

## BILL ANALYSIS

Senate Research Center

H.B. 1614  
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Health & Human Services  
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Engrossed

### DIGEST AND PURPOSE

In 1999 the Institute of Medicine released the ground-breaking report entitled *To Err is Human: Building a Safer Healthcare System*. The report estimated that 44,000 Americans die each year from medical errors. While much data is available on hospital performance through various state agencies as well as on the internet, reliable information about medical errors is lacking. This bill is one effort to enhance hospitals' accountability to the public, while providing valuable information to help hospitals identify and prevent errors. H.B. 1614 establishes a patient safety program at the Texas Department of Health (TDH) through which hospitals, ambulatory surgical centers, and mental hospitals will report medical errors to TDH and develop internal plans of correction to prevent future occurrences of errors.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Health in SECTION 2 (Section 241.206, Health and Safety Code), SECTION 4 (Section 243.056, Health and Safety Code), and SECTION 6 (Section 577.056, Health and Safety Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Provides that the purpose of this Act is to establish programs that will promote public accountability through the detection of statewide trends in the occurrence of certain medical errors by requiring hospitals, ambulatory surgical centers, and mental hospitals to report errors, by providing the public with access to statewide summaries of such reports, and by requiring such facilities to implement risk-reduction strategies. Provides that the programs also will encourage hospitals, ambulatory surgical centers, and mental hospitals to share best practices and safety measures that have been effective in improving patient safety.

SECTION 2. Amends Chapter 241, Health and Safety Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. PATIENT SAFETY PROGRAM

Sec. 241.201. Requires the Texas Department of Health (TDH) to develop a patient safety program for hospitals. Requires the program to meet certain requirements.

Sec. 241.202. ANNUAL REPORT. (a) Requires a hospital, on renewal of a license under this chapter, to submit an annual report to TDH that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of certain types of events.

(b) Prohibits TDH from requiring the annual report under Subsection (b) to include any information other than the number of occurrences, if any, of the events listed in that subsection.

Sec. 241.203. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) Defines "root cause analysis."

(b) Requires a hospital, not later than the 45th day after the date a hospital becomes aware of the occurrence of an event listed in Section 241.202, to perform

certain tasks.

(c) Authorizes TDH to review a root cause analysis or action plan related to an event listed in Section 241.202 during a survey, inspection, or investigation of a hospital.

(d) Prohibits TDH from requiring a root cause analysis or action plan to be submitted to TDH.

(e) Prohibits TDH or an employee or agent of TDH in any form, format, or manner from removing, copying, reproducing, redacting, or dictating from any part of a root cause analysis or action plan.

Sec. 241.204. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Provides that all information and materials, except as provided by Sections 241.205 and 241.206, obtained or compiled by TDH under this section are confidential and not subject to disclosure under Chapter 552, Government Code (Public Information), and are not subject discovery, subpoena, or other means of legal compulsion for release to anyone other than TDH or its employees or agents involved in the program. Prohibits information and materials obtained or compiled by TDH under this section from being admitted in evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) Provides that the confidentiality protections provided by Subsections (a) apply regardless of whether the information or materials are obtained from or compiled by a hospital or an entity that has an ownership or management interest in a hospital.

(c) Provides that the transfer of information or material under this section shall not be treated as a waiver of any privilege or protection.

(d) Provides that information reported by a hospital and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital as required by this section, and all related information and materials, are subject to an absolute privilege and may not be used in any form against the hospital or its agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which the information, analyses, plans, records, reports, or related information and materials came into the possession of the person attempting to use them. Requires a court to enforce this privilege as to all matters covered by this section.

(e) Provides that this section does not prohibit access to the patient's medical records to the extent authorized by law by the patient or the patient's legally authorized representative.

Sec. 241.205. ANNUAL DEPARTMENT SUMMARY. Requires TDH on an annual basis to compile and make publicly available a summary of the events that were reported by hospitals under Section 241.202. Authorizes the summary to contain only aggregated information and may not directly or indirectly identify certain entities.

