By: Davis of Harris H.B. No. 3233

A BILL TO BE ENTITLED

AN ACT

relating to nonpayment of hospitals under the state Medicaid program for certain preventable adverse events and to the reporting of occurrences of those events at certain health care facilities.

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 32.02805 to read as follows:

Sec. 32.02805. NONPAYMENT OF HOSPITALS FOR PREVENTABLE ADVERSE EVENTS. (a) In this section:

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

(2) "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 a hospital; or

(B) loss of a body part.

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

(A) death;

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

(C) permanent and significant disfigurement.

(b) The department, in its adoption of reasonable rules and standards governing the determination of rates paid for inpatient hospital services on a prospective payment basis, shall assure that a hospital may not receive additional payment associated with a preventable adverse event that occurred during the recipient's hospitalization.

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

(1) surgery performed on the wrong body part;

(2) surgery performed on the wrong person;

(3) the wrong surgical procedure performed on the recipient;

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

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

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

(7) death or serious disability caused by the use or function of a device during the recipient's care in which the device

is used for a function other than as intended;

(8) death or serious disability caused by an intravascular air embolism, excluding a death associated with a neurological procedure known to present a high risk of intravascular air embolism;

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

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

(11) suicide or attempted suicide resulting in serious disability while the recipient was receiving care at the hospital if the suicide or attempted suicide was due to the recipient's actions after admission to the hospital, excluding a death resulting from a self-inflicted injury that was the reason for the recipient's admission to the hospital;

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

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

(14) death or serious disability caused by labor or delivery in a low-risk pregnancy while the recipient was receiving care at the hospital, including death or serious disability that occurred not later than 42 days after the delivery date;

(15) death or serious disability directly related to the following manifestations of poor glycemic control, the onset of which occurred while the recipient was receiving care at the hospital:

(A) diabetic ketoacidosis;

(B) nonketotic hyperosmolar coma;

(C) hypoglycemic coma;

(D) secondary diabetes with ketoacidosis; and

(E) secondary diabetes with hyperosmolarity;

(16) death or serious disability, including kernicterus, caused by failure to identify and treat hyperbilirubinemia in a neonate before discharge from the hospital;

(17) stage three or four pressure ulcers acquired after admission to the hospital;

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

(19) death or serious disability caused by an electric shock while the recipient was receiving care at the hospital, excluding an event involving a planned treatment such as electric countershock;

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

(21) death or serious disability caused by a burn incurred from any source while the recipient was receiving care at the hospital;

(22) death or serious disability caused by a fall or

trauma while the recipient was receiving care at the hospital, including death or serious disability from a fracture, dislocation, intracranial injury, or crushing injury;

(23) death or serious disability caused by the use of a restraint or bed rail while the recipient was receiving care at the hospital;

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

(25) abduction of the recipient from the hospital;

(26) sexual assault of the recipient within or on the grounds of the hospital;

(27) death or serious injury resulting from a physical assault of the recipient that occurred within or on the grounds of the hospital;

(28) artificial insemination with the wrong donor sperm or implantation with the wrong donor egg;

(29) death or serious disability caused by a urinary tract infection resulting from the insertion of a catheter by an individual health care provider;

(30) death or serious disability caused by an infection resulting from the insertion of a vascular catheter by an individual health care provider;

(31) death or serious disability caused by a surgical site infection occurring as a result of the following procedures:

(A) a coronary artery bypass graft;

(B) bariatric surgery such as laparoscopic

gastric bypass surgery, gastroenterostomy, and laparoscopic gastric restrictive surgery; and

(C) orthopedic procedures involving the spine, neck, shoulder, or elbow; and

(32) death or serious disability caused by a pulmonary embolism or deep vein thrombosis that occurred while the recipient was receiving care at the hospital following a total knee arthroplasty or hip arthroplasty.

(d) The executive commissioner of the Health and Human Services Commission may adopt rules to define additional preventable adverse events for which a hospital shall be denied additional payment under this section. In adopting rules under this subsection, the executive commissioner may consider only the same types of health care-associated adverse conditions or events for which the Medicare program will not provide additional payment under a policy adopted by the Centers for Medicare and Medicaid Services.

(e) The department's nonpayment of a hospital under this section does not in itself create civil liability and is not subject to discovery or admissible in any civil action against the hospital.

(f) A hospital may not charge a recipient of medical assistance for the hospital service for which the hospital is denied payment under this section.

(g) The executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement this section, including procedures for:

(1) identifying a preventable adverse event;

(2) verifying the occurrence of a preventable adverse event;

(3) administering denials of payment; and

(4) managing hospitals' appeals relating to denials of payment.

SECTION 2. The heading to Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND PREVENTABLE ADVERSE EVENTS

SECTION 3. Sections 98.001(1) and (11), Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(1) "Advisory panel" means the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events.

(11) "Reporting system" means the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System.

SECTION 4. Section 98.051, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

Sec. 98.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events within [~~the infectious disease surveillance and epidemiology branch of~~] the department to guide the implementation, development, maintenance, and evaluation of

the reporting system.

SECTION 5. Sections 98.102(a) and (c), Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(a) The department shall establish the Texas Health Care-Associated Infection and Preventable Adverse Events Reporting System within the [~~infectious disease surveillance and epidemiology branch of the~~] department. The purpose of the reporting system is to provide for:

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

(2) the reporting of health care-associated preventable adverse events by health care facilities to the department;

(3) the public reporting of information regarding the health care-associated infections by the department;

(4) the public reporting of information regarding health care-associated preventable adverse events by the department; and

(5) [~~(3)~~] the education and training of health care facility staff by the department regarding this chapter.

(c) The data reported by health care facilities to the department must contain sufficient patient identifying information to:

(1) avoid duplicate submission of records;

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

(3) for data reported under Section 98.103 or 98.104, allow the department to risk adjust the facilities' infection rates.

SECTION 6. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended by adding Section 98.1045 to read as follows:

Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a) In this section:

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

(2) "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.

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

(A) death;

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

(C) permanent and significant disfigurement.

(b) A health care facility shall report to the department the following preventable adverse events involving a patient at the

facility:

(1) surgery performed on the wrong body part;

(2) surgery performed on the wrong person;

(3) the wrong surgical procedure performed on the patient;

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

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

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

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

(8) death or serious disability caused by an intravascular air embolism that occurred while the patient was receiving care at the facility, excluding a death associated with a neurological procedure known to present a high risk of intravascular air embolism;

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

(10) death or serious disability associated with the patient's disappearance for more than four hours, excluding the

death or serious disability of an adult patient who has decision-making capacity;

(11) suicide or attempted suicide resulting in serious disability while the patient was receiving care at the facility if the suicide or attempted suicide was due to the patient's actions after admission to the facility, excluding a death resulting from a self-inflicted injury that was the reason for the patient's admission to the facility;

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

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

(14) death or serious disability caused by labor or delivery in a low-risk pregnancy while the patient was receiving care at the facility, including death or serious disability occurring not later than 42 days after the delivery date;

(15) death or serious disability directly related to the following manifestations of poor glycemic control, the onset of which occurred while the patient was receiving care at the facility:

(A) diabetic ketoacidosis;

(B) nonketotic hyperosmolar coma;

(C) hypoglycemic coma;

(D) secondary diabetes with ketoacidosis; and

(E) secondary diabetes with hyperosmolarity;

(16) death or serious disability, including kernicterus, caused by failure to identify and treat hyperbilirubinemia in a neonate before discharge from the facility;

(17) stage three or four pressure ulcers acquired after admission to the facility;

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

(19) death or serious disability caused by an electric shock while the patient was receiving care at the facility, excluding an event involving a planned treatment such as electric countershock;

(20) an incident in which a line designated for oxygen or other gas to be delivered to the patient contained the wrong gas or was contaminated by a toxic substance;

(21) death or serious disability caused by a burn incurred from any source while the patient was receiving care at the facility;

(22) death or serious disability caused by a fall or trauma while the patient was receiving care at the facility, including death or serious disability from a fracture, dislocation, intracranial injury, or crushing injury;

(23) death or serious disability caused by the use of a restraint or bed rail while the patient was receiving care at the facility;

(24) an instance of care for the patient ordered or provided by an individual impersonating a physician, nurse,

pharmacist, or other licensed health care professional;

(25) abduction of the patient from the facility;

(26) sexual assault of the patient within or on the grounds of the facility;

(27) death or serious injury resulting from a physical assault of the patient that occurred within or on the grounds of the facility;

(28) artificial insemination with the wrong donor sperm or implantation with the wrong donor egg;

(29) death or serious disability caused by a urinary tract infection resulting from the insertion of a catheter by an individual health care provider;

(30) death or serious disability caused by an infection resulting from the insertion of a vascular catheter by an individual health care provider;

(31) death or serious disability caused by a surgical site infection occurring as a result of the following procedures:

(A) a coronary artery bypass graft;

(B) bariatric surgery such as laparoscopic gastric bypass surgery, gastroenterostomy, and laparoscopic gastric restrictive surgery; and

(C) orthopedic procedures involving the spine, neck, shoulder, or elbow;

(32) death or serious disability caused by a pulmonary embolism or deep vein thrombosis that occurred while the patient was receiving care at the facility following a total knee arthroplasty or hip arthroplasty; and

(33) a health care-associated adverse condition or event for which the Medicare program will not provide additional payment to a health care facility under a policy adopted by the Centers for Medicare and Medicaid Services.

SECTION 7. Sections 98.106(a), (b), and (g), Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

(a) The department shall compile and make available to the public a summary, by health care facility, of:

(1) the infections reported by facilities under Sections 98.103 and 98.104; and

(2) the preventable adverse events reported by facilities under Section 98.1045.

(b) Information included in the [~~The~~] departmental summary with respect to infections reported by facilities under Sections 98.103 and 98.104 must be risk adjusted and include a comparison of the risk-adjusted infection rates for each health care facility in this state that is required to submit a report under Sections 98.103 and 98.104.

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

SECTION 8. Section 98.108, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular

Session, 2007, is amended to read as follows:

Sec. 98.108. FREQUENCY OF REPORTING. In consultation with the advisory panel, the executive commissioner by rule shall establish the frequency of reporting by health care facilities required under Sections 98.103, [~~and~~] 98.104, and 98.1045. Facilities may not be required to report more frequently than quarterly.

SECTION 9. Section 98.109(e), Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, is amended to read as follows:

(e) A department 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.

SECTION 10. Sections 98.110 and 98.111, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular Session, 2007, are amended to read as follows:

Sec. 98.110. DISCLOSURE WITHIN DEPARTMENT. Notwithstanding any other law, the department may disclose information reported by health care facilities under Section 98.103, [~~or~~] 98.104, or 98.1045 to other programs within the department for public health research or analysis purposes only, provided that the research or analysis relates to health care-associated infections or preventable adverse events. The privilege and confidentiality provisions contained in this chapter apply to such disclosures.

Sec. 98.111. CIVIL ACTION. Published infection rates or

preventable adverse events may not be used in a civil action to establish a standard of care applicable to a health care facility.

SECTION 11. (a) Not later than June 1, 2010, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 32.02805, Human Resources Code, as added by this Act.

(b) Not later than October 1, 2009, the executive commissioner of the Health and Human Services Commission shall adopt rules and procedures necessary to implement the reporting of health care-associated preventable adverse events as required under Chapter 98, Health and Safety Code, as amended by this Act.

SECTION 12. Section 32.02805, Human Resources Code, as added by this Act, applies only to a preventable adverse event occurring on or after the effective date of the rules adopted by the executive commissioner of the Health and Human Services Commission under Section 11(a) of this Act.

SECTION 13. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 14. This Act takes effect September 1, 2009.