

BILL ANALYSIS

C.S.H.B. 1085
By: Walle
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

One of the U.S. Department of Health and Human Services goals is to reduce the rate of maternal mortality in the United States. According to a state agency, the maternal mortality rate in Texas has quadrupled in the past few decades, with rates in some counties well above the national average. For every maternal death, it is estimated that 50 women experience severe maternal morbidity, which is defined as a life-threatening condition resulting from pregnancy, labor, or delivery. Interested parties note that there is a large degree of variation of maternal mortality and morbidity rates across certain groups, with African-American women more likely to die from pregnancy-related complications. The parties assert that many maternal deaths and cases of severe morbidity are preventable. Many states have established some form of review to analyze what is causing these high rates of mortality and morbidity and to make recommendations to improve and produce better health outcomes. C.S.H.B. 1085 seeks to create such a task force in Texas.

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 SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 1085 amends the Health and Safety Code to create the Maternal Mortality and Morbidity Task Force as a multidisciplinary advisory committee within the Department of State Health Services (DSHS). The bill makes the task force subject to review under the Texas Sunset Act and, unless continued in existence as provided by that act, provides that the task force is abolished and provisions relating to the task force expire September 1, 2019. The bill sets out provisions relating to the composition, appointment, administration, and operation of the task force. The bill establishes that meetings of the task force are closed to the public and are not subject to open meeting laws.

C.S.H.B. 1085 requires the task force to study and review cases of pregnancy-related deaths and trends in severe maternal morbidity, determine the feasibility of the task force studying cases of severe maternal morbidity, and make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas. The bill authorizes DSHS and the task force to consult with any relevant experts and stakeholders and, in gathering information, to consult with representatives of any relevant state professional associations and organizations. The bill prohibits a member of the task force or employee of DSHS from disclosing any identifying information of an applicable patient or a health care provider while consulting with such individuals or organizations. The bill authorizes DSHS, on behalf of the task force, to enter into agreements with institutions of higher education or with other organizations consistent with the duties of DSHS or the task force.

C.S.H.B. 1085 requires DSHS to determine a statistically significant number of cases of pregnancy-related deaths for review and to randomly select cases for the task force to review to

reflect a cross-section of pregnancy-related deaths in Texas. The bill requires DSHS to analyze aggregate data of severe maternal morbidity in Texas to identify any trends and authorizes DSHS, if feasible, to randomly select cases of severe maternal morbidity for the task force to review to reflect any such identified trends. The bill requires DSHS, on selecting a case of pregnancy-related death or severe maternal morbidity for review, to obtain information relevant to the case to enable the task force to review the case and to provide the information to the task force. The bill prohibits such information provided to the task force from including identifying information of a patient or health care provider. The bill requires a hospital, birthing center, or other custodian of information requested by DSHS to provide the information to DSHS, on request of DSHS, without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family. The bill specifies that a person who provides such information to DSHS is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

C.S.H.B. 1085 sets out provisions relating to the confidentiality and disclosure of task force work products and information pertaining to a pregnancy-related death or severe maternal morbidity obtained for purposes of the task force. The bill authorizes the task force to publish statistical studies and research reports based on confidential information, provided that the information is published in aggregate, does not identify or include information that could be used to identify a patient or the patient's family, and does not identify a health care provider. The bill sets out provisions relating to the privileged nature of task force work product and related confidential information for purposes of subpoena and discovery and to the liability of a task force member or a person employed by or acting in an advisory capacity to the task force.

C.S.H.B. 1085 authorizes DSHS to establish and maintain an electronic database to track cases of pregnancy-related deaths and severe maternal morbidity to assist DSHS and the task force in performing functions under the bill's provisions. The bill prohibits the information in the database from including identifying information and specifies that the database may be accessed only by DSHS and the task force for purposes described in the bill's provisions. The bill exempts from its provisions the disclosure of records pertaining to voluntary or therapeutic termination of pregnancy and prohibits such records from being collected, maintained, or disclosed under its provisions.