Sec. 241.206. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) Requires a hospital to provide to the department at least one report of the best practices and safety measures related to a reported event.

(b) Authorizes a hospital to provide to TDH a report of other best practices and the safety measures, such as marking a surgical site and involving the patient in the marking process, that are effective in improving patient safety.

(c) Authorizes TDH by rule to prescribe the form and format of a best practices

report. The department may not require a best practices report to exceed one page in length. Requires TDH to accept, in lieu of a report in the form and format prescribed by the department, a copy of a report submitted by a hospital to a patient safety organization.

(d) Requires TDH periodically to compile a summary of best practices reports make the summary available to the public.

(e) Prohibits the summary from directly or indirectly identifying certain entities.

Sec. 241.207. PROHIBITION. Prohibits the hospital annual report, TDH summary, or the best practices report from distinguishing between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

Sec. 241.208. REPORT TO LEGISLATURE. (a) Provides that not later than December 1, 2006, the commissioner of public health must perform certain tasks.

(b) Requires the commissioner of public health to conduct the evaluation in consultation with hospitals licensed under this chapter.

(c) Requires the evaluation to address certain issues.

Sec. 241.209. GIFTS, GRANTS, AND DONATIONS. Authorizes TDH to accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 241.210. EXPIRATION. Provides that unless continued in existence, this subchapter expires September 1, 2007.

SECTION 3. Provides that Sections 243.001 through 243.016, Health and Safety Code, are designated as Subchapter A, Chapter 243, Health and Safety Code, and a heading to Subchapter A is added, as follows:

#### SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

SECTION 4. Amends Chapter 243, Health and Safety Code, by adding Subchapter B, as follows:

#### SUBCHAPTER B. PATIENT SAFETY PROGRAM

Sec. 243.051. DUTIES OF DEPARTMENT. Requires TDH to develop a patient safety program for ambulatory surgical centers. Requires the program to meet certain requirements.

Sec. 243.052. ANNUAL REPORT. (a) Provides that on renewal of a license under this chapter, an ambulatory surgical center must submit to TDH an annual report that lists the number of occurrences at the center or at an outpatient facility owned or operated by the center of each of certain events.

(b) Prohibits TDH from requiring the annual report to include any information other than the number of occurrences of each event listed in Subsection (a).

Sec. 243.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) Defines "root cause analysis."

(b) Provides that not later than the 45th day after an ambulatory surgical center becomes aware of the occurrence of an event listed in Section 243.052, the center must conduct certain tasks.

(c) Authorizes TDH to review a root cause analysis or action plan related to an event listed in Section 243.052 during a survey, inspection, or investigation of an ambulatory surgical center.

(d) Prohibits TDH from requiring a root cause analysis or action plan to be submitted to TDH.

(e) Prohibits TDH or an employee or agent of TDH from in any form, formatting, or manner removing, copying, reproducing, redacting, or dictating from any part of a root cause analysis or action plan.

Sec. 243.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Provides that except as provided by Sections 243.055 and 243.056, all information and materials obtained or compiled by TDH under this subchapter or compiled by an ambulatory surgical center under this subchapter, including the root cause analysis, annual report of an ambulatory surgical center, action plan, best practices report, department summary, and all related information and materials, are confidential.

(b) Provides that the confidentiality protections under Subsection (a) apply without regard to whether the information or materials are obtained from or compiled by an ambulatory surgical center or an entity that has an ownership or management interest in an ambulatory surgical center.

(c) Provides that the transfer of information or materials under this subchapter is not a waiver of a privilege or protection granted under law.

(d) Provides that information reported by an ambulatory surgical center under this subchapter and analyses, plans, records, and reports obtained, prepared, or compiled by the center under this subchapter and all related information and materials are subject to an absolute privilege and may not be used in any form against the center or the center's agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which a person came into possession of the information, analysis, plan, record, report, or related information or material. Requires a court to enforce this privilege for all matters covered by this subsection.

