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HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 47
AS AMENDED BY
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 16, DELAWARE CODE RELATING TO REPORTING AND DISCLOSURE OF INFECTIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 16, Delaware Code by adding a new Chapter to read as follows:

“Chapter 10A. Hospital Infections Disclosure Act.

§ 1001A. Short title. This Act may be cited as the Hospital Infections Disclosure Act.

§ 1002A. Definitions. For purposes of this Act:

- (a) ‘Advisory Committee’ means the committee established under § 1003A(c) of this Chapter.
- (b) ‘Correctional facility’ means any health care facility operated at any Department of Correction facility in this State.
- (c) ‘Department’ means the Department of Health and Social Services.
- (d) ‘Hospital’ means an acute care health care facility licensed under Chapter 10 of this Title.
- (e) ‘Hospital-acquired infection’ means a localized or systemic condition:
 - (1) that results from adverse reaction to the presence of an infections agent(s) or its toxin(s); and
 - (2) that was not present or incubating at the time of admission to the hospital or the correctional facility.
- (f) ‘Public Report’ means the report provided to the hospitals, correctional facilities and the public by the Department as set forth in § 1003A(b) of this Chapter.

§ 1003A. Hospital reports.

- (a) Individual hospitals shall collect data on hospital acquired infection rates related to specific clinical procedures as determined by the Advisory Committee and set forth in regulations promulgated by the Department. Examples may include the following categories:
- (1) Surgical site infections such as total hip and knee arthroplasty;
 - (2) Central line-related bloodstream infections in an Intensive Care Unit (ICU);
 - (3) Direct healthcare provider's Influenza vaccination rates; and
 - (4) Other categories as provided under subsection (d) of this Section.
- (b)(1) Infection control professionals, or a designee, of hospitals shall submit quarterly reports on their hospital-acquired infection rates to the Department using the accepted Centers for Disease Control and Prevention's (CDC) National Healthcare Safety Network ('NHSN') definitions. Prevention and Control data related to quality measures will be based on nationally recognized and recommended standards that may include those developed by the CDC, Centers for Medicare and Medicaid, and/or the Agency for Healthcare, Research and Quality, to name a few. Data in quarterly reports must cover a period ending not earlier than 45 days prior to submission of the report. Quarterly reports shall be made available to each hospital 45 days after submittal to the Department for review by the hospitals. The hospitals shall have seven (7) days to review the quarterly reports and report any changes or provide additional summary information as provided in subsection (3) below to the Department. Following the seven-day review period, such quarterly reports shall be made available to the public at each hospital and through the Department (the 'Public Report'). The first Public Report issued by the Department shall cover an entire calendar year and shall be due no later than June 30, 2009. After this initial annual Public Report, the Department will issue quarterly Public Reports in accordance with this Section.
- (2) Each quarterly report shall provide background information about each hospital as determined by regulations of the Department. Such background criteria shall include the adult and pediatric populations of each hospital, whether the hospital provides tertiary care, bed size, specialty divisions of each hospital and whether a hospital is a teaching or a non-teaching institution. This background information shall be included in the Public Report.
 - (3) Each quarterly report shall include a brief summary report to allow hospitals to comment on performance improvement and changes in patient population and risk factors. The information contained in this report shall be considered proprietary information and shall be utilized by the Department had shall not be made available in the Public Report and shall not be subject to disclosure under the State's Freedom of Information Act.

- (4) Each physician who performs a clinical procedure to be reported in accordance with this Act shall report to the hospital at which the clinical procedures was performed, a hospital-acquired infection the physician diagnoses at a follow-up appointment with the patient; the Advisory Committee created in subsection (c) of this Section shall establish standardized criteria and methods for these reports. The infection control department of each hospital shall only be required to report those physician-reported infections that meet the accepted NHSN definitions. This information shall be included in the hospital reports to the Department.
- (5) If the hospital is a division or subsidiary of another entity that owns or operates other hospitals or related organizations, the quarterly report shall be for the specific division of subsidiary and not for the other entity.
- (c)(1) The Secretary of the Department shall appoint an Advisory Committee, which shall include one (1) infection control professional who has responsibility for infection control programs from each hospital or health care system in Delaware, four (4) infection disease physicians with expertise in infection control, and one (1) representative from the State Division of Public Health and the Public Health Hospital Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint seven (7) other members of the Committee including representatives from direct care nursing staff, academic researchers, consumer organizations, health insurers, health maintenance organizations, organized labor and purchasers of health insurance, such as employers. The Advisory Committee shall have the authority to engage personnel with appropriate training and/or certification in infection prevention and control for the purposes of collecting data.
- (2) The Advisory Committee shall assist the Department in the development of all aspects of the Department's methodology for collection, analyzing and disclosing the information collected under this Act, including collection methods, formatting and methods and means for release and dissemination.
- (3) In developing the methodology for collecting and analyzing the infection rate data, the Department and the Advisory Committee shall adopt the methodologies and system for data collection from the Centers for Disease Control's National Healthcare Safety Network, or its successor. The data collection and analysis methodology shall be disclosed to the public prior to any public disclosure of hospital-acquired infection rates.
- (4) The Department and the Advisory Committee shall meet on a regular basis to review the definitions and assess the methodologies of data collection. The Advisory Committee will periodically evaluate the impact on the individual hospitals and be able to recommend and support modifications to the public reporting system, if necessary.

