

BILL ANALYSIS

Senate Research Center
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S.B. 1328
By: Nelson
Health and Human Services
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Pursuant to S.B. 1136 (78R), the Office of the Attorney General analyzed state law to identify provisions that were preempted by or inconsistent with the federal Health Insurance Portability and Accountability Act (HIPAA) of 1996 and related rules. As proposed, S.B. 1328 repeals from state law provisions that are preempted by HIPAA and ensures consistency between state law and HIPAA where appropriate. This will enable covered entities to comply fully with both state and federal law on health policy.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 58.0071, Family Code, by adding Subsection (g) to prohibit a covered entity from destroying a record or file before the sixth anniversary of the date the record or file was created if destruction of the physical record or file under this section is destruction of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 2. Amends Sections 82.010(b) and (c), Family Code, to prohibit a court from releasing an application to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner. Makes conforming changes.

SECTION 3. Amends Section 107.006(c), Family Code, to provide for an exception to the extent that the other law is preempted by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 4. Amends Sections 162.018(a) and (b), Family Code, to require the Department of Family and Protective Services (department), licensed child-placing agency, person, or entity placing a child for adoption to provide to the adoptive parents, upon request, copies of the records and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption. Deletes existing text entitling the adoptive parents to receive this information. Makes conforming changes.

SECTION 5. Amends Section 162.414, Family Code, is amended by adding Subsection (f) to require a covered entity to ensure that the use or disclosure of protected health information by a covered entity complies with all applicable requirements, standards, or implementation specifications of the privacy rule to the extent that Subsection (d) (pertaining to match establishment) authorizes the use or disclosure, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 6. Amends Section 264.408(a), Family Code, to authorize a children's advocacy center to disclose the files, reports, records, communications and working papers developed in providing services under this chapter (Child Welfare Services).

SECTION 7. Amends Section 420.031(e), Government Code to require a covered entity to ensure that the consent to the disclosure of protected health information complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures if a disclosure under this subsection is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 8. Amends Section 825.507, Government Code, by adding Subsection (h) to make conforming changes.

SECTION 9. Amends Section 81.103, Health and Safety Code, by adding Subsection (k) to require a covered entity to ensure that the authorization for the disclosure of protected health information complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures if a disclosure under this Subsection (d) is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 10. Amends Section 83.005, Health and Safety Code, by adding Subsection (c) to make conforming changes.

SECTION 11. Amends Section 84.006, Health and Safety Code, by adding Subsection (c) to make conforming changes.

SECTION 12. Amends Section 88.002, Health and Safety Code, by adding Subsection (e) to make conforming changes.

SECTION 13. Amends Section 92.006, Health and Safety Code, by adding Subsection (d) to make conforming changes.

SECTION 14. Amends Section 108.009(a), Health and Safety Code, to delete existing text referencing Subsection (c) as an exception.

SECTION 15. Amends Section 142.009, Health and Safety Code, by adding Subsection (m) to make conforming changes.

SECTION 16. Amends Section 162.006, Health and Safety Code, by adding Subsection (d) to make conforming changes.

SECTION 17. Amends Section 241.152, Health and Safety Code, by adding Subsection (g) to make conforming changes.

SECTION 18. Amends Section 241.154, Health and Safety Code, by amending Subsection (b) and adding Subsection (f) to make conforming changes and authorize a hospital that is a covered entity releasing protected health information, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, to an individual who is the subject of the information or that person's representative to charge a reasonable cost-based fee, provided that the fee includes only certain costs and to prohibit the hospital from charging a retrieval fee or withhold copies of the information for nonpayment of the fee.

SECTION 19. Amends Section 247.065, Health and Safety Code, by adding Subsection (c) to provide that Subsection (b)(7) does not authorize the disclosure or use of protected health information by a HIPAA covered entity unless the disclosure or use complies with all applicable requirements, standards, or implementation specifications of the privacy rule.

SECTION 20. Amends Section 262.030, Health and Safety Code, by adding Subsection (c) to prohibit a covered entity from destroying a record before the sixth anniversary of the date the record was created if destruction of a record under this section is destruction of HIPAA protected health information.

SECTION 21. Amends Section 281.073, Health and Safety Code, by adding Subsection (c) to make conforming changes.

SECTION 22. Amends Section 595.003, Health and Safety Code, by adding Subsection (c) to make conforming changes.

SECTION 23. Amends Section 595.004, Health and Safety Code, by amending Subsection (a) and adding Subsection (c) to prohibit a covered entity from denying a request under this section for HIPAA protected health information unless the qualified professional responsible for supervising the client's habilitation determines that making the record available to the client is reasonably likely to endanger the life or physical safety of the client or another person. Makes a conforming change.

SECTION 24. Amends Section 611.004, Health and Safety Code, by adding Subsection (e), to make conforming changes.

SECTION 25. Amends Section 611.0045(b), Health and Safety Code, to make conforming changes.

SECTION 26. Amends Section 611.008(b), Health and Safety Code, to prohibit a covered entity charging a fee for HIPAA protected health information from charging a fee for retrieving the information or withholding copies for nonpayment of the fee.

SECTION 27. Amends Section 773.093, Health and Safety Code, by adding Subsection (d) to make conforming changes.

SECTION 28. Amends Section 8, Article 21.58A, Insurance Code, by amending Subsection (g) and adding Subsection (j), as follows:

(g) Prohibits a covered entity from destroying a record before the sixth anniversary of the date the record was created if destruction of a record under this section is destruction of HIPAA protected health information.

(j) Requires the covered entity to ensure that authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information if a disclosure under this Subsection (d) is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 29. Amends Section 546.104, Insurance Code, as effective April 1, 2005, to make conforming changes.

SECTION 30. Amends Section 21.4032, Labor Code, to require the covered entity to ensure that authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures of protected health information if a disclosure under this Subsection (d) is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E. Makes a conforming change.

SECTION 31. Amends Section 58.104, Occupation Code, to require the covered entity to ensure that authorization for the disclosure complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses

and disclosures of protected health information if a disclosure under this Subsection (d) is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 32. Amends Chapter 159.005, Occupation Code, by adding Subsection (f) to require a covered entity to ensure that the consent to the disclosure of protected health information complies with all of the privacy rule's applicable requirements, standards, and implementation specifications relating to authorizations for uses and disclosures if a disclosure under this subsection is a disclosure of protected health information by the covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 33. Amends Section 159.006, Occupations Code, by amending Subsection (a) and adding Subsection (f) to prohibit a covered entity from denying a request under this section for HIPAA protected health information unless the qualified professional responsible for supervising the client's habilitation determines that making the record available to the client is reasonably likely to endanger the life or physical safety of the client or another person. Makes a conforming change.

SECTION 34. Amends Section 159.008, Occupations Code, by amending Subsection (a) and adding Subsection (c) to prohibit a covered entity charging a fee for HIPAA protected health information from charging a fee for retrieving the information or withholding copies for nonpayment of the fee. Makes a conforming change.

SECTION 35. Amends Section 201.405, Occupations Code, by amending Subsection (g) and adding Subsection (h) to make conforming changes.

SECTION 36. Amends Section 202.406, Occupations Code, by amending Subsection (d) and adding Subsection (f) to make conforming changes.

SECTION 37. Amends Section 258.104, Occupations Code, by adding Subsection (e) to make conforming changes.

SECTION 38. Amends Section 32, Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), by adding Subsection (d) to require a covered entity to ensure that the use or disclosure of protected health information complies with all applicable requirements, standards, or implementation specifications of the privacy rule to the extent that Subsection (d) (pertaining to match establishment) authorizes the use or disclosure of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of HIPAA (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 39. Repealer: Section 108.009(c) (pertaining to the provision of data), Health and Safety Code.

SECTION 40. Effective date: September 1, 2005.