

AN ACT

relating to the reporting of medical errors and the establishment of a patient safety program in hospitals, ambulatory surgical centers, and mental hospitals; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The purpose of this Act is to establish a program to:

(1) promote public accountability through the detection of statewide trends in the occurrence of certain medical errors by:

(A) requiring hospitals, ambulatory surgical centers, and mental hospitals to report errors;

(B) providing the public with access to statewide summaries of the reports; and

(C) requiring hospitals, ambulatory surgical centers, and mental hospitals to implement risk-reduction strategies; and

(2) encourage hospitals, ambulatory surgical centers, and mental hospitals to share best practices and safety measures that are effective in improving patient safety.

SECTION 2. Chapter 241, Health and Safety Code, is amended by adding Subchapter H to read as follows:

SUBCHAPTER H. PATIENT SAFETY PROGRAM

1       Sec. 241.201. DUTIES OF DEPARTMENT. (a) The department  
2 shall develop a patient safety program for hospitals. The program  
3 must:

4           (1) be administered by the hospital licensing program  
5 within the department; and

6           (2) serve as an information clearinghouse for  
7 hospitals concerning best practices and quality improvement  
8 strategies.

9       (b) The department shall group hospitals by size for the  
10 reports required by this chapter as follows:

11           (1) less than 50 beds;

12           (2) 50 to 99 beds;

13           (3) 100 to 199 beds;

14           (4) 200 to 399 beds; and

15           (5) 400 beds or more.

16       (c) The department shall combine two or more categories  
17 described by Subsection (b) if the number of hospitals in any  
18 category falls below 40.

19       Sec. 241.202. ANNUAL REPORT. (a) On renewal of a license  
20 under this chapter, a hospital shall submit to the department an  
21 annual report that lists the number of occurrences at the hospital  
22 or at an outpatient facility owned or operated by the hospital of  
23 each of the following events during the preceding year:

24           (1) a medication error resulting in a patient's  
25 unanticipated death or major permanent loss of bodily function in  
26 circumstances unrelated to the natural course of the illness or  
27 underlying condition of the patient;

1           (2) a perinatal death unrelated to a congenital  
2 condition in an infant with a birth weight greater than 2,500 grams;

3           (3) the suicide of a patient in a setting in which the  
4 patient received care 24 hours a day;

5           (4) the abduction of a newborn infant patient from the  
6 hospital or the discharge of a newborn infant patient from the  
7 hospital into the custody of an individual in circumstances in  
8 which the hospital knew, or in the exercise of ordinary care should  
9 have known, that the individual did not have legal custody of the  
10 infant;

11           (5) the sexual assault of a patient during treatment  
12 or while the patient was on the premises of the hospital or  
13 facility;

14           (6) a hemolytic transfusion reaction in a patient  
15 resulting from the administration of blood or blood products with  
16 major blood group incompatibilities;

17           (7) a surgical procedure on the wrong patient or on the  
18 wrong body part of a patient;

19           (8) a foreign object accidentally left in a patient  
20 during a procedure; and

21           (9) a patient death or serious disability associated  
22 with the use or function of a device designed for patient care that  
23 is used or functions other than as intended.

24           (b) The department may not require the annual report to  
25 include any information other than the number of occurrences of  
26 each event listed in Subsection (a).

27           Sec. 241.203. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In

1 this section, "root cause analysis" means the process that  
2 identifies basic or causal factors underlying a variation in  
3 performance leading to an event listed in Section 241.202 and that:

- 4 (1) focuses primarily on systems and processes;  
5 (2) progresses from special causes in clinical  
6 processes to common causes in organizational processes; and  
7 (3) identifies potential improvements in processes or  
8 systems.

9 (b) Not later than the 45th day after the date a hospital  
10 becomes aware of the occurrence of an event listed in Section  
11 241.202, the hospital shall:

- 12 (1) conduct a root cause analysis of the event; and  
13 (2) develop an action plan that identifies strategies  
14 to reduce the risk of a similar event occurring in the future.

15 (c) The department may review a root cause analysis or  
16 action plan related to an event listed in Section 241.202 during a  
17 survey, inspection, or investigation of a hospital.

