AN ACT

relating to a study regarding the impact of niche hospitals on other
general hospitals, to certain reports and disclosure requirements
regarding niche hospitals, and to the establishment of an advisory
panel to conduct a study on the reporting of health care associated
infection rates and process measures.

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

SECTION 1. Section 105.002, Occupations Code, is amended by
amending Subsection (a) and adding Subsections (c) and (d) to read
as follows:

(a) A health care provider commits unprofessional conduct
if the health care provider, in connection with the provider's
professional activities:

(1) knowingly presents or causes to be presented a
false or fraudulent claim for the payment of a loss under an
insurance policy; or

(2) knowingly prepares, makes, or subscribes to any
writing, with intent to present or use the writing, or to allow it
to be presented or used, in support of a false or fraudulent claim
under an insurance policy; or

(3) knowingly directs or requires a patient to obtain
health care goods or services from a niche hospital in which the
health care provider or an immediate family member of the provider
has a financial interest, unless the provider:
(A) discloses to the patient, in writing, that
the provider or the provider's family member has a financial
interest in the niche hospital; and

(B) informs the patient that the patient has the
option of using an alternative health care facility.

(c) Subsection (a)(3) does not apply to a financial interest
in publicly available shares of a registered investment company,
such as a mutual fund, that owns publicly traded equity securities
or debt obligations issued by a niche hospital or an entity that
owns the niche hospital.

(d) In this section:

(1) "Diagnosis-related group" means the
classification system mandated by Medicare regulations for
reimbursement purposes that groups patients according to principal
diagnosis, presence of a surgical procedure, age, presence or
absence of significant complications, and other relevant criteria.

(2) "Niche hospital" means a hospital that:

(A) classifies at least two-thirds of the
hospital's Medicare patients or, if data is available, all
patients:

(i) in not more than two major
diagnosis-related groups; or

(ii) in surgical diagnosis-related groups;

(B) specializes in one or more of the following
areas:

(i) cardiac;

(ii) orthopedics;
(iii) surgery; or
(iv) women's health; and

(C) is not:

(i) a public hospital;

(ii) a hospital for which the majority of inpatient claims are for major diagnosis-related groups relating to rehabilitation, psychiatry, alcohol and drug treatment, or children or newborns; or

(iii) a hospital with fewer than 10 claims per bed per year.

SECTION 2. Subchapter B, Chapter 162, Occupations Code, is amended by adding Section 162.052 to read as follows:

Sec. 162.052. NOTICE OF CERTAIN OWNERSHIP INTERESTS.

(a) In this section, "niche hospital" has the meaning assigned by Section 105.002.

(b) A physician shall notify the Department of State Health Services of any ownership interest held by the physician in a niche hospital.

(c) Subsection (b) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The board, in consultation with the Department of State Health Services, shall adopt rules governing the form and content of the notice required by Subsection (b).

SECTION 3. Subtitle D, Title 2, Health and Safety Code, is
amended by adding Chapter 96 to read as follows:

CHAPTER 96. HEALTH CARE ASSOCIATED INFECTION RATE

AND PROCESS MEASURE REPORTING

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 96.001. DEFINITIONS. (a) In this chapter:

(1) "Advisory panel" means the Advisory Panel on Health Care Associated Infections.

(2) "Commissioner" means the commissioner of state health services.

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

(4) "Health care associated infection" means a localized or symptomatic condition resulting from an adverse reaction to an infectious agent or its toxins to which a patient is exposed in the course of health care delivery.

(5) "Health care facility" means a hospital licensed under Chapter 241 or an ambulatory surgical center licensed under Chapter 243.

(6) "Infection rate" means the number of health care associated infections at a health care facility divided by a numerical measure over time of the population at risk for contracting the infection.

(7) "Process measure" means a measure of a health care facility's compliance with recommended infection control practices.

(b) The advisory panel may modify or define the term "infection rate" as necessary to accomplish the purposes of this
chapter.

Sec. 96.002. APPLICABILITY OF OTHER LAW. Chapter 2110, Government Code, does not apply to the advisory panel created under Subchapter B.

Sec. 96.003. EXPIRATION. This chapter expires January 1, 2007.

[Sections 96.004-96.050 reserved for expansion]

SUBCHAPTER B. ADVISORY PANEL ON HEALTH CARE ASSOCIATED INFECTIONS

Sec. 96.051. ESTABLISHMENT. The commissioner shall establish the Advisory Panel on Health Care Associated Infections within the regulatory licensing unit of the health care quality section of the department.

Sec. 96.052. MEMBERSHIP. The advisory panel is composed of 14 members as follows:

(1) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are practicing in hospitals in this state, at least one of which must be a rural hospital;

(2) two infection control practitioner members who:

(A) are certified by the Certification Board of Infection Control and Epidemiology; and

(B) are nurses licensed to engage in professional nursing under Chapter 301, Occupations Code;

(3) three board-certified or board-eligible physician members who:
(A) are licensed to practice medicine in this state under Chapter 155, Occupations Code, at least two of whom have active medical staff privileges at a hospital in this state; 

(B) are active members of the Society for Healthcare Epidemiology of America; and

(C) have demonstrated expertise in infection control in healthcare facilities;

(4) one member who is a chief executive officer of a hospital licensed under Chapter 241;

(5) one member who is a chief executive officer of an ambulatory surgical center licensed under Chapter 243;

(6) three members who:

(A) are department employees representing the department in epidemiology and the licensing of hospitals or ambulatory surgical centers; and

(B) serve as nonvoting members of the advisory panel; and

(7) two members who represent the public as consumers.

