

By: Capelo, et al. (Senate Sponsor - Zaffirini) H.B. No. 1921  
(In the Senate - Received from the House May 12, 2003;  
May 13, 2003, read first time and referred to Committee on Health  
and Human Services; May 23, 2003, reported favorably by the  
following vote: Yeas 7, Nays 0; May 23, 2003, sent to printer.)

A BILL TO BE ENTITLED  
AN ACT

relating to the immunization registry.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 161, Health and Safety  
Code, is amended by adding Section 161.0001 to read as follows:

Sec. 161.0001. DEFINITIONS. In this subchapter:

(1) "Data elements" means the information a health  
care provider who administers a vaccine is required to record in a  
medical record under 42 U.S.C. Section 300aa-25, as amended,  
including:

(A) the date the vaccine is administered;

(B) the vaccine manufacturer and lot number of  
the vaccine; and

(C) the name, the address, and if appropriate,  
the title of the health care provider administering the vaccine.

(2) "Payor" means an insurance company, a health  
maintenance organization, or another organization that pays a  
health care provider to provide health care benefits, including  
providing immunizations to a person younger than 18 years of age.

SECTION 2. Section 161.007, Health and Safety Code, is  
amended to read as follows:

Sec. 161.007. IMMUNIZATION REGISTRY; REPORTS TO  
DEPARTMENT. (a) The department, for purposes of establishing and  
maintaining a single repository of accurate, complete, and current  
immunization records to be used in aiding, coordinating, and  
promoting efficient and cost-effective childhood communicable  
disease prevention and control efforts, shall establish and  
maintain a childhood immunization registry. The department by rule  
shall develop guidelines to:

(1) protect the confidentiality of patients in  
accordance with Section 159.002, Occupations Code;

(2) inform a parent, managing conservator, or guardian  
of each patient about the registry;

(3) require the written consent of a parent, managing  
conservator, or guardian of a patient before any information  
relating to the patient is included in the registry; and

(4) permit a parent, managing conservator, or guardian  
to withdraw consent for the patient to be included in the registry.

(a-1) The written consent required by Subsection (a)(3) is  
required to be obtained only one time. The written consent is valid  
until the child becomes 18 years of age unless the consent is  
withdrawn in writing. A parent, managing conservator, or guardian  
of a child may provide the written consent by using an electronic  
signature on the child's birth certificate.

(b) The childhood immunization registry must contain  
information on the immunization history that is obtained by the  
department under this section of each person who is younger than 18  
years of age and for whom consent has been obtained in accordance  
with guidelines adopted under Subsection (a). The department shall  
remove from the registry information for any person for whom  
consent has been withdrawn. The department may not retain  
individually identifiable information about any person for whom  
consent has been withdrawn.

(c) A payor that receives data elements from a health care  
provider who administers [An insurance company, a health  
maintenance organization, or another organization that pays or  
reimburses a claim for] an immunization to [of] a person younger  
than 18 years of age shall provide the data elements to the

department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified. ~~[an immunization history to the department. An insurance company, health maintenance organization, or other organization is not required to provide an immunization history to the department under this subsection for a person for whom consent has not been obtained in accordance with guidelines adopted under Subsection (a) or for whom consent has been withdrawn.]~~

(d) A health care provider who administers an immunization to a person younger than 18 years of age shall provide data elements regarding an immunization [history] to the department ~~[unless the immunization history is submitted to an insurance company, a health maintenance organization, or another organization that pays or reimburses a claim for an immunization to a person younger than 18 years of age].~~ The data elements ~~[report]~~ shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about a person for whom consent cannot be verified. ~~[, which may include submission in writing, by electronic means, or by voice. A health care provider is not required to provide an immunization history to the department under this subsection for a person for whom consent has not been obtained in accordance with guidelines adopted under Subsection (a) or for whom consent has been withdrawn.]~~

(e) The department shall provide notice to a health care provider that submits an immunization history for a person for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsection (a) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to a parent, managing conservator, or guardian regarding his or her child or ward who is due or overdue for a particular type of immunization according to the department's immunization schedule. The department shall consult with health care providers to determine the most efficient and cost-effective manner of using the registry to provide those notices.

(g) The department shall provide instruction and education to providers about the immunization registry provider application and enrollment process. The department shall:

(1) initially target providers in the geographic regions of the state with immunization rates below the state average for preschool children; and

(2) expedite the processing of provider applications.

