

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5054

By Delegates Summers and Tully

[Originating in the Committee on Health and Human

Resources; Reported on February 1, 2024]

1 A BILL to amend and reenact §16B-20-1, §16B-20-2, §16B-20-3, §16B-20-4, and §16B-20-5 of
2 the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto
3 four new sections, designated §16B-20-6, §16B-20-7, §16B-20-8 and §16B-20-9, all
4 relating to the licensure of birthing centers; defining terms; creating license types for
5 birthing centers; updating the procedure for application for and obtaining a license;
6 updating license fees; providing for regulation by the Office of Health Facility Licensure and
7 Certification; setting certain minimum standards in a birthing center; setting certain
8 minimum required services; prohibiting certain prohibited services in a birthing center;
9 restricting the location of birthing centers; allowing for variances and waivers from
10 licensure standards; providing for inspections and inspection warrants; designating license
11 limitations; providing procedure for denial, suspension, or revocation of a license; allowing
12 civil money penalties; providing for administrative review and appeal rights; and permitting
13 the Inspector General to promulgate rules, including emergency rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 20. BIRTHING CENTERS.

§16B-20-1. Birthing centers to obtain license; application; fees; suspension or revocation

Definitions.

1 ~~No person, partnership, association or corporation, or any local governmental unit or any~~
2 ~~division, department, board or agency thereof may operate a birthing center unless such operation~~
3 ~~shall have been approved and licensed by the state director of health in accordance with the~~
4 ~~provisions of this article and the rules and regulations lawfully promulgated hereunder provided~~
5 ~~that all birthing centers which are in operation or which have received a certificate of need valid as~~
6 ~~of the date of passage of this act shall be deemed to have been so approved and shall be issued a~~
7 ~~license within thirty days of passage of this act.~~

8 Any person, partnership, association or corporation, or any local governmental unit or any
9 division, department, board or agency thereof desiring a license hereunder shall file with the

10 ~~department of health an application in such form as the department shall prescribe and furnish~~
11 ~~accompanied by a fee of ten dollars. Information received by the department of health under the~~
12 ~~provisions of this section shall be confidential. The director of health is authorized to issue licenses~~
13 ~~for the operation of birthing centers which are found to comply with the provisions of this article and~~
14 ~~with all rules and regulations promulgated by the department. The license issued shall not be~~
15 ~~transferred or assignable. The director of health is authorized to suspend or revoke a license~~
16 ~~issued hereunder if the provisions of this article or of the rules and regulations are violated.~~

17 ~~Before any such license is suspended or revoked, however, written notice shall be given~~
18 ~~the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing~~
19 ~~on the complaint, which date shall not be less than thirty days from the time notice is given. Such~~
20 ~~notice shall be sent by registered mail to the licensee at the address where the institution~~
21 ~~concerned is located. The licensee shall be entitled to be represented by legal counsel at the~~
22 ~~hearing.~~

23 ~~If a license is revoked as herein provided, a new application for a license shall be~~
24 ~~considered by the director of health if, when and after, the conditions upon which revocation was~~
25 ~~based have been corrected and evidence of this fact has been furnished. A new license shall then~~
26 ~~be granted after proper inspection has been made and all provisions of this article and rules and~~
27 ~~regulations promulgated hereunder have been satisfied.~~

28 ~~All of the pertinent provisions of article five, chapter twenty-nine A of this Code shall apply~~
29 ~~to and govern any hearing authorized and required by the provisions of this article and the~~
30 ~~administrative procedure in connection with and following any such hearing, with like effect as if~~
31 ~~the provisions of said article five were set forth in extenso in this section.~~

32 ~~The court shall have the power to affirm, modify, or reverse the decision of the department~~
33 ~~and either the applicant or licensee or the department may appeal from the court's decision to the~~
34 ~~supreme court of appeals. Pending the final disposition of the matter the status quo of the~~
35 ~~applicant or licensee shall be preserved.~~

36 ~~Any applicant or licensee who is dissatisfied with the decision of the state department of~~
37 ~~health as a result of the hearing provided in this section may, within thirty days after receiving~~
38 ~~notice of the decision, appeal to the circuit court, in term or in vacation, of the county in which the~~
39 ~~applicant or licensee is located for judicial review of the decision.~~

40 "Administrator" means the person who is responsible for the day-to-day operation of the
41 birthing center and who is responsible for implementing policies and procedures and
42 administrative operation of the birthing center.

