

BILL ANALYSIS

C.S.H.B. 15
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Over the past decade, Texas has seen significant increases in the utilization of neonatal intensive care units (NICU). According to interested parties, while only a small fraction of births are low-weight births, approximately half of the costs associated with NICU care can be attributed to care of infants with very low birth weights. These parties contend that, because Medicaid covers more than half of all births in Texas, concern over the standards for operating a NICU and the Medicaid payments for services delivered in these units led to the establishment of the Neonatal Intensive Care Unit Council. It has been reported that the council has recommended defining standards for both neonatal and maternity levels of care to improve outcomes and allow the state to make effective use of the state's resources.

C.S.H.B. 15 seeks to reduce the utilization of NICUs, to improve the outcomes for both pregnant women and newborns, and to achieve cost savings for the state by providing for level of care designations for neonatal and maternal care units at hospitals.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 15 amends the Health and Safety Code to require the executive commissioner of the Health and Human Services Commission (HHSC), in accordance with rules adopted under the bill, to assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital. The bill authorizes a hospital to receive different level designations for neonatal and maternal care, respectively.

C.S.H.B. 15 requires the executive commissioner, in consultation with the Department of State Health Services (DSHS), to adopt rules establishing the levels of care for neonatal and maternal care to be assigned to hospitals; prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation; establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively; establishing a process for amending the level of care designation requirements, including a process for assisting facilities in implementing any changes made necessary by the amendments; dividing the state into neonatal and maternal care regions; facilitating transfer agreements through regional coordination; requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the facility's level of care designation; and prohibiting the denial of a neonatal or maternal level of care designation to a hospital that meets the minimum requirements for that level of care.

C.S.H.B. 15 requires HHSC to study patient transfers that are not medically necessary but would be cost-effective. The bill authorizes the executive commissioner, based on the study, to adopt

rules addressing those transfers if it is determined that the transfers are feasible and desirable. The bill requires each level of care designation to require the hospital to regularly submit outcome and other data to DSHS as required or requested. The bill requires the criteria a hospital must achieve to receive each level of care designation to be posted on DSHS's Internet website.

C.S.H.B. 15 requires the executive commissioner, in consultation with DSHS, to assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care and requires the executive commissioner to evaluate separately the neonatal and maternal services provided at the hospital and to assign the respective level of care designations accordingly. The bill requires the executive commissioner and DSHS every three years to review the levels of care designations assigned to each hospital and to assign a hospital a different level of care designation or remove the hospital's level of care designation as necessary. The bill authorizes a hospital to request a change of designation at any time and requires the executive commissioner and DSHS, on such request, to review the hospital's request and, as necessary, change the hospital's level of care designation. The bill requires the executive commissioner to complete for each hospital in Texas the neonatal level of care designation not later than August 31, 2017, and the maternal level of care designation not later than August 31, 2019.

C.S.H.B. 15 prohibits a hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services from receiving a level of care designation for those services and specifies that such a hospital is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable, except emergency services required to be provided or reimbursed under Texas or federal law. The bill establishes that a hospital is not required to have a neonatal level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2017, or a maternal level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2019.

C.S.H.B. 15 establishes the 17-member Perinatal Advisory Council, requires the members to be appointed by the executive commissioner not later than December 1, 2013, and sets out the composition of the advisory council. The bill requires the executive commissioner, to the extent possible, to appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council. The bill establishes that members of the advisory council, with the exception of the ex officio representative from the office of the medical director of HHSC, serve staggered three-year terms, with the terms of five or six of those members expiring September 1 of each year, and sets out specific dates for the expiration of the initial terms of each of those member. The bill authorizes a member to be reappointed to the advisory council and establishes that a member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties. The bill requires DSHS, with recommendations from the advisory council, to develop a process for the designation and updates of levels of neonatal and maternal care at hospitals in accordance with the bill's provisions.

C.S.H.B. 15 requires the advisory council to develop and recommend criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation; to develop and recommend a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively; to make recommendations for the division of the state into neonatal and maternal care regions; to examine utilization trends relating to neonatal and maternal care; and to make recommendations related to improving neonatal and maternal outcomes. The bill requires the advisory council, in developing the criteria for the levels of neonatal and maternal care, to consider any recommendations or publications of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists, including the *Guidelines for Perinatal Care*; any guidelines developed by the Society of Maternal-Fetal Medicine; and the geographic and varied needs of citizens of this state. The bill requires the advisory council to submit a report detailing the advisory council's determinations and recommendations to DSHS and the executive

commissioner not later than September 1, 2015, and requires the advisory council to continue to update its recommendations based on any relevant scientific or medical developments. The bill establishes that the advisory council is subject to the Texas Sunset Act and, unless continued in existence as provided by that act, provides that the advisory council is abolished and provisions relating to the advisory council expire on September 1, 2025.

