

1-1 By: Nelson S.B. No. 288
1-2 (In the Senate - Filed January 24, 2007; January 30, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 26, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 288 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to health care associated infection rates at certain
1-11 health care facilities and the creation of an advisory panel.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle D, Title 2, Health and Safety Code, is
1-14 amended by adding Chapter 98 to read as follows:

1-15 CHAPTER 98. HEALTH CARE ASSOCIATED INFECTION RATES

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 98.001. DEFINITIONS. In this chapter:

1-18 (1) "Advisory panel" means the Advisory Panel on
1-19 Health Care Associated Infections.

1-20 (2) "Ambulatory surgical center" means a facility
1-21 licensed under Chapter 243.

1-22 (3) "Commissioner" means the commissioner of state
1-23 health services.

1-24 (4) "Department" means the Department of State Health
1-25 Services.

1-26 (5) "Executive commissioner" means the executive
1-27 commissioner of the Health and Human Services Commission.

1-28 (6) "General hospital" means a public or private
1-29 general hospital licensed under Chapter 241. The term includes a
1-30 pediatric and adolescent hospital. The term does not include
1-31 comprehensive medical rehabilitation facilities.

1-32 (7) "Health care associated infection" means a
1-33 localized or symptomatic condition resulting from an adverse
1-34 reaction to an infectious agent or its toxins to which a patient is
1-35 exposed in the course of health care delivery.

1-36 (8) "Health care facility" means:

1-37 (A) a general hospital;

1-38 (B) an ambulatory surgical center; or

1-39 (C) a state-owned or state-operated hospital
1-40 that provides acute medical or surgical services subject to
1-41 reporting requirements under this chapter.

1-42 (9) "Infection control professional" means a person:

1-43 (A) whose primary training is in nursing, medical
1-44 technology/clinical laboratory science, microbiology, public
1-45 health, or epidemiology; and

1-46 (B) who has acquired specialized training in
1-47 infection control.

1-48 (10) "Infection rate" means the number of health care
1-49 associated infections of a particular type at a health care
1-50 facility divided by a numerical measure over time of the population
1-51 at risk for contracting the infection, unless the term is modified
1-52 by rule of the executive commissioner to accomplish the purposes of
1-53 this chapter.

1-54 (11) "Pediatric and adolescent hospital" has the
1-55 meaning assigned by Section 241.003.

1-56 (12) "Reporting system" means the Texas Health Care
1-57 Associated Infection Reporting System established under Subchapter
1-58 C.

1-59 (13) "Special care setting" means a unit or service of
1-60 a general hospital that provides treatment to inpatients who
1-61 require extraordinary care on a concentrated and continuous basis.
1-62 The term includes an adult intensive care unit, a burn intensive
1-63 care unit, and a critical care unit.

2-1 Sec. 98.002. APPLICABILITY OF OTHER LAW. Chapter 2110,
 2-2 Government Code, does not apply to the advisory panel created under
 2-3 Subchapter B.

2-4 [Sections 98.003-98.050 reserved for expansion]

2-5 SUBCHAPTER B. ADVISORY PANEL

2-6 Sec. 98.051. ESTABLISHMENT. The commissioner shall
 2-7 establish the Advisory Panel on Health Care Associated Infections
 2-8 within the infectious disease surveillance and epidemiology branch
 2-9 of the department as a permanent advisory panel to guide the
 2-10 development, implementation, and evaluation of the reporting
 2-11 system.

2-12 Sec. 98.052. MEMBERSHIP; TERM. (a) The commissioner shall
 2-13 appoint the members of the advisory panel in accordance with
 2-14 Subsection (b).

2-15 (b) The advisory panel is composed of 14 members as follows:

2-16 (1) two infection control professionals who:

2-17 (A) are certified by the Certification Board of
 2-18 Infection Control and Epidemiology; and

2-19 (B) are practicing in hospitals in this state, at
 2-20 least one of which must be a rural hospital;

2-21 (2) two infection control professionals who:

2-22 (A) are certified by the Certification Board of
 2-23 Infection Control and Epidemiology; and

2-24 (B) are nurses licensed to engage in professional
 2-25 nursing under Chapter 301, Occupations Code;

2-26 (3) three board-certified or board-eligible
 2-27 physicians who:

2-28 (A) are licensed to practice medicine in this
 2-29 state under Chapter 155, Occupations Code, at least two of whom must
 2-30 have active medical staff privileges at a hospital in this state;

2-31 (B) are active members of the Society for
 2-32 Healthcare Epidemiology of America; and

2-33 (C) have demonstrated expertise in infection
 2-34 control in health care facilities;

2-35 (4) one chief executive officer of, or person with
 2-36 similar decision-making authority at, a general hospital;

2-37 (5) one chief executive officer of, or person with
 2-38 similar decision-making authority at, an ambulatory surgical
 2-39 center;

2-40 (6) three nonvoting members who are department
 2-41 employees representing the department in epidemiology and the
 2-42 licensing of hospitals or ambulatory surgical centers; and

2-43 (7) two public members who represent health care
 2-44 consumers.

2-45 (c) Members of the advisory panel serve two-year terms.

2-46 Sec. 98.053. MEMBER ELIGIBILITY. A person may not be a
 2-47 member of the advisory panel if the person is required to register
 2-48 as a lobbyist under Chapter 305, Government Code, because of the
 2-49 person's activities for compensation on behalf of a profession
 2-50 related to health care.

2-51 Sec. 98.054. OFFICERS. The members of the advisory panel
 2-52 shall elect a presiding officer and an assistant presiding officer
 2-53 from among the members.

2-54 Sec. 98.055. COMPENSATION; EXPENSES. (a) Except as
 2-55 provided by Subsection (b), a member of the advisory panel is not
 2-56 entitled to compensation for service on the advisory panel and is
 2-57 not entitled to reimbursement for travel expenses.

2-58 (b) A member who is a representative of a state agency shall
 2-59 be reimbursed for travel expenses incurred while conducting the
 2-60 business of the advisory panel from the funds of the agency the
 2-61 person represents in accordance with the General Appropriations
 2-62 Act.

2-63 Sec. 98.056. VACANCY. A vacancy on the advisory panel shall
 2-64 be filled by the commissioner.

2-65 Sec. 98.057. MEETINGS; DEPARTMENT ASSISTANCE. (a) The
 2-66 advisory panel shall meet at the call of the presiding officer or
 2-67 the commissioner.

2-68 (b) The department shall provide the advisory panel the
 2-69 assistance it needs to perform its duties.

3-1 Sec. 98.058. DUTIES. (a) The advisory panel shall advise
 3-2 the department regarding the development, implementation, and
 3-3 evaluation of the reporting system.

3-4 (b) The advisory panel, using existing resources, may
 3-5 consult with other persons who have technical or clinical expertise
 3-6 in infectious diseases or infection control.

3-7 Sec. 98.059. REPORT TO LEGISLATURE. Not later than
 3-8 November 1 of each even-numbered year, the commissioner shall file
 3-9 a report with the presiding officer of each house of the legislature
 3-10 on the advisory panel's recommendations for legislation regarding
 3-11 the collection and reporting of infection rates.

3-12 [Sections 98.060-98.100 reserved for expansion]

3-13 SUBCHAPTER C. REPORTING INFECTION RATE

3-14 Sec. 98.101. COLLECTION OF HEALTH CARE ASSOCIATED INFECTION
 3-15 DATA. (a) A health care facility at least quarterly shall submit
 3-16 to the infectious disease surveillance and epidemiology branch of
 3-17 the department a report of the health care associated infections at
 3-18 the facility for the period covered by the report. The information
 3-19 for the report must be identified by an infection control
 3-20 professional using accepted methods of clinical surveillance in
 3-21 accordance with rules of the executive commissioner.

3-22 (b) The report required by Subsection (a) must include
 3-23 patient-identified information sufficient for the department to
 3-24 calculate risk-adjusted infection rates for the following:

3-25 (1) central line-associated, laboratory-confirmed
 3-26 primary bloodstream infections in special care settings;

3-27 (2) surgical site infections identified, including
 3-28 infections identified through post-discharged surveillance, for
 3-29 the following surgical procedures performed in general hospitals
 3-30 and ambulatory surgical centers:

3-31 (A) colon surgery;
 3-32 (B) hip and knee arthroplasty;
 3-33 (C) abdominal and vaginal hysterectomy;
 3-34 (D) coronary artery bypass graft; and
 3-35 (E) other vascular procedures specified by
 3-36 department rule;

3-37 (3) health care associated respiratory syncytial
 3-38 viruses in pediatric inpatient units of general hospitals;

3-39 (4) surgical site infections identified, including
 3-40 those identified through post-discharged surveillance, for the
 3-41 following surgical procedures performed in pediatric and
 3-42 adolescent hospitals:

3-43 (A) cardiac procedures, excluding thoracic;
 3-44 (B) ventriculoperitoneal shunt procedures; and
 3-45 (C) spinal surgery with instrumentation; and

3-46 (5) any other surgical site infections, including
 3-47 those identified through post-discharged surveillance, that the
 3-48 department by rule requires a health care facility to report.

3-49 (c) An ambulatory surgical center or a general hospital,
 3-50 including a pediatric and adolescent hospital, that performs fewer
 3-51 than 50 of the surgical procedures listed in Subsections (b)(2) and
 3-52 (4) shall report surgical site infection data, including
 3-53 post-discharge surveillance data, for the three procedures most
 3-54 frequently performed at the center or hospital that are on the
 3-55 federal Centers for Disease Control and Prevention's National
 3-56 Health Safety Network list of surgical procedures.

3-57 (d) The executive commissioner and department by rule shall
 3-58 phase in for inclusion in the report required under Subsection (a)
 3-59 additional surgical site infections listed on the federal Centers
 3-60 for Disease Control and Prevention's National Health Safety Network
 3-61 list of surgical procedures. The executive commissioner and
 3-62 department may exclude a procedure or include an unlisted procedure
 3-63 as the department determines appropriate to protect the public
 3-64 health and safety or to follow federal reporting requirements.

3-65 (e) In adopting rules under this section, the executive
 3-66 commissioner shall ensure that the health care associated
 3-67 infections that a health care facility is required to report under
 3-68 this section have the meanings assigned by the federal Centers for
 3-69 Disease Control and Prevention.

4-1 (f) A health care facility may not use hospital discharge
 4-2 diagnosis codes to determine the information that must be reported
 4-3 under this section.

4-4 Sec. 98.102. REPORTING SYSTEM. The department, using
 4-5 existing resources, shall:

4-6 (1) develop the Texas Health Care Associated Infection
 4-7 Reporting System, a flexible and expandable system to collect data
 4-8 through electronic communications with health care facilities; and

4-9 (2) review infection control and reporting activities
 4-10 of health care facilities to ensure the data provided is valid and
 4-11 does not have unusual data patterns or trends that suggest
 4-12 implausible rates.

4-13 Sec. 98.103. INFORMATION AVAILABLE TO PUBLIC. The
 4-14 department, on its Internet website and in a written report, shall
 4-15 at least annually disclose to the public for each health care
 4-16 facility required to submit a report under Section 98.101 the
 4-17 risk-adjusted infection rate for:

4-18 (1) central line-associated, laboratory-confirmed
 4-19 primary bloodstream infections in special care settings;

4-20 (2) surgical site infections; and

4-21 (3) health care associated respiratory syncytial
 4-22 virus in pediatric inpatient units of general hospitals.

4-23 Sec. 98.104. TRAINING FOR INFECTION CONTROL PROFESSIONALS.
 4-24 The department shall provide training for infection control
 4-25 professionals regarding the reporting system.

4-26 Sec. 98.105. PROTECTION FOR REPORTING. (a) A health care
 4-27 facility may not retaliate against an infection control
 4-28 professional employed by or under contract with a health care
 4-29 facility for identifying information that must be submitted to the
 4-30 department under this chapter.

4-31 (b) This section does not prohibit a health care facility
 4-32 from terminating an employee for a reason other than retaliation.

4-33 Sec. 98.106. CONFIDENTIALITY; PRIVILEGE. (a) Except as
 4-34 otherwise provided by this chapter, all information and materials
 4-35 obtained or compiled by the department under this chapter or
 4-36 compiled by a health care facility under this chapter, and all
 4-37 related information and materials, are confidential and:

4-38 (1) are not subject to disclosure under Chapter 552,
 4-39 Government Code, or discovery, subpoena, or other means of legal
 4-40 compulsion for release to any person;

4-41 (2) may not be admitted as evidence or otherwise
 4-42 disclosed in any civil, criminal, or administrative proceeding; and

4-43 (3) may not otherwise be released or made public
 4-44 except as provided by this chapter.

