

By: Truitt

H.B. No. 1614

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the reporting of medical errors by certain hospitals,  
3 ambulatory surgical centers, and mental hospitals.

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

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

16 SECTION 2. Subchapter B, Chapter 241, Health and Safety  
17 Code, is amended by adding Section 241.030 to read as follows:

18 Sec. 241.030. PATIENT SAFETY PROGRAM. (a) Using existing  
19 resources, the department shall develop a patient safety program  
20 for hospitals. The program shall:

21 (1) be administered by the hospital licensing program  
22 within the department; and

23 (2) serve as a clearinghouse of information for  
24 hospitals concerning best practices and quality improvement

1 strategies.

2 (b) A hospital shall submit an annual report to the  
3 department, the due date to be based on the date of licensure or  
4 relicensure of the hospital, of the following types of events:

5 (1) a medication error resulting in the unanticipated  
6 death of a patient, or a major, permanent loss of a bodily function  
7 by a patient, that is not related to the natural course of the  
8 illness or underlying condition of the patient;

9 (2) any perinatal death unrelated to a congenital  
10 condition in an infant having a birth weight greater than 2,500  
11 grams;

12 (3) the abduction from the hospital of a newborn  
13 infant patient, or the discharge from the hospital of a newborn  
14 infant patient into the custody of an individual in circumstances  
15 in which the hospital knew, or in the exercise of ordinary care  
16 should have known, that the individual did not have legal custody of  
17 the newborn infant patient;

18 (4) the suicide of a patient in a setting where the  
19 patient receives around-the-clock care;

20 (5) the sexual assault of a patient while the patient  
21 is being treated or while the patient is on the premises of the  
22 facility;

23 (6) a hemolytic transfusion reaction in a patient  
24 resulting from the administration of blood or blood products having  
25 major blood group incompatibilities;

26 (7) the performance of surgery on the wrong patient or  
27 on the wrong body part of a patient;

1           (8) a foreign object's accidentally being left in a  
2 patient's body during a procedure; and

3           (9) the death or serious disability of a patient  
4 associated with the use or function of a device in patient care in  
5 which the device is used or functions in a manner other than that  
6 intended.

7           (c) The department may not require the annual report under  
8 Subsection (b) to include any information other than a listing of  
9 the number of occurrences, if any, of the events listed in that  
10 subsection.

11           (d) A hospital shall conduct a root cause analysis of an  
12 event listed in Subsection (b) following identification of the  
13 event.

14           (e) Following the performance of a root cause analysis of an  
15 event listed in Subsection (b), a hospital shall develop an action  
16 plan that identifies the strategies the hospital intends to use to  
17 reduce the risk of similar events occurring in the future.

18           (f) A hospital must conduct a root cause analysis and  
19 complete an action plan under Subsection (e) not later than 45 days  
20 after becoming aware of an event that must be reported under  
21 Subsection (b).

22           (g) The department may review a root cause analysis and  
23 action plan regarding an event that must be reported under  
24 Subsection (b) during a licensure or complaint survey but may not  
25 require that the root cause analysis or action plan be reported to  
26 the department. The department and its employees and agents are  
27 prohibited from removing, copying, reproducing, redacting, or

1 dictating from, all or any part of a root cause analysis or action  
2 plan. This prohibition applies to any form, format, or manner of  
3 copying, reproducing, redacting, or dictating.

4 (h) All information and materials obtained or compiled by  
5 the department under this section are confidential and not subject  
6 to disclosure under Chapter 552, Government Code, and are not  
7 subject to discovery, subpoena, or other means of legal compulsion  
8 for release to anyone other than the department or its employees or  
9 agents involved in the program. Information and materials obtained  
10 or compiled by the department under this section may not be admitted  
11 in evidence or otherwise disclosed in any civil, criminal, or  
12 administrative proceeding.

13 (i) The root cause analysis and action plan compiled by a  
14 hospital in compliance with Subsections (d) and (e) and all related  
15 information and materials, and the report of best practices and  
16 safety measures described in Subsection (m) and all related  
17 information and materials, are confidential and not subject to  
18 disclosure under Chapter 552, Government Code, and are not subject  
19 to discovery, subpoena, or other means of legal compulsion for  
20 release to anyone. The root cause analysis and action plan and all  
21 related information and materials, and the report of best practices  
22 and safety measures and all related information and materials, may  
23 not be admitted in evidence or otherwise disclosed in any civil,  
24 criminal, or administrative proceeding. Information reported by a  
25 hospital and analyses, plans, records, and reports obtained,  
26 prepared, or compiled by a hospital as required by this section, and  
27 all related information and materials, are subject to an absolute

1 privilege and may not be used in any form against the hospital or  
2 its agents, employees, partners, assignees, or independent  
3 contractors in any civil, criminal, or administrative proceeding,  
4 regardless of the means by which the information, analyses, plans,  
5 records, reports, or related information and materials came into  
6 the possession of the person attempting to use them. A court shall  
7 enforce this privilege as to all matters covered by this section.

8 (j) The confidentiality protections provided by Subsections  
9 (h) and (i) apply regardless of whether the information or  
10 materials are obtained from or compiled by a hospital or an entity  
11 that has an ownership or management interest in a hospital.

12 (k) The transfer of information or materials under this  
13 section shall not be treated as a waiver of any privilege or  
14 protection.

15 (l) Notwithstanding the provisions of Subsection (h), the  
16 department shall on an annual basis compile and make publicly  
17 available a summary of the events that were reported by hospitals  
18 under Subsection (b). The summary shall contain only aggregated  
19 information and may not directly or indirectly identify a specific  
20 hospital or group of hospitals, an individual, a specific reported  
21 event, or the circumstances or individuals surrounding or involved  
22 in a specific reported event.

23 (m) A hospital may provide to the department a report of its  
24 best practices and safety measures that have been effective in  
25 improving patient safety. The department may adopt rules regarding  
26 the form and format of the report. The department shall  
27 periodically compile a summary of such reports and make the summary

1 publicly available. The summary may not directly or indirectly  
2 identify a specific hospital or group of hospitals, an individual,  
3 a specific reported event, or the circumstances or individuals  
4 surrounding or involved in a specific reported event.

5 (n) The provisions of this section also apply to the events  
6 listed in Subsection (b) that occur in an offsite outpatient  
7 facility that is owned or operated by a hospital, and the report  
8 described in Subsection (m) shall not distinguish between those  
9 offsite outpatient facilities that are owned or operated by a  
10 hospital and those facilities that are included under the  
11 hospital's license.

12 (o) The commissioner of public health shall evaluate the  
13 program established under this section and submit the evaluation,  
14 together with recommendations, to the legislature not later than  
15 December 1, 2006. The evaluation shall be made in consultation with  
16 hospitals that are required to make a report under Subsection (b).

17 (p) The evaluation under Subsection (o) shall include the  
18 following:

19 (1) the degree to which the department was able to  
20 detect statewide trends in errors based on the types and numbers of  
21 errors reported;

22 (2) the extent to which the statewide summaries  
23 required to be compiled by the department under Subsection (l) were  
24 accessed by the public;

25 (3) the effectiveness of the summary of reported best  
26 practices and safety measures in assisting hospitals in improving  
27 patient care; and

1           (4) the impact of national studies regarding the  
2 effectiveness of state or federal systems of reporting medical  
3 errors.

4           (g) In this section, "root cause analysis" means a process  
5 for identifying basic or causal factors that underlie variation in  
6 performance, focusing primarily on systems and processes,  
7 progressing from special causes in clinical processes to common  
8 causes in organizational processes, and identifying potential  
9 improvements in processes or systems.

10           (r) This section, except for Subsections (h)-(k) and (q),  
11 expires September 1, 2007.

12           SECTION 3. Chapter 243, Health and Safety Code, is amended  
13 by adding Section 243.0101 to read as follows:

14           Sec. 243.0101. PATIENT SAFETY PROGRAM. (a) Using existing  
15 resources, the department shall develop a patient safety program  
16 for licensed ambulatory surgical centers. The program shall:

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

19                   (2) serve as a clearinghouse of information for  
20 licensed ambulatory surgical centers concerning best practices and  
21 quality improvement strategies.

22           (b) An ambulatory surgical center licensed by the  
23 department shall submit an annual report to the department, the due  
24 date to be based on the date of licensure or relicensure of the  
25 ambulatory surgical center, of the following types of events:

26                   (1) a medication error resulting in the unanticipated  
27 death of a patient, or a major, permanent loss of a bodily function

1 by the patient, that is not related to the natural course of the  
2 illness or underlying condition of the patient;

3 (2) the suicide of a patient in an ambulatory surgical  
4 center;

5 (3) the sexual assault of a patient while the patient  
6 is being treated or while the patient is on the premises of the  
7 facility;

8 (4) a hemolytic transfusion reaction in a patient  
9 resulting from the administration of blood or blood products having  
10 major blood group incompatibilities;

11 (5) the performance of surgery on the wrong patient or  
12 on the wrong body part of a patient;

13 (6) a foreign object's accidentally being left in a  
14 patient's body during a procedure; and

15 (7) the death or serious disability of a patient  
16 associated with the use of or function of a device in patient care  
17 in which the device is used or functions in a manner other than that  
18 intended.

19 (c) The department may not require the annual report under  
20 Subsection (b) to include any information other than a listing of  
21 the number of occurrences, if any, of the events listed in that  
22 subsection.

23 (d) A licensed ambulatory surgical center shall conduct a  
24 root cause analysis of an event listed in Subsection (b) following  
25 identification of the event.

26 (e) Following the performance of a root cause analysis of an  
27 event listed in Subsection (b), a licensed ambulatory surgical



1 center shall develop an action plan that identifies the strategies  
2 the licensed ambulatory surgical center intends to use to reduce  
3 the risk of similar events occurring in the future.

4 (f) A licensed ambulatory surgical center must conduct a  
5 root cause analysis and complete an action plan under Subsection  
6 (e) not later than 45 days after becoming aware of an event that  
7 must be reported under Subsection (b).

8 (g) The department may review a root cause analysis and  
9 action plan regarding an event that must be reported under  
10 Subsection (b) during a licensure or complaint survey but may not  
11 require that the action plan be reported to the department. The  
12 department and its employees and agents are prohibited from  
13 removing, copying, reproducing, redacting, or dictating from all or  
14 any part of a root cause analysis or action plan. This prohibition  
15 applies to any form, format, or manner of copying, reproducing,  
16 redacting, or dictating.

17 (h) All information and materials obtained or compiled by  
18 the department under this section are confidential and not subject  
19 to disclosure under Chapter 552, Government Code, and are not  
20 subject to discovery, subpoena, or other means of legal compulsion  
21 for release to anyone other than the department or its employees or  
22 agents involved in the program. Information and materials obtained  
23 or compiled by the department under this section may not be admitted  
24 in evidence or otherwise disclosed in any civil, criminal, or  
25 administrative proceeding.

26 (i) The root cause analysis and action plan compiled by a  
27 licensed ambulatory surgical center in compliance with Subsections

1 (d) and (e) and all related information and materials, and the  
2 report of best practices and safety measures described in  
3 Subsection (m) and all related information and materials, are  
4 confidential and not subject to disclosure under Chapter 552,  
5 Government Code, and are not subject to discovery, subpoena, or  
6 other means of legal compulsion for release to anyone. The root  
7 cause analysis and action plan and all related information and  
8 materials, and the report of best practices and safety measures and  
9 all related information and materials may not be admitted in  
10 evidence or otherwise disclosed in any civil, criminal, or  
11 administrative proceeding. Information reported by a licensed  
12 ambulatory surgical center and analyses, plans, records, and  
13 reports obtained, prepared, or compiled by a licensed ambulatory  
14 surgical center as required by this section, and all related  
15 information and materials, are subject to an absolute privilege and  
16 may not be used in any form against the licensed ambulatory surgical  
17 center or its agents, employees, partners, assignees, or  
18 independent contractors in any civil, criminal, or administrative  
19 proceeding, regardless of the means by which the information,  
20 analyses, plans, records, reports, or related information and  
21 materials came into the possession of the person attempting to use  
22 them. A court shall enforce this privilege as to all matters  
23 covered by this section.

24 (j) The confidentiality protections provided by Subsections  
25 (h) and (i) apply regardless of whether the information or  
26 materials are obtained from or compiled by a licensed ambulatory  
27 surgical center or an entity that has an ownership or management

1 interest in a licensed ambulatory surgical center.

2 (k) The transfer of information or materials under this  
3 section shall not be treated as a waiver of any privilege or  
4 protection.

5 (l) Notwithstanding the provisions of Subsection (h), the  
6 department shall on an annual basis compile and make publicly  
7 available a summary of the events that were reported by licensed  
8 ambulatory surgical centers under Subsection (b). The summary  
9 shall contain only aggregated information and may not directly or  
10 indirectly identify a specific licensed ambulatory surgical center  
11 or group of licensed ambulatory surgical centers, an individual, a  
12 specific reported event, or the circumstances or individuals  
13 surrounding or involved in a specific reported event.

14 (m) A licensed ambulatory surgical center may provide to the  
15 department a report of its best practices and safety measures that  
16 have been effective in improving patient safety. The department  
17 may adopt rules regarding the form and format of the report. The  
18 department shall periodically compile a summary of the reports and  
19 make the summary publicly available. The summary may not directly  
20 or indirectly identify a specific licensed ambulatory surgical  
21 center or group of licensed ambulatory surgical centers, an  
22 individual, a specific reported event, or the circumstances or  
23 individuals surrounding or involved in a specific reported event.

24 (n) The commissioner of public health shall evaluate the  
25 program established under this section and report the evaluation,  
26 together with recommendations, to the legislature not later than  
27 December 1, 2006. The evaluation shall be made in consultation with

1 licensed ambulatory surgical centers that are required to make a  
2 report under Subsection (b).

3 (o) The evaluation under Subsection (n) shall include the  
4 following:

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

8 (2) the extent to which the statewide summaries  
9 required to be compiled by the department under Subsection (l) were  
10 accessed by the public;

11 (3) the effectiveness of the summary of reported best  
12 practices and safety measures in assisting licensed ambulatory  
13 surgical centers in improving patient care; and

14 (4) the impact of national studies regarding the  
15 effectiveness of state or federal systems of reporting medical  
16 errors.

17 (p) In this section, "root cause analysis" means a process  
18 for identifying basic or causal factors that underlie variation in  
19 performance, focusing primarily on systems and processes,  
20 progressing from special causes in clinical processes to common  
21 causes in organizational processes, and identifying potential  
22 improvements in processes or systems.

23 (q) This section, except for Subsections (h)-(k) and (p),  
24 expires September 1, 2007.

25 SECTION 4. Chapter 577, Health and Safety Code, is amended  
26 by adding Section 577.0102 to read as follows:

27 Sec. 577.0102. PATIENT SAFETY PROGRAM. (a) Using existing

1 resources, the department shall develop a patient safety program  
2 for mental hospitals licensed under Section 577.001(a). The  
3 program shall:

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

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

9 (b) A licensed mental hospital shall submit an annual report  
10 to the department, the due date to be based on the date of licensure  
11 or relicensure of the licensed mental hospital, of the following  
12 types of events:

13 (1) a medication error resulting in the unanticipated  
14 death of a patient, or a major, permanent loss of a bodily function  
15 by the patient, that is not related to the natural course of the  
16 illness or underlying condition of the patient;

17 (2) the suicide of a patient in a setting where the  
18 patient receives around-the-clock care;

19 (3) the sexual assault of a patient while the patient  
20 is being treated or while the patient is on the premises of the  
21 facility;

22 (4) a hemolytic transfusion reaction in a patient  
23 resulting from the administration of blood or blood products having  
24 major blood group incompatibilities; and

25 (5) the death or serious disability of a patient  
26 associated with the use or function of a device in patient care in  
27 which the device is used or functions in a manner other than that

1 intended.

2 (c) The department may not require the annual report under  
3 Subsection (b) to include any information other than a listing of  
4 the number of occurrences, if any, of the events listed in that  
5 subsection.

6 (d) A licensed mental hospital shall conduct a root cause  
7 analysis of an event listed in Subsection (b) following  
8 identification of the event.

9 (e) Following the performance of a root cause analysis of an  
10 event listed in Subsection (b), a licensed mental hospital shall  
11 develop an action plan that identifies the strategies the licensed  
12 mental hospital intends to use to reduce the risk of similar events  
13 occurring in the future.

14 (f) A licensed mental hospital must conduct a root cause  
15 analysis and complete an action plan under Subsection (e) not later  
16 than 45 days after becoming aware of an event that must be reported  
17 under Subsection (b).

18 (g) The department may review a root cause analysis and  
19 action plan regarding an event that must be reported under  
20 Subsection (b) during a licensure or complaint survey but may not  
21 require that the root cause analysis or action plan be reported to  
22 the department. The department and its employees and agents are  
23 prohibited from removing, copying, reproducing, redacting, or  
24 dictating from all or any part of a root cause analysis or action  
25 plan. This prohibition applies to any form, format, or manner of  
26 copying, reproducing, redacting, or dictating.

27 (h) All information and materials obtained or compiled by

1 the department under this section are confidential and not subject  
2 to disclosure under Chapter 552, Government Code, and are not  
3 subject to discovery, subpoena, or other means of legal compulsion  
4 for release to anyone other than the department or its employees or  
5 agents involved in the program. Information and materials obtained  
6 or compiled by the department under this section may not be admitted  
7 in evidence or otherwise disclosed in any civil, criminal, or  
8 administrative proceeding.

9 (i) The root cause analysis and action plan compiled by a  
10 licensed mental hospital in compliance with Subsections (d) and (e)  
11 and all related information and materials, and the report of best  
12 practices and safety measures described in Subsection (m) and all  
13 related information and materials, are confidential and not subject  
14 to disclosure under Chapter 552, Government Code, and are not  
15 subject to discovery, subpoena, or other means of legal compulsion  
16 for release to anyone. The root cause analysis and action plan and  
17 all related information and materials and the report of best  
18 practices and safety measures and all related information and  
19 materials may not be admitted in evidence or otherwise disclosed in  
20 any civil, criminal, or administrative proceeding. Information  
21 reported by a licensed mental hospital and analyses, plans,  
22 records, and reports obtained, prepared, or compiled by a licensed  
23 mental hospital as required by this section, and all related  
24 information and materials, are subject to an absolute privilege and  
25 may not be used in any form against the licensed mental hospital or  
26 its agents, employees, partners, assignees, or independent  
27 contractors in any civil, criminal, or administrative proceeding,

1 regardless of the means by which the information, analyses, plans,  
2 records, reports, or related information and materials came into  
3 the possession of the person attempting to use them. A court shall  
4 enforce this privilege as to all matters covered by this section.

5 (j) The confidentiality protections provided by Subsections  
6 (h) and (i) apply regardless of whether the information or  
7 materials are obtained from or compiled by a licensed mental  
8 hospital or an entity that has an ownership or management interest  
9 in a licensed mental hospital.

10 (k) The transfer of information or materials under this  
11 section shall not be treated as a waiver of any privilege or  
12 protection.

13 (l) Notwithstanding the provisions of Subsection (h), the  
14 department shall on an annual basis compile and make publicly  
15 available a summary of the events that were reported by licensed  
16 mental hospitals under Subsection (b). The summary shall contain  
17 only aggregated information and may not directly or indirectly  
18 identify a specific licensed mental hospital or group of licensed  
19 mental hospitals, an individual, a specific reported event, or the  
20 circumstances or individuals surrounding or involved in a specific  
21 reported event.

22 (m) A licensed mental hospital may provide to the department  
23 a report of its best practices and safety measures that have been  
24 effective in improving patient safety. The department may adopt  
25 rules regarding the form and format of the report. The department  
26 shall periodically compile a summary of the reports and make the  
27 summary publicly available. The summary may not directly or



1 indirectly identify a specific licensed mental hospital or group of  
2 licensed mental hospitals, an individual, a specific reported  
3 event, or the circumstances surrounding or involved in a specific  
4 reported event.

5 (n) The commissioner of public health shall evaluate the  
6 program established under this section and submit the evaluation,  
7 together with recommendations, to the legislature not later than  
8 December 1, 2006. The evaluation shall be made in consultation with  
9 licensed mental hospitals that are required to make a report under  
10 Subsection (b).

11 (o) The evaluation under Subsection (n) shall include the  
12 following:

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

16 (2) the extent to which the statewide summaries  
17 required to be compiled by the department under Subsection (1) were  
18 accessed by the public;

19 (3) the effectiveness of the summary of reported best  
20 practices and safety measures in assisting licensed mental  
21 hospitals in improving patient care; and

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

25 (p) In this section, "root cause analysis" means a process  
26 for identifying basic or causal factors that underlie variation in  
27 performance, focusing primarily on systems and processes,

1 progressing from special causes in clinical processes to common  
2 causes in organizational processes, and identifying potential  
3 improvements in processes or systems.

4 (g) This section, except for Subsections (h)-(k) and (p),  
5 expires September 1, 2007.

6 SECTION 5. The 80th Legislature shall assess the  
7 effectiveness of the patient safety programs developed for:

8 (1) hospitals, under Section 241.030, Health and  
9 Safety Code, as added by Section 2 of this Act;

10 (2) licensed ambulatory surgical centers, under  
11 Section 243.0101, Health and Safety Code, as added by Section 3 of  
12 this Act; and

13 (3) licensed mental hospitals, under Section  
14 577.0102, Health and Safety Code, as added by Section 4 of this Act.

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