C.S.H.B. 15 requires the executive commissioner, not later than March 1, 2017, and after consideration of the advisory council's report, to adopt the initial rules required by the bill.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 15 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

Sec. 241.181. DEFINITIONS.

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner shall assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital.

(b) A hospital may receive different level designations for neonatal and maternal care, respectively.

Sec. 241.183. RULES. (a) The executive commissioner shall adopt rules:

(1) establishing the levels of care for neonatal and maternal care to be assigned to hospitals;

(2) prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(3) establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE

Sec. 241.181. DEFINITIONS.

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner, in accordance with the rules adopted under Section 241.183, shall assign level of care designations to each hospital based on the neonatal and maternal services provided at the hospital.

(b) A hospital may receive different level designations for neonatal and maternal care, respectively.

Sec. 241.183. RULES. (a) The executive commissioner, in consultation with the department, shall adopt rules:

(1) establishing the levels of care for neonatal and maternal care to be assigned to hospitals;

(2) prescribing criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(3) establishing a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(4) dividing the state into neonatal and maternal care regions;

(5) establishing neonatal and maternal care regional advisory councils and prescribing processes for the councils; and

(6) detailing confidential reporting requirements.

(b) Each level of care designation must require the hospital to:

(1) actively participate in the appropriate neonatal and maternal care regional advisory council; and

(2) regularly submit outcome and other data to the department as required or requested.

(c) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet website.

Sec. 241.184. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) The executive commissioner in consultation with the department shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(4) establishing a process for amending the level of care designation requirements, including a process for assisting facilities in implementing any changes made necessary by the amendments;

(5) dividing the state into neonatal and maternal care regions;

(6) facilitating transfer agreements through regional coordination;

(7) requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the facility's level of care designation; and

(8) prohibiting the denial of a neonatal or maternal level of care designation to a hospital that meets the minimum requirements for that level of care designation.

(b) The Health and Human Services Commission shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

(c) Each level of care designation must require a hospital to

regularly submit outcome and other data to the department as required or requested.

(d) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet website.

Sec. 241.184. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) The executive commissioner, in consultation with the department, shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(b) Biennially, the executive commissioner and the department shall review the levels of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

Sec. 241.185. HOSPITAL FAILING TO ACHIEVE MINIMUM LEVELS OF CARE. A hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services:

- (1) may not receive a level of care designation for those services; and
- (2) is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable.

SECTION 2. (a) In this section:

(1) "Department" means the Department of State Health Services.

(2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(3) "Task force" means the Perinatal Facility Designation Implementation Task Force established under this section.

(b) The task force consists of 14 members appointed by the executive commissioner as follows:

(1) four neonatologists, at least two of whom must practice in a Level III neonatal intensive care unit;

(2) one general pediatrician;

(b) Every three years, the executive commissioner and the department shall review the level of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

(c) A hospital may request a change of designation at any time. On request under this subsection, the executive commissioner and the department shall review the hospital's request and, as necessary, change the hospital's level of care designation.

Sec. 241.185. HOSPITAL FAILING TO ACHIEVE MINIMUM LEVELS OF CARE. A hospital that does not meet the minimum requirements for any level of care designation for neonatal or maternal services:

- (1) may not receive a level of care designation for those services; and
- (2) is not eligible to receive reimbursement through the Medicaid program for neonatal or maternal services, as applicable, except emergency services required to be provided or reimbursed under state or federal law.

Sec. 241.186. PERINATAL ADVISORY COUNCIL.

(a) In this section, "advisory council" means the Perinatal Advisory Council established under this section.

(b) The advisory council consists of 17 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice

- (3) two general obstetrician-gynecologists;
- (4) two maternal fetal medicine specialists;
- (5) one family practice physician who provides obstetrical care and practices in a rural community;
- (6) one representative from a children's hospital;
- (7) one representative from a hospital with a Level II neonatal intensive care unit;
- (8) one representative from a rural hospital; and
- (9) one representative from a general hospital.

(c) To the extent possible, the executive commissioner shall appoint members to the task force who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) A member of the task force serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of task force duties.

