

By: Delisi, Gattis, Miller, et al.

H.B. No. 1398

Substitute the following for H.B. No. 1398:

By: Laubenberg

C.S.H.B. No. 1398

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the reporting of health care-associated infections at
3 certain health care facilities and the creation of an advisory
4 panel.

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

6 SECTION 1. Subtitle D, Title 2, Health and Safety Code, is
7 amended by adding Chapter 98 to read as follows:

8 CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 98.001. DEFINITIONS. In this chapter:

11 (1) "Advisory panel" means the Advisory Panel on
12 Health Care-Associated Infections.

13 (2) "Ambulatory surgical center" means a facility
14 licensed under Chapter 243.

15 (3) "Commissioner" means the commissioner of state
16 health services.

17 (4) "Department" means the Department of State Health
18 Services.

19 (5) "Executive commissioner" means the executive
20 commissioner of the Health and Human Services Commission.

21 (6) "General hospital" means a general hospital
22 licensed under Chapter 241 or a hospital that provides surgical or
23 obstetrical services and that is maintained or operated by this
24 state. The term does not include a comprehensive medical

1 rehabilitation hospital.

2 (7) "Health care-associated infection" means a
3 localized or symptomatic condition resulting from an adverse
4 reaction to an infectious agent or its toxins to which a patient is
5 exposed in the course of the delivery of health care to the patient.

6 (8) "Health care facility" means a general hospital or
7 an ambulatory surgical center.

8 (9) "Infection rate" means the number of health
9 care-associated infections of a particular type at a health care
10 facility divided by a numerical measure over time of the population
11 at risk for contracting the infection, unless the term is modified
12 by rule of the executive commissioner to accomplish the purposes of
13 this chapter.

14 (10) "Pediatric and adolescent hospital" has the
15 meaning assigned by Section 241.003.

16 (11) "Reporting system" means the Texas Health
17 Care-Associated Infection Reporting System.

18 (12) "Special care setting" means a unit or service of
19 a general hospital that provides treatment to inpatients who
20 require extraordinary care on a concentrated and continuous basis.
21 The term includes an adult intensive care unit, a burn intensive
22 care unit, and a critical care unit.

23 Sec. 98.002. APPLICABILITY OF OTHER LAW. Chapter 2110,
24 Government Code, does not apply to the advisory panel created under
25 Subchapter B.

26 [Sections 98.003-98.050 reserved for expansion]

1 SUBCHAPTER B. ADVISORY PANEL

2 Sec. 98.051. ESTABLISHMENT. The commissioner shall
3 establish the Advisory Panel on Health Care-Associated Infections
4 within the infectious disease surveillance and epidemiology branch
5 of the department to guide the implementation, development,
6 maintenance, and evaluation of the reporting system.

7 Sec. 98.052. MEMBERSHIP; TERM. (a) The advisory panel is
8 composed of 16 members as follows:

9 (1) two infection control professionals who:

10 (A) are certified by the Certification Board of
11 Infection Control and Epidemiology; and

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

14 (2) two infection control professionals who:

15 (A) are certified by the Certification Board of
16 Infection Control and Epidemiology; and

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

19 (3) three board-certified or board-eligible
20 physicians who:

21 (A) are licensed to practice medicine in this
22 state under Chapter 155, Occupations Code, at least two of whom have
23 active medical staff privileges at a hospital in this state and at
24 least one of whom is a pediatric infectious disease physician with
25 expertise and experience in pediatric health care epidemiology;

26 (B) are active members of the Society for
27 Healthcare Epidemiology of America; and

1 (C) have demonstrated expertise in infection
2 control in health care facilities;

3 (4) two professionals in quality assessment and
4 performance improvement, one of whom is employed by a general
5 hospital and one of whom is employed by an ambulatory surgical
6 center;

7 (5) one officer of a general hospital;

8 (6) one officer of an ambulatory surgical center;

9 (7) three nonvoting members who are department
10 employees representing the department in epidemiology and the
11 licensing of hospitals or ambulatory surgical centers; and

12 (8) two members who represent the public as consumers.

13 (b) Members of the advisory panel serve two-year terms.

14 Sec. 98.053. MEMBER ELIGIBILITY. (a) A person may not be a
15 member of the advisory panel if the person is required to register
16 as a lobbyist under Chapter 305, Government Code, because of the
17 person's activities for compensation on behalf of a profession
18 related to health care.

19 (b) A person may not be a member of the advisory panel if the
20 person is an officer, employee, or paid consultant of a Texas trade
21 association in the field of health care.

22 Sec. 98.054. OFFICERS. The members of the advisory panel
23 shall elect a presiding officer and an assistant presiding officer
24 from among the members. The officers serve two-year terms.

25 Sec. 98.055. COMPENSATION; EXPENSES. Members of the
26 advisory panel serve without compensation but are entitled to
27 reimbursement of the travel expenses incurred by the member while

1 conducting the business of the advisory panel from department
2 funds, in accordance with the General Appropriations Act.

