SECTION 16. This Act takes effect September 1, 2009.
Passed by the House on May 5, 2009: Yeas 144, Nays 0, 1 present, not voting; the
House concurred in Senate amendments to H.B. No. 1151 on May 29, 2009: Yeas
141, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May
23, 2009: Yeas 31, Nays 0.
Approved June 19, 2009.
Effective September 1, 2009.

CHAPTER 1119

H.B. No. 1174

AN ACT
relating to payment by a municipality or river authority for certain damages caused by the municipality’s
or river authority’s operation of a sanitary sewer system.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subchapter Z, Chapter 552, Local Government Code, is amended by adding
Section 552.912 to read as follows:

Sec. 552.912. CERTAIN DAMAGES CAUSED BY SEWAGE BACKUP. (a) A munici-
paty or river authority may pay actual property damages caused by the backup of the munici-
pality’s or river authority’s sanitary sewer system regardless of whether the municipality or river authority would be
liable for the damages under Chapter 101, Civil Practice and Remedies Code.

(b) This section does not waive governmental immunity from suit or liability.

(c) This section does not apply to the Trinity River Authority, the San Jacinto River
Authority, the Sabine River Authority, or the Lower Neches Valley River Authority.

SECTION 2. Section 552.912, Local Government Code, as added by this Act, applies to
damages caused by the backup of a sanitary sewer system on or after March 1, 2007.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the
members elected to each house, as provided by Section 39, Article III, Texas Constitution. If
this Act does not receive the vote necessary for immediate effect, this Act takes effect
September 1, 2009.

Passed by the House on April 22, 2009: Yeas 149, Nays 0, 1 present, not voting; the
House concurred in Senate amendments to H.B. No. 1174 on May 29, 2009: Yeas
142, Nays 0, 2 present, not voting; passed by the Senate, with amendments, on May
25, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

CHAPTER 1120

H.B. No. 1218

AN ACT
relating to programs to exchange certain health information between the Health and Human Services
Commission and certain health care entities and facilities.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter V to
read as follows:

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SUBCHAPTER V. HEALTH INFORMATION EXCHANGE SYSTEMS

Sec. 531.901. DEFINITIONS. In this subchapter:

(1) “Electronic health record” means an electronic record of aggregated health-related information concerning a person that conforms to nationally recognized interoperability standards and that can be created, managed, and consulted by authorized health care providers across two or more health care organizations.

(2) “Electronic medical record” means an electronic record of health-related information concerning a person that can be created, gathered, managed, and consulted by authorized clinicians and staff within a single health care organization.

(3) “Health information exchange system” means a health information exchange system created under this subchapter that moves health-related information among entities according to nationally recognized standards.

(4) “Local or regional health information exchange” means a health information exchange operating in this state that securely exchanges electronic health information, including information for patients receiving services under the child health plan or Medicaid program, among hospitals, clinics, physicians' offices, and other health care providers that are not owned by a single entity or included in a single operational unit or network.

Sec. 531.902. ELECTRONIC HEALTH INFORMATION EXCHANGE PILOT PROJECT. (a) The commission shall establish a pilot project in at least one urban area of this state to determine the feasibility, costs, and benefits of exchanging secure electronic health information between the commission and local or regional health information exchanges. The pilot project must include the participation of at least two local or regional health information exchanges.

(b) A local or regional health information exchange selected for the pilot project under this section must possess a functioning health information exchange database that exchanges secure electronic health information among hospitals, clinics, physicians' offices, and other health care providers that are not each owned by a single entity or included in a single operational unit or network. The information exchanged by the local or regional health information exchange must include health information for patients receiving services from state and federal health and human services programs administered by the commission.

(c) In developing the pilot project under this section, the commission shall:

(1) establish specific written guidelines, in conjunction with the health information exchanges participating in the pilot project, to:

(A) ensure that information exchanged through the pilot project is used only for the patient’s benefit; and

(B) specify which health care providers will use which data elements obtained from the commission and for what purposes, including purposes related to reducing costs, improving access, and improving quality of care for patients; and

(2) ensure compliance with all state and federal laws and rules related to the transmission of health information, including state privacy laws and the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and rules adopted under that Act.

(d) The commission and the health information exchanges participating in the pilot project shall at a minimum exchange a patient's medication history under the pilot project. If the executive commissioner determines that there will be no significant cost to the state, the commission shall apply for and actively pursue any waiver from the federal Centers for Medicare and Medicaid Services that may be necessary for the pilot project and shall actively pursue a waiver to use an electronic alternative to the requirement for handwritten certification of certain drugs under 42 C.F.R. Section 447.152. The pilot project may include additional health care information, either at the inception of the project or as part of a subsequent expansion of the scope of the project.
(e) The pilot project shall initially use the method of secure transmission that is available at the time implementation of the pilot project begins, and subsequently move toward full interoperability in conjunction with the health information exchange system under Section 531.903.

(f) The commission may accept gifts, grants, and donations from any public or private source for the operation of the pilot project.

Sec. 531.903. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM. (a) The commission shall develop an electronic health information exchange system to improve the quality, safety, and efficiency of health care services provided under the child health plan and Medicaid programs. In developing the system, the commission shall ensure that:

(1) the confidentiality of patients' health information is protected and the privacy of those patients is maintained in accordance with applicable federal and state law, including:

(A) Section 1902(a)(7), Social Security Act (42 U.S.C. Section 1396a(a)(7));
(B) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104–191);
(C) Chapter 552, Government Code;
(D) Subchapter G, Chapter 241, Health and Safety Code;
(E) Section 12.003, Human Resources Code; and
(F) federal and state rules and regulations, including:
   (i) 42 C.F.R. Part 431, Subpart F; and
   (ii) 45 C.F.R. Part 164;

(2) appropriate information technology systems used by the commission and health and human services agencies are interoperable;

(3) the system and external information technology systems are interoperable in receiving and exchanging appropriate electronic health information as necessary to enhance:

(A) the comprehensive nature of the information contained in electronic health records; and
(B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers;

(4) the system and other health information systems not described by Subdivision (3) and data warehousing initiatives are interoperable; and

(5) the system has the elements described by Subsection (b).

(b) The health information exchange system must include the following elements:

(1) an authentication process that uses multiple forms of identity verification before allowing access to information systems and data;

(2) a formal process for establishing data-sharing agreements within the community of participating providers in accordance with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104–191) and the American Recovery and Reinvestment Act of 2009 (Pub. L. No. 111–5);

(3) a method by which the commission may open or restrict access to the system during a declared state emergency;

(4) the capability of appropriately and securely sharing health information with state and federal emergency responders;

(5) compatibility with the Nationwide Health Information Network (NHIN) and other national health information technology initiatives coordinated by the Office of the National Coordinator for Health Information Technology;

(6) technology that allows for patient identification across multiple systems; and

(7) the capability of allowing a health care provider to access the system if the provider has technology that meets current national standards.
(c) The commission shall implement the health information exchange system in stages as described by Sections 531.905 through 531.908, except that the commission may deviate from those stages if technological advances make a deviation advisable or more efficient.

(d) The health information exchange system must be developed in accordance with the Medicaid Information Technology Architecture (MITA) initiative of the Center for Medicaid and State Operations and conform to other standards required under federal law.

Sec. 531.904. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM ADVISORY COMMITTEE. (a) The commission shall establish the Electronic Health Information Exchange System Advisory Committee to assist the commission in the performance of the commission's duties under this subchapter.

(b) The executive commissioner shall appoint to the advisory committee at least 12 and not more than 16 members who have an interest in health information technology and who have experience in serving persons receiving health care through the child health plan and Medicaid programs.

(c) The advisory committee must include the following members:

1. Medicaid providers;
2. child health plan program providers;
3. fee-for-service providers;
4. at least one representative of the Texas Health Services Authority established under Chapter 182, Health and Safety Code;
5. at least one representative of each health and human services agency;
6. at least one representative of a major provider association;
7. at least one representative of a health care facility;
8. at least one representative of a managed care organization;
9. at least one representative of the pharmaceutical industry;
10. at least one representative of Medicaid recipients and child health plan enrollees;
11. at least one representative of a local or regional health information exchange; and
12. at least one representative who is skilled in pediatric medical informatics.

(d) The members of the advisory committee must represent the geographic and cultural diversity of the state.

(e) The executive commissioner shall appoint the presiding officer of the advisory committee.

(f) The advisory committee shall advise the commission on issues regarding the development and implementation of the electronic health information exchange system, including any issue specified by the commission and the following specific issues:

1. data to be included in an electronic health record;
2. presentation of data;
3. useful measures for quality of service and patient health outcomes;
4. federal and state laws regarding privacy and management of private patient information;
5. incentives for increasing health care provider adoption and usage of an electronic health record and the health information exchange system; and
6. data exchange with local or regional health information exchanges to enhance:
   (A) the comprehensive nature of the information contained in electronic health records; and
   (B) health care provider efficiency by supporting integration of the information into the electronic health record used by health care providers.

(g) The advisory committee shall collaborate with the Texas Health Services Authority to ensure that the health information exchange system is interoperable with, and not an impediment to, the electronic health information infrastructure that the authority assists in developing.
Sec. 531.905. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM STAGE ONE: ELECTRONIC HEALTH RECORD. (a) In stage one of implementing the health information exchange system, the commission shall develop and establish an electronic health record for each person who receives medical assistance under the Medicaid program. The electronic health record must be available through a browser-based format.

(b) The commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that electronic health records established under this section support health information exchange with electronic medical records systems in use by physicians in the public and private sectors.

(c) The executive commissioner shall adopt rules specifying the information required to be included in the electronic health record. The required information may include, as appropriate:

1. the name and address of each of the person's health care providers;
2. a record of each visit to a health care provider, including diagnoses, procedures performed, and laboratory test results;
3. an immunization record;
4. a prescription history;
5. a list of due and overdue Texas Health Steps medical and dental checkup appointments; and
6. any other available health history that health care providers who provide care for the person determine is important.

(d) Information under Subsection (c) may be added to any existing electronic health record or health information technology and may be exchanged with local and regional health information exchanges.

(e) The commission shall make an electronic health record for a patient available to the patient through the Internet.

Sec. 531.9051. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM STAGE ONE: ENCOUNTER DATA. In stage one of implementing the health information exchange system, the commission shall require for purposes of the implementation each managed care organization with which the commission contracts under Chapter 533 for the provision of Medicaid managed care services or Chapter 62, Health and Safety Code, for the provision of child health plan program services to submit to the commission complete and accurate encounter data not later than the 30th day after the last day of the month in which the managed care organization adjudicated the claim.

Sec. 531.906. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM STAGE ONE: ELECTRONIC PRESCRIBING. (a) In stage one of implementing the health information exchange system, the commission shall support and coordinate electronic prescribing tools used by health care providers and health care facilities under the child health plan and Medicaid programs.

(b) The commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that the electronic prescribing tools described by Subsection (a):

1. are integrated with existing electronic prescribing systems otherwise in use in the public and private sectors; and
2. to the extent feasible:
   (A) provide current payer formulary information at the time a health care provider writes a prescription; and
   (B) support the electronic transmission of a prescription.

(c) The commission may take any reasonable action to comply with this section, including establishing information exchanges with national electronic prescribing networks or providing health care providers with access to an Internet-based prescribing tool developed by the commission.
The commission shall apply for and actively pursue any waiver to the child health plan program or the state Medicaid plan from the federal Centers for Medicare and Medicaid Services or any other federal agency as necessary to remove an identified impediment to supporting and implementing electronic prescribing tools under this section, including the requirement for handwritten certification of certain drugs under 42 C.F.R. Section 447.512. If the commission, with assistance from the Legislative Budget Board, determines that the implementation of operational modifications in accordance with a waiver obtained as required by this subsection has resulted in cost increases in the child health plan or Medicaid program, the commission shall take the necessary actions to reverse the operational modifications.

Sec. 531.907. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM STAGE TWO: EXPANSION. (a) Based on the recommendations of the advisory committee established under Section 531.904 and feedback provided by interested parties, the commission in stage two of implementing the health information exchange system may expand the system by:

(1) providing an electronic health record for each child enrolled in the child health plan program;

(2) including state laboratory results information in an electronic health record, including the results of newborn screenings and tests conducted under the Texas Health Steps program, based on the system developed for the health passport under Section 266.006, Family Code;

(3) improving data-gathering capabilities for an electronic health record so that the record may include basic health and clinical information in addition to available claims information, as determined by the executive commissioner;

(4) using evidence-based technology tools to create a unique health profile to alert health care providers regarding the need for additional care, education, counseling, or health management activities for specific patients; and

(5) continuing to enhance the electronic health record created under Section 531.905 as technology becomes available and interoperability capabilities improve.

(b) In expanding the system, the commission shall consult and collaborate with, and accept recommendations from, physicians and other stakeholders to ensure that electronic health records provided under this section support health information exchange with electronic medical records systems in use by physicians in the public and private sectors.

Sec. 531.908. ELECTRONIC HEALTH INFORMATION EXCHANGE SYSTEM STAGE THREE: EXPANSION. In stage three of implementing the health information exchange system, the commission may expand the system by:

(1) developing evidence-based benchmarking tools that can be used by health care providers to evaluate their own performances on health care outcomes and overall quality of care as compared to aggregated performance data regarding peers; and

(2) expanding the system to include state agencies, additional health care providers, laboratories, diagnostic facilities, hospitals, and medical offices.

Sec. 531.909. INCENTIVES. The commission and the advisory committee established under Section 531.904 shall develop strategies to encourage health care providers to use the health information exchange system, including incentives, education, and outreach tools to increase usage.

Sec. 531.910. REPORTS. (a) The commission shall provide an initial report to the Senate Committee on Health and Human Services or its successor, the House Committee on Human Services or its successor, and the House Committee on Public Health or its successor regarding the health information exchange system not later than January 1, 2011, and shall provide a subsequent report to those committees not later than January 1, 2013. Each report must:

(1) describe the status of the implementation of the system;

(2) specify utilization rates for each health information technology implemented as a component of the system; and
(3) identify goals for utilization rates described by Subdivision (2) and actions the commission intends to take to increase utilization rates.

(b) This section expires September 2, 2013.

Sec. 531.911. RULES. The executive commissioner may adopt rules to implement Sections 531.903 through 531.910.

Sec. 531.912. QUALITY OF CARE HEALTH INFORMATION EXCHANGE WITH CERTAIN NURSING FACILITIES. (a) In this section, “nursing facility” means a convalescent or nursing home or related institution licensed under Chapter 242, Health and Safety Code, that provides long-term care services, as defined by Section 22.0011, Human Resources Code, to medical assistance recipients.

(b) If feasible, the executive commissioner by rule shall establish a quality of care health information exchange with nursing facilities that choose to participate in a program designed to improve the quality of care and services provided to medical assistance recipients. Subject to Subsection (d), the program may provide incentive payments in accordance with this section to encourage facilities to participate in the program.

(c) In establishing a quality of care health information exchange program under this section, the executive commissioner shall, subject to Subsection (d), exchange information with participating nursing facilities regarding performance measures. The performance measures:

(1) must be:

(A) recognized by the executive commissioner as valid indicators of the overall quality of care received by medical assistance recipients; and

(B) designed to encourage and reward evidence-based practices among nursing facilities; and

(2) may include measures of:

(A) quality of life;

(B) direct-care staff retention and turnover;

(C) recipient satisfaction;

(D) employee satisfaction and engagement;

(E) the incidence of preventable acute care emergency room services use;

(F) regulatory compliance;

(G) level of person-centered care; and

(H) level of occupancy or of facility utilization.

(d) The executive commissioner shall maximize the use of available information technology and limit the number of performance measures adopted under Subsection (c) to achieve administrative cost efficiency and avoid an unreasonable administrative burden on participating nursing facilities.

(e) The executive commissioner may:

(1) determine the amount of any incentive payment under the program; and

(2) enter into a contract with a qualified person, as determined by the executive commissioner, for the following services related to the program:

(A) data collection;

(B) data analysis; and

(C) technical support.

(f) The commission may make incentive payments under the program only if money is specifically appropriated for that purpose.

Sec. 531.913. HOSPITAL HEALTH INFORMATION EXCHANGE. (a) In this section, “potentially preventable readmission” means a return hospitalization of a person within a period specified by the commission that results from deficiencies in the care or treatment provided to the person during a previous hospital stay or from deficiencies in post-hospital discharge follow-up. The term does not include a hospital readmission necessitated by the
occurrence of unrelated events after the discharge. The term includes the readmission of a
person to a hospital for:

(1) the same condition or procedure for which the person was previously admitted;
(2) an infection or other complication resulting from care previously provided;
(3) a condition or procedure that indicates that a surgical intervention performed
during a previous admission was unsuccessful in achieving the anticipated outcome; or
(4) another condition or procedure of a similar nature, as determined by the executive
commissioner.

(b) The executive commissioner shall adopt rules for identifying potentially preventable
readmissions of Medicaid recipients and the commission shall exchange data with hospitals
on present-on-admission indicators for purposes of this section.

(c) The commission shall establish a health information exchange program to exchange
confidential information with each hospital in this state regarding the hospital's perform-
ance with respect to potentially preventable readmissions. A hospital shall distribute the
information received from the commission to health care providers providing services at the
hospital.

SECTION 2. Subchapter B, Chapter 62, Health and Safety Code, is amended by adding
Section 62.060 to read as follows:

Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this
section, "health information technology" means information technology used to improve the
quality, safety, or efficiency of clinical practice, including the core functionalities of an
electronic health record, an electronic medical record, a computerized health care provider
order entry, electronic prescribing, and clinical decision support technology.

(b) The Health and Human Services Commission shall ensure that any health information technology used by the
commission or any entity acting on behalf of the commission in the medical assistance
program conforms to standards required under federal law.

SECTION 3. Section 32.060(a), Human Resources Code, as added by Section 16.01,
Chapter 204 (H.B. 4), Acts of the 78th Legislature, Regular Session, 2003, is amended to read
as follows:

(a) The following are not admissible as evidence in a civil action:

(1) any finding by the department that an institution licensed under Chapter 242, Health
and Safety Code, has violated a standard for participation in the medical assistance
program under this chapter; [scr]
(2) the fact of the assessment of a monetary penalty against an institution under Section
32.021 or the payment of the penalty by an institution; or
(3) any information exchanged between the department and a nursing facility under
Section 531.912, Government Code.

SECTION 4. Subchapter B, Chapter 32, Human Resources Code, is amended by adding
Section 32.073 to read as follows:

Sec. 32.073. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a) In this
section, "health information technology" means information technology used to improve the
quality, safety, or efficiency of clinical practice, including the core functionalities of an
electronic health record, an electronic medical record, a computerized health care provider
order entry, electronic prescribing, and clinical decision support technology.

(b) The Health and Human Services Commission shall ensure that any health information technology used by the commission or any entity acting on behalf of the commission in the medical assistance program conforms to standards required under federal law.

SECTION 5. The Health and Human Services Commission shall begin implementing the
pilot project established under Section 531.902, Government Code, as added by this Act, as
soon as feasible after September 1, 2009, but not later than the 60th day after the effective
date of this Act.

SECTION 6. Not later than January 1, 2011, the Health and Human Services Commiss-
ion shall:
(1) assess, in conjunction with the health information exchanges selected for participation in the pilot project established under Section 531.902, Government Code, as added by this Act, the benefits to the state, patients, and health care providers of exchanging secure health information with local or regional health information exchanges;

(2) include, as part of the assessment required by Subdivision (1) of this section, a return on investment analysis for the guidelines developed under Section 531.902(c)(1), Government Code, as added by this Act; and

(3) report the commission’s findings to the standing committees of the senate and house of representatives having primary jurisdiction over health and human services issues.

SECTION 7. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall:

(1) adopt rules to implement the health information exchange systems required by Subchapter V, Chapter 531, Government Code, as added by this Act; and

(2) appoint the members of the Electronic Health Information Exchange System Advisory Committee established under Section 531.904, Government Code, as added by this Act.

SECTION 8. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 9. This Act takes effect September 1, 2009.

Passed by the House on May 12, 2009: Yeas 140, Nays 1, 1 present, not voting; the House refused to concur in Senate amendments to H.B. No. 1218 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 1218 on May 31, 2009: Yeas 140, Nays 0, 1 present, not voting; passed by the Senate, with amendments, on May 26, 2009: Yeas 28, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 1218 on May 31, 2009: Yeas 31, Nays 0.

Approved June 19, 2009.

Effective September 1, 2009.

CHAPTER 1121

H.B. No. 1544

AN ACT

relating to court proceedings for a plea of guilty or nolo contendere for a misdemeanor punishable by fine only.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 27.14(b), Code of Criminal Procedure, is amended to read as follows:

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail or deliver in person to the court a plea of “guilty” or a plea of “nolo contendere” and a waiver of jury trial. The defendant may also request in writing that the court notify the defendant, at the address stated in the request, of the amount of an appeal bond that the court will approve. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. If the court receives a plea and waiver after the time the defendant is scheduled to appear in court but at least five business days before a scheduled trial date, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant either in person or by certified mail, return receipt requested, of the amount of any fine assessed in the case and, if requested by the defendant, the amount of an