

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 15  
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Health & Human Services  
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Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Over the past decade, Texas has seen significant increases in the utilization of neonatal intensive care units (NICU), and a corresponding increase in Medicaid costs associated with NICUs. Due to this trend and the fact that Medicaid covers more than half of all births in Texas, the legislature passed H.B. 2636, 82nd Legislature, Regular Session, 2011, to create a NICU Council to study these units. C.S.H.B. 15 implements some of the recommendations of this council by establishing level of care designations for hospital NICUs and maternal care units. This bill seeks to reduce overutilization of NICUs, to improve outcomes for both pregnant women and newborns, and to achieve cost savings for the state.

C.S.H.B. 15 amends current law relating to level of care designations for hospitals that provide neonatal and maternal services.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 241.183, Health and Safety Code) and SECTION 2 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 241, Health and Safety Code, by adding Subchapter H, as follows:

#### **SUBCHAPTER H. HOSPITAL LEVEL OF CARE DESIGNATIONS FOR NEONATAL AND MATERNAL CARE**

Sec. 241.181. DEFINITIONS. Defines “department” and “executive commissioner” in this subchapter.

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

(b) Authorizes a hospital to receive different level designations for neonatal and maternal care, respectively.

Sec. 241.183. RULES. (a) Requires the executive commissioner, in consultation with the Department of State Health Services (DSHS), to 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;
- (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 or maternal level of care designation to a hospital that meets the minimum requirements for that level of care designation.

(b) Prohibits the criteria for levels one through three of neonatal and maternal care adopted under Subsection (a)(2) from including requirements related to the number of patients treated at a hospital.

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

(d) Requires that each level of care designation require a hospital to regularly submit outcome and other data to DSHS as required or requested.

(e) Requires that the criteria a hospital is required to achieve to receive each level of care designation be posted on the DSHS's Internet website.

Sec. 241.184. CONFIDENTIALITY; PRIVILEGE. (a) Provides that all information and materials submitted by a hospital to DSHS under Section 241.183(d) are confidential and are not subject to disclosure under Chapter 552 (Public Information), Government Code, or discovery, subpoena, or other means of legal compulsion for release to any person, and is prohibited from being admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) Provides that the confidentiality protections under Subsection (a) apply without regard to whether the information or materials are submitted by a hospital or an entity that has an ownership or management interest in a hospital.

(c) Prohibits a state employee or officer from being examined in a civil, criminal, or special proceeding, or any other proceeding, regarding the existence or contents of information or materials submitted to DSHS under Section 241.183(d).

(d) Provides that the submission of information or materials under Section 241.183(d) is not a waiver of a privilege or protection granted under law.

(e) Provides that the provisions of this section regarding the confidentiality of information or materials submitted by a hospital in compliance with Section 241.183(d) do not restrict access, to the extent authorized by law, by the patient or the patient's legally authorized representative to records of the patient's medical diagnosis or treatment or to other primary health records.

(f) Prohibits a DSHS summary or disclosure, including an assignment of a level of care designation, from containing information identifying a patient, employee, contractor, volunteer, consultant, health care practitioner, student, or trainee.

Sec. 241.185. ASSIGNMENT OF LEVEL OF CARE DESIGNATION. (a) Requires the executive commissioner, in consultation with DSHS, to assign the appropriate level of care designation to each hospital that meets the minimum standards for that level of care. Requires the executive commissioner to evaluate separately the neonatal and maternal services provided at the hospital and assign the respective level of care designations accordingly.

(b) Requires the executive commissioner and DSHS, every three years, to 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) Authorizes a hospital to request a change of designation at any time. Requires the executive commissioner and DSHS, on request under this subsection, to review the hospital's request and, as necessary, change the hospital's level of care designation.

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

(1) is prohibited from receiving a level of care designation for those services; and

(2) is not eligible to receive reimbursement through the Medicaid program for neonatal 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) Defines "advisory council" in this section.

(b) Provides that the Perinatal Advisory Council (advisory council) consists of 17 members appointed by the executive commissioner as follows:

(1) four physicians licensed to practice medicine under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code, specializing in neonatology at least two of whom practice in a Level III or IV neonatal intensive care unit, and 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 (Regulation of Nursing), 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 HHSC.

(c) Requires the executive commissioner, to the extent possible, to 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) Provides that 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. Authorizes a member to be reappointed to the advisory council.

(e) Provides that 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) Requires DSHS, with recommendations from the advisory council, to develop a process for the designation and updates of levels of neonatal and maternal care at hospitals in accordance with this subchapter.

(g) Requires the advisory council to:

(1) develop and recommend criteria for designating levels of neonatal 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 and maternal care, respectively;

(3) make recommendations for the division of the state into neonatal and maternal care regions;

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

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

(h) Requires the advisory council, in developing the criteria for the levels of neonatal and maternal care, to 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) Prohibits the advisory council, in developing the criteria for designating levels one through three of neonatal and maternal care, from considering the number of patients treated at a hospital.

(j) Requires the advisory council to submit a report detailing the advisory council's determinations and recommendations to DSHS and the executive commissioner not later than September 1, 2015.

(k) Requires the advisory council to continue to update its recommendations based on any relevant scientific or medical developments.

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

SECTION 2. (a) Requires the executive commissioner, not later than December 1, 2013, to appoint the members of the advisory council as required by Section 241.186, Health and Safety Code, as added by this Act. Requires the executive commissioner, notwithstanding Section 241.186(d), Health and Safety Code, as added by this Act, to 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) Requires the executive commissioner, not later than March 1, 2017, after consideration of the report of the advisory council, to adopt the initial rules required by Section 241.183, Health and Safety Code, as added by this Act.

(c) Requires the executive commissioner to complete for each hospital in this state the neonatal level of care designation not later than August 31, 2017, and the maternal level of care designation not later than August 31, 2019.

(d) Provides that 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 through the Medicaid program before September 1, 2017; and

(2) a hospital is not required to have a maternal level of care designation as a condition of reimbursement through the Medicaid program before September 1, 2019.

SECTION 3. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 4. Effective date: September 1, 2013.