

1-1 By: Kolkhorst S.B. No. 749  
1-2 (In the Senate - Filed February 11, 2019; March 1, 2019,  
1-3 read first time and referred to Committee on Health & Human  
1-4 Services; March 21, 2019, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
1-6 March 21, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Kolkhorst	X		
1-10	Perry	X		
1-11	Buckingham	X		
1-12	Campbell	X		
1-13	Flores	X		
1-14	Johnson	X		
1-15	Miles	X		
1-16	Powell	X		
1-17	Seliger	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 749 By: Kolkhorst

1-19 A BILL TO BE ENTITLED  
1-20 AN ACT

1-21 relating to level of care designations for hospitals that provide  
1-22 neonatal and maternal care.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 241.183(a), Health and Safety Code, is  
1-25 amended to read as follows:

1-26 (a) The executive commissioner, in consultation with the  
1-27 department, shall adopt rules:

1-28 (1) establishing the levels of care for neonatal and  
1-29 maternal care to be assigned to hospitals;

1-30 (2) prescribing criteria for designating levels of  
1-31 neonatal and maternal care, respectively, including specifying the  
1-32 minimum requirements to qualify for each level designation;

1-33 (3) establishing a process for the assignment of  
1-34 levels of care to a hospital for neonatal and maternal care,  
1-35 respectively;

1-36 (4) establishing a process for amending the level of  
1-37 care designation requirements, including a process for assisting  
1-38 facilities in implementing any changes made necessary by the  
1-39 amendments;

1-40 (5) dividing the state into neonatal and maternal care  
1-41 regions;

1-42 (6) facilitating transfer agreements through regional  
1-43 coordination;

1-44 (7) requiring payment, other than quality or  
1-45 outcome-based funding, to be based on services provided by the  
1-46 facility, regardless of the hospital's [~~facility's~~] level of care  
1-47 designation; ~~and~~

1-48 (8) prohibiting the denial of a neonatal or maternal  
1-49 level of care designation to a hospital that meets the minimum  
1-50 requirements for that level of care designation;

1-51 (9) establishing a process through which a hospital  
1-52 may obtain a limited follow-up survey by an independent third party  
1-53 to appeal the level of care designation assigned to the hospital;

1-54 (10) permitting a hospital to satisfy any requirement  
1-55 for a Level I or II level of care designation that relates to an  
1-56 obstetrics or gynecological physician by:

1-57 (A) granting maternal care privileges to a family  
1-58 physician with obstetrics training or experience; and

1-59 (B) developing and implementing a plan for  
1-60 responding to obstetrical emergencies that require services or

2-1 procedures outside the scope of privileges granted to the family  
2-2 physician described by Paragraph (A);  
2-3 (11) clarifying that, regardless of a hospital's level  
2-4 of care designation, a health care provider at a designated  
2-5 facility or hospital may provide the full range of health care  
2-6 services:  
2-7 (A) that the provider is authorized to provide  
2-8 under state law; and  
2-9 (B) for which the hospital has granted privileges  
2-10 to the provider; and  
2-11 (12) requiring the department to provide to each  
2-12 hospital that receives a level of care designation a written  
2-13 explanation of the basis for the designation, including, as  
2-14 applicable, specific reasons that prevented the hospital from  
2-15 receiving a higher level of care designation.  
2-16 SECTION 2. Subchapter H, Chapter 241, Health and Safety  
2-17 Code, is amended by adding Sections 241.1835, 241.1836, and  
2-18 241.1865 to read as follows:  
2-19 Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES.  
2-20 (a) In this section, "telemedicine medical service" has the  
2-21 meaning assigned by Section 111.001, Occupations Code.  
2-22 (b) The rules adopted under Section 241.183 must allow the  
2-23 use of telemedicine medical services by a physician providing  
2-24 on-call services to satisfy certain requirements identified by the  
2-25 executive commissioner in the rules for a Level I, II, or III level  
2-26 of care designation.  
2-27 (c) In identifying a requirement for a level of care  
2-28 designation that may be satisfied through the use of telemedicine  
2-29 medical services under Subsection (b), the executive commissioner,  
2-30 in collaboration with the Perinatal Advisory Council established  
2-31 under Section 241.187 and other relevant interested persons,  
2-32 including hospital-based and community-based physicians of  
2-33 applicable specialties with experience in providing telemedicine  
2-34 medical services, must ensure that the provision of a service or  
2-35 procedure through the use of telemedicine medical services is in  
2-36 accordance with the standard of care applicable to the provision of  
2-37 the same service or procedure in an in-person setting.  
2-38 (d) Telemedicine medical services must be administered  
2-39 under this section by a physician licensed to practice medicine  
2-40 under Subtitle B, Title 3, Occupations Code.  
2-41 (e) This section does not waive other requirements for a  
2-42 level of care designation.  
2-43 Sec. 241.1836. APPEAL PROCESS. (a) The rules adopted  
2-44 under Section 241.183 establishing the appeal process for a level  
2-45 of care designation assigned to a hospital must allow a hospital to  
2-46 appeal to a three-person panel that includes:  
2-47 (1) a representative of the department;  
2-48 (2) a representative of the commission; and  
2-49 (3) an independent person who:  
2-50 (A) has expertise in the specialty area for which  
2-51 the hospital is seeking a level of care designation;  
2-52 (B) is not an employee of or affiliated with  
2-53 either the department or the commission; and  
2-54 (C) does not have a conflict of interest with the  
2-55 hospital, department, or commission.  
2-56 (b) The independent person on the panel described by  
2-57 Subsection (a) must rotate after each appeal from a list of five to  
2-58 seven similarly qualified persons. The department shall solicit  
2-59 persons to be included on the list. A person must apply to the  
2-60 department on a form prescribed by the department and be approved by  
2-61 the commissioner to be included on the list.  
2-62 Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION  
2-63 REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall  
2-64 develop and implement a process through which a hospital may  
2-65 request and enter into an agreement with the department to:  
2-66 (1) receive or maintain a level of care designation  
2-67 for which the hospital does not meet all requirements conditioned  
2-68 on the hospital, in accordance with a plan approved by the  
2-69 department and outlined under the agreement, satisfying all

