

1-1 By: Truitt, et al. (Senate Sponsor - Madla) H.B. No. 1614
1-2 (In the Senate - Received from the House May 1, 2003;
1-3 May 6, 2003, read first time and referred to Committee on Health
1-4 and Human Services; May 24, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 6,
1-6 Nays 0; May 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1614 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the reporting of medical errors and the establishment
1-11 of a patient safety program in hospitals, ambulatory surgical
1-12 centers, and mental hospitals; providing an administrative
1-13 penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. The purpose of this Act is to establish a program
1-16 to:

1-17 (1) promote public accountability through the
1-18 detection of statewide trends in the occurrence of certain medical
1-19 errors by:

1-20 (A) requiring hospitals, ambulatory surgical
1-21 centers, and mental hospitals to report errors;

1-22 (B) providing the public with access to statewide
1-23 summaries of the reports; and

1-24 (C) requiring hospitals, ambulatory surgical
1-25 centers, and mental hospitals to implement risk-reduction
1-26 strategies; and

1-27 (2) encourage hospitals, ambulatory surgical centers,
1-28 and mental hospitals to share best practices and safety measures
1-29 that are effective in improving patient safety.

1-30 SECTION 2. Chapter 241, Health and Safety Code, is amended
1-31 by adding Subchapter H to read as follows:

1-32 SUBCHAPTER H. PATIENT SAFETY PROGRAM

1-33 Sec. 241.201. DUTIES OF DEPARTMENT. (a) The department
1-34 shall develop a patient safety program for hospitals. The program
1-35 must:

1-36 (1) be administered by the hospital licensing program
1-37 within the department; and

1-38 (2) serve as an information clearinghouse for
1-39 hospitals concerning best practices and quality improvement
1-40 strategies.

1-41 (b) The department shall group hospitals by size for the
1-42 reports required by this chapter as follows:

1-43 (1) less than 50 beds;

1-44 (2) 50 to 99 beds;

1-45 (3) 100 to 199 beds;

1-46 (4) 200 to 399 beds; and

1-47 (5) 400 beds or more.

1-48 (c) The department shall combine two or more categories
1-49 described by Subsection (b) if the number of hospitals in any
1-50 category falls below 40.

1-51 Sec. 241.202. ANNUAL REPORT. (a) On renewal of a license
1-52 under this chapter, a hospital shall submit to the department an
1-53 annual report that lists the number of occurrences at the hospital
1-54 or at an outpatient facility owned or operated by the hospital of
1-55 each of the following events during the preceding year:

1-56 (1) a medication error resulting in a patient's
1-57 unanticipated death or major permanent loss of bodily function in
1-58 circumstances unrelated to the natural course of the illness or
1-59 underlying condition of the patient;

1-60 (2) a perinatal death unrelated to a congenital
1-61 condition in an infant with a birth weight greater than 2,500 grams;

1-62 (3) the suicide of a patient in a setting in which the
1-63 patient received care 24 hours a day;

2-1 (4) the abduction of a newborn infant from the
2-2 hospital or the discharge of a newborn infant from the
2-3 hospital into the custody of an individual in circumstances in
2-4 which the hospital knew, or in the exercise of ordinary care should
2-5 have known, that the individual did not have legal custody of the
2-6 infant;

2-7 (5) the sexual assault of a patient during treatment
2-8 or while the patient was on the premises of the hospital or
2-9 facility;

2-10 (6) a hemolytic transfusion reaction in a patient
2-11 resulting from the administration of blood or blood products with
2-12 major blood group incompatibilities;

2-13 (7) a surgical procedure on the wrong patient or on the
2-14 wrong body part of a patient;

2-15 (8) a foreign object accidentally left in a patient
2-16 during a procedure; and

2-17 (9) a patient death or serious disability associated
2-18 with the use or function of a device designed for patient care that
2-19 is used or functions other than as intended.

2-20 (b) The department may not require the annual report to
2-21 include any information other than the number of occurrences of
2-22 each event listed in Subsection (a).

2-23 Sec. 241.203. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In
2-24 this section, "root cause analysis" means the process that
2-25 identifies basic or causal factors underlying a variation in
2-26 performance leading to an event listed in Section 241.202 and that:

2-27 (1) focuses primarily on systems and processes;

2-28 (2) progresses from special causes in clinical
2-29 processes to common causes in organizational processes; and

2-30 (3) identifies potential improvements in processes or
2-31 systems.

2-32 (b) Not later than the 45th day after the date a hospital
2-33 becomes aware of the occurrence of an event listed in Section
2-34 241.202, the hospital shall:

2-35 (1) conduct a root cause analysis of the event; and

2-36 (2) develop an action plan that identifies strategies
2-37 to reduce the risk of a similar event occurring in the future.

