

BILL ANALYSIS

C.S.S.B. 288
By: Nelson
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As directed by SB 872 in the 79th session of the Texas Legislature, the Department of State Health Services established a 14-member advisory panel to study and make recommendations for the collecting and reporting of health care-associated infections (HAI). The advisory panel was appointed in 2005 by the commissioner of state health services and is comprised of consumers, infection control professionals and health care facility leaders. The HAI panel met nine times from November 2005 to October 2006. By consensus, the panel agreed on eight key findings. The recommendations and key findings of the advisory panel on healthcare-associated infections were submitted to the Governor by the commissioner of state health services in 2006. CSSB 288 incorporates a number of the recommendations from the hospital acquired infections report.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS 1 and 3 of this bill.

ANALYSIS

CSSB 288 amends the Health and Safety Code by adding Chapter 98 on the Reporting of Health Care-Associated Infections (chapter). The bill requires the commissioner of the Department of State Health Services (commissioner) to establish the Advisory Panel on Health Care-Associated Infections (advisory panel) within the infectious disease surveillance and epidemiology branch of the Department of State Health Services (department) to guide the implementation, development, maintenance, and evaluation of the reporting system. The bill sets forth the membership, qualifications for serving, officers, terms, and compensation of the advisory panel. It also provides definitions for advisory panel, ambulatory surgical center, commissioner, department, executive commissioner, general hospital, health care-associated infection, health care facility, infection rate, pediatric and adolescent hospital, reporting system, and special care setting. The bill provides that Chapter 2110, Government Code, does not apply to the advisory panel. The bill requires a vacancy on the advisory panel to be filled by the commissioner.

CSSB 288 requires the department, not later than June 1, 2008, to establish the Texas Health Care-Associated Infection Reporting System, within the infectious disease surveillance and epidemiology branch of the department. The purpose of the reporting system is to provide for the reporting of health care-associated infections by health care facilities to the department, for the public reporting regarding these infections, and for the education and training of health care facility staff by the department. The reporting system shall provide a mechanism to collect data, at state expense, through a secure electronic interface with health care facilities. The data reported by health care facilities to the department must contain sufficient patient identifying information to avoid duplicate submission of records, allow the department to verify the accuracy and completeness of the data reported, and allow the department to risk adjust the facilities' infection rates. The department is required to review the infection control and reporting activities of health care facilities to ensure the data provided by facilities is valid and does not have unusual data patterns or trends that suggest implausible infection rates.

The bill requires a health care facility and a pediatric and adolescent hospital to report the incidence of surgical site infections for certain procedures. A health care facility that does not perform at least an average of 50 procedures per month of the reportable procedures must report the infections for the three most frequently performed surgical procedures, based on a specified list. A general hospital is required to report the incidences of laboratory-confirmed central line-associated primary bloodstream infections occurring in any special care setting in the hospital

and respiratory syncytial virus occurring in any pediatric inpatient unit in the hospital. The department shall ensure that the health care-associated infections a health care facility is required to report under this section have the meanings assigned by the federal Centers for Disease Control and Prevention. Based on recommendations of the advisory panel, the executive commissioner of Health and Human Services Commission (executive commissioner), by rule, may modify the list of reportable procedures, and in consultation with the advisory panel, shall establish the frequency of reporting, providing it is not more frequently than quarterly. The modifications must be based on changes in reporting guidelines and in definitions established by the federal Centers for Disease Control and Prevention.

CSSB 288 requires the department to compile, and make available to the public, a summary, by health care facility, of the reported infections. The summary must be risk adjusted and include a comparison of the infection rates for each facility. The bill provides the frequency, format and method of publication for the summary. The website must contain information on reporting by the public of suspected health care-associated infections to the department. The bill requires the executive commissioner, by rule, to allow a health care facility to provide written comments regarding the information contained in the summary that relates to the facility. The department shall attach the facility's comments to the public report in a certain manner. The bill establishes that the disclosure of the comments to the department does not constitute a waiver of privilege or protection under Section 98.109. Additionally, the bill authorizes the department to disclose certain information reported by health care facilities to other programs within the department for public health research or analysis purposes only, provided the research or analysis relates to health care-associated infections. The bill provides that published infection rates may not be used in a civil action to establish a standard of care applicable to a health care facility.

Except for limited exceptions, all information and materials obtained or compiled or reported by the department, or compiled or reported by a health care facility, and all related information and materials, are confidential and not subject to disclosure under the Public Information Act, discovery, or subpoena, or other means of legal compulsion for release, and may not be admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding.

