

118TH CONGRESS  
2D SESSION

# S. 5262

To address maternity care shortages and promote optimal maternity outcomes by expanding access to birth centers and exploring more effective payment models for birth center care, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 2024

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

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## A BILL

To address maternity care shortages and promote optimal maternity outcomes by expanding access to birth centers and exploring more effective payment models for birth center care, 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 “Better Availability of  
5       Birth Centers Improves Outcomes and Expands Savings  
6       Act” or the “BABIES Act”.

1 **SEC. 2. GRANTS TO IMPROVE ACCESS TO FREESTANDING**  
2 **BIRTH CENTER SERVICES.**

3 Part P of title III of the Public Health Service Act  
4 (42 U.S.C. 280g et seq.) is amended by adding at the end  
5 the following:

6 **“SEC. 399V–8. STRONG START BIRTH CENTER GRANTS TO**  
7 **ASSIST BIRTH CENTERS WITH START-UP OR**  
8 **EXPANSION COSTS TO EXPAND ACCESS TO**  
9 **BIRTH CENTER SERVICES IN UNDERSERVED**  
10 **AREAS.**

11 “(a) IN GENERAL.—The Secretary, acting through  
12 the Administrator of the Health Resources and Services  
13 Administration, may award grants to eligible birth centers  
14 that are accredited, or intend to seek accreditation, as  
15 birth centers by a nationally recognized accrediting body  
16 such as the Commission for the Accreditation of Birth  
17 Centers, or that have the intention of seeking such accred-  
18 itation, for the purposes described in subsection (b).

19 “(b) USE OF FUNDS.—A birth center receiving a  
20 grant under this section may use such grant funds for any  
21 of the following purposes:

22 “(1) Renovation, expansion, or construction of  
23 a birth center facility.

24 “(2) Purchasing or updating equipment for a  
25 birth center.

1           “(3) Accreditation and State licensure activi-  
2       ties.

3           “(c) GRANTS; GRANT AMOUNTS.—For each of fiscal  
4 years 2025 through 2029, the Secretary shall award  
5 grants under this section to up to 15 birth centers, each  
6 in an amount of not less than \$300,000 and not more  
7 than \$500,000.

8           “(d) SPECIAL CONSIDERATIONS.—In awarding  
9 grants under this section, the Secretary shall give special  
10 consideration to an eligible birth center that—

11           “(1) is located in, or offers services to, a geo-  
12       graphic area that—

13           “(A) has been designated under section  
14       332 as a health professional shortage area with  
15       respect to maternity care; or

16           “(B) has maternity care outcomes that are  
17       below a threshold established by the Secretary;  
18       and

19           “(2) has not previously received a grant under  
20       this section.

21           “(e) AUTHORIZATION OF APPROPRIATIONS.—There  
22 is authorized to be appropriated to carry out this section  
23 \$5,000,000 for the period of fiscal years 2025 through  
24 2029.”.

1 **SEC. 3. 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 new  
 6 subsection:

7 “(cc) DEMONSTRATION PROGRAM TO IMPROVE  
 8 FREESTANDING BIRTH CENTER SERVICES.—

9 “(1) AUTHORITY.—The Secretary shall conduct  
 10 a demonstration program for the purpose of explor-  
 11 ing more effective payment models for birth center  
 12 care in order to improve access to, and the quality  
 13 and scope of, freestanding birth center services for  
 14 women with a low-risk pregnancy who are eligible  
 15 for medical assistance under the State plan under  
 16 this title or under a waiver of such plan.

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

20 “(A) PARTICIPATION AND PROSPECTIVE  
 21 PAYMENT SYSTEM DEADLINE.—Not later than  
 22 1 year after the date of the enactment of this  
 23 subsection, the Secretary shall do the following:

24 “(i) PUBLICATION OF PARTICIPATION  
 25 CRITERIA FOR FREESTANDING BIRTH CEN-  
 26 TERS.—

1                   “(I) IN GENERAL.—The Sec-  
 2                   retary shall publish criteria for a free-  
 3                   standing birth center to be certified  
 4                   by a State for purposes of partici-  
 5                   pating in a State demonstration pro-  
 6                   gram conducted under this subsection.

7                   “(II) REQUIREMENTS.—The cri-  
 8                   teria required to be published under  
 9                   subclause (I) shall include the fol-  
 10                  lowing:

11                   “(aa) ACCREDITATION.—At  
 12                   the time of certification for pur-  
 13                   poses of participating in the dem-  
 14                   onstration program conducted  
 15                   under this subsection, a free-  
 16                   standing birth center must be ac-  
 17                   credited or have completed the  
 18                   initial phase of accreditation  
 19                   from an approved, nationally-rec-  
 20                   ognized birth center accreditation  
 21                   body, as determined by the Sec-  
 22                   retary.

23                   “(bb) LICENSURE AND  
 24                   OTHER REQUIREMENTS.—A free-  
 25                   standing birth center shall—

1                   “(AA) be licensed, or  
 2                   otherwise approved, by the  
 3                   State to provide prenatal,  
 4                   labor and delivery,  
 5                   postpartum, newborn care,  
 6                   and other ambulatory serv-  
 7                   ices for which medical as-  
 8                   sistance is available under  
 9                   the State plan or waiver  
 10                  under this title; and

11                  “(BB) comply with  
 12                  such other requirements re-  
 13                  lating to the health and  
 14                  safety of individuals who re-  
 15                  ceive services furnished by  
 16                  the facility as the State shall  
 17                  establish.

18                  “(cc) CARE COORDINA-  
 19                  TION.—A freestanding birth cen-  
 20                  ter shall be able to meet care co-  
 21                  ordination requirements estab-  
 22                  lished by the Secretary, including  
 23                  requirements to coordinate care  
 24                  across settings and providers to  
 25                  ensure seamless transitions for

1 patients across the full spectrum  
2 of health services, and shall be  
3 able to engage in consultation for  
4 higher level maternity care serv-  
5 ices, non-maternity care services,  
6 and behavioral health needs,  
7 which may include plans for con-  
8 sultation, collaboration and refer-  
9 ral, and arrangements with the  
10 following:

11 “(AA) Federally quali-  
12 fied health centers (and as  
13 applicable, rural health clin-  
14 ics) to provide Federally  
15 qualified health center serv-  
16 ices (and as applicable, rural  
17 health clinic services) to the  
18 extent such services are not  
19 provided directly through  
20 the birth center.

21 “(BB) Other outpatient  
22 clinics, including licensed  
23 midwifery and physician  
24 practices.

1 “(CC) Inpatient acute  
2 care facilities with obstet-  
3 rical care units.

4 “(dd) SCOPE OF SERV-  
5 ICES.—As determined by the Sec-  
6 retary, a freestanding birth cen-  
7 ter shall be able to provide  
8 peripartum care for women with  
9 a low-risk pregnancy and for  
10 newborns, consistent with evi-  
11 dence-based guidelines.

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

15 “(AA) In addition to  
16 the requirements specified  
17 under section 431.53 of title  
18 42, Code of Federal Regula-  
19 tions, and any successor reg-  
20 ulation (relating to assur-  
21 ance of transportation), the  
22 capability and equipment to  
23 provide prenatal, labor and  
24 delivery, postpartum, and  
25 newborn care for women

1 with a low-risk pregnancy,  
2 readiness at all times to ini-  
3 tiate emergency procedures  
4 to meet unexpected needs of  
5 such women and of  
6 newborns within the center,  
7 including at least 2 qualified  
8 staff on-site at every birth,  
9 and the ability to facilitate  
10 transport to an acute care  
11 hospital with an obstetrical  
12 care unit when necessary.

13 “(BB) An established  
14 transfer plan with a receiv-  
15 ing hospital with an obstet-  
16 rical care unit with policies  
17 and procedures for timely  
18 transport.

19 “(CC) Medical con-  
20 sultation available from a li-  
21 censed board-certified physi-  
22 cian with admitting privi-  
23 leges in obstetrics at a near-  
24 by hospital, as defined by  
25 State law or regulation.

1 “(DD) Data collection,  
2 storage, and retrieval, in-  
3 cluding data on intrapartum  
4 and postpartum maternal  
5 and newborn transfer rates  
6 and hospital admissions.

7 “(EE) The ability to  
8 initiate and document qual-  
9 ity improvement programs  
10 as required by accreditation  
11 that include efforts to maxi-  
12 mize patient safety, such as  
13 safety checklists, validated  
14 training and competency of  
15 staff, and emergency pre-  
16 paredness and drills.

17 “(ff) HEALTH CARE PRO-  
18 VIDERS.—A freestanding birth  
19 center shall employ, or have care  
20 delivery arrangements with, both  
21 of the following:

22 “(AA) A physician li-  
23 censed to practice within the  
24 State or jurisdiction of the  
25 birth center.

1 “(BB) A midwife that  
2 meets or exceeds the edu-  
3 cation and training stand-  
4 ards of the International  
5 Confederation of Midwives  
6 and who is licensed to prac-  
7 tice within the jurisdiction of  
8 the birth center.

9 “(gg) NON-DUPLICATION.—  
10 In carrying out this subsection,  
11 the Secretary shall, with respect  
12 to a State participating in the  
13 demonstration program, establish  
14 procedures to prevent, to the  
15 greatest extent practicable, the  
16 provision of, or payment for,  
17 services under the demonstration  
18 program for which medical as-  
19 sistance is available under the  
20 State plan under this title or  
21 waiver of such plan.

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

1           “(I) IN GENERAL.—The Sec-  
2           retary shall issue guidance for States  
3           participating in a demonstration pro-  
4           gram conducted under this subsection  
5           to establish a prospective payment  
6           system that shall only apply to free-  
7           standing birth center services that—

8                   “(aa) meet the criteria es-  
9                   tablished under clause (i); and

10                   “(bb) are furnished by a  
11                   freestanding birth center partici-  
12                   pating in such a demonstration  
13                   program.

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

19                   “(aa) a partial facility pay-  
20                   ment based on units in the case  
21                   that a pregnant woman is admit-  
22                   ted in labor and then needs to be  
23                   transferred to the hospital in  
24                   labor before the birth of the  
25                   baby;

1 “(bb) a facility payment for  
 2 therapeutic rest or for observa-  
 3 tion short stays to rule out labor;

4 “(cc) ensuring payment for  
 5 the newborn and mother as 2  
 6 separate facility payment compo-  
 7 nents;

8 “(dd) ensuring payment for  
 9 nitrous oxide and hydrotherapy  
 10 supplies costs for pain relief;

11 “(ee) ensuring payment for  
 12 all professional services of health  
 13 professionals involved in the de-  
 14 livery of care in a birth center,  
 15 which may include—

16 “(AA) 3 or more pre-  
 17 natal office visits;

18 “(BB) observation and  
 19 triage;

20 “(CC) newborn exam  
 21 and care; and

22 “(DD) multiple  
 23 postpartum, mother, and  
 24 newborn visits, as needed;

1           “(ff) ensuring payment for  
2 partial prenatal and postpartum  
3 care episodes or for prenatal care  
4 only with planned delivery in the  
5 hospital and returning for  
6 postpartum care in the birth cen-  
7 ter; and

8           “(gg) payment for services  
9 provided within—

10           “(AA) in the case of a  
11 pregnant woman, the period  
12 that commences upon the  
13 confirmation of pregnancy  
14 when the woman is accepted  
15 into care at the freestanding  
16 birth center, continues  
17 through prenatal care, labor,  
18 and delivery, and ends at  
19 the completion of the  
20 postpartum period (as de-  
21 fined by State law or regula-  
22 tion) with documentation of  
23 a plan for continued well  
24 woman care, inclusive of at

1 least 2 postpartum care vis-  
 2 its; and

3 “(BB) in the case of a  
 4 newborn, a period that con-  
 5 tinues through the first 28  
 6 days of life with documenta-  
 7 tion of continued infant  
 8 care.

