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of Consumer Reports

February 16, 2010

By e-mail to eric.creer@cdph.ca.gov and by U.S. mail

RE: Public Records Act Request

California Department of Public Health
PO BOX 997413-MS3001
Sacramento, CA 95899-7413

Attention: Eric Creer

Consumers Union is concerned about patient safety in California. Under the authority of the Public Records Act, we request documents related to adverse events and hospital acquired infections made available to the public through legislation passed since 2006. The relevant sections of the California Health and Safety Code is listed in bullet form after each numbered item we request. Please inform us if there will be additional costs for obtaining the data we request. We would be willing to come to the Department's offices to access the records if this would reduce the cost. If any of the listed items cannot be provided, please provide the rest. Please provide the data in electronic format where available.

Consumers Union hereby requests the following:

1. A list of California hospitals with the number and type of adverse events reported to the department for each hospital pursuant to 1279.1; and the compiled data regarding substantiated adverse events and the outcomes of inspections and investigations, pursuant to 1279.3. Please include hospitals for which zero events were reported and hospitals that failed to report adverse events as required. We would prefer the data in excel format.
 - 1279.1 (a) A health facility licensed pursuant to subdivision (a), (b), or (f) of Section 1250 shall report an adverse event to the department no later than five days after the adverse event has been detected, or, of that event is an ongoing or emergent threat to the welfare, health, or safety of patients, personnel, or visitors, not later than 24 hours after the adverse event has been detected. Disclosure of individually identifiable patient information shall be consistent with applicable law.
 - 1279.3(b) By January 1, 2009, and until January 1, 2015, the department shall make information regarding reports of substantiated adverse events pursuant to Section 1279.1, and outcomes of inspections and investigations conducted pursuant to Section 1279.1, readily accessible to consumers throughout California. The department shall also compile and make available, to entities deemed appropriate by the department, data regarding

these reports of substantiated adverse events pursuant to Section 1279.1 and outcomes of inspections and investigations conducted pursuant to Section 1279.1, in order that these entities may post this data on their Internet Web sites. Entities deemed appropriate by the department shall enter into a memorandum of understanding with the department that requires the inclusion of all data and all hospital information provided by the department. These entities may include universities, consumer organizations, or health care quality organizations.

1279.3(c) The information required pursuant to this section shall include, but not be limited to, information regarding each substantiated adverse event, as defined in Section 1279.1, reported to the department, and may include compliance information history. The names of the health care professionals and health care workers shall not be included in the information released by the department to the public.

2. The standard form, or other method, used by the department to confirm that hospitals have reported an adverse event to patients or parties responsible for patients pursuant to 1279.1 (c),
 - 1279.1 (c) The facility shall inform the patient or the party responsible for the patient of the adverse event by the time the report is made.

3. A list of hospitals that failed to report an adverse event pursuant to 1279.1, and the fines issued pursuant to 1280.4,

- 1280.4 If a licensee of a health facility licensed under subdivision (a), (b), or (f) of Section 1250 fails to report an adverse event pursuant to Section 1279.1, the department may assess the licensee a civil penalty in an amount not to exceed one hundred dollars (\$100) for each day that the adverse event is not reported following the initial five-day period or 24-hour period, as applicable, pursuant to subdivision (a) of Section 1279.1. If the licensee disputes a determination by the department regarding alleged failure to report an adverse event, the licensee may, within 10 days, request a hearing pursuant to Section 100171. Penalties shall be paid when appeals pursuant to those provisions have been exhausted.

4. Quarterly reports of cases of MRSA, C.Diff, Vancomycin-resistant enterococcal bloodstream infection, central line associated bloodstream infection, and surgical site infection pursuant to 1288.55 (a),

- 1288.55. (a) (1) Each health facility, as defined in paragraph (3) of subdivision (a) of Section 1255.8, shall quarterly report all cases of health-care-associated MRSA bloodstream infection, health-care-associated clostridium difficile infection, and health-care-associated Vancomycin-resistant enterococcal bloodstream infection, and the number of inpatient days.
(2) Each health facility shall report quarterly to the department all central line associated bloodstream infections and the total central line days.
(3) Each health facility shall report quarterly to the department all health-care-associated surgical site infections of deep or organ space surgical sites, health-care-associated infections of orthopedic surgical sites, cardiac surgical sites, and gastrointestinal surgical sites designated as clean and clean-contaminated, and the number of surgeries involving deep or organ space, and orthopedic, cardiac, and gastrointestinal surgeries designated

clean and clean-contaminated.

5. Annual hospital data on influenza vaccination of healthcare workers and central line insertion practices made to the department pursuant to 1288.8 (b) of the Health and Safety Code, arranged by hospital.

- 1288.8 (b) On and after January 1, 2008, each general acute care hospital shall implement and annually report to the department on its implementation of infection surveillance and infection prevention process measures that have been recommended by the Centers for Disease Control and Prevention (CDC) Healthcare Infection Control Practices Advisory Committee, as suitable for a mandatory public reporting program. Initially, these process measures shall include the CDC guidelines for central line insertion practices, surgical antimicrobial prophylaxis, and influenza vaccination of patients and healthcare personnel. In consultation with the advisory committee established pursuant to Section 1288.5, the department shall make this information public no later than six months after receiving the data.

6. A list of hospitals that have signed up for NHSN, hospitals that are reporting data to NHSN, and those that have not signed up, pursuant to 1288.55 and 1288.8,

- 1288.55 (d) (*regarding reports of infection rates*) Health facilities that report data pursuant to the system shall report this data to the NHSN and the department, as appropriate
- 1288.8 (d) (*regarding reports of process measures*): Each general acute care hospital shall also submit data on implemented process measures to the National Healthcare Safety Network of the CDC, or to any other scientifically valid national HAI reporting system based upon the recommendations of the Centers for Disease Control (CDC) Healthcare Infection Control Practices Advisory Committee. Hospitals shall utilize the Centers for Disease Control and Prevention definitions and methodology for surveillance of HAI. Hospitals participating the California Hospital Assessment and Reporting Task Force (CHART) shall publicly report those HAI measures as agreed to by all CHART hospitals.

7. Resource assessments or written documents memorializing resource assessments conducted and documentation of education of department staff conducted pursuant to 1288.8 (a),

- 1288.8 (a) By January 1, 2008, the department shall take all of the following actions to protect against health care associated infection (HAI) in general acute care hospitals statewide:
(1) Implement an HAI surveillance and prevention program designed to assess the department's resource needs, educate health facility evaluator nurses in HAI, and educate department staff on methods of implementing recommendations for disease prevention

8. Systems analyses prepared for Licensing & Certification pursuant to 1279.2 (g),

- 1279.2(g). In preparing the staffing and systems analysis required pursuant to Section 1266, the department shall also report regarding the number and timeliness of investigations of adverse events initiated in response to reports of adverse events.

9. Administrative regulations adopted pursuant to 1288.8 (a) (2), and the link to the regulations on an agency website.

- 1288.8 (a) (2) [By January 1, 2008, the department shall] revise existing and adopt new administrative regulations, as necessary, to incorporate current Centers for Disease Control and Prevention guidelines and standards for HAI prevention.

10. Administrative regulations adopted pursuant to 1280.3 (b), and the link to the regulations on an agency website.

- 1280.3 (b) The department shall promulgate regulations establishing the criteria to assess an administrative penalty against a health facility licensed pursuant to subdivisions (a), (b), or (f) of Section 1250. The criteria shall include, but need not be limited to, the following:
 - (1) The patient's physical and mental condition.
 - (2) The probability and severity of the risk that the violation presents to the patient.
 - (3) The actual financial harm to patients, if any.
 - (4) The nature, scope, and severity of the violation.
 - (5) The facility's history of compliance with related state and federal statutes and regulations.
 - (6) Factors beyond the facility's control that restrict the facility's ability to comply with this chapter or the rules and regulations promulgated thereunder.
 - (7) The demonstrated willfulness of the violation.
 - (8) The extent to which the facility detected the violation and took steps to immediately correct the violation and prevent the violation from recurring.

11. Documentation that the department is completing evaluations during surveys and that department staff has been trained pursuant to Sections 1279 (Adverse Events) and 1288 (Hospital Acquired Infections) of the Health and Safety Code, specifically with reference to 1288.8 (e) (3), 1288.9 (c) and 1279 (g),

- 1279 (g): Notwithstanding any other provision of the law, the department shall inspect for compliance with provisions of state law and regulations during a state or federal period inspection, including, but not limited to, an inspection required under this section.
- 1288.8 (e) (2): [The department shall establish an infection surveillance, prevention, and control program to] Provide education and training to department health facility evaluator nurses and consultants to effectively survey hospitals for compliance with infection surveillance, prevention, and control recommendations, as well as state and federal statutes and regulations.
- 1288.9: By January 1, 2009, the department shall do all of the following: (c) During surveys, evaluate the facility's compliance with existing policies and procedures to prevent HAI, including any externally or internally reported HAI process and outcome measures.

12. A list of the deficiency codes used on the health facilities consumer information system, with definitions of the codes' meaning.

13. The survey forms, providing the details and findings from the department's surveys, for the five largest general acute care hospitals (by bed number) evaluated during the last quarter of 2009 (October-December).

The Public Records Act mandates that, "upon request for a copy of records that reasonably describes an identifiable record or records, [the agency] shall make the records promptly available to any person". Cal. Gov't Code ' 6253(b); see also id. ' 6253(a), (d). The Act defines "public record" as "includ[ing] any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Gov't Code ' 6252(e).

California's Public Records Act is premised on the Legislature's determination that "access to information concerning the conduct of the people's business is a fundamental and necessary

right of every person in this state". Cal. Gov't Code ' 6250. Consequently, a state agency's public records are open to public inspection and, upon request, a state agency shall provide copies of its public records. Id. ' 6253(a)-(b). Upon request, the agency shall provide the databases in electronic format. Id. ' 6253.9(a).

Pursuant to Cal. Gov't Code ' 6253(c), we request that the Department of Health please provide the public records above within ten days of the date of this letter. Electronic mail, to "sayesy@consumer.org" and "lmcgiffert@consumer.org", is fine for any communication. If you or your staff have any questions, please telephone us at your earliest convenience at (415) 431-6747 ext. 137 or (512) 477-4431 ext 115.

Sincerely,



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