(e) ~~The Health and Human Services Commission, the department, and the task force shall work together~~ to develop a process for the designation of levels of

medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

(3) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provides obstetrical care in a rural community;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) one representative from a rural hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(c) To the extent possible, the executive commissioner shall appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of five or six of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(e) A member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties.

(f) The department, with recommendations from the advisory council, shall develop a process for the designation and updates of levels of neonatal and maternal care at

neonatal and maternal care at hospitals in accordance with Subchapter H, Chapter 241, Health and Safety Code, as added by this Act.

(f) The task force shall:

(1) develop criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develop a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

(4) develop processes for neonatal and maternal care regional advisory councils; and

(5) develop confidential reporting requirements.

(g) In developing the criteria for the levels of neonatal and maternal care, the task force shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists, including the Guidelines for Perinatal Care; and

(2) the geographic and varied needs of citizens of this state.

(h) Each level of care designation must comply with Section 241.183(b), Health and Safety Code, as added by this Act.

(i) The task force shall submit a report detailing the task force's determinations and recommendations to the department and the executive commissioner not later than September 1, 2015.

(j) The task force is abolished August 31,

hospitals in accordance with this subchapter.

(g) The advisory council shall:

(1) develop and recommend criteria for designating levels of neonatal and maternal care, respectively, including specifying the minimum requirements to qualify for each level designation;

(2) develop and recommend a process for the assignment of levels of care to a hospital for neonatal and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

(4) examine utilization trends relating to neonatal and maternal care; and

(5) make recommendations related to improving neonatal and maternal outcomes.

(h) In developing the criteria for the levels of neonatal and maternal care, the advisory council shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists, including "Guidelines for Perinatal Care";

(2) any guidelines developed by the Society of Maternal-Fetal Medicine; and

(3) the geographic and varied needs of citizens of this state.

(i) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1, 2015.

(j) The advisory council shall continue to update its recommendations based on any relevant scientific or medical developments.

(k) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this section expires

2016.

SECTION 3. (a) Not later than December 1, 2013, the executive commissioner of the Health and Human Services Commission shall appoint the members of the Perinatal Facility Designation Implementation Task Force as required by Section 2 of this Act.

(b) Not later than March 1, 2016, after consideration of the report of the Perinatal Facility Designation Implementation Task Force, the executive commissioner of the Health and Human Services Commission shall adopt the initial rules required by Section 241.183, Health and Safety Code, as added by this Act.

(c) Not later than August 31, 2016, the executive commissioner of the Health and Human Services Commission shall complete the neonatal and maternal level of care designation assignments for each hospital in this state.

(d) Notwithstanding Section 241.185,

September 1, 2025.

SECTION 2. (a) Not later than December 1, 2013, the executive commissioner of the Health and Human Services Commission shall appoint the members of the Perinatal Advisory Council as required by Section 241.186, Health and Safety Code, as added by this Act.

Notwithstanding Section 241.186(d), Health and Safety Code, as added by this Act, the executive commissioner shall appoint:

(1) two members described by Section 241.186(b)(1), Health and Safety Code, one member described by Section 241.186(b)(3), Health and Safety Code, and the members described by Sections 241.186(b)(6) and (9), Health and Safety Code, to an initial term that expires September 1, 2017;

(2) one member described by Section 241.186(b)(1), Health and Safety Code, one member described by Section 241.186(b)(3), Health and Safety Code, one member described by Section 241.186(b)(4), Health and Safety Code, and the members described by Sections 241.186(b)(2), (7), and (10), Health and Safety Code, to an initial term that expires September 1, 2018; and

(3) one member described by Section 241.186(b)(1), Health and Safety Code, one member described by Section 241.186(b)(4), Health and Safety Code, and the members described by Sections 241.186(b)(5), (8), and (11), Health and Safety Code, to an initial term that expires September 1, 2019.

(b) Not later than March 1, 2017, after consideration of the report of the Perinatal Advisory Council, the executive commissioner of the Health and Human Services Commission shall adopt the initial rules required by Section 241.183, Health and Safety Code, as added by this Act.

(c) The executive commissioner of the Health and Human Services Commission shall complete for each hospital in this state:

(1) the neonatal level of care designation not later than August 31, 2017; and

(2) the maternal level of care designation not later than August 31, 2019.

Health and Safety Code, as added by this Act, a hospital is not required to have a level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2016.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect September 1, 2013.

(d) Notwithstanding Section 241.185, Health and Safety Code, as added by this Act:

(1) a hospital is not required to have a neonatal level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2017; and

(2) a hospital is not required to have a maternal level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2019.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.