- (d) After June 30, 2010 and upon consultation with the Advisory Committee and other experts in infection, prevention, identification and control, the Department may revise categories of infections set forth in subdivision (a).

§ 1004A. Department reports.

- (a) The Department shall annually submit to the legislature a report summarizing the hospital quarterly reports and shall publish the annual report on its website. The first annual report shall be and published no later than June 30, 2009. Following the initial report, the Department shall update the public information on a quarterly basis.
- (b) All reports issued by the Department shall be risk adjusted, or use some other method to account for the differences in patient populations among hospitals.
- (c) The annual report shall compare hospital-acquired infection rates to national rates published by the CDC's NHSN program and collected pursuant to this Act for each individual hospital in the State. The Department, in consultation with the Advisory Committee, shall make this report as easy to comprehend as possible. The report shall also include an executive summary, written in plain language that shall include but not be limited to a discussion of findings, conclusions and trends concerning the overall state of hospital-acquired infections in the State, including a comparison to prior years. The report may include policy recommendations, as appropriate.
- (d) The Department shall publicize the report and its availability as widely as practical to interested parties, including but not limited to hospitals, providers, media organizations, health insurers, health maintenance organizations, purchasers of health insurance, organized labor, consumer or patient advocacy groups and individual consumers. The annual report shall be made available to any person upon request.
- (e) No hospital report or Department disclosure may contain information identifying a patient, employee or licensed health care professional in connection with a specific infection incident.

§ 1005A. Correctional Facilities.

- (a) Correctional facilities shall collect data on hospital-acquired infection rates related to specific clinical procedures as determined by the Advisory Committee and as set forth in regulations promulgated by the Department. These categories of infection rate data may differ from that information required from hospitals.
- (b) Correctional facilities shall report data to the Department pursuant to § 1003A and the Department shall include the correctional facility data in its Department reports pursuant to § 1004A. The information from the correctional facilities shall be segregated from the hospital data contained in the reports submitted pursuant to § 1003A and § 1004A.

§ 1006A. Privacy.

It is the express intent of the legislature that a patient's right of confidentiality shall not be violated in any manner. Patient social security numbers and any other information that could be used to identify an individual patient shall not be released notwithstanding any other provision of law.

§ 1007A. Penalties.

A determination that a hospital or correctional facility has violated the provisions of this Act may result in any of the following:

- (a) termination of licensure or other sanctions relating to licensure under Chapter 10 of this Title; or
- (b) a civil penalty of up to \$500 per day per violation for each day the hospital or correctional facility is in violation of this Act.

§ 1008A. Regulatory oversight.

The Department shall be responsible for ensuring compliance with this Act as a condition of licensure under Chapter 10 of this Title and shall enforce such compliance according to the provisions of Chapter 10 of this Title.

§ 1009A. Hospital Infection Specialist.

The Department shall establish and fund a Hospital Infection Specialist position within the Division of Public Health supporting the functions of this Chapter. The Hospital Infection Specialist must have knowledge of the NHSN system and skills to appropriately analyze hospital acquired infection data.

§ 1010A. Privilege and confidentiality protections.

Notwithstanding any other provision of federal, state or local law, the hospital infection data provided pursuant to this Chapter is privileged and, with the exception of § 1003A and § 1004A, shall not be (1) subject to admission as evidence or other disclosure in any federal, state or local civil, criminal or administrative proceeding, or (2) subject to use in a disciplinary proceeding against a hospital or provider, or (3) subject to disclosure under Chapter 100 of Title 29 of the Delaware Code.

§ 1011A. Membership in National Healthcare Safety Network.

By December 31, 2007, all hospitals in the State of Delaware shall join the Centers of Disease Control and Prevention's National Healthcare Safety Network. If the Network is not open for enrollment to all hospitals by this date, all hospitals shall join the Network within 180 days after the Center of Disease Control and Prevention permits such enrollment. Hospitals shall authorize the Department to have access to hospital-specific data contained in the National healthcare Safety Network database consistent with the requirements of this Chapter.”.

Section 2. Amend § 10006(a), Chapter 10, Title 16 of the Delaware Code by adding the word “Chapter” and before the “.” at the end of the subsection the following “or the Hospital Infections Disclosure Act”.

Section 3. This Act shall become effective upon the specific appropriation of funds for such purposes in the Annual Appropriations Act.