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.

IN THE HOUSE OF REPRESENTATIVES

Ms. CLARK of Massachusetts introduced the following bill; which was referred to the Committee on ____________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Birth Access Benefiting Improved Essential Facility Services Act” or the “BABIES Act”.

January 21, 2021 (1:06 p.m.)
SEC. 2. MEDICAID DEMONSTRATION PROGRAM TO IMPROVE FREESTANDING BIRTH CENTER SERVICES.

Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended by adding at the end the following:

“(bb) DEMONSTRATION PROGRAM TO IMPROVE FREESTANDING BIRTH CENTER SERVICES.—

“(1) AUTHORITY.—The Secretary shall establish a demonstration program for the purpose of identifying ways to improve access to, and the quality and scope of, freestanding birth center services for women with a low-risk pregnancy.

“(2) DEADLINES FOR CENTERS PARTICIPATION CRITERIA, PROSPECTIVE PAYMENT SYSTEM; PLANNING GRANTS.—

“(A) PARTICIPATION AND PROSPECTIVE PAYMENT SYSTEM DEADLINE.—Not later than one year after the date of the enactment of this subsection, the Secretary shall do the following:

“(i) PUBLICATION OF PARTICIPATION CRITERIA FOR FREESTANDING BIRTH CENTERS.—

“(I) IN GENERAL.—Publish criteria for a freestanding birth center to be certified by a State for purposes of participating in a State demonstration
program conducted under this subsection.

“(II) REQUIREMENTS.—The criteria required to be published under subclause (I) shall include the following:

“(aa) ACCREDITATION.—A freestanding birth center must have a current accreditation credential from an approved nationally recognized birth center accreditation body, as determined by the Secretary.

“(bb) LICENSURE AND OTHER REQUIREMENTS.—A freestanding birth center shall—

“(AA) be licensed, or otherwise approved, by the State to provide prenatal, labor and delivery, postpartum, newborn care, and other ambulatory services that are included in the State Medicaid program; and
“(BB) comply with such other requirements relating to the health and safety of individuals who receive services furnished by the facility as the State shall establish.

“(cc) CARE COORDINATION.—A freestanding birth center shall be able to meet care coordination requirements, including requirements to coordinate care across settings and providers to ensure seamless transitions for patients across the full spectrum of health services, and engage in consultation for higher level maternity care services, non-maternity care services, and behavioral health needs, and which may include plans for consultation, collaboration and referral, and arrangements with the following:
“(AA) Federally-qualified health centers (and as applicable, rural health clinics) to provide Federally-qualified health center services (and as applicable, rural health clinic services) to the extent such services are not provided directly through the birth center.

“(BB) Other outpatient clinics, including licensed midwifery and physician practices.

“(CC) Inpatient acute care facilities with obstetrical care units.

“(dd) Scope of services.—As determined by the Secretary, a freestanding birth center must be able to provide peripartum care for women with a low-risk pregnancy and for newborns, consistent with evidence-based guidelines.
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
and procedures for timely transport.

“(CC) Medical consultation available from a licensed board-certified physician with admitting privileges in obstetrics at a nearby hospital.

“(DD) Data collection, storage, and retrieval, including data on intrapartum and postpartum maternal and newborn transfer rates and hospital admissions.

“(EE) The ability to initiate and document quality improvement programs as required by accreditation that include efforts to maximize patient safety, such as safety checklists, validated training and competency of staff, and emergency preparedness and drills.
Nothing in subitem (AA) shall be construed as affecting the State plan requirement specified under section 431.53 of title 42, Code of Federal Regulations, or any successor regulation (relating to assurance of transportation).

“(ff) HEALTH CARE PROVIDERS.—A freestanding birth center must employ or have care delivery arrangements with both of the following:

“(AA) A physician or physicians licensed to practice within the State or jurisdiction of the birth center.

“(BB) A midwife or midwives that meet or exceed the education and training standards of the International Confederation of Midwives and who are licensed to practice within the jurisdiction of the birth center.
“(gg) NON-DUPLICATION.—

In carrying out this subsection, the Secretary shall, to the greatest extent practicable, prevent the duplication of services covered under this subsection with services otherwise covered under the State plan under this title and prevent payment under a demonstration program under paragraph (3) for services for which payment is otherwise made under the State plan under this title.

“(ii) GUIDANCE ON DEVELOPMENT OF PROSPECTIVE PAYMENT SYSTEM FOR TESTING UNDER STATE DEMONSTRATION PROGRAMS.—

“(I) IN GENERAL.—The Secretary shall issue guidance for States participating in a demonstration program conducted under paragraph (3) to establish a prospective payment system that shall only apply to free-standing birth center services that
meet the criteria established under clause (i) furnished by a freestanding birth center participating in such demonstration program.

“(II) REQUIREMENTS.—The guidance issued by the Secretary under subclause (I) shall, to the greatest extent practicable, provide for—

“(aa) partial facility payment based on units in the case that a pregnant woman is admitted in labor and then needs to be transferred to the hospital in labor before the birth of the baby;

“(bb) facility payment for observation short stays to rule out labor or for therapeutic rest;

“(cc) ensuring payment for the newborn and mother as two facility payment components;

“(dd) ensuring payment for nitrous oxide and hydrotherapy supplies costs for pain relief;
“(ee) ensuring payment for all professional services of health professionals involved in the delivery of care in a birth center which may include 3 or more office visits; observation and triage; newborn exam and care; and multiple postpartum, mother, and baby visits, as needed;

“(ff) ensuring payment for partial prenatal and postpartum care episodes or for prenatal care only with planned delivery in the hospital and client returning for postpartum care in the birth center; and

“(gg) payment for services provided within—

“(AA) in the case of a pregnant woman, the period that commences upon the confirmation of pregnancy when the woman is accepted into care at the freestanding birth center, continues
through prenatal care, labor and delivery, and ends 60 days postpartum, inclusive of at least 2 postpartum care visits; and

“(BB) in the case of a newborn, a period that continues through the first 28 days of life.

“(B) PLANNING GRANTS.—

“(i) IN GENERAL.—Not later than 18 months after the date of the enactment of this subsection, the Secretary shall award planning grants to States for the purpose of developing proposals to conduct a demonstration program described in paragraph (3).

“(ii) USE OF FUNDS.—A State awarded a planning grant under this subparagraph shall use the funds awarded under such grant to—

“(I) solicit input with respect to the development of the demonstration program from patients, providers (in-
cluding certified nurse-midwives and physicians) and other stakeholders;

“(II) secure participation of freestanding birth centers that meet the criteria established under subparagraph (A)(i), including by providing support for such centers to meet that criteria in order to maximize the number of freestanding birth centers participating in the demonstration program; and

“(III) in accordance with the guidance issued under subparagraph (A)(ii), establish a prospective payment system which States must use for making payments to freestanding birth centers participating in the demonstration program.

“(3) STATE DEMONSTRATION PROGRAMS.—

“(A) IN GENERAL.—Not later than 24 months after the date of the enactment of this subsection, from among the States awarded a planning grant under paragraph (2)(B), the Secretary shall select not more than 6 such
States to conduct demonstration programs that meet the requirements of this paragraph.

“(B) APPLICATION REQUIREMENTS.—

“(i) IN GENERAL.—The Secretary shall solicit applications to conduct a demonstration program under this subsection from States awarded planning grants under paragraph (2)(B).

“(ii) REQUIRED INFORMATION.—A State application to conduct a demonstration program under this paragraph shall include the following:

“(I) A description of the target Medicaid population to be served under the demonstration program.

“(II) A list of the participating freestanding birth centers in the State.

“(III) Verification that each participating freestanding birth center meets the participation criteria established in paragraph (2)(A)(i).

“(IV) A description of the scope of the freestanding birth center services available under the State Med-
icaid program for women with a low-risk pregnancy that will be paid for under the prospective payment system tested in the demonstration program.

“(V) Verification that the State has agreed to pay for such services at the rate established under the prospective payment system.

“(VI) An assurance that the State will require freestanding birth centers to submit to the State, and that the State will submit to the Secretary, such information and data as the State or Secretary may require relating to the demonstration program or an episode of care for such a pregnant woman or newborn.

“(VII) Such other information as the Secretary may require relating to the demonstration program, including with respect to determining the soundness of the proposed prospective payment system.

“(C) LENGTH OF DEMONSTRATION PROGRAMS.—A State selected to conduct a dem-
onstration program under this paragraph shall conduct the program for a 4-year period.

“(D) REQUIREMENTS FOR SELECTING DEMONSTRATION PROGRAMS.—In selecting States to conduct demonstration programs under this paragraph, the Secretary shall—

“(i) ensure States meet the criteria described in paragraph (2)(A)(i)(II);

“(ii) ensure that the States represent a diverse selection of geographic areas, including rural and underserved areas; and

“(iii) give preference to States that demonstrate the potential to expand the availability of and access to maternity care services in a demonstration area and increase the quality of services provided by freestanding birth centers without increasing net Federal spending.

“(E) PAYMENT FOR SERVICES PROVIDED BY FREESTANDING BIRTH CENTERS.—

“(i) IN GENERAL.—Amounts expended by a State to conduct a demonstration program under this paragraph shall be treated as medical assistance for purposes of subsection (a) of this section. Under a
demonstration program conducted under this paragraph by a State, payments shall be made by the State for freestanding birth center services that meet the criteria established under paragraph (2)(A)(i) furnished by a freestanding birth center in accordance with the prospective payment system for such services established pursuant to the guidance issued under paragraph (2)(A)(ii).

“(ii) LIMITATIONS.—Payments shall be made under this subparagraph to a State only for freestanding birth center services that are—

“(I) described in the demonstration program application submitted by the State and approved by the Secretary; and

“(II) provided to an individual who is eligible for medical assistance under the State Medicaid program.

“(iii) PROHIBITED PAYMENTS.—Unless included as part of a payment provided under a prospective payment system established by a State for the demonstra-
tion program pursuant to the guidance
issued under paragraph (2)(A(ii), no pay-
ment shall be made under this subpara-
graph for inpatient care or other non-am-
bulatory services, as determined by the
Secretary.

“(F) Waiver of Statewideness Re-
quirement.—The Secretary shall waive section
1902(a)(1) (relating to statewideness) as may
be necessary for a State to conduct a dem-
onstration program in accordance with the re-
quirements of this paragraph.

“(G) Annual Reports.—

“(i) In General.—Not later than 2
years after the date on which the first
State is selected to conduct a demonstra-
tion program under this paragraph, and
annually thereafter, based on information
and data submitted by States in accord-
ance with the assurance provided under
subparagraph (B)(ii)(VI), the Secretary
shall submit to Congress an annual report
on all State demonstration programs con-
ducted under this paragraph. Each such
report shall include with respect to each such State demonstration program—

“(I) an assessment of clinical outcomes for maternity services provided by freestanding birth centers participating in the demonstration program compared to outcomes for low-risk pregnancy Medicaid patients in comparable demographic and geographic areas, including with respect to the number of births and data on intrapartum and postpartum maternal and newborn transfer rates and hospital admissions; and

“(II) an assessment of the impact of all the State demonstration programs conducted under this paragraph on the Federal and State costs relating to providing freestanding birth center services for women with a low-risk pregnancy (including with respect to the provision of inpatient, emergency, and ambulatory services) and newborn care, compared to the Federal and State costs related to the
provision of freestanding birth center services by freestanding birth centers outside of such demonstration programs.

“(ii) RECOMMENDATIONS.—Not later than the end of the third year of the demonstration program established under this subsection, the Secretary shall submit to Congress recommendations concerning whether the demonstration programs under this paragraph should be continued, expanded, modified, or terminated.

“(4) FUNDING.—

“(A) IN GENERAL.—Out of any funds in the Treasury not otherwise appropriated, there is appropriated to the Secretary—

“(i) for purposes of carrying out paragraph (2)(B), $2,000,000; and

“(ii) for purposes of carrying out the demonstration programs under paragraph (3), $25,000,000.

“(B) AVAILABILITY.—Funds appropriated under subparagraph (A) shall remain available until expended.

“(5) DEFINITIONS.—In this subsection:
“(A) FREESTANDING BIRTH CENTER SERVICES.—The term ‘freestanding birth center services’ has the meaning given that term under section 1905(l)(3)(A) and includes such other services as the Secretary shall determine for purposes of the demonstration programs conducted under paragraph (3).

“(B) LOW-RISK PREGNANCY.—The term ‘low-risk pregnancy’ means an uncomplicated singleton term pregnancy with a vertex presentation with an expected uncomplicated birth.”.