

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 medical, nursing, and hospital
22 associations, and other appropriate interested persons, must
23 ensure that the provision of a service or procedure through the use
24 of telemedicine medical services is in accordance with the standard
25 of care applicable to the provision of the same service or procedure
26 in an in-person 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 level of care designations for
7 hospitals must allow a hospital to appeal a level of care
8 designation 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) The process developed and implemented under this
11 section must:

12 (1) subject to Subdivision (2), allow a hospital to
13 submit a written request under Subsection (a) at any time;

14 (2) require a hospital to:
15 (A) before submitting the request, provide
16 notice of the hospital's intention to seek a waiver under this
17 section to the hospital's medical staff who practice in a specialty
18 service area affected by the waiver;

19 (B) provide the notice required by Paragraph (A)
20 in accordance with the hospital's process for communicating
21 information to medical staff; and

22 (C) document the provision of the notice required
23 by Paragraph (A); and

24 (3) allow the department to make a determination on
25 the request at any time.

26 (c) The department may enter into an agreement with a
27 hospital to waive a requirement under Subsection (a)(2) only if the

1 department determines the waiver is justified after considering:

2 (1) the expected impact on:

3 (A) the accessibility of care in the geographical
4 area served by the hospital if the waiver is not granted; and

5 (B) quality of care and patient safety; or

6 (2) whether health care services related to the
7 requirement can be provided through telemedicine medical services
8 under Section 241.1835.

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

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

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

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

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

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

22 (2) an aggregated list of the requirements
23 conditionally met or waived in agreements entered into under this
24 section.

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

1 SECTION 3. Section 241.187, Health and Safety Code, is
2 amended by amending Subsection (l) and adding Subsections (m) and
3 (n) to read as follows:

4 (l) The advisory council is subject to Chapter 325,
5 Government Code (Texas Sunset Act). The advisory council shall be
6 reviewed during the period in which the Department of State Health
7 Services is reviewed [~~Unless continued in existence as provided by~~
8 ~~that chapter, the advisory council is abolished and this section~~
9 ~~expires September 1, 2025~~].

10 (m) The department, in consultation with the advisory
11 council, shall:

12 (1) conduct a strategic review of the practical
13 implementation of rules adopted in consultation with the department
14 under this subchapter that at a minimum identifies:

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

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

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

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

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

27 (ii) regardless of the number of patients

1 of a particular gestational age treated by the hospital, the
2 hospital's capabilities in providing care to patients of a
3 particular gestational age as determined by the hospital;

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

8 (3) prepare and submit to the legislature:

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

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

17 (n) Subsection (m) and this subsection expire September 1,
18 2021.

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

23 (b) Notwithstanding Section [241.186](#), Health and Safety
24 Code, a hospital is not required to have a maternal level of care
25 designation as a condition of reimbursement for maternal services
26 through the Medicaid program before September 1, 2021.

27 (c) A hospital that submits an application to the Department

1 of State Health Services for a maternal level of care designation
2 under Subchapter H, Chapter 241, Health and Safety Code, before the
3 effective date of this Act may amend the application to reflect the
4 applicable changes in law made by this Act.

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

9 SECTION 6. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 749 passed the Senate on April 1, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 23, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 749 passed the House, with amendments, on May 21, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor