

AN ACT

relating to level of care designations for hospitals that provide neonatal and maternal care.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 241.183(a), Health and Safety Code, is amended to read as follows:

(a) The executive commissioner, in consultation with the department, shall 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 hospital's [~~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;

(9) establishing a process through which a hospital may 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 may provide the full range of health care

services:

(A) that the provider is authorized to provide under state law; and

(B) for which the hospital has granted privileges to the provider; and

(12) requiring the department 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. Subchapter H, Chapter 241, Health and Safety Code, is amended by adding Sections 241.1835, 241.1836, and 241.1865 to read as follows:

Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES. (a) In this section, "telemedicine medical service" has the meaning assigned by Section 111.001, Occupations Code.

(b) The rules adopted under Section 241.183 must 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) In identifying a requirement for a level of care designation that may be satisfied through the use of telemedicine medical services under Subsection (b), the executive commissioner,

in consultation with the department, physicians of appropriate specialties, statewide medical, nursing, and hospital associations, and other appropriate interested persons, must ensure that the provision of a service or procedure through the use of telemedicine medical 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) Telemedicine medical services must be administered under this section by a physician licensed to practice medicine under Subtitle B, Title 3, Occupations Code.

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

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

- (1) a representative of the department;
- (2) a representative of the commission; and
- (3) an independent person who:

(A) has expertise in the specialty area for which the hospital is seeking a level of care designation;

(B) is not an employee of or affiliated with either the department or the commission; and

(C) does not have a conflict of interest with the

hospital, department, or commission.

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

Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall develop and implement a process through which a hospital may request and enter into an agreement with the department 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 the department and outlined under the agreement, satisfying all requirements for the level of care designation within a time specified under the agreement, which may not exceed 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) The process developed and implemented under this section must:

(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 the department to make a determination on the request at any time.

(c) The department may enter into an agreement with a hospital to waive a requirement under Subsection (a)(2) only if the department determines the waiver is justified after 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) A waiver agreement entered into under Subsection (a):

(1) must expire not later than at the end of each

designation cycle but may be renewed on expiration by the department under the same or different terms; and

(2) may specify any conditions for ongoing reporting and monitoring during the agreement.

(e) 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) The department shall post on the department's Internet website and periodically update:

(1) a list of hospitals that enter into an agreement with the department under this section; and

(2) an aggregated list of the requirements conditionally met or waived in agreements entered into under this section.

(g) A hospital that enters into an agreement with the department under this section shall post on the hospital's Internet website the nature and general terms of the agreement.

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

(1) The advisory council is subject to Chapter 325, Government Code (Texas Sunset Act). The advisory council shall be reviewed during the period in which the Department of State Health Services is reviewed [~~Unless continued in existence as provided by that chapter, the advisory council is abolished and this section~~]

~~expires September 1, 2025].~~

(m) The department, in consultation with the advisory council, shall:

(1) conduct a strategic review of the practical implementation of rules adopted in consultation with the department under this subchapter 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, the department or the perinatal 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:

(A) not later than December 31, 2019, a written report that summarizes the department's review of neonatal care conducted under Subdivision (1) and on actions taken by the department and executive commissioner based on that review; and

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

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

SECTION 4. (a) The executive commissioner of the Health and Human Services Commission shall complete for each hospital in this state the maternal level of care designation not later than August 31, 2021.

(b) Notwithstanding Section 241.186, 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) A hospital that submits an application to the Department of State Health Services for a maternal level of care designation under Subchapter H, Chapter 241, Health and Safety Code, before the

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effective date of this Act may amend the application to reflect the applicable changes in law made by this Act.

SECTION 5. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules as necessary to implement the changes in law made by this Act.

SECTION 6. 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, 2019.

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President of the Senate

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Speaker of the House

I hereby certify that S.B. No. 749 passed the Senate on April 1, 2019, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 23, 2019, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.B. No. 749 passed the House, with amendments, on May 21, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor