

BILL ANALYSIS

C.S.H.B. 2919
By: Kuempel
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Cancer Registry (TCR), a part of the Texas Department of State Health Services (department), is charged with producing timely, accurate and complete data on new cancer cases, mortality and survivorship. This data comes from doctors, hospitals and laboratories throughout the state and is used for research, policymaking, and providing services. Progress toward reducing the Texas cancer burden cannot be determined if data on new cases cannot be tracked over time but data on new cancer cases in Texas has consistently been three years behind current trends.

The TCR's enabling statute requires doctors, hospitals and other providers to report data to the TCR but the only compliance mechanism available to the department is cost recovery. When a provider refuses to report its data, the TCR must go into a non-compliant facility and find, abstract and report the cancer cases. The TCR must then try to recover the cost of its work from the non-compliant provider. This has not been an effective compliance mechanism because for some reporting facilities, waiting for the department to perform their duties for them and pay some cost recovery later is less expensive than complying with the law. The department cannot afford to bear these costs up front and cost recovery is unfair to those facilities that comply with the cancer reporting law.

More encouragement for compliance and enforcement mechanisms are needed to ensure that data reporting is done in a timely manner. Current and future cancer patients depend on it. The substitute authorizes DSHS to pursue penalties against those who fail to comply with reporting requirements and to charge a fee to provide the data complied to some end users.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

ANALYSIS

Allows the department to pursue penalties against a health care facility, clinical laboratory or health care practitioner that knowingly or in bad faith fails to furnish the required cancer data.

The cancer registry may impose reasonable fees to provide data linkages and fulfill data requests other than standard publications for general distribution. The executive commissioner of the Health and Human Services Committee shall adopt rules to set the amount of the fees and shall be collected in the name of the department and are dedicated to the cancer registry. These fees are not subject to full-time equivalent limitations or limits on capital expenditures and travel expenses in the General Appropriations Act.

The department may impose a penalty on any person, other than a health care practitioner, that fails to comply with their reporting or other requirements. The department must send notice after the 30th day after the person was required to report data, that they have not complied with this chapter and they have 60 days after the date of the notice to comply with the law. The department shall send a second notice 30 days after the first notice stating the person has 30 days to comply with the law.

If the person has not furnished the data required by law before the 91st day after it was due, the department may impose a penalty. To determine the amount of the penalty, the department shall

consider the seriousness of the violation, the person's compliance history and any other matter in the interest of justice. The penalty set by department rule may not be more than \$1,000 per day for each violation and each day is considered a new violation.

The department may not impose a penalty until after the person charged with the violation is given an opportunity for hearing. If a hearing is held, the department is required to make findings of fact and issue a written decision stating whether a violation occurred and the amount of any penalty. If the person does not request a hearing, the department may assess a penalty after it determines a violation has occurred. A written order will be issued requiring the person to pay the penalty imposed. The department is allowed to consolidate this hearing with any other proceeding it may be conducting.

The department must inform the person of the finding of a violation not later than the 30th day after the order is issued. Before the 31st day after a decision or final order, the person charged with a violation must pay the penalty or file a petition for judicial review of the fact of the violation, the amount of the penalty, or both. A person who chooses to file a petition for judicial review may stay enforcement of the penalty by paying the penalty to the court to be placed in escrow or give the court a bond. A person may also stay enforcement by filing with the court an affidavit of his or her inability to pay and sending a copy of the affidavit to the department by certified mail.

The Attorney General may bring a civil action to recover the penalty at the request of the department. Judicial review will be in the district court in Travis County and is under the substantial evidence rule. After judicial review, if the penalty is reduced or overturned, the department shall either execute a release of the bond or return the amount paid into escrow plus interest within 30 days of the determination.

The department may request the attorney general or the district, county, or city attorney with jurisdiction to bring a civil suit for injunctive relief or the assessment and recovery of a civil penalty against a person who has violated, is violating or threatens to violate this chapter. The civil penalty assessed may not be more than \$1,000 a day for each violation and each day is considered a new violation. To determine the amount of the penalty, the court shall consider the seriousness of the violation, the person's compliance history and whether the person charged made a good faith effort to comply. A civil penalty recovered by the attorney general shall be deposited in the state treasury.

All administrative and civil penalties collected under this Chapter shall be recovered in the name of the Department of State Health Services and are dedicated to the cancer registry. These funds are not subject to full-time equivalents limitations or limitations on capital expenditures and travel expenses in the General Appropriations Act.

The provisions of this Act apply only to the furnishing of data that is due to be furnished after September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Changes caption to better reflect content of bill. The substitute renumbers the Sections and places them in correct order, changes the titles of the Subsections to put in Legislative Council format. The substitute adds that the executive commissioner of the Health and Human Services Committee shall adopt rules to set the amount of the fees. The substitute requires the department to send notice of a violation to a person, other than a health care practitioner, after the 30th day after the date the person was required to furnish the data and the person may take corrective action not later than the 60th day after the notice,. The substitute requires the department to send a second notice to the person before the 31st day after the date of the department's initial notice stating that the person has only 30 days remaining to take corrective action. The department may only assess an administrative penalty after complying with notification statutes and the person fails to furnish the required data before the 91st day after the date the person is originally

required to furnish data. The original bill required the person to comply before the 60th day the data was required to be furnished or an administrative penalty would be assessed. The original bill did not require the notification provision. The substitute allows a person who chooses to file a petition for judicial review may stay enforcement of the penalty by paying the penalty to the court to be placed in escrow or give the court a bond. A person may also stay enforcement by filing with the court an affidavit of his or her inability to pay and sending a copy of the affidavit to the department by certified mail.