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

A BILL TO BE ENTITLED

1	AN ACT
2	relating to nonpayment of hospitals under the state Medicaid
3	program for certain preventable adverse events and to the reporting
4	of occurrences of those events at certain health care facilities.
5	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
6	SECTION 1. Subchapter B, Chapter 32, Human Resources Code,
7	is amended by adding Section 32.02805 to read as follows:
8	Sec. 32.02805. NONPAYMENT OF HOSPITALS FOR PREVENTABLE
9	ADVERSE EVENTS. (a) In this section:
10	(1) "Infant" means a child younger than one year of
11	age.
12	(2) "Serious disability" means:
13	(A) a physical or mental impairment that
14	substantially limits one or more major life activities of ar
15	individual such as seeing, hearing, speaking, walking, or
16	breathing, or a loss of a bodily function, if the impairment or loss
17	lasts more than seven days or is still present at the time of
18	discharge from a hospital; or
19	(B) loss of a body part.
20	(3) "Serious injury" means a bodily injury that
21	results in:
22	(A) death;
23	(B) permanent and serious impairment of ar
24	important bodily function; or

Τ	(C) permanent and significant disfigurement.
2	(b) The department, in its adoption of reasonable rules and
3	standards governing the determination of rates paid for inpatient
4	hospital services on a prospective payment basis, shall assure that
5	a hospital may not receive additional payment associated with a
6	preventable adverse event that occurred during the recipient's
7	hospitalization.
8	(c) For purposes of this section, a preventable adverse
9	event is any of the following events involving a recipient of
10	medical assistance:
11	(1) surgery performed on the wrong body part;
12	(2) surgery performed on the wrong person;
13	(3) the wrong surgical procedure performed on the
14	recipient;
15	(4) the unintended retention of a foreign object in
16	the recipient after surgery or another procedure;
17	(5) death during or immediately after surgery if the
18	recipient would be classified as a normal, healthy patient under
19	guidelines published by a national association of
20	anesthesiologists;
21	(6) death or serious disability caused by the use of a
22	contaminated drug, device, or biologic provided by a health care
23	provider if the contamination is the result of a generally
24	detectable contaminant in drugs, devices, or biologics regardless
25	of the source of the contamination or product;
26	(7) death or serious disability caused by the use or
27	function of a device during the recipient's care in which the device

- 1 <u>is used for a function other than as intended;</u>
- 2 <u>(8) death or serious disability caused by an</u>
- 3 intravascular air embolism, excluding a death associated with a
- 4 neurological procedure known to present a high risk of
- 5 intravascular air embolism;
- 6 (9) an infant being discharged to the wrong person;
- 7 (10) death or serious disability associated with the
- 8 recipient's disappearance for more than four hours, excluding the
- 9 death or serious disability of an adult recipient who has
- 10 decision-making capacity;
- 11 (11) suicide or attempted suicide resulting in serious
- 12 disability while the recipient was receiving care at the hospital
- 13 if the suicide or attempted suicide was due to the recipient's
- 14 actions after admission to the hospital, excluding a death
- 15 resulting from a self-inflicted injury that was the reason for the
- 16 recipient's admission to the hospital;
- 17 (12) death or serious disability caused by a
- 18 medication error, including an error involving the wrong drug,
- 19 wrong dose, wrong patient, wrong time, wrong rate, wrong
- 20 preparation, or wrong route of administration;
- 21 (13) death or serious disability caused by a hemolytic
- 22 reaction resulting from the administration of ABO- or
- 23 <u>HLA-incompatible blood or blood products;</u>
- 24 (14) death or serious disability caused by labor or
- 25 delivery in a low-risk pregnancy while the recipient was receiving
- 26 care at the hospital, including death or serious disability that
- 27 occurred not later than 42 days after the delivery date;

