

BILL ANALYSIS

Senate Research Center

S.B. 749
By: Kolkhorst
Health & Human Services
6/20/2019
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 83rd Legislature passed H.B. 15, authored by Representative Kolkhorst. The bill directed the establishment of designation levels for neonatal intensive care units (NICUs) and maternal levels of care.

The Perinatal Advisory Council (PAC) developed the standards for each level of designation, and the Department of State Health Services (DSHS) determines and assigns the level of designations.

S.B. 749 seeks to improve the current level of designations process. The bill requires DSHS to establish a process for a hospital to appeal its level of designation to an independent third party, and clarifies the role of telemedicine and practitioners' scope of practice. The bill also provides a waiver process from certain designation rules to address variability in hospital volume and capability, requires a strategic review of the designation rules, and aligns the PAC sunset date with the sunset date for DSHS. (Original Author's/Sponsor's Statement of Intent)

S.B. 749 amends current law relating to level of care designations for hospitals that provide neonatal and maternal care.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission (executive commissioner) in SECTION 5 of this bill.

Rulemaking authority previously granted to the executive commissioner is modified in SECTION 1 (Section 241.183, Health and Safety Code) and SECTION 2 (Section 241.1835, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 241.183(a), Health and Safety Code, as follows:

(a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner; HHSC) in consultation with the Department of State Health Services (DSHS), to adopt rules:

(1)–(6) makes no changes to these subdivisions;

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

(8) makes a nonsubstantive change to this subdivision;

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

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

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

(B) developing and implementing a plan for responding to obstetrical emergencies that require services or procedures outside the scope of privileges granted to the family physician described by Paragraph (A);

(11) clarifying that, regardless of a hospital's level of care designation, a health care provider at a designated facility or hospital is authorized to provide the full range of health care services that the provider is authorized to provide under state law and for which the hospital has granted privileges to the provider; and

(12) requiring DSHS to provide to each hospital that receives a level of care designation a written explanation of the basis for the designation, including, as applicable, specific reasons that prevented the hospital from receiving a higher level of care designation.

SECTION 2. Amends Subchapter H, Chapter 241, Health and Safety Code, by adding Sections 241.1835, 241.1836, and 241.1865, as follows:

Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES. (a) Defines "telemedicine medical service" for purposes of this section.

(b) Requires the rules adopted under Section 241.183 to allow the use of telemedicine medical services by a physician providing on-call services to satisfy certain requirements identified by the executive commissioner in the rules for a Level I, II, or III level of care designation.

(c) Requires the executive commissioner, in consultation with DSHS, physicians of appropriate specialties, statewide medical, nursing, and hospital associations, and other appropriate interested persons, in identifying a requirement for a level of care designation that is authorized to be satisfied through the use of telemedicine medical services under Subsection (b), to ensure that the provision of a service or procedure through the use of telemedicine services is in accordance with the standard of care applicable to the provision of the same service or procedure in an in-person setting.

(d) Requires telemedicine medical services to be administered under this section by a physician licensed to practice medicine under Subtitle B (Physicians), Title 3, Occupations Code.

(e) Provides that this section does not waive other requirements for a level of care designation.

Sec. 241.1836. APPEAL PROCESS. (a) Requires the rules adopted under Section 241.183 establishing level of care designations for hospitals to allow a hospital to appeal a level of care designation to a three-person panel that includes:

(1) a representative of DSHS;

(2) a representative of HHSC; and

(3) an independent person who has expertise in the specialty area for which the hospital area is seeking a level of care designation, who is not an employee of or affiliated with either DSHS or HHSC, and who does not have a conflict of interest with the hospital, DSHS, or HHSC.

(b) Requires the independent person on the panel described by Subsection (a) to rotate after each appeal from a list of five to seven similarly qualified persons. Requires DSHS to solicit persons to be included on the list. Requires a person to apply to DSHS on a form prescribed by DSHS and be approved by the commissioner of DSHS to be included on the list.

Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION REQUIREMENTS; CONDITIONAL DESIGNATION. (a) Requires DSHS to develop and implement a process through which a hospital is authorized to request and enter into an agreement with DSHS to:

(1) receive or maintain a level of care designation for which the hospital does not meet all requirements conditioned on the hospital, in accordance with a plan approved by DSHS and outlined under the agreement, satisfying all requirements for the level of care designation within a time specified under the agreement, which is prohibited from exceeding the first anniversary of the effective date of the agreement; or

(2) waive one specific requirement for a level of care designation in accordance with Subsection (c).

(b) Requires the process developed and implemented under this section to:

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

(2) require a hospital to:

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

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

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

(3) allow DSHS to make a determination on the request at any time.

(c) Authorizes DSHS to enter into an agreement with a hospital to waive a requirement under Subsection (a)(2) only if DSHS determines the waiver is justified considering:

(1) the expected impact on:

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

(B) quality of care and patient safety; or

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

(d) Provides that a waiver agreement entered into under Subsection (a):

(1) is required to expire not later than at the end of each designation cycle but is authorized to be renewed on expiration by DSHS under the same or different terms; and

(2) is authorized to specify any conditions for ongoing reporting and monitoring during the agreement.

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

(f) Requires DSHS to post on DSHS's Internet website and periodically update a list of hospitals that enter into an agreement with DSHS under this section and an aggregated list of the requirements conditionally met or waived in agreements entered into under this section.

(g) Requires a hospital that enters into an agreement with DSHS under this section to post on the hospital's Internet website the nature and general terms of the agreement.

SECTION 3. Amends Section 241.187, Health and Safety Code, by amending Subsection (l) and adding Subsections (m) and (n), as follows:

(l) Provides that the Perinatal Advisory Council (advisory council) is subject to Chapter 325 (Sunset Law), Government Code. Requires the advisory council to be reviewed during the period in which DSHS is reviewed. Deletes existing text providing that, unless continued in existence as provided by Chapter 325, the advisory council is abolished and this section expires September 1, 2025.

(m) Requires DSHS, in consultation with HHSC and the advisory council, to:

(1) conduct a strategic review of the practical implementation of rules adopted in consultation with DSHS under this subchapter (Hospital Level of Care Designations For Neonatal and Maternal Care) that at a minimum identifies:

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

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

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

(D) whether, in making a level of care designation for a hospital, DSHS or the advisory council should consider:

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

(ii) regardless of the number of patients of a particular gestational age treated by the hospital, the hospital's capabilities in providing care to patients of a particular gestational age as determined by the hospital;

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

(3) prepare and submit to the legislature not later than December 31, 2019, a written report that summarizes DSHS's review of neonatal care conducted under Subdivision (1) and on actions taken by DSHS and the executive commissioner

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

(n) Provides that Subsection (m) and this subsection expire September 1, 2021.

SECTION 4. (a) Requires the executive commissioner to complete for each hospital in this state the maternal level of care designation not later than August 31, 2021.

(b) Provides that, notwithstanding Section 241.186 (Hospital Not Designated), Health and Safety Code, 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, 2021.

(c) Authorizes a hospital that submits an application to DSHS for a maternal level of care designation under Subchapter H, Chapter 241, Health and Safety Code, before the effective date of this Act to amend the application to reflect the applicable changes in law made by this Act.

SECTION 5. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt rules as necessary to implement the changes in law made by this Act.

SECTION 6. Effective date: upon passage or September 1, 2019.