(e) Provides that this section does not prohibit access to the patient's medical records to the extent authorized by law by the patient or the patient's legally authorized representative.

Sec. 243.055. ANNUAL DEPARTMENT SUMMARY. Requires TDH to compile and make available to the public a summary of the events reported by ambulatory surgical centers as required by Section 243.052. Authorizes the summary to contain only aggregated information and prohibits it from directly or indirectly identifying certain entities.

Sec. 243.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) Requires an ambulatory surgical center to provide to TDH at least one report of best practices and safety measures related to a reported event.

(b) Authorizes an ambulatory surgical center to provide to TDH a report of other best practices and the safety measures, such as marking a surgical site and involving the patient in the marking process, that are effective in improving patient safety.

(c) Authorizes TDH by rule to prescribe the form and format of a best practices report. Prohibits TDH from requiring a best practices report to exceed one page

in length. Requires TDH to accept, in lieu of a report in the form and format prescribed by TDH, a copy of a report submitted by an ambulatory surgical center to a patient safety organization.

(d) Requires TDH periodically to compile a summary of best practices reports and make the summary available to the public.

(e) Prohibits the summary from directly or indirectly identifying certain entities.

Sec. 243.057. PROHIBITION. Provides that the annual report of an ambulatory surgical center, TDH summary, or the best practices report may not distinguish between an event that occurred at an outpatient facility owned or operated by the center and an event that occurred at a center facility.

Sec. 243.058. REPORT TO LEGISLATURE. (a) Provides that not later than December 1, 2006, the commissioner of public health must perform certain tasks.

(b) Requires the commissioner of public health to conduct the evaluation in consultation with ambulatory surgical centers.

(c) Requires the evaluation to address certain conditions.

Sec. 243.059. GIFTS, GRANTS, AND DONATIONS. Authorizes TDH to accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 243.060. EXPIRATION. Provides that unless continued in existence, this subchapter expires September 1, 2007.

SECTION 5. Provides that Sections 577.001 through 577.019, Health and Safety Code, are designated as Subchapter A, Chapter 577, Health and Safety Code, and a heading to Subchapter A is added, to read as follows:

#### SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

SECTION 6. Amends Chapter 577, Health and Safety Code, by adding Subchapter B, as follows:

#### SUBCHAPTER B. PATIENT SAFETY PROGRAM

Sec. 577.051 Requires TDH to develop a patient safety program for hospitals. Requires the program to meet certain requirements.

Sec. 577.052. ANNUAL REPORT. (a) Requires a hospital, on renewal of a license under this chapter, to submit an annual report to TDH that lists the number of occurrences at the hospital or at an outpatient facility owned or operated by the hospital of certain types of events.

(b) Prohibits TDH from requiring the annual report under Subsection (b) to include any information other than the number of occurrences, if any, of the events listed in that subsection.

Sec. 577.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) Defines "root cause analysis."

(b) Requires a hospital, not later than the 45th day after the date a hospital becomes aware of the occurrence of an event listed in Section 577.052, to perform certain tasks.

(c) Authorizes TDH to review a root cause analysis or action plan related to an event listed in Section 577.052(a) during a survey, inspection, or investigation of a hospital.

(d) Prohibits TDH from requiring a root cause analysis or action plan to be submitted to TDH.

(e) Prohibits TDH or an employee or agent of TDH in any form, format, or manner from removing, copying, reproducing, redacting, or dictating from any part of a root cause analysis or action plan.

Sec. 577.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a) Provides that all information and materials, except as provided by Sections 577.055 and 577.056, obtained or compiled by TDH under this section are confidential and not subject to disclosure under Chapter 552, Government Code (Public Information), and are not subject discovery, subpoena, or other means of legal compulsion for release to anyone other than TDH or its employees or agents involved in the program. Prohibits information and materials obtained or compiled by TDH under this section from being admitted in evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

(b) Provides that the confidentiality protections provided by Subsections (a) apply regardless of whether the information or materials are obtained from or compiled by a hospital or an entity that has an ownership or management interest in a hospital.

