

- SUBJECT:** Removing the Texas Health Services Authority from statute
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 8 ayes — Raymond, Rose, Keough, S. King, Naishtat, Peña, Price, Spitzer
- 0 nays
- 1 absent — Klick
- WITNESSES:** For — (*Registered, but did not testify*: Harry Holmes, Texas Association of Healthcare Information Organizations; Nora Belcher, Texas e-Health Alliance)
- Against — None
- On — Karl Spock, Sunset Advisory Commission; (*Registered, but did not testify*: Tony Gilman, Texas Health Services Authority; Troy Alexander, Texas Medical Association)
- BACKGROUND:** In 2007, the 80th Legislature created the Texas Health Services Authority (THSA). This public-private partnership, legally structured as a public nonprofit corporation, is designed to accelerate the secure sharing of health-related information, including electronic medical records, among health providers through the adoption of health information exchanges across the state. The entity is subject to the Sunset Act but has not undergone Sunset review. If not continued in statute, the entity would expire on September 1, 2015.
- Agency function.** THSA promotes and coordinates the development of local and statewide health information exchanges that transfer patient medical records among providers. The Texas Health and Human Services Commission (HHSC), with support from THSA, competitively funded 10 local health information exchanges using federal grant money. THSA also created a state health information exchange called HIETexas that aims to act as a hub to connect local exchanges in Texas to each other and to

networks outside the state.

In 2011, the 82nd Legislature directed THSA to develop privacy and security standards for electronically sharing protected health information and to establish a process by which an entity could apply for certification under these standards. THSA currently enforces the security standards adopted by HHSC.

Governing structure. THSA is an independent entity that contracts with but is not a part of HHSC. It is governed by an 11-member board of directors appointed by the governor with the advice and consent of the Texas Senate. The governor also appoints two ex-officio, nonvoting board members who represent the Texas Department of State Health Services. The board's chairman and five staff members oversee THSA's daily operations.

Funding. THSA receives no ongoing state appropriation, although the Legislature distributed \$5 million to THSA from the Texas Health Insurance Pool in fiscal 2014, the same year in which federal funding for THSA ran out.

DIGEST:

HB 1680 would remove the Texas Health Services Authority (THSA) from statute and Sunset review effective September 1, 2021. In place of the authority, the bill would designate in statute a private nonprofit organization with relevant knowledge and experience in establishing statewide health information exchange capabilities to succeed THSA following its expiration in 2021.

Expiration in statute of THSA's authority. Effective September 1, 2021, the bill would remove from statute the following provisions regarding THSA:

- a list of the agency's general powers and duties;
- a list of acts in which THSA may not engage;
- requirements regarding the confidentiality of protected health information and individually identifiable health information

- collected, assembled, or maintained by THSA;
- requirements that THSA establish security standards to protect the transmission and receipt of individually identifiable health information or data;
 - requirements that THSA establish policies and procedures for taking disciplinary actions against a board member, employee, or other person who violates state or federal privacy laws related to health care information or THSA-maintained data;
 - a requirement that THSA take commercially reasonable measures to protect its intellectual property;
 - a requirement that THSA submit an annual report to certain governmental entities;
 - a provision allowing THSA to be funded through the general appropriations act and to request, accept, and use gifts and grants as necessary in addition to assessing fees or other revenue-generating activities to cover costs associated with its functions;
 - a requirement that THSA collaborate with the Electronic Health Information Exchange System Advisory Committee to ensure that certain health information exchange systems are interoperable;
 - a requirement that THSA coordinate with HHSC, the attorney general, and the Texas Department of Insurance to request a federal audit of an entity's compliance with HIPAA and to monitor and review entities that use, store, or transmit health information; and
 - a requirement that THSA apply for and pursue federal funding in consultation with HHSC and the Texas Department of Insurance.

Transfer of THSA's advisory committee role to a private nonprofit organization. Effective September 1, 2021, the bill also would remove a representative of the Texas Health Services Authority from the Electronic Health Information Exchange System Advisory Committee and would add to the advisory committee at least one representative of the private nonprofit organization with relevant knowledge and experience in establishing statewide health information exchange capabilities.

Privacy and security standards. The bill would maintain in statute the privacy and security standards for the electronic sharing of protected

health information that were developed by THSA and adopted by HHSC until the commission amends the standards by rule. Under the bill, if HHSC did amend the standards, it would have to seek the assistance of a private nonprofit organization with relevant knowledge and experience in establishing statewide health information exchange capabilities.

The amended standards would have to:

- comply with the Health Insurance Portability and Accountability Act and Privacy Standards and chapter 181 of the Health and Safety Code;
- comply with any other state and federal law relating to the security and confidentiality of electronic health information;
- ensure the secure maintenance and disclosure of individually identifiable health information;
- include strategies and procedures for disclosing individually identifiable health information; and
- support a level of system interoperability with existing health record databases in Texas that is consistent with emerging standards.

Transfer of THSA's role in certifying compliance with privacy standards. In place of THSA, a private nonprofit organization would establish a process by which an entity that uses, stores, or transmits health information could apply to the nonprofit for a certificate of compliance with privacy standards. If this private nonprofit did not exist, the bill would allow HHSC to establish its own certification process or designate another entity with relevant knowledge to establish a certification process.

Board membership. HB 1680 would increase membership on THSA's governor-appointed board of directors from 11 to 12, including a voting board member who would represent Texas local health information exchanges. The bill would change the board's structure by requiring the two ex-officio, nonvoting members to be representatives of any health and human services agency rather than representatives of the Department of State Health Services.

Except as otherwise provided, the bill would take effect September 1, 2015.

SUPPORTERS
SAY:

By directing THSA to function as a private nonprofit corporation rather than as a public nonprofit, HB 1680 would allow THSA to continue its core functions with greater flexibility to operate, create services, and deliver value.

As a private nonprofit corporation, it would be more dependent on market forces to drive development of health information exchanges and therefore more responsive to the needs of health care providers and health information exchanges, which would financially support THSA through user fees or other funding if they found its services to be valuable. The entity should depend on participation by the private sector for its financial support, not the largesse of the state. A private model would be in line with a recommendation from THSA's *2014 Texas State HIE Strategic Plan* that government participation in health information infrastructure be limited to catalyzing relevant markets, facilitating collaborations, aligning incentives, and easing regulatory burdens.

Transitioning THSA to a private nonprofit corporation model also would allow the entity to review its computer security systems to certify compliance with privacy and security standards without creating the possibility that the results of the review and security flaws would be open to disclosure under the Public Information Act.

Transitioning THSA from a public nonprofit model to a private nonprofit model additionally would not lower the privacy and security standards for protected health information that HHSC and THSA already have developed. Under its new structure, THSA could continue assisting in developing or changing standards if HHSC requested it. Statutory provisions that protect providers in compliance with privacy and security standards still would be maintained in law. Moreover, health care providers are concerned with meeting federal HIPAA standards and would participate only in a health information exchange that met those standards. THSA's privacy standards certification program also would ensure that

bad actors who did not protect the privacy of health information would not be certified.

Transitioning THSA to a private nonprofit corporation model also would not necessarily reduce oversight. Under its new structure, THSA could establish its own oversight board to meet its needs in place of the governor-appointed board of directors.

The bill would keep the funding model for THSA largely the same as it is now. THSA already had authority in statute to use funding from user fees or other revenue-generating models in addition to state funds. The THSA already does not receive ongoing state appropriations and it has been preparing to be a fully market-driven model for several years. The entity also could continue to use federal grant funds through HHSC if more funding became available. The new model would not unnecessarily jeopardize providers' access to electronic health information exchanges.

**OPPONENTS
SAY:**

By transitioning THSA from a public-private partnership to a private nonprofit corporation model, HB 1680 would reduce government oversight of the transfer of electronic health information by removing its governor-appointed board. THSA already operates with a market-oriented focus and would not need to transition to a private corporation model to continue that focus. A private nonprofit board might not be as responsive to privacy concerns as the current governor-appointed board.

If THSA under its new structure could not raise funds to support the performance of its duties, the bill could jeopardize the availability of health information exchanges at a time when most health providers are switching to electronic-only health records and will need access to a robust, secure, low-cost network of exchanges.

NOTES:

The companion bill, SB 203 by Nelson, was reported favorably by the Senate Health and Human Services Committee on March 23 and placed on the local and uncontested calendar for April 9.

CASHB 1680 differs from the introduced bill in that the committee

substitute would:

- provide for the Electronic Health Information Exchange System Advisory Committee to have at least one representative from the private nonprofit organization succeeding THSA after the entity expired in statute;
- require, rather than allow, HHSC to seek the assistance of the private nonprofit organization that succeeds THSA;
- reorganize provisions regarding the privacy standards certification process to specify that the new provisions transferring the certification process from THSA to its private nonprofit successor would go into effect after THSA expired in statute;
- provide for THSA's private nonprofit successor to continue certifying entities that met privacy and security standards rather than giving this authority to HHSC;
- require the organization that establishes the privacy standards certification process to publish the standards on its website; and
- specify that the bill would take effect September 1, 2015, except as otherwise provided.