(h) ~~[(f)]~~ Nothing in this section diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(i) ~~[(g)]~~ A person, including a health care provider, payor, or an employee of the department who submits or obtains in good faith ~~[an]~~ immunization ~~[history or]~~ data elements to or from the department in compliance with the provisions of this section and any rules adopted under this section is not liable for any civil damages.

(j) Except as provided by Section 161.008, information ~~[(h) Information]~~ obtained by the department for the immunization registry is confidential and may be disclosed only with the written consent of the child's parent, managing conservator, or guardian.

(k) ~~[(i)]~~ The board shall adopt rules to implement this section.

SECTION 3. Subchapter A, Chapter 161, Health and Safety Code, is amended by adding Sections 161.0071, 161.0072, 161.0073, 161.0074, 161.0075, and 161.0076 to read as follows:

3-1 Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA;  
 3-2 EXCLUSION FROM REGISTRY. (a) The first time the department  
 3-3 receives registry data for a child for whom the department has  
 3-4 received consent to be included in the registry, from a person other  
 3-5 than the child's parent, managing conservator, or guardian, the  
 3-6 department shall send a written notice to the child's parent,  
 3-7 managing conservator, or guardian disclosing:

3-8 (1) that providers and payors may be sending the  
 3-9 child's immunization information to the department;

3-10 (2) the information that is included in the registry;

3-11 (3) the persons to whom the information may be  
 3-12 released under Section 161.008(d);

3-13 (4) the purpose and use of the registry;

3-14 (5) the procedure to exclude a child from the  
 3-15 registry; and

3-16 (6) the procedure to report a violation if a parent,  
 3-17 managing conservator, or guardian discovers a child is included in  
 3-18 the registry after exclusion has been requested.

3-19 (b) On discovering that consent to be included in the  
 3-20 registry has not been granted, the department shall exclude the  
 3-21 child's immunization records from the registry and any other  
 3-22 registry-related department record that individually identifies  
 3-23 the child.

3-24 (c) On receipt of a written request to exclude a child's  
 3-25 immunization records from the registry, the department shall send  
 3-26 to a parent, managing conservator, or guardian who makes the  
 3-27 request a written confirmation of receipt of the request for  
 3-28 exclusion and shall exclude the child's records from the registry.

3-29 (d) The department commits a violation if the department  
 3-30 fails to exclude a child's immunization information from the  
 3-31 registry as required by Subsection (b) or (c).

3-32 (e) The department shall accept a written statement from a  
 3-33 parent, managing conservator, or guardian communicating to the  
 3-34 department that a child should be excluded from the registry,  
 3-35 including a statement on the child's birth certificate, as a  
 3-36 request for exclusion under Subsection (c). The written statement  
 3-37 may include the electronic signature on the child's birth  
 3-38 certificate.

3-39 Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO  
 3-40 DEPARTMENT. (a) If the parent, managing conservator, or guardian  
 3-41 of a child has reasonable concern that the child's health care  
 3-42 provider is not submitting the immunization history to the  
 3-43 department and the parent, managing conservator, or guardian wants  
 3-44 the child included in the registry, the parent, managing  
 3-45 conservator, or guardian may provide the child's immunization  
 3-46 history directly to the department to be included in the  
 3-47 immunization registry.

3-48 (b) The parent, managing conservator, or guardian of a child  
 3-49 may send evidence of the child's immunization history to the  
 3-50 department by facsimile transmission or by mail. The evidence may  
 3-51 include a copy of:

3-52 (1) the child's medical record indicating the  
 3-53 immunization history;

3-54 (2) an invoice from a health care provider for the  
 3-55 immunization; or

3-56 (3) documentation showing that a claim for the  
 3-57 immunization was paid by a payor.

3-58 (c) The board shall develop rules to ensure that the  
 3-59 immunization history submitted by a parent, managing conservator,  
 3-60 or guardian is medically verified immunization information.

3-61 Sec. 161.0073. REGISTRY CONFIDENTIALITY. (a) The  
 3-62 information that individually identifies a child received by the  
 3-63 department for the immunization registry is confidential and may be  
 3-64 used by the department for registry purposes only.

3-65 (b) Unless specifically authorized under this subchapter,  
 3-66 the department may not release registry information to any  
 3-67 individual or entity without the consent of the person or, if a  
 3-68 minor, the parent, managing conservator, or guardian of the child.

3-69 (c) A person required to report information to the

department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information to any other person without written consent of the parent, managing conservator, or guardian of the child, except as provided by Chapter 159, Occupations Code, or Article 28B.04, Insurance Code.

(d) Registry information is not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter; or

(2) admissible in any civil, administrative, or criminal proceeding.