9 “(iii) PUBLICATION OF AN RFP FOR  
 10 STATES TO APPLY FOR THE DEMONSTRA-  
 11 TION PROGRAM.—

12 “(I) IN GENERAL.—The Sec-  
 13 retary shall publish a request for pro-  
 14 posal (in this clause referred to as an  
 15 ‘RFP’) for States to establish and test  
 16 a prospective payment system for  
 17 freestanding birth center services  
 18 that—

19 “(aa) meets the criteria es-  
 20 tablished under clause (i); and

21 “(bb) are furnished by a  
 22 freestanding birth center partici-  
 23 pating in a demonstration pro-  
 24 gram under this subsection.

1                   “(II)       REQUIREMENTS.—The  
2                   RFP published by the Secretary  
3                   under subclause (I) shall, to the  
4                   greatest extent practicable, include  
5                   the following parameters:

6                   “(aa) States must have a  
7                   minimum number of established  
8                   or developing birth centers.

9                   “(bb) States must have a  
10                  mechanism to recognize or license  
11                  birth centers.

12                  “(cc) States must have at  
13                  least 1 area that has been des-  
14                  ignated a maternity care desert.

15                  “(dd) States must have  
16                  areas with maternity care out-  
17                  comes that are below a certain  
18                  threshold, as determined by the  
19                  Secretary.

20                  “(ee) States should rep-  
21                  resent a diverse selection of geo-  
22                  graphic areas, including rural  
23                  and underserved areas.

24                  “(ff) Preference should be  
25                  given to States that demonstrate

1 the potential to expand the avail-  
2 ability of and access to maternity  
3 care services in a demonstration  
4 area and increase the quality of  
5 services provided by freestanding  
6 birth centers without increasing  
7 net Federal spending, as deter-  
8 mined by the Secretary.

9 “(III) REQUIRED INFORMA-  
10 TION.—A State application to conduct  
11 a demonstration program under this  
12 subsection shall include the following:

13 “(aa) A description of the  
14 target population of individuals  
15 who are eligible for medical as-  
16 sistance under the State plan  
17 under this title or under a waiver  
18 of such plan and are to be served  
19 under the demonstration pro-  
20 gram.

21 “(bb) A list of the partici-  
22 pating freestanding birth centers  
23 in the State.

24 “(cc) Verification that each  
25 participating freestanding birth

1 center meets the participation  
2 criteria established in paragraph  
3 (2)(A)(i).

4 “(dd) A description of the  
5 scope of the freestanding birth  
6 center services available under  
7 the State plan under this title or  
8 waiver of such plan for women  
9 with a low-risk pregnancy that  
10 will be paid for under the pro-  
11 spective payment system tested  
12 in the demonstration program.

13 “(ee) Verification that the  
14 State has agreed to pay for such  
15 services at the rate established  
16 under the prospective payment  
17 system.

18 “(ff) An assurance that the  
19 State will require freestanding  
20 birth centers to submit to the  
21 State, and that the State will  
22 submit to the Secretary, such in-  
23 formation and data as the State  
24 or Secretary may require relating  
25 to the demonstration program or

1 an episode of care for such a  
2 pregnant woman or newborn.

3 “(gg) Such other informa-  
4 tion as the Secretary may require  
5 relating to the demonstration  
6 program, including with respect  
7 to determining the soundness of  
8 the proposed prospective payment  
9 system.

10 “(IV) DEADLINES FOR SUBMIS-  
11 SION OF RFP APPLICATIONS.—The  
12 deadline for a State to submit an ap-  
13 plication to participate in the dem-  
14 onstration program conducted under  
15 this subsection shall be the date that  
16 is 90 days after the date on which the  
17 Secretary publishes the RFP under  
18 subclause (I).