3 Sec. 98.056. VACANCY. A vacancy on the advisory panel shall
4 be filled by the commissioner.

5 [Sections 98.057-98.100 reserved for expansion]

6 SUBCHAPTER C. DUTIES OF DEPARTMENT AND ADVISORY PANEL; REPORTING
7 SYSTEM

8 Sec. 98.101. RULEMAKING. (a) The executive commissioner
9 may adopt rules for the department to implement this chapter.

10 (b) The executive commissioner may not adopt rules that
11 conflict with or duplicate any federally mandated infection
12 reporting program or requirement.

13 Sec. 98.102. DEPARTMENTAL RESPONSIBILITIES; REPORTING
14 SYSTEM. (a) The department shall establish the Texas Health
15 Care-Associated Infection Reporting System within the infectious
16 disease surveillance and epidemiology branch of the department. The
17 purpose of the reporting system is to provide for:

18 (1) the reporting of health care-associated
19 infections by health care facilities to the department;

20 (2) the public reporting of information regarding the
21 health care-associated infections by the department; and

22 (3) the education and training of health care facility
23 staff by the department regarding this chapter.

24 (b) The reporting system shall provide a mechanism for this
25 state to collect data, at state expense, through a secure
26 electronic interface with health care facilities.

27 (c) The data reported by health care facilities to the

1 department must contain sufficient patient identifying information
2 to:

- 3 (1) avoid duplicate submission of records;
4 (2) allow the department to verify the accuracy and
5 completeness of the data reported; and
6 (3) allow the department to risk adjust the
7 facilities' infection rates.

8 (d) The department shall review the infection control and
9 reporting activities of health care facilities to ensure the data
10 provided by the facilities is valid and does not have unusual data
11 patterns or trends that suggest implausible infection rates.

12 Sec. 98.103. REPORTABLE INFECTIONS. (a) A health care
13 facility, other than a pediatric and adolescent hospital, shall
14 report to the department the incidence of surgical site infections
15 occurring in the following procedures:

- 16 (1) colon surgeries;
17 (2) hip arthroplasties;
18 (3) knee arthroplasties;
19 (4) abdominal hysterectomies;
20 (5) vaginal hysterectomies;
21 (6) coronary artery bypass grafts; and
22 (7) vascular procedures.

23 (b) A pediatric and adolescent hospital shall report the
24 incidence of surgical site infections occurring in the following
25 procedures to the department:

- 26 (1) cardiac procedures, excluding thoracic cardiac
27 procedures;

1 (2) ventriculoperitoneal shunt procedures; and

2 (3) spinal surgery with instrumentation.

3 (c) A general hospital shall report the following to the
4 department:

5 (1) the incidence of laboratory-confirmed central
6 line-associated primary bloodstream infections occurring in any
7 special care setting in the hospital; and

8 (2) the incidence of respiratory syncytial virus
9 occurring in any pediatric inpatient unit in the hospital.

10 (d) The department shall ensure that the health
11 care-associated infections a health care facility is required to
12 report under this section have the meanings assigned by the federal
13 Centers for Disease Control and Prevention.

14 Sec. 98.104. ALTERNATIVE FOR REPORTABLE SURGICAL SITE
15 INFECTIONS. A health care facility that does not perform at least
16 an average of 50 procedures per month of the procedures listed in
17 Section 98.103(a) or (b), as modified under Section 98.105, is not
18 required to comply with the reporting requirements of Section
19 98.103 but instead shall report to the department the surgical site
20 infections relating to the three surgical procedures most
21 frequently performed at the facility, based on the list of surgical
22 procedures promulgated by the federal Centers for Disease Control
23 and Prevention's National Healthcare Safety Network or its
24 successor.

25 Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the
26 recommendations of the advisory panel, the executive commissioner
27 by rule may modify in accordance with this chapter the list of

1 procedures that are reportable under Section 98.103 or 98.104. The
2 modifications must be based on changes in reporting guidelines and
3 in definitions established by the federal Centers for Disease
4 Control and Prevention.

5 Sec. 98.106. DEPARTMENTAL SUMMARY. (a) The department
6 shall compile and make available to the public a summary, by health
7 care facility, of the infections reported by facilities under
8 Sections 98.103 and 98.104.

9 (b) The departmental summary must be risk adjusted and
10 include a comparison of the risk-adjusted infection rates for each
11 health care facility in this state that is required to submit a
12 report under Sections 98.103 and 98.104.

13 (c) In consultation with the advisory panel, the department
14 shall publish the departmental summary in a format that is easy to
15 read.

16 (d) The department shall publish the departmental summary
17 at least annually and may publish the summary more frequently as the
18 department considers appropriate.

19 (e) The executive commissioner by rule shall allow a health
20 care facility to submit concise written comments regarding
21 information contained in the departmental summary that relates to
22 the facility. The department shall attach the facility's comments
23 to the public report and the comments must be in the same format as
24 the summary.

