



Summary: *The Birth Freedom Act preserves the longstanding right of women to choose and direct their maternal healthcare, including the right to choose where to give birth, with which providers, and the right to decline any treatment. The model policy also protects the right of providers to open facilities and provide maternal healthcare services within their respective scopes of practice without any unreasonable regulatory burdens. Finally, where related claims are litigated, it requires courts to exercise discretion in favor of protecting the right to choose and direct maternal healthcare.*

Birth Freedom Act

Section 1: Findings and Purpose

- (a) The legislature finds and declares the following:
- (1) Childbirth is a culmination of pregnancy and is a natural process rather than an illness;
 - (2) The practice of midwifery has been part of the history and tradition of the United States and this State since before their founding;
 - (3) Midwives and other trained individuals provide safe, quality care to families;
 - (4) It is in the public interest to remove impediments to the practice of midwifery;
 - (5) It is in the public interest to ensure all providers involved in prenatal, labor and delivery, and postpartum care are able to practice to the full extent allowed by their respective training;
 - (6) Giving birth at home or in the location of one's choosing is part of the history and tradition of the United States and this State since before their founding;
 - (7) Women, together with their families, have the right to choose and direct their maternal healthcare, including the unqualified right to choose where and how to deliver; and
 - (8) It is in the public interest to remove obstacles to safe out-of-hospital deliveries.
- (b) The purposes of this Act are:
- (1) To protect the right of women to direct and choose their pre-natal, labor and delivery, and postpartum care, which includes the right to decline any service, treatment, or type of care and the right to choose both where to give birth and who may attend the birth;
 - (2) To increase access to pre-natal, labor and delivery, and postpartum care by ensuring birth centers and other safe locations for labor and delivery can open and operate without unreasonable burdens;



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- (3) To ensure that providers who provide care to families during pregnancy, labor and delivery, and postpartum can offer safe, quality care and practice to the full extent allowed by their training; and
- (4) To prohibit state agencies from creating future occupational licensure requirements for providers that offer pre-natal, labor and delivery, or postpartum care and to encourage the Legislature to make any future occupational licenses voluntary, not mandatory.

Section 2: Right to Direct Maternal Healthcare

- (a) Nothing in this Act abridges, limits, or changes in any way the longstanding rights of women to deliver their baby where, when, how, and with whom they choose. This right includes the right to give birth at home or at any location outside of a licensed hospital or facility.
- (b) All women have the right to make their own healthcare choices regarding prenatal, maternity, labor and delivery, and postpartum care and services. This right includes the unqualified right to choose who is present during labor and delivery, regardless of licensure or other status.
- (c) Women also have the right to name individuals who are authorized to act as their agents and advocate on their behalf. Agents may include, but are not limited to, family members, spouses, doulas, or other birth workers.
- (d) Providers must respect a woman's decision about her general health care, her pregnancy, and her birthing experience.
- (e) Providers must respect a woman's decision to decline any treatment, procedure, service, or modality of care.
- (f) Nothing in this Act supersedes any private claim against a provider.
- (g) Nothing in this Act requires health care providers to provide any type of care against their will.

Section 3: The Right of Facilities to Provide Maternal Healthcare

- (a) "Birth center" means a facility where mothers receive midwifery care or other prenatal or maternal healthcare, well-person reproductive healthcare, extended postpartum care, and newborn care within the scope of practice of a trained provider. Birth centers do not include hospitals. The existence of birth centers in no way limits a woman's right to choose where and with whom she receives prenatal, labor and delivery, and postpartum care.
- (b) Notwithstanding any other provision of law, no facility or provider is required to obtain a certificate of need to open or operate a birth center.



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- (c) Notwithstanding any other provision of law, no facility or provider is required to seek permission from a hospital or other healthcare facility or provider as a condition to open or operate a birth center.
- (d) Nothing in this Act limits the [state agency] from promulgating reasonable standards for a transfer plan from a birth center to another facility in an emergency, provided that those standards are substantially related to real threats to public health and safety, and further provided that:
 - (1) The State shall not require a birth center to obtain a transfer agreement signed by a hospital, ambulance service, or other provider as a condition to open or operate or as a condition of obtaining a facility license.
 - (2) The State shall not require that birth centers be located within a certain proximity to hospitals or neo-natal intensive care units.
- (e) Notwithstanding any other provision of law, no provider is required to obtain a certificate of need to provide obstetrics, gynecological, or perinatal services.
- (f) Notwithstanding any other provision of law, no provider is required to obtain a certificate of need to offer or expand neonatal intensive care.
- (g) Nothing in this Act prohibits the [state agency] from promulgating reasonable standards for birth centers or neonatal intensive care, provided that all licensure standards are substantially related to real threats to public health and safety and provided that any birth center accredited by the Commission for the Accreditation of Birth Centers is automatically eligible for facility licensure.

Section 4: Maternal Healthcare Provider Scope of Practice

- (a) All providers attending births, whether in a hospital, birth center, private residence, or other location, shall only provide care within the generally accepted scope of practice for their profession.
- (b) Midwives may attend live births and practice to the full extent allowed by their respective training.
- (c) Nothing in this Act shall be construed as authorizing a midwife to prescribe medication requiring a prescription.
- (d) Nothing in this Act shall be construed to establish a standard of care or to alter the scope of practice for licensed physicians, licensed physician assistants, or licensed nurses.
- (e) Nothing in this Act shall prohibit a birth attendant from providing midwifery services without a license if the birth attendant has cultural or religious traditions that include the attendance of birth attendants at birth, and the birth attendant serves only women in that distinct cultural or religious group.
- (f) A person may use a title that accurately reflects their training and expertise, regardless of their licensure status in the state, provided however that no person may offer to provide services they are not legally allowed to provide.



Section 5: Occupational Licenses

- (a) No state agency may promulgate a new occupational license for providers that participate in and offer prenatal, labor and delivery, or postpartum care. Only the legislature can establish new occupational licenses.
- (b) Occupational licensure increases costs to consumers, decreases the availability of providers, and prevents individuals from pursuing a lawful calling. If the legislature decides to create a new occupational license for providers that participate in or offer prenatal, labor and delivery, or postpartum care, it is encouraged to consider voluntary licensure for healthcare insurance reimbursement purposes only. Under a voluntary licensure scheme no providers may be prohibited from practicing to the full extent allowed by their training for failure to obtain a license.
- (c) To increase access to maternal healthcare, this state recognizes out-of-state licenses for providers that participate in and offer prenatal, labor and delivery, or postpartum care.

Section 6: Standard of Review

In actions brought by or against state agencies relating to the offering of prenatal, labor and delivery, or postpartum care by a facility or a provider, after applying all customary tools of interpretation, the court or hearing officer must exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes a mother's right to direct and choose her maternal care.