

BILL ANALYSIS

C.S.H.B. 3433
By: Sheffield
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised that recent legislation establishing hospital level of care designations for neonatal and maternal care has resulted in some unintended consequences for hospitals in rural areas of Texas. Interested parties contend that, while rural hospitals welcome efforts to enhance the care they provide, these hospitals have always faced a struggle in finding a balance between what is realistic, practical, and achievable with available resources. A number of rural hospitals report that they have experienced incredible difficulty in attempting to comply with certain rules regarding these designations, and some hospitals have even indicated that they may be forced to stop offering obstetrics services altogether. The parties argue that these consequences go against the original intent of the legislation and that additional representation on the Perinatal Advisory Council from providers in rural areas would help to clarify the situation. C.S.H.B. 3433 seeks to address this issue.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3433 amends the Health and Safety Code to increase from 17 to 19 the number of members appointed to the Perinatal Advisory Council by increasing from one to two the number of members who are licensed physicians specializing in family practice who provide obstetrical care in a rural community and increasing from one to two the number of members who are representatives from a rural hospital. The bill requires that at least one of the licensed physician members who provide obstetrical care in a rural community provide care at, and at least one of the representatives from a rural hospital be an administrative representative from, a hospital that has 50 or fewer patient beds and that is located in a county with a population of 60,000 or less or that is designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital. The bill specifies that six council members' terms expire September 1 of each year and postpones the deadline by which the council must submit a report of its determinations and recommendations to the Department of State Health Services and the executive commissioner of the Health and Human Services Commission from September 1, 2015, to September 1, 2016.

C.S.H.B. 3433 requires the executive commissioner, not later than October 1, 2015, to appoint the additional physician member of the council to an initial term that expires September 1, 2019, and the additional member who is a representative from a rural hospital to an initial term that expires September 1, 2017. The bill requires the executive commissioner to adopt initial rules required by Section 241.183, Health and Safety Code, as added by Chapter 217 (H.B. 15), Acts

of the 83rd Legislature, Regular Session, 2013, not later than March 1, 2018, after consideration of the report of the Perinatal Advisory Council. The bill requires the executive commissioner to complete, for each hospital in this state, the neonatal level of care designation not later than August 31, 2018, and the maternal level of care designation not later than August 31, 2020. The bill establishes that a hospital is not required to have a neonatal level of care designation as a condition of reimbursement for neonatal services through the Medicaid program before September 1, 2018, or a maternal level of care designation as a condition of reimbursement for maternal services through the Medicaid program before September 1, 2020.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3433 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

INTRODUCED

SECTION 1. Chapter 241, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE NEONATAL INTENSIVE CARE UNITS

Sec. 241.181. DEFINITIONS. In this subchapter:

- (1) "Department" means the Department of State Health Services.
- (2) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

Sec. 241.182. LEVEL OF CARE DESIGNATIONS. (a) The executive commissioner, in accordance with the rules adopted under Section 241.183, shall assign level of care designations to each hospital based on the ~~neonatal and maternal~~ neonatal intensive care services provided at the hospital.

(b) A hospital may receive different level designations for neonatal intensive care services. ~~and maternal care, respectively.~~

Sec. 241.183. RULES. (a) The executive commissioner, in consultation with the department, shall adopt rules:

- (1) establishing the levels of care for neonatal intensive care services. ~~and maternal care to be assigned to hospitals;~~

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Sections 241.187(b), (d), and (j), Health and Safety Code, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013, are amended to read as follows:

No equivalent provision.

No equivalent provision.

(2) prescribing criteria for designating levels of neonatal ~~intensive 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 ~~intensive care 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 recommended neonatal ~~and maternal~~ care regions.

(6) facilitating transfer agreements through regional coordination for hospitals without transferring agreements in a manner that preserves historic or existing patient referral patterns;

(7) requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the facility's level of care designation; and

(8) prohibiting the denial of a neonatal ~~intensive care or maternal level of care~~ designation to a hospital that meets the minimum requirements for that level of care designation.

(b) The criteria for levels one through three of neonatal ~~intensive and maternal~~ care adopted under Subsection (a)(2) may not include requirements related to the number of patients treated at a hospital.

(c) The Health and Human Services Commission shall study patient transfers that are not medically necessary but would be cost-effective. Based on the study under this subsection, if the executive commissioner determines that the transfers are feasible and desirable, the executive commissioner may adopt rules addressing those transfers.