Sec. 96.053. MEMBER ELIGIBILITY. A person may not be a member of the advisory panel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to health care.

Sec. 96.054. OFFICERS. The members of the advisory panel shall elect a presiding officer and an assistant presiding officer from among the members.

Sec. 96.055. COMPENSATION; EXPENSES. (a) Except as
provided by Subsection (b), a member of the advisory panel is not entitled to compensation for service on the advisory panel and is not entitled to reimbursement for travel expenses.

(b) A member who is a representative of a state agency shall be reimbursed for travel expenses incurred while conducting the business of the advisory panel from the funds of the agency the person represents in accordance with the General Appropriations Act.

Sec. 96.056. VACANCY. A vacancy on the advisory panel shall be filled by the commissioner.

Sec. 96.057. ABOLISHED. The Advisory Panel on Health Care Associated Infections is abolished January 1, 2007.

[Sections 96.058-96.100 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF ADVISORY PANEL

Sec. 96.101. GENERAL POWERS AND DUTIES. (a) The advisory panel, using nationally accepted measures, shall study and recommend definitions and methodologies for collecting and reporting evidence-based data on:

(1) infection rates;
(2) process measures; or
(3) both infection rates and process measures.

(b) In developing the recommendations described in Subsection (a), the advisory panel shall consider:

(1) adjusting the reported infection rates to account for the differences in patient populations and for factors outside the control of the health care facility;
(2) standardizing data collection methodology and
reporting;

(3) reviewing data collection and reporting systems of other entities related to infection rates, such as the National Nosocomial Infections Surveillance System of the federal Centers for Disease Control and Prevention;

(4) reviewing data collection and reporting systems of other entities related to process measures, such as the Joint Commission on Accreditation of Healthcare Organizations or the Centers for Medicare and Medicaid Services;

(5) maximizing the efficient use of the resources required for health care facilities to conduct required surveillance and reporting;

(6) recognizing the potential unintended consequences of public reporting that is poorly designed or executed and that may diminish the overall quality of this state's health care or mislead or fail to protect health care consumers who use the data; and

(7) providing additional benefits to health care consumers.

Sec. 96.102. REPORT TO LEGISLATURE. (a) Not later than November 1, 2006, the commissioner shall file a report with the presiding officer of each house of the legislature on the advisory panel's recommendations for legislation regarding the collection and reporting of infection rates, process measures, or both.

(b) The report shall include a recommendation that the legislation set September 1, 2007, as the date for hospitals and ambulatory surgical centers to comply with the legislation.
amended by adding Subsections (c-1) and (c-2) to read as follows:

(c-1) The council shall use public use data to prepare and issue reports that provide information for review and analysis by the Health and Human Services Commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

SECTION 5. (a) In this section, "niche hospital" has the meaning assigned by Section 105.002, Occupations Code.

(b) The Department of State Health Services shall conduct a study regarding the impact of niche hospitals on the financial viability of other general hospitals located in this state.

(c) In conducting the study, the Department of State Health Services shall evaluate:

(1) the number of niche hospitals currently operating in this state;

(2) the number of niche hospitals in this state that are currently under construction or in the planning phase of construction;

(3) the location of each niche hospital and its proximity to other general hospitals;

(4) the financial impact of niche hospitals on other
general hospitals;

(5) the referral patterns of physicians with an ownership interest in a niche hospital as compared to the referral patterns of physicians with privileges at a niche hospital who do not have an ownership interest in the niche hospital; and

(6) the range of services provided by niche hospitals in this state, with particular emphasis on the provision of emergency and charity care services.

(d) Not later than December 1, 2006, the Department of State Health Services shall submit a report to the legislature regarding the results of the study conducted under this section.

(e) This section expires September 1, 2007.

SECTION 6. Section 105.002, Occupations Code, as amended by this Act, applies only to conduct that occurs on or after the effective date of this Act. Conduct that occurs before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. As soon as practicable after the effective date of this Act, the commissioner of the Department of State Health Services shall appoint members to the Advisory Panel on Health Care Associated Infections as required by Chapter 96, Health and Safety Code, as added by this Act.

SECTION 8. This Act takes effect September 1, 2005.
I hereby certify that S.B. No. 872 passed the Senate on April 12, 2005, by the following vote: Yeas 30, Nays 0, one present not voting; May 27, 2005, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 28, 2005, House granted request of the Senate; May 28, 2005, Senate adopted Conference Committee Report by the following vote: Yeas 31, Nays 0.

I hereby certify that S.B. No. 872 passed the House, with amendments, on May 23, 2005, by a non-record vote; May 28, 2005, House granted request of the Senate for appointment of Conference Committee; May 29, 2005, House adopted Conference Committee Report by the following vote: Yeas 138, Nays 2, two present not voting.

17 JUNE '05

Rick Perry
Governor