

By: Chavez

H.B. No. 486

Substitute the following for H.B. No. 486:

By: Merritt

C.S.H.B. No. 486

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the transmission of certain health information to a
3 site outside the United States; providing penalties.

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

5 SECTION 1. Section 181.001(b)(2), Health and Safety Code,
6 is amended to read as follows:

7 (2) "Covered entity" means any person who:

8 (A) for commercial, financial, or professional
9 gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro
10 bono basis, engages, in whole or in part, and with real or
11 constructive knowledge, in the practice of creating, transcribing,
12 assembling, collecting, analyzing, using, evaluating, storing, or
13 transmitting protected health information. The term includes a
14 business associate, health care payer, governmental unit,
15 information or computer management entity, school, health
16 researcher, health care facility, clinic, health care provider, or
17 person who maintains an Internet site;

18 (B) comes into possession of protected health
19 information;

20 (C) obtains or stores protected health
21 information under this chapter; or

22 (D) is an employee, agent, or contractor of a
23 person described by Paragraph (A), (B), or (C) insofar as the
24 employee, agent, or contractor creates, receives, obtains,

1 maintains, uses, or transmits protected health information.

2 SECTION 2. Chapter 181, Health and Safety Code, is amended
3 by adding Subchapter G to read as follows:

4 SUBCHAPTER G. TRANSMISSION OF CERTAIN INFORMATION

5 Sec. 181.301. PROHIBITED DISCLOSURE. (a) A covered entity
6 is prohibited from disclosing protected health information to a
7 person or site outside the United States except as provided by
8 Subsection (b) and Section 181.304.

9 (b) A covered entity that provides an individual with a
10 notice of privacy practices, as described by Section 181.302, and
11 obtains written authorization from that individual that the
12 disclosure is allowed, as described by Section 181.303, may
13 disclose protected health information to a person or site outside
14 the United States.

15 Sec. 181.302. NOTICE REQUIREMENTS. (a) A covered entity
16 shall provide a notice of privacy practices that informs an
17 individual that the covered entity may disclose the individual's
18 protected health information to a person or site outside the United
19 States. The notice may be provided separately or may be added to a
20 notice required by 45 C.F.R. Section 164.520 in bold print and in a
21 conspicuous location.

22 (b) The notice must include:

23 (1) a statement that the covered entity may disclose
24 protected health information to a person or site outside the United
25 States;

26 (2) the specific purpose or purposes for the
27 disclosure;

1 (3) a statement informing the individual of the right
2 to refuse the authorization;

3 (4) a statement that the covered entity may not
4 discriminate against the individual for refusing to provide the
5 authorization; and

6 (5) the signature of the individual or personal
7 representative of the individual.

8 Sec. 181.303. AUTHORIZATION REQUIREMENTS. The written
9 authorization described by Section 181.301 must include the
10 following information:

11 (1) a specific and meaningful description of the
12 information that may be disclosed;

13 (2) the name, location, and other identifying
14 information of the person or class of persons to whom disclosure may
15 be made;

16 (3) a specific and meaningful description of each
17 purpose or reason a disclosure is authorized;

18 (4) the date that the authorization will expire, which
19 must be not later than one year from the date the authorization is
20 signed unless the purpose of the disclosure is for research or
21 another defined event that will exceed one year, in which case the
22 authorization may expire on the end date of the research or defined
23 event;

24 (5) a dated signature of the individual or personal
25 representative of the individual and, if a personal representative
26 signs for an individual, the authorization must state the authority
27 of the personal representative to act on behalf of the individual;

1 (6) a statement that the individual has the right to
2 revoke the authorization and that treatment cannot be conditioned
3 on providing the authorization;

4 (7) a statement that the covered entity is subject to
5 the penalties and disciplinary actions authorized by Subchapter E
6 for unauthorized disclosures that are not consistent with the
7 authorization; and

8 (8) a statement that the covered entity may be liable
9 for unauthorized disclosures by a person that receives information
10 directly from the covered entity under a business associate
11 agreement or contract but may not be liable for subsequent
12 unauthorized disclosures.

13 Sec. 181.304. EXCEPTION FOR CERTAIN DISCLOSURES. This
14 subchapter does not apply to a transmittal of individually
15 identifiable health information:

16 (1) to the extent the use or disclosure is permitted by
17 45 C.F.R. Section 164.512;

18 (2) that occurs because an individual initiates a
19 request for health care services, diagnosis, or treatment outside
20 the United States;

21 (3) to the extent required by law or regulation;

22 (4) for public health purposes; or

23 (5) for the purpose of:

24 (A) collecting or reporting information about an
25 adverse event or product defect for a product or activity regulated
26 by the United States Food and Drug Administration;

27 (B) tracking a product regulated by the United

1 States Food and Drug Administration;

2 (C) enabling a recall or post-marketing
3 surveillance activity or study of a product regulated by the United
4 States Food and Drug Administration; or

5 (D) conducting or gathering or reporting data and
6 results of research studies.

7 Sec. 181.305. ENFORCEMENT. A person who violates this
8 subchapter is subject to the enforcement provisions of Subchapter
9 E.

10 SECTION 3. This Act takes effect September 1, 2005.