

BILL ANALYSIS

C.S.S.B. 749
By: Kolkhorst
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recent legislative efforts directed the establishment of designation levels for neonatal intensive care units and maternal levels of care in Texas. There have been calls to improve the current level of designations process. C.S.S.B. 749 seeks to address this issue by, among other things, requiring the Department of State Health Services to establish a process for a hospital to appeal its level of care designation to an independent third party and by providing for a waiver process from certain designation rules and for conditional designations.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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 5 of this bill.

ANALYSIS

C.S.S.B. 749 amends the Health and Safety Code to include the following rules among the rules the executive commissioner of the Health and Human Services Commission (HHSC) is required to adopt relating to hospital level of care designations for neonatal and maternal care:

- rules establishing a process through which a hospital may obtain a limited follow-up survey by an independent third party to appeal the level of care designation assigned to the hospital;
- rules permitting a hospital to satisfy any requirement for a Level I or II level of care designation that relates to an obstetrics or gynecological physician by:
 - granting maternal care privileges to a family physician with obstetrics training or experience; and
 - developing and implementing a plan for responding to obstetrical emergencies that require services or procedures outside the scope of privileges granted to such a family physician;
- rules clarifying that, regardless of a hospital's level of care designation, a health care provider at a designated facility or hospital may provide the full range of health care services that the provider is authorized to provide under state law and for which the hospital has granted privileges to the provider; and
- rules requiring the Department of State Health Services (DSHS) to provide to each hospital that receives a level of care designation a written explanation of the basis for the designation, including, as applicable, specific reasons that prevented the hospital from receiving a higher level of care designation.

C.S.S.B. 749 requires the rules adopted by the executive commissioner relating to hospital level of care designations for neonatal and maternal care to allow the use of telemedicine medical services by a physician providing on-call services to satisfy certain requirements identified by the executive commissioner in the rules for a Level I, II, or III level of care designation. The bill requires the executive commissioner, in identifying a requirement for a level of care designation that may be satisfied through the use of such services and in consultation with certain specified entities, to ensure that the provision of a service or procedure through the use of telemedicine medical services is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting. The bill requires such telemedicine medical services to be administered by a physician licensed to practice medicine. The bill establishes that these provisions do not waive other requirements for a level of care designation.

C.S.S.B. 749 requires the rules adopted by the executive commissioner establishing level of care designations for hospitals to allow a hospital to appeal a level of care designation to a specified three-person panel, including an independent person who must rotate after each appeal from a list of five to seven similarly qualified persons. The bill requires DSHS to solicit persons to be included on the list and requires a person to apply to DSHS on a DSHS-prescribed form and to be approved by the commissioner of state health services in order to be included on the list.

C.S.S.B. 749 requires DSHS to develop and implement a process through which a hospital may request and enter into an agreement with DSHS to:

- receive or maintain a level of care designation for which the hospital does not meet all requirements conditioned on the hospital, in accordance with a plan approved by DSHS and outlined under the agreement, satisfying all requirements for the level of care designation within a time specified under the agreement, which may not exceed the first anniversary of the effective date of the agreement; or
- waive one specific requirement for a level of care designation in accordance with the bill's provisions.

C.S.S.B. 749 authorizes a hospital to submit such a written request at any time and authorizes DSHS to make a determination on such a request at any time. The bill authorizes DSHS to enter into an agreement with a hospital to waive the one specific requirement only if DSHS determines the waiver is justified under certain considerations set out by the bill. The bill requires a waiver agreement to expire not later than at the end of each designation cycle, establishes that the agreement may be renewed by DSHS under the same or different terms, and authorizes the agreement to specify any conditions for ongoing reporting and monitoring during the agreement.

C.S.S.B. 749 requires a hospital that enters into a waiver agreement to satisfy all other requirements for a level of care designation that are not waived in the agreement. The bill requires DSHS to post on the DSHS website and periodically update a list of hospitals that enter into such an agreement with DSHS and an aggregated list of the requirements conditionally met or waived in such agreements. The bill requires a hospital that enters into such an agreement with DSHS to post on the hospital's website the nature and general terms of the agreement.

C.S.S.B. 749 removes the provision abolishing the perinatal advisory council and setting September 1, 2025, as the expiration date for statutory provisions relating to the council under the Texas Sunset Act and requires the council instead to be reviewed during the period in which DSHS is reviewed under the act.

C.S.S.B. 749, in temporary provisions set to expire September 1, 2021, requires DSHS in consultation with the perinatal advisory council to:

- conduct a strategic review of the practical implementation of rules adopted in consultation with DSHS relating to hospital level of care designations for neonatal and maternal care that identifies certain specified information;

- based on the strategic review, recommend a modification of the adopted rules, as appropriate, to improve the process and methodology of assigning level of care designations; and
- prepare and submit to the legislature:
 - not later than December 31, 2019, a written report that summarizes the strategic review of neonatal care and on actions taken by DSHS and the executive commissioner based on that review; and
 - not later than December 31, 2020, a written report that summarizes the strategic review of maternal care and on actions taken by DSHS and the executive commissioner based on that review.

C.S.S.B. 749 requires the executive commissioner to complete for each hospital in Texas the maternal level of care designation not later than August 31, 2021, and establishes that a hospital is not required to have a maternal level of care designation as a condition of reimbursement for maternal services through the Medicaid program before September 1, 2021. The bill authorizes a hospital that submits an application to DSHS for a maternal level of care designation before the bill's effective date to amend the application to reflect the applicable changes in law made by the bill. The bill requires the executive commissioner to adopt rules to implement the bill's provisions.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 749 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute includes medical and nursing associations among the entities with which the executive commissioner must consult in ensuring that the provision of a service or procedure through the use of telemedicine medical services is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting.

The substitute revises the requirement that DSHS determine whether a waiver of a specific requirement for a level of care designation is justified based on consideration of certain factors by providing for the determination to be made based on any of the specified factors, whereas the original provided for consideration of all of the specified factors.

The substitute includes language specifying that a hospital may make a determination with regard to the hospital's capabilities in providing care to patients of a particular gestational age for purposes consideration by DSHS or the perinatal advisory council with regard to a level of care designation as part of the strategic review conducted by DSHS in consultation with the advisory council .