2-38 (c) The department may review a root cause analysis or
2-39 action plan related to an event listed in Section 241.202 during a
2-40 survey, inspection, or investigation of a hospital.

2-41 (d) The department may not require a root cause analysis or
2-42 action plan to be submitted to the department.

2-43 (e) The department or an employee or agent of the department
2-44 may not in any form, format, or manner remove, copy, reproduce,
2-45 redact, or dictate from any part of a root cause analysis or action
2-46 plan.

2-47 Sec. 241.204. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)
2-48 Except as provided by Sections 241.205 and 241.206, all information
2-49 and materials obtained or compiled by the department under this
2-50 subchapter or compiled by a hospital under this subchapter,
2-51 including the root cause analysis, annual hospital report, action
2-52 plan, best practices report, department summary, and all related
2-53 information and materials, are confidential and:

2-54 (1) are not subject to disclosure under Chapter 552,
2-55 Government Code, or discovery, subpoena, or other means of legal
2-56 compulsion for release to any person, subject to Section
2-57 241.203(c); and

2-58 (2) may not be admitted as evidence or otherwise
2-59 disclosed in any civil, criminal, or administrative proceeding.

2-60 (b) The confidentiality protections under Subsection (a)
2-61 apply without regard to whether the information or materials are
2-62 obtained from or compiled by a hospital or an entity that has an
2-63 ownership or management interest in a hospital.

2-64 (c) The transfer of information or materials under this
2-65 subchapter is not a waiver of a privilege or protection granted
2-66 under law.

2-67 (d) Information reported by a hospital under this
2-68 subchapter and analyses, plans, records, and reports obtained,
2-69 prepared, or compiled by a hospital under this subchapter and all

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

3-9 (e) The provisions of this section regarding the
 3-10 confidentiality of information or materials compiled or reported by
 3-11 a hospital in compliance with or as authorized under this
 3-12 subchapter do not restrict access, to the extent authorized by law,
 3-13 by the patient or the patient's legally authorized representative
 3-14 to records of the patient's medical diagnosis or treatment or to
 3-15 other primary health records.

3-16 Sec. 241.205. ANNUAL DEPARTMENT SUMMARY. The department
 3-17 annually shall compile and make available to the public a summary of
 3-18 the events reported by hospitals as required by Section 241.202.
 3-19 The summary may contain only aggregated information and may not
 3-20 directly or indirectly identify:

3-21 (1) a specific hospital or group of hospitals;
 3-22 (2) an individual; or
 3-23 (3) a specific reported event or the circumstances or
 3-24 individuals surrounding the event.

3-25 Sec. 241.206. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.
 3-26 (a) A hospital shall provide to the department at least one report
 3-27 of the best practices and safety measures related to a reported
 3-28 event.

3-29 (b) A hospital may provide to the department a report of
 3-30 other best practices and the safety measures, such as marking a
 3-31 surgical site and involving the patient in the marking process,
 3-32 that are effective in improving patient safety.

3-33 (c) The department by rule may prescribe the form and format
 3-34 of a best practices report. The department may not require a best
 3-35 practices report to exceed one page in length. The department shall
 3-36 accept, in lieu of a report in the form and format prescribed by the
 3-37 department, a copy of a report submitted by a hospital to a patient
 3-38 safety organization.

3-39 (d) The department periodically shall:
 3-40 (1) review the best practices reports;
 3-41 (2) compile a summary of the best practices reports
 3-42 determined by the department to be effective and recommended as
 3-43 best practices; and
 3-44 (3) make the summary available to the public.

3-45 (e) The summary may not directly or indirectly identify:
 3-46 (1) a specific hospital or group of hospitals;
 3-47 (2) an individual; or
 3-48 (3) a specific reported event or the circumstances or
 3-49 individuals surrounding the event.

3-50 Sec. 241.207. PROHIBITION. The hospital annual report,
 3-51 the department summary, or the best practices report may not
 3-52 distinguish between an event that occurred at an outpatient
 3-53 facility owned or operated by the hospital and an event that
 3-54 occurred at a hospital facility.

3-55 Sec. 241.208. REPORT TO LEGISLATURE. (a) Not later than
 3-56 December 1, 2006, the commissioner of public health shall:

3-57 (1) evaluate the patient safety program established
 3-58 under this subchapter; and
 3-59 (2) report the results of the evaluation and make
 3-60 recommendations to the legislature.

3-61 (b) The commissioner of public health shall conduct the
 3-62 evaluation in consultation with hospitals licensed under this
 3-63 chapter.

