

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE B. HEALTH PROGRAMS

CHAPTER 47. HEARING LOSS IN NEWBORNS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. [219](#), 84th Legislature, Regular Session, for amendments affecting this section.

Sec. 47.001. DEFINITIONS. In this chapter:

- (1) "Birth admission" means the time after birth that a newborn remains in the birthing facility before the newborn is discharged.
- (2) "Birthing facility" means:
 - (A) a hospital licensed under Chapter 241 that offers obstetrical services;
 - (B) a birthing center licensed under Chapter 244;
 - (C) a children's hospital; or
 - (D) a facility, maintained or operated by this state or an agency of this state, that provides obstetrical services.
- (3) "Health care provider" means a registered nurse recognized as an advanced practice nurse by the Texas Board of Nursing or a physician assistant licensed by the Texas Physician Assistant Board.
- (4) "Hearing loss" means a hearing loss of 30 dB HL or greater in the frequency region important for speech recognition and comprehension in one or both ears, approximately 500 through 4,000 Hz. As technological advances permit the detection of less severe hearing loss, the department may modify this definition by rule.
- (5) "Infant" means a child who is at least 30 days but who is younger than 24 months old.
- (6) "Intervention or follow-up care" means the early intervention services described in Part C, Individuals with Disabilities Education Act (20 U.S.C. Sections 1431-1445), as amended by Pub. L. No. 105-17.
- (7) "Newborn" means a child younger than 30 days old.
- (8) "Parent" means a natural parent, stepparent, adoptive parent, legal guardian, or other legal custodian of a child.
- (9) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(10) "Program" means a newborn hearing screening, tracking, and intervention program certified by the department under this chapter.

Sec. 47.003. NEWBORN HEARING SCREENING, TRACKING, AND INTERVENTION PROGRAM. (a) A birthing facility, through a program certified by the department under Section [47.004](#), shall perform, either directly or through a referral to another program certified under that section, a hearing screening for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged from the facility unless:

- (1) the parent declines the screening;
- (2) the newborn or infant is transferred to another facility before the screening is performed;
- (3) the screening has previously been completed; or
- (4) the newborn was discharged from the birthing facility not more than 10 hours after birth and a referral for the newborn was made to a program certified under Section [47.004](#) at another birthing facility or operated by a physician or other health care provider.

(a-1) The birthing facility shall inform the parents during admission that:

- (1) the facility is required by law to screen a newborn or infant for hearing loss; and
- (2) the parents may decline the screening.

(b) The department or the department's designee shall approve program protocols.

(c) Subject to Section [47.008](#), the department shall maintain data and information on each newborn or infant who receives a hearing screening under Subsection (a).

(d) The department shall ensure that intervention is available to families for a newborn or infant identified as having hearing loss and that the intervention is managed by state programs operating under the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(e) The department shall ensure that the intervention described by Subsection (d) is available for a newborn or infant identified as having hearing loss not later than the sixth month after the newborn's or infant's birth and through the time the child is an infant unless the infant has been hospitalized since birth.

(f) If a newborn or an infant receives medical intervention services, including a hearing aid or cochlear implant, the intervention specialist shall report the results of the intervention to the department.

Sec. 47.0031. FOLLOW-UP SCREENING. (a) The program that performed the hearing screening under Section [47.003](#) shall provide the newborn's or infant's parents with the screening results. A birthing facility, through the program, shall offer a follow-up hearing screening to the parents of a newborn or infant who does not pass the screening, or refer the parents to another program for the follow-up

hearing screening. The follow-up hearing screening should be performed not later than the 30th day after the date the newborn or infant is discharged from the facility.

(b) If a newborn or an infant does not pass the screening in a follow-up hearing screening, the program that performed the follow-up hearing screening on the newborn or infant shall:

- (1) provide the newborn's or infant's parents with the screening results;
- (2) assist in scheduling a diagnostic audiological evaluation for the newborn or infant, consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement, or refer the newborn or infant to a licensed audiologist who provides diagnostic audiological evaluations for newborns or infants that are consistent with the most current guidelines in the Joint Committee on Infant Hearing Position Statement; and
- (3) refer the newborn or infant to early childhood intervention services.

Sec. 47.0035. REFERRAL TO PROGRAM BY MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section [203.002](#), Occupations Code.

(b) A midwife who attends the birth of a newborn:

- (1) is not required to offer the parents of a newborn a hearing screening for the newborn for the identification of hearing loss; and
- (2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program.

Sec. 47.004. CERTIFICATION OF SCREENING PROGRAMS. (a) The department or the department's designee shall establish certification criteria for implementing a program.

(b) In order to be certified, the program must:

- (1) provide hearing screening using equipment recommended by the department;
- (2) use appropriate staff to provide the screening;
- (3) maintain and report data electronically as required by the department;
- (4) distribute family, health care provider, and physician educational materials standardized by the department;
- (5) provide information, as recommended by the department, to the parents on follow-up services for newborns and infants who do not pass the screening; and
- (6) be supervised by:
 - (A) a physician;

- (B) an audiologist;
 - (C) a registered nurse; or
 - (D) a physician assistant.
- (c) The department may certify a program that meets and maintains the certification criteria.
- (d) The department may renew the certification of a program on a periodic basis as established by board rule in order to ensure quality services to newborns, infants, and families.
- (e) A fee may not be charged to certify or recertify a program.

Sec. 47.005. INFORMATION CONCERNING SCREENING RESULTS AND FOLLOW-UP CARE. (a) A birthing facility that operates a program shall distribute to the parents of each newborn or infant who is screened educational materials that are standardized by the department regarding screening results and follow-up care.

(b) A birthing facility that operates a program shall report screening results to:

- (1) the parents;
- (2) the newborn's or infant's attending physician, primary care physician, or other applicable health care provider; and
- (3) the department.

(c) Appropriate and necessary care for the infant who needs follow-up care should be directed and coordinated by the infant's physician or health care provider, with support from appropriate ancillary services.

(d) The department may coordinate the diagnostic audiological evaluation required under Section [47.0031\(b\)\(2\)](#). A diagnostic audiological evaluation must be completed on the newborn or infant:

- (1) not later than the third month after the newborn's or infant's birth unless the newborn or infant has been hospitalized since birth; or
- (2) upon referral by the newborn's or infant's primary care physician or other applicable health care provider.

(e) An audiologist who performs a diagnostic audiological evaluation under this chapter shall report the results of the evaluation to:

- (1) the parents;
- (2) the newborn's or infant's primary care physician or other applicable health care provider; and
- (3) the department under Section [47.007\(b\)](#).

Sec. 47.006. TECHNICAL ASSISTANCE BY DEPARTMENT. The department may consult with a birthing facility and provide to the facility technical assistance associated with the implementation of a certified program.

Sec. 47.007. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. (a) The department shall provide each birthing facility that provides newborn hearing screening under the state's medical assistance program provided under Chapter 32, Human Resources Code, with access to the appropriate information management, reporting, and tracking system for the program. The information management, reporting, and tracking system must be capable of providing the department with information and data necessary to plan, monitor, and evaluate the program, including the program's screening, follow-up, diagnostic, and intervention components.

(b) Subject to Section [47.008](#), a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist shall access the information management, reporting, and tracking system to provide information to the department and may obtain information from the department relating to:

- (1) the results of each hearing screening performed under Section [47.003\(a\)](#) or [47.0031\(a\)](#);
- (2) the results of each diagnostic audiological evaluation required under Section [47.0031\(b\)\(2\)](#);
- (3) infants who receive follow-up care;
- (4) infants identified with hearing loss;
- (5) infants who are referred for intervention services; and
- (6) case level information necessary to report required statistics to:
 - (A) the Maternal and Child Health Bureau on an annual basis; and
 - (B) the federal Centers for Disease Control and Prevention.
- (c) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.
- (d) A birthing facility described by Subsection (a) shall report the resulting information in the format and within the time frame specified by the department.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. [229](#)), Sec. 3

(d) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the child or refer the child to a person who provides the services needed by the child; and

(2) provide, with the consent of the child's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of infants identified with hearing loss; and

(C) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 10

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who receives a referral from a program under this chapter shall:

(1) provide the services needed by the newborn or infant or refer the newborn or infant to a person who provides the services needed by the newborn or infant; and

(2) provide, with the consent of the newborn's or infant's parent, the following information to the department or the department's designee:

(A) results of follow-up care;

(B) results of audiologic testing of an infant identified with hearing loss; and

(C) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. [229](#)), Sec. 3

(e) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to infants who are diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

(1) results of follow-up services;

(2) results of audiologic testing of infants identified with hearing loss; and

(3) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 10

(f) A qualified hearing screening provider, audiologist, intervention specialist, educator, or other person who provides services to an infant who is diagnosed with hearing loss shall provide, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of follow-up care;
- (2) results of audiologic testing; and
- (3) reports on the initiation of intervention services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. [229](#)), Sec. 3

(f) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system, which the department has provided the hospital with access to, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of all follow-up services for infants who do not pass the birth admission screening if the hospital provides the follow-up services; or
- (2) the name of the provider or facility where the hospital refers an infant who does not pass the birth admission screening for follow-up services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 10

(g) A hospital that provides services under this chapter shall use the information management, reporting, and tracking system described by this section, access to which has been provided to the hospital by the department, to report, with the consent of the infant's parent, the following information to the department or the department's designee:

- (1) results of all follow-up services for an infant who does not pass the screening described by Section [47.003](#)(a) if the hospital provides the follow-up services; or
- (2) the name of the provider or facility to which the hospital refers an infant who does not pass the screening described by Section [47.003](#)(a) for follow-up services.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. [229](#)), Sec. 3

(g) The department shall ensure that the written consent of a parent is obtained before any information individually identifying the newborn or infant is released through the information management, reporting, and tracking system.

(h) Subject to Section [47.008](#), a qualified hearing screening provider, hospital, health care provider, physician, audiologist, or intervention specialist may obtain information from the department relating to:

- (1) the results of each hearing screening performed under Section [47.003\(a\)](#) or [47.0031\(a\)](#);
- (2) the results of each diagnostic audiological evaluation required under Section [47.0031\(b\)\(2\)](#);
- (3) infants who receive follow-up care;
- (4) infants identified with hearing loss; and
- (5) infants who are referred for intervention services.

Sec. 47.008. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The information management, reporting, and tracking system provided in accordance with this chapter must meet confidentiality requirements in accordance with required state and federal privacy guidelines.

(b) Data obtained through the information management, reporting, and tracking system under this chapter are for the confidential use of the department, the department's designee, and the persons or public or private entities that the department determines are necessary to carry out the functions of the tracking system.

(c) The department by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter 159, Occupations Code, and require the written consent of a parent or guardian of a patient before any individually identifying information is provided to the department as set out in this chapter. The department shall permit a parent or guardian at any time to withdraw information provided to the department under this chapter.

(d) Statistical or aggregated information that is about activities conducted under this chapter and that could not be used to individually identify a newborn, infant, or patient or a parent or guardian of a newborn, infant, or patient is not confidential.

Sec. 47.009. IMMUNITY FROM LIABILITY. A birthing facility, a clinical laboratory, an audiologist, a health care provider, a physician, a registered nurse, or any other officer or employee of a birthing facility, a laboratory, a physician, or an audiologist is not criminally or civilly liable for furnishing information in good faith to the department or its designee as required by this chapter. This section does not apply to information gathered and furnished after a parent of a newborn or infant declined screening offered through a program.

Sec. 47.010. RULEMAKING. (a) The executive commissioner of the Health and Human Services Commission may adopt rules for the department to implement this chapter.

(b) If the executive commissioner adopts rules, the executive commissioner shall consider the most current guidelines established by the Joint Committee on Infant Hearing.

Sec. 47.011. DUTIES OF MIDWIFE. (a) In this section, "midwife" has the meaning assigned by Section [203.002](#), Occupations Code, and includes a nurse midwife described by Section [301.152](#), Occupations Code.

(b) A midwife who attends the birth of a newborn:

(1) is not required to offer the parents of the newborn a hearing screening for the newborn for the identification of hearing loss; and

(2) shall refer the parents of the newborn to a birthing facility or a provider that participates in the program and make a record of the referral.