

BILL ANALYSIS

C.S.S.B. 1069
By: Madla
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, data submitted to the Department of State Health Services (DSHS) regarding health status and access to care is not reported in a manner that identifies geographical differences. Distinguishing the differences in data could better help identify health care needs.

Furthermore, the Texas Cancer Registry, as part of DSHS, 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, policy making, and providing services. Progress toward reducing the Texas cancer burden cannot be determined if data on new cases cannot be tracked over time. Data on new cancer cases in Texas has consistently been three years behind current trends.

C.S.S.B. 1069 amends the Health and Safety Code to require DSHS to evaluate and update health data reporting mechanisms in a manner that distinguishes between geographic regions. This will enable those using the data to distinguish, for example, rural health dynamics from urban health dynamics.

C.S.S.B. 1069, further amends the Health and Safety Code regarding the Texas Cancer Registry (TCR). The TCR's enabling statute requires doctors, hospitals and other providers to report data to the TCR but the only compliance mechanism available to DSHS 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 DSHS to perform their duties for them and pay some cost recovery later is less expensive than complying with the law. DSHS 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. This amendment authorizes DSHS to pursue penalties against those who fail to comply with reporting requirements and to charge a fee to provide the data compiled 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

The bill 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 bill authorizes the DSHS to impose reasonable fees to provide data linkages and fulfill data requests in the cancer registry other than standard publications for general distribution. These fees shall be adopted by rule and shall be collected in the name of the DSHS and are dedicated to the cancer registry. These fees are not subject to any limitation on full-time equivalents (FTEs), capital expenditures, and travel expenses in the General Appropriations Act.

The bill requires the department to send notice to a person, other than a health care practitioner, if it is determined that they have failed to furnish the required data. 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 not later than the 60th day after the date of the notice to comply with the law. The department shall send a second notice before the 31st day after the initial notice stating the person has 30 days remaining to comply with the law.

The bill authorizes the department to impose a penalty if the person, other than a health care practitioner, has not furnished the data required by law before the 91st day after it was due. To determine the amount of the penalty, the department must consider the seriousness of the violation, the person's previous violation and any other matter that justice may require. 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 the penalty that may be warranted. If the person charged with the violation does not request a hearing, the department may assess a penalty after it determines a violation has occurred and the amount of the penalty that is warranted, as well as issue an order requiring the person to pay the penalty imposed. The department is allowed to consolidate this hearing with another proceeding.

The department must inform the person of the order finding that a violation has occurred 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 in full or file a petition for judicial review to contest 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 a sworn affidavit of his or her inability to pay and giving a copy of the affidavit to the department by certified mail.

The bill states that the Attorney General may bring a civil action to recover the penalty at the request of the department and that 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 bill states that 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 previous violations 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.

The bill requires that all administrative and civil penalties collected under this Chapter shall be recovered in the name of the DSHS and are dedicated to the cancer registry. These funds are not subject to limitations on FTEs, capital expenditures and travel expenses in the General Appropriations Act.

The bill allows that data received by the department identifying specific patients is confidential and not subject to disclosure under Chapter 552, Government Code, and may not be released unless the identifying information is removed. The bill removes language that data received by the department identifying specific health care facilities is confidential and not subject to disclosure under Chapter 552, Government Code. This subsection does not authorize the release of information that is confidential under Chapter 108.

According to H.B. 2292, Acts of the 78th Legislature, duties of the Texas Department of Health (department) are transferred to the DSHS.

The bill requires the department to compile the health data relating to births, deaths, and fetal deaths collected under this subchapter and organize the results, to the extent possible, according to the Texas-Mexico border region, each public health region, rural and urban areas, each county and the state. The bill requires that health data released under this subchapter to release information relating to births, deaths, and fetal deaths, in accordance with the way it is compiled under this section.

The provision of this Act apply only to the furnishing of data under Chapter 82, Health and Safety Code, or a rule adopted under this chapter that is due to be furnished after the effective date of this Act.

The bill requires the DSHS to consult with certain groups of affected persons and entities to define rural and urban areas for the purposes of Sections 104.044 and 191.008, Health and Safety Code, as added by this Act, to include: individuals with expertise in rural health services research, epidemiology, rural public health services delivery, demography, health planning, and large data sets; and representatives from universities, the DSHS, the Office of Rural Community Affairs, are health education centers, and local and county health departments.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

Changes caption to reflect content of the bill. The substitute renumbers the Section and placed then in correct order. The substitute adds that the executive commissioner of HHSC shall adopt rules to set the amount of fees and requires the DSHS 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 DSHS 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 and DSHS may only assess a specified 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 substitute provides: the opportunity for a hearing, the finding of fact, for judicial review, that judicial review will be in the district court in Travis County, and the recovery of fees through civil suit for injunctive relief and civil penalties as well as guidelines for the DSHS to consider in determining the amount of the penalties. The substitute requires that data received by the department identifying specific patients is confidential and not subject to disclosure under Chapter 552, Government Code, and may not be released unless the identifying information is removed. Information that is confidential under Chapter 108 cannot be released.

The substitute states provision of this Act apply only to the furnishing of data under Chapter 82, Health and Safety Code, or a rule adopted under this chapter that is due to be furnished after September 1, 2005, the effective date.