3-64 (c) The evaluation must address:
 3-65 (1) the degree to which the department was able to
 3-66 detect statewide trends in errors based on the types and numbers of
 3-67 events reported;
 3-68 (2) the degree to which the statewide summaries of
 3-69 events compiled by the department were accessed by the public;

4-1 (3) the effectiveness of the department's best
4-2 practices summary in improving hospital patient care; and

4-3 (4) the impact of national studies on the
4-4 effectiveness of state or federal systems of reporting medical
4-5 errors.

4-6 Sec. 241.209. GIFTS, GRANTS, AND DONATIONS. The department
4-7 may accept and administer a gift, grant, or donation from any source
4-8 to carry out the purposes of this subchapter.

4-9 Sec. 241.210. EXPIRATION. Unless continued in existence,
4-10 this subchapter expires September 1, 2007.

4-11 SECTION 3. Sections 243.001 through 243.016, Health and
4-12 Safety Code, are designated as Subchapter A, Chapter 243, Health
4-13 and Safety Code, and a heading to Subchapter A is added to read as
4-14 follows:

4-15 SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

4-16 SECTION 4. Chapter 243, Health and Safety Code, is amended
4-17 by adding Subchapter B to read as follows:

4-18 SUBCHAPTER B. PATIENT SAFETY PROGRAM

4-19 Sec. 243.051. DUTIES OF DEPARTMENT. The department shall
4-20 develop a patient safety program for ambulatory surgical centers.
4-21 The program must:

4-22 (1) be administered by the ambulatory surgical center
4-23 licensing program within the department; and

4-24 (2) serve as an information clearinghouse for
4-25 ambulatory surgical centers concerning best practices and quality
4-26 improvement strategies.

4-27 Sec. 243.052. ANNUAL REPORT. (a) On renewal of a license
4-28 under this chapter, an ambulatory surgical center shall submit to
4-29 the department an annual report that lists the number of
4-30 occurrences at the center or at an outpatient facility owned or
4-31 operated by the center of each of the following events during the
4-32 preceding year:

4-33 (1) a medication error resulting in a patient's
4-34 unanticipated death or major permanent loss of bodily function in
4-35 circumstances unrelated to the natural course of the illness or
4-36 underlying condition of the patient;

4-37 (2) the suicide of a patient;

4-38 (3) the sexual assault of a patient during treatment
4-39 or while the patient was on the premises of the center or facility;

4-40 (4) a hemolytic transfusion reaction in a patient
4-41 resulting from the administration of blood or blood products with
4-42 major blood group incompatibilities;

4-43 (5) a surgical procedure on the wrong patient or on the
4-44 wrong body part of a patient;

4-45 (6) a foreign object accidentally left in a patient
4-46 during a procedure; and

4-47 (7) a patient death or serious disability associated
4-48 with the use or function of a device designed for patient care that
4-49 is used or functions other than as intended.

4-50 (b) The department may not require the annual report to
4-51 include any information other than the number of occurrences of
4-52 each event listed in Subsection (a).

4-53 Sec. 243.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In
4-54 this section, "root cause analysis" means the process that
4-55 identifies basic or causal factors underlying a variation in
4-56 performance leading to an event listed in Section 243.052 and that:

4-57 (1) focuses primarily on systems and processes;

4-58 (2) progresses from special causes in clinical
4-59 processes to common causes in organizational processes; and

4-60 (3) identifies potential improvements in processes or
4-61 systems.

4-62 (b) Not later than the 45th day after an ambulatory surgical
4-63 center becomes aware of the occurrence of an event listed in Section
4-64 243.052, the center shall:

4-65 (1) conduct a root cause analysis of the event; and

4-66 (2) develop an action plan that identifies strategies
4-67 to reduce the risk of a similar event occurring in the future.

4-68 (c) The department may review a root cause analysis or
4-69 action plan related to an event listed in Section 243.052 during a

5-1 survey, inspection, or investigation of an ambulatory surgical
 5-2 center.

5-3 (d) The department may not require a root cause analysis or
 5-4 action plan to be submitted to the department.

5-5 (e) The department or an employee or agent of the department
 5-6 may not in any form, format, or manner remove, copy, reproduce,
 5-7 redact, or dictate from any part of a root cause analysis or action
 5-8 plan.

5-9 Sec. 243.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)
 5-10 Except as provided by Sections 243.055 and 243.056, all information
 5-11 and materials obtained or compiled by the department under this
 5-12 subchapter or compiled by an ambulatory surgical center under this
 5-13 subchapter, including the root cause analysis, annual report of an
 5-14 ambulatory surgical center, action plan, best practices report,
 5-15 department summary, and all related information and materials, are
 5-16 confidential and:

5-17 (1) are not subject to disclosure under Chapter 552,
 5-18 Government Code, or discovery, subpoena, or other means of legal
 5-19 compulsion for release to any person, subject to Section
 5-20 243.053(c); and

5-21 (2) may not be admitted as evidence or otherwise
 5-22 disclosed in any civil, criminal, or administrative proceeding.

