

By: Allen

H.B. No. 3820

A BILL TO BE ENTITLED

AN ACT

relating to safe patient handling practices at hospitals and nursing homes; providing an administrative penalty.

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

SECTION 1. Section 256.001, Health and Safety Code, is amended to read as follows:

Sec. 256.001. DEFINITIONS. In this chapter:

(1) "Department" means the Department of State Health Services.

(2) "Equipment" means a powered or non-powered device, including all accessories necessary for the operation of the device, that effectively reduces the forces exerted by or on a health care worker performing patient handling.

(3) "Health care worker" means a person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by this state or a person providing direct patient care in the course of a training or educational program.

(4) "Hospital" means a general or special hospital, as defined by Section 241.003, a private mental hospital licensed under Chapter 577, or another hospital that is maintained or operated by the state.

(5) [~~2~~] "Nursing home" means an institution licensed under Chapter 242.

1 (6) "Patient handling" means the lifting,
2 transferring, repositioning, or moving of all or part of a
3 patient's body with or without the assistance of equipment.

4 SECTION 2. Section 256.002, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 256.002. REQUIRED SAFE PATIENT HANDLING AND MOVEMENT
7 POLICY. (a) The governing body of a hospital or the quality
8 assurance committee of a nursing home shall adopt, ~~and~~ ensure
9 implementation of, and maintain at all times a policy to identify,
10 assess, and develop strategies to control risk of injury to
11 patients and health care workers ~~[nurses]~~ associated with ~~[the~~
12 ~~lifting, transferring, repositioning, or movement of a]~~ patient
13 handling.

14 (b) The policy shall establish a process that, at a minimum,
15 includes:

16 (1) analysis of the risk of injury to both patients and
17 health care workers ~~[nurses]~~ posed by the patient handling needs of
18 the patient populations served by the hospital or nursing home and
19 the physical environment in which patient handling ~~[and movement]~~
20 occurs;

21 (2) adoption of a health care worker patient handling
22 injury prevention program under Section 256.003;

23 (3) education of health care workers ~~[nurses]~~ in the
24 identification, assessment, and control of risks of injury to
25 patients and nurses during patient handling;

26 (4) ~~(3)~~ evaluation of alternative ways to reduce
27 risks associated with patient handling, including evaluation of

1 equipment and the environment;

2 ~~[(4) restriction, to the extent feasible with existing~~
3 ~~equipment and aids, of manual patient handling or movement of all or~~
4 ~~most of a patient's weight to emergency, life-threatening, or~~
5 ~~otherwise exceptional circumstances;]~~

6 (5) collaboration with and annual report to the
7 hospital or nursing home ~~[nurse]~~ staffing committee;

8 (6) procedures for health care workers ~~[nurses]~~ to
9 refuse to perform or be involved in patient handling or movement
10 that the health care worker ~~[nurse]~~ believes in good faith will
11 expose a patient or a nurse to an unacceptable risk of injury;

12 (7) submission of an annual report to the governing
13 body or the quality assurance committee on activities related to
14 the identification, assessment, and development of strategies to
15 control risk of injury to patients and health care workers ~~[nurses]~~
16 associated with patient handling ~~[the lifting, transferring,~~
17 ~~repositioning, or movement of a patient]~~; and

18 (8) in developing architectural plans for
19 constructing or remodeling a hospital or nursing home or a unit of a
20 hospital or nursing home in which patient handling ~~[and movement]~~
21 occurs, consideration of the feasibility of incorporating patient
22 handling equipment or the physical space and construction design
23 needed to incorporate that equipment at a later date.

24 SECTION 3. Chapter 256, Health and Safety Code, is amended
25 by adding Sections 256.003, 256.004, 256.005, 256.006, 256.007, and
26 256.008 to read as follows:

27 Sec. 256.003. HEALTH CARE WORKER PATIENT HANDLING INJURY

1 PREVENTION PROGRAM. (a) As part of the policy adopted under
2 Section 256.002, the governing body of a hospital or the quality
3 assurance committee of a nursing home shall adopt, ensure
4 implementation of, and maintain at all times a program to prevent
5 injuries to health care workers who are responsible for performing
6 patient handling.

7 (b) The program adopted under Subsection (a) must:

8 (1) reflect professional occupational safety
9 guidelines for protecting from injury patients and health care
10 workers who perform patient handling in hospitals and nursing
11 homes;

12 (2) identify circumstances in which manual patient
13 handling is not appropriate and health care workers should use
14 equipment for patient handling; and

15 (3) establish a designated lift team of health care
16 workers who, in addition to other duties, work together to perform
17 patient handling and who are trained on:

18 (A) the areas of body exposure, including
19 vertical, lateral, bariatric, repositioning, and ambulation,
20 involved in patient handling; and

21 (B) the proper use of equipment to safely perform
22 patient handling.

