

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 495  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Maternal mortality is often used to measure health and well-being for women. Improved surveillance efforts can improve maternal mortality estimates and inform the development of strategies to address the needs of maternal and child health populations. This bill creates a Maternal Mortality and Morbidity Task Force (task force) to study maternal mortality and severe maternal morbidity. Such task forces are a key mechanism for reducing preventable maternal deaths and complications, because they can identify trends and implement changes in order to improve health outcomes.

As proposed, S.B. 495 amends current law relating to the creation of a task force to study maternal mortality and severe maternal morbidity.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 34.016, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 2, Health and Safety Code, by adding Chapter 34, as follows:

#### CHAPTER 34. MATERNAL MORTALITY AND MORBIDITY TASK FORCE

Sec. 34.001. DEFINITIONS. Defines "commissioner," "department," "executive commissioner," "health care provider," "institution of higher education," "intrapartum care," "maternal morbidity," "patient," "perinatal care," "physician," "pregnancy-related death," and "task force" in this chapter.

Sec. 34.002. MATERNAL MORTALITY AND MORBIDITY TASK FORCE. (a) Provides that the Maternal Mortality and Morbidity Task Force (task force) is administered by the Department of State Health Services (DSHS).

(b) Provides that the task force is a multidisciplinary advisory committee within DSHS and is composed of the following 15 members:

(1) 13 members appointed by the commissioner of state health services (commissioner) as follows: four physicians specializing in obstetrics, at least one of whom is a maternal fetal medicine specialist; one certified nurse-midwife; one registered nurse; one physician specializing in family practice; one physician specializing in psychiatry; one physician specializing in pathology; one epidemiologist, biostatistician, or researcher of pregnancy-related deaths; one social worker or social service provider; one community advocate in a relevant field; and one medical examiner or coroner responsible for recording deaths;

- (2) a representative of DSHS's family and community health programs; and
- (3) the state epidemiologist for DSHS or the epidemiologist's designee.

(c) Requires the commissioner, in appointing members to the task force, to:

- (1) include members working in and representing communities that are diverse with regard to race, ethnicity, immigration status, and English proficiency, and 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) Requires the commissioner to appoint from among the task force members a presiding officer.

(e) Provides that 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. (a) Provides that task force members appointed by the commissioner serve staggered six-year terms, with the terms of four or five members, as appropriate, expiring February 1 of each odd-numbered year.

(b) Authorizes a task force member to serve more than one term.

(c) Requires a vacancy on the task force to be filled for the unexpired term in the same manner as the original appointment.

Sec. 34.004. MEETINGS. (a) Requires the task force to meet at least quarterly. Authorizes the task force to meet at other times at the call of the commissioner.

(b) Provides that the meetings of the task force are closed to the public and are not subject to Chapter 551 (Open Meetings), Government Code.

Sec. 34.005. DUTIES OF TASK FORCE. (a) Requires the task force to:

- (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) Requires the task force to 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) Authorizes DSHS and the task force to consult with any relevant experts and stakeholders, including anesthesiologists, intensivists or critical care physicians, nutritionists, substance abuse treatment specialists, hospital staff or employees,

representatives of the state Medicaid program, paramedics or other emergency medical response personnel, hospital-based risk management specialists, representatives of local health departments and public health districts in this state, public health experts, government representatives or officials, and law enforcement officials.

(b) Authorizes DSHS and the task force, in gathering information, to consult with representatives of any relevant state professional associations and organizations, including District XI of the American Congress of Obstetricians and Gynecologists; the Texas Association of Obstetricians and Gynecologists; the Texas Nurses Association; the Texas Section of the Association of Women's Health, Obstetric and Neonatal Nurses; the Texas Academy of Family Physicians; the Consortium of Texas Certified Nurse-Midwives; the Association of Texas Midwives; the Texas Hospital Association; the Texas Medical Association; and the Texas Public Health Association.

(c) Prohibits a member of the task force or employee of DSHS, in consulting with individuals or organizations under Subsection (a) or (b), from disclosing any identifying information of a patient or health care provider.

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

Sec. 34.007. **SELECTION AND REVIEW OF CASES.** Requires DSHS to determine a statistically significant number of cases of pregnancy-related deaths and maternal morbidity for review. Requires DSHS to 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) Requires DSHS, on selecting a case of pregnancy-related death or maternal morbidity for review, in accordance with this section, to obtain information relevant to the case to enable the task force to review the case. Requires DSHS to provide the information to the task force.

(b) Prohibits the information provided to the task force from including identifying information of a patient or health care provider, including the name, address, or date of birth of the patient or a member of the patient's family, or the name or specific location of a health care provider that treated the patient.

(c) Requires a health care provider or other custodian of the requested information, on the request of DSHS, to provide the information to DSHS. Requires that the information be provided without the authorization of the patient or, if the patient is deceased, without the authorization of the patient's family.

