

## **BILL ANALYSIS**

Senate Research Center  
80R754 JTS-D

S.B. 205  
By: Nelson  
Health and Human Services  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B.1136 from the 78th Legislature, Regular Session, directed the Office of the Attorney General to perform a preemption analysis of state law based on the Health Insurance Portability and Accountability Act's (HIPAA) privacy protections. This bill is in response to that analysis.

As proposed, S.B. 205 allows for the removal of provisions that are preempted by the Health Insurance Portability and Accountability Act of 1996 and provides greater consistency therewith on the authorization and destruction of health records.

### **RULEMAKING AUTHORITY**

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

### **SECTION BY SECTION ANALYSIS**

[While the statutory references in this bill are to the Texas Department of Protective and Regulatory Services (DPRS) and the Texas Department of Health (TDH), the following amendments affect the Department of Family Protective Services and the Department of State Health Services, as the successor agency to TDH and DRPS, respectively.]

SECTION 1. Amends Section 58.0071(f), Family Code, as follows:

(f) Specifies that this section (Destruction of Certain Physical Files and Records) does not apply to the destruction of protected health information maintained by a covered entity. Defines "covered entity."

SECTION 2. Amends Sections 82.010(b) and (c), Family Code, to make nonsubstantive changes.

SECTION 3. Amends Sections 162.018(a) and (b), Family Code, as follows:

(a) Requires the Texas Department of Protective Services, licensed child-placing agency, person, or entity placing the child for adoption to provide to the adoptive parents, upon request, specific information related to the child that is maintained by the entity.

(b) Requires the Texas Department of Protective Services, licensed child-placing agency, person, or entity placing the child for adoption to provide to the adoptive parents upon request specific information relating to the biological parents of the adopted child. Makes conforming changes.

SECTION 4. Amends Section 162.414, Family Code, by adding Subsection (f), to require a covered entity that uses or discloses protected health information to comply with all applicable requirements, standards, or implementation specifications of the privacy rule of the Administrative Simplification subtitle of the Health Portability and Accountability Act of 1996.

SECTION 5. Amends Section 264.408(a), Family Code, as follows:

(a) Authorizes a children's advocacy center (center) to only disclose specified information in providing services under this chapter.

SECTION 6. Amends Section 420.031(e), Government Code, to make conforming changes regarding uses and disclosures of protected health information collected as evidence in cases of sexual assault.

SECTION 7. Amends Section 825.507, Government Code, by adding Subsection (h), to make conforming changes regarding uses and disclosures of protected health information gathered by the Teacher Retirement System.

SECTION 8. Amends Section 865.019, Government Code, by adding Subdivision (e), to make conforming changes regarding uses and disclosures of protected health information regarding members, annuitants, or beneficiaries of the Texas Emergency Services Retirement System.

SECTION 9. Amends Section 81.103, Health and Safety Code, by adding Subsection (k), to make conforming changes regarding uses and disclosures of protected health information that is a result of a test for a communicable disease.

SECTION 10. Amends Section 108.009, Health and Safety Code, by adding Subsection (c-1), as follows:

(c-1) Defines "council." Specifies that certain information is a use and disclosure for which an authorization or opportunity to agree or object is not required.

SECTION 11. Amends Section 142.009, Health and Safety Code, by amending Subsection (g) and adding Subsection (m), as follows:

(g) Requires the Texas Department of Health to provide certain information to the chief executive officer of the home and community support services agency. Makes a conforming change.

(m) Makes a conforming change regarding uses and disclosures of protected health information relating to home and community health services.

SECTION 12. Amends Section 162.006, Health and Safety Code, by adding Subsection (d), to make conforming changes regarding uses and disclosures of protected health information by blood banks to other blood banks.

SECTION 13. Amends Section 162.007, Health and Safety Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Requires a blood bank to report HIV positive blood results, or blood found to be contaminated with any other infectious disease to certain persons and entities, except as provided by Subsection (d).

(d) Requires a blood bank to maintain a record of its attempts to report blood test results to an infected person if the blood bank is unable to report the results.

SECTION 14. Amends Section 181.051, Health and Safety Code, as follows:

Sec. 181.051. PARTIAL EXEMPTION. Specifies that this chapter (Medical Records Privacy), except subchapter E, applies to specific entities.

SECTION 15. Amends Section 241.103, Health and Safety Code, by adding Subsection (d), as follows:

(d) Applies this section (Preservation of Records) to a hospital that is a covered entity, as defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996.

SECTION 16. Amends Section 241.152, Health and Safety Code, by adding Subsection (g), to make conforming changes regarding uses and disclosures of protected health information by a hospital.

SECTION 17. Amends Section 241.153, Health and Safety Code, as follows:

Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION. (a) Creates this subsection from existing text. Specifies that the application of this section is subject to the provisions of Subsection (b). Makes conforming and nonsubstantive changes.

(b) Requires a hospital that is a covered entity disclosing protected information under this section to ensure that the disclosure complies with all requirements, standards, or implementation specifications of the privacy rule. Sets forth specific provisions with which the entity must comply.

SECTION 18. Amends Section 241.154, Health and Safety Code, by amending Subsection (b) and adding Subsection (f), as follows:

(b) Requires a hospital or agent thereof to charge a reasonable fee for providing health care information, except as provided by Subsections (d) and (f).

(f) Requires a covered entity to comply with specific requirements, including the requirement that protected health information may not be denied to an individual or legal representative thereof if the information is obtained for inspection purposes.

SECTION 19. Amends Section 247.065, Health and Safety Code, by adding Subsection (c), to prohibit the use or disclosure of protected health information by a covered entity unless the disclosure complies with all applicable requirements, standards, or implementation specifications of the privacy rule.

SECTION 20. Amends Section 595.003, Health and Safety Code, by adding Subsection (c), to make conforming changes regarding uses and disclosures of protected health information concerning a person who has mental retardation.

SECTION 21. Amends Section 595.004, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Specifies that this section is subject to the provisions of Subsection (c).

(c) Prohibits a covered entity from denying a protected health information request under this section unless the client's supervising habilitation professional determines that the release of the information would endanger the patient's health, or complies with other requirements relating to the denial of protected health information.

SECTION 22. Amends Section 611.004, Health and Safety Code, by adding Subsection (e) to make conforming changes regarding uses and disclosures of protected health information in a judicial or administrative proceeding concerning mental health.

SECTION 23. Amends Section 611.0045(b), Health and Safety Code, to make conforming changes regarding uses and disclosures of protected health information concerning mental health records.

SECTION 24. Amends Section 611.008(b), Health and Safety Code, as follows:

(b) Provides an exception. Makes conforming changes regarding uses and disclosures of protected health information by mental health professionals.

SECTION 25. Amends Section 773.093, Health and Safety Code, to make conforming changes regarding uses and disclosures of protected health information relating to the consent to release confidential information by a patient.

SECTION 26. Amends Section 546.104, Insurance Code, to make conforming changes regarding uses and disclosures of protected health information relating to the disclosure of genetic information of an individual.

SECTION 27. Amends Section 4201.552, Insurance Code, by adding Subsection (d), to make conforming changes regarding uses and disclosures of protected health information by a utilization review agent.

SECTION 28. Amends Section 21.4032, Labor Code, to make conforming changes regarding uses and disclosures of protected health information relating to the genetic information of an individual.

SECTION 29. Amends Section 201.009(c), Local Government Code, as follows:

(c) Adds a local government that is a covered entity disclosing protected health information, as defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 to the entities to which this section (Access To Records) does not apply.

SECTION 30. Amends Section 58.104, Occupations Code, to make conforming changes regarding uses and disclosures of protected health information relating to the genetic information of the individual.

SECTION 31. Amends Section 159.005, Occupation Code, by adding Subsection (f), to make conforming changes regarding uses and disclosures of protected health information relating to a consent for release of confidential information.

SECTION 32. Amends Section 159.006, Occupation Code, by amending Subsection (a) and adding Subsection (f), to make conforming changes regarding uses and disclosures of protected health information by a physician.

SECTION 33. Amends Section 159.008, Occupations Code, by amending Subsection (a) and adding Subsection (c), to make conforming changes regarding uses and disclosures of protected health information relating to physician's fees for information.

SECTION 34. Amends Section 201.405, Occupations Code, by amending Subsection (g) and adding Subsection (h), as follows:

(g) Prohibits a chiropractor who is a covered entity from denying access to requested information unless the chiropractor determines that the release thereof would endanger the life of the patient or another person and complies with other requirements relating to the denial of access to protected health information.

(h) Makes conforming changes regarding uses and disclosures of protected health information by a chiropractor.

SECTION 35. Amends Section 202.406, Occupations Code, by amending Subsection (d) and adding Subsection (f), to make conforming changes regarding uses and disclosures of protected health information by a podiatrist.

SECTION 36. Amends Section 258.104, Occupations Code, by adding Subsection (e), to make conforming changes regarding uses and disclosures of protected health information by a dentist.

SECTION 37. Amends Section 32, Texas Local Fire Fighters Retirement Act (Article 6243e, V.T.C.S.), by adding Subsection (d), to make conforming changes regarding uses and disclosures of protected health information.

SECTION 38. Amends Section 3.01, Chapter 824, Acts of the 73rd Legislature, Regular Session, 1993 (Article 6243o, V.T.C.S.), by amending Subsection (k), to make conforming changes regarding uses and disclosures of protected health information.

SECTION 39. Requires the state auditor to conduct an audit of state agencies to determine which agencies are covered entities, as defined by this Act, or should be designated as a hybrid of a covered entity. Requires the auditor to submit the report to the attorney general and the appropriate legislative committees by March 1, 2008.

SECTION 40. Effective date: September 1, 2007.