

By: Hinojosa

S.B. No. 1535

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

1 (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 is used for a function other than as intended;

2 (8) death or serious disability caused by an
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 HLA-incompatible blood or blood products;

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 countershock;

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;

27 (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 Services Commission may adopt rules to define additional
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 hospital.

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 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 health care-associated preventable adverse events by the
19 department; and

20 (5) [~~(3)~~] the education and training of health care
21 facility staff by the department regarding this chapter.

22 (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

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

4 SECTION 6. Subchapter C, Chapter 98, Health and Safety
5 Code, as added by Chapter 359 (S.B. 288), Acts of the 80th
6 Legislature, Regular Session, 2007, is amended by adding Section
7 98.1045 to read as follows:

8 Sec. 98.1045. REPORTING OF PREVENTABLE ADVERSE EVENTS. (a)
9 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 an
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 an inpatient health care facility; 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 an
24 important bodily function; or

25 (C) permanent and significant disfigurement.

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

1 facility:

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 patient;

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 intravascular air embolism;

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

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

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

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

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

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

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

24 (A) diabetic ketoacidosis;

25 (B) nonketotic hyperosmolar coma;

26 (C) hypoglycemic coma;

27 (D) secondary diabetes with ketoacidosis; and

- 1 (E) secondary diabetes with hyperosmolarity;
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 countershock;
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 facility;
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 facility;
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
6 assault of the patient that occurred within or on the grounds of the
7 facility;
8 (28) artificial insemination with the wrong donor
9 sperm or implantation with the wrong donor egg;
10 (29) death or serious disability caused by a urinary
11 tract infection resulting from the insertion of a catheter by an
12 individual health care provider;
13 (30) death or serious disability caused by an
14 infection resulting from the insertion of a vascular catheter by an
15 individual health care provider;
16 (31) death or serious disability caused by a surgical
17 site infection occurring as a result of the following procedures:
18 (A) a coronary artery bypass graft;
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,
23 neck, shoulder, or elbow;
24 (32) death or serious disability caused by a pulmonary
25 embolism or deep vein thrombosis that occurred while the patient
26 was receiving care at the facility following a total knee
27 arthroplasty or hip arthroplasty; and

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

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

14 (b) Information included in the [The] departmental summary
15 with respect to infections reported by facilities under Sections
16 98.103 and 98.104 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.

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

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.

15 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, ~~[or]~~ 98.104, or 98.1045 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.

27 Sec. 98.111. CIVIL ACTION. Published infection rates or

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.