5-23 (b) The confidentiality protections under Subsection (a)
 5-24 apply without regard to whether the information or materials are
 5-25 obtained from or compiled by an ambulatory surgical center or an
 5-26 entity that has an ownership or management interest in an
 5-27 ambulatory surgical center.

5-28 (c) The transfer of information or materials under this
 5-29 subchapter is not a waiver of a privilege or protection granted
 5-30 under law.

5-31 (d) Information reported by an ambulatory surgical center
 5-32 under this subchapter and analyses, plans, records, and reports
 5-33 obtained, prepared, or compiled by the center under this subchapter
 5-34 and all related information and materials are subject to an
 5-35 absolute privilege and may not be used in any form against the
 5-36 center or the center's agents, employees, partners, assignees, or
 5-37 independent contractors in any civil, criminal, or administrative
 5-38 proceeding, regardless of the means by which a person came into
 5-39 possession of the information, analysis, plan, record, report, or
 5-40 related information or material. A court shall enforce this
 5-41 privilege for all matters covered by this subsection.

5-42 (e) The provisions of this section regarding the
 5-43 confidentiality of information or materials compiled or reported by
 5-44 an ambulatory surgical center in compliance with or as authorized
 5-45 under this subchapter do not restrict access, to the extent
 5-46 authorized by law, by the patient or the patient's legally
 5-47 authorized representative to records of the patient's medical
 5-48 diagnosis or treatment or to other primary health records.

5-49 Sec. 243.055. ANNUAL DEPARTMENT SUMMARY. The department
 5-50 annually shall compile and make available to the public a summary of
 5-51 the events reported by ambulatory surgical centers as required by
 5-52 Section 243.052. The summary may contain only aggregated
 5-53 information and may not directly or indirectly identify:

5-54 (1) a specific ambulatory surgical center or group of
 5-55 centers;

5-56 (2) an individual; or

5-57 (3) a specific reported event or the circumstances or
 5-58 individuals surrounding the event.

5-59 Sec. 243.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.
 5-60 (a) An ambulatory surgical center shall provide to the department
 5-61 at least one report of best practices and safety measures related to
 5-62 a reported event.

5-63 (b) An ambulatory surgical center may provide to the
 5-64 department a report of other best practices and the safety
 5-65 measures, such as marking a surgical site and involving the patient
 5-66 in the marking process, that are effective in improving patient
 5-67 safety.

5-68 (c) The department by rule may prescribe the form and format
 5-69 of a best practices report. The department may not require a best

6-1 practices report to exceed one page in length. The department shall
6-2 accept, in lieu of a report in the form and format prescribed by the
6-3 department, a copy of a report submitted by an ambulatory surgical
6-4 center to a patient safety organization.

6-5 (d) The department periodically shall:
6-6 (1) review the best practices reports;
6-7 (2) compile a summary of the best practices reports
6-8 determined by the department to be effective and recommended as
6-9 best practices; and
6-10 (3) make the summary available to the public.

6-11 (e) The summary may not directly or indirectly identify:
6-12 (1) a specific ambulatory surgical center or group of
6-13 centers;
6-14 (2) an individual; or
6-15 (3) a specific reported event or the circumstances or
6-16 individuals surrounding the event.

6-17 Sec. 243.057. PROHIBITION. The annual report of an
6-18 ambulatory surgical center, the department summary, or the best
6-19 practices report may not distinguish between an event that occurred
6-20 at an outpatient facility owned or operated by the center and an
6-21 event that occurred at a center facility.

6-22 Sec. 243.058. REPORT TO LEGISLATURE. (a) Not later than
6-23 December 1, 2006, the commissioner of public health shall:

6-24 (1) evaluate the patient safety program established
6-25 under this subchapter; and
6-26 (2) report the results of the evaluation and make
6-27 recommendations to the legislature.

6-28 (b) The commissioner of public health shall conduct the
6-29 evaluation in consultation with ambulatory surgical centers.

6-30 (c) The evaluation must address:
6-31 (1) the degree to which the department was able to
6-32 detect statewide trends in errors based on the types and numbers of
6-33 events reported;
6-34 (2) the degree to which the statewide summaries of
6-35 events compiled by the department were accessed by the public;
6-36 (3) the effectiveness of the department's best
6-37 practices summary in improving patient care; and
6-38 (4) the impact of national studies on the
6-39 effectiveness of state or federal systems of reporting medical
6-40 errors.

