

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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

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**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,  
21 postpartum, newborn care,  
22 and other ambulatory serv-  
23 ices 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.

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

“(AA) The capability and equipment to provide prenatal, labor and delivery, postpartum, and newborn care for women with a low-risk pregnancy, readiness at all times to initiate emergency procedures to meet unexpected needs of such women and of newborns within the center, including at least 2 qualified staff on-site at every birth, and the ability to facilitate transport to an acute care hospital with an obstetrical care unit when necessary.

“(BB) An established transfer plan with a receiving hospital with an obstetrical 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-

1 including certified nurse-midwives and  
2 physicians) and other stakeholders;

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

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

19 “(3) STATE DEMONSTRATION PROGRAMS.—

20 “(A) IN GENERAL.—Not later than 24  
21 months after the date of the enactment of this  
22 subsection, from among the States awarded a  
23 planning grant under paragraph (2)(B), the  
24 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 demonstration 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(1)(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.”.