

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 2641  
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Health & Human Services  
5/21/2015  
Committee Report (Substituted)

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

Interested parties report that Texas health care providers have invested millions of dollars implementing electronic health record systems in an effort to improve the quality of care delivered to patients and to help reduce the overall costs of health care. A fundamental capability of those systems is to exchange patient and test data using national standards for interoperability developed through the American National Standards Institute. However, it is reported that providers who send information to the state's health and human services agencies are at times unable to use their electronic systems to make timely, efficient, and accurate exchanges. The parties assert that as these agencies develop new reporting systems, every effort should be made to build those systems to be compatible with provider systems. The parties contend that certain laws governing the reporting of public health data to the Department of State Health Services also need to be amended to recognize the emergence of health information exchanges as a way for required public health reporting to be performed on behalf of a provider.

C.S.H.B. 2641 would promote interoperability by ensuring that all systems set for future procurement be able to exchange health information securely, in accordance with applicable national data exchange standards. C.S.H.B. 2641 would also allow health-related information to be transmitted through local health information exchanges to the appropriate state agencies.

C.S.H.B. 2641 defines the terms "health information exchange" and "health care provider", and clarifies the duties, authorities, and penalties that will be imposed upon each entity. It provides a "safe harbor" for both entities (excluding acts of intent or gross negligence), and specifies that the existence of health information exchanges does not *per se* establish a medical standard of care that would expose either entity to legal action.

C.S.H.B. 2641 amends current law relating to the exchange of health information in this state and creates a criminal offense.

[**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 is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 531.0162, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 4, Civil Practice and Remedies Code, by adding Chapter 74A, as follows:

#### CHAPTER 74A. LIMITATION OF LIABILITY RELATING TO HEALTH INFORMATION EXCHANGES

Sec. 74A.001. DEFINITIONS. Defines, in this chapter, "gross negligence," "health care provider," "health information exchange," and "physician."

Sec. 74A.002. LIMITATION ON LIABILITY OF HEALTH CARE PROVIDERS RELATING TO HEALTH INFORMATION EXCHANGES. (a) Defines, in this section, “health care liability claim.”

(b) Provides that the use of, failure to use, or existence of a health information exchange, notwithstanding any other law, does not establish a standard of care, duty, or obligation that forms the basis for a cause of action applicable to a health care provider for obtaining, using, or disclosing patient information.

(c) Provides that, notwithstanding any other law, information or evidence relating to a health information exchange is not admissible in a civil or administrative proceeding for the purpose of establishing a standard of care, duty, or obligation that forms the basis for a cause of action in a proceeding, including a health care liability claim, involving a health care provider.

(d) Provides that the health care provider, unless a health care provider acts with intent or gross negligence, is not liable for any damages, penalties, or other relief related to:

(1) the health care provider’s or another health care provider’s obtainment of or failure to obtain patient information from a health information exchange;

(2) the health care provider’s or another health care provider’s disclosure of or failure to disclose patient information to a health information exchange;

(3) the health care provider’s or another health care provider’s reliance on inaccurate patient information obtained from or disclosed by a health information exchange; or

(4) the obtainment, use, or disclosure by a health information exchange, another health care provider, or any other person, in violation of federal or state law, of any patient information that the health care provider provided to a health information exchange or to another health care provider in compliance with the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and other applicable federal and state law.

(e) Provides that nothing in this section may be construed to create a cause of action or to create a standard of care, obligation, or duty that forms the basis for a cause of action.

Sec. 74A.003. LIMITATION ON LIABILITY OF HEALTH INFORMATION EXCHANGES. (a) Provides that the health information exchange, unless a health information exchange acts with intent or gross negligence, is not liable for any damages, penalties, or other relief related to:

(1) a health care provider’s obtainment of or failure to obtain patient information from the health information exchange;

(2) a health care provider’s disclosure of or failure to disclose patient information to the health information exchange;

(3) a health care provider’s reliance on inaccurate patient information obtained from or disclosed by the health information exchange; or

(4) the obtainment, use, or disclosure by a health care provider or any other person, in violation of federal or state law, of any patient information

that was provided to the person by the health information exchange in compliance with:

(A) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and other applicable federal and state law; and

(B) the health information exchange's policies.

(b) Provides that nothing in this section may be construed to create a cause of action or to create a standard of care, obligation, or duty that forms the basis for a cause of action.

Sec. 74A.004. **APPLICABILITY OF OTHER LAW.** Provides that the protections, immunities, and limitations of liability provided by this chapter are in addition to any other protections, immunities, and limitations of liability provided by other law.

SECTION 2. Amends Section 531.0162, Government Code, by adding Subsections (e), (f), (g), and (h), as follows:

(e) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to ensure that:

(1) all information systems available for use by the Health and Human Services Commission (HHSC) or a health and human services agency in sending protected health information to a health care provider or receiving protected health information from a health care provider, and for which planning or procurement begins on or after September 1, 2015, are capable of sending or receiving that information in accordance with the applicable data exchange standards developed by the appropriate standards development organization accredited by the American National Standards Institute;

(2) if national data exchange standards do not exist for a system described by Subdivision (1), HHSC makes every effort to ensure the system is interoperable with the national standards for electronic health record systems; and

(3) HHSC and each health and human services agency establish an interoperability standards plan for all information systems that exchange protected health information with health care providers.

(f) Requires the executive commissioner, not later than December 1 of each even-numbered year, to report to the governor and the Legislative Budget Board on HHSC's and the health and human services agencies' measurable progress in ensuring that the information systems described in Subsection (e) are interoperable with one another and meet the appropriate standards specified by that subsection. Requires that the report include an assessment of the progress made in achieving HHSC goals related to the exchange of health information, including facilitating care coordination among the agencies, ensuring quality improvement, and realizing cost savings.

(g) Authorizes the executive commissioner by rule to develop and authorizes HHSC to implement a system to reimburse providers of health care services under the state Medicaid program for review and transmission of electronic health information if feasible and cost-effective.

(h) Provides that, in this section, "health care provider" and "provider of health care services" include a physician.

SECTION 3. Amends Section 531.02176, Government Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to prohibit HHSC, notwithstanding any other law,

from reimbursing providers under Medicaid for the provision of home telemonitoring services on or after September 1, 2019, rather than on or after September 1, 2015.

SECTION 4. Amends Section 81.044(a), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require the executive commissioner to prescribe the form and method of reporting under this chapter, which may be in writing, by telephone, by electronic data transmission, through a health information exchange as defined by Section 182.151 if requested and authorized by the person required to report, or by other means.

SECTION 5. Amends Section 82.008(a), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Authorizes data, at the request and with the authorization of the applicable health care facility, clinical laboratory, or health care practitioner, to be furnished to the Texas Department of Health (TDH) through a health information exchange as defined by Section 182.151. Makes no further change to this subsection.

SECTION 6. Amends Section 161.007(d), Health and Safety Code, as follows:

(d) Authorizes the data elements, at the request and with the authorization of the health care provider, to be submitted through a health information exchange as defined by Section 182.151. Makes no further change to this subsection.

SECTION 7. Amends Section 161.00705(a), Health and Safety Code, as follows:

(a) Authorizes data elements, at the request and with the authorization of the health care provider, to be provided through a health information exchange as defined by Section 182.151. Makes no further change to this subsection.

SECTION 8. Amends Section 161.00706(b), Health and Safety Code, as follows:

(b) Authorizes the data elements, at the request and with the authorization of the health care provider, to be submitted through a health information exchange as defined by Section 182.151. Makes no further change to this subsection.

SECTION 9. Amends Section 161.0073(c), Health and Safety Code, as follows:

(c) Adds a reference to Sections 161.007 (Immunization Registry; Reports to Department), 161.00705 (Recording Administration of Immunization and Medication For Disasters and Emergencies), 161.00706 (First Responder Immunization Information), and 161.008 (Immunization Record), Chapter 159, of this code. Makes no further change to this subsection.

SECTION 10. Amends Section 161.008, Health and Safety Code, by adding Subsection (i) to authorize immunization history or data, at the request and with the authorization of the applicable health care provider, to be submitted to or obtained by TDH through a health information exchange as defined by Section 182.151.

SECTION 11. Amends Chapter 182, Health and Safety Code, by adding Subchapter D, as follows:

#### SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

Sec. 182.151. DEFINITION. Defines “health information exchange.”

Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE. (a) Authorizes a health information exchange, notwithstanding Sections 81.046 (Confidentiality), 82.009 (Confidentiality), 161.0073 (Registry Confidentiality), and 161.008, to access and transmit health-related information under Sections 81.044(a),

82.008(a), 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the access or transmittal is:

- (1) made for the purpose of assisting in the reporting of health-related information to the appropriate agency;
- (2) requested and authorized by the appropriate health care provider, practitioner, physician, facility, clinical laboratory, or other person who is required to report health-related information;
- (3) made in accordance with the applicable consent requirements for the immunization registry under Subchapter A (Immunizations), Chapter 161 (Public Health Provisions), if the information being accessed or transmitted relates to the immunization registry; and
- (4) made in accordance with the requirements of this subchapter and all other state and federal law.

(b) Authorizes a health information exchange to only use and disclose the information that it accesses or transmits under Subsection (a) in compliance with this subchapter and all applicable state and federal law, and prohibits a health information exchange from exchanging, selling, trading, or otherwise making any prohibited use or disclosure of the information.

Sec. 182.153. **COMPLIANCE WITH LAW; SECURITY.** Requires a health information exchange that collects, transmits, disseminates, accesses, or reports health-related information under this subchapter to comply with all applicable state and federal law, including secure electronic data submission requirements.

Sec. 182.154. **CRIMINAL PENALTY.** (a) Provides that a person who collects, transmits, disseminates, accesses, or reports information under this subchapter on behalf of or as a health information exchange commits an offense if the person, with the intent to violate this subchapter, allows health-related information in the possession of a health information exchange to be used or disclosed in a manner that violates this subchapter.

(b) Provides that an offense under this section is a Class A misdemeanor.

Sec. 182.155. **IMMUNITIES AND DEFENSES CONTINUED.** Provides that collecting, transmitting, disseminating, accessing or reporting information through a health information exchange does not alone deprive a physician or health care provider of an otherwise applicable immunity or defense.

**SECTION 12.** Provides that Chapter 74A, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. Provides that a cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

**SECTION 13.** Effective date: September 1, 2015.