

SUBJECT: Revising certain regulations for public health disasters and emergencies

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter, P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

SENATE VOTE: On final passage, April 21 — 31-0

WITNESSES: For — Regan De Marines and Jackie Schlegel, Texans for Vaccine Choice; Andrea Gauthier; (*Registered, but did not testify*: Nora Belcher, Texas e-Health Alliance; Kelley Masters)

Against — (*Registered, but did not testify*: Tony Bennett, Texas Association of Manufacturers)

On — Dawn Richardson, National Vaccine Information Center; John Carlo, Texas Medical Association and Texas Public Health Coalition; (*Registered, but did not testify*: Barbara Klein and Jennifer Sims, Department of State Health Services)

BACKGROUND: Health and Safety Code sec. 81.003 defines "public health disaster" as:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there is an immediate threat from a communicable disease that poses a high risk of death or serious long-term disability and creates a substantial risk of public exposure.

Under sec. 81.081, DSHS must impose control measures to prevent the spread of disease to protect the public health.

Under sec. 81.082(d), a declaration of a public health disaster may

continue for a maximum of 30 days. A public health disaster may be renewed one time by the commissioner of DSHS for an additional 30 days. Sec. 81.082(e) specifies that the governor may terminate a declaration of a public health disaster at any time.

DIGEST:

SB 968 would revise regulations governing the Department of State Health Services, the Texas Medical Board, and the Texas Division of Emergency Management during a public health disaster or emergency. The bill would prohibit COVID-19 vaccine passports, establish the Office of Chief State Epidemiologist, and revise and add definitions under Health and Safety Code ch. 81.

The bill would revise the definition of "public health disaster" under current law to mean:

- a state of disaster declared by the governor; and
- a determination by the commissioner of the Department of State Health Services (DSHS) that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that posed a high risk of death or serious harm to the public and created a substantial risk of harmful public exposure.

"Public health emergency" would be defined as a determination by the DSHS commissioner, evidenced in a commissioner-issued emergency order, that there was an immediate threat from a communicable disease, health condition, or chemical, biological, radiological, or electromagnetic exposure that:

- potentially posed a risk of death or severe illness or harm to the public; and
- potentially created a substantial risk of harmful exposure to the public.

Department of State Health Services. The bill would establish DSHS as the preemptive authority under Health and Safety Code ch. 81 and would

revise the department's required duties to include:

- coordinating statewide or regional efforts to protect public health; and
- collaborating with local elected officials, including county and municipal officials, to prevent the spread of disease and protect the public health.

Authority. The bill would allow the commissioner of DSHS to declare a statewide or regional public health disaster or order a statewide or regional public health emergency if the commissioner determined an occurrence or threat to public health was imminent. The commissioner could declare a public health disaster only if the governor declared a state of disaster for the occurrence or threat.

Length of disaster or emergency. A public health disaster or emergency would continue until the governor or commissioner terminated the disaster or emergency on a finding that the threat or danger had passed or the disaster or emergency had been managed to the extent emergency conditions no longer existed.

The bill would specify that a declaration of a public health disaster or an order of public health emergency could continue for a maximum of 30 days after the date the disaster or emergency was declared or ordered by the commissioner of DSHS.

A public health disaster or public health emergency could only be renewed by the Legislature or a designated legislative oversight board, rather than the DSHS commissioner. The bill would prohibit each renewal period for a public health disaster declaration or public health emergency order from exceeding 30 days.

Content and publication of declaration or order. A declaration or order issued would have to include:

- a description of the disaster or emergency;

- a designation of the area threatened by the disaster or emergency;
- a description of the condition that created the disaster or emergency; and
- if applicable, the reason for renewing or terminating the disaster or emergency.

The bill would specify methods in which declarations or orders would have to be filed.

Expert panel. Immediately after declaring a public health disaster or issuing a public health emergency order, the DSHS commissioner would be required to appoint an expert panel composed of five physicians and four other health care providers with certain knowledge and experience. The commissioner also would have to appoint a presiding officer.

The expert panel would have to meet during the public health disaster or emergency to provide recommendations on the disaster or emergency to the appointed chief state epidemiologist. The expert panel would be abolished on the termination of the public health disaster or emergency.

COVID-19 vaccine passports. The bill would prohibit a governmental entity in the state from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care, including publishing or sharing any individual's COVID-19 immunization record or similar health information for a non-health care purpose.

The bill would prohibit a business in the state from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery to enter, access, or receive service from the business. A business that failed to comply would not be eligible to receive a grant or enter into a contract payable with state funds.

Each appropriate state agency would have to ensure that businesses in the state complied and could require compliance as a condition for a license, permit, or other state authorization necessary for conducting business in

the state.

These provisions could not be construed to restrict a business from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health, or interfere with an individual's right to access the individual's personal health information under federal law.

Office of Chief State Epidemiologist. The bill would require the commissioner of DSHS to establish an Office of Chief State Epidemiologist within the department to provide expertise in public health activities and policy in the state by evaluating epidemiologic, medical, and health care information and identifying pertinent research and evidence-based best practices. The commissioner would have to appoint a physician licensed to practice medicine in the state as the chief state epidemiologist to administer the new office.

The bill would require the chief state epidemiologist to report to TDEM's state operations center during a declared public health disaster to provide expertise and support the state's response to the disaster.

