

AN ACT

relating to a study regarding the impact of niche hospitals on other general hospitals, to certain reports and disclosure requirements regarding niche hospitals, and to the establishment of an advisory panel to conduct a study on the reporting of health care associated infection rates and process measures.

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

SECTION 1. Section 105.002, Occupations Code, is amended by amending Subsection (a) and adding Subsections (c) and (d) to read as follows:

(a) A health care provider commits unprofessional conduct if the health care provider, in connection with the provider's professional activities:

(1) knowingly presents or causes to be presented a false or fraudulent claim for the payment of a loss under an insurance policy; ~~or~~

(2) knowingly prepares, makes, or subscribes to any writing, with intent to present or use the writing, or to allow it to be presented or used, in support of a false or fraudulent claim under an insurance policy; or

(3) knowingly directs or requires a patient to obtain health care goods or services from a niche hospital in which the health care provider or an immediate family member of the provider has a financial interest, unless the provider:

1 (A) discloses to the patient, in writing, that
2 the provider or the provider's family member has a financial
3 interest in the niche hospital; and

4 (B) informs the patient that the patient has the
5 option of using an alternative health care facility.

6 (c) Subsection (a)(3) does not apply to a financial interest
7 in publicly available shares of a registered investment company,
8 such as a mutual fund, that owns publicly traded equity securities
9 or debt obligations issued by a niche hospital or an entity that
10 owns the niche hospital.

11 (d) In this section:

12 (1) "Diagnosis-related group" means the
13 classification system mandated by Medicare regulations for
14 reimbursement purposes that groups patients according to principal
15 diagnosis, presence of a surgical procedure, age, presence or
16 absence of significant complications, and other relevant criteria.

17 (2) "Niche hospital" means a hospital that:

18 (A) classifies at least two-thirds of the
19 hospital's Medicare patients or, if data is available, all
20 patients:

21 (i) in not more than two major
22 diagnosis-related groups; or

23 (ii) in surgical diagnosis-related groups;

24 (B) specializes in one or more of the following
25 areas:

26 (i) cardiac;

27 (ii) orthopedics;

1 (iii) surgery; or

2 (iv) women's health; and

3 (C) is not:

4 (i) a public hospital;

5 (ii) a hospital for which the majority of
6 inpatient claims are for major diagnosis-related groups relating to
7 rehabilitation, psychiatry, alcohol and drug treatment, or
8 children or newborns; or

9 (iii) a hospital with fewer than 10 claims
10 per bed per year.

11 SECTION 2. Subchapter B, Chapter 162, Occupations Code, is
12 amended by adding Section 162.052 to read as follows:

13 Sec. 162.052. NOTICE OF CERTAIN OWNERSHIP INTERESTS.

14 (a) In this section, "niche hospital" has the meaning assigned by
15 Section 105.002.

16 (b) A physician shall notify the Department of State Health
17 Services of any ownership interest held by the physician in a niche
18 hospital.

19 (c) Subsection (b) does not apply to an ownership interest
20 in publicly available shares of a registered investment company,
21 such as a mutual fund, that owns publicly traded equity securities
22 or debt obligations issued by a niche hospital or an entity that
23 owns the niche hospital.

24 (d) The board, in consultation with the Department of State
25 Health Services, shall adopt rules governing the form and content
26 of the notice required by Subsection (b).

27 SECTION 3. Subtitle D, Title 2, Health and Safety Code, is

1 amended by adding Chapter 96 to read as follows:

2 CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE

3 AND PROCESS MEASURE REPORTING

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 96.001. DEFINITIONS. (a) In this chapter:

6 (1) "Advisory panel" means the Advisory Panel on
7 Health Care Associated Infections.

8 (2) "Commissioner" means the commissioner of state
9 health services.

10 (3) "Department" means the Department of State Health
11 Services.

12 (4) "Health care associated infection" means a
13 localized or symptomatic condition resulting from an adverse
14 reaction to an infectious agent or its toxins to which a patient is
15 exposed in the course of health care delivery.

