

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 749  
By: Kolkhorst  
Health & Human Services  
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As Filed

### **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.

As proposed, 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 in SECTION 2 (Section 241.1865, Health and Safety Code) and SECTION 4 of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 1 (Section 241.183, Health and Safety Code), SECTION 2 (Section 241.1835, Health and Safety Code), and SECTION 3 (Section 241.187, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 241.183, Health and Safety Code, by amending Subsection (a) and adding Subsection (f), as follows:

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

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

(7)–(8) makes nonsubstantive changes to these subdivisions;

(9) establishing a process through which a hospital is authorized to appeal to an independent third party regarding the level of care designation assigned to the hospital;

(10) permitting a health care provider who provides care at a hospital assigned a Level I or II level of care designation to provide each health care service for which the provider is licensed if the hospital demonstrates a need for the service; and

(11) specifying the situations in which the hospital can receive off-site medical consulting or services to meet the requirements for a level of care designation.

(f) Requires the executive commissioner, in adopting rules under Subsection (a), to ensure that any requirement for a level of care designation related to care for patients of a particular gestational age or for a specified number of patients of a particular gestational area in which the hospital is located and the hospital's capabilities for providing care.

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

Sec. 241.1835. USE OF TELEHEALTH SERVICES AND TELEMEDICINE MEDICAL SERVICES AT CERTAIN HOSPITALS. (a) Provides that, in this section, "telehealth" and "telemedicine" have the meanings assigned by Section 111.001, Occupations Code.

(b) Prohibits the executive commissioner, in adopting rules under Section 241.183, from excluding or prohibiting the use of telehealth services or telemedicine medical services by a physician providing on-call services at a hospital located in a rural area of this state, as defined by executive commissioner rule, that is assigned a Level I, II, or III level of care designation. Provides that this section applies only to on-call services provided at a hospital with a local medical staff consisting of not more than four physicians, and for a hospital assigned a Level II or III level of care designation, by a physician licensed to practice medicine under Subtitle B (Physicians), Title 3, Occupations Code, and board certified in obstetrics or gynecology.

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

Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION REQUIREMENTS. (a) Requires the executive commissioner by rule to develop and implement a process through which a hospital is authorized to enter in an agreement with HHSC to waive one or more requirements for a level of care designation.

(b) Requires the executive commissioner by rule to adopt requirements to enter into a waiver agreement under Subsection (A) and specify the type of designation requirements that are authorized to be waived.

(c) Provides that a waiver agreement entered into under Subsection (A) is required to expire at the end of each designation cycle and is authorized to be renewed by HHSC under the same or different terms, and is authorized to require a hospital to meet the requirements for a level of care designation within the period specified under the agreement.

(d) 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.

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

(l) Provides that the advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). 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 the executive commissioner, in consultation with HHSC and the advisory council, to:

(1) conduct a strategic review of the practical implementation of rules adopted by the executive commissioner under this subchapter that at a minimum identifies:

(A) barriers to a hospital obtaining the hospital's preferred level of care designation; and

(B) whether the barriers identified under Paragraph (A) are appropriate;

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

(3) prepare and submit to the legislature each biennium a written report that summarizes:

(A) the review conducted under Subdivision (1); and

(B) actions taken by the executive commissioner based on the review.

SECTION 4. Requires the executive commissioner of the Health and Human Services Commission, 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 5. Effective date: September 1, 2019.