(d) Provides that a health care provider or other person who provides information to DSHS 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.** (a) Provides that any information pertaining to a pregnancy-related death or maternal morbidity is confidential for purposes of this chapter.

(b) Provides that confidential information that is acquired by DSHS and that contains identifying information of an individual or health care provider is privileged and is prohibited from being disclosed to any person. Provides that information that is prohibited from being disclosed under this subsection includes:

(1) the name and address of a patient or a member of the patient's family;

- (2) any service received by the patient or a member of the patient's family;
- (3) the social and economic condition of the patient or a member of the patient's family;
- (4) medical, dental, and mental health care information related to the patient or a member of the patient's family, including diagnoses, conditions, diseases, or disability; and
- (5) the identity of a health care provider that provided any services to the patient or a member of the patient's family.

(c) Provides that task force work product or information obtained by DSHS under this chapter, including information contained in an electronic database established and maintained under Section 34.012, or any other document or record, is confidential. Provides that this subsection does not prevent the task force or DSHS from releasing information described by Subsection (d) or (e) or from submitting the report required by Section 34.015.

(d) Provides that information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as total expenditures made for specific purposes, the number of families served by particular health care providers or agencies, aggregated data on social and economic conditions, medical data and information related to health care services that do not include any identifying information relating to a patient or the patient's family, and other statistical information.

(e) Authorizes the task force to publish statistical studies and research reports based on information that is confidential under this section, provided that the information is published in aggregate, does not identify a patient or the patient's family, does not include any information that could be used to identify a patient or the patient's family, and does not identify a health care provider.

(f) Requires DSHS to adopt and implement practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

(g) Provides that information that is confidential under this section is excepted from disclosure under Chapter 552 (Public Information), Government Code, as provided by Section 552.101 (Exception: Confidential Information) of that chapter.

(h) Requires the task force and DSHS to comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Sec. 34.010. SUBPOENA AND DISCOVERY. (a) Provides that task force work product or information that is confidential under Section 34.009 is privileged, is not subject to subpoena or discovery, and is prohibited from being 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) Provides that 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. (a) Provides that a member of the task force or a person employed by or acting in an advisory capacity to the task force and who provides information, counsel, or services to the task force is not liable for damages for an action taken within the scope of the functions of the task force.

(b) Provides that Subsection (a) does not apply if the person acts with malice or without the reasonable belief that the action is warranted by the facts known to the person.

(c) Provides that this section does not provide immunity to a person described by Subsection (a) for a violation of a state or federal law or rule relating to the privacy of health information or the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

Sec. 34.012. DATABASE OF DE-IDENTIFIED INFORMATION. (a) Authorizes DSHS to establish and maintain an electronic database to track cases of pregnancy-related deaths and maternal morbidity to assist DSHS and the task force in performing functions under this chapter.

(b) Prohibits the information in the database from including identifying information, including the name of a patient or the name or specific location of a health care provider that treated a patient.

(c) Authorizes the database to be accessed only by DSHS and the task force for the purposes described in this chapter.

Sec. 34.013. INAPPLICABILITY OF CHAPTER. Provides that this chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records are prohibited from being collected, maintained, or disclosed under this chapter.

Sec. 34.014. FUNDING. (a) Requires DSHS to apply for and use any available federal money to fund the duties of DSHS and the task force under this chapter.

(b) Authorizes DSHS to accept gifts and grants from any source to fund the duties of DSHS and the task force under this chapter.

Sec. 34.015. REPORTS. (a) 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 under this chapter to the governor, lieutenant governor, speaker of the house of representatives, and appropriate committees of the legislature.

(b) Requires that the report 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) Requires DSHS to 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. Authorizes the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt rules to implement this chapter.

Sec. 34.017. DEPARTMENT ACCESS TO INFORMATION. (a) Authorizes DSHS, notwithstanding Chapter 108 (Texas Health Care Information Council) or any other law, 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 under this chapter.

(b) Prohibits DSHS from disclosing the information described by Subsection (a) to the task force or any other person.

Sec. 34.018. SUNSET PROVISION. Provides that the task force is subject to Chapter 325 (Sunset Law), Government Code (Texas Sunset Act). Provides that the task force, unless continued in existence as provided by that chapter, is abolished and this chapter expires September 1, 2019.

SECTION 2. (a) 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:

(1) DSHS's progress in establishing the task force required by Chapter 34, Health and Safety Code, as added by this Act; and

(2) any recommendations for legislation to assist DSHS in studying pregnancy-related deaths and maternal morbidity.

(b) Provides that DSHS and the 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) Requires the commissioner, not later than December 1, 2013, to appoint the members of the task force in accordance with Section 34.002(b)(1), Health and Safety Code, as added by this Act. Requires the commissioner, in making the initial appointments, to 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. Effective date: September 1, 2013.