6-41 Sec. 243.059. GIFTS, GRANTS, AND DONATIONS. The department
6-42 may accept and administer a gift, grant, or donation from any source
6-43 to carry out the purposes of this subchapter.

6-44 Sec. 243.060. EXPIRATION. Unless continued in existence,
6-45 this subchapter expires September 1, 2007.

6-46 SECTION 5. Sections 577.001 through 577.019, Health and
6-47 Safety Code, are designated as Subchapter A, Chapter 577, Health
6-48 and Safety Code, and a heading to Subchapter A is added to read as
6-49 follows:

6-50 SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

6-51 SECTION 6. Chapter 577, Health and Safety Code, is amended
6-52 by adding Subchapter B to read as follows:

6-53 SUBCHAPTER B. PATIENT SAFETY PROGRAM

6-54 Sec. 577.051. DUTIES OF DEPARTMENT. The department shall
6-55 develop a patient safety program for mental hospitals licensed
6-56 under Section 577.001(a). The program must:

6-57 (1) be administered by the licensing program within
6-58 the department; and
6-59 (2) serve as an information clearinghouse for
6-60 hospitals concerning best practices and quality improvement
6-61 strategies.

6-62 Sec. 577.052. ANNUAL REPORT. (a) On renewal of a license
6-63 under this chapter, a mental hospital shall submit to the
6-64 department an annual report that lists the number of occurrences at
6-65 the hospital or at an outpatient facility owned or operated by the
6-66 hospital of each of the following events during the preceding year:

6-67 (1) a medication error resulting in a patient's
6-68 unanticipated death or major permanent loss of bodily function in
6-69 circumstances unrelated to the natural course of the illness or

7-1 underlying condition of the patient;
7-2 (2) the suicide of a patient in a setting in which the
7-3 patient received care 24 hours a day;
7-4 (3) the sexual assault of a patient during treatment
7-5 or while the patient was on the premises of the hospital or
7-6 facility;
7-7 (4) a hemolytic transfusion reaction in a patient
7-8 resulting from the administration of blood or blood products with
7-9 major blood group incompatibilities; and
7-10 (5) a patient death or serious disability associated
7-11 with the use or function of a device designed for patient care that
7-12 is used or functions other than as intended.
7-13 (b) The department may not require the annual report to
7-14 include any information other than the number of occurrences of
7-15 each event listed in Subsection (a).
7-16 Sec. 577.053. ROOT CAUSE ANALYSIS AND ACTION PLAN. (a) In
7-17 this section, "root cause analysis" means the process that
7-18 identifies basic or causal factors underlying a variation in
7-19 performance leading to an event listed in Section 577.052 and that:
7-20 (1) focuses primarily on systems and processes;
7-21 (2) progresses from special causes in clinical
7-22 processes to common causes in organizational processes; and
7-23 (3) identifies potential improvements in processes or
7-24 systems.
7-25 (b) Not later than the 45th day after the date a mental
7-26 hospital becomes aware of an event listed in Section 577.052, the
7-27 hospital shall:
7-28 (1) conduct a root cause analysis of the event; and
7-29 (2) develop an action plan that identifies strategies
7-30 to reduce the risk of a similar event occurring in the future.
7-31 (c) The department may review a root cause analysis or
7-32 action plan related to an event listed in Section 577.052 during a
7-33 survey, inspection, or investigation of a mental hospital.
7-34 (d) The department may not require a root cause analysis or
7-35 action plan to be submitted to the department.
7-36 (e) The department or an employee or agent of the department
7-37 may not in any form, format, or manner remove, copy, reproduce,
7-38 redact, or dictate from all or any part of a root cause analysis or
7-39 action plan.
7-40 Sec. 577.054. CONFIDENTIALITY; ABSOLUTE PRIVILEGE. (a)
7-41 Except as provided by Sections 577.055 and 577.056, all information
7-42 and materials obtained or compiled by the department under this
7-43 subchapter or compiled by a mental hospital under this subchapter,
7-44 including the root cause analysis, annual report of the hospital,
7-45 action plan, best practices report, department summary, and all
7-46 related information and materials, are confidential and:
7-47 (1) are not subject to disclosure under Chapter 552,
7-48 Government Code, or discovery, subpoena, or other means of legal
7-49 compulsion for release to any person, subject to Section
7-50 577.053(c); and
7-51 (2) may not be admitted as evidence or otherwise
7-52 disclosed in any civil, criminal, or administrative proceeding.
7-53 (b) The confidentiality protections under Subsection (a)
7-54 apply without regard to whether the information or materials are
7-55 obtained from or compiled by a mental hospital or an entity that has
7-56 an ownership or management interest in a hospital.
7-57 (c) The transfer of information or materials under this
7-58 subchapter is not a waiver of a privilege or protection granted
7-59 under law.
7-60 (d) Information reported by a mental hospital under this
7-61 subchapter and analyses, plans, records, and reports obtained,
7-62 prepared, or compiled by a hospital under this subchapter and all
7-63 related information and materials are subject to an absolute
7-64 privilege and may not be used in any form against the hospital or
7-65 the hospital's agents, employees, partners, assignees, or
7-66 independent contractors in any civil, criminal, or administrative
7-67 proceeding, regardless of the means by which a person came into
7-68 possession of the information, analysis, plan, record, report, or
7-69 related information or material. A court shall enforce this