3-1 requirements for the level of care designation within a time  
 3-2 specified under the agreement, which may not exceed the first  
 3-3 anniversary of the effective date of the agreement; or  
 3-4 (2) waive one specific requirement for a level of care  
 3-5 designation in accordance with Subsection (c).  
 3-6 (b) A hospital may submit a written request under Subsection  
 3-7 (a) at any time. The department may make a determination on a  
 3-8 request submitted under that subsection at any time.  
 3-9 (c) The department may enter into an agreement with a  
 3-10 hospital to waive a requirement under Subsection (a)(2) only if the  
 3-11 department determines the waiver is justified considering:  
 3-12 (1) the expected impact on the accessibility of care  
 3-13 in the geographical area served by the hospital if the waiver is not  
 3-14 granted;  
 3-15 (2) the expected impact on quality of care;  
 3-16 (3) the expected impact on patient safety; and  
 3-17 (4) whether health care services related to the  
 3-18 requirement can be provided through telemedicine medical services  
 3-19 under Section 241.1835.  
 3-20 (d) A waiver agreement entered into under Subsection (a):  
 3-21 (1) must expire not later than at the end of each  
 3-22 designation cycle but may be renewed on expiration by the  
 3-23 department under the same or different terms; and  
 3-24 (2) may specify any conditions for ongoing reporting  
 3-25 and monitoring during the agreement.  
 3-26 (e) A hospital that enters into a waiver agreement under  
 3-27 Subsection (a) is required to satisfy all other requirements for a  
 3-28 level of care designation that are not waived in the agreement.  
 3-29 (f) The department shall post on the department's Internet  
 3-30 website and periodically update:  
 3-31 (1) a list of hospitals that enter into an agreement  
 3-32 with the department under this section; and  
 3-33 (2) an aggregated list of the requirements  
 3-34 conditionally met or waived in agreements entered into under this  
 3-35 section.  
 3-36 (g) A hospital that enters into an agreement with the  
 3-37 department under this section shall post on the hospital's Internet  
 3-38 website the nature and general terms of the agreement.  
 3-39 SECTION 3. Section 241.187, Health and Safety Code, is  
 3-40 amended by amending Subsection (l) and adding Subsections (m) and  
 3-41 (n) to read as follows:  
 3-42 (l) The advisory council is subject to Chapter 325,  
 3-43 Government Code (Texas Sunset Act). The advisory council shall be  
 3-44 reviewed during the period in which the Department of State Health  
 3-45 Services is reviewed [~~Unless continued in existence as provided by~~  
 3-46 ~~that chapter, the advisory council is abolished and this section~~  
 3-47 ~~expires September 1, 2025].  
 3-48 (m) The department, in consultation with the advisory  
 3-49 council, shall:  
 3-50 (1) conduct a strategic review of the practical  
 3-51 implementation of rules adopted in consultation with the department  
 3-52 under this subchapter that at a minimum identifies:  
 3-53 (A) barriers to a hospital obtaining its  
 3-54 requested level of care designation; and  
 3-55 (B) whether the barriers identified under  
 3-56 Paragraph (A) are appropriate to ensure and improve neonatal and  
 3-57 maternal care;  
 3-58 (2) based on the review conducted under Subdivision  
 3-59 (1), recommend a modification of rules adopted under this  
 3-60 subchapter, as appropriate, to improve the process and methodology  
 3-61 of assigning level of care designations; and  
 3-62 (3) prepare and submit to the legislature:  
 3-63 (A) not later than December 31, 2019, a written  
 3-64 report that summarizes the department's review of neonatal care  
 3-65 conducted under Subdivision (1) and on actions taken by the  
 3-66 department and executive commissioner based on that review; and  
 3-67 (B) not later than December 31, 2020, a written  
 3-68 report that summarizes the department's review of maternal care  
 3-69 conducted under Subdivision (1) and on actions taken by the~~

4-1 department and executive commissioner based on that review.

4-2 (n) Subsection (m) and this subsection expire September 1,  
4-3 2021.

4-4 SECTION 4. (a) The executive commissioner of the Health and  
4-5 Human Services Commission shall complete for each hospital in this  
4-6 state the maternal level of care designation not later than August  
4-7 31, 2020.

4-8 (b) Notwithstanding Section 241.186, Health and Safety  
4-9 Code, a hospital is not required to have a maternal level of care  
4-10 designation as a condition of reimbursement for maternal services  
4-11 through the Medicaid program before September 1, 2021.

4-12 (c) A hospital that submits an application to the Department  
4-13 of State Health Services for a maternal level of care designation  
4-14 under Subchapter H, Chapter 241, Health and Safety Code, before the  
4-15 effective date of this Act may amend the application to reflect the  
4-16 applicable changes in law made by this Act.

4-17 SECTION 5. As soon as practicable after the effective date  
4-18 of this Act, the executive commissioner of the Health and Human  
4-19 Services Commission shall adopt rules as necessary to implement the  
4-20 changes in law made by this Act.

4-21 SECTION 6. This Act takes effect immediately if it receives  
4-22 a vote of two-thirds of all the members elected to each house, as  
4-23 provided by Section 39, Article III, Texas Constitution. If this  
4-24 Act does not receive the vote necessary for immediate effect, this  
4-25 Act takes effect September 1, 2019.

4-26

\* \* \* \* \*