C.S.H.B. 1085 requires DSHS to apply for and use any available federal money to fund the duties of DSHS and the task force and authorizes DSHS to accept gifts and grants from any source to fund such duties. The bill requires the task force and DSHS, not later than September 1 of each even-numbered year, to submit a joint report on the findings of the task force to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature. The bill requires the report to include the task force's recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in Texas. The bill requires DSHS to disseminate the report to specified state professional associations and organizations and to make the report publicly available in paper or electronic form. The bill specifies that DSHS and the task force are not required to submit the first report before September 1, 2016.

C.S.H.B. 1085 authorizes the executive commissioner of the Health and Human Services Commission to adopt rules to implement the bill's provisions. The bill authorizes DSHS to have access to birth records, fetal death records, maternal death records, and hospital and birthing center discharge data that may include the identity of a patient to fulfill its duties and prohibits DSHS from disclosing such information to the task force or any other person.

C.S.H.B. 1085 requires DSHS, not later than September 1, 2014, to submit a report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature outlining DSHS's progress in establishing the Maternal Mortality and Morbidity Task Force and any recommendations for legislation to assist DSHS in studying pregnancy-related deaths and severe maternal morbidity. The bill requires the commissioner of

state health services to appoint the members of the task force not later than December 1, 2013, and provides for the staggered expiration of the members' initial terms.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1085 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. Subtitle B, Title 2, Health and Safety Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. MATERNAL MORTALITY AND MORBIDITY TASK FORCE

Sec. 34.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, including a physician or a hospital or birthing center.
- (5) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (6) "Intrapartum care" has the meaning assigned by Section 32.002.

(7) "Maternal morbidity" means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

(8) "Patient" means the woman who while pregnant or within one year of delivery or end of pregnancy suffers death or maternal morbidity.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle B, Title 2, Health and Safety Code, is amended by adding Chapter 34 to read as follows:

CHAPTER 34. MATERNAL MORTALITY AND MORBIDITY TASK FORCE

Sec. 34.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of state health services.
- (2) "Department" means the Department of State Health Services.
- (3) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.
- (4) "Health care provider" means an individual or facility licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice, including a physician or a hospital or birthing center.
- (5) "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.
- (6) "Intrapartum care" has the meaning assigned by Section 32.002.

(7) "Life-threatening condition" means a condition from which the likelihood of death is probable unless the course of the condition is interrupted.

(8) "Maternal morbidity" means a pregnancy-related health condition occurring during pregnancy, labor, or delivery or within one year of delivery or end of pregnancy.

(9) "Patient" means the woman who while pregnant or within one year of delivery or end of pregnancy suffers death or severe maternal morbidity.

(9) "Perinatal care" has the meaning assigned by Section 32.002.

(10) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(11) "Pregnancy-related death" means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(12) "Task force" means the Maternal Mortality and Morbidity Task Force.

Sec. 34.002. MATERNAL MORTALITY AND MORBIDITY TASK FORCE.

(a) The Maternal Mortality and Morbidity Task Force is administered by the department.

(b) The task force is a multidisciplinary advisory committee within the department and is composed of the following 15 members:

(1) 13 members appointed by the commissioner as follows:

(A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(B) one certified nurse-midwife;

(C) one registered nurse;

(D) one physician specializing in family practice;

(E) one physician specializing in psychiatry;

(F) one physician specializing in pathology;

(G) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(H) one social worker or social service provider;

(I) one community advocate in a relevant field; and

(J) one medical examiner or coroner responsible for recording deaths;

(2) a representative of the department's family and community health programs; and

(3) the state epidemiologist for the department or the epidemiologist's designee.

(c) In appointing members to the task force, the commissioner shall:

(1) include members:

(A) working in and representing

(10) "Perinatal care" has the meaning assigned by Section 32.002.

