

By: Kolkhorst

S.B. No. 749

A BILL TO BE ENTITLED

AN ACT

relating to level of care designations for hospitals that provide neonatal and maternal care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 241.183(a), Health and Safety Code, is amended to read as follows:

(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) 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;

1 (7) requiring payment, other than quality or
2 outcome-based funding, to be based on services provided by the
3 facility, regardless of the hospital's [~~facility's~~] level of care
4 designation; ~~and~~

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

8 (9) establishing a process through which a hospital
9 may obtain a limited follow-up survey by an independent third party
10 to appeal the level of care designation assigned to the hospital;

11 (10) permitting a hospital to satisfy any requirement
12 for a Level I or II level of care designation that relates to an
13 obstetrics or gynecological physician by:

14 (A) granting maternal care privileges to a family
15 physician with obstetrics training or experience; and

16 (B) developing and implementing a plan for
17 responding to obstetrical emergencies that require services or
18 procedures outside the scope of privileges granted to the family
19 physician described by Paragraph (A);

20 (11) clarifying that, regardless of a hospital's level
21 of care designation, a health care provider at a designated
22 facility or hospital may provide the full range of health care
23 services:

24 (A) that the provider is authorized to provide
25 under state law; and

26 (B) for which the hospital has granted privileges
27 to the provider; and

1 (12) requiring the department to provide to each
2 hospital that receives a level of care designation a written
3 explanation of the basis for the designation, including, as
4 applicable, specific reasons that prevented the hospital from
5 receiving a higher level of care designation.

6 SECTION 2. Subchapter H, Chapter 241, Health and Safety
7 Code, is amended by adding Sections 241.1835, 241.1836, and
8 241.1865 to read as follows:

9 Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES.

10 (a) In this section, "telemedicine medical service" has the
11 meaning assigned by Section 111.001, Occupations Code.

12 (b) The rules adopted under Section 241.183 must allow the
13 use of telemedicine medical services by a physician providing
14 on-call services to satisfy certain requirements identified by the
15 executive commissioner in the rules for a Level I, II, or III level
16 of care designation.

17 (c) In identifying a requirement for a level of care
18 designation that may be satisfied through the use of telemedicine
19 medical services under Subsection (b), the executive commissioner,
20 in consultation with the department, physicians of appropriate
21 specialties, statewide hospital associations, and other
22 appropriate interested persons, must ensure that the provision of a
23 service or procedure through the use of telemedicine medical
24 services is in accordance with the standard of care applicable to
25 the provision of the same service or procedure in an in-person
26 setting.

27 (d) Telemedicine medical services must be administered

1 under this section by a physician licensed to practice medicine
2 under Subtitle B, Title 3, Occupations Code.

3 (e) This section does not waive other requirements for a
4 level of care designation.

5 Sec. 241.1836. APPEAL PROCESS. (a) The rules adopted
6 under Section 241.183 establishing the appeal process for a level
7 of care designation assigned to a hospital must allow a hospital to
8 appeal to a three-person panel that includes:

9 (1) a representative of the department;

10 (2) a representative of the commission; and

11 (3) an independent person who:

12 (A) has expertise in the specialty area for which
13 the hospital is seeking a level of care designation;

14 (B) is not an employee of or affiliated with
15 either the department or the commission; and

16 (C) does not have a conflict of interest with the
17 hospital, department, or commission.

18 (b) The independent person on the panel described by
19 Subsection (a) must rotate after each appeal from a list of five to
20 seven similarly qualified persons. The department shall solicit
21 persons to be included on the list. A person must apply to the
22 department on a form prescribed by the department and be approved by
23 the commissioner to be included on the list.

24 Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION
25 REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall
26 develop and implement a process through which a hospital may
27 request and enter into an agreement with the department to:

1 (1) receive or maintain a level of care designation
2 for which the hospital does not meet all requirements conditioned
3 on the hospital, in accordance with a plan approved by the
4 department and outlined under the agreement, satisfying all
5 requirements for the level of care designation within a time
6 specified under the agreement, which may not exceed the first
7 anniversary of the effective date of the agreement; or

8 (2) waive one specific requirement for a level of care
9 designation in accordance with Subsection (c).

10 (b) A hospital may submit a written request under Subsection
11 (a) at any time. The department may make a determination on a
12 request submitted under that subsection at any time.

