

1 AN ACT relating to freestanding birthing centers.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 216B IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section, "freestanding birthing center" means any health facility,*
6 *place, or institution which is not a hospital, is not in a hospital or a private*
7 *residence, and is established to provide care for labor, delivery, and the*
8 *immediate postpartum period.*

9 *(2) The cabinet shall promulgate updated administrative regulations establishing*
10 *licensure standards for freestanding birthing centers by December 1, 2022. The*
11 *administrative regulations shall:*

12 *(a) Require accreditation by the Commission for the Accreditation of Birth*
13 *Centers;*

14 *(b) Be consistent with the American Association of Birth Centers (AABC)*
15 *Standards for Birth Centers; and*

16 *(c) Consistent with requirements in paragraphs (a) and (b) of this subsection,*
17 *require plans for transfer and safe transport to a hospital when such*
18 *transfer and transport are needed.*

19 *(3) A certificate of need shall not be required to establish and license a freestanding*
20 *birthing center.*

21 *(4) Nothing in this section is intended to expand or limit liability of a health care*
22 *provider or a freestanding birthing center. In the event of an action for injury or*
23 *death due to any act or omission of a health care provider rendering services at a*
24 *freestanding birthing center where an injured patient is transferred to any other*
25 *health care provider or health care facility, the liability of the subsequent health*
26 *care provider or health care facility shall be limited to their own negligent acts*
27 *and omissions that violate their professional standards of care, unless the*

1 subsequent health care provider or health care facility owns, operates, or
2 provided care at the freestanding birthing center, and under those circumstances
3 the health care provider or health care facility shall be liable for acts or
4 omissions that violate their professional standards of care and that occur at a
5 freestanding birthing center that the health care provider or health care facility
6 owns or operates.

7 ➔Section 2. KRS 216B.020 is amended to read as follows:

- 8 (1) The provisions of this chapter that relate to the issuance of a certificate of need shall
9 not apply to abortion facilities as defined in KRS 216B.015; any hospital which
10 does not charge its patients for hospital services and does not seek or accept
11 Medicare, Medicaid, or other financial support from the federal government or any
12 state government; assisted living residences; family care homes; state veterans'
13 nursing homes; services provided on a contractual basis in a rural primary-care
14 hospital as provided under KRS 216.380; community mental health centers for
15 services as defined in KRS Chapter 210; primary care centers; rural health clinics;
16 private duty nursing services operating as nursing pools; group homes; licensed
17 residential crisis stabilization units; licensed free-standing residential substance use
18 disorder treatment programs with sixteen (16) or fewer beds, but not including
19 Levels I and II psychiatric residential treatment facilities or licensed psychiatric
20 inpatient beds; outpatient behavioral health treatment, but not including partial
21 hospitalization programs; end stage renal disease dialysis facilities, freestanding or
22 hospital based; swing beds; special clinics, including but not limited to wellness,
23 weight loss, family planning, disability determination, speech and hearing,
24 counseling, pulmonary care, and other clinics which only provide diagnostic
25 services with equipment not exceeding the major medical equipment cost threshold
26 and for which there are no review criteria in the state health plan; nonclinically
27 related expenditures; nursing home beds that shall be exclusively limited to on-

1 campus residents of a certified continuing care retirement community; home health
2 services provided by a continuing care retirement community to its on-campus
3 residents; the relocation of hospital administrative or outpatient services into
4 medical office buildings which are on or contiguous to the premises of the hospital;
5 the relocation of acute care beds which occur among acute care hospitals under
6 common ownership and which are located in the same area development district so
7 long as there is no substantial change in services and the relocation does not result
8 in the establishment of a new service at the receiving hospital for which a certificate
9 of need is required; the redistribution of beds by licensure classification within an
10 acute care hospital so long as the redistribution does not increase the total licensed
11 bed capacity of the hospital; residential hospice facilities established by licensed
12 hospice programs; freestanding birthing centers as defined in Section 1 of this
13 Act; or the following health services provided on site in an existing health facility
14 when the cost is less than six hundred thousand dollars (\$600,000) and the services
15 are in place by December 30, 1991: psychiatric care where chemical dependency
16 services are provided, level one (1) and level two (2) of neonatal care, cardiac
17 catheterization, and open heart surgery where cardiac catheterization services are in
18 place as of July 15, 1990. The provisions of this section shall not apply to nursing
19 homes, personal care homes, intermediate care facilities, and family care homes; or
20 nonconforming ambulance services as defined by administrative regulation. These
21 listed facilities or services shall be subject to licensure, when applicable.

