SUBJECT: Designating levels of neonatal and maternal care for hospitals

COMMITTEE: Public Health — committee substitute recommended

VOTE: 7 ayes — S. Thompson, Wray, Allison, Coleman, Frank, Price, Zedler

0 nays

4 absent — Guerra, Lucio, Ortega, Sheffield

SENATE VOTE: On final passage, April 1 — 31-0

WITNESSES: For — James Stockman, Texas Association of Nurse Anesthetists; Steve Wohleb, Texas Hospital Association; Misty Boyer; (*Registered, but did not testify*: Christina Hoppe, Children's Hospital Association of Texas; Juliana Kerker, HCA Healthcare; Elise Richardson, Houston Methodist Hospital; Maureen Milligan, Teaching Hospitals of Texas; Marshall Kenderdine, Texas Academy of Family Physicians; Nora Belcher, Texas e-Health Alliance; Kevin Stewart, Texas Nurse Practitioners; John Henderson and Don McBeath, Texas Organization of Rural and Community Hospitals)

Against — (*Registered, but did not testify*: Andrew Williams)

On — Doug Curran, Texas Medical Association, Texas Pediatric Society, Texas Association of Obstetricians and Gynecologists, American College of Obstetricians and Gynecologists District XI (Texas); Tillmann Hein, Texas Society of Anesthesiologists; (*Registered, but did not testify*: Stephen Pahl, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 241.183 requires the executive commissioner of the Health and Human Services Commission, in consultation with the Department of State Health Services (DSHS), to adopt rules establishing the levels of care for neonatal and maternal care assigned to hospitals and establishing a process for designating those levels of care.

Sec. 241.187 specifies that the Perinatal Advisory Council is subject to the Texas Sunset Act and will be abolished on September 1, 2025, along with its applicable provisions, unless continued in statute. The Perinatal Advisory Council must:

- develop and recommend criteria for designating levels of neonatal and maternal care and a process for assigning levels of care to each hospital;
- make recommendations for dividing the state into neonatal and maternal care regions and improving neonatal and maternal care outcomes; and
- examine neonatal and maternal care utilization trends.

Some have called for revisions to the process by which DSHS assigns level of neonatal and maternal care designations for hospitals by creating an appeal and waiver process and clarifying the role of telemedicine in satisfying certain level of care requirements.

DIGEST:

CSSB 749 would require the executive commissioner of the Health and Human Services Commission (HHSC) to adopt certain rules for designating levels of neonatal and maternal care for hospitals and establish an appeal process, waiver agreement, and telemedicine exceptions. The bill also would amend the Perinatal Advisory Council's duties.

Rules. The bill would require the executive commissioner of HHSC, in consultation with the Department of State Health Services (DSHS), to adopt rules establishing a process through which a hospital could obtain a limited follow-up survey by an independent third party to appeal the level of care designation assigned to the hospital. The commissioner also would have to adopt rules permitting a hospital to satisfy any requirement for a Level I or II level of care designation that related 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 required services outside the scope of privileges granted to the family physician.

The bill also would require the HHSC executive commissioner to adopt rules clarifying that a health provider at a designated facility or hospital could provide the full range of health care services that the provider was authorized to provide under state law and for which the hospital had granted privileges to the provider.

Appeal process. Under the bill, the adopted rules would have to allow a hospital to appeal a level of care designation to a three-person panel that included a DSHS representative, an HHSC representative, and an independent person.

The independent person would be someone who had expertise in the specialty area for which the hospital was seeking a designated level, was not an employee of or affiliated with either DSHS or HHSC, and did not have a conflict of interest with the hospital, DSHS, or HHSC.

Waiver. The bill would require DSHS to implement a process for hospitals at any time to request and enter into an agreement with the department to:

- receive or maintain a level of care designation for which the hospital did not meet all requirements conditioned on the hospital; or
- waive one specific requirement for a designated level.

DSHS could waive a level of care requirement only if DSHS determined the waiver was justified considering the expected impact on the quality of care, patient safety, or the accessibility of care in the hospital's geographical area if the waiver was not granted, or whether certain health care services could be provided through telemedicine.

A hospital that received a waiver for a level of care designation would

have to satisfy all other requirements that were not waived.

A waiver agreement would expire by the end of each designation cycle but could be renewed on expiration by DSHS under the same or different terms.

The bill would require DSHS to post on its website a list of hospitals that entered into a waiver agreement and an aggregated list of requirements conditionally met or waived. A hospital that entered into a waiver agreement would have to post on its website the agreement's general terms.

Telemedicine. Under the bill, the adopted rules would have to allow the use of telemedicine by a licensed physician providing on-call services to satisfy certain requirements for a Level I, II, or III level of care designation. The executive commissioner of HHSC would have to ensure that the provided telemedicine services met the same standard of care for services provided in an in-person setting. These provisions would not waive other requirements for a level of care designation.

Perinatal Advisory Council. The bill would require DSHS, in consultation with the Perinatal Advisory Council, to conduct a strategic review of the practical implementation of adopted rules that identified barriers to a hospital obtaining its requested level of care designation and whether, in making a level of care designation, DSHS or the council should consider the hospital's geographic area. Based on the strategic review, DSHS and the council would have to recommend a modification of adopted rules to improve the methodology of assigning level of care designations.

By December 31, 2019, DSHS and the council would have to submit a written report summarizing the department's review of neonatal care and the actions taken by DSHS or the HHSC executive commissioner based on the review. By December 31, 2020, DSHS and the council would have to submit a written report summarizing the department's review of maternal care and the actions of DSHS or the HHSC executive

commissioner.

The bill would remove the provision abolishing the Perinatal Advisory Council on September 1, 2025, and would require the council to be reviewed during the period in which DSHS would be reviewed under the Texas Sunset Act. The bill would establish a September 1, 2021, expiration date for the Perinatal Advisory Council and its related provisions under Health and Safety Code sec. 241.187.

Other provisions. Under the bill, a hospital would not be 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. A hospital that submitted an application to DSHS for a maternal level of care designation before the bill's effective date could amend the application to reflect the bill's applicable changes.

By August 31, 2021, the executive commissioner of HHSC would have to complete maternal level of care designations for each hospital in Texas. As soon as practicable after the bill's effective date, the HHSC executive commissioner would adopt rules to implement the bill's provisions.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2019.