13 (c) The department may enter into an agreement with a
14 hospital to waive a requirement under Subsection (a)(2) only if the
15 department determines the waiver is justified considering:

16 (1) the expected impact on the accessibility of care
17 in the geographical area served by the hospital if the waiver is not
18 granted;

19 (2) the expected impact on quality of care;

20 (3) the expected impact on patient safety; and

21 (4) whether health care services related to the
22 requirement can be provided through telemedicine medical services
23 under Section 241.1835.

24 (d) A waiver agreement entered into under Subsection (a):

25 (1) must expire not later than at the end of each
26 designation cycle but may be renewed on expiration by the
27 department under the same or different terms; and

1 (2) may specify any conditions for ongoing reporting
2 and monitoring during the agreement.

3 (e) A hospital that enters into a waiver agreement under
4 Subsection (a) is required to satisfy all other requirements for a
5 level of care designation that are not waived in the agreement.

6 (f) The department shall post on the department's Internet
7 website and periodically update:

8 (1) a list of hospitals that enter into an agreement
9 with the department under this section; and

10 (2) an aggregated list of the requirements
11 conditionally met or waived in agreements entered into under this
12 section.

13 (g) A hospital that enters into an agreement with the
14 department under this section shall post on the hospital's Internet
15 website the nature and general terms of the agreement.

16 SECTION 3. Section [241.187](#), Health and Safety Code, is
17 amended by amending Subsection (l) and adding Subsections (m) and
18 (n) to read as follows:

19 (1) The advisory council is subject to Chapter [325](#),
20 Government Code (Texas Sunset Act). The advisory council shall be
21 reviewed during the period in which the Department of State Health
22 Services is reviewed [~~Unless continued in existence as provided by~~
23 ~~that chapter, the advisory council is abolished and this section~~
24 ~~expires September 1, 2025]~~.

25 (m) The department, in consultation with the advisory
26 council, shall:

27 (1) conduct a strategic review of the practical

implementation of rules adopted in consultation with the department under this subchapter that at a minimum identifies:

(A) barriers to a hospital obtaining its requested level of care designation;

(B) whether the barriers identified under Paragraph (A) are appropriate to ensure and improve neonatal and maternal care;

(C) requirements for a level of care designation that relate to gestational age; and

(D) whether, in making a level of care designation for a hospital, the department or the perinatal advisory council should consider:

(i) the geographic area in which the hospital is located; and

(ii) regardless of the number of patients of a particular gestational age treated by the hospital, the hospital's capabilities in providing care to patients of a particular gestational age;

(2) based on the review conducted under Subdivision (1), recommend a modification of rules adopted under this subchapter, as appropriate, to improve the process and methodology of assigning level of care designations; and

(3) prepare and submit to the legislature:

(A) not later than December 31, 2019, a written report that summarizes the department's review of neonatal care conducted under Subdivision (1) and on actions taken by the department and executive commissioner based on that review; and

1 (B) not later than December 31, 2020, a written
2 report that summarizes the department's review of maternal care
3 conducted under Subdivision (1) and on actions taken by the
4 department and executive commissioner based on that review.

5 (n) Subsection (m) and this subsection expire September 1,
6 2021.

7 SECTION 4. (a) The executive commissioner of the Health
8 and Human Services Commission shall complete for each hospital in
9 this state the maternal level of care designation not later than
10 August 31, 2021.

11 (b) Notwithstanding Section 241.186, Health and Safety
12 Code, a hospital is not required to have a maternal level of care
13 designation as a condition of reimbursement for maternal services
14 through the Medicaid program before September 1, 2021.

15 (c) A hospital that submits an application to the Department
16 of State Health Services for a maternal level of care designation
17 under Subchapter H, Chapter 241, Health and Safety Code, before the
18 effective date of this Act may amend the application to reflect the
19 applicable changes in law made by this Act.

20 SECTION 5. As soon as practicable after the effective date
21 of this Act, the executive commissioner of the Health and Human
22 Services Commission shall adopt rules as necessary to implement the
23 changes in law made by this Act.

24 SECTION 6. This Act takes effect immediately if it receives
25 a vote of two-thirds of all the members elected to each house, as
26 provided by Section 39, Article III, Texas Constitution. If this
27 Act does not receive the vote necessary for immediate effect, this

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1 Act takes effect September 1, 2019.