18 (d) The department may not require a root cause analysis or  
19 action plan to be submitted to the department.

20 (e) The department or an employee or agent of the department  
21 may not in any form, format, or manner remove, copy, reproduce,  
22 redact, or dictate from any part of a root cause analysis or action  
23 plan.

24 Sec. 241.204. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)  
25 Except as provided by Sections 241.205 and 241.206, all information  
26 and materials obtained or compiled by the department under this  
27 subchapter or compiled by a hospital under this subchapter,

1 including the root cause analysis, annual hospital report, action  
2 plan, best practices report, department summary, and all related  
3 information and materials, are confidential and:

4 (1) are not subject to disclosure under Chapter 552,  
5 Government Code, or discovery, subpoena, or other means of legal  
6 compulsion for release to any person, subject to Section  
7 241.203(c); and

8 (2) may not be admitted as evidence or otherwise  
9 disclosed in any civil, criminal, or administrative proceeding.

10 (b) The confidentiality protections under Subsection (a)  
11 apply without regard to whether the information or materials are  
12 obtained from or compiled by a hospital or an entity that has an  
13 ownership or management interest in a hospital.

14 (c) The transfer of information or materials under this  
15 subchapter is not a waiver of a privilege or protection granted  
16 under law.

17 (d) Information reported by a hospital under this  
18 subchapter and analyses, plans, records, and reports obtained,  
19 prepared, or compiled by a hospital under this subchapter and all  
20 related information and materials are subject to an absolute  
21 privilege and may not be used in any form against the hospital or  
22 the hospital's agents, employees, partners, assignees, or  
23 independent contractors in any civil, criminal, or administrative  
24 proceeding, regardless of the means by which a person came into  
25 possession of the information, analysis, plan, record, report, or  
26 related information or material. A court shall enforce this  
27 privilege for all matters covered by this subsection.

1       (e) The provisions of this section regarding the  
2 confidentiality of information or materials compiled or reported by  
3 a hospital in compliance with or as authorized under this  
4 subchapter do not restrict access, to the extent authorized by law,  
5 by the patient or the patient's legally authorized representative  
6 to records of the patient's medical diagnosis or treatment or to  
7 other primary health records.

8       Sec. 241.205. ANNUAL DEPARTMENT SUMMARY. The department  
9 annually shall compile and make available to the public a summary of  
10 the events reported by hospitals as required by Section 241.202.  
11 The summary may contain only aggregated information and may not  
12 directly or indirectly identify:

13               (1) a specific hospital or group of hospitals;

14               (2) an individual; or

15               (3) a specific reported event or the circumstances or  
16 individuals surrounding the event.

17       Sec. 241.206. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.

18 (a) A hospital shall provide to the department at least one report  
19 of the best practices and safety measures related to a reported  
20 event.

21 (b) A hospital may provide to the department a report of  
22 other best practices and the safety measures, such as marking a  
23 surgical site and involving the patient in the marking process,  
24 that are effective in improving patient safety.

25 (c) The department by rule may prescribe the form and format  
26 of a best practices report. The department may not require a best  
27 practices report to exceed one page in length. The department shall

1 accept, in lieu of a report in the form and format prescribed by the  
2 department, a copy of a report submitted by a hospital to a patient  
3 safety organization.

4 (d) The department periodically shall:

5 (1) review the best practices reports;

6 (2) compile a summary of the best practices reports  
7 determined by the department to be effective and recommended as  
8 best practices; and

9 (3) make the summary available to the public.

10 (e) The summary may not directly or indirectly identify:

11 (1) a specific hospital or group of hospitals;

12 (2) an individual; or

13 (3) a specific reported event or the circumstances or  
14 individuals surrounding the event.

15 Sec. 241.207. PROHIBITION. The hospital annual report,  
16 the department summary, or the best practices report may not  
17 distinguish between an event that occurred at an outpatient  
18 facility owned or operated by the hospital and an event that  
19 occurred at a hospital facility.

20 Sec. 241.208. REPORT TO LEGISLATURE. (a) Not later than  
21 December 1, 2006, the commissioner of public health shall:

22 (1) evaluate the patient safety program established  
23 under this subchapter; and

24 (2) report the results of the evaluation and make  
25 recommendations to the legislature.