43 "Birthing center" means a facility licensed for the primary purpose of providing midwifery
44 care, low-risk deliveries, and newborn care immediately after delivery, for a stay of generally less
45 than twenty-four hours. This term does not include a hospital labor and delivery unit, ambulatory
46 surgical center, or the residence of the patient giving birth. A birthing center may be a location for
47 additional services in shared or adjacent spaces, including outpatient gynecologic care, primary
48 care, and education and support services within each licensed provider's scope of practice.

49 "Clinical director" means a licensed clinician in the State of West Virginia who assumes
50 responsibility for administering all medical services performed at the birthing center, either by
51 performing them directly or by delegating specific responsibility to authorized health care
52 professionals functioning within their scope of practice.

53 "Director" means the Director of the Office of Health Facility Licensure and Certification, or
54 his or her designee.

55 "Governing body" means the individual, agency, group, or corporation, appointed, elected,
56 or otherwise designated, who is legally responsible for and has authority over the conduct and
57 regulatory compliance of the birthing center.

58 "Inspector General" means the Inspector General of the Office of the Inspector General, as
59 described in section §16B-2-1 of this code, or his or her designee.

60 "Office of Health Facility Licensure and Certification" means the West Virginia Office of
61 Health Facility Licensure and Certification within the Office of Inspector General.

62 "Substantial compliance" means a level of compliance with the minimum standards set
63 forth in this article and any applicable rules promulgated pursuant to this article so as not to impose
64 a risk to the rights, health, and safety of a patient.

65 "Variance" means written permission granted by the Inspector General to a birthing center
66 that a requirement of this article or rules promulgated pursuant to this article may be accomplished
67 in manner different from the manner set forth in this article or associated rule.

68 "Waiver" means a formal, time-limited agreement between the Inspector General and the
69 birthing center that suspends a rule, policy, or standard for a specific situation so long as the health
70 and safety of patients is better served in the situation by suspension of the rule, policy, or standard
71 that _____ by _____ enforcement.

§16B-20-2. State director of health to establish rules and regulations; legislative findings; emergency filing Birthing Centers to obtain license; applications; fees and inspections.

1 ~~The director of health shall promulgate rules and regulations not in conflict with any~~
2 ~~provision of this article, as it finds necessary in order to ensure adequate care and~~
3 ~~accommodations for consumers of birthing centers. In promulgating such regulations the director~~
4 ~~shall be limited to simple, necessary provisions which shall not have the effect of hampering the~~
5 ~~development and licensure of birthing centers. Such regulations shall not address acceptable site~~
6 ~~characteristics such as the number of minutes of travel time between a birthing center and a~~
7 ~~hospital, or physical environment, such as acceptable levels of temperature of any refrigerator~~
8 ~~found in a birthing center, or clinical equipment, such as the number and kind of clocks which a~~
9 ~~birthing center must have on the premises. Such regulations shall require that all birthing centers~~
10 ~~submit satisfactory evidence that the center has implemented the paternity program created~~
11 ~~pursuant to section thirteen of this article along with any application for licensure.~~

12 ~~The Legislature hereby finds and declares that it is in the public interest to encourage the~~
13 ~~development of birthing centers for the purpose of providing an alternative method of birth and~~

14 ~~therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm~~
15 ~~to the public interest because of preexisting delay, within sixty days of passage of this article, the~~
16 ~~director of health shall proceed to promulgate such rules and regulations under the provisions of~~
17 ~~section fifteen, article three, chapter twenty-nine-a of this code.~~

18 (a) This Inspector General designates the Director of the Office of Health Facility Licensure
19 and Certification shall enforce the provisions of this article, except where otherwise stated.

20 (b) A person, partnership, association, or corporation may not operate a birthing center
21 without first obtaining a license from the director in accordance with the provisions of this article
22 and the rules lawfully promulgated pursuant to this article. A person, entity, or facility may not
23 represent itself as a birthing center or use the term "birth center" or "birthing center" as its title, or
24 part of its title, in any advertising, publications, or other forms of communication unless licensed as
25 a birthing center in accordance with the provisions of this article and the rules promulgated
26 pursuant to this article.

27 (c) A person, partnership, association, or corporation desiring a license to operate a
28 birthing center in this state shall file with the Office of Health Facility Licensure and Certification an
29 application on a form as prescribed by the director and furnish accompanied by an application fee.