(d) Each level of care designation must require a hospital to regularly submit outcome and other data to the department as required or requested.

(e) The criteria a hospital must achieve to receive each level of care designation must be posted on the department's Internet website.

Sec. 241.185. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) The executive commissioner, in consultation

No equivalent provision.

with the department, shall assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. The executive commissioner shall evaluate separately the neonatal intensive care and ~~maternal~~ services provided at the hospital and assign the respective level of care designations accordingly.

(b) Every three years, the executive commissioner and the department shall review the level of care designations assigned to each hospital and, as necessary, assign a hospital a different level of care designation or remove the hospital's level of care designation.

(c) A hospital may request a change of designation at any time. On request under this subsection, the executive commissioner and the department shall review the hospital's request and, as necessary, change the hospital's level of care designation.

Sec. 241.186. HOSPITAL NOT DESIGNATED. A hospital that does not meet the minimum requirements for any level of care designation for neonatal intensive care ~~or maternal~~ services:

(1) may not receive a level of care designation for those services; and

(2) is not eligible to receive reimbursement through the Medicaid program for neonatal intensive care ~~or maternal~~ services, ~~as applicable~~, except emergency services required to be provided or reimbursed under state or federal law.

Sec. 241.187. PERINATAL ADVISORY COUNCIL. (a) In this section, "advisory council" means the Perinatal Advisory Council established under this section.

(b) The advisory council consists of 17 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

No equivalent provision.

(b) The advisory council consists of 19 [47] members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in neonatology:

(A) at least two of whom practice in a Level III or IV neonatal intensive care unit; and

(B) at least one of whom practices in a neonatal intensive care unit of a hospital located in a rural area;

(2) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in general pediatrics;

(3) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) one physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provides obstetrical care in a rural community;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) one representative from a rural hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(c) To the extent possible, the executive commissioner shall appoint members to the advisory council who previously served on the Neonatal Intensive Care Unit Council established under Chapter 818 (H.B. 2636), Acts of the 82nd Legislature, Regular Session, 2011.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of

(3) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in obstetrics-gynecology;

(4) two physicians licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in maternal fetal medicine;

(5) two physicians [~~one physician~~] licensed to practice medicine under Subtitle B, Title 3, Occupations Code, specializing in family practice who provide [~~provides~~] obstetrical care in a rural community, at least one of whom must provide such care at a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(6) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in maternal health care delivery;

(7) one registered nurse licensed under Subtitle E, Title 3, Occupations Code, with expertise in perinatal health care delivery;

(8) one representative from a children's hospital;

(9) one representative from a hospital with a Level II neonatal intensive care unit;

(10) two representatives [~~one representative~~] from a rural hospital, at least one of whom must be an administrative representative from a hospital that has 50 or fewer patient beds and that is:

(A) located in a county with a population of 60,000 or less; or

(B) designated by the Centers for Medicare and Medicaid Services as a critical access hospital, rural referral center, or sole community hospital;

(11) one representative from a general hospital; and

(12) one ex officio representative from the office of the medical director of the Health and Human Services Commission.

(d) Members of the advisory council described by Subsections (b)(1)-(11) serve staggered three-year terms, with the terms of

five or six of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(e) A member of the advisory council serves without compensation but is entitled to reimbursement for actual and necessary travel expenses related to the performance of advisory council duties.

(f) The department, with recommendations from the advisory council, shall develop a process for the designation and updates of levels of neonatal ~~intensive and maternal~~ care at hospitals in accordance with this subchapter.

(g) The advisory council shall:

(1) develop and recommend criteria for designating levels of neonatal ~~intensive and maternal~~ care, ~~respectively~~, including specifying the minimum requirements to qualify for each level designation;

(2) develop and recommend a process for the assignment of levels of care to a hospital for neonatal ~~intensive and maternal~~ care, ~~respectively~~;

(3) make recommendations for the division of the state into neonatal ~~intensive and maternal~~ care regions incorporating existing patient transfer patterns and agreements;

(4) examine utilization trends relating to neonatal ~~intensive and maternal~~ care; and

(5) make recommendations related to improving neonatal intensive care ~~and maternal~~ outcomes.

(h) In developing the criteria for the levels of neonatal ~~intensive and maternal~~ care, the advisory council shall consider:

(1) any recommendations or publications of the American Academy of Pediatrics and the American Congress of Obstetricians and Gynecologists, including "Guidelines for Perinatal Care";

(2) any guidelines developed by the Society of Maternal-Fetal Medicine; and

(3) the geographic and varied needs of citizens of this state.

(i) In developing the criteria for designating levels one through three of neonatal ~~intensive and maternal~~ care, the advisory council may not consider the number of patients treated at a hospital.

(j) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1, ~~2015-2016~~.

(k) The advisory council shall continue to update its recommendations based on any

~~[five or]~~ six of those members expiring September 1 of each year. A member may be reappointed to the advisory council.

(j) The advisory council shall submit a report detailing the advisory council's determinations and recommendations to the department and the executive commissioner not later than September 1, 2016 ~~[2015]~~.

relevant scientific or medical developments.

(l) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the advisory council is abolished and this section expires September 1, 2025.

SECTION 2. (a) Not later than December 1, 2013, the executive commissioner of the Health and Human Services Commission shall appoint the members of the Perinatal Advisory Council as required by Section 241.187, Health and Safety Code, as added by this Act. Notwithstanding Section 241.187(d), Health and Safety Code, as added by this Act, the executive commissioner shall appoint:

(1) two members described by Section 241.187(b)(1), Health and Safety Code, one member described by Section 241.187(b)(3), Health and Safety Code, and the members described by Sections 241.187(b)(6) and (9), Health and Safety Code, to an initial term that expires September 1, 2017;

(2) one member described by Section 241.187(b)(1), Health and Safety Code, one member described by Section 241.187(b)(3), Health and Safety Code, one member described by Section 241.187(b)(4), Health and Safety Code, and the members described by Sections 241.187(b)(2), (7), and (10), Health and Safety Code, to an initial term that expires September 1, 2018; and

(3) one member described by Section 241.187(b)(1), Health and Safety Code, one member described by Section 241.187(b)(4), Health and Safety Code, and the members described by Sections 241.187(b)(5), (8), and (11), Health and Safety Code, to an initial term that expires September 1, 2019.

(b) Not later than March 1, ~~2017~~2018, after consideration of the report of the Perinatal Advisory Council, the executive commissioner of the Health and Human Services Commission shall adopt the initial rules required by Section 241.183, Health and Safety Code, as added by this Act.

(c) The executive commissioner of the

No equivalent provision.

SECTION 3. Notwithstanding Section 2, Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013:

(1) the executive commissioner of the Health and Human Services Commission shall adopt the initial rules required by Section 241.183, Health and Safety Code, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013, not later than March 1, 2018, after consideration of the report of the Perinatal Advisory Council;

(2) the executive commissioner of the

Health and Human Services Commission shall complete for each hospital in this state: (1) the neonatal level of care designation not later than August 31, 2017-2018; and

~~(2) the maternal level of care designation not later than August 31, 2019.~~

(d) Notwithstanding Section 241.186, Health and Safety Code, as added by this Act:

(1) a hospital is not required to have a neonatal level of care designation as a condition of reimbursement for neonatal services through the Medicaid program before September 1, 2017-2018; and

~~(2) 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, 2019.~~

No equivalent provision.

SECTION 3. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 4. This Act takes effect September 1, 2015.

Health and Human Services Commission shall complete for each hospital in this state: (A) the neonatal level of care designation not later than August 31, 2018; and

(B) the maternal level of care designation not later than August 31, 2020; and

(3) a hospital is not required to have:

(A) a neonatal level of care designation as a condition of reimbursement for neonatal services through the Medicaid program before September 1, 2018; and

(B) a maternal level of care designation as a condition of reimbursement for maternal services through the Medicaid program before September 1, 2020.

SECTION 2. Notwithstanding Section 241.187, Health and Safety Code, as added by Chapter 217 (H.B. 15), Acts of the 83rd Legislature, Regular Session, 2013, and as amended by this Act, of the two additional persons appointed to the Perinatal Advisory Council by this Act, the executive commissioner of the Health and Human Services Commission shall appoint the additional member described by Section 241.187(b)(5), Health and Safety Code, to an initial term that expires September 1, 2019, and the additional member described by Section 241.187(b)(10), Health and Safety Code, to an initial term that expires September 1, 2017. The executive commissioner shall make the appointments not later than October 1, 2015.

SECTION 4. Same as introduced version.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not

receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.