1	(15) death or serious disability directly related to
2	the following manifestations of poor glycemic control, the onset of
3	which occurred while the recipient was receiving care at the
4	hospital:
5	(A) diabetic ketoacidosis;
6	(B) nonketotic hyperosmolar coma;
7	(C) hypoglycemic coma;
8	(D) secondary diabetes with ketoacidosis; and
9	(E) secondary diabetes with hyperosmolarity;
10	(16) death or serious disability, including
11	kernicterus, caused by failure to identify and treat
12	hyperbilirubinemia in a neonate before discharge from the hospital;
13	(17) stage three or four pressure ulcers acquired
14	after admission to the hospital;
15	(18) death or serious disability resulting from spinal
16	manipulative therapy;
17	(19) death or serious disability caused by an electric
18	shock while the recipient was receiving care at the hospital,
19	excluding an event involving a planned treatment such as electric
20	<pre>countershock;</pre>
21	(20) an incident in which a line designated for oxygen
22	or other gas to be delivered to the recipient contains the wrong gas
23	or is contaminated by a toxic substance;
24	(21) death or serious disability caused by a burn
25	incurred from any source while the recipient was receiving care at
26	the hospital;
27	(22) death or serious disability caused by a fall or

- 1 trauma while the recipient was receiving care at the hospital,
- 2 including death or serious disability from a fracture, dislocation,
- 3 intracranial injury, or crushing injury;
- 4 (23) death or serious disability caused by the use of a
- 5 restraint or bed rail while the recipient was receiving care at the
- 6 hospital;
- 7 (24) an instance of care for the recipient ordered or
- 8 provided by an individual impersonating a physician, nurse,
- 9 pharmacist, or other licensed health care professional;
- 10 (25) abduction of the recipient from the hospital;
- 11 (26) sexual assault of the recipient within or on the
- 12 grounds of the hospital;
- 13 (27) death or serious injury resulting from a physical
- 14 assault of the recipient that occurred within or on the grounds of
- 15 the hospital;
- 16 (28) artificial insemination with the wrong donor
- 17 sperm or implantation with the wrong donor egg;
- 18 (29) death or serious disability caused by a urinary
- 19 tract infection resulting from the insertion of a catheter by an
- 20 individual health care provider;
- 21 (30) death or serious disability caused by an
- 22 infection resulting from the insertion of a vascular catheter by an
- 23 individual health care provider;
- 24 (31) death or serious disability caused by a surgical
- 25 site infection occurring as a result of the following procedures:
- 26 (A) a coronary artery bypass graft;
- (B) bariatric surgery such as laparoscopic

- 1 gastric bypass surgery, gastroenterostomy, and laparoscopic
- 2 gastric restrictive surgery; and
- 3 (C) orthopedic procedures involving the spine,
- 4 neck, shoulder, or elbow; and
- 5 (32) death or serious disability caused by a pulmonary
- 6 embolism or deep vein thrombosis that occurred while the recipient
- 7 was receiving care at the hospital following a total knee
- 8 arthroplasty or hip arthroplasty.
- 9 (d) The executive commissioner of the Health and Human
- 10 <u>Services Commission may adopt rules to define additional</u>
- 11 preventable adverse events for which a hospital shall be denied
- 12 additional payment under this section. In adopting rules under
- 13 this subsection, the executive commissioner may consider only the
- 14 same types of health care-associated adverse conditions or events
- 15 for which the Medicare program will not provide additional payment
- 16 under a policy adopted by the Centers for Medicare and Medicaid
- 17 Services.
- 18 (e) The department's nonpayment of a hospital under this
- 19 section does not in itself create civil liability and is not subject
- 20 to discovery or admissible in any civil action against the
- 21 <u>hospital.</u>
- 22 (f) A hospital may not charge a recipient of medical
- 23 assistance for the hospital service for which the hospital is
- 24 denied payment under this section.
- 25 (g) The executive commissioner of the Health and Human
- 26 Services Commission shall adopt rules necessary to implement this
- 27 section, including procedures for:

- 1 (1) identifying a preventable adverse event;
- 2 (2) verifying the occurrence of a preventable adverse
- 3 event;
- 4 (3) administering denials of payment; and
- 5 (4) managing hospitals' appeals relating to denials of
- 6 payment.
- 7 SECTION 2. The heading to Chapter 98, Health and Safety
- 8 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
- 9 Legislature, Regular Session, 2007, is amended to read as follows:
- 10 CHAPTER 98. REPORTING OF HEALTH CARE-ASSOCIATED INFECTIONS AND
- 11 PREVENTABLE ADVERSE EVENTS
- SECTION 3. Sections 98.001(1) and (11), Health and Safety
- 13 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
- 14 Legislature, Regular Session, 2007, are amended to read as follows:
- 15 (1) "Advisory panel" means the Advisory Panel on
- 16 Health Care-Associated Infections and Preventable Adverse Events.
- 17 (11) "Reporting system" means the Texas Health
- 18 Care-Associated Infection and Preventable Adverse Events Reporting
- 19 System.
- SECTION 4. Section 98.051, Health and Safety Code, as added
- 21 by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular
- 22 Session, 2007, is amended to read as follows:
- Sec. 98.051. ESTABLISHMENT. The commissioner shall
- 24 establish the Advisory Panel on Health Care-Associated Infections
- 25 and Preventable Adverse Events within [the infectious disease
- 26 surveillance and epidemiology branch of] the department to guide
- 27 the implementation, development, maintenance, and evaluation of

- 1 the reporting system.
- 2 SECTION 5. Sections 98.102(a) and (c), Health and Safety
- 3 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
- 4 Legislature, Regular Session, 2007, are amended to read as follows:
- 5 (a) The department shall establish the Texas Health
- 6 Care-Associated Infection and Preventable Adverse Events Reporting
- 7 System within the [infectious disease surveillance and
- 8 epidemiology branch of the] department. The purpose of the
- 9 reporting system is to provide for:
- 10 (1) the reporting of health care-associated
- 11 infections by health care facilities to the department;
- 12 (2) the reporting of health care-associated
- 13 preventable adverse events by health care facilities to the
- 14 department;
- 15 (3) the public reporting of information regarding the
- 16 health care-associated infections by the department;
- 17 (4) the public reporting of information regarding
- 18 <u>health care-associated preventable adverse events by the</u>
- 19 department; and
- 20 (5) $[\frac{(3)}{(3)}]$ the education and training of health care
- 21 facility staff by the department regarding this chapter.
- (c) The data reported by health care facilities to the
- 23 department must contain sufficient patient identifying information
- 24 to:
- 25 (1) avoid duplicate submission of records;
- 26 (2) allow the department to verify the accuracy and
- 27 completeness of the data reported; and

(3) for data reported under Section 98.103 or 98.104, 1 2 allow the department to risk adjust the facilities' infection 3 rates. 4 SECTION 6. Subchapter C, Chapter 98, Health and Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th 5 Legislature, Regular Session, 2007, is amended by adding Section 6 7 98.1045 to read as follows: Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a) 8 In this section: 9 10 (1) "Infant" means a child younger than one year of 11 age. 12 (2) "Serious disability" means: (A) a physical or mental impairment that 13 substantially limits one or more major life activities of an 14 15 individual such as seeing, hearing, speaking, walking, or breathing, or a loss of a bodily function, if the impairment or loss 16 17 lasts more than seven days or is still present at the time of discharge from an inpatient health care facility; or 18 19 (B) loss of a body part. 20 "Serious injury" means a bodily injury that results in: 21 22 (A) death; 23 (B) permanent and serious impairment of an 24 important bodily function; or 25 (C) permanent and significant disfigurement. (b) A health care facility shall report to the department 26

the following preventable adverse events involving a patient at the

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1	<pre>facility:</pre>
2	(1) surgery performed on the wrong body part;
3	(2) surgery performed on the wrong person;
4	(3) the wrong surgical procedure performed on the
5	<pre>patient;</pre>
6	(4) the unintended retention of a foreign object in
7	the patient after surgery or another procedure;
8	(5) death during or immediately after surgery if the
9	patient would be classified as a normal, healthy patient under
10	guidelines published by a national association of
11	anesthesiologists;
12	(6) death or serious disability caused by the use of a
13	contaminated drug, device, or biologic provided by a health care
14	provider if the contamination was the result of a generally
15	detectable contaminant in drugs, devices, or biologics regardless
16	of the source of the contamination or product;
17	(7) death or serious disability caused by the use or
18	function of a device during the patient's care in which the device
19	was used for a function other than as intended;
20	(8) death or serious disability caused by an
21	intravascular air embolism that occurred while the patient was
22	receiving care at the facility, excluding a death associated with a
23	neurological procedure known to present a high risk of
24	<pre>intravascular air embolism;</pre>
25	(9) an infant being discharged to the wrong person;
26	(10) death or serious disability associated with the
27	patient's disappearance for more than four hours, excluding the

death or serious disability of an adult patient who has 1 2 decision-making capacity; 3 (11) suicide or attempted suicide resulting in serious disability while the patient was receiving care at the facility if 4 5 the suicide or attempted suicide was due to the patient's actions after admission to the facility, excluding a death resulting from a 6 7 self-inflicted injury that was the reason for the patient's 8 admission to the facility; (12) death or serious disability caused by a 9 medication error, including an error involving the wrong drug, 10 wrong dose, wrong patient, wrong time, wrong rate, wrong 11 12 preparation, or wrong route of administration; (13) death or serious disability caused by a hemolytic 13 reaction resulting from the administration of ABO- or 14 15 HLA-incompatible blood or blood products; (14) death or serious disability caused by labor or 16 17 delivery in a low-risk pregnancy while the patient was receiving care at the facility, including death or serious disability 18 19 occurring not later than 42 days after the delivery date; (15) death or serious disability directly related to 20 the following manifestations of poor glycemic control, the onset of 21 which occurred while the patient was receiving care at the 22 facility: 23 24 (A) diabetic ketoacidosis; 25 (B) nonketotic hyperosmolar coma;

(D) secondary diabetes with ketoacidosis; and

(C) hypoglycemic coma;

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	(L) Secondary drabetes with hyperosmorarity,
2	(16) death or serious disability, including
3	kernicterus, caused by failure to identify and treat
4	hyperbilirubinemia in a neonate before discharge from the facility;
5	(17) stage three or four pressure ulcers acquired
6	after admission to the facility;
7	(18) death or serious disability resulting from spinal
8	manipulative therapy;
9	(19) death or serious disability caused by an electric
10	shock while the patient was receiving care at the facility,
11	excluding an event involving a planned treatment such as electric
12	<pre>countershock;</pre>
13	(20) an incident in which a line designated for oxygen
14	or other gas to be delivered to the patient contained the wrong gas
15	or was contaminated by a toxic substance;
16	(21) death or serious disability caused by a burn
17	incurred from any source while the patient was receiving care at the
18	<pre>facility;</pre>
19	(22) death or serious disability caused by a fall or
20	trauma while the patient was receiving care at the facility,
21	including death or serious disability from a fracture, dislocation,
22	intracranial injury, or crushing injury;
23	(23) death or serious disability caused by the use of a
24	restraint or bed rail while the patient was receiving care at the
25	<pre>facility;</pre>
26	(24) an instance of care for the patient ordered or
27	provided by an individual impersonating a physician, nurse,

1 pharmacist, or other licensed health care professional; 2 (25) abduction of the patient from the facility; 3 (26) sexual assault of the patient within or on the 4 grounds of the facility; 5 (27) death or serious injury resulting from a physical assault of the patient that occurred within or on the grounds of the 6 7 facility; (28) artificial insemination with the wrong donor 8 sperm or implantation with the wrong donor egg; 9 10 (29) death or serious disability caused by a urinary tract infection resulting from the insertion of a catheter by an 11 12 individual health care provider; (30) death or serious disability caused by an 13 infection resulting from the insertion of a vascular catheter by an 14 15 individual health care provider; (31) death or serious disability caused by a surgical 16 17 site infection occurring as a result of the following procedures: (A) a coronary artery bypass graft; 18 19 (B) bariatric surgery such as laparoscopic 20 gastric bypass surgery, gastroenterostomy, and laparoscopic 21 gastric restrictive surgery; and 22 (C) orthopedic procedures involving the spine, neck, shoulder, or elbow; 23 24 (32) death or serious disability caused by a pulmonary embolism or deep vein thrombosis that occurred while the patient 25

