

By: Delisi

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; and
4 (2) allow the department to verify the accuracy and
5 completeness of the data reported.

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

- 10 (1) colon surgeries;
11 (2) hip arthroplasties;
12 (3) knee arthroplasties;
13 (4) abdominal hysterectomies;
14 (5) vaginal hysterectomies;
15 (6) coronary artery bypass grafts; and
16 (7) vascular procedures.

17 (b) A pediatric and adolescent hospital shall report the
18 incidence of surgical site infections occurring in the following
19 procedures to the department:

- 20 (1) cardiac procedures, excluding thoracic cardiac
21 procedures;
22 (2) ventriculoperitoneal shunt procedures; and
23 (3) spinal surgery with instrumentation.

24 (c) A general hospital shall report the following to the
25 department:

- 26 (1) the incidence of laboratory-confirmed central
27 line-associated primary bloodstream infections occurring in any

1 special care setting in the hospital; and

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

4 Sec. 98.104. ALTERNATIVE FOR REPORTABLE SURGICAL SITE
5 INFECTIONS. A health care facility that does not perform at least
6 an average of 50 procedures per month of the procedures listed in
7 Section 98.103(a) or (b), as modified under Section 98.105, is not
8 required to comply with the reporting requirements of Section
9 98.103 but instead shall report to the department the surgical site
10 infections relating to the three surgical procedures most
11 frequently performed at the facility, based on the list of surgical
12 procedures promulgated by the federal Centers for Disease Control
13 and Prevention's National Healthcare Safety Network or its
14 successor.

15 Sec. 98.105. REPORTING SYSTEM MODIFICATIONS. Based on the
16 recommendations of the advisory panel, the executive commissioner
17 by rule may modify the list of procedures that are reportable under
18 Section 98.103 or 98.104. The modifications must be based on
19 changes in reporting guidelines established by the federal Centers
20 for Disease Control and Prevention, the Centers for Medicare and
21 Medicaid Services, or the Agency for Healthcare Research and
22 Quality.

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

27 (b) The departmental summary must be risk adjusted and

1 include a comparison of the risk-adjusted infection rates for each
2 health care facility in this state that is required to submit a
3 report under Sections 98.103 and 98.104.

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

7 (d) The department shall publish the departmental summary
8 at least annually and may publish the summary more frequently as the
9 department considers appropriate.

10 (e) The executive commissioner by rule shall allow a health
11 care facility to submit concise written comments regarding
12 information contained in the departmental summary that relates to
13 the facility. The department shall attach the facility's comments
14 to the public report and the comments must be in the same format as
15 the summary.

16 (f) The disclosure of written comments to the department by
17 a health care facility as provided by Subsection (e) does not
18 constitute a waiver of a privilege or protection under Section
19 98.109.

20 (g) The department shall make the departmental summary
21 available on an Internet website administered by the department and
22 may make the summary available through other formats accessible to
23 the public. The website must contain a statement informing the
24 public of the option to report suspected health care-associated
25 infections to the department.

26 Sec. 98.107. EDUCATION AND TRAINING REGARDING REPORTING
27 SYSTEM. The department shall provide education and training for

1 health care facility staff regarding this chapter. The training
2 must be reasonable in scope and focus primarily on:

3 (1) the implementation and management of a facility
4 reporting mechanism;

5 (2) characteristics of the reporting system,
6 including public reporting by the department and facility reporting
7 to the department;

8 (3) confidentiality; and

9 (4) legal protections.

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

15 Sec. 98.109. CONFIDENTIALITY; PRIVILEGE. (a) Except as
16 provided by Sections 98.106 and 98.110, all information and
17 materials obtained or compiled by the department under this chapter
18 or compiled by a health care facility under this chapter, and all
19 related information and materials, are confidential and:

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

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

25 (b) The confidentiality protections under Subsection (a)
26 apply without regard to whether the information or materials are
27 obtained from or compiled by a health care facility or an entity

1 that has an ownership or management interest in a facility.

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

5 (d) Information reported by a health care facility under
6 this chapter and analyses, plans, records, and reports obtained,
7 prepared, or compiled by the facility under this chapter and all
8 related information and materials are subject to an absolute
9 privilege and may not be used in any form against the facility or
10 the facility's agents, employees, partners, assignees, or
11 independent contractors in any civil, criminal, or administrative
12 proceeding, regardless of the means by which a person came into
13 possession of the information, analysis, plan, record, report, or
14 related information or material. A court shall enforce this
15 privilege for all matters covered by this subsection.

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

1 Sec. 98.110. DISCLOSURE WITHIN DEPARTMENT.

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

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

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

18 SECTION 3. (a) As soon as practicable after the effective
19 date of this Act, the executive commissioner of the Health and Human
20 Services Commission shall adopt the rules and procedures necessary
21 to implement Chapter 98, Health and Safety Code, as added by this
22 Act.

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

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