The department's summary or disclosure may not contain information identifying a facility, patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific infection incident. The bill extends confidentiality protections to an entity that has an ownership or management interest in a health care facility. It provides that transfer of information or materials is not a waiver. The bill provides that the confidentiality provisions do not restrict certain access by patients or their legal representative to their records regarding medical diagnosis or treatment or to other primary health records.

The department is required to provide training and education for health care facility staff regarding the chapter. The training is to focus primarily on the implementation and management of a facility reporting mechanism, the characteristics of the reporting system, confidentiality, and legal protections.

The bill authorizes the executive commissioner to adopt rules in order for the department to implement the chapter, and prohibits the executive commissioner from adopting any rules that conflict with or duplicate any federally mandated infection reporting program or requirement.

The bill provides that a general hospital that violates Chapter 98 or a rule adopted under the chapter is subject to the enforcement provisions of Subchapter C, Chapter 241 of the Health and Safety Code, and rules adopted and enforced under that subchapter as if the hospital violated Chapter 241 or a rule adopted under that chapter. The bill provides that this enforcement does not apply to comprehensive medical rehabilitation hospitals. An ambulatory surgical center that violates Chapter 98 or a rule adopted under the chapter is subject to the enforcement provisions of Chapter 243 and rules adopted and enforced under that chapter as if the center violated Chapter 243 or a rule adopted under that chapter.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

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COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original by amending the caption from "relating to health care associated infection rates . . ." to "relating to the reporting of health care-associated infections..".

The substitute changes the title of Chapter 98 from HEALTH CARE ASSOCIATED INFECTION RATES to REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS.

The substitute modifies the original by changing the definitions for "general hospital," health care facility," "reporting system", "health care associated infection" and deleting a definition for "infection control professional."

The substitute amends the original by deleting the language that the advisory panel on health care associated infections (advisory panel) was a permanent advisory panel to guide the development of the reporting system. The substitute provides that the advisory panel is established to guide the maintenance of the reporting system. The substitute deletes the language requiring the commissioner to appoint the members of the advisory panel, changes the compensation of the panel, and increases the membership from 14 to 16 members. The substitute changes the qualifications for membership on the advisory panel, and adds two members who are professionals in quality assessment and performance improvement. The substitute provides that a member may not be an officer, employee, or paid consultant of a Texas trade association in the field of health care, and that there are two year terms for all members including officers. The substitute allows reimbursement for travel expenses, where the original provided for reimbursement for travel expenses of a member who was a representative of a state agency.

The following provisions in the original are deleted in the substitute: requiring the advisory panel to meet at a certain time; requiring the department to provide certain assistance; requiring the panel to advise the department in regarding the development, implementation, and evaluation of the reporting system; and authorizing the panel, using existing resources, to consult with persons who have expertise in infectious diseases or infection control. It also deletes the language regarding reporting to the legislature regarding the advisory panel's recommendations.

The original created Subchapter C, REPORTING INFECTION RATE, and required a health care facility (facility), at least quarterly, to provide the infectious disease surveillance and epidemiology branch of the department with a report of the health care associated infections at the facility (report) for the period covered by the report. The substitute requires the executive commissioner, in consultation with the advisory panel, by rule to establish the frequency of required reporting by health care facilities; facilities may not be required to report more frequently than quarterly. The original required an infection control professional using methods of clinical surveillance complying with rules of the executive commissioner of the Health and Human Services Commission (executive commissioner) to identify the information included in this report. The original set forth certain information sufficient for the department to calculate risk-adjusted infection rates that are required to be included in the report.

The substitute creates Subchapter C, DUTIES OF DEPARTMENT AND ADVISORY PANEL; REPORTING SYSTEM, authorizes the executive commissioner to adopt rules for the department to implement this chapter, and prohibits the executive commissioner from adopting rules that conflict with or duplicate any federally mandated infection reporting program or requirement.

The original required the department to use existing resources to develop the Texas health care associated infection reporting system that is flexible and can gather data through electronic communications and review infection control and reporting activities of health care facilities to ensure that valid data is being supplied and to identify unusual trends.

The substitute requires the department, not later than June 1, 2008, to establish the Texas Health Care-Associated Infection Reporting System, within the infectious disease surveillance and epidemiology branch of the department, and sets forth the purpose.

The substitute requires the department to provide a mechanism to collect data, at state expense, through a secure electronic interface with health care facilities. The substitute provides that the data reported by health care facilities to the department must contain certain identifying information, avoid duplicate submission of records, allow the department to verify the accuracy and completeness of the data reported, and allow the department to risk adjust the facilities' infection rates. The substitute requires the department to review the infection control and reporting activities of health care facilities to ensure the data is valid, and does not have certain unusual data patterns or trends.

The substitute requires a health care facility and a pediatric and adolescent hospital to report to the department the incidence of surgical site infections occurring in certain procedures. The substitute deletes the requirement to include in the report certain infections identified through post-discharge surveillance. The substitute includes vascular procedures in the list of reported procedures. The original included other vascular procedures specified by department rule in the list of reported procedures. The substitute excludes thoracic cardiac procedures from the list of cardiac procedures reported by a pediatric and adolescent hospital. The original excluded thoracic procedures from the list of cardiac procedures reported by a pediatric and adolescent hospital. The department is required to ensure that the health care-associated infections a health care facility is required to report have certain meanings. The substitute provides that in consultation with the advisory panel, the executive commissioner by rule, is required to establish the frequency of reporting by certain health care facilities, and may not be required to report more frequently than quarterly. The substitute deletes the requirement that health care facilities report sufficient information for the department to calculate infection rates for any other surgical site infection.

The original required certain medical facilities performing less than 50 procedures listed to report other surgical site infection data, based on procedures specified by the federal Centers for Disease Control and Prevention's National Healthcare Safety Network or its successor. The substitute provides that a health care facility that does not perform at least an average of 50 procedures per month of certain procedures is not required to comply with the specified reporting requirements, but instead shall report to the department the surgical site infections relating to the three surgical procedures most frequently performed at the facility, based on the list of certain surgical procedures.

The original required the executive commissioner and the department by rule to phase into the report certain federal information; authorized the executive commissioner and the department to exclude or include certain procedures; required the executive commissioner to ensure that the infections that a health care facility is required to report have certain meanings; and prohibited a health care facility from using hospital discharge diagnosis codes to establish certain information that must be reported. The substitute provides that, based on recommendations of the advisory panel, the executive commissioner of HHSC, by rule, may modify the list of certain reportable procedures. The modifications must be based on changes in certain federal reporting guidelines and definitions.

The original required the department to release the risk adjusted infection rate for certain infections in facilities required to submit a report on its Internet website and in a written report at least annually. The substitute requires the department to compile and make available to the public a summary, by health care facility, of the reported infections. The summary must be risk adjusted and include a comparison of the infections rates for each facility. The substitute provides the frequency, format and method of publication for the summary, and provides the website must contain a statement informing the public of the option to report suspected health care-associated infections to the department. The substitute requires the executive commissioner, by rule, to allow a health care facility to provide certain written comments and requires the department to attach the facility's comments to the public report in a certain manner.

The original required the department to provide training for infection control professionals regarding the reporting system. The substitute requires the department to provide certain education and training for health care facility staff and provides that the training must be reasonable in scope and focus primarily on specified subjects.

The substitute deletes language in the original that prohibited a health care facility from retaliating against an employee for reporting required information to the department and provides that an employee can be fired for reasons other than retaliation.

The substitute establishes that the disclosure of the comments to the department by a health care facility regarding information contained in the departmental summary that relates to the facility does not constitute a waiver of certain privileges or protections.

The substitute authorizes the department to disclose certain information reported by health care facilities under Sec's. 98.103 or 98.104 to other programs within the department for certain public health research or analysis purposes. The original authorized the department to disclose information reported by health care facilities "under this chapter."

The substitute prohibits a department summary or disclosure from containing information identifying certain individuals, where the original prohibited a health care facility report or department summary or disclosure from containing information identifying certain individuals.

The substitute deletes language in the original that prohibited certain information and materials from otherwise being released or made public except as provided by this chapter. The substitute also deletes language that provided that certain information and materials are subject to an absolute privilege and are prohibited from being used in any form against the facility or related persons in any legal proceeding, regardless of the means by which a person came into possession of said information and materials. The substitute deletes the requirement in the original that a court enforce this privilege for all matters covered by this subsection.

In addition to deleting language that prohibits a "health care facility report" from containing certain identifying information, the substitute deletes language in the original that provided that the reports, records, and information obtained under this chapter are for the confidential use of the department and the persons or entities determined necessary by the department to carry out the intent of this chapter.

The substitute deletes the language found in the original that authorized the release of medical or epidemiological information under certain conditions.

The substitute adds "reported" and deletes a "health care facility report" in the provision regarding confidentiality and privilege.

The original required the department to obtain initial reports based on data from the previous quarter and required by Chapter 98, Health and Safety Code, as added by this Act, by January 1, 2008, and to disclose the information required by Section 98.103, Health and Safety Code, as added by this Act, to the public not later than June 1, 2008. The substitute requires the department to establish the Texas Health Care-Associated Infection Reporting System not later than June 1, 2008.

The substitute establishes enforcement provisions for violations by certain hospitals and ambulatory surgical centers.