Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

CHAPTER 351
FORMERLY
HOUSE BILL NO. 403
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE HOSPITAL INFECTIONS DISCLOSURE ACT.

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

Section 1. Amend Chapter 10A, Title 16 of the Delaware as follows:

CHAPTER 10A. HEALTHCARE ASSOCIATED INFECTIONS DISCLOSURE ACT

§ 1001A. Short title.

This chapter may be cited as the “Healthcare Associated Infections Disclosure Act."

§ 1002A. Definitions.

For purposes of this chapter:

(1) "Advisory Committee" means the Committee established under this chapter.

(2) "Correctional facility" means any healthcare facility operated at any Department of Correction facility in this State.

(3) "Department"' means the Department of Health and Social Services.

(4) “Dialysis center” means a facility approved to furnish outpatient dialysis services directly to End Stage Renal Disease (ESRD) patients. Outpatient dialysis includes: staff-assisted dialysis (dialysis performed by the staff of the facility) and self-dialysis (dialysis performed with little or no professional assistance by an ESRD patient who has completed an appropriate course of training). ESRD is that stage of renal impairment that appears irreversible and permanent, and requires a regular course of dialysis or kidney transplantation to maintain life.

(5) “Freestanding surgical center” means a facility licensed under Chapter 1 of this Title.

(6) “Healthcare associated infection” means a localized or systemic condition:

a. That results from adverse reaction to the presence of an infectious agent or agents or its toxin or toxins; and

b. That was not present or incubating at the time of admission to the healthcare facility.

(7) “Healthcare facility” means a correctional facility, dialysis center, freestanding surgical center, hospital, long-term care facility, or psychiatric facility.

(8) "Hospital" means an acute care healthcare facility licensed under Chapter 10 of this title.

(9) “Long-term care facility” means a nursing home or intermediate care facility for persons with mental retardation licensed under Chapter 11 of this title.

(10) “Psychiatric facility” means a facility that is primarily engaged in providing, by or under the supervision of a doctor of medicine or osteopathy, psychiatric services for the diagnosis and treatment of mentally ill persons.

(11) "Public Report" means the report provided to the healthcare facilities and the public by the Department as set forth in this chapter.

§ 1003A. Reporting of infections by physicians.

In accordance with this chapter, a physician who diagnoses and treats a healthcare associated infection related to a clinical procedure, or a licensed practitioner who is permitted by law to diagnose and treat such infection and does so, is required to report the infection back to the healthcare facility at which the clinical procedure was performed. The infection control department of the healthcare facility will then be required to report to the Department only those infections that meet the accepted National Healthcare Safety Network definitions and are currently required to be reported by law.

§ 1004A. Hospital reports.

(a) Individual hospitals shall collect data on healthcare associated 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 arthoplasty;

(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 (c) of this section.

(b) (1) Infection control professionals, or a designee, of hospitals shall submit quarterly reports on their healthcare associated 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 7 days to review the quarterly reports and report any changes to the Department. Following the 7-day review period, such quarterly reports shall be made available to the public at each hospital and through the Department (the "Public Report").

(2) 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~~ or subsidiary and not for the other entity.

(c) 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 subsection (a) of this section.

§ 1005A. 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 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 healthcare associated infection rates to national rates published by the CDC's NHSN program and collected pursuant to this chapter 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 healthcare associated 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.

(f) The annual report shall provide background information about each hospital which shall include: the hospital’s adult and pediatric populations, bed size, and specialty divisions, whether the hospital provides tertiary care, and whether the hospital is a teaching or a nonteaching institution. This background information shall be included in the Public Report.

(g) The annual 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 the summary report shall be considered proprietary information and shall be utilized by the Department but shall not be made available in the Public Report and shall not be subject to disclosure under the State’s Freedom of Information Act [Chapter 100 of Title 29].

§ 1006A. Correctional facility reports.

(a) Correctional facilities shall collect data on healthcare associated infections related to specific clinical procedures resulting from care in the correctional facility, as determined by the Advisory Committee and as set forth in regulations promulgated by the Department. These categories of infection data may differ from that information required from hospitals.

(b) Correctional facilities shall report data to the Department in accordance with regulations of the Department. The information from the correctional facilities shall be segregated from the hospital data contained in the reports submitted pursuant to this chapter.

§ 1007A. Reports by other healthcare facilities.

Only with the concurrence of the Advisory Committee, and not until such time that the Centers for Medicaid and Medicare or the Centers for Disease Control and Prevention issue final federal regulations requiring such, and after careful evaluation of the economic and public health impact, the Department may through regulation require the reporting of healthcare associated infections from healthcare facilities other than hospitals and correctional facilities. The procedures for reporting shall be consistent with procedures for reporting by hospitals as specified in this chapter, except as may be necessary to accommodate the unique characteristics and capabilities of the healthcare facilities and the capabilities of the National Healthcare Safety Network.

§ 1008A. Advisory Committee.

(a) The Secretary of the Department shall appoint an Advisory Committee, which shall include 1 infection control professional who has responsibility for infection control programs for each hospital or healthcare system in Delaware, 4 infection disease physicians with expertise in infection control, 1 representative of the Delaware Health Care Facilities Association, 1 representative of a freestanding surgical center, 1 representative of a dialysis center, 1 representative of a psychiatric facility, 1 representative from the State Division of Public Health, and the Public Health Healthcare Associated Infections Specialist responsible for collating and reporting data. The Secretary shall also appoint 8 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.

(b) 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 chapter, including collection methods, formatting and methods and means for release and dissemination.

(c) 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 healthcare associated infection rates.

(d) The Advisory Committee shall assist the Department in the sharing of information and best practices toward the development of activities and policies that:

(1) Enhance coordination between healthcare facilities throughout the continuum of care for the prevention and control of healthcare associated infections;

(2) Promote the prevention and control of healthcare associated infections generally; and

(3) Encourage the creation of benchmarks against which to measure progress in the prevention and control of healthcare associated infections.

§ 1009A. 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.

§ 1010A. Penalties.

A determination that a healthcare facility has violated the provisions of this chapter may result in any of the following:

(1) Termination of licensure or other sanctions relating to licensure under Chapter 10 of this title; or

(2) A civil penalty of up to $500 per day per violation for each day the healthcare facility is in violation of this chapter.

§ 1011A. Regulatory oversight.

The Department shall be responsible for ensuring compliance.

When the Department licenses a healthcare facility according to the provisions of this title, compliance with this chapter shall be a condition of licensure.

§ 1012A. Hospital Infection Specialist.

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

§ 1013A. Privilege and confidentiality protections.

Notwithstanding any other provision of federal, state or local law, the healthcare associated infection data provided pursuant to this chapter is privileged and, with the exception of §§§ 1003A, 1004A and 1005A of this title, 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 healthcare facility or provider, or

(3) Subject to disclosure under Chapter 100 of Title 29.

§ 1014A. Membership in National Healthcare Safety Network.

By December 31, 2007, all hospitals in the State shall join the Centers of Disease Control and Prevention's National Healthcare Safety Network or its successor. 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 ~~h~~ Healthcare Safety Network database consistent with the requirements of this chapter. With the concurrence of the Advisory Committee the Department may require other healthcare facilities through regulation to join the National Healthcare Safety Network as may be appropriate in accordance with this chapter.

Approved July 20, 2012