26 (b) The commissioner of public health shall conduct the  
27 evaluation in consultation with hospitals licensed under this

1 chapter.

2 (c) The evaluation must address:

3 (1) the degree to which the department was able to  
4 detect statewide trends in errors based on the types and numbers of  
5 events reported;

6 (2) the degree to which the statewide summaries of  
7 events compiled by the department were accessed by the public;

8 (3) the effectiveness of the department's best  
9 practices summary in improving hospital patient care; and

10 (4) the impact of national studies on the  
11 effectiveness of state or federal systems of reporting medical  
12 errors.

13 Sec. 241.209. GIFTS, GRANTS, AND DONATIONS. The department  
14 may accept and administer a gift, grant, or donation from any source  
15 to carry out the purposes of this subchapter.

16 Sec. 241.210. EXPIRATION. Unless continued in existence,  
17 this subchapter expires September 1, 2007.

18 SECTION 3. Sections 243.001 through 243.016, Health and  
19 Safety Code, are designated as Subchapter A, Chapter 243, Health  
20 and Safety Code, and a heading to Subchapter A is added to read as  
21 follows:

22 SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

23 SECTION 4. Chapter 243, Health and Safety Code, is amended  
24 by adding Subchapter B to read as follows:

25 SUBCHAPTER B. PATIENT SAFETY PROGRAM

26 Sec. 243.051. DUTIES OF DEPARTMENT. The department shall  
27 develop a patient safety program for ambulatory surgical centers.



1 The program must:

2 (1) be administered by the ambulatory surgical center  
3 licensing program within the department; and

4 (2) serve as an information clearinghouse for  
5 ambulatory surgical centers concerning best practices and quality  
6 improvement strategies.

7 Sec. 243.052. ANNUAL REPORT. (a) On renewal of a license  
8 under this chapter, an ambulatory surgical center shall submit to  
9 the department an annual report that lists the number of  
10 occurrences at the center or at an outpatient facility owned or  
11 operated by the center of each of the following events during the  
12 preceding year:

13 (1) a medication error resulting in a patient's  
14 unanticipated death or major permanent loss of bodily function in  
15 circumstances unrelated to the natural course of the illness or  
16 underlying condition of the patient;

17 (2) the suicide of a patient;

18 (3) the sexual assault of a patient during treatment  
19 or while the patient was on the premises of the center or facility;

20 (4) a hemolytic transfusion reaction in a patient  
21 resulting from the administration of blood or blood products with  
22 major blood group incompatibilities;

23 (5) a surgical procedure on the wrong patient or on the  
24 wrong body part of a patient;

25 (6) a foreign object accidentally left in a patient  
26 during a procedure; and

27 (7) a patient death or serious disability associated

1 with the use or function of a device designed for patient care that  
2 is used or functions other than as intended.

3 (b) The department may not require the annual report to  
4 include any information other than the number of occurrences of  
5 each event listed in Subsection (a).

6 Sec. 243.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In  
7 this section, "root cause analysis" means the process that  
8 identifies basic or causal factors underlying a variation in  
9 performance leading to an event listed in Section 243.052 and that:

10 (1) focuses primarily on systems and processes;

11 (2) progresses from special causes in clinical  
12 processes to common causes in organizational processes; and

13 (3) identifies potential improvements in processes or  
14 systems.

15 (b) Not later than the 45th day after an ambulatory surgical  
16 center becomes aware of the occurrence of an event listed in Section  
17 243.052, the center shall:

18 (1) conduct a root cause analysis of the event; and

19 (2) develop an action plan that identifies strategies  
20 to reduce the risk of a similar event occurring in the future.

21 (c) The department may review a root cause analysis or  
22 action plan related to an event listed in Section 243.052 during a  
23 survey, inspection, or investigation of an ambulatory surgical  
24 center.

25 (d) The department may not require a root cause analysis or  
26 action plan to be submitted to the department.

27 (e) The department or an employee or agent of the department

1 may not in any form, format, or manner remove, copy, reproduce,  
2 redact, or dictate from any part of a root cause analysis or action  
3 plan.

4 Sec. 243.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)

5 Except as provided by Sections 243.055 and 243.056, all information  
6 and materials obtained or compiled by the department under this  
7 subchapter or compiled by an ambulatory surgical center under this  
8 subchapter, including the root cause analysis, annual report of an  
9 ambulatory surgical center, action plan, best practices report,  
10 department summary, and all related information and materials, are  
11 confidential and:

12 (1) are not subject to disclosure under Chapter 552,  
13 Government Code, or discovery, subpoena, or other means of legal  
14 compulsion for release to any person, subject to Section  
15 243.053(c); and

16 (2) may not be admitted as evidence or otherwise  
17 disclosed in any civil, criminal, or administrative proceeding.

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

23 (c) The transfer of information or materials under this  
24 subchapter is not a waiver of a privilege or protection granted  
25 under law.

26 (d) Information reported by an ambulatory surgical center  
27 under this subchapter and analyses, plans, records, and reports

1 obtained, prepared, or compiled by the center under this subchapter  
2 and all related information and materials are subject to an  
3 absolute privilege and may not be used in any form against the  
4 center or the center's agents, employees, partners, assignees, or  
5 independent contractors in any civil, criminal, or administrative  
6 proceeding, regardless of the means by which a person came into  
7 possession of the information, analysis, plan, record, report, or  
8 related information or material. A court shall enforce this  
9 privilege for all matters covered by this subsection.

10 (e) The provisions of this section regarding the  
11 confidentiality of information or materials compiled or reported by  
12 an ambulatory surgical center in compliance with or as authorized  
13 under this subchapter do not restrict access, to the extent  
14 authorized by law, by the patient or the patient's legally  
15 authorized representative to records of the patient's medical  
16 diagnosis or treatment or to other primary health records.

17 Sec. 243.055. ANNUAL DEPARTMENT SUMMARY. The department  
18 annually shall compile and make available to the public a summary of  
19 the events reported by ambulatory surgical centers as required by  
20 Section 243.052. The summary may contain only aggregated  
21 information and may not directly or indirectly identify:

22 (1) a specific ambulatory surgical center or group of  
23 centers;

24 (2) an individual; or

25 (3) a specific reported event or the circumstances or  
26 individuals surrounding the event.

27 Sec. 243.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.

1 (a) An ambulatory surgical center shall provide to the department  
2 at least one report of best practices and safety measures related to  
3 a reported event.

4 (b) An ambulatory surgical center may provide to the  
5 department a report of other best practices and the safety  
6 measures, such as marking a surgical site and involving the patient  
7 in the marking process, that are effective in improving patient  
8 safety.

9 (c) The department by rule may prescribe the form and format  
10 of a best practices report. The department may not require a best  
11 practices report to exceed one page in length. The department shall  
12 accept, in lieu of a report in the form and format prescribed by the  
13 department, a copy of a report submitted by an ambulatory surgical  
14 center to a patient safety organization.

15 (d) The department periodically shall:

16 (1) review the best practices reports;

17 (2) compile a summary of the best practices reports  
18 determined by the department to be effective and recommended as  
19 best practices; and

20 (3) make the summary available to the public.

21 (e) The summary may not directly or indirectly identify:

22 (1) a specific ambulatory surgical center or group of  
23 centers;

24 (2) an individual; or

25 (3) a specific reported event or the circumstances or  
26 individuals surrounding the event.

27 Sec. 243.057. PROHIBITION. The annual report of an

1 ambulatory surgical center, the department summary, or the best  
2 practices report may not distinguish between an event that occurred  
3 at an outpatient facility owned or operated by the center and an  
4 event that occurred at a center facility.

5 Sec. 243.058. REPORT TO LEGISLATURE. (a) Not later than  
6 December 1, 2006, the commissioner of public health shall:

7 (1) evaluate the patient safety program established  
8 under this subchapter; and

9 (2) report the results of the evaluation and make  
10 recommendations to the legislature.

11 (b) The commissioner of public health shall conduct the  
12 evaluation in consultation with ambulatory surgical centers.

13 (c) The evaluation must address:

14 (1) the degree to which the department was able to  
15 detect statewide trends in errors based on the types and numbers of  
16 events reported;

17 (2) the degree to which the statewide summaries of  
18 events compiled by the department were accessed by the public;

19 (3) the effectiveness of the department's best  
20 practices summary in improving patient care; and

21 (4) the impact of national studies on the  
22 effectiveness of state or federal systems of reporting medical  
23 errors.

24 Sec. 243.059. GIFTS, GRANTS, AND DONATIONS. The department  
25 may accept and administer a gift, grant, or donation from any source  
26 to carry out the purposes of this subchapter.

27 Sec. 243.060. EXPIRATION. Unless continued in existence,

1 this subchapter expires September 1, 2007.

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

6 SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

7 SECTION 6. Chapter 577, Health and Safety Code, is amended  
8 by adding Subchapter B to read as follows:

9 SUBCHAPTER B. PATIENT SAFETY PROGRAM

10 Sec. 577.051. DUTIES OF DEPARTMENT. The department shall  
11 develop a patient safety program for mental hospitals licensed  
12 under Section 577.001(a). The program must:

13 (1) be administered by the licensing program within  
14 the department; and

15 (2) serve as an information clearinghouse for  
16 hospitals concerning best practices and quality improvement  
17 strategies.

18 Sec. 577.052. ANNUAL REPORT. (a) On renewal of a license  
19 under this chapter, a mental hospital shall submit to the  
20 department an annual report that lists the number of occurrences at  
21 the hospital or at an outpatient facility owned or operated by the  
22 hospital of each of the following events during the preceding year:

23 (1) a medication error resulting in a patient's  
24 unanticipated death or major permanent loss of bodily function in  
25 circumstances unrelated to the natural course of the illness or  
26 underlying condition of the patient;

27 (2) the suicide of a patient in a setting in which the

1 patient received care 24 hours a day;

2 (3) the sexual assault of a patient during treatment  
3 or while the patient was on the premises of the hospital or  
4 facility;

5 (4) a hemolytic transfusion reaction in a patient  
6 resulting from the administration of blood or blood products with  
7 major blood group incompatibilities; and

8 (5) a patient death or serious disability associated  
9 with the use or function of a device designed for patient care that  
10 is used or functions other than as intended.

11 (b) The department may not require the annual report to  
12 include any information other than the number of occurrences of  
13 each event listed in Subsection (a).

14 Sec. 577.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In  
15 this section, "root cause analysis" means the process that  
16 identifies basic or causal factors underlying a variation in  
17 performance leading to an event listed in Section 577.052 and that:

18 (1) focuses primarily on systems and processes;

19 (2) progresses from special causes in clinical  
20 processes to common causes in organizational processes; and

21 (3) identifies potential improvements in processes or  
22 systems.

23 (b) Not later than the 45th day after the date a mental  
24 hospital becomes aware of an event listed in Section 577.052, the  
25 hospital shall:

26 (1) conduct a root cause analysis of the event; and

27 (2) develop an action plan that identifies strategies



1 to reduce the risk of a similar event occurring in the future.

2 (c) The department may review a root cause analysis or  
3 action plan related to an event listed in Section 577.052 during a  
4 survey, inspection, or investigation of a mental hospital.

5 (d) The department may not require a root cause analysis or  
6 action plan to be submitted to the department.

7 (e) The department or an employee or agent of the department  
8 may not in any form, format, or manner remove, copy, reproduce,  
9 redact, or dictate from all or any part of a root cause analysis or  
10 action plan.

11 Sec. 577.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)  
12 Except as provided by Sections 577.055 and 577.056, all information  
13 and materials obtained or compiled by the department under this  
14 subchapter or compiled by a mental hospital under this subchapter,  
15 including the root cause analysis, annual report of the hospital,  
16 action plan, best practices report, department summary, and all  
17 related information and materials, are confidential and:

18 (1) are not subject to disclosure under Chapter 552,  
19 Government Code, or discovery, subpoena, or other means of legal  
20 compulsion for release to any person, subject to Section  
21 577.053(c); and

22 (2) may not be admitted as evidence or otherwise  
23 disclosed in any civil, criminal, or administrative proceeding.

24 (b) The confidentiality protections under Subsection (a)  
25 apply without regard to whether the information or materials are  
26 obtained from or compiled by a mental hospital or an entity that has  
27 an ownership or management interest in a hospital.

1       (c) The transfer of information or materials under this  
2 subchapter is not a waiver of a privilege or protection granted  
3 under law.

4       (d) Information reported by a mental hospital under this  
5 subchapter and analyses, plans, records, and reports obtained,  
6 prepared, or compiled by a hospital under this subchapter and all  
7 related information and materials are subject to an absolute  
8 privilege and may not be used in any form against the hospital or  
9 the hospital's agents, employees, partners, assignees, or  
10 independent contractors in any civil, criminal, or administrative  
11 proceeding, regardless of the means by which a person came into  
12 possession of the information, analysis, plan, record, report, or  
13 related information or material. A court shall enforce this  
14 privilege for all matters covered by this subsection.

15       (e) The provisions of this section regarding the  
16 confidentiality of information or materials compiled or reported by  
17 a mental hospital in compliance with or as authorized under this  
18 subchapter do not restrict access, to the extent authorized by law,  
19 by the patient or the patient's legally authorized representative  
20 to records of the patient's medical diagnosis or treatment or to  
21 other primary health records.

22       Sec. 577.055. ANNUAL DEPARTMENT SUMMARY. The department  
23 annually shall compile and make available to the public a summary of  
24 the events reported by mental hospitals as required by Section  
25 577.052. The summary may contain only aggregated information and  
26 may not directly or indirectly identify:

27           (1) a specific mental hospital or group of hospitals;

1           (2) an individual; or

2           (3) a specific reported event or the circumstances or  
3 individuals surrounding the event.

4           Sec. 577.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.

5           (a) A mental hospital shall provide to the department at least one  
6 report of best practices and safety measures related to a reported  
7 event.

8           (b) A mental hospital may provide to the department a report  
9 of other best practices and the safety measures that are effective  
10 in improving patient safety.

11           (c) The department by rule may prescribe the form and format  
12 of a best practices report. The department may not require a best  
13 practices report to exceed one page in length. The department shall  
14 accept, in lieu of a report in the form and format prescribed by the  
15 department, a copy of a report submitted by a mental hospital to a  
16 patient safety organization.

17           (d) The department periodically shall:

18                   (1) review the best practices reports;

19                   (2) compile a summary of the best practices reports  
20 determined by the department to be effective and recommended as  
21 best practices; and

22                   (3) make the summary available to the public.

23           (e) The summary may not directly or indirectly identify:

24                   (1) a specific mental hospital or group of hospitals;

25                   (2) an individual; or

26                   (3) a specific reported event or the circumstances or  
27 individuals surrounding the event.

1       Sec. 577.057. PROHIBITION. The annual report of a mental  
2 hospital, the department summary, or the best practices report may  
3 not distinguish between an event that occurred at an outpatient  
4 facility owned or operated by the hospital and an event that  
5 occurred at a hospital facility.

6       Sec. 577.058. REPORT TO LEGISLATURE. (a) Not later than  
7 December 1, 2006, the commissioner of public health shall:

8           (1) evaluate the patient safety program established  
9 under this subchapter; and

10          (2) report the results of the evaluation and make  
11 recommendations to the legislature.

12          (b) The commissioner of public health shall conduct the  
13 evaluation in consultation with mental hospitals licensed under  
14 this chapter.

15          (c) The evaluation must address:

16           (1) the degree to which the department was able to  
17 detect statewide trends in errors based on the types and numbers of  
18 events reported;

19           (2) the degree to which the statewide summaries of  
20 events compiled by the department were accessed by the public;

21           (3) the effectiveness of the department's best  
22 practices summary in improving hospital patient care; and

23           (4) the impact of national studies on the  
24 effectiveness of state or federal systems of reporting medical  
25 errors.

26       Sec. 577.059. GIFTS, GRANTS, AND DONATIONS. The department  
27 may accept and administer a gift, grant, or donation from any source

1 to carry out the purposes of this subchapter.

2 Sec. 577.060. ADMINISTRATIVE PENALTY. (a) The department  
3 may assess an administrative penalty against a person who violates  
4 this subchapter or a rule adopted under this subchapter.

5 (b) The penalty may not exceed \$1,000 for each violation.  
6 Each day of a continuing violation constitutes a separate  
7 violation.

8 (c) In determining the amount of an administrative penalty  
9 assessed under this section, the department shall consider:

- 10 (1) the seriousness of the violation;  
11 (2) the history of previous violations;  
12 (3) the amount necessary to deter future violations;  
13 (4) efforts made to correct the violation;  
14 (5) any hazard posed to the public health and safety by  
15 the violation; and  
16 (6) any other matters that justice may require.

17 (d) All proceedings for the assessment of an administrative  
18 penalty under this subchapter are considered to be contested cases  
19 under Chapter 2001, Government Code.

20 Sec. 577.061. NOTICE; REQUEST FOR HEARING. (a) If, after  
21 investigation of a possible violation and the facts surrounding  
22 that possible violation, the department determines that a violation  
23 has occurred, the department shall give written notice of the  
24 violation to the person alleged to have committed the violation.  
25 The notice shall include:

- 26 (1) a brief summary of the alleged violation;  
27 (2) a statement of the amount of the proposed penalty

1 based on the factors set forth in Section 577.060(c); and

2 (3) a statement of the person's right to a hearing on  
3 the occurrence of the violation, the amount of the penalty, or both  
4 the occurrence of the violation and the amount of the penalty.

5 (b) Not later than the 20th day after the date on which the  
6 notice is received, the person notified may accept the  
7 determination of the department made under this section, including  
8 the proposed penalty, or make a written request for a hearing on  
9 that determination.

10 (c) If the person notified of the violation accepts the  
11 determination of the department, the commissioner of public health  
12 or the commissioner's designee shall issue an order approving the  
13 determination and ordering that the person pay the proposed  
14 penalty.

15 Sec. 577.062. HEARING; ORDER. (a) If the person notified  
16 fails to respond in a timely manner to the notice under Section  
17 577.061(b) or if the person requests a hearing, the department  
18 shall:

19 (1) set a hearing;

20 (2) give written notice of the hearing to the person;

21 and

22 (3) designate a hearings examiner to conduct the  
23 hearing.

24 (b) The hearings examiner shall make findings of fact and  
25 conclusions of law and shall promptly issue to the commissioner of  
26 public health or the commissioner's designee a proposal for  
27 decision as to the occurrence of the violation and a recommendation

1 as to the amount of the proposed penalty if a penalty is determined  
2 to be warranted.

3 (c) Based on the findings of fact and conclusions of law and  
4 the recommendations of the hearings examiner, the commissioner of  
5 public health or the commissioner's designee by order may find that  
6 a violation has occurred and may assess a penalty or may find that  
7 no violation has occurred.

8 Sec. 577.063. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;  
9 JUDICIAL REVIEW; REFUND. (a) The department shall give notice of  
10 the order under Section 577.062(c) to the person notified. The  
11 notice must include:

12 (1) separate statements of the findings of fact and  
13 conclusions of law;

14 (2) the amount of any penalty assessed; and

15 (3) a statement of the right of the person to judicial  
16 review of the order.

17 (b) Not later than the 30th day after the date on which the  
18 decision is final as provided by Chapter 2001, Government Code, the  
19 person shall:

20 (1) pay the penalty;

21 (2) pay the penalty and file a petition for judicial  
22 review contesting the occurrence of the violation, the amount of  
23 the penalty, or both the occurrence of the violation and the amount  
24 of the penalty; or

25 (3) without paying the penalty, file a petition for  
26 judicial review contesting the occurrence of the violation, the  
27 amount of the penalty, or both the occurrence of the violation and

1 the amount of the penalty.

2 (c) Within the 30-day period, a person who acts under  
3 Subsection (b)(3) may:

4 (1) stay enforcement of the penalty by:

5 (A) paying the penalty to the court for placement  
6 in an escrow account; or

7 (B) giving to the court a supersedeas bond that  
8 is approved by the court for the amount of the penalty and that is  
9 effective until all judicial review of the order is final; or

10 (2) request the court to stay enforcement of the  
11 penalty by:

12 (A) filing with the court a sworn affidavit of  
13 the person stating that the person is financially unable to pay the  
14 amount of the penalty and is financially unable to give the  
15 supersedeas bond; and

16 (B) giving a copy of the affidavit to the  
17 department by certified mail.

18 (d) If the department receives a copy of an affidavit under  
19 Subsection (c)(2), the department may file with the court, within  
20 five days after the date the copy is received, a contest to the  
21 affidavit. The court shall hold a hearing on the facts alleged in  
22 the affidavit as soon as practicable and shall stay the enforcement  
23 of the penalty on finding that the alleged facts are true. The  
24 person who files an affidavit has the burden of proving that the  
25 person is financially unable to pay the penalty and to give a  
26 supersedeas bond.

27 (e) If the person does not pay the penalty and the



1 enforcement of the penalty is not stayed, the department may refer  
2 the matter to the attorney general for collection of the penalty.

3 (f) Judicial review of the order:

4 (1) is instituted by filing a petition as provided by  
5 Subchapter G, Chapter 2001, Government Code; and

6 (2) is under the substantial evidence rule.

7 (g) If the court sustains the occurrence of the violation,  
8 the court may uphold or reduce the amount of the penalty and order  
9 the person to pay the full or reduced amount of the penalty. If the  
10 court does not sustain the occurrence of the violation, the court  
11 shall order that no penalty is owed.

12 (h) When the judgment of the court becomes final, the court  
13 shall proceed under this subsection. If the person paid the amount  
14 of the penalty under Subsection (b)(2) and if that amount is reduced  
15 or is not upheld by the court, the court shall order that the  
16 department pay the appropriate amount plus accrued interest to the  
17 person. The rate of the interest is the rate charged on loans to  
18 depository institutions by the New York Federal Reserve Bank, and  
19 the interest shall be paid for the period beginning on the date the  
20 penalty was paid and ending on the date the penalty is remitted. If  
21 the person paid the penalty under Subsection (c)(1)(A) or gave a  
22 supersedeas bond under Subsection (c)(1)(A) and if the amount of  
23 the penalty is not upheld by the court, the court shall order the  
24 release of the escrow account or bond. If the person paid the  
25 penalty under Subsection (c)(1)(A) and the amount of the penalty is  
26 reduced, the court shall order that the amount of the penalty be  
27 paid to the department from the escrow account and that the

1 remainder of the account be released. If the person gave a  
2 supersedeas bond and if the amount of the penalty is reduced, the  
3 court shall order the release of the bond after the person pays the  
4 amount.

5 Sec. 577.064. EXPIRATION. Unless continued in existence,  
6 this subchapter expires September 1, 2007.

7 SECTION 7. (a) Not later than January 1, 2004, the Texas  
8 Department of Health, using existing resources available to the  
9 department, shall establish a patient safety program as required  
10 under Subchapter H, Chapter 241, Health and Safety Code, as added by  
11 this Act, under Subchapter B, Chapter 243, Health and Safety Code,  
12 as added by this Act, and under Subchapter B, Chapter 577, Health  
13 and Safety Code, as added by this Act.

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

19 SECTION 8. The expiration of Subchapter H, Chapter 241,  
20 Health and Safety Code, as added by this Act, Subchapter B, Chapter  
21 243, Health and Safety Code, as added by this Act, and Subchapter B,  
22 Chapter 577, Health and Safety Code, as added by this Act, in  
23 accordance with Sections 241.210, 243.060, and 577.064, Health and  
24 Safety Code, as added by this Act, does not affect the  
25 confidentiality of and privilege applicable to information and  
26 materials or the authorized disclosure of summary reports of that  
27 information and materials under Sections 241.204, 241.205,

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1 241.206, 241.208, 243.054, 243.055, 243.056, 243.058, 577.054,  
2 577.055, 577.056, and 577.058, Health and Safety Code, as added by  
3 this Act, and these laws are continued in effect for this purpose.

4 SECTION 9. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1614 was passed by the House on April 30, 2003, by the following vote: Yeas 134, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1614 on May 30, 2003, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 1614 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor