

1-1 By: Kolkhorst S.B. No. 749
1-2 (In the Senate - Filed February 11, 2019; March 1, 2019,
1-3 read first time and referred to Committee on Health & Human
1-4 Services; March 21, 2019, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 March 21, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9 Kolkhorst	X			
1-10 Perry	X			
1-11 Buckingham	X			
1-12 Campbell	X			
1-13 Flores	X			
1-14 Johnson	X			
1-15 Miles	X			
1-16 Powell	X			
1-17 Seliger	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 749 By: Kolkhorst

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to level of care designations for hospitals that provide
1-22 neonatal and maternal care.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 241.183(a), Health and Safety Code, is
1-25 amended to read as follows:

1-26 (a) The executive commissioner, in consultation with the
1-27 department, shall adopt rules:

1-28 (1) establishing the levels of care for neonatal and
1-29 maternal care to be assigned to hospitals;

1-30 (2) prescribing criteria for designating levels of
1-31 neonatal and maternal care, respectively, including specifying the
1-32 minimum requirements to qualify for each level designation;

1-33 (3) establishing a process for the assignment of
1-34 levels of care to a hospital for neonatal and maternal care,
1-35 respectively;

1-36 (4) establishing a process for amending the level of
1-37 care designation requirements, including a process for assisting
1-38 facilities in implementing any changes made necessary by the
1-39 amendments;

1-40 (5) dividing the state into neonatal and maternal care
1-41 regions;

1-42 (6) facilitating transfer agreements through regional
1-43 coordination;

1-44 (7) requiring payment, other than quality or
1-45 outcome-based funding, to be based on services provided by the
1-46 facility, regardless of the hospital's [~~facility's~~] level of care
1-47 designation; and

1-48 (8) prohibiting the denial of a neonatal or maternal
1-49 level of care designation to a hospital that meets the minimum
1-50 requirements for that level of care designation;

1-51 (9) establishing a process through which a hospital
1-52 may obtain a limited follow-up survey by an independent third party
1-53 to appeal the level of care designation assigned to the hospital;

1-54 (10) permitting a hospital to satisfy any requirement
1-55 for a Level I or II level of care designation that relates to an
1-56 obstetrics or gynecological physician by:

1-57 (A) granting maternal care privileges to a family
1-58 physician with obstetrics training or experience; and

1-59 (B) developing and implementing a plan for
1-60 responding to obstetrical emergencies that require services or

2-1 procedures outside the scope of privileges granted to the family
 2-2 physician described by Paragraph (A);

2-3 (11) clarifying that, regardless of a hospital's level
 2-4 of care designation, a health care provider at a designated
 2-5 facility or hospital may provide the full range of health care
 2-6 services:

2-7 (A) that the provider is authorized to provide
 2-8 under state law; and

2-9 (B) for which the hospital has granted privileges
 2-10 to the provider; and

2-11 (12) requiring the department to provide to each
 2-12 hospital that receives a level of care designation a written
 2-13 explanation of the basis for the designation, including, as
 2-14 applicable, specific reasons that prevented the hospital from
 2-15 receiving a higher level of care designation.

2-16 SECTION 2. Subchapter H, Chapter 241, Health and Safety
 2-17 Code, is amended by adding Sections 241.1835, 241.1836, and
 2-18 241.1865 to read as follows:

2-19 Sec. 241.1835. USE OF TELEMEDICINE MEDICAL SERVICES.
 2-20 (a) In this section, "telemedicine medical service" has the
 2-21 meaning assigned by Section 111.001, Occupations Code.

2-22 (b) The rules adopted under Section 241.183 must allow the
 2-23 use of telemedicine medical services by a physician providing
 2-24 on-call services to satisfy certain requirements identified by the
 2-25 executive commissioner in the rules for a Level I, II, or III level
 2-26 of care designation.

2-27 (c) In identifying a requirement for a level of care
 2-28 designation that may be satisfied through the use of telemedicine
 2-29 medical services under Subsection (b), the executive commissioner,
 2-30 in collaboration with the Perinatal Advisory Council established
 2-31 under Section 241.187 and other relevant interested persons,
 2-32 including hospital-based and community-based physicians of
 2-33 applicable specialties with experience in providing telemedicine
 2-34 medical services, must ensure that the provision of a service or
 2-35 procedure through the use of telemedicine medical services is in
 2-36 accordance with the standard of care applicable to the provision of
 2-37 the same service or procedure in an in-person setting.

2-38 (d) Telemedicine medical services must be administered
 2-39 under this section by a physician licensed to practice medicine
 2-40 under Subtitle B, Title 3, Occupations Code.

2-41 (e) This section does not waive other requirements for a
 2-42 level of care designation.

2-43 Sec. 241.1836. APPEAL PROCESS. (a) The rules adopted
 2-44 under Section 241.183 establishing the appeal process for a level
 2-45 of care designation assigned to a hospital must allow a hospital to
 2-46 appeal to a three-person panel that includes:

2-47 (1) a representative of the department;
 2-48 (2) a representative of the commission; and

2-49 (3) an independent person who:

2-50 (A) has expertise in the specialty area for which
 2-51 the hospital is seeking a level of care designation;

2-52 (B) is not an employee of or affiliated with
 2-53 either the department or the commission; and

2-54 (C) does not have a conflict of interest with the
 2-55 hospital, department, or commission.

2-56 (b) The independent person on the panel described by
 2-57 Subsection (a) must rotate after each appeal from a list of five to
 2-58 seven similarly qualified persons. The department shall solicit
 2-59 persons to be included on the list. A person must apply to the
 2-60 department on a form prescribed by the department and be approved by
 2-61 the commissioner to be included on the list.