25 (f) The disclosure of written comments to the department by
26 a health care facility as provided by Subsection (e) does not
27 constitute a waiver of a privilege or protection under Section

1 98.109.

2 (g) The department shall make the departmental summary
3 available on an Internet website administered by the department and
4 may make the summary available through other formats accessible to
5 the public. The website must contain a statement informing the
6 public of the option to report suspected health care-associated
7 infections to the department.

8 Sec. 98.107. EDUCATION AND TRAINING REGARDING REPORTING
9 SYSTEM. The department shall provide education and training for
10 health care facility staff regarding this chapter. The training
11 must be reasonable in scope and focus primarily on:

12 (1) the implementation and management of a facility
13 reporting mechanism;

14 (2) characteristics of the reporting system,
15 including public reporting by the department and facility reporting
16 to the department;

17 (3) confidentiality; and

18 (4) legal protections.

19 Sec. 98.108. FREQUENCY OF REPORTING. In consultation with
20 the advisory panel, the executive commissioner by rule shall
21 establish the frequency of reporting by health care facilities
22 required under Sections 98.103 and 98.104. Facilities may not be
23 required to report more frequently than quarterly.

24 Sec. 98.109. CONFIDENTIALITY; PRIVILEGE. (a) Except as
25 provided by Sections 98.106 and 98.110, all information and
26 materials obtained or compiled or reported by the department under
27 this chapter or compiled or reported by a health care facility under

1 this chapter, and all related information and materials, are
2 confidential and:

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

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

8 (b) The confidentiality protections under Subsection (a)
9 apply without regard to whether the information or materials are
10 obtained from or compiled or reported by a health care facility or
11 an entity that has an ownership or management interest in a
12 facility.

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

16 (d) The provisions of this section regarding the
17 confidentiality of information or materials compiled or reported by
18 a health care facility in compliance with or as authorized under
19 this chapter do not restrict access, to the extent authorized by
20 law, by the patient or the patient's legally authorized
21 representative to records of the patient's medical diagnosis or
22 treatment or to other primary health records.

23 (e) A department summary or disclosure may not contain
24 information identifying a facility patient, employee, contractor,
25 volunteer, consultant, health care professional, student, or
26 trainee in connection with a specific infection incident.

27 Sec. 98.110. DISCLOSURE WITHIN DEPARTMENT.

1 Notwithstanding any other law, the department may disclose
2 information reported by health care facilities under Section 98.103
3 or 98.104 to other programs within the department for public health
4 research or analysis purposes only, provided that the research or
5 analysis relates to health care-associated infections. The
6 privilege and confidentiality provisions contained in this section
7 apply to such disclosures.

8 Sec. 98.111. CIVIL ACTION. The information publicly
9 reported by the department in the departmental summary under
10 Section 98.106 and a public report by a program of the department
11 that is based on information obtained under Section 98.110 may not
12 be used to establish a standard of care in a civil action.

13 [Sections 98.112-98.150 reserved for expansion]

14 SUBCHAPTER D. ENFORCEMENT

15 Sec. 98.151. VIOLATIONS. (a) Except as provided by
16 Subsection (b), a general hospital that violates this chapter or a
17 rule adopted under this chapter is subject to the enforcement
18 provisions of Subchapter C, Chapter 241, and rules adopted and
19 enforced under that subchapter as if the hospital violated Chapter
20 241 or a rule adopted under that chapter.

21 (b) Subsection (a) does not apply to a comprehensive medical
22 rehabilitation hospital as defined in Section 241.003.

23 (c) An ambulatory surgical center that violates this
24 chapter or a rule adopted under this chapter is subject to the
25 enforcement provisions of Chapter 243 and rules adopted and
26 enforced under that chapter as if the center violated Chapter 243 or
27 a rule adopted under that chapter.

1 SECTION 2. Not later than June 1, 2008, the Department of
2 State Health Services shall establish the Texas Health
3 Care-Associated Infection Reporting System as required under
4 Chapter 98, Health and Safety Code, as added by this Act.

5 SECTION 3. (a) As soon as practicable after the effective
6 date of this Act, the executive commissioner of the Health and Human
7 Services Commission shall adopt the rules and procedures necessary
8 to implement Chapter 98, Health and Safety Code, as added by this
9 Act.

10 (b) As soon as practicable after the effective date of this
11 Act, the commissioner of state health services shall appoint
12 members to the Advisory Panel on Health Care-Associated Infections
13 as required by Chapter 98, Health and Safety Code, as added by this
14 Act.

15 SECTION 4. This Act takes effect immediately if it receives
16 a vote of two-thirds of all the members elected to each house, as
17 provided by Section 39, Article III, Texas Constitution. If this
18 Act does not receive the vote necessary for immediate effect, this
19 Act takes effect September 1, 2007.