(c) Provides that the transfer of information or material under this section shall not be treated as a waiver of any privilege or protection.

(d) Provides that information reported by a hospital and analyses, plans, records, and reports obtained, prepared, or compiled by a hospital as required by this section, and all related information and materials, are subject to an absolute privilege and may not be used in any form against the hospital or its agents, employees, partners, assignees, or independent contractors in any civil, criminal, or administrative proceeding, regardless of the means by which the information, analyses, plans, records, reports, or related information and materials came into the possession of the person attempting to use them. Requires a court to enforce this privilege as to all matters covered by this section.

(e) Provides that this section does not prohibit access to the patient's medical records to the extent authorized by law by the patient or the patient's legally authorized representative.

Sec. 577.055. ANNUAL DEPARTMENT SUMMARY. Requires TDH on an annual basis to compile and make publicly available a summary of the events that were reported by hospitals under Section 577.052. Authorizes the summary to contain only aggregated information and prohibits it from directly or indirectly identifying certain entities.

Sec. 577.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY. (a) Requires a hospital to provide to TDH at least one report of the best practices and safety measures related to a reported event.

(b) Authorizes a hospital to provide to TDH a report of other best practices and the safety measures, such as marking a surgical site and involving the patient in the marking process, that are effective in improving patient safety.

(c) Authorizes TDH by rule to prescribe the form and format of a best practices report. Prohibits TDH from requiring a best practices report to exceed one page in length. Requires TDH to accept, in lieu of a report in the form and format

prescribed by TDH, a copy of a report submitted by a hospital to a patient safety organization.

(d) Requires TDH periodically to compile a summary of best practices reports make the summary available to the public.

(e) Prohibits the summary from directly or indirectly identifying certain entities.

Sec. 577.057. PROHIBITION. Prohibits the hospital annual report, TDH summary, or the best practices report from distinguishing between an event that occurred at an outpatient facility owned or operated by the hospital and an event that occurred at a hospital facility.

Sec. 577.058. REPORT TO LEGISLATURE. (a) Provides that not later than December 1, 2006, the commissioner of public health must perform certain tasks.

(b) Requires the commissioner of public health to conduct the evaluation in consultation with hospitals licensed under this chapter.

(c) Requires the evaluation to address certain issues.

Sec. 577.059. GIFTS, GRANTS, AND DONATIONS. Authorizes TDH to accept and administer a gift, grant, or donation from any source to carry out the purposes of this subchapter.

Sec. 577.060. EXPIRATION. Provides that unless continued in existence, this subchapter expires September 1, 2007.

SECTION 7. (a) Provides that not later than January 1, 2004, TDH, using existing resources available to it, must establish a patient safety program as required under Subchapter H, Chapter 241, Health and Safety Code, as added by this Act, under Subchapter B, Chapter 243, Health and Safety Code, as added by this Act, and under Subchapter B, Chapter 577, Health and Safety Code, as added by this Act.

(b) Provides that beginning July 1, 2004, a hospital, ambulatory surgical center, or mental hospital on renewal of a license under Chapter 241 or 243 or Section 577.001(a), Health and Safety Code, shall submit the annual report required by Section 241.202, 243.052, or 577.052, Health and Safety Code, as added by this Act.

SECTION 8. Provides that the expiration of Subchapter H, Chapter 241, Health and Safety Code, as added by this Act, Subchapter B, Chapter 243, Health and Safety Code, as added by this Act, and Subchapter B, Chapter 577, Health and Safety Code, as added by this Act, in accordance with Sections 241.210, 243.060, and 577.060, Health and Safety Code, as added by this Act, does not affect the confidentiality of and privilege applicable to information and materials or the authorized disclosure of summary reports of that information and materials under Sections 241.204, 241.205, 241.206, 241.208, 243.054, 243.055, 243.056, 243.058, 577.054, 577.055, 577.056, and 577.058, Health and Safety Code, as added by this Act, and these laws are continued in effect for this purpose.

SECTION 9. Effective date: upon passage or September 1, 2003.