



Frequently Asked Questions from Neonatal (NICU) Facilities

What is the application process for facilities seeking Level II, III or IV neonatal designation?

To start the process, the facility will contract with a survey organization recognized by the department to perform a site visit and verify compliance with the requirements. The facility requests the NICU level at which they want to be reviewed.

The survey organization provides the facility with a written report of the site review findings. The surveyor indicates compliance or non-compliance with the required elements as well as providing explanatory notes.

The facility then submits an application packet to the department, which includes the application form, application fee, survey report, patient care reviews, evidence of Perinatal Care Region (PCR) participation and a plan of correction, if needed.

What is the process to determine designation?

The department reviews the survey report findings including the surveyor's notes, patient care reviews, facility PCR participation and the plan of correction (if needed) to determine compliance with the requirements. A facility compliant with the requirements based on the department's review of all pertinent information is recommended for designation. When the department identifies a facility non-compliant with the requirements, the facility will be recommended for the level of care at which the minimum requirements are met.

Why was our facility designated at a lower level than requested on our application?

The department recommends designation based on evidence of compliance with the requirements for each level. Designation at a lower level than requested by the facility occurs when deficiencies or non-compliance with the requirements are identified. The department notifies the facility of the identified deficiencies through verbal and written communications. For example, if a facility has a policy that it will

transfer all neonates less than 32 weeks, the facility would not qualify as a Level III.

If our facility is a Level II, is it required to transfer any neonates less than 32 weeks to a higher level of care?

No. The facility is not required to transfer neonates less than 32 weeks. The physicians at the facility will continue to practice medicine and make medical decisions regarding care of the neonate.

What is required of the facility if it keeps neonates less than 32 weeks?

When the facility admits neonates of lower gestational ages and weights than indicated for their designation level, the facility is required to provide the standard of care based on the patient's needs. The facility will complete an in-depth critical review of the care provided in the quality assurance and performance improvement program as prescribed in rule.

Will Medicaid reimbursement be affected with a lower level designation?

No. A facility must have a neonatal designation to receive Medicaid reimbursement for neonatal care. However, the level of designation is not taken into consideration in Medicaid payments. Medicaid reimbursement is based on services provided by the facility. Health and Safety Code, Sec. 241.183(a)(7) states:

- (a) *The executive commissioner, in consultation with the department, shall adopt rules:*
 - (7) *requiring payment, other than quality or outcome-based funding, to be based on services provided by the facility, regardless of the facility's level of care designation.*

Is there a process to appeal the designation decision at a lower level?

Yes, the appeals process is outlined in the Designation Process section of the rule, 25 Texas Administrative Code § 133.184.

If the facility disagrees with the level of designation awarded by the department, the facility may submit a written appeal to the Director of the Office of EMS/Trauma Systems. The written appeal must be submitted within 60 days from the date of the

department's letter notifying the facility of their designation. The facility must submit a signed letter from the governing board explaining how the facility meets the higher level requirements. The facility may include new supporting information with the letter from the governing board.

The written appeal will be reviewed for compliance with the requirement(s) cited as deficiencies. The department will provide a written decision to the facility within 30 days from receipt of the complete written appeal.

- If the facility demonstrates compliance with the requirement(s) in the appeal, the department will recommend designation at a higher level.
- If the facility has not demonstrated compliance with the requirements, the Director of the Office of EMS/Trauma Systems will notify the facility of the decision to not change the original designation awarded.
- If the facility disagrees with the decision after the appeal review, it may submit a written request for further review within 30 days from the date of the letter sent by the department with the decision. This written appeal will be submitted to the Associate Commissioner of the DSHS Consumer Protection Division.

A facility also has the option of requesting a hearing before the State Office of Administrative Hearings.

Is there a different process to appeal when a facility disagrees with a decision to deny, revoke or reduce designation?

Yes. When a facility repeatedly does not meet designation requirements, has a contingent designation with a required corrective action plan to ensure compliance with the requirements, and fails to correct the deficiencies, the department may deny or revoke designation, or recommend a lower level. If the facility disagrees with this decision, it may request a secondary review by a designation review committee.

A facility also has the option of requesting a hearing before the State Office of Administrative Hearings.