4-45 (b) The confidentiality protections under Subsection (a)
 4-46 apply without regard to whether the information or materials are
 4-47 obtained from or compiled by a health care facility or an entity
 4-48 that has an ownership or management interest in a facility.

4-49 (c) The transfer of information or materials under this
 4-50 chapter is not a waiver of a privilege or protection granted under
 4-51 law.

4-52 (d) Information reported by a health care facility under
 4-53 this chapter and analyses, plans, records, and reports obtained,
 4-54 prepared, or compiled by the facility under this chapter and all
 4-55 related information and materials are subject to an absolute
 4-56 privilege and may not be used in any form against the facility or
 4-57 the facility's agents, employees, partners, assignees, or
 4-58 independent contractors in any civil, criminal, or administrative
 4-59 proceeding, regardless of the means by which a person came into
 4-60 possession of the information, analysis, plan, record, report, or
 4-61 related information or material. A court shall enforce this
 4-62 privilege for all matters covered by this subsection.

4-63 (e) The provisions of this section regarding the
 4-64 confidentiality of information or materials compiled or reported by
 4-65 a health care facility in compliance with or as authorized under
 4-66 this chapter do not restrict access, to the extent authorized by
 4-67 law, by the patient or the patient's legally authorized
 4-68 representative to records of the patient's medical diagnosis or
 4-69 treatment or to other primary health records.

5-1 (f) A health care facility report or department summary or
5-2 disclosure may not contain information identifying a facility
5-3 patient, employee, contractor, volunteer, consultant, health care
5-4 professional, student, or trainee in connection with a specific
5-5 infection incident.

5-6 (g) Except as provided by this chapter, the reports,
5-7 records, and information obtained under this chapter are for the
5-8 confidential use of the department and the persons or entities that
5-9 the department determines are necessary to carry out the intent of
5-10 this chapter. Medical or epidemiological information may be
5-11 released:

5-12 (1) for statistical purposes in a manner that prevents
5-13 identification of individuals or health care practitioners; or

5-14 (2) with the consent of each person identified in the
5-15 information.

5-16 Sec. 98.107. DISCLOSURE WITHIN DEPARTMENT.
5-17 Notwithstanding any other law, the department may disclose
5-18 information reported by health care facilities under this chapter
5-19 to other programs within the department for public health research
5-20 or analysis purposes only, provided that the research or analysis
5-21 relates to health care associated infections. The privilege and
5-22 confidentiality provisions contained in this chapter apply to such
5-23 disclosures.

5-24 Sec. 98.108. CIVIL ACTION. Published infection rates may
5-25 not be used in a civil action to establish a standard of care
5-26 applicable to a health care facility.

5-27 SECTION 2. (a) As soon as practicable after the effective
5-28 date of this Act, the executive commissioner of the Health and Human
5-29 Services Commission shall adopt the rules and procedures necessary
5-30 to implement Chapter 98, Health and Safety Code, as added by this
5-31 Act.

5-32 (b) The Department of State Health Services shall:

5-33 (1) require submission of the initial reports required
5-34 under Chapter 98, Health and Safety Code, as added by this Act, not
5-35 later than January 1, 2008, based on data from the previous quarter;
5-36 and

5-37 (2) disclose to the public the information required by
5-38 Section 98.103, Health and Safety Code, as added by this Act, not
5-39 later than June 1, 2008.

5-40 SECTION 3. As soon as practicable after the effective date
5-41 of this Act, the commissioner of state health services shall
5-42 appoint members to the Advisory Panel on Health Care Associated
5-43 Infections as required by Chapter 98, Health and Safety Code, as
5-44 added by this Act.

5-45 SECTION 4. This Act takes effect immediately if it receives
5-46 a vote of two-thirds of all the members elected to each house, as
5-47 provided by Section 39, Article III, Texas Constitution. If this
5-48 Act does not receive the vote necessary for immediate effect, this
5-49 Act takes effect September 1, 2007.

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