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KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2023 REGULAR SESSION

Amend printed copy of **SB 67**

On page 1, by deleting lines 6 to 8 in their entirety and inserting the following in lieu thereof:

"place, or institution that:

(a) Is not a hospital, is not in a hospital or a private residence, and is established to provide care for labor, delivery, the immediate postpartum period, and the newborn immediately following delivery; and

(b) Is located within five (5) miles of a licensed Kentucky hospital offering obstetric services."; and

On page 1, by deleting lines 14 to 19 in their entirety, and by inserting the following in lieu thereof:

"(b) Except as provided by paragraph (c) of this subsection, be consistent with the American Association of Birth Centers (AABC) Standards for Birth Centers;

(c) Have linkages through formal written agreements with providers of other levels of care that may be medically indicated to supplement the services available in the center. These written agreements shall include:

1. A local Kentucky hospital that offers obstetric services;

2. A board-eligible or board-certified Kentucky licensed obstetrician with admitting privileges at the hospital with whom the center has a written

Amendment No. SFA 9

Rep. Sen. Stephen Meredith

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRD Drafter: _____

Adopted: _____

Date: _____

Rejected: _____

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transfer agreement;

3. A board-eligible or board-certified Kentucky licensed pediatrician with admitting privileges at the hospital with whom the center has a written transfer agreement;
4. A registered pharmacist; and
5. Licensed emergency medical transportation services with appropriate equipment for transporting a pregnant woman or a mother and her newborn infant; and

On page 1, line 20, after "(d)", by inserting the following:

"Require the birthing center to have a written agreement with a board-eligible or board-certified Kentucky licensed obstetrician who shall:

1. Approve the criteria that would exclude a pregnant women or mother from the center's program and that would preclude management of newborns at the center. The criteria shall be consistent with national standards established by the American College of Obstetrics and Gynecology; and
2. Be included in the center's quality program and review all transfers and incidents that occur at the center; and

(e)"; and

On page 2, after line 10, by inserting the following:

"(5) Each freestanding birthing center shall obtain and maintain commercially reasonable medical liability insurance in an amount no less than three million dollars (\$3,000,000) per claim and five million dollars (\$5,000,000) in the aggregate. Each licensed health care provider who practices at, is employed by, is under contract with, or has an ownership interest in a freestanding birthing center shall obtain and maintain commercially reasonable medical liability insurance in

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an amount no less than two million dollars (\$2,000,000) per claim and two million dollars (\$2,000,000) in the aggregate.

(6) Each freestanding birthing center shall meet all requirements that licensed Kentucky hospitals offering obstetric services are required to meet, including but not limited to:

(a) The newborn screening required by KRS 214.155;

(b) The tests for pregnant women required by KRS 214.160;

(c) The requirements relating to congenital cytomegalovirus under KRS 214.565 to 214.571;

(d) Auditory screening and reporting required by KRS 216.2970;

(e) The requirements relating to birth certificates and the Kentucky birth surveillance registry under KRS 211.651 to 211.670;

(f) Paternity establishment requirements in KRS 213.046; and

(g) Neonatal abstinence syndrome reporting required by KRS 211.676.

➔ Section 2. KRS 216B.015 is amended to read as follows:

Except as otherwise provided, for purposes of this chapter, the following definitions shall apply:

- (1) "Abortion facility" means any place in which an abortion is performed;
- (2) "Administrative regulation" means a regulation adopted and promulgated pursuant to the procedures in KRS Chapter 13A;
- (3) "Affected persons" means the applicant; any person residing within the geographic area served or to be served by the applicant; any person who regularly uses health facilities within that geographic area; health facilities located in the health service area in which the project is proposed to be located which provide services similar to the services of the facility under review; health facilities which, prior to receipt by the agency of the proposal being reviewed, have formally indicated an intention to provide similar services in the future; and the cabinet and third-party payors who reimburse health facilities for services in

the health service area in which the project is proposed to be located;

- (4) (a) "Ambulatory surgical center" means a health facility:
1. Licensed pursuant to administrative regulations promulgated by the cabinet;
 2. That provides outpatient surgical services, excluding oral or dental procedures; and
 3. Seeking recognition and reimbursement as an ambulatory surgical center from any federal, state, or third-party insurer from which payment is sought.
- (b) An ambulatory surgical center does not include the private offices of physicians where in-office outpatient surgical procedures are performed as long as the physician office does not seek licensure, certification, reimbursement, or recognition as an ambulatory surgical center from a federal, state, or third-party insurer.
- (c) Nothing in this subsection shall preclude a physician from negotiating enhanced payment for outpatient surgical procedures performed in the physician's private office so long as the physician does not seek recognition or reimbursement of his or her office as an ambulatory surgical center without first obtaining a certificate of need or license required under KRS 216B.020 and 216B.061;
- (5) "Applicant" means any physician's office requesting a major medical equipment expenditure exceeding the capital expenditure minimum, or any person, health facility, or health service requesting a certificate of need or license;
- (6) "Cabinet" means the Cabinet for Health and Family Services;
- (7) "Capital expenditure" means an expenditure made by or on behalf of a health facility which:
- (a) Under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance or is not for investment purposes only; or
 - (b) Is made to obtain by lease or comparable arrangement any facility or part thereof or

- any equipment for a facility or part thereof;
- (8) "Capital expenditure minimum" means the annually adjusted amount set by the cabinet. In determining whether an expenditure exceeds the expenditure minimum, the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the improvement, expansion, or replacement of any plant or any equipment with respect to which the expenditure is made shall be included. Donations of equipment or facilities to a health facility which if acquired directly by the facility would be subject to review under this chapter shall be considered a capital expenditure, and a transfer of the equipment or facilities for less than fair market value shall be considered a capital expenditure if a transfer of the equipment or facilities at fair market value would be subject to review;
- (9) "Certificate of need" means an authorization by the cabinet to acquire, to establish, to offer, to substantially change the bed capacity, or to substantially change a health service as covered by this chapter;
- (10) "Certified surgical assistant" means a certified surgical assistant or certified first assistant who is certified by the National Surgical Assistant Association on the Certification of Surgical Assistants, the Liaison Council on Certification of Surgical Technologists, or the American Board of Surgical Assistants. The certified surgical assistant is an unlicensed health-care provider who is directly accountable to a physician licensed under KRS Chapter 311 or, in the absence of a physician, to a registered nurse licensed under KRS Chapter 314;
- (11) "Continuing care retirement community" means a community that provides, on the same campus, a continuum of residential living options and support services to persons sixty (60) years of age or older under a written agreement. The residential living options shall include independent living units, nursing home beds, and either assisted living units or personal

- care beds;
- (12) "Formal review process" means the ninety (90) day certificate-of-need review conducted by the cabinet;
- (13) "Health facility" means any institution, place, building, agency, or portion thereof, public or private, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care and includes alcohol abuse, drug abuse, and mental health services. This shall include but shall not be limited to health facilities and health services commonly referred to as hospitals, psychiatric hospitals, physical rehabilitation hospitals, chemical dependency programs, nursing facilities, nursing homes, personal care homes, intermediate care facilities, assisted living communities, family care homes, outpatient clinics, ambulatory care facilities, ambulatory surgical centers, emergency care centers and services, ambulance providers, hospices, community mental health centers, home health agencies, kidney disease treatment centers and freestanding hemodialysis units, *freestanding birthing centers as defined in Section 1 of this Act*, and others providing similarly organized services regardless of nomenclature;
- (14) "Health services" means clinically related services provided within the Commonwealth to two (2) or more persons, including but not limited to diagnostic, treatment, or rehabilitative services, and includes alcohol, drug abuse, and mental health services;
- (15) "Independent living" means the provision of living units and supportive services, including but not limited to laundry, housekeeping, maintenance, activity direction, security, dining options, and transportation;
- (16) "Intraoperative surgical care" includes the practice of surgical assisting in which the certified surgical assistant or physician assistant is working under the direction of the operating physician as a first or second assist, and which may include the following

procedures:

- (a) Positioning the patient;
 - (b) Preparing and draping the patient for the operative procedure;
 - (c) Observing the operative site during the operative procedure;
 - (d) Providing the best possible exposure of the anatomy incident to the operative procedure;
 - (e) Assisting in closure of incisions and wound dressings; and
 - (f) Performing any task, within the role of an unlicensed assistive person, or if the assistant is a physician assistant, performing any task within the role of a physician assistant, as required by the operating physician incident to the particular procedure being performed;
- (17) "Major medical equipment" means equipment which is used for the provision of medical and other health services and which costs in excess of the medical equipment expenditure minimum. In determining whether medical equipment has a value in excess of the medical equipment expenditure minimum, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of the equipment shall be included;
- (18) "Nonsubstantive review" means an expedited review conducted by the cabinet of an application for a certificate of need as authorized under KRS 216B.095;
- (19) "Nonclinically related expenditures" means expenditures for:
- (a) Repairs, renovations, alterations, and improvements to the physical plant of a health facility which do not result in a substantial change in beds, a substantial change in a health service, or the addition of major medical equipment, and do not constitute the replacement or relocation of a health facility; or
 - (b) Projects which do not involve the provision of direct clinical patient care, including

but not limited to the following:

1. Parking facilities;
 2. Telecommunications or telephone systems;
 3. Management information systems;
 4. Ventilation systems;
 5. Heating or air conditioning, or both;
 6. Energy conservation; or
 7. Administrative offices;
- (20) "Party to the proceedings" means the applicant for a certificate of need and any affected person who appears at a hearing on the matter under consideration and enters an appearance of record;
- (21) "Perioperative nursing" means a practice of nursing in which the nurse provides preoperative, intraoperative, and postoperative nursing care to surgical patients;
- (22) "Person" means an individual, a trust or estate, a partnership, a corporation, an association, a group, state, or political subdivision or instrumentality including a municipal corporation of a state;
- (23) "Physician assistant" means the same as the definition provided in KRS 311.550;
- (24) "Record" means, as applicable in a particular proceeding:
- (a) The application and any information provided by the applicant at the request of the cabinet;
 - (b) Any information provided by a holder of a certificate of need or license in response to a notice of revocation of a certificate of need or license;
 - (c) Any memoranda or documents prepared by or for the cabinet regarding the matter under review which were introduced at any hearing;
 - (d) Any staff reports or recommendations prepared by or for the cabinet;

- (e) Any recommendation or decision of the cabinet;
 - (f) Any testimony or documentary evidence adduced at a hearing;
 - (g) The findings of fact and opinions of the cabinet or the findings of fact and recommendation of the hearing officer; and
 - (h) Any other items required by administrative regulations promulgated by the cabinet;
- (25) "Registered nurse first assistant" means one who:
- (a) Holds a current active registered nurse licensure;
 - (b) Is certified in perioperative nursing; and
 - (c) Has successfully completed and holds a degree or certificate from a recognized program, which shall consist of:
 - 1. The Association of Operating Room Nurses, Inc., Core Curriculum for the registered nurse first assistant; and
 - 2. One (1) year of postbasic nursing study, which shall include at least forty-five (45) hours of didactic instruction and one hundred twenty (120) hours of clinical internship or its equivalent of two (2) college semesters.
- A registered nurse who was certified prior to 1995 by the Certification Board of Perioperative Nursing shall not be required to fulfill the requirements of paragraph (c) of this subsection;
- (26) "Secretary" means the secretary of the Cabinet for Health and Family Services;
- (27) "Sexual assault examination facility" means a licensed health facility, emergency medical facility, primary care center, or a children's advocacy center or rape crisis center that is regulated by the Cabinet for Health and Family Services, and that provides sexual assault examinations under KRS 216B.400;
- (28) "State health plan" means the document prepared triennially, updated annually, and approved by the Governor;

- (29) "Substantial change in a health service" means:
- (a) The addition of a health service for which there are review criteria and standards in the state health plan; or
 - (b) The addition of a health service subject to licensure under this chapter;
- (30) "Substantial change in bed capacity" means the addition or reduction of beds by licensure classification within a health facility;
- (31) "Substantial change in a project" means a change made to a pending or approved project which results in:
- (a) A substantial change in a health service, except a reduction or termination of a health service;
 - (b) A substantial change in bed capacity, except for reductions;
 - (c) A change of location; or
 - (d) An increase in costs greater than the allowable amount as prescribed by regulation;
- (32) "To acquire" means to obtain from another by purchase, transfer, lease, or other comparable arrangement of the controlling interest of a capital asset or capital stock, or voting rights of a corporation. An acquisition shall be deemed to occur when more than fifty percent (50%) of an existing capital asset or capital stock or voting rights of a corporation is purchased, transferred, leased, or acquired by comparable arrangement by one (1) person from another person;
- (33) "To batch" means to review in the same review cycle and, if applicable, give comparative consideration to all filed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area;
- (34) "To establish" means to construct, develop, or initiate a health facility;
- (35) "To obligate" means to enter any enforceable contract for the construction, acquisition, lease, or financing of a capital asset. A contract shall be considered enforceable when all

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contingencies and conditions in the contract have been met. An option to purchase or lease which is not binding shall not be considered an enforceable contract; and

(36) "To offer" means, when used in connection with health services, to hold a health facility out as capable of providing, or as having the means of providing, specified health services."; and

Renumber subsequent sections accordingly; and

On page 19, line 23, after "birthing centers", by bracketing and striking through "with at least forty (40) births per year".