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BIRTHING FACILITY LICENSURE AMENDMENTS

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill amends provisions relating to the licensure of a birthing facility.

Highlighted Provisions:

This bill:

- amends provisions relating to the licensure of a birthing facility;
- allows a birthing facility that is not freestanding to be licensed as an alongside midwifery unit under certain circumstances; and
- describes the requirements for licensure as an alongside midwifery unit.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

26-21-2, as last amended by Laws of Utah 2011, Chapter 161

26-21-29, as enacted by Laws of Utah 2016, Chapter 73

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-21-2** is amended to read:

26-21-2. Definitions.

As used in this chapter:

(1) "Abortion clinic" means a type I abortion clinic or a type II abortion clinic.

30 (2) "Activities of daily living" means essential activities including:
31 (a) dressing;
32 (b) eating;
33 (c) grooming;
34 (d) bathing;
35 (e) toileting;
36 (f) ambulation;
37 (g) transferring; and
38 (h) self-administration of medication.
39 (3) "Ambulatory surgical facility" means a freestanding facility, which provides
40 surgical services to patients not requiring hospitalization.
41 (4) "Assistance with activities of daily living" means providing of or arranging for the
42 provision of assistance with activities of daily living.
43 (5) (a) "Assisted living facility" means:
44 (i) a type I assisted living facility, which is a residential facility that provides assistance
45 with activities of daily living and social care to two or more residents who:
46 (A) require protected living arrangements; and
47 (B) are capable of achieving mobility sufficient to exit the facility without the
48 assistance of another person; and
49 (ii) a type II assisted living facility, which is a residential facility with a home-like
50 setting that provides an array of coordinated supportive personal and health care services
51 available 24 hours per day to residents who have been assessed under department rule to need
52 any of these services.
53 (b) Each resident in a type I or type II assisted living facility shall have a service plan
54 based on the assessment, which may include:
55 (i) specified services of intermittent nursing care;
56 (ii) administration of medication; and
57 (iii) support services promoting residents' independence and self sufficiency.

58 (6) "Birthing center" means a [~~freestanding facility, receiving~~] facility that:
59 (a) receives maternal clients and [~~providing~~] provides care during pregnancy, delivery,
60 and immediately after delivery[~~.~~]; and
61 (b) (i) is freestanding; or
62 (ii) is not freestanding, but meets the requirements for an alongside midwifery unit
63 described in Subsection 26-21-29(7).
64 (7) "Committee" means the Health Facility Committee created in Section 26-1-7.
65 (8) "Consumer" means any person not primarily engaged in the provision of health care
66 to individuals or in the administration of facilities or institutions in which such care is provided
67 and who does not hold a fiduciary position, or have a fiduciary interest in any entity involved in
68 the provision of health care, and does not receive, either directly or through his spouse, more
69 than 1/10 of his gross income from any entity or activity relating to health care.
70 (9) "End stage renal disease facility" means a facility which furnishes staff-assisted
71 kidney dialysis services, self-dialysis services, or home-dialysis services on an outpatient basis.
72 (10) "Freestanding" means existing independently or physically separated from another
73 health care facility by fire walls and doors and administrated by separate staff with separate
74 records.
75 (11) "General acute hospital" means a facility which provides diagnostic, therapeutic,
76 and rehabilitative services to both inpatients and outpatients by or under the supervision of
77 physicians.
78 (12) "Governmental unit" means the state, or any county, municipality, or other
79 political subdivision or any department, division, board, or agency of the state, a county,
80 municipality, or other political subdivision.
81 (13) (a) "Health care facility" means general acute hospitals, specialty hospitals, home
82 health agencies, hospices, nursing care facilities, residential-assisted living facilities, birthing
83 centers, ambulatory surgical facilities, small health care facilities, abortion clinics, facilities
84 owned or operated by health maintenance organizations, end stage renal disease facilities, and
85 any other health care facility which the committee designates by rule.

