnancy, birth, and the postpartum period. **FSBCs are not competitors of hospitals; rather, having a collaborative relationship** with them in the necessary continuum of care for patients requiring medical management and acute care services.
 - The **CON process does not apply to FSBCs** because the services FSBCs provide are unique in structure and provision, it is an outpatient setting, meaning patients are discharged in less than 24 hours, and the facilities typically have only three labor beds. **None of this equates to the type of care provided in a hospital or a hospital's physical plan.**
 - **The purposes of the state's health plan are not relevant to FSBCs relative to the CON's goal of appropriate distribution of access to health care and health care technologies.**
 - As noted in comments regarding a 2014 FTC Healthcare Workshop, "Furthermore, in at least five states at present, FSBCs are required to go through the same Certificate of Need process that state health planners use to

limit the number of hospital beds. **As the Commission noted regarding APRNs, restrictions on birth center operation are not related to ‘safety concerns or quality, which has been the subject of numerous positive studies, ‘but to the political decisions in the state in which the birth center is located.’** ²

- **Freestanding birth centers are cost-effective.** Analysis by the Center for Medicare & Medicaid Services (CMS) has documented **significant cost savings** when comparing hospital and FSBC care for low-risk patients. In fact, several studies calculated the **savings to be about \$2000/birth.** **The National Birth Center Study II noted incredible savings:**

“First of all, vaginal births in birth centers simply cost less. In 2011, the average Medicare/Medicaid facility services reimbursement for an uncomplicated vaginal birth in a hospital was \$3,998, compared with \$1,907 in birth centers. This factor alone saved \$27.2 million in the National Birth Study II.”⁴

- **Midwifery provides primary care at FSBCs.**¹ The midwifery model of care emphasizes support for pregnancy and birth as a natural physiologic process that benefits and is enhanced by education. Midwifery care is patient-centered, advocating for self-determination for personal and cultural preferences more easily achievable in the FSBC setting. **Midwifery does not practice in a vacuum but values and ascribes to a systems approach in the delivery of health services, which includes physician colleagues, ancillary services, and the availability of hospital acute-care services when that level of care is required.**
- The above points represent but a small sampling of benefits for patients and our state that FSBCs offer. **While Kentucky already includes FSBCs in statute, regulation, and provision of Medicaid reimbursement, none currently operate in this state. This is in great part due to the political, professional, and financial difficulties associated with the process of attempting to obtain a CON.** This is not a far-fetched concern due to an 8-year FSBC case that ended in the denial of a CON application and subsequent litigation concluding in 2017 with a State Court of Appeals ruling in favor of a local hospital that opposed a Kentucky certified nurse-midwife’s (CNM) attempt to open a freestanding birth center.⁵ This result came at a personal financial cost to the CNM of over \$250,000, resulting in her subsequent departure from the state. There is serious hesitation for anyone to open a FSBC until this issue has been resolved.

It is time for the CON requirement for freestanding birth centers to be removed.

It is time for Kentucky women and families to have the option of giving birth in a licensed freestanding birth center with current, evidence-based administrative standards.

We will continue to work diligently to eliminate health disparities and advocate for safe, equitable, inclusive care for the women and families of Kentucky.

Please join us in supporting SB67 and HB129.

Respectfully submitted,



Dolores J. Polito, DNP, APRN, CNM, FACNM,
Vice President, Kentucky Affiliate of the American College of Nurse-Midwives

1. American Association of Birth Centers. Available at: <http://www.birthcenters.org/>
2. American Association of Birth Centers. Correspondence with the Federal Trade Commission regarding FTC Health Care Workshop, Project No. P131207. April 30, 2014.
3. Rooks, J.P., Weatherby, N.L., Ernst, E.K., Stapleton, S., Rosen, D., & Rosenfield, A. (1989). Outcomes of care in birth centers. The national birth center study. *New England Journal of Medicine*, 321(26), 1804-11. <https://www.ncbi.nlm.nih.gov/pubmed/2687692>
4. Stapleton SR, Osborne C, Illuzzi J. (2013). Outcomes of care in birth centers: Demonstration of a durable model. *Journal of Midwifery and Women's Health*, 58(1), 3-14. <https://doi.org/10.1111/jmwh.12003>
5. Summary of Birth Center Certificate of Need (CON) Litigation and Current Status. December 2018.