22 (2) Nothing in this chapter shall be construed to authorize the licensure, supervision,
23 regulation, or control in any manner of:

24 (a) Private offices and clinics of physicians, dentists, and other practitioners of
25 the healing arts, except any physician's office that meets the criteria set forth
26 in KRS 216B.015(5) or that meets the definition of an ambulatory surgical
27 center as set out in KRS 216B.015;

- 1 (b) Office buildings built by or on behalf of a health facility for the exclusive use
2 of physicians, dentists, and other practitioners of the healing arts; unless the
3 physician's office meets the criteria set forth in KRS 216B.015(5), or unless
4 the physician's office is also an abortion facility as defined in KRS 216B.015,
5 except no capital expenditure or expenses relating to any such building shall
6 be chargeable to or reimbursable as a cost for providing inpatient services
7 offered by a health facility;
- 8 (c) Outpatient health facilities or health services that:
- 9 1. Do not provide services or hold patients in the facility after midnight;
10 and
11 2. Are exempt from certificate of need and licensure under subsection (3)
12 of this section;
- 13 (d) Dispensaries and first-aid stations located within business or industrial
14 establishments maintained solely for the use of employees, if the facility does
15 not contain inpatient or resident beds for patients or employees who generally
16 remain in the facility for more than twenty-four (24) hours;
- 17 (e) Establishments, such as motels, hotels, and boarding houses, which provide
18 domiciliary and auxiliary commercial services, but do not provide any health
19 related services and boarding houses which are operated by persons
20 contracting with the United States Department of Veterans Affairs for
21 boarding services;
- 22 (f) The remedial care or treatment of residents or patients in any home or
23 institution conducted only for those who rely solely upon treatment by prayer
24 or spiritual means in accordance with the creed or tenets of any recognized
25 church or religious denomination and recognized by that church or
26 denomination; and
- 27 (g) On-duty police and fire department personnel assisting in emergency

1 situations by providing first aid or transportation when regular emergency
2 units licensed to provide first aid or transportation are unable to arrive at the
3 scene of an emergency situation within a reasonable time.

4 (3) The following outpatient categories of care shall be exempt from certificate of need
5 and licensure on July 14, 2018:

- 6 (a) Primary care centers;
- 7 (b) Special health clinics, unless the clinic provides pain management services
8 and is located off the campus of the hospital that has majority ownership
9 interest;
- 10 (c) Specialized medical technology services, unless providing a State Health Plan
11 service;
- 12 (d) Retail-based health clinics and ambulatory care clinics that provide
13 nonemergency, noninvasive treatment of patients;
- 14 (e) Ambulatory care clinics treating minor illnesses and injuries;
- 15 (f) Mobile health services, unless providing a service in the State Health Plan;
- 16 (g) Rehabilitation agencies;
- 17 (h) Rural health clinics; and
- 18 (i) Off-campus, hospital-acquired physician practices.

19 (4) The exemptions established by subsections (2) and (3) of this section shall not apply
20 to the following categories of care:

- 21 (a) An ambulatory surgical center as defined by KRS 216B.015(4);
- 22 (b) A health facility or health service that provides one (1) of the following types
23 of services:
 - 24 1. Cardiac catheterization;
 - 25 2. Megavoltage radiation therapy;
 - 26 3. Adult day health care;
 - 27 4. Behavioral health services;

- 1 5. Chronic renal dialysis;{
 2 6.—Birthing services;} or
 3 6.[7.]Emergency services above the level of treatment for minor illnesses or
 4 injuries;
- 5 (c) A pain management facility as defined by KRS 218A.175(1);
 6 (d) An abortion facility that requires licensure pursuant to KRS 216B.0431; or
 7 (e) A health facility or health service that requests an expenditure that exceeds the
 8 major medical expenditure minimum.
- 9 (5) An existing facility licensed as an intermediate care or nursing home shall notify the
 10 cabinet of its intent to change to a nursing facility as defined in Public Law 100-
 11 203. A certificate of need shall not be required for conversion of an intermediate
 12 care or nursing home to the nursing facility licensure category.
- 13 (6) Ambulance services owned and operated by a city government, which propose to
 14 provide services in coterminous cities outside of the ambulance service's designated
 15 geographic service area, shall not be required to obtain a certificate of need if the
 16 governing body of the city in which the ambulance services are to be provided
 17 enters into an agreement with the ambulance service to provide services in the city.
- 18 (7) Notwithstanding any other provision of law, a continuing care retirement
 19 community's nursing home beds shall not be certified as Medicaid eligible unless a
 20 certificate of need has been issued authorizing applications for Medicaid
 21 certification. The provisions of subsection (5) of this section notwithstanding, a
 22 continuing care retirement community shall not change the level of care licensure
 23 status of its beds without first obtaining a certificate of need.
- 24 ➔Section 3. This Act shall be known as the Mary Carol Akers Birth Centers Act.