was receiving care at the facility following a total knee

arthroplasty or hip arthroplasty; and

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- 1 (33) a health care-associated adverse condition or
- 2 event for which the Medicare program will not provide additional
- 3 payment to a health care facility under a policy adopted by the
- 4 Centers for Medicare and Medicaid Services.
- 5 SECTION 7. Sections 98.106(a), (b), and (g), Health and
- 6 Safety Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
- 7 Legislature, Regular Session, 2007, are amended to read as follows:
- 8 (a) The department shall compile and make available to the
- 9 public a summary, by health care facility, of:
- 10 <u>(1)</u> the infections reported by facilities under
- 11 Sections 98.103 and 98.104; and
- 12 (2) the preventable adverse events reported by
- 13 <u>facilities under Section 98.1045</u>.
- 14 (b) Information included in the [The] departmental summary
- 15 with respect to infections reported by facilities under Sections
- 16 <u>98.103</u> and <u>98.104</u> must be risk adjusted and include a comparison of
- 17 the risk-adjusted infection rates for each health care facility in
- 18 this state that is required to submit a report under Sections 98.103
- 19 and 98.104.
- 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 and preventable adverse events to the department.
- SECTION 8. Section 98.108, Health and Safety Code, as added
- 27 by Chapter 359 (S.B. 288), Acts of the 80th Legislature, Regular

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- 1 Session, 2007, is amended to read as follows:
- 2 Sec. 98.108. FREQUENCY OF REPORTING. In consultation with
- 3 the advisory panel, the executive commissioner by rule shall
- 4 establish the frequency of reporting by health care facilities
- 5 required under Sections 98.103, [and] 98.104, and 98.1045.
- 6 Facilities may not be required to report more frequently than
- 7 quarterly.
- 8 SECTION 9. Section 98.109(e), Health and Safety Code, as
- 9 added by Chapter 359 (S.B. 288), Acts of the 80th Legislature,
- 10 Regular Session, 2007, is amended to read as follows:
- 11 (e) A department summary or disclosure may not contain
- 12 information identifying a facility patient, employee, contractor,
- 13 volunteer, consultant, health care professional, student, or
- 14 trainee in connection with a specific [infection] incident.
- SECTION 10. Sections 98.110 and 98.111, Health and Safety
- 16 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
- 17 Legislature, Regular Session, 2007, are amended to read as follows:
- 18 Sec. 98.110. DISCLOSURE WITHIN DEPARTMENT.
- 19 Notwithstanding any other law, the department may disclose
- 20 information reported by health care facilities under Section
- 21 98.103<u>,</u> [or] 98.104<u>, or 98.1045</u> to other programs within the
- 22 department for public health research or analysis purposes only,
- 23 provided that the research or analysis relates to health
- 24 care-associated infections or preventable adverse events. The
- 25 privilege and confidentiality provisions contained in this chapter
- 26 apply to such disclosures.
- Sec. 98.111. CIVIL ACTION. Published infection rates or

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- 1 preventable adverse events may not be used in a civil action to
- 2 establish a standard of care applicable to a health care facility.
- 3 SECTION 11. (a) Not later than June 1, 2010, the executive
- 4 commissioner of the Health and Human Services Commission shall
- 5 adopt rules necessary to implement Section 32.02805, Human
- 6 Resources Code, as added by this Act.
- 7 (b) Not later than October 1, 2009, the executive
- 8 commissioner of the Health and Human Services Commission shall
- 9 adopt rules and procedures necessary to implement the reporting of
- 10 health care-associated preventable adverse events as required
- 11 under Chapter 98, Health and Safety Code, as amended by this Act.
- 12 SECTION 12. Section 32.02805, Human Resources Code, as
- 13 added by this Act, applies only to a preventable adverse event
- 14 occurring on or after the effective date of the rules adopted by the
- 15 executive commissioner of the Health and Human Services Commission
- 16 under Section 11(a) of this Act.
- 17 SECTION 13. If before implementing any provision of this
- 18 Act a state agency determines that a waiver or authorization from a
- 19 federal agency is necessary for implementation of that provision,
- 20 the agency affected by the provision shall request the waiver or
- 21 authorization and may delay implementing that provision until the
- 22 waiver or authorization is granted.
- 23 SECTION 14. This Act takes effect September 1, 2009.