86 (b) "Health care facility" does not include the offices of private physicians or dentists,
87 whether for individual or group practice, except that it does include an abortion clinic.
88 (14) "Health maintenance organization" means an organization, organized under the
89 laws of any state which:
90 (a) is a qualified health maintenance organization under 42 U.S.C. Sec. 300e-9; or
91 (b) (i) provides or otherwise makes available to enrolled participants at least the
92 following basic health care services: usual physician services, hospitalization, laboratory, x-ray,
93 emergency, and preventive services and out-of-area coverage;
94 (ii) is compensated, except for copayments, for the provision of the basic health
95 services listed in Subsection (14)(b)(i) to enrolled participants by a payment which is paid on a
96 periodic basis without regard to the date the health services are provided and which is fixed
97 without regard to the frequency, extent, or kind of health services actually provided; and
98 (iii) provides physicians' services primarily directly through physicians who are either
99 employees or partners of such organizations, or through arrangements with individual
100 physicians or one or more groups of physicians organized on a group practice or individual
101 practice basis.
102 (15) (a) "Home health agency" means an agency, organization, or facility or a
103 subdivision of an agency, organization, or facility which employs two or more direct care staff
104 persons who provide licensed nursing services, therapeutic services of physical therapy, speech
105 therapy, occupational therapy, medical social services, or home health aide services on a
106 visiting basis.
107 (b) "Home health agency" does not mean an individual who provides services under
108 the authority of a private license.
109 (16) "Hospice" means a program of care for the terminally ill and their families which
110 occurs in a home or in a health care facility and which provides medical, palliative,
111 psychological, spiritual, and supportive care and treatment.
112 (17) "Nursing care facility" means a health care facility, other than a general acute or
113 specialty hospital, constructed, licensed, and operated to provide patient living

114 accommodations, 24-hour staff availability, and at least two of the following patient services:
115 (a) a selection of patient care services, under the direction and supervision of a
116 registered nurse, ranging from continuous medical, skilled nursing, psychological, or other
117 professional therapies to intermittent health-related or paraprofessional personal care services;
118 (b) a structured, supportive social living environment based on a professionally
119 designed and supervised treatment plan, oriented to the individual's habilitation or
120 rehabilitation needs; or
121 (c) a supervised living environment that provides support, training, or assistance with
122 individual activities of daily living.
123 (18) "Person" means any individual, firm, partnership, corporation, company,
124 association, or joint stock association, and the legal successor thereof.
125 (19) "Resident" means a person 21 years of age or older who:
126 (a) as a result of physical or mental limitations or age requires or requests services
127 provided in an assisted living facility; and
128 (b) does not require intensive medical or nursing services as provided in a hospital or
129 nursing care facility.
130 (20) "Small health care facility" means a four to 16 bed facility that provides licensed
131 health care programs and services to residents.
132 (21) "Specialty hospital" means a facility which provides specialized diagnostic,
133 therapeutic, or rehabilitative services in the recognized specialty or specialties for which the
134 hospital is licensed.
135 (22) "Substantial compliance" means in a department survey of a licensee, the
136 department determines there is an absence of deficiencies which would harm the physical
137 health, mental health, safety, or welfare of patients or residents of a licensee.
138 (23) "Type I abortion clinic" means a facility, including a physician's office, but not
139 including a general acute or specialty hospital, that:
140 (a) performs abortions, as defined in Section 76-7-301, during the first trimester of
141 pregnancy; and

142 (b) does not perform abortions, as defined in Section 76-7-301, after the first trimester
143 of pregnancy.
144 (24) "Type II abortion clinic" means a facility, including a physician's office, but not
145 including a general acute or specialty hospital, that:
146 (a) performs abortions, as defined in Section 76-7-301, after the first trimester of
147 pregnancy; or
148 (b) performs abortions, as defined in Section 76-7-301, during the first trimester of
149 pregnancy and after the first trimester of pregnancy.
150 Section 2. Section **26-21-29** is amended to read:
151 **26-21-29. Birthing centers -- Regulatory restrictions.**
152 (1) For purposes of this section:
153 (a) "Alongside midwifery unit" means a birthing center that meets the requirements
154 described in Subsection (7).
155 [~~(a)~~] (b) "Certified nurse midwife" means an individual who is licensed under Title 58,
156 Chapter 44a, Nurse Midwife Practice Act.
157 [~~(b)~~] (c) "Direct-entry midwife" means an individual who is licensed under Title 58,
158 Chapter 77, Direct-Entry Midwife Act.
159 [~~(c)~~] (d) "Licensed maternity care practitioner" includes:
160 (i) a physician;
161 (ii) a certified nurse midwife;
162 (iii) a direct entry midwife;
163 (iv) a naturopathic physician; and
164 (v) other individuals who are licensed under Title 58, Occupations and Professions and
165 whose scope of practice includes midwifery or obstetric care.
166 [~~(d)~~] (e) "Naturopathic physician" means an individual who is licensed under Title 58,
167 Chapter 71, Naturopathic Physician Practice Act.
168 [~~(e)~~] (f) "Physician" means an individual who is licensed under Title 58, Chapter 67,
169 Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

