

HEALTH AND SAFETY CODE

TITLE 2. HEALTH

SUBTITLE B. HEALTH PROGRAMS

CHAPTER 47. HEARING LOSS IN NEWBORNS

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 registered 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 executive commissioner 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 1431-1443).

(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 Medical Board.

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

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 889 (H.B. 2426), Sec. 60, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 5, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0170, eff. April 2, 2015.

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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 586 (S.B. [793](#)), Sec. 1, eff. June 14, 2013.

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 screening results to:

(A) the newborn's or infant's parents; and

(B) with the prior written consent of the newborn's or infant's parents, the primary statewide resource center established under Section 30.051, Education Code;

(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 and the primary statewide resource center established under Section 30.051, Education Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 7, eff. June 17, 2011.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 1, eff. September 1, 2019.

Sec. 47.0032. TESTING FOR CONGENITAL CYTOMEGALOVIRUS.

(a) In this section, "congenital cytomegalovirus" has the meaning assigned by Section 46.001.

(b) If a newborn or infant does not pass the hearing screening performed under Section 47.003, the program that performed the screening shall perform or cause to be performed a test for congenital cytomegalovirus on the newborn or infant unless the newborn's or infant's parent declines the test.

(c) If the newborn or infant receives a positive test for congenital cytomegalovirus, the entity that performed the test shall provide the newborn's or infant's parents with:

(1) the results of the test;

(2) information on the potential effects of congenital cytomegalovirus and the available treatment options; and

(3) a referral to an appropriate physician or facility

for the treatment of congenital cytomegalovirus.

Added by Acts 2023, 88th Leg., R.S., Ch. 722 (H.B. [2478](#)), Sec. 3, eff. September 1, 2023.

Sec. 47.004. CERTIFICATION OF SCREENING PROGRAMS. (a) The executive commissioner 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 department rule;

(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 department 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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.
Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 8, eff. June 17, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0171, eff. April 2, 2015.

Sec. 47.005. INFORMATION CONCERNING SCREENING RESULTS AND FOLLOW-UP CARE. (a) A birthing facility that operates a program shall simultaneously distribute to the parents of each newborn or infant who is screened:

- (1) the screening results; and
- (2) educational and informational materials that are standardized by the department regarding:
 - (A) follow-up care; and
 - (B) available public resources, including:
 - (i) early childhood intervention services developed under Chapter 73, Human Resources Code;
 - (ii) the primary statewide resource center established under Section 30.051, Education Code; and
 - (iii) contact information for Texas Early Hearing Detection and Intervention.

(a-1) The department shall make available to the public on request the educational and informational materials described by Subsection (a)(2).

(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;
- (3) the department; and
- (4) the primary statewide resource center established under Section 30.051, Education Code.

(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).

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 9, eff. June 17, 2011.

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. 2255), Sec. 2, eff. September 1, 2019.

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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

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 federal 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 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.

(e) 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.

(f) 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.

(g) The department shall ensure that the written or electronic 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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 601 (S.B. 229), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. [411](#)), Sec. 10, eff. June 17, 2011.

Reenacted and amended by Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0172, eff. April 2, 2015.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. [1404](#)), Sec. 3, eff. September 1, 2019.

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 executive commissioner by rule shall develop guidelines to protect the confidentiality of patients in accordance with Chapter [159](#), Occupations Code, and require the written or electronic consent of a parent or guardian of a patient before any individually identifying information is provided to the department or the primary statewide resource center established under Section [30.051](#), Education Code, as set out in this chapter. The department and center shall permit a parent or guardian at any time to withdraw information provided to the department or center 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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.771, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 880, Sec. 1, eff. June 20, 2003.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 3.0173, eff. April 2, 2015.

Acts 2019, 86th Leg., R.S., Ch. 98 (H.B. [2255](#)), Sec. 3, eff. September 1, 2019.

Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. [1404](#)), Sec. 4, eff. September 1, 2019.

Sec. 47.0085. CONSENT. (a) The department shall create a process to:

(1) permit the parent of a newborn or infant to provide the consent required under this chapter through electronic means, including through audio or video recording;

(2) determine the manner of storing electronic consent records; and

(3) ensure the newborn's or infant's attending physician has access to the electronic consent records for the newborn or infant.

(b) A request for consent required by this chapter may be submitted to the parent or guardian of a newborn or infant through written or electronic means, including through audio or visual recording.

(c) A birthing facility or person required to obtain consent under this chapter is not required to use the process created by the department under this section to obtain the consent.

Added by Acts 2019, 86th Leg., R.S., Ch. 628 (S.B. [1404](#)), Sec. 5, eff. September 1, 2019.

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.

Added by Acts 1999, 76th Leg., ch. 1347, Sec. 1, eff. Sept. 1, 1999.

Sec. 47.010. RULEMAKING. (a) The executive commissioner 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 3.0174, eff. April 2, 2015.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1273 (H.B. 411), Sec. 11, eff. June 17, 2011.