2-62 Sec. 241.1865. WAIVER FROM LEVEL OF CARE DESIGNATION
 2-63 REQUIREMENTS; CONDITIONAL DESIGNATION. (a) The department shall
 2-64 develop and implement a process through which a hospital may
 2-65 request and enter into an agreement with the department to:

2-66 (1) receive or maintain a level of care designation
 2-67 for which the hospital does not meet all requirements conditioned
 2-68 on the hospital, in accordance with a plan approved by the
 2-69 department and outlined under the agreement, satisfying all

3-1 requirements for the level of care designation within a time
3-2 specified under the agreement, which may not exceed the first
3-3 anniversary of the effective date of the agreement; or
3-4 (2) waive one specific requirement for a level of care
3-5 designation in accordance with Subsection (c).

3-6 (b) A hospital may submit a written request under Subsection
3-7 (a) at any time. The department may make a determination on a
3-8 request submitted under that subsection at any time.

3-9 (c) The department may enter into an agreement with a
3-10 hospital to waive a requirement under Subsection (a)(2) only if the
3-11 department determines the waiver is justified considering:

3-12 (1) the expected impact on the accessibility of care
3-13 in the geographical area served by the hospital if the waiver is not
3-14 granted;

3-15 (2) the expected impact on quality of care;
3-16 (3) the expected impact on patient safety; and
3-17 (4) whether health care services related to the
3-18 requirement can be provided through telemedicine medical services
3-19 under Section 241.1835.

3-20 (d) A waiver agreement entered into under Subsection (a):
3-21 (1) must expire not later than at the end of each
3-22 designation cycle but may be renewed on expiration by the
3-23 department under the same or different terms; and
3-24 (2) may specify any conditions for ongoing reporting
3-25 and monitoring during the agreement.

3-26 (e) A hospital that enters into a waiver agreement under
3-27 Subsection (a) is required to satisfy all other requirements for a
3-28 level of care designation that are not waived in the agreement.

3-29 (f) The department shall post on the department's Internet
3-30 website and periodically update:

3-31 (1) a list of hospitals that enter into an agreement
3-32 with the department under this section; and
3-33 (2) an aggregated list of the requirements
3-34 conditionally met or waived in agreements entered into under this
3-35 section.

3-36 (g) A hospital that enters into an agreement with the
3-37 department under this section shall post on the hospital's Internet
3-38 website the nature and general terms of the agreement.

3-39 SECTION 3. Section 241.187, Health and Safety Code, is
3-40 amended by amending Subsection (l) and adding Subsections (m) and
3-41 (n) to read as follows:

3-42 (l) The advisory council is subject to Chapter 325,
3-43 Government Code (Texas Sunset Act). The advisory council shall be
3-44 reviewed during the period in which the Department of State Health
3-45 Services is reviewed [Unless continued in existence as provided by
3-46 that chapter, the advisory council is abolished and this section
3-47 expires September 1, 2025].

3-48 (m) The department, in consultation with the advisory
3-49 council, shall:

3-50 (1) conduct a strategic review of the practical
3-51 implementation of rules adopted in consultation with the department
3-52 under this subchapter that at a minimum identifies:

3-53 (A) barriers to a hospital obtaining its
3-54 requested level of care designation; and
3-55 (B) whether the barriers identified under
3-56 Paragraph (A) are appropriate to ensure and improve neonatal and
3-57 maternal care;

3-58 (2) based on the review conducted under Subdivision
3-59 (1), recommend a modification of rules adopted under this
3-60 subchapter, as appropriate, to improve the process and methodology
3-61 of assigning level of care designations; and

3-62 (3) prepare and submit to the legislature:
3-63 (A) not later than December 31, 2019, a written
3-64 report that summarizes the department's review of neonatal care
3-65 conducted under Subdivision (1) and on actions taken by the
3-66 department and executive commissioner based on that review; and

3-67 (B) not later than December 31, 2020, a written
3-68 report that summarizes the department's review of maternal care
3-69 conducted under Subdivision (1) and on actions taken by the

4-1 department and executive commissioner based on that review.

4-2 (n) Subsection (m) and this subsection expire September 1,
4-3 2021.

4-4 SECTION 4. (a) The executive commissioner of the Health and
4-5 Human Services Commission shall complete for each hospital in this
4-6 state the maternal level of care designation not later than August
4-7 31, 2020.

4-8 (b) Notwithstanding Section [241.186](#), Health and Safety
4-9 Code, a hospital is not required to have a maternal level of care
4-10 designation as a condition of reimbursement for maternal services
4-11 through the Medicaid program before September 1, 2021.

4-12 (c) A hospital that submits an application to the Department
4-13 of State Health Services for a maternal level of care designation
4-14 under Subchapter H, Chapter [241](#), Health and Safety Code, before the
4-15 effective date of this Act may amend the application to reflect the
4-16 applicable changes in law made by this Act.

4-17 SECTION 5. As soon as practicable after the effective date
4-18 of this Act, the executive commissioner of the Health and Human
4-19 Services Commission shall adopt rules as necessary to implement the
4-20 changes in law made by this Act.

4-21 SECTION 6. This Act takes effect immediately if it receives
4-22 a vote of two-thirds of all the members elected to each house, as
4-23 provided by Section [39](#), Article III, Texas Constitution. If this
4-24 Act does not receive the vote necessary for immediate effect, this
4-25 Act takes effect September 1, 2019.

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