

BILL ANALYSIS

Senate Research Center
81R13399 YDB-D

C.S.S.B. 346
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Health & Human Services
3/16/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, parental consent is required for a child to be included in ImmTrac, but records in ImmTrac are automatically deleted when a child turns 18 years of age. However, there are many instances after a person's 18th birthday when immunization records are required. For example, entry into college, the military, and study abroad programs all typically occur after a person turns 18 years of age and necessitate proof of certain immunizations.

C.S.S.B. 346 provides that a person is allowed to maintain the person's immunization records in ImmTrac beyond the person's 18th birthday.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of State Health Services, as the successor agency to TDH.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Health is transferred to the executive commissioner of the Health and Human Services Commission (HHSC) in SECTION 2 (Section 161.007, Health and Safety Code) and SECTION 8 (Section 161.008, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of HHSC in SECTION 2 (Section 161.007, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.0001, Health and Safety Code, by adding Subdivision (1-c) and (3) and amending Subdivision (2), as follows:

- (1-c) Defines "individual's legally authorized representative" (representative).
- (2) Redefines "payor."
- (3) Defines "electronically."

SECTION 2. Amends Section 161.007, Health and Safety Code, by amending Subsections (a), (a-1), (b), (b-1), (c)-(f), (j), and (k), and adding Subsection (a-2) and (a-3), as follows:

- (a) Requires the Texas Department of Health (TDH) to establish and maintain an immunization registry to be used in aiding, coordinated, and promoting efficient and cost-effective communicable disease, rather than childhood communicable disease, prevention and control efforts. Requires the executive commissioner of the Health and Human Services Commission (HHSC), rather than TDH, by rule to develop guidelines to inform the individual or the representative, rather than a parent, managing conservator, or guardian of each patient younger than 18 years of age, about the registry and to require the written or electronic consent of the individual or representative before any information relating to the individual, rather than patient, is included in the registry. Makes conforming changes.

(a-1) Provides that the written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. Provides that the consent, rather than the written consent, is valid, unless withdrawn in writing or electronically, until the individual, rather than child, becomes 18 years of age. Authorizes a parent, managing conservator, or guardian of a minor, rather than child, to provide the consent, rather than written consent, by using an electronic signature on the minor's, rather than child's, birth certificate.

(a-2) Authorizes a representative of an individual or the individual, after the individual has attained 18 years of age, to consent in writing or electronically for the individual's information to remain and subsequent immunizations to be included in the registry after the individual's 18th birthday. Requires that the written or electronic consent of the minor's legally authorized representative, as described by Section 161.0001(1-c)(A) (relating to the definition of individuals legally authorized representative) be submitted to TDH before the individual's 18th birthday and that the written or electronic consent of the individual or the representative as described by Section 161.0001(1-c)(B) or (C) (relating to the definition of individuals legally authorized representative) be submitted to TDH not later than the individual's 19th birthday. Provides that the written or electronic consent of the representative or individual is valid until withdrawn in writing by the representative or individual. Prohibits TDH from including in the registry the immunization information of an individual who is 18 years of age or older until written or electronic consent has been obtained as provided by this subsection. Requires TDH to coordinate with the Texas Education Agency to distribute materials described in Section 161.0095(a)(2) (relating to educational information for certain health care entities) to students and parents through local school districts.

(a-3) Requires the executive commissioner of HHSC by rule to develop guidelines and procedures for obtaining consent from an individual after the individual's 18th birthday, including procedures for retaining immunization information in a separate database that is inaccessible by any person other than TDH during the one-year period during which an 18-year-old is authorized to consent to inclusion in the registry under Subsection (a-2).

(b) Creates an exception under Section 161.0071. to require that the immunization registry contain information on the immunization history that is obtained by TDH under this section of each individual, rather than person who is younger than 18 years of age, and for whom consent has been obtained in accordance with guidelines adopted under Subsection (a) or (a-3), as applicable.

(b-1) Requires TDH to remove from the registry information for any individual, rather than a person, for whom consent has been withdrawn. Makes conforming changes.

(c) Creates text to provide that a payor that receives data elements from a health care provider (provider) who administers an immunization to an individual 18 years of age or older is authorized to provide the data elements to TDH. Makes conforming changes.

(d) Creates text to provide that a provider who administers an immunization to an individual 18 years of age or older is authorized to submit data elements regarding an immunization to TDH. Makes conforming changes.

(e) Requires that the notice provided by TDH to a provider that submits an immunization history for an individual, rather than a person, for whom consent cannot be verified, contain instructions for obtaining consent in accordance with guidelines adopted under Subsections (a) and (a-3), rather than Subsection (a).

(f) Authorizes TDH and providers to use the registry to contact an individual or representative of the individual regarding an individual who is due or overdue for a particular type of immunization according to TDH's immunization schedule for children or another analogous schedule recognized by TDH for individuals 18 years of age or older.

(j) Makes conforming changes.

(k) Requires the executive commissioner of HHSC, rather than the Texas Board of Health (TBH), to adopt rules to implement this section.

SECTION 3. Amends Section 161.00705(f), Health and Safety Code, as follows:

(f) Requires TDH, unless an individual or the representative, rather than if a child, the child's parent, managing conservator, or guardian, consents in writing or electronically to continued inclusion of the individual's, rather than child's or other individual's, information in the registry remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e) (relating to immunization registry following certain events).

SECTION 4. Amends Section 161.00706(e), Health and Safety Code, to authorize a person whose immunization records are included in the immunization registry as authorized by this section to request in writing or electronically that TDH remove that information from the registry.

SECTION 5. Amends Section 161.0071, Health and Safety Code, as follows:

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) Requires TDH, the first time TDH receives registry data for an individual for whom TDH has received consent to be included in the registry, to send a notice to the individual or representative disclosing certain information to include the procedure to report a violation if an individual's information is included in the registry after the exclusion has been requested or consent has been withdrawn. Deletes existing text requiring TDH, the first time TDH receives registry data for a child from a person other than the child's parent, a managing conservator, or guardian, to send written notice to the child's parent, a managing conservator, or guardian. Makes conforming changes.

(b)-(d) Makes conforming changes.

(e) Requires TDH to accept a written or electronic statement from an individual or representative communicating to TDH that an individual's information should be excluded from the registry, including a statement on a minor's, rather than the child's, birth certificate, as a request for exclusion under Subsection (c). Deletes existing text authorizing the written statement to include the electronic signature on the child's birth certificate. Makes conforming changes.

SECTION 6. Amends Section 161.0072, Health and Safety Code, as follows:

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. Provides that if the representative, rather than parent, managing conservator, or guardian of a child, has reasonable concern that the individual's, rather than child's, health care provider is not submitting the immunization history to TDH, the individual or representative is authorized to provide the individual's immunization history directly to TDH to be included in the immunization registry.

(b) Authorizes the representative to send evidence of the individual's immunization history to TDH electronically, by facsimile transmission, or by mail. Makes conforming changes.

SECTION 7. Amends Sections 161.0073(a)-(c), Health and Safety Code, as follows:

(a) Make a conforming change.

(b) Makes a conforming change.

(c) Prohibits a person required to report information to TDH for registry from disclosing the individually identifiable information of an individual to any person without the written or electronic consent of the individual. Makes conforming changes.

SECTION 8. Amends Sections 161.008(c)-(e), (g), and (h), to make conforming changes and to require the executive commissioner of HHSC, rather than the Texas Board of Health, to adopt rules to implement this section.

SECTION 9. Amends Section 161.009(a), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Section 161.0095, Health and Safety Code, as follows:

Sec. 161.0095. New heading: EDUCATION PROGRAMS AND INFORMATION. (a) Creates this subsection from existing text. Requires TDH to develop continuing education programs for health care providers relating to immunizations and the vaccines for children program operated by TDH under authority of 42 U.S.C. Section 1396s and educational information, for health care providers, health care clinics, hospitals, and any other health care facility that provides health care to children 14 to 18 years of age, relating to the immunization registry and the option for an individual who is 18 years of age or older to consent to submission and retention of the individual's information in the immunization registry, rather than as amended.

(b) Creates this subsection from existing text. Requires TDH to establish a work group to assist TDH in developing the continuing education programs and educational information, rather than materials.

SECTION 11. Effective date: September 1, 2009.