Certain information provided to the office that related to an epidemiologic or toxicologic investigation of human illness or conditions and of environmental exposure that were harmful or believed to be harmful to the public health would be confidential and not subject to disclosure under the Texas Public Information Act. This information could not be released or made public on subpoena or otherwise, except for statistical purposes if released in a manner that prevented identification of any person.

Texas Medical Board. The bill would prohibit the Texas Medical Board (TMB) from issuing an order or adopting a regulation that limited or prohibited a nonelective medical procedure. "Nonelective medical procedure" would mean a medical procedure that if not performed within a reasonable time could, as determined in good faith by a patient's physician, result in the patient's loss of life or a deterioration, complication, or progression of the patient's current or potential medical

condition or disorder, including a physical condition or mental disorder. The term would include a surgery, a physical exam, a diagnostic test, a screening, the performance of a laboratory test, and the collection of a specimen to perform a laboratory test.

The bill would apply only to an order issued or regulation adopted on or after the bill's effective date.

Exception. The bill would allow TMB during a declared state of disaster to issue an order or adopt a regulation imposing a temporary limitation or prohibition on a medical procedure other than a nonelective medical procedure only if the limitation or prohibition was reasonably necessary to conserve resources for nonelective medical procedures or resources needed for disaster response. The order or regulation could not continue for more than 15 days unless renewed by the board.

Immunity. A person subject to an issued order or adopted regulation who in good faith acted or failed to act would not be civilly or criminally liable or subject to disciplinary action.

Texas Division of Emergency Management. The bill would require the Texas Division of Emergency Management (TDEM) to enter into a contract with a manufacturer of personal protective equipment (PPE) that guaranteed a set amount and stocked supply of PPE for use during a certain declared public health disaster.

Under a contract, TDEM could purchase PPE only if it determined the state's supply of PPE would be insufficient based on PPE in the state's reserve and supplied by or expected to be supplied by the federal government. TDEM would be required to pursue all available federal funding to cover the costs of PPE purchased under a contract with a PPE manufacturer.

Civil penalty. A health care facility that failed to submit a report required by DSHS under a public health disaster or emergency would be liable to the state for a maximum civil penalty of \$1,000 for each failure. The

attorney general at the request of DSHS could bring an action to collect an imposed civil penalty.

Study and report. Under the direction of the emergency management council established by the governor, the Preparedness Coordinating Council would have to conduct a study on the state's response to COVID-19, examining the roles of DSHS, the Health and Human Services Commission, and TDEM.

By December 1, 2022, the council would have to submit a written report containing the study's results and legislative recommendations to the governor, the lieutenant governor, the House speaker, and the members of the Legislature.

These provisions would expire September 1, 2023.

Other provisions. DSHS would have to use any available federal money to implement the bill. DSHS and the Preparedness Coordinating Council advisory committee would be required to implement the bill only if the Legislature appropriated money specifically for that purpose. If the Legislature did not appropriate money specifically for that purpose, DSHS and the council could, but would not be required to, implement the bill using other appropriations available for that purpose.

The bill would repeal Health and Safety Code secs. 81.082(d) and 81.082(e), regarding the maximum length of a declared public health disaster and the governor's authority to terminate a declaration at any time.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS
SAY:**

SB 968 would ensure that Texas was better prepared in responding to future public health emergencies and disasters by clarifying the responsibilities of the Department of State Health Services and other entities, establishing legislative oversight, and requiring contracts to

stockpile personal protective equipment. The COVID-19 pandemic highlighted several challenges, including public access to information, coordination between state and local agencies, and shortages in testing and PPE. The bill is necessary to clarify the authority of DSHS, the Texas Medical Board, and the Texas Division of Emergency Management (TDEM) to ensure the state responds more efficiently and effectively in a public health disaster or emergency.

COVID-19 vaccine passports. By prohibiting COVID-19 vaccine passports, the bill would protect an individual from discrimination and preserve an individual's choice on whether to receive the COVID-19 vaccine. The COVID-19 vaccine is voluntary and should not be mandated by government or businesses as a condition to receive services or maintain employment.

Office of Chief State Epidemiologist. Requiring the chief state epidemiologist to report to TDEM would improve coordination among entities and help provide essential expertise and support to mitigate the spread of a communicable disease.

Civil penalty. The civil penalty in the bill would ensure health care facilities submitted certain required reports in a timely manner.

CRITICS
SAY:

SB 968 would unnecessarily interfere with a business' choices to adopt its own health policies and could increase the administrative burden for health care facilities that failed to comply with certain reporting requirements.

COVID-19 vaccine passports. By prohibiting COVID-19 vaccine passports, the bill would unnecessarily interfere with a business' ability to adopt its own health policies to protect its employees from exposure to COVID-19 and other diseases.

Office of Chief State Epidemiologist. The bill could create confusion by requiring the chief state epidemiologist to report to the Texas Division of Emergency Management during public health disasters. It would be better

for the chief state epidemiologist to remain within the purview of the Department of State Health Services at all times to ensure consistent leadership regarding infectious disease concerns.

Civil penalty. The maximum civil penalty for health care facilities that do not comply with reporting requirements is too punitive, especially for health care facilities that lack adequate resources to sort through large data sets.