

## **BILL ANALYSIS**

C.S.S.B. 1328  
By: Nelson  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Pursuant to S.B. 1136, Acts of the 78th Legislature, the Office of the Attorney General analyzed state law to identify provisions that were preempted by or inconsistent with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and related rules. C.S.S.B. 1328 repeals from state law provisions that are preempted by HIPAA and ensures consistency between state law and HIPAA where appropriate. This will enable covered entities to comply fully with both state and federal law on health policy.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

This substitute provides that records under the Juvenile Justice Information System does not affect the destruction of protected health information by a covered entity.

The substitute sets forth provisions relating health disclosure in: adoption matching procedures; evidence collection protocol for sexual assault survivors; record of confidentiality for public retirement systems; confidentiality and criminal penalty for the Communicable Disease Prevention and Control Act; surveys and complaints for home and community support services; disclosure to other blood banks and the donation of blood; authorized disclosure of confidential information other than in judicial or administrative proceedings for mental health records; consent for emergency medical services; consent for release of confidential information for Patient-Physician Communication; consent for the release of information for Podiatrist; consent to disclosure of privileged information for the practice by a dentist; Volunteer Fire Fighters Relief and Retirement Fund; request or written authorization for disclosure of health care information for hospitals; consent to disclosure of a record for mental health and mental retardation; health care utilization review agents; authorized disclosure for employment discrimination; authorized disclosure for the use of genetic testing information; authorized disclosure for use of the genetic information; data submission and collection for the Texas Health Care Information Council by a covered entity to comply with federal laws, rules, and regulations.

The substitute requires the Department of Family and Protective Services (department), licensed child-placing agency, person, or entity placing a child for adoption to provide to the adoptive parents, upon request, copies of the records and other information relating to the history of the child maintained by the department, licensed child-placing agency, person, or entity placing the child for adoption as well as providing the information, upon request, to the adoptive parents and the adopted child after the child is an adult that are maintained by the entity.

The substitute requires a blood bank to maintain a record of the blood bank's attempt to report that person along with the blood test results if the blood bank is unable to report the blood test results to a person blood that tested positive for HIV.

The substitute does not authorize the disclosure of protected health information for a provider's bill of rights for assisted living facilities by a covered entity. The substitute provides for provision that a covered entity may not deny a request for protected health information as provided by HIPAA of 1996 for a right to mental health and personal records, to a physician, chiropractor, or podiatrist that is a covered entity.

The substitute makes conforming changes, technical changes and renumbers the sections accordingly.

**EFFECTIVE DATE**

September 1, 2005.

**COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute removes language requiring the covered entities under Chapter 58, Family Code, and Chapters 262 and 281, Health and Safety Code, to not destroy records before a specified date. The substitute also clarifies language for access or inspection of records and makes nonsubstantive changes.