30 (d) The Office of Health Facility Licensure and Certification shall inspect each facility and
31 review all documentation submitted with the application. The director shall issue a license if the
32 facility is in substantial compliance with the provisions of this article and with any rules lawfully
33 promulgated pursuant to this article.

34 (e) A license shall be issued in one of three categories:

35 (1) An initial six month license shall be issued to a birthing center establishing a new facility
36 for which there is insufficient patient participation to demonstrate substantial compliance with this
37 article and with all rules promulgated pursuant to this article.

38 (2) A provisional license shall be issued when a birthing center seeks a renewal license,
39 and the birthing center is not in substantial compliance with this article and with all rules

40 promulgated pursuant to this article but does not pose a significant risk to the rights, health, and
41 safety of a consumer. It shall expire not more than six months from the date of issuance, and may
42 not be consecutively reissued; or

43 (3) A renewal license shall be issued when a birthing center is in substantial compliance
44 with this article and with all rules promulgated pursuant to this article. A renewal license shall
45 expire not more than one year from the date of issuance.

46 (f) At least 60 days prior to the license expiration date, an application for renewal shall be
47 submitted by the birthing center to the director on forms furnished by the director. A license shall
48 be renewed if the director determines that the applicant is in substantial compliance with this
49 article and with all rules promulgated pursuant to this article.

50 (g) A license issued to one facility location pursuant to this article is not transferrable or
51 assignable. Any change of ownership of a licensed birthing center requires submission of a new
52 application. The birthing center shall notify the Office of Health Facility Licensure and Certification
53 of any change in ownership within 10 days of the change and must submit a new application within
54 the time frame prescribed by the director.

55 (h) Any person, partnership, association, or corporation that seeks to obtain or renew a
56 license for a birthing center in this state must submit to the director the following information and
57 documentation:

58 (1) Full operating name of the birthing center as advertised;

59 (2) Legal name of the birthing center as registered with the West Virginia Secretary of
60 State;

61 (3) Physical address of the birthing center;

62 (4) Preferred mailing address for the birthing center;

63 (5) Email address to be used as the primary contact for the birthing center;

64 (6) Federal Employer Identification Number assigned to the birthing center;

65 (7) All business licenses issued to the birthing center by this state, the State Tax
66 Department, the Secretary of State, and all other applicable business entities;

67 (8) Brief description of all services provided by the birthing center;

68 (9) Hours of operation;

69 (10) Legal Registered Owner Name – name of the person registered as the legal owner of
70 the birthing center. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal
71 owner separately, indicating the percentage of ownership;

72 (11) Administrator's full name and, if applicable, a list of all current licenses and
73 certifications;

74 (12) Name and location address of all birthing centers owned or operated by the applicant;

75 (13) Notarized signature of applicant; and

76 (14) Check or money order for licensing fee and inspection fee.

77 (i) Upon satisfaction that an applicant has met all of the requirements of this article, the
78 director shall issue a license to operate a birthing center.

79 (j) The birthing center shall display the current license in a prominent location where
80 services are provided and in clear view of all patients.

81 (k) The schedule of fees for a birthing center license is as follows:

82 (1) Initial licensure fee is \$125;

83 (2) First renewal licensure fee is \$125;

84 (3) Second and all subsequent renewal licensure fee is \$250; and

85 (4) Change of Ownership licensure fee is \$250.

86 (l) In addition to set fee, the annual renewal fee shall be adjusted on the first day of June of
87 each year to correspond with the increases in the consumer price index. The Office of Health
88 Facility Licensure and Certification shall post the consumer price index increases, immediately
89 after those increases are released annually.

90 (m) An application for licensure is not considered complete until the applicant pays the
91 licensing and inspection fee. The fee shall accompany the application form.

92 (n) License fees paid by an applicant are non-refundable.

93 (o) The director shall inspect on a periodic basis all birthing centers that are subject to this
94 article and all rules adopted pursuant to this article to ensure continued compliance.

§16B-20-3. Insurance Operational Requirements.

1 ~~Not later than the first day of July, one thousand nine hundred eighty three, every policy or~~
2 ~~contract of individual accident and sickness insurance covered under the provisions of article~~
3 ~~fifteen, chapter thirty three, or policy or contract of group accident and sickness insurance covered~~
4 ~~under the provisions of article sixteen of said chapter, including, but not limited to, any subscriber~~
5 ~~contract issued by a corporation organized pursuant to article twenty four of said chapter, shall~~
6 ~~include benefits to all subscribers and members for birthing center service charges, and for care~~
7 ~~rendered therein by a licensed nurse midwife or midwife as this occupation is defined in section~~
8 ~~one, article fifteen, chapter fifty of this Code, and which care is within the scope of duties for such~~
9 ~~licensed nurse midwife or midwife as permitted by the provisions of section seven, article fifteen of~~
10 ~~said chapter thirty~~

11 (a) A birthing center shall be licensed in this state with the director, the Secretary of State,
12 the State Tax Department, and all other applicable business or licensing entities.

13 (b) A birthing center shall identify the governing body. The governing body shall be
14 responsible for appointing the administrator. The governing body shall be responsible for
15 monitoring and ensuring compliance with all requirements related to the licensing of the birthing
16 center. The governing body shall adopt written policies and procedures for the operation of this
17 birthing center in accordance with this article and any rules promulgated pursuant thereto.

18 (c) A birthing center shall designate an administrator. The administrator shall be
19 responsible for the daily operation of the birthing center, as further specified in the rules
20 promulgated pursuant to this article. The administrator may delegate the day-to-day operation of a

21 birthing center as provided in rules promulgated pursuant to this article. Within 10 days after
22 termination of a administrator, the governing body shall notify the director of the identity of another
23 administrator for that birthing center. Failure to have an administrator for the birthing center may be
24 the basis for a suspension or revocation of the birthing center license. The administrator shall:

25 (1) Designate a clinical director who practices at the licensed birthing center and has a full,
26 active, and unencumbered license to practice and provide services and treatment within his or her
27 scope of practice, including, but not limited to, preconception, prenatal, labor, birth, and
28 postpartum care and early care of the newborn and who may be the primary attendant during the
29 prenatal period;

30 (2) Be responsible for monitoring and ensuring compliance with all and operation of the
31 birthing center;

32 (3) Supervise, control, and direct the activities of each individual working or operating at
33 the birthing center including any employee, volunteer, or individual under contract, who provides
34 treatment at the birthing center or is associated with the provision of that treatment. The
35 supervision, control, and direction shall be provided in accordance with rules promulgated by the
36 Inspector General; and

37 (4) Complete other requirements prescribed by the Inspector General by rule.

38 (d) A birthing center shall be eligible for, and not prohibited from, enrollment with West
39 Virginia Medicaid and other private insurance. Prior to directly billing a patient for any treatment, a
40 birthing center must receive either a rejection of prior authorization, rejection of a submitted claim,
41 or a written denial from a patient's insurer or West Virginia Medicaid denying coverage for such
42 treatment: *Provided*, That the director, in consultation with the Inspector General, may grant a
43 variance from this requirement pursuant to §16-2E-5 of this code. The birthing center shall also
44 document whether a patient has no insurance. At the option of the birthing center, treatment may
45 commence prior to billing.

46 (e) A person employed by the birthing center shall comply with the requirements for the
47 operation of a birthing center established within this article or by any rule adopted pursuant to this
48 article.

49 (f) A birthing center shall have a policy concerning criminal background checks for
50 individuals providing direct patient care.

51 (g) A birthing center shall comply with:

52 (1) The West Virginia Board of Pharmacy regulations;

53 (2) Any applicable professional licensing agencies for any and all staff or employees of the
54 birthing center;

55 (3) Any requirements as specified in the rules promulgated pursuant to this article.

56 (h) Birthing centers shall provide care and treatment in a home-like environment with
57 adequate space for furnishings, equipment, supplies, and comfortable accommodations for
58 patients and families served. The birthing center shall provide services, including, but not limited
59 to, initial and ongoing risk and patient eligibility assessments; intrapartum care; postpartum care;
60 and laboratory services, as further described in the rules promulgated pursuant to this article.

