

By: Leibowitz

H.B. No. 344

A BILL TO BE ENTITLED

AN ACT

relating to reimbursement under the state Medicaid program for health care services associated with certain adverse events.

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

SECTION 1. Subchapter B, Chapter 32, Human Resources Code, is amended by adding Section 32.0312 to read as follows:

Sec. 32.0312. REIMBURSEMENT PROHIBITED FOR SERVICES ASSOCIATED WITH PREVENTABLE ADVERSE EVENTS. (a) In this section:

(1) "Health care facility" means a hospital or ambulatory surgical center.

(2) "Health care provider" means a physician or health care facility.

(3) "Infant" means a child younger than one year of age.

(4) "Serious disability" means:

(A) a physical or mental impairment that substantially limits one or more major life activities of an individual such as seeing, hearing, speaking, walking, or breathing, or a loss of a bodily function, if the impairment or loss lasts more than seven days or is still present at the time of discharge from an inpatient health care facility; or

(B) loss of a body part.

(5) "Serious injury" means a bodily injury that results in:

1           (A) death;

2           (B) permanent and serious impairment of an  
3 important bodily function; or

4           (C) permanent and significant disfigurement.

5           (b) The department may not provide reimbursement under the  
6 medical assistance program to a health care provider for a health  
7 care service provided in association with a preventable adverse  
8 event involving a recipient of medical assistance while in the  
9 provider's care, including a health care service provided as a  
10 result of or to correct the consequences of a preventable adverse  
11 event.

12           (c) For purposes of this section, a preventable adverse  
13 event is any of the following events involving a recipient of  
14 medical assistance:

15           (1) surgery performed on the wrong body part that is  
16 not consistent with the documented informed consent for that  
17 recipient, excluding a situation requiring prompt action that  
18 occurs in the course of surgery or an urgent situation that  
19 precludes obtaining informed consent;

20           (2) surgery performed on the wrong person;

21           (3) the wrong surgical procedure performed on the  
22 recipient that is not consistent with the documented informed  
23 consent for that recipient, excluding a situation requiring prompt  
24 action that occurs in the course of surgery or an urgent situation  
25 that precludes obtaining informed consent;

26           (4) the unintended retention of a foreign object in  
27 the recipient after surgery or another procedure;

1           (5) death during or immediately after surgery if the  
2 recipient would be classified as a normal, healthy patient under  
3 guidelines published by a national association of  
4 anesthesiologists;

5           (6) death or serious disability caused by the use of a  
6 contaminated drug, device, or biologic provided by a health care  
7 provider if the contamination is the result of a generally  
8 detectable contaminant in drugs, devices, or biologics regardless  
9 of the source of the contamination or product;

10           (7) death or serious disability caused by the use or  
11 function of a device during the recipient's care in which the device  
12 is used for a function other than as intended;

13           (8) death or serious disability caused by an  
14 intravascular air embolism that occurs while the recipient is  
15 receiving care in a health care facility, excluding a death  
16 associated with a neurological procedure known to present a high  
17 risk of intravascular air embolism;

18           (9) an infant being discharged to the wrong person;

19           (10) death or serious disability associated with the  
20 recipient's disappearance for more than four hours, excluding the  
21 death or serious disability of an adult recipient who has  
22 decision-making capacity;

23           (11) suicide or attempted suicide resulting in serious  
24 disability while the recipient is receiving care in a health care  
25 facility if the suicide or attempted suicide is due to the  
26 recipient's actions after admission to the facility, excluding a  
27 death resulting from a self-inflicted injury that was the reason

1 for the recipient's admission to the facility;

2 (12) death or serious disability caused by a  
3 medication error, including an error involving the wrong drug,  
4 wrong dose, wrong patient, wrong time, wrong rate, wrong  
5 preparation, or wrong route of administration;

6 (13) death or serious disability caused by a hemolytic  
7 reaction resulting from the administration of ABO- or  
8 HLA-incompatible blood or blood products;

9 (14) subject to Subsection (d), death or serious  
10 disability caused by labor or delivery in a low-risk pregnancy  
11 while the recipient is receiving care in a health care facility,  
12 including death or serious disability occurring not later than 42  
13 days after the delivery date;

14 (15) death or serious disability directly related to  
15 hypoglycemia, the onset of which occurs while the recipient is  
16 receiving care in a health care facility;

17 (16) death or serious disability, including  
18 kernicterus, caused by failure to identify and treat  
19 hyperbilirubinemia in a neonate before discharge from a health care  
20 facility;

21 (17) stage three or four pressure ulcers acquired  
22 after admission to a health care facility, excluding progression  
23 from stage two to stage three if stage two was recognized on  
24 admission;

25 (18) death or serious disability resulting from spinal  
26 manipulative therapy;

27 (19) death or serious disability caused by an electric

1 shock while the recipient is receiving care in a health care  
2 facility, excluding an event involving a planned treatment such as  
3 electric countershock;

4 (20) an incident in which a line designated for oxygen  
5 or other gas to be delivered to the recipient contains the wrong gas  
6 or is contaminated by a toxic substance;

7 (21) death or serious disability caused by a burn  
8 incurred from any source while the recipient is receiving care in a  
9 health care facility;

10 (22) death or serious disability caused by a fall  
11 while the recipient is receiving care in a health care facility;

12 (23) death or serious disability caused by the use of a  
13 restraint or bed rail while the recipient is receiving care in a  
14 health care facility;

15 (24) an instance of care for the recipient ordered or  
16 provided by an individual impersonating a physician, nurse,  
17 pharmacist, or other licensed health care professional;

18 (25) abduction of the recipient from a health care  
19 facility;

20 (26) sexual assault of the recipient within or on the  
21 grounds of a health care facility;

22 (27) death or significant injury resulting from a  
23 physical assault of the recipient that occurs within or on the  
24 grounds of a health care facility; and

25 (28) artificial insemination with the wrong donor  
26 sperm or donor egg.

27 (d) For purposes of Subsection (c)(14), the death of a

1 recipient of medical assistance resulting from pulmonary or  
2 amniotic fluid embolism, acute fatty liver of pregnancy, or  
3 cardiomyopathy during the course of labor or delivery is not  
4 considered a preventable adverse event.

5 (e) The department's refusal to reimburse a health care  
6 provider under this section does not in itself create civil  
7 liability and is not subject to discovery or admissible in any civil  
8 action against the provider.

9 SECTION 2. Not later than November 1, 2009, the executive  
10 commissioner of the Health and Human Services Commission shall  
11 adopt rules necessary to implement Section 32.0312, Human Resources  
12 Code, as added by this Act.

13 SECTION 3. Section 32.0312, Human Resources Code, as added  
14 by this Act, applies only to a preventable adverse event occurring  
15 on or after the effective date of the rules adopted by the executive  
16 commissioner of the Health and Human Services Commission under  
17 Section 2 of this Act.

18 SECTION 4. If before implementing any provision of this Act  
19 a state agency determines that a waiver or authorization from a  
20 federal agency is necessary for implementation of that provision,  
21 the agency affected by the provision shall request the waiver or  
22 authorization and may delay implementing that provision until the  
23 waiver or authorization is granted.

24 SECTION 5. This Act takes effect September 1, 2009.