19 “(B) PLANNING GRANTS.—

20 “(i) IN GENERAL.—Not later than 18  
21 months after the date of enactment of this  
22 subsection, the Secretary shall award a  
23 planning grant to up to 6 States for the  
24 purpose of developing a detailed proposal

1 to conduct a demonstration program de-  
2 scribed in paragraph (3).

3 “(ii) USE OF FUNDS.—A State award-  
4 ed a planning grant under this subpara-  
5 graph shall use the funds awarded under  
6 such grant to—

7 “(I) solicit input with respect to  
8 the development of the demonstration  
9 program from patients, providers (in-  
10 cluding certified nurse-midwives, other  
11 midwives licensed within the State,  
12 and physicians), and other stake-  
13 holders;

14 “(II) secure participation of free-  
15 standing birth centers that meet the  
16 criteria established under subpara-  
17 graph (A)(i), including by providing  
18 support for such centers to meet that  
19 criteria (including accreditation) in  
20 order to maximize the number of free-  
21 standing birth centers participating in  
22 the demonstration program; and

23 “(III) in accordance with the  
24 guidance issued under subparagraph  
25 (A)(ii), establish a prospective pay-

1                   ment system which the State shall use  
2                   for making payments to freestanding  
3                   birth centers participating in the dem-  
4                   onstration program.

5                   “(3) STATE DEMONSTRATION PROGRAMS.—

6                   “(A) IN GENERAL.—Not later than 2 years  
7                   after the date of enactment of this subsection,  
8                   the States selected by the Secretary under para-  
9                   graph (2)(B)(i) shall launch their demonstra-  
10                  tion programs.

11                  “(B) LENGTH OF DEMONSTRATION PRO-  
12                  GRAMS.—A State conducting a demonstration  
13                  program in accordance with this paragraph  
14                  shall conduct the program for a 4-year period.

15                  “(C) PAYMENT FOR SERVICES PROVIDED  
16                  BY FREESTANDING BIRTH CENTERS.—

17                  “(i) IN GENERAL.—During the first  
18                  16 fiscal quarter period (or any portion of  
19                  such period) that the State participates in  
20                  the demonstration program, the Secretary  
21                  shall pay a State participating in a dem-  
22                  onstration program under this subsection  
23                  the Federal matching percentage specified  
24                  in clause (ii) for amounts expended by the  
25                  State to provide freestanding birth center

1 services that meet the criteria established  
2 under paragraph (2)(A)(i) and are fur-  
3 nished by a freestanding birth center in ac-  
4 cordance with the prospective payment sys-  
5 tem for such services established by the  
6 State pursuant to the guidance issued  
7 under paragraph (2)(A)(ii) to individuals  
8 who are enrolled in the State Medicaid  
9 program.

10 “(ii) FEDERAL MATCHING PERCENT-  
11 AGE.—Subject to clause (iii), the Federal  
12 matching percentage specified in this  
13 clause is, with respect to medical assist-  
14 ance described in clause (i) that is fur-  
15 nished by a State participating in an ongo-  
16 ing demonstration program under this sub-  
17 section—

18 “(I) to a newly eligible individual  
19 described in paragraph (2) of section  
20 1905(y), the matching rate applicable  
21 under paragraph (1) of that section  
22 (as increased under section 1905(ii),  
23 if applicable); and

24 “(II) to an individual who is not  
25 a newly eligible individual (as so de-

scribed) but who is eligible for medical assistance under the State Medicaid program, the enhanced FMAP applicable to the State.

“(iii) APPLICATION OF HIGHER MATCH.—Clause (ii) shall not apply in the case of State expenditures described in such clause if the application of such clause would result in a lower Federal medical assistance percentage for such expenditures than would otherwise apply without the application of such clause.

“(iv) LIMITATION.—Payments shall be made under this subparagraph to a State only for amounts expended by the State to provide medical assistance for freestanding birth center services that are described in the demonstration program application submitted by the State and approved by the Secretary.

“(v) ADMINISTRATIVE EXPENSES.—Amounts expended by a State to conduct a demonstration program in accordance with this paragraph shall be considered, for purposes of subsection (a)(7), to be necessary

1           for the proper and efficient administration  
2           of the State plan.

3           “(D) WAIVER OF STATEWIDENESS RE-  
4           QUIREMENT.—The Secretary shall waive the re-  
5           quirements of section 1902(a)(1) (relating to  
6           Statewideness), section 1902(a)(10)(B) (relat-  
7           ing to comparability), and any other provision  
8           of this title which would be directly contrary to  
9           the authority under this subsection as may be  
10          necessary for a State to conduct a demonstra-  
11          tion program in accordance with this para-  
12          graph.

13          “(E) 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 subsection, and  
18               annually thereafter, based on information  
19               and data submitted by States in accord-  
20               ance with the assurance provided under  
21               paragraph (2)(A)(iii)(III)(ff), the Sec-  
22               retary shall submit to Congress an annual  
23               report on all State demonstration pro-  
24               grams conducted under this subsection.  
25               Each such report shall include with respect

1 to each such State demonstration pro-  
2 gram—

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 for individuals who are eligi-  
8 ble for medical assistance under a  
9 State plan under this title or under a  
10 waiver of such plan and are women  
11 with a low-risk pregnancy with out-  
12 comes in comparable demographic and  
13 geographic areas, including with re-  
14 spect to—

15 “(aa) the number of births  
16 and data on intrapartum and  
17 postpartum maternal and new-  
18 born transfer rates and hospital  
19 admissions; and

20 “(bb) the rate of primary  
21 and repeat cesarean sections,  
22 preterm births, and neonatal in-  
23 tensive care unit admissions; and

24 “(II) an assessment of the im-  
25 pact of all the State demonstration

1 programs conducted under this sub-  
2 section on the Federal and State costs  
3 relating to providing freestanding  
4 birth center services for individuals  
5 who are eligible for medical assistance  
6 under a State plan under this title or  
7 under a waiver of such plan and are  
8 women with a low-risk pregnancy (in-  
9 cluding with respect to the provision  
10 of inpatient, emergency, and ambula-  
11 tory services) and newborn care, com-  
12 pared to the Federal and State costs  
13 related to the provision of—

14 “(aa) freestanding birth cen-  
15 ter services to such individuals by  
16 freestanding birth centers outside  
17 of such demonstration programs;  
18 and

19 “(bb) traditional maternity  
20 services as provided in non-birth  
21 center clinics and hospital pro-  
22 grams.

23 “(ii) RECOMMENDATIONS.—Not later  
24 than 6 months after the end of the third  
25 year of the demonstration program con-

1           ducted under this subsection, the Secretary  
 2           shall submit to Congress recommendations  
 3           concerning whether such demonstration  
 4           program should be continued, expanded,  
 5           modified, or terminated.

6           “(4) FUNDING.—

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

10           “(i) for purposes of carrying out para-  
 11           graph (2)(B), \$3,000,000; and

12           “(ii) for purposes of carrying out the  
 13           demonstration programs described in para-  
 14           graph (3), \$24,000,000, to be appropriated  
 15           at the rate of \$6,000,000 per year for 4  
 16           years.

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

20           “(5) DEFINITIONS.—In this subsection:

21           “(A) FREESTANDING BIRTH CENTER  
 22           SERVICES.—The term ‘freestanding birth center  
 23           services’ has the meaning given that term under  
 24           section 1905(l)(3)(A) and includes such other  
 25           services as the Secretary shall determine for

1           purposes of conducting the demonstration pro-  
2           grams described in paragraph (3).

3           “(B) LOW-RISK PREGNANCY.—The term  
4           ‘low-risk pregnancy’ means an uncomplicated  
5           singleton term pregnancy with a vertex presen-  
6           tation with an expected uncomplicated birth.”.

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