61 (i) The following limitations apply to the services performed at birthing centers:

62 (1) The use of general or regional anesthesia, including epidurals, is prohibited;

63 (2) Notwithstanding paragraph (a), systemic analgesia, nitrous oxide, and other forms of
64 pain relief may be administered at the birthing center if it is performed within the provider's scope
65 of practice, and as determined by the birthing center's policies and procedures;

66 (3) Labor shall not be induced, stimulated, or augmented with pharmacologic agents
67 during the first or second stages of labor or before labor;

68 (4) Surgical services must be limited to those normally performed during an uncomplicated
69 birth, including episiotomy and repair, circumcision, frenotomy, insertion and removal of
70 contraceptive implants, endometrial biopsy, abscess treatment, and colposcopy if it is performed

71 within the provider's scope of practice. No operative obstetrics or cesarean sections shall be
72 performed;

73 (5) The use of vacuum extractors, vaginal forceps, or continuous electronic fetal
74 monitoring is prohibited; and

75 (6) The risk factors preclude a patient from delivering at the birthing center:

76 (A) Known breech or non vertex presentation at time of admission;

77 (B) Multiple gestation, such as twins;

78 (C) Gestation less than 36 weeks and zero days, or greater than 42 weeks and zero days;

79 and

80 (D) Other risk factors contrary to the birthing center's established risk criteria.

81 (j) Each birthing center location shall be licensed separately, regardless of whether the
82 center is operated under the same business name or management as another birthing center.

83 (k) The birthing center shall report data, statistics, and other information as directed in this
84 code, and the rules promulgated pursuant to this article, to required agencies and other
85 authorities.

86 (l) The birthing center shall immediately notify the director, or his or her designee, in writing
87 of any changes to its operations that affect the birthing center's continued compliance with the
88 licensure _____ requirements.

§16B-20-4. Violations; penalties; injunction Restrictions; variances and waivers.

1 ~~Any person, partnership, association or corporation, and any local governmental unit or~~
2 ~~any division, department, board or agency thereof establishing, conducting, managing, or~~
3 ~~operating a birthing center without first obtaining a license therefor as herein provided, or violating~~
4 ~~any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be~~
5 ~~guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a~~
6 ~~fine of not more than one hundred dollars, or by imprisonment in the county jail for a period of not~~
7 ~~more than ninety days, or by both such fine and imprisonment, in the discretion of the court. For~~

8 ~~each subsequent offense the fine may be increased to not more than five hundred dollars, with~~
9 ~~imprisonment in the county jail for a period of not more than ninety days, or both such fine and~~
10 ~~imprisonment, in the discretion of the court. Each day of continuing violation after conviction shall~~
11 ~~be considered a separate offense.~~

12 ~~Notwithstanding the existence or pursuit of any other remedy, the director may, in the~~
13 ~~manner provided by law, maintain an action in the name of the State for an injunction against any~~
14 ~~person, partnership, association, corporation, or any local governmental unit, or any division,~~
15 ~~department, board or agency thereof, to restrain or prevent the establishment, conduct,~~
16 ~~management, or operation of any birthing center without first obtaining a license therefor in the~~
17 ~~manner hereinbefore provided.~~

18 (a) Birthing centers shall not have procedures for offering a bounty, monetary, equipment
19 or merchandise reward, or free services for individuals in exchange for recruitment of new patients
20 into the birthing center.

21 (b) The director, in consultation with the Inspector General, may grant a waiver or a
22 variance from any licensure standard, or portion thereof, for the period which the license is in
23 effect.

24 (1) Requests for waivers or variances of licensure standards shall be in writing to the
25 director and shall include:

26 (A) The specific section of this article or rules promulgated pursuant to this article for which
27 a waiver or variance is sought;

28 (B) The rationale for requesting the waiver or variance;

29 (C) Documentation by the birthing center's administrator or governing body to the director
30 that describes how the birthing center will maintain the quality of services and patient safety and
31 rights if the waiver or variance is granted; and

32 (D) The consequences of not receiving approval of the requested waiver or variance.

13 (e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
14 may, in the manner provided by law, maintain an action in the name of the state for an inspection
15 warrant against any person, partnership, association, or corporation to allow any inspection or
16 seizure of records in order to complete any inspection allowed by this article or the rules
17 promulgated pursuant to this article, or to meet any other purpose of this article or the rules
18 promulgated pursuant to this article.

§16B-20-6. License limitation; denial; suspension; revocation.

1 (a) The director, in consultation with the Inspector General, may, by order, impose a ban on
2 the admission of patients and that an imposition of a ban on admissions would place the licensee
3 in a position to render adequate care. Any notice to a licensee of a ban on new admission shall
4 include the terms of the order, the reason therefor, and the date set for compliance.

5 (b) The director, in consultation with the Inspector General, shall deny, suspend, or revoke
6 a license pursuant to this article if the provisions of this article or of the rules promulgated pursuant
7 to this article are violated. The director, in consultation with the Inspector General, may revoke a
8 birthing center's license and prohibit all licensed disciplines associated with that birthing center
9 from practicing at the birthing center location based upon annual, periodic, complaint, verification,
10 or other inspection and evaluation.

