By: Truitt, et al. (Senate Sponsor - Madla) H.B. No. 1614

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COMMITTEE SUBSTITUTE FOR H.B. No. 1614 By: Nelson

A BILL TO BE ENTITLED
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

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

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

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

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

(1) less than 50 beds;

(2) 50 to 99 beds;

(3) 100 to 199 beds;

(4) 200 to 399 beds; and

(5) 400 beds or more.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) focuses primarily on systems and processes;

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

(3) identifies potential improvements in processes or systems.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) a specific hospital or group of hospitals;

(2) an individual; or

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

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

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

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

(d) The department periodically shall:

(1) review the best practices reports;

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

(3) make the summary available to the public.

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

(1) a specific hospital or group of hospitals;

(2) an individual; or

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

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

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

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

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

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

(c) The evaluation must address:

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

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

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

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

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

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

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

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

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

SUBCHAPTER B. PATIENT SAFETY PROGRAM

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

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

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

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

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

(2) the suicide of a patient;

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

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

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

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

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

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

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

(1) focuses primarily on systems and processes;

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

(3) identifies potential improvements in processes or systems.

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

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

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

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

survey, inspection, or investigation of an ambulatory surgical center.

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

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

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

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

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

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

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

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

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

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

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

(2) an individual; or

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

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

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

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

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

(d) The department periodically shall:

(1) review the best practices reports;

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

(3) make the summary available to the public.

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

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

(2) an individual; or

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

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

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

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

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

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

(c) The evaluation must address:

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

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

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

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

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

Sec. 243.060. EXPIRATION. Unless continued in existence, this subchapter expires September 1, 2007.

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

SUBCHAPTER A. GENERAL PROVISIONS; LICENSING AND PENALTIES

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

SUBCHAPTER B. PATIENT SAFETY PROGRAM

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

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

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

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

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

underlying condition of the patient;

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

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

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

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

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

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

(1) focuses primarily on systems and processes;

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

(3) identifies potential improvements in processes or systems.

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

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

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

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

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

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

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

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

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

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

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

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

privilege for all matters covered by this subsection.

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

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

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

(2) an individual; or

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

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

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

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

(d) The department periodically shall:

(1) review the best practices reports;

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

(3) make the summary available to the public.

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

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

(2) an individual; or

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

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

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

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

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

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

(c) The evaluation must address:

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

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

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

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

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

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

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

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

(1) the seriousness of the violation;

(2) the history of previous violations;

(3) the amount necessary to deter future violations;

(4) efforts made to correct the violation;

(5) any hazard posed to the public health and safety by the violation; and

(6) any other matters that justice may require.

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

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

(1) a brief summary of the alleged violation;

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

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

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

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

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

(1) set a hearing;

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

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

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

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

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

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

(2) the amount of any penalty assessed; and

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

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

(1) pay the penalty;

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

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

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

(1) stay enforcement of the penalty by:

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

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

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

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

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

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

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

(f) Judicial review of the order:

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

(2) is under the substantial evidence rule.

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

(h) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty under Subsection (b)(2) and if that amount is reduced or is not upheld by the court, the court shall order that the department pay the appropriate amount plus accrued interest to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person paid the penalty under Subsection (c)(1)(A) or gave a supersedeas bond under Subsection (c)(1)(A) and if the amount of the penalty is not upheld by the court, the court shall order the release of the escrow account or bond. If the person paid the penalty under Subsection (c)(1)(A) and the amount of the penalty is reduced, the court shall order that the amount of the penalty be paid to the department from the escrow account and that the remainder of the account be released. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

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

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

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

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

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

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