170 (2) The Health Facility Committee and the department may not require a birthing
171 center or a licensed maternity care practitioner who practices at a birthing center to:
172 (a) maintain admitting privileges at a general acute hospital;
173 (b) maintain a written transfer agreement with one or more general acute hospitals;
174 (c) maintain a collaborative practice agreement with a physician; or
175 (d) have a physician or certified nurse midwife present at each birth when another
176 licensed maternity care practitioner is present at the birth and remains until the maternal patient
177 and newborn are stable postpartum.
178 (3) The Health Facility Committee and the department shall:
179 (a) permit all types of licensed maternity care practitioners to practice in a birthing
180 center; and
181 (b) except as provided in Subsection (2)(b), require a birthing center to have a written
182 plan for the transfer of a patient to a hospital in accordance with Subsection (4).
183 (4) A transfer plan under Subsection (3)(b) shall:
184 (a) be signed by the patient; and
185 (b) indicate that the plan is not an agreement with a hospital.
186 (5) If a birthing center transfers a patient to a licensed maternity care practitioner or
187 facility, the responsibility of the licensed maternity care practitioner or facility, for the patient:
188 (a) does not begin until the patient is physically within the care of the licensed
189 maternity care practitioner or facility;
190 (b) is limited to the examination and care provided after the patient is transferred to the
191 licensed maternity care practitioner or facility; and
192 (c) does not include responsibility or accountability for the patient's decision to pursue
193 an out-of-hospital birth and the services of a birthing center.
194 (6) (a) Except as provided in Subsection (6)(c), a licensed maternity care practitioner
195 who is not practicing at a birthing center may, upon receiving a briefing from a member of a
196 birthing center's clinical staff, issue a medical order for the birthing center's patient without
197 assuming liability for the care of the patient for whom the order was issued.

198 (b) Regardless of the advice given or order issued under Subsection (6)(a), the
199 responsibility and liability for caring for the patient is that of the birthing center and the
200 birthing center's clinical staff.
201 (c) The licensed maternity care practitioner giving the order under Subsection (6)(a) is
202 responsible and liable only for the appropriateness of the order, based on the briefing received
203 under Subsection (6)(a).
204 (7) (a) A birthing center that is not freestanding may be licensed as an alongside
205 midwifery unit if the birthing center:
206 (i) is accredited by the Commission on Accreditation of Birth Centers;
207 (ii) is connected to a hospital facility, either through a bridge, ramp, or adjacent to the
208 labor and delivery unit within the hospital with care provided with the midwifery model of
209 care, where maternal patients are received and care provided during labor, delivery, and
210 immediately after delivery; and
211 (iii) is supervised by a clinical director who is licensed as a physician as defined in
212 Section 58-67-102 or a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife
213 Practice Act.
214 (b) An alongside midwifery unit shall have a transfer agreement in place with the
215 adjoining hospital:
216 (i) to transfer a patient to the adjacent hospital's labor and delivery unit if a higher level
217 of care is needed; and
218 (ii) for services that are provided by the adjacent hospital's staff in collaboration with
219 the alongside midwifery unit staff.
220 (c) An alongside midwifery unit may:
221 (i) contract with staff from the adjoining hospital to assist with newborn care or
222 resuscitation of a patient in an emergency; and
223 (ii) integrate the alongside midwifery unit's medical records with the medical record
224 system utilized by the adjoining hospital.
225 (d) Notwithstanding Title 58, Chapter 77, Direct-Entry Midwife Act, licensure as a

226 direct-entry midwife under Section 58-77-301 is not sufficient to practice as a licensed
227 maternity care practitioner in an alongside midwifery unit.
228 [~~(7)~~] (8) The department shall hold a public hearing under Subsection 63G-3-302(2)(a)
229 for a proposed administrative rule, and amendment to a rule, or repeal of a rule, that relates to
230 birthing centers.