8-1 privilege for all matters covered by this subsection.

8-2 (e) The provisions of this section regarding the
8-3 confidentiality of information or materials compiled or reported by
8-4 a mental hospital in compliance with or as authorized under this
8-5 subchapter do not restrict access, to the extent authorized by law,
8-6 by the patient or the patient's legally authorized representative
8-7 to records of the patient's medical diagnosis or treatment or to
8-8 other primary health records.

8-9 Sec. 577.055. ANNUAL DEPARTMENT SUMMARY. The department
8-10 annually shall compile and make available to the public a summary of
8-11 the events reported by mental hospitals as required by Section
8-12 577.052. The summary may contain only aggregated information and
8-13 may not directly or indirectly identify:

- 8-14 (1) a specific mental hospital or group of hospitals;
- 8-15 (2) an individual; or
- 8-16 (3) a specific reported event or the circumstances or
8-17 individuals surrounding the event.

8-18 Sec. 577.056. BEST PRACTICES REPORT AND DEPARTMENT SUMMARY.

8-19 (a) A mental hospital shall provide to the department at least one
8-20 report of best practices and safety measures related to a reported
8-21 event.

8-22 (b) A mental hospital may provide to the department a report
8-23 of other best practices and the safety measures that are effective
8-24 in improving patient safety.

8-25 (c) The department by rule may prescribe the form and format
8-26 of a best practices report. The department may not require a best
8-27 practices report to exceed one page in length. The department shall
8-28 accept, in lieu of a report in the form and format prescribed by the
8-29 department, a copy of a report submitted by a mental hospital to a
8-30 patient safety organization.

- 8-31 (d) The department periodically shall:
- 8-32 (1) review the best practices reports;
 - 8-33 (2) compile a summary of the best practices reports
8-34 determined by the department to be effective and recommended as
8-35 best practices; and
 - 8-36 (3) make the summary available to the public.

8-37 (e) The summary may not directly or indirectly identify:

- 8-38 (1) a specific mental hospital or group of hospitals;
- 8-39 (2) an individual; or
- 8-40 (3) a specific reported event or the circumstances or
8-41 individuals surrounding the event.

8-42 Sec. 577.057. PROHIBITION. The annual report of a mental
8-43 hospital, the department summary, or the best practices report may
8-44 not distinguish between an event that occurred at an outpatient
8-45 facility owned or operated by the hospital and an event that
8-46 occurred at a hospital facility.

8-47 Sec. 577.058. REPORT TO LEGISLATURE. (a) Not later than
8-48 December 1, 2006, the commissioner of public health shall:

- 8-49 (1) evaluate the patient safety program established
8-50 under this subchapter; and
- 8-51 (2) report the results of the evaluation and make
8-52 recommendations to the legislature.

8-53 (b) The commissioner of public health shall conduct the
8-54 evaluation in consultation with mental hospitals licensed under
8-55 this chapter.

- 8-56 (c) The evaluation must address:
- 8-57 (1) the degree to which the department was able to
8-58 detect statewide trends in errors based on the types and numbers of
8-59 events reported;
 - 8-60 (2) the degree to which the statewide summaries of
8-61 events compiled by the department were accessed by the public;
 - 8-62 (3) the effectiveness of the department's best
8-63 practices summary in improving hospital patient care; and
 - 8-64 (4) the impact of national studies on the
8-65 effectiveness of state or federal systems of reporting medical
8-66 errors.

8-67 Sec. 577.059. GIFTS, GRANTS, AND DONATIONS. The department
8-68 may accept and administer a gift, grant, or donation from any source
8-69 to carry out the purposes of this subchapter.

9-1 Sec. 577.060. ADMINISTRATIVE PENALTY. (a) The department
9-2 may assess an administrative penalty against a person who violates
9-3 this subchapter or a rule adopted under this subchapter.