(11) "Physician" means a person licensed to practice medicine in this state under Subtitle B, Title 3, Occupations Code.

(12) "Pregnancy-related death" means the death of a woman while pregnant or within one year of delivery or end of pregnancy, regardless of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management, but not from accidental or incidental causes.

(13) "Severe maternal morbidity" means maternal morbidity that constitutes a life-threatening condition.

(14) "Task force" means the Maternal Mortality and Morbidity Task Force.

Sec. 34.002. MATERNAL MORTALITY AND MORBIDITY TASK FORCE.

(a) The Maternal Mortality and Morbidity Task Force is administered by the department.

(b) The task force is a multidisciplinary advisory committee within the department and is composed of the following 15 members:

(1) 13 members appointed by the commissioner as follows:

(A) four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist;

(B) one certified nurse-midwife;

(C) one registered nurse;

(D) one physician specializing in family practice;

(E) one physician specializing in psychiatry;

(F) one physician specializing in pathology;

(G) one epidemiologist, biostatistician, or researcher of pregnancy-related deaths;

(H) one social worker or social service provider;

(I) one community advocate in a relevant field; and

(J) one medical examiner or coroner responsible for recording deaths;

(2) a representative of the department's family and community health programs; and

(3) the state epidemiologist for the department or the epidemiologist's designee.

(c) In appointing members to the task force, the commissioner shall:

(1) include members:

(A) working in and representing

communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency; and

(B) from differing geographic regions in the state, including both rural and urban areas;

(2) endeavor to include members who are working in and representing communities that are affected by pregnancy-related deaths and maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(3) ensure that the composition of the task force reflects the racial, ethnic, and linguistic diversity of this state.

(d) The commissioner shall appoint from among the task force members a presiding officer.

(e) A member of the task force appointed under Subsection (b)(1) is not entitled to compensation for service on the task force or reimbursement for travel or other expenses incurred by the member while conducting the business of the task force.

Sec. 34.003. TERMS; VACANCY.

Sec. 34.004. MEETINGS.

Sec. 34.005. DUTIES OF TASK FORCE.

(a) The task force shall:

(1) study and review pregnancy-related deaths and cases of maternal morbidity; and

(2) make recommendations for best practices and protocols to help reduce the incidence of pregnancy-related deaths and maternal morbidity in this state.

(b) The task force shall develop standard procedures and criteria for the comprehensive, multidisciplinary review of pregnancy-related deaths and cases of maternal morbidity.

Sec. 34.006. CONSULTATIONS AND AGREEMENTS WITH OUTSIDE PARTIES. (a) The department and task force may consult with any relevant experts and stakeholders, including:

communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency; and

(B) from differing geographic regions in the state, including both rural and urban areas;

(2) endeavor to include members who are working in and representing communities that are affected by pregnancy-related deaths and severe maternal morbidity and by a lack of access to relevant perinatal and intrapartum care services; and

(3) ensure that the composition of the task force reflects the racial, ethnic, and linguistic diversity of this state.

(d) The commissioner shall appoint from among the task force members a presiding officer.

(e) A member of the task force appointed under Subsection (b)(1) is not entitled to compensation for service on the task force or reimbursement for travel or other expenses incurred by the member while conducting the business of the task force.

(f) In carrying out its duties, the task force may use technology, including teleconferencing or videoconferencing, to eliminate travel expenses.

Sec. 34.003. TERMS; VACANCY.

Sec. 34.004. MEETINGS.

Sec. 34.005. DUTIES OF TASK FORCE.

The task force shall:

(1) study and review:

(A) cases of pregnancy-related deaths; and

(B) trends in severe maternal morbidity;

(2) determine the feasibility of the task force studying cases of severe maternal morbidity; and

(3) make recommendations to help reduce the incidence of pregnancy-related deaths and severe maternal morbidity in this state.

Sec. 34.006. CONSULTATIONS AND AGREEMENTS WITH OUTSIDE PARTIES. (a) The department and task force may consult with any relevant experts and stakeholders, including:

- (1) anesthesiologists;
- (2) intensivists or critical care physicians;
- (3) nutritionists;
- (4) substance abuse treatment specialists;
- (5) hospital staff or employees;
- (6) representatives of the state Medicaid program;
- (7) paramedics or other emergency medical response personnel;
- (8) hospital-based risk management specialists;
- (9) representatives of local health departments and public health districts in this state;
- (10) public health experts;
- (11) government representatives or officials; and
- (12) law enforcement officials.

(b) In gathering information, the department and the task force may consult with representatives of any relevant state professional associations and organizations, including:

- (1) District XI of the American Congress of Obstetricians and Gynecologists;
- (2) the Texas Association of Obstetricians and Gynecologists;
- (3) the Texas Nurses Association;
- (4) the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
- (5) the Texas Academy of Family Physicians;

- (6) the Consortium of Texas Certified Nurse-Midwives;
- (7) the Association of Texas Midwives;
- (8) the Texas Hospital Association;
- (9) the Texas Medical Association; and
- (10) the Texas Public Health Association.

(c) In consulting with individuals or organizations under Subsection (a) or (b), a member of the task force or employee of the department may not disclose any identifying information of a patient or health care provider.

(d) The department on behalf of the task force may enter into agreements with institutions of higher education or other organizations consistent with the duties of the department or task force under this chapter.

Sec. 34.007. SELECTION AND REVIEW OF CASES. The department shall determine a statistically significant number

- (1) anesthesiologists;
- (2) intensivists or critical care physicians;
- (3) nutritionists;
- (4) substance abuse treatment specialists;
- (5) hospital staff or employees;
- (6) representatives of the state Medicaid program;
- (7) paramedics or other emergency medical response personnel;
- (8) hospital-based risk management specialists;
- (9) representatives of local health departments and public health districts in this state;
- (10) public health experts;
- (11) government representatives or officials; and
- (12) law enforcement officials.

(b) In gathering information, the department and task force may consult with representatives of any relevant state professional associations and organizations, including:

- (1) District XI of the American Congress of Obstetricians and Gynecologists;
- (2) the Texas Association of Obstetricians and Gynecologists;
- (3) the Texas Nurses Association;
- (4) the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses;
- (5) the Texas Academy of Family Physicians;
- (6) the Texas Pediatric Society;

- (7) the Consortium of Texas Certified Nurse-Midwives;
- (8) the Association of Texas Midwives;
- (9) the Texas Hospital Association;
- (10) the Texas Medical Association; and
- (11) the Texas Public Health Association.

(c) In consulting with individuals or organizations under Subsection (a) or (b), a member of the task force or employee of the department may not disclose any identifying information of a patient or health care provider.

(d) The department on behalf of the task force may enter into agreements with institutions of higher education or other organizations consistent with the duties of the department or task force under this chapter.

Sec. 34.007. SELECTION AND REVIEW OF CASES. (a) The department shall determine a statistically significant number

of cases of pregnancy-related deaths and maternal morbidity for review. The department shall randomly select cases for the task force to review to reflect a cross-section of pregnancy-related deaths and maternal morbidity cases in this state.

Sec. 34.008. OBTAINING DE-IDENTIFIED INFORMATION FOR REVIEW. (a) On selecting a case of pregnancy-related death or maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the task force to review the case. The department shall provide the information to the task force.

(b) The information provided to the task force may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(c) On the request of the department, a health care provider or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

(d) A health care provider or other person who provides information to the department under this section is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

Sec. 34.009. CONFIDENTIALITY; PRIVILEGE.

Sec. 34.010. SUBPOENA AND DISCOVERY. (a) Task force work

of cases of pregnancy-related deaths for review. The department shall randomly select cases for the task force to review under this subsection to reflect a cross-section of pregnancy-related deaths in this state.

(b) The department shall analyze aggregate data of severe maternal morbidity in this state to identify any trends.

(c) If feasible, the department may select cases of severe maternal morbidity for review. In selecting cases under this subsection, the department shall randomly select cases for the task force to review to reflect trends identified under Subsection (b).

Sec. 34.008. OBTAINING DE-IDENTIFIED INFORMATION FOR REVIEW. (a) On selecting a case of pregnancy-related death or severe maternal morbidity for review, the department shall, in accordance with this section, obtain information relevant to the case to enable the task force to review the case. The department shall provide the information to the task force.

(b) The information provided to the task force may not include identifying information of a patient or health care provider, including:

(1) the name, address, or date of birth of the patient or a member of the patient's family; or

(2) the name or specific location of a health care provider that treated the patient.

(c) On the request of the department, a hospital, birthing center, or other custodian of the requested information shall provide the information to the department. The information shall be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

(d) A person who provides information to the department under this section is not subject to an administrative, civil, or criminal action for damages or other relief for providing the information.

Sec. 34.009. CONFIDENTIALITY; PRIVILEGE. (Substantially the same as introduced version.)

Sec. 34.010. SUBPOENA AND DISCOVERY. Task force work product or

product or information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

(b) A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under Subsection (a) solely because the document or other information was presented during a meeting of the task force or because a record of the document or other information is maintained by the task force.

Sec. 34.011. IMMUNITY.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION.

Sec. 34.013. INAPPLICABILITY OF CHAPTER.

Sec. 34.014. FUNDING.

Sec. 34.015. REPORTS. (a) Not later than September 1 of each even-numbered year, the task force and the department shall submit a joint report on the findings of the task force under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) The report must include the task force's recommendations for best practices under Section 34.005(a)(2) to help reduce the incidence of pregnancy-related deaths and maternal morbidity in this state.

(c) The department shall disseminate the report to the state professional associations and organizations listed in Section 34.006(b) and make the report publicly available in paper or electronic form.

Sec. 34.016. RULES.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION.

Sec. 34.018. SUNSET PROVISION.

information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and may not be introduced into evidence in any administrative, civil, or criminal proceeding against a patient, a member of the family of a patient, or a health care provider.

Sec. 34.011. IMMUNITY.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION.
(Substantially the same as introduced version.)

Sec. 34.013. INAPPLICABILITY OF CHAPTER.

Sec. 34.014. FUNDING.

Sec. 34.015. REPORTS. (a) Not later than September 1 of each even-numbered year, the task force and the department shall submit a joint report on the findings of the task force under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) The report must include the task force's recommendations under Section 34.005(a)(3).

(c) The department shall disseminate the report to the state professional associations and organizations listed in Section 34.006(b) and make the report publicly available in paper or electronic form.

Sec. 34.016. RULES.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION.

Sec. 34.018. SUNSET PROVISION.

SECTION 2. (a) Not later than September 1, 2014, the Department of State Health Services shall submit a report to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature outlining:

- (1) the department's progress in establishing the Maternal Mortality and Morbidity Task Force required by Chapter 34, Health and Safety Code, as added by this Act; and
- (2) any recommendations for legislation to assist the department in studying pregnancy-related deaths and maternal morbidity.

(b) The Department of State Health Services and the Maternal Mortality and Morbidity Task Force created by Chapter 34, Health and Safety Code, as added by this Act, are not required to submit the first report required by Section 34.015, Health and Safety Code, as added by this Act, before September 1, 2016.

(c) Not later than December 1, 2013, the commissioner of state health services shall appoint the members of the Maternal Mortality and Morbidity Task Force in accordance with Section 34.002(b)(1), Health and Safety Code, as added by this Act. In making the initial appointments, the commissioner shall designate five members to serve terms expiring February 1, 2015, four members to serve terms expiring February 1, 2017, and four members to serve terms expiring February 1, 2019.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 2. Substantially the same as introduced version.

SECTION 3. Same as introduced version.