



Via U.S. and Electronic Mail

November 2, 2022

Dr. Jennifer A. Shuford, Interim Commissioner
c/o Rachael Hendrickson, Director of External Relations
Texas Department of State Health Services
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Dr. Carla Ortique, Chair
Maternal Mortality and Morbidity Review Committee
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MaternalHealth@DSHS.texas.gov

Re: Demand for Compliance with Section 34.015 of the Texas Health & Safety Code

Dear Drs. Shuford and Ortique,

We represent the Society for Maternal-Fetal Medicine (“SMFM”), which is a national organization comprised of more than 5,500 maternal-fetal medicine (“MFM”) subspecialists, 442 of whom practice in Texas. MFM subspecialists are obstetricians with additional years of formal training and a board certification in maternal-fetal medicine, making them highly qualified experts and leaders in the care of high-risk pregnancy. We write on behalf of SMFM to respectfully request that the Texas Department of State Health Services (“DSHS”) and the Maternal Mortality and Morbidity Review Committee (“MMMRC”) comply with Texas law by releasing the 2022 joint report containing the MMMRC’s findings and recommendations (the “Joint Report”) as soon as possible and no later than November 10, 2022.

Texas faces a maternal health crisis. By some estimates, Texas has one of the 10 highest rates of maternal mortality in the country.¹ SMFM and its members, including MFM subspecialists practicing throughout the state of Texas, are on the front lines of addressing the maternal mortality crisis and are working to ensure that all medically appropriate and evidence-based treatment options are available for individuals experiencing a high-risk pregnancy. In addition to improving individual patient outcomes, SMFM also aims to effect system-wide change, including by reducing racial inequities in maternal health outcomes. It does so by having members serve on and advise bodies that advance public health, like maternal

¹ See Casey Leins, *States With the Highest Maternal Mortality Rates*, *US News*, (June 12, 2019), available at <https://www.usnews.com/news/best-states/articles/2019-06-12/these-states-have-the-highest-maternal-mortality-rates>.

mortality review committees, and supporting initiatives shown to reduce preventable maternal mortality and morbidity, such as (among others) the Alliance for Innovation on Maternal Health (“AIM”) and the Obstetric Care Consensus on Levels of Maternal Care (“LoMC”). SMFM depends on the data and recommendations produced by review committees, like the MMMRC, to inform this work and has specifically looked to data jointly published by DSHS and the MMMRC in prior biennial reporting cycles. DSHS and the MMMRC have recognized that SMFM is a key stakeholder in the fight for maternal health in Texas and that its data-driven efforts have been “essential” to the “effective implementation, adoption, and diffusion of MMMRC recommendations.”²

As you are aware, Texas law dictates that the MMMRC and DSHS “shall submit a joint report on the findings of the review committee” no later than “September 1 of each even-numbered year.”³ The Joint Report was, accordingly, due on September 1, 2022. DSHS and the MMMRC have ignored that statutory deadline, however, and announced at the MMMRC’s September 2, 2022 meeting that the Joint Report would not be released until the summer of 2023.⁴ DSHS’s purported reason for delaying the Joint Report’s release was that the MMMRC has not yet reviewed the entire 2019 cohort of maternal deaths, despite the fact that prior Joint Reports were not withheld simply because the Joint Report contained a review of only a partial annual cohort of cases.⁵ For instance, the 2020 Report was released notwithstanding the fact that the MMMRC had reviewed only “137 of the 175 pregnancy-associated cases in the 2013 case cohort” and intended to continue its “[p]reparation and review of the remaining 38 cases” thereafter.⁶

Following DSHS’s surprise announcement on September 2, 2022, members of the Texas legislature asked DSHS to reconsider its decision to delay the release of the Joint Report.⁷ DSHS recently responded to these legislators but has failed to commit to a date certain by when it will remedy its ongoing violation of Texas law. Instead, Dr. Shuford’s October 26, 2022 response indicated only that DSHS would discuss its continued withholding of this critical

² See *Texas Maternal Mortality and Morbidity Review Committee and Department of State Health Services Joint Biennial Report, Appendix I*, September 2020 (Revised February 2022), available at <https://dshs.texas.gov/legislative/2020-Reports/DSHS-MMMRC-2020.pdf> (hereinafter the “2020 Report”).

³ See Tex. Health & Safety Code Ann. § 34.015.

⁴ Julian Gill & Jeremy Blackman, *Texas Delays Publication of Maternal Death Data Until After Midterms, Legislative Session*, Houston Chronicle (Sept. 14, 2022, 9:52 AM), available at <https://www.houstonchronicle.com/politics/texas/article/Texas-delays-publication-of-maternal-death-data-17439477.php>.

⁵ See Letter from Dr. John Hellerstedt, Commissioner DSHS, to Gov. Greg Abbott at 1 (Sept. 2, 2022).

⁶ See 2020 Report at 8.

⁷ See Letter from Representative Shawn Thierry to Dr. John Hellerstedt, Commissioner DSHS (Sept. 19, 2022), <https://twitter.com/RepThierry146/status/1571919007074160642?s=20&t=vvEzcKFgIKO0SmNtgBbEHQ>; Letter from the Texas Women’s Health Caucus to Dr. Jennifer A. Shuford, Interim Commissioner DSHS (Oct. 11, 2022).

maternal health data at the MMMRC’s December 8, 2022 meeting and that it intends “to provide data and recommendations timely to help inform efforts during the 88th Legislative Session.”⁸

Contrary to the suggestion in Dr. Shuford’s letter, however, Texas law is clear on the meaning of “timely” in this context; it requires that DSHS and the MMMRC “shall” release the Joint Report by September 1, 2022. DSHS and the MMMRC have no discretion to deviate from that deadline. Notably, DSHS has never taken the position, as it has here, that it can unilaterally delay publication of the report, contrary to law. This ongoing delay in releasing the Joint Report not only impedes legislative efforts but also will hamper the ability of leading maternal health organizations, like SMFM, to advise healthcare providers in Texas, including SMFM’s members, on current trends in maternal health and medically appropriate treatment options. Given the current maternal health crisis facing Texas, SMFM’s concern grows every day that passes without the release of the Joint Report and the information it contains, which helps inform its public health guidance, as well as the care rendered by its members.

We therefore respectfully ask that you take action to bring DSHS and the MMMRC into compliance with Texas law by releasing the Joint Report immediately, but, in any event, no later than November 10, 2022. Should you continue to withhold the Joint Report in violation of Texas law, SMFM will consider all available options, including seeking legal remedies, to compel publication of the Joint Report. To that end, please also ensure that DSHS and the MMMRC are preserving all documents and communications related to the decision to delay the Joint Report.

Please contact counsel below should you wish to discuss this request.

Sincerely,

/s/ Skye Perryman
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*On behalf of the Society for Maternal-Fetal
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⁸ See Letter from Dr. Jennifer A. Shuford, Interim Commissioner DSHS, to Rep. Thierry at 1 (Oct. 26, 2022), available at <https://twitter.com/RepThierry146/status/1585638248507789312?s=20&t=vvEzcKFgIKO0SmNtgBbEHQ>.