9-4 (b) The penalty may not exceed \$1,000 for each violation.
9-5 Each day of a continuing violation constitutes a separate
9-6 violation.

9-7 (c) In determining the amount of an administrative penalty
9-8 assessed under this section, the department shall consider:

9-9 (1) the seriousness of the violation;

9-10 (2) the history of previous violations;

9-11 (3) the amount necessary to deter future violations;

9-12 (4) efforts made to correct the violation;

9-13 (5) any hazard posed to the public health and safety by
9-14 the violation; and

9-15 (6) any other matters that justice may require.

9-16 (d) All proceedings for the assessment of an administrative
9-17 penalty under this subchapter are considered to be contested cases
9-18 under Chapter 2001, Government Code.

9-19 Sec. 577.061. NOTICE; REQUEST FOR HEARING. (a) If, after
9-20 investigation of a possible violation and the facts surrounding
9-21 that possible violation, the department determines that a violation
9-22 has occurred, the department shall give written notice of the
9-23 violation to the person alleged to have committed the violation.
9-24 The notice shall include:

9-25 (1) a brief summary of the alleged violation;

9-26 (2) a statement of the amount of the proposed penalty
9-27 based on the factors set forth in Section 577.060(c); and

9-28 (3) a statement of the person's right to a hearing on
9-29 the occurrence of the violation, the amount of the penalty, or both
9-30 the occurrence of the violation and the amount of the penalty.

9-31 (b) Not later than the 20th day after the date on which the
9-32 notice is received, the person notified may accept the
9-33 determination of the department made under this section, including
9-34 the proposed penalty, or make a written request for a hearing on
9-35 that determination.

9-36 (c) If the person notified of the violation accepts the
9-37 determination of the department, the commissioner of public health
9-38 or the commissioner's designee shall issue an order approving the
9-39 determination and ordering that the person pay the proposed
9-40 penalty.

9-41 Sec. 577.062. HEARING; ORDER. (a) If the person notified
9-42 fails to respond in a timely manner to the notice under Section
9-43 577.061(b) or if the person requests a hearing, the department
9-44 shall:

9-45 (1) set a hearing;

9-46 (2) give written notice of the hearing to the person;
9-47 and

9-48 (3) designate a hearings examiner to conduct the
9-49 hearing.

9-50 (b) The hearings examiner shall make findings of fact and
9-51 conclusions of law and shall promptly issue to the commissioner of
9-52 public health or the commissioner's designee a proposal for
9-53 decision as to the occurrence of the violation and a recommendation
9-54 as to the amount of the proposed penalty if a penalty is determined
9-55 to be warranted.

9-56 (c) Based on the findings of fact and conclusions of law and
9-57 the recommendations of the hearings examiner, the commissioner of
9-58 public health or the commissioner's designee by order may find that
9-59 a violation has occurred and may assess a penalty or may find that
9-60 no violation has occurred.

9-61 Sec. 577.063. NOTICE AND PAYMENT OF ADMINISTRATIVE PENALTY;
9-62 JUDICIAL REVIEW; REFUND. (a) The department shall give notice of
9-63 the order under Section 577.062(c) to the person notified. The
9-64 notice must include:

9-65 (1) separate statements of the findings of fact and
9-66 conclusions of law;

9-67 (2) the amount of any penalty assessed; and

9-68 (3) a statement of the right of the person to judicial
9-69 review of the order.

10-1 (b) Not later than the 30th day after the date on which the
 10-2 decision is final as provided by Chapter 2001, Government Code, the
 10-3 person shall:

10-4 (1) pay the penalty;
 10-5 (2) pay the penalty and file a petition for judicial
 10-6 review contesting the occurrence of the violation, the amount of
 10-7 the penalty, or both the occurrence of the violation and the amount
 10-8 of the penalty; or

10-9 (3) without paying the penalty, file a petition for
 10-10 judicial review contesting the occurrence of the violation, the
 10-11 amount of the penalty, or both the occurrence of the violation and
 10-12 the amount of the penalty.

10-13 (c) Within the 30-day period, a person who acts under
 10-14 Subsection (b)(3) may:

10-15 (1) stay enforcement of the penalty by:
 10-16 (A) paying the penalty to the court for placement
 10-17 in an escrow account; or

10-18 (B) giving to the court a supersedeas bond that
 10-19 is approved by the court for the amount of the penalty and that is
 10-20 effective until all judicial review of the order is final; or

10-21 (2) request the court to stay enforcement of the
 10-22 penalty by:

10-23 (A) filing with the court a sworn affidavit of
 10-24 the person stating that the person is financially unable to pay the
 10-25 amount of the penalty and is financially unable to give the
 10-26 supersedeas bond; and

10-27 (B) giving a copy of the affidavit to the
 10-28 department by certified mail.

10-29 (d) If the department receives a copy of an affidavit under
 10-30 Subsection (c)(2), the department may file with the court, within
 10-31 five days after the date the copy is received, a contest to the
 10-32 affidavit. The court shall hold a hearing on the facts alleged in
 10-33 the affidavit as soon as practicable and shall stay the enforcement
 10-34 of the penalty on finding that the alleged facts are true. The
 10-35 person who files an affidavit has the burden of proving that the
 10-36 person is financially unable to pay the penalty and to give a
 10-37 supersedeas bond.

10-38 (e) If the person does not pay the penalty and the
 10-39 enforcement of the penalty is not stayed, the department may refer
 10-40 the matter to the attorney general for collection of the penalty.

10-41 (f) Judicial review of the order:
 10-42 (1) is instituted by filing a petition as provided by
 10-43 Subchapter G, Chapter 2001, Government Code; and

10-44 (2) is under the substantial evidence rule.

10-45 (g) If the court sustains the occurrence of the violation,
 10-46 the court may uphold or reduce the amount of the penalty and order
 10-47 the person to pay the full or reduced amount of the penalty. If the
 10-48 court does not sustain the occurrence of the violation, the court
 10-49 shall order that no penalty is owed.

10-50 (h) When the judgment of the court becomes final, the court
 10-51 shall proceed under this subsection. If the person paid the amount
 10-52 of the penalty under Subsection (b)(2) and if that amount is reduced
 10-53 or is not upheld by the court, the court shall order that the
 10-54 department pay the appropriate amount plus accrued interest to the
 10-55 person. The rate of the interest is the rate charged on loans to
 10-56 depository institutions by the New York Federal Reserve Bank, and
 10-57 the interest shall be paid for the period beginning on the date the
 10-58 penalty was paid and ending on the date the penalty is remitted. If
 10-59 the person paid the penalty under Subsection (c)(1)(A) or gave a
 10-60 supersedeas bond under Subsection (c)(1)(A) and if the amount of
 10-61 the penalty is not upheld by the court, the court shall order the
 10-62 release of the escrow account or bond. If the person paid the
 10-63 penalty under Subsection (c)(1)(A) and the amount of the penalty is
 10-64 reduced, the court shall order that the amount of the penalty be
 10-65 paid to the department from the escrow account and that the
 10-66 remainder of the account be released. If the person gave a
 10-67 supersedeas bond and if the amount of the penalty is reduced, the
 10-68 court shall order the release of the bond after the person pays the
 10-69 amount.

11-1 Sec. 577.064. EXPIRATION. Unless continued in existence,
11-2 this subchapter expires September 1, 2007.

11-3 SECTION 7. (a) Not later than January 1, 2004, the Texas
11-4 Department of Health, using existing resources available to the
11-5 department, shall establish a patient safety program as required
11-6 under Subchapter H, Chapter 241, Health and Safety Code, as added by
11-7 this Act, under Subchapter B, Chapter 243, Health and Safety Code,
11-8 as added by this Act, and under Subchapter B, Chapter 577, Health
11-9 and Safety Code, as added by this Act.

11-10 (b) Beginning July 1, 2004, a hospital, ambulatory surgical
11-11 center, or mental hospital on renewal of a license under Chapter 241
11-12 or 243 or Section 577.001(a), Health and Safety Code, shall submit
11-13 the annual report required by Section 241.202, 243.052, or 577.052,
11-14 Health and Safety Code, as added by this Act.

11-15 SECTION 8. The expiration of Subchapter H, Chapter 241,
11-16 Health and Safety Code, as added by this Act, Subchapter B, Chapter
11-17 243, Health and Safety Code, as added by this Act, and Subchapter B,
11-18 Chapter 577, Health and Safety Code, as added by this Act, in
11-19 accordance with Sections 241.210, 243.060, and 577.064, Health and
11-20 Safety Code, as added by this Act, does not affect the
11-21 confidentiality of and privilege applicable to information and
11-22 materials or the authorized disclosure of summary reports of that
11-23 information and materials under Sections 241.204, 241.205,
11-24 241.206, 241.208, 243.054, 243.055, 243.056, 243.058, 577.054,
11-25 577.055, 577.056, and 577.058, Health and Safety Code, as added by
11-26 this Act, and these laws are continued in effect for this purpose.

11-27 SECTION 9. This Act takes effect immediately if it receives
11-28 a vote of two-thirds of all the members elected to each house, as
11-29 provided by Section 39, Article III, Texas Constitution. If this
11-30 Act does not receive the vote necessary for immediate effect, this
11-31 Act takes effect September 1, 2003.

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