Sec. 161.0074. REPORT TO LEGISLATURE. (a) The department shall report to the Legislative Budget Board, the governor, the lieutenant governor, the speaker of the house of representatives, and appropriate committees of the legislature not later than September 30 of each even-numbered year.

(b) The department shall use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources.

(c) The report must:

(1) include the current immunization rates by geographic region of the state, where available;

(2) focus on the geographic regions of the state with immunization rates below the state average for preschool children;

(3) describe the approaches identified to increase immunization rates in underserved areas and the estimated cost for each;

(4) identify changes to department procedures needed to increase immunization rates;

(5) identify the services provided under and provisions of contracts entered into by the department to increase immunization rates in underserved areas;

(6) identify performance measures used in contracts described by Subdivision (5);

(7) include the number and type of exemptions used in the past year;

(8) include the number of complaints received by the department related to the department's failure to comply with requests for exclusion of individuals from the registry;

(9) identify all reported incidents of discrimination for requesting exclusion from the registry or for using an exemption for a required immunization;

(10) include department recommendations about the best way to use, and communicate with, local registries in the state; and

(11) include ways to increase provider participation in the registry.

Sec. 161.0075. IMMUNITY FROM LIABILITY. Except as provided by Section 161.009, the following persons subject to this subchapter that act in compliance with Sections 161.007, 161.0071, 161.0073, 161.0074, and 161.008 are not civilly or criminally liable for furnishing the information required under this subchapter:

(1) a payor;

(2) a health care provider who administers immunizations; and

(3) an employee of the department.

Sec. 161.0076. COMPLIANCE WITH FEDERAL LAW. If the provisions of this chapter relating to the use or disclosure of information in the registry are more stringent than the Health Insurance Portability and Accountability Act and Privacy Standards, as defined by Section 181.001, then the use or disclosure of information in the registry is governed by this chapter.

SECTION 4. Section 161.008, Health and Safety Code, is amended by amending Subsections (c) and (d) and adding Subsections (e)-(h) to read as follows:

(c) The department[, ~~only with the consent of a child's~~

parent, managing conservator, or guardian,] may[+  
 [(1)] obtain the data constituting an immunization  
 record for a [the] child from a public health district, a local  
 health department, the child's parent, managing conservator, or  
 guardian, a physician to the child, a payor, or any health care  
 provider licensed or otherwise authorized to administer vaccines.  
 The department shall verify consent before including the reported  
 information in the immunization registry. The department may not  
 retain individually identifiable information about a person for  
 whom consent cannot be verified.

(d) The department may [or a physician to the child, or  
 [(2)] release the data constituting an immunization  
 record for the child to any entity that is described by Subsection  
 (c), to [a public health district, a local health department, a  
 physician to the child, or] a school or child care facility in which  
 the child is enrolled, or to a state agency having legal custody of  
 the child.

(e) [(d)] A parent, managing conservator, or legal guardian  
 may obtain and on request to the department shall be provided with  
 all individually identifiable immunization registry information  
 concerning his or her child or ward.

(f) A person, including a health care provider, a payor, or  
 an employee of the department, that submits in good faith an  
 immunization history or data to or obtains in good faith an  
 immunization history or data from the department in compliance with  
 the provisions of this section and any rules adopted under this  
 section is not liable for any civil damages.

(g) The department may release nonidentifying summary  
 statistics related to the registry that do not individually  
 identify a child.

(h) The board shall adopt rules to implement this section.

SECTION 5. Section 161.009(a), Health and Safety Code, is  
 amended to read as follows:

(a) A person commits an offense if the person:  
 (1) negligently releases or discloses immunization  
 registry information in violation of Section 161.007, 161.0071,  
 161.0073, or 161.008;

(2) fails to exclude a child's immunization  
 information in violation of Section 161.0071; or

(3) [(2)] negligently uses [the] information in the  
 immunization registry to solicit new patients or clients or for  
 other purposes that are not associated with immunization or  
 quality-of-care purposes, unless authorized under this section.

SECTION 6. (a) As soon as practicable, but not later than  
 January 1, 2005, the Texas Board of Health shall adopt rules and  
 forms necessary to implement this Act.

(b) The data reported under Sections 161.007(c) and (d),  
 Health and Safety Code, as amended by this Act, may not be accepted  
 or released by the Texas Department of Health until the department  
 has adopted rules and prescribed the forms required by this Act.

SECTION 7. (a) Except as provided by Subsection (b) of this  
 section, 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, 2003.

(b) The change in law made by this Act to Sections  
 161.007(c) and (d), Health and Safety Code, takes effect January 1,  
 2005.

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