23 (c) A registered nurse who is designated by a hospital or
24 nursing home as the coordinator of care for a patient may:

25 (1) be responsible for observing or directing patient
26 handling by other health care workers; and

27 (2) participate in patient handling as the nurse

1 determines necessary based on the nurse's professional judgment.

2 Sec. 256.004. COMPLAINTS. (a) A person may file a
3 complaint against a hospital or nursing home alleging a violation
4 of this chapter in the manner provided by Chapters 241 and 242 and
5 department rules.

6 (b) A hospital or nursing home may not interfere with,
7 coerce, intimidate, or otherwise prevent a person from making a
8 complaint under this chapter.

9 Sec. 256.005. RETALIATION PROHIBITED; CAUSE OF ACTION. (a)
10 In this section, "employee" means a person who is an employee of a
11 hospital or nursing home or any other person who provides services
12 to a hospital or nursing home for compensation, including a
13 contract laborer.

14 (b) A hospital or nursing home may not take an adverse
15 personnel action or discriminate against an employee who refuses to
16 perform patient handling based on:

17 (1) concerns over patient or employee safety; or

18 (2) the lack of trained designated lift team personnel
19 available to perform patient handling.

20 (c) An employee has a cause of action against the hospital
21 or nursing home, or another employee of the hospital or nursing
22 home, if the hospital or nursing home suspends or terminates the
23 employment of the employee or otherwise disciplines,
24 discriminates, or retaliates against the employee in violation of
25 this section.

26 (d) A hospital or nursing home may not retaliate or
27 discriminate against a person who, in good faith:

1 (1) makes a complaint or files a grievance against the
2 hospital or nursing home for a violation of this chapter;

3 (2) initiates or cooperates in an investigation or
4 proceeding of a governmental entity or private accreditation body
5 relating to an alleged violation of this chapter;

6 (3) makes a demand relating to an alleged violation of
7 this chapter; or

8 (4) files a civil action or seeks injunctive relief
9 relating to an alleged violation of this chapter.

10 (e) For purposes of Subsection (d), a person acts in good
11 faith if the person reasonably believes that the information
12 reported or disclosed is true or that a violation of this chapter
13 has occurred or may occur.

14 (f) A person, including an employee, who is retaliated or
15 discriminated against or subject to an adverse personnel action in
16 violation of this section is entitled to sue for:

17 (1) injunctive relief;

18 (2) actual damages;

19 (3) exemplary damages;

20 (4) court costs;

21 (5) reasonable attorney's fees; and

22 (6) other damages allowed by law.

23 (g) In addition to the amounts that may be recovered under
24 Subsection (f), an employee whose employment is suspended or
25 terminated is entitled to appropriate injunctive relief,
26 including, if applicable:

27 (1) reinstatement to the employee's former position or

1 severance pay in an amount equal to three months of the employee's
2 most recent salary; and

3 (2) compensation for wages and benefits lost during
4 the period of suspension or termination.

5 Sec. 256.006. REQUIRED DISCLOSURE. Notwithstanding
6 Chapters 241 and 242 and department rules, all information and
7 materials obtained or compiled by the department in connection with
8 a complaint and investigation under this chapter concerning a
9 hospital or nursing home are subject to disclosure under Chapter
10 552, Government Code, unless protected under federal law.

11 Sec. 256.007. DEPARTMENT INSPECTION, SURVEY, OR
12 INVESTIGATION. The department may inspect, survey, or investigate
13 a hospital or nursing home in accordance with Chapters 241 and 242
14 and department rules to ensure compliance with this chapter.

15 Sec. 256.008. VIOLATION; ADMINISTRATIVE PENALTY. (a)
16 Except as provided under Subsection (b), a hospital or nursing home
17 that violates this chapter is liable to the department for an
18 administrative penalty of not more than \$5,000 for each act
19 constituting a violation. Each day a continuing violation occurs
20 constitutes a separate violation.

21 (b) If a hospital or nursing home violates this chapter for
22 at least five consecutive days, the hospital or nursing home is
23 liable to the department for an administrative penalty of \$10,000
24 for each act constituting a violation. Each day a continuing
25 violation occurs constitutes a separate violation.

26 (c) The department shall assess the administrative penalty
27 in accordance with the procedures established in Chapter 241 for

1 hospitals and Chapter 242 for nursing homes.

2 SECTION 4. Notwithstanding Chapter 256, Health and Safety
3 Code, as amended by this Act, a hospital or nursing home is not
4 required to implement a health care worker patient handling injury
5 prevention program until January 1, 2016.

6 SECTION 5. This Act takes effect September 1, 2015.