16 (5) "Health care facility" means a hospital licensed
17 under Chapter 241 or an ambulatory surgical center licensed under
18 Chapter 243.

19 (6) "Infection rate" means the number of health care
20 associated infections at a health care facility divided by a
21 numerical measure over time of the population at risk for
22 contracting the infection.

23 (7) "Process measure" means a measure of a health care
24 facility's compliance with recommended infection control
25 practices.

26 (b) The advisory panel may modify or define the term
27 "infection rate" as necessary to accomplish the purposes of this

1 chapter.

2 Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110,
3 Government Code, does not apply to the advisory panel created under
4 Subchapter B.

5 Sec. 96.003. EXPIRATION. This chapter expires January 1,
6 2007.

7 [Sections 96.004-96.050 reserved for expansion]

8 SUBCHAPTER B. ADVISORY PANEL ON

9 HEALTH CARE ASSOCIATED INFECTIONS

10 Sec. 96.051. ESTABLISHMENT. The commissioner shall
11 establish the Advisory Panel on Health Care Associated Infections
12 within the regulatory licensing unit of the health care quality
13 section of the department.

14 Sec. 96.052. MEMBERSHIP. The advisory panel is composed of
15 14 members as follows:

16 (1) two infection control practitioner members who:

17 (A) are certified by the Certification Board of
18 Infection Control and Epidemiology; and

19 (B) are practicing in hospitals in this state, at
20 least one of which must be a rural hospital;

21 (2) two infection control practitioner members who:

22 (A) are certified by the Certification Board of
23 Infection Control and Epidemiology; and

24 (B) are nurses licensed to engage in professional
25 nursing under Chapter 301, Occupations Code;

26 (3) three board-certified or board-eligible physician
27 members who:

1 (A) are licensed to practice medicine in this
2 state under Chapter 155, Occupations Code, at least two of whom have
3 active medical staff privileges at a hospital in this state;

4 (B) are active members of the Society for
5 Healthcare Epidemiology of America; and

6 (C) have demonstrated expertise in infection
7 control in health care facilities;

8 (4) one member who is a chief executive officer of a
9 hospital licensed under Chapter 241;

10 (5) one member who is a chief executive officer of an
11 ambulatory surgical center licensed under Chapter 243;

12 (6) three members who:

13 (A) are department employees representing the
14 department in epidemiology and the licensing of hospitals or
15 ambulatory surgical centers; and

16 (B) serve as nonvoting members of the advisory
17 panel; and

18 (7) two members who represent the public as consumers.

19 Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a
20 member of the advisory panel if the person is required to register
21 as a lobbyist under Chapter 305, Government Code, because of the
22 person's activities for compensation on behalf of a profession
23 related to health care.

24 Sec. 96.054. OFFICERS. The members of the advisory panel
25 shall elect a presiding officer and an assistant presiding officer
26 from among the members.

27 Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as

1 provided by Subsection (b), a member of the advisory panel is not
2 entitled to compensation for service on the advisory panel and is
3 not entitled to reimbursement for travel expenses.

4 (b) A member who is a representative of a state agency shall
5 be reimbursed for travel expenses incurred while conducting the
6 business of the advisory panel from the funds of the agency the
7 person represents in accordance with the General Appropriations
8 Act.

9 Sec. 96.056. VACANCY. A vacancy on the advisory panel shall
10 be filled by the commissioner.

11 Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care
12 Associated Infections is abolished January 1, 2007.

13 [Sections 96.058-96.100 reserved for expansion]

14 SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

15 Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory
16 panel, using nationally accepted measures, shall study and
17 recommend definitions and methodologies for collecting and
18 reporting evidence-based data on:

19 (1) infection rates;

20 (2) process measures; or

21 (3) both infection rates and process measures.