11 (c) Notice of any license denial, suspension, or revocation shall be by written notice given
12 to the licensee stating the grounds for the denial, suspension, or revocation.

13 (d) If a license is denied or revoked as herein provided, a new application for license shall
14 be considered by the director if, when, and after the conditions upon which the denial or revocation
15 was based have been corrected and evidence of this fact has been furnished with the new
16 application. A new license shall then be granted after proper inspection, if applicable, has been
17 made and all provisions of this article and rules promulgated pursuant to this article have been
18 satisfied.

19 (e) If the license of a birthing center is denied, suspended, or revoked, the owner,
20 governing body, or administrator, or any combination thereof, shall cease to operate the center,
21 clinic, facility, office, or program as a birthing center as of the effective date of the denial,
22 suspension, or revocation. The owner or lessor of the birthing center property is responsible for
23 removing all signs and symbols identifying the premises as a birthing center within 30 days of the
24 denial, suspension, or revocation. Any administrative appeal of the denial, suspension, or
25 revocation shall not stay the denial, suspension, or revocation.

26 (f) Upon the effective date of the denial, suspension, or revocation, the administrator of the
27 birthing center shall advise the director and the Board of Pharmacy of the disposition of all
28 medications located on the premises. The disposition is subject to the supervision and approval of
29 the director. Medications that are purchased or held by a birthing center that is not licensed may be
30 deemed adulterated.

31 (g) If the license of a birthing center is suspended or revoked, any person owning or
32 operating the birthing center or any person committing a serious violation, including, but
33 not limited to abuse or neglect, or both, may not, as an individual or as part of a group,
34 apply to operate another birthing center for up to five years after the date of suspension or
35 revocation. The director, in consultation with the Inspector General, may grant a variance
36 pursuant to section five of this article to the prohibition of this subsection.

§16B-20-7. Violations; penalties; injunction.

1 (a) Any person, partnership, association, or corporation which establishes, conducts,
2 manages, or operates a birthing center without first obtaining a license as herein provided, or who
3 violates any provision of this article or any rule lawfully promulgated pursuant to this article, shall
4 be assessed a civil penalty by the director, in consultation with the Inspector General, in
5 accordance with this section. Each day of continuing violation after assessment shall be
6 considered a separate violation.

7 (b) If a birthing center or any owner, governing body, or administrator is found to be in
8 violation of any provision of this article, unless otherwise noted herein, the director, in consultation
9 with the Inspector General, may limit, suspend, or revoke the birthing center's license.

10 (c) If the birthing center's administrator or governing body knowingly and intentionally
11 misrepresents actions taken to correct a violation, the director, in consultation with the Inspector
12 General, may impose a civil money penalty not to exceed \$10,000 and, in the case of any owner-
13 operator birthing center, limit or revoke a birthing center's license.

14 (d) If any owner of a birthing center that requires a license under this article fails to apply for
15 a new license for the birthing center upon a change of ownership and operates under new
16 ownership, the director, in consultation with the Inspector General, may impose a civil money
17 penalty upon the owner, not to exceed \$5,000.

18 (e) If anyone operates, owns, or manages an unlicensed birthing center that is required to
19 be licensed pursuant to this article; or procures or attempts to procure a license for a birthing
20 center for any other person by making or causing to be made any false representation, the
21 director, in consultation with the Inspector General, may assess a civil money penalty of not more
22 than \$20,000.

23 (f) Civil money penalties may be in addition to or in lieu of any other action that may be
24 taken by the director, in consultation with the Inspector General, or any other board, court, or entity.

25 (g) In determining whether a civil money penalty is to be imposed and in fixing the amount
26 of the penalty, the director, in consultation with the Inspector General, shall consider the following
27 factors:

28 (1) The gravity of violation, including the probability that death or serious physical or
29 emotional harm to a patient has resulted, or could have resulted, from the birthing center's actions
30 or the actions of any administrator, governing body, or any licensed professional, the severity of
31 the action or potential harm, and the extent to which the provisions of the applicable laws or rules
32 were violated;

33 (2) What actions, if any, the owner or administrator took to correct the violations;

34 (3) Whether there were any previous violations at the birthing center; and

35 (4) The financial benefits that the birthing center derived from committing or continuing to
36 commit the violations.

37 (h) Upon finding that a licensed professional has violated provisions of this article or rules
38 adopted pursuant to this article, the director shall provide notice of the violation to the applicable
39 licensing _____ board.

§16B-20-8. Due process; injunction.

1 (a) Within 10 business days of receipt of the notice required in §16B-20-6 or §16B-20-7, or
2 both, the birthing center may submit a request for an administrative hearing before the Board of
3 Review or an informal meeting to address the notice and reason stated therefore.

4 (b) The birthing center and its owner or owners and the Office of Health Facility Licensure
5 and Certification will be entitled to representation by legal counsel at the informal meeting and at
6 the administrative hearing at their own expense, respectively.

7 (c) All of the pertinent provisions of §29A-5-1 et seq. of this code shall apply to and govern
8 any formal hearing authorized by this article and any rules promulgated pursuant thereto.

9 (d) If a birthing center fails to request a hearing within the time frame specified, he or she
10 shall be subject to the full limitation, enforcement action, or penalty, or any combination thereof,
11 imposed pursuant to §16B-20-6 or §16B-20-7, or both.

12 (e) The filing of a request for an administrative hearing or an informal meeting does not
13 stay or supersede the enforcement of a limitation, enforcement action, or penalty, or any
14 combination thereof, imposed pursuant to §16B-20-6 or §16B-20-7, or both.

15 (f) Any party who is dissatisfied with the decision of the Board of Review as a result of the
16 formal hearing provided in this section may, within 30 days after receiving the notice of the
17 decision, petition the West Virginia Intermediate Court of Appeals.

18 (g) The court may affirm, modify, or reverse the decision of the Board of Review and either
19 the applicant or the licensee, or the Inspector General may appeal the court's decision to the West
20 Virginia Supreme Court of Appeals.

21 (h) Notwithstanding the existence or pursuit of any other remedy, the Inspector General
22 may, in the manner provided by law, maintain an action in the name of the state for an injunction
23 against any person, partnership, association, or corporation to restrain or prevent the
24 establishment, conduct, management, or operation of any birthing center or violation of any
25 provision of this article or any rule lawfully promulgated thereunder without first obtaining a license
26 in the manner herein provided.

§16B-20-9. Rules; minimum standards for birthing centers.

1 (a) The Inspector General shall promulgate rules in accordance with the provisions of W.
2 Va. Code §§29A-3-1, et seq. for the licensure of birthing centers to ensure adequate care,
3 treatment, health, safety, welfare, and comfort of patients at birthing centers. These rules shall be
4 based on best practices and evidence-based practices and include, at a minimum:

5 (1) The process to be followed by applicants seeking a license;

6 (2) The qualifications and supervision of licensed and non-licensed personnel at a birthing
7 center and training requirements for all facility health care practitioners who are not regulated by
8 another board;

9 (3) The plan for collaboration with other providers, agencies, or organizations for services
10 not directly provided by the birthing center;

11 (4) The management, operation, staffing, and equipping of the birthing center;

12 (5) The clinical, medical, patient, and business records kept by the birthing center;

13 (6) The procedures for inspections and for review of utilization and quality of patient care;

14 (7) The standards and procedures for the general operation of a birthing center, including,
15 but not limited to, facility operations, physical operations, infection control requirements, health
16 and safety requirements, and quality assurance;

- 17 (8) The criteria used to identify a facility as a birthing center;
18 (9) The standards and procedures to be followed by an administrator in providing,
19 supervision, direction, and control of individuals employed by or associated with a birthing center;
20 (10) Data collection and reporting requirements;
21 (11) The criteria and requirements related to required services and specific functions of a
22 birthing center;
23 (12) The provisions for requesting and responding to a written request for a variance or
24 waiver; and
25 (13) The provisions for administrative due process; suspension, revocation, or denial of a
26 license; ban on admissions; reduction in census; and civil money penalties, and the time frames
27 for the same.
28 (b) The Legislature finds that an emergency exists and, therefore, the Inspector General
29 shall file an emergency rule to implement the provisions of this section pursuant to the provisions
30 of §29A-3-15 of this code.

NOTE: The purpose of this bill is to modernize the birthing center statute by updating language to make the statute more consistent with nationally recognized best practices in the field and by making the administrative requirements and processes associated with birthing center licensure more streamlined and consistent with other facility types regulated by the Office of Health Facility and Certification.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.