22 (b) In developing the recommendations described in
23 Subsection (a), the advisory panel shall consider:

24 (1) adjusting the reported infection rates to account
25 for the differences in patient populations and for factors outside
26 the control of the health care facility;

27 (2) standardizing data collection methodology and

1 reporting;

2 (3) reviewing data collection and reporting systems of
3 other entities related to infection rates, such as the National
4 Nosocomial Infections Surveillance System of the federal Centers
5 for Disease Control and Prevention;

6 (4) reviewing data collection and reporting systems of
7 other entities related to process measures, such as the Joint
8 Commission on Accreditation of Healthcare Organizations or the
9 Centers for Medicare and Medicaid Services;

10 (5) maximizing the efficient use of the resources
11 required for health care facilities to conduct required
12 surveillance and reporting;

13 (6) recognizing the potential unintended consequences
14 of public reporting that is poorly designed or executed and that may
15 diminish the overall quality of this state's health care or mislead
16 or fail to protect health care consumers who use the data; and

17 (7) providing additional benefits to health care
18 consumers.

19 Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than
20 November 1, 2006, the commissioner shall file a report with the
21 presiding officer of each house of the legislature on the advisory
22 panel's recommendations for legislation regarding the collection
23 and reporting of infection rates, process measures, or both.

24 (b) The report shall include a recommendation that the
25 legislation set September 1, 2007, as the date for hospitals and
26 ambulatory surgical centers to comply with the legislation.

27 SECTION 4. Section 108.011, Health and Safety Code, is

1 amended by adding Subsections (c-1) and (c-2) to read as follows:

2 (c-1) The council shall use public use data to prepare and
3 issue reports that provide information for review and analysis by
4 the Health and Human Services Commission relating to services that
5 are provided in a niche hospital, as defined by Section 105.002,
6 Occupations Code, and that are provided by a physician with an
7 ownership interest in the niche hospital.

8 (c-2) Subsection (c-1) does not apply to an ownership
9 interest in publicly available shares of a registered investment
10 company, such as a mutual fund, that owns publicly traded equity
11 securities or debt obligations issued by a niche hospital or an
12 entity that owns the niche hospital.

13 SECTION 5. (a) In this section, "niche hospital" has the
14 meaning assigned by Section 105.002, Occupations Code.

15 (b) The Department of State Health Services shall conduct a
16 study regarding the impact of niche hospitals on the financial
17 viability of other general hospitals located in this state.

18 (c) In conducting the study, the Department of State Health
19 Services shall evaluate:

20 (1) the number of niche hospitals currently operating
21 in this state;

22 (2) the number of niche hospitals in this state that
23 are currently under construction or in the planning phase of
24 construction;

25 (3) the location of each niche hospital and its
26 proximity to other general hospitals;

27 (4) the financial impact of niche hospitals on other

1 general hospitals;

2 (5) the referral patterns of physicians with an
3 ownership interest in a niche hospital as compared to the referral
4 patterns of physicians with privileges at a niche hospital who do
5 not have an ownership interest in the niche hospital; and

6 (6) the range of services provided by niche hospitals
7 in this state, with particular emphasis on the provision of
8 emergency and charity care services.

9 (d) Not later than December 1, 2006, the Department of State
10 Health Services shall submit a report to the legislature regarding
11 the results of the study conducted under this section.

12 (e) This section expires September 1, 2007.

13 SECTION 6. Section 105.002, Occupations Code, as amended by
14 this Act, applies only to conduct that occurs on or after the
15 effective date of this Act. Conduct that occurs before the
16 effective date of this Act is governed by the law as it existed
17 immediately before the effective date of this Act, and that law is
18 continued in effect for that purpose.

19 SECTION 7. As soon as practicable after the effective date
20 of this Act, the commissioner of the Department of State Health
21 Services shall appoint members to the Advisory Panel on Health Care
22 Associated Infections as required by Chapter 96, Health and Safety
23 Code, as added by this Act.

24 SECTION 8. This Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 872 passed the Senate on April 12, 2005, by the following vote: Yeas 30, Nays 0, one present not voting; May 27, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2005, House granted request of the Senate; May 28, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 872 passed the House, with amendments, on May 23, 2005, by a non-record vote; May 28, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by the following vote: Yeas 138, Nays 2, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor