

By: Nelson

S.B. No. 1328

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of protected health information.

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

SECTION 1. Section 58.0071, Family Code, is amended by adding Subsection (g) to read as follows:

(g) If destruction of a physical record or file under this section is destruction of protected health information by a covered entity, as those terms are defined by the privacy rule of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the covered entity may not destroy the record or file before the later of:

(1) the sixth anniversary of the date the record or file was created; or

(2) the date the entity is authorized to destroy the record under other applicable law, including Section 241.103, Health and Safety Code, if the entity is a hospital.

SECTION 2. Subsections (b) and (c), Section 82.010, Family Code, are amended to read as follows:

(b) Except as otherwise provided by law, an application for a protective order is confidential and~~[7]~~ is excepted from required public disclosure under Chapter 552, Government Code. A court~~[7 and]~~ may not release an application ~~[be released]~~ to a person who is

1 not a respondent to the application until after the date of service
2 of notice of the application or the date of the hearing on the
3 application, whichever date is sooner.

4 (c) Except as otherwise provided by law, an application
5 requesting the issuance of a temporary ex parte order under Chapter
6 83 is confidential and~~[7]~~ is excepted from required public
7 disclosure under Chapter 552, Government Code. A court~~[7, and]~~ may
8 not release an application ~~[be released]~~ to a person who is not a
9 respondent to the application until after the date that the court or
10 law enforcement informs the respondent of the court's order.

11 SECTION 3. Subsection (a), Section 107.006, Family Code, is
12 amended to read as follows:

13 (a) In ~~[Except as provided by Subsection (c), in]~~
14 conjunction with an appointment under this chapter, other than an
15 appointment of an attorney ad litem for an adult or a parent, the
16 court shall issue an order authorizing the attorney ad litem,
17 guardian ad litem for the child, or amicus attorney to have
18 immediate access to:

19 (1) the child; and

20 (2) any otherwise privileged or confidential
21 information relating to the child.

22 SECTION 4. Subsections (a) and (b), Section 162.018, Family
23 Code, are amended to read as follows:

24 (a) The department, licensed child-placing agency, person,
25 or entity placing a child for adoption shall provide to the ~~[The]~~
26 adoptive parents, upon request, ~~[are entitled to receive]~~ copies of
27 the records and other information relating to the history of the

1 child maintained by the department, licensed child-placing agency,
2 person, or entity placing the child for adoption.

3 (b) The department, licensed child-placing agency, person,
4 or entity placing the child for adoption shall, upon request,
5 provide to the [The] adoptive parents and the adopted child, after
6 the child is an adult, [~~are entitled to receive~~] copies of the
7 records maintained by the entity that have been edited to protect
8 the identity of the biological parents and any other person whose
9 identity is confidential and other information relating to the
10 history of the child [~~maintained by the department, licensed~~
11 ~~child-placing agency, person, or entity placing the child for~~
12 ~~adoption~~].

13 SECTION 5. Section 162.414, Family Code, is amended by
14 adding Subsection (f) to read as follows:

15 (f) To the extent that Subsection (d) authorizes the use or
16 disclosure of protected health information by a covered entity, as
17 those terms are defined by the privacy rule of the Administrative
18 Simplification subtitle of the Health Insurance Portability and
19 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
20 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
21 covered entity shall ensure that the use or disclosure complies
22 with all applicable requirements, standards, or implementation
23 specifications of the privacy rule.

24 SECTION 6. Subsection (a), Section 264.408, Family Code, is
25 amended to read as follows:

26 (a) The files, reports, records, communications, and
27 working papers used or developed in providing services under this

1 chapter are confidential and not subject to public release under
2 Chapter 552, Government Code. A center~~, and~~ may only disclose the
3 files, reports, records, communications, and working papers
4 developed in providing services under this chapter ~~[be disclosed]~~
5 for purposes consistent with this chapter. Disclosure may be to:

6 (1) the department, department employees, law
7 enforcement agencies, prosecuting attorneys, medical
8 professionals, and other state agencies that provide services to
9 children and families; and

10 (2) the attorney for the child who is the subject of
11 the records and a court-appointed volunteer advocate appointed for
12 the child under Section 107.031.

13 SECTION 7. Subsection (e), Section 420.031, Government
14 Code, is amended to read as follows:

15 (e) Evidence collected under this section may not be
16 released unless the survivor of the offense or a legal
17 representative of the survivor signs a written consent to release
18 the evidence. If a disclosure under this subsection is a disclosure
19 of protected health information by a covered entity, as those terms
20 are defined by the privacy rule of the Administrative
21 Simplification subtitle of the Health Insurance Portability and
22 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
23 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
24 covered entity shall ensure that the consent to the disclosure
25 complies with all of the privacy rule's applicable requirements,
26 standards, and implementation specifications relating to
27 authorizations for uses and disclosures of protected health

1 information.

2 SECTION 8. Section 825.507, Government Code, is amended by
3 adding Subsection (h) to read as follows:

4 (h) If a disclosure under Subsection (b)(6) is a disclosure
5 of protected health information by a covered entity, as those terms
6 are defined by the privacy rule of the Administrative
7 Simplification subtitle of the Health Insurance Portability and
8 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
9 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
10 covered entity shall ensure that the authorization for the
11 disclosure complies with all of the privacy rule's applicable
12 requirements, standards, and implementation specifications
13 relating to authorizations for uses and disclosures of protected
14 health information.

15 SECTION 9. Section 81.103, Health and Safety Code, is
16 amended by adding Subsection (k) to read as follows:

17 (k) If a disclosure under Subsection (d) is a disclosure of
18 protected health information by a covered entity, as those terms
19 are defined by the privacy rule of the Administrative
20 Simplification subtitle of the Health Insurance Portability and
21 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
22 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
23 covered entity shall ensure that the authorization for the
24 disclosure complies with all of the privacy rule's applicable
25 requirements, standards, and implementation specifications
26 relating to authorizations for uses and disclosures of protected
27 health information.

1 SECTION 10. Section 108.009, Health and Safety Code, is
2 amended by adding Subsection (c-1) to read as follows:

3 (c-1) For purposes of this section, the council or other
4 entity as determined by the council under Subsection (a) is a public
5 health authority, as that term is defined by the privacy rule of the
6 Administrative Simplification subtitle of the Health Insurance
7 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
8 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
9 and E. Data voluntarily submitted by a rural provider to the
10 council under Subsection (c) is a use and disclosure for which an
11 authorization or an opportunity to agree or object is not required.

12 SECTION 11. Section 142.009, Health and Safety Code, is
13 amended by amending Subsection (g) and adding Subsection (m) to
14 read as follows:

15 (g) After a survey of a home and community support services
16 agency by the department, the department shall provide to the chief
17 executive officer of the home and community support services
18 agency:

19 (1) specific and timely written notice of the
20 preliminary findings of the survey, including:

21 (A) the specific nature of the survey;

22 (B) any alleged violations of a specific statute
23 or rule;

24 (C) the specific nature of any finding regarding
25 an alleged violation or deficiency; and

26 (D) if a deficiency is alleged, the severity of
27 the deficiency;

1 (2) information on the identity, including the
2 signature, of each department representative conducting,
3 reviewing, or approving the results of the survey and the date on
4 which the department representative acted on the matter; and

5 (3) if requested by the home and community support
6 services agency, copies of all documents relating to the survey
7 maintained by the department or provided by the department to any
8 other state or federal agency that are not confidential under state
9 law.

10 (m) If a disclosure under Subsection (d)(3) is a disclosure
11 of protected health information by a covered entity, as those terms
12 are defined by the privacy rule of the Administrative
13 Simplification subtitle of the Health Insurance Portability and
14 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
15 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
16 covered entity shall ensure that the consent to the disclosure
17 complies with all of the privacy rule's applicable requirements,
18 standards, and implementation specifications relating to
19 authorizations for uses and disclosures of protected health
20 information.

21 SECTION 12. Section 162.006, Health and Safety Code, is
22 amended by adding Subsection (d) to read as follows:

23 (d) If a disclosure under this section is a disclosure of
24 protected health information by a covered entity, as those terms
25 are defined by the privacy rule of the Administrative
26 Simplification subtitle of the Health Insurance Portability and
27 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45

1 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
2 covered entity shall ensure that the disclosure complies with all
3 of the privacy rule's applicable requirements, standards, and
4 implementation specifications.

5 SECTION 13. Section 162.007, Health and Safety Code, is
6 amended by amending Subsection (a) and adding Subsection (d) to
7 read as follows:

8 (a) Except as provided by Subsection (d), a [A] blood bank
9 shall report blood test results for blood confirmed as HIV positive
10 by the normal procedures blood banks presently use or found to be
11 contaminated by any other infectious disease to:

12 (1) the hospital or other facility in which the blood
13 was transfused or provided;

14 (2) the physician who transfused the infected blood;
15 and [~~or~~]

16 (3) the recipient of the blood.

17 (d) If a blood bank is unable to report blood test results to
18 a person listed in Subsection (a), the blood bank shall maintain a
19 record of the blood bank's attempt to report to that person along
20 with the blood test results.

21 SECTION 14. Section 181.051, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapters
24 [~~Subchapter~~] D and E, this chapter does not apply to:

25 (1) a covered entity as defined by Section 602.001,
26 Insurance Code;

27 (2) an entity established under Article 5.76-3,

1 Insurance Code; or

2 (3) an employer.

3 SECTION 15. Section 241.103, Health and Safety Code, is
4 amended by adding Subsection (d) to read as follows:

5 (d) This section applies to a hospital that is a covered
6 entity, as that term is defined by the privacy rule of the
7 Administrative Simplification subtitle of the Health Insurance
8 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
9 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
10 and E.

11 SECTION 16. Section 241.152, Health and Safety Code, is
12 amended by adding Subsection (g) to read as follows:

13 (g) If an authorization under this section authorizes the
14 disclosure of protected health information by a covered entity, as
15 those terms are defined by the privacy rule of the Administrative
16 Simplification subtitle of the Health Insurance Portability and
17 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
18 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
19 covered entity shall ensure that the authorization complies with
20 all of the privacy rule's applicable requirements, standards, and
21 implementation specifications.

22 SECTION 17. Section 241.153, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION.

25 (a) Subject to Subsection (b), a [A] patient's health care
26 information may be disclosed without the patient's authorization if
27 the disclosure is:

1 (1) directory information, unless the patient has
2 instructed the hospital not to make the disclosure or the directory
3 information is otherwise protected by state or federal law;

4 (2) to a health care provider who is rendering health
5 care to the patient when the request for the disclosure is made;

6 (3) to a transporting emergency medical services
7 provider for the sole purpose of determining the patient's
8 diagnosis and the outcome of the patient's hospital admission;

9 (4) to a clergy member [~~of the clergy~~] specifically
10 designated by the patient;

11 (5) to a qualified organ or tissue procurement
12 organization as defined in Section 692.002 for the purpose of
13 making inquiries relating to donations according to the protocol
14 referred to in Section 692.013(d);

15 (6) to a prospective health care provider for the
16 purpose of securing the services of that health care provider as
17 part of the patient's continuum of care, as determined by the
18 patient's attending physician;

19 (7) to a person authorized to consent to medical
20 treatment under Chapter 313 or to a person in a circumstance
21 exempted from Chapter 313 to facilitate the adequate provision of
22 treatment;

23 (8) to an employee or agent of the hospital who
24 requires health care information for health care education, quality
25 assurance, or peer review or for assisting the hospital in the
26 delivery of health care or in complying with statutory, licensing,
27 accreditation, or certification requirements and if the hospital

1 takes appropriate action to ensure that the employee or agent:

2 (A) will not use or disclose the health care
3 information for any other purpose; and

4 (B) will take appropriate steps to protect the
5 health care information;

6 (9) to a federal, state, or local government agency or
7 authority to the extent authorized or required by law;

8 (10) to a hospital that is the successor in interest to
9 the hospital maintaining the health care information;

10 (11) to the American Red Cross for the specific
11 purpose of fulfilling the duties specified under its charter
12 granted as an instrumentality of the United States government;

13 (12) to a regional poison control center, as the term
14 is used in Chapter 777, to the extent necessary to enable the center
15 to provide information and education to health professionals
16 involved in the management of poison and overdose victims,
17 including information regarding appropriate therapeutic use of
18 medications, their compatibility and stability, and adverse drug
19 reactions and interactions;

20 (13) to a health care utilization review agent who
21 requires the health care information for utilization review of
22 health care under Article 21.58A, Insurance Code;

23 (14) for use in a research project authorized by an
24 institutional review board under federal law;

25 (15) to health care personnel of a penal or other
26 custodial institution in which the patient is detained if the
27 disclosure is for the sole purpose of providing health care to the

1 patient;

2 (16) to facilitate reimbursement to a hospital, other
3 health care provider, or the patient for medical services or
4 supplies;

5 (17) to a health maintenance organization for purposes
6 of maintaining a statistical reporting system as required by a rule
7 adopted by a state agency or regulations adopted under the federal
8 Health Maintenance Organization Act of 1973, as amended (42 U.S.C.
9 Section 300 et seq.);

10 (18) to satisfy a request for medical records of a
11 deceased or incompetent person pursuant to Section 74.051(e), Civil
12 Practice and Remedies Code [~~4.01(e), Medical Liability and~~
13 ~~Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas~~
14 ~~Civil Statutes)];~~

15 (19) to comply with a court order except as provided by
16 Subdivision (20); or

17 (20) related to a judicial proceeding in which the
18 patient is a party and the disclosure is requested under a subpoena
19 issued under:

20 (A) the Texas Rules of Civil Procedure or Code of
21 Criminal Procedure; or

22 (B) Chapter 121, Civil Practice and Remedies
23 Code.

24 (b) A hospital that is a covered entity disclosing protected
25 health information under this section, as those terms are defined
26 by the privacy rule of the Administrative Simplification subtitle
27 of the Health Insurance Portability and Accountability Act of 1996

1 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R.
2 Part 164, Subparts A and E, shall ensure that the disclosure
3 complies with all applicable requirements, standards, or
4 implementation specifications of the privacy rule, including
5 provisions relating to disclosures for:

6 (1) facility directories under 45 C.F.R. Section
7 164.510(a);

8 (2) treatment, payment, or health care operations
9 under 45 C.F.R. Section 164.506;

10 (3) cadaveric organ, eye, or tissue donation purposes
11 under 45 C.F.R. Section 164.512(h);

12 (4) law enforcement purposes under 45 C.F.R. Section
13 164.512(f);

14 (5) health oversight activities under 45 C.F.R.
15 Section 164.512(d);

16 (6) research purposes under 45 C.F.R. Section
17 164.512(i); and

18 (7) a judicial or administrative proceeding under 45
19 C.F.R. Section 164.512(e).

20 SECTION 18. Section 241.154, Health and Safety Code, is
21 amended by amending Subsection (b) and adding Subsection (f) to
22 read as follows:

23 (b) Except as provided by Subsections [~~Subsection~~] (d) and
24 (f), the hospital or its agent may charge a reasonable fee for
25 providing the health care information and is not required to permit
26 the examination, copying, or release of the information requested
27 until the fee is paid unless there is a medical emergency. The fee

1 may not exceed the sum of:

2 (1) a basic retrieval or processing fee, which must
3 include the fee for providing the first 10 pages of the copies and
4 which may not exceed \$30; and

5 (A) a charge for each page of:

6 (i) \$1 for the 11th through the 60th page of
7 the provided copies;

8 (ii) 50 cents for the 61st through the 400th
9 page of the provided copies; and

10 (iii) 25 cents for any remaining pages of
11 the provided copies; and

12 (B) the actual cost of mailing, shipping, or
13 otherwise delivering the provided copies; or

14 (2) if the requested records are stored on any
15 microform or other electronic medium, a retrieval or processing
16 fee, which must include the fee for providing the first 10 pages of
17 the copies and which may not exceed \$45; and

18 (A) \$1 per page thereafter; and

19 (B) the actual cost of mailing, shipping, or
20 otherwise delivering the provided copies.

21 (f) A hospital that is a covered entity releasing protected
22 health information, as those terms are defined by the privacy rule
23 of the Administrative Simplification subtitle of the Health
24 Insurance Portability and Accountability Act of 1996 (Pub. L. No.
25 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164,
26 Subparts A and E, to an individual who is the subject of the
27 information or the individual's personal representative:

1 (1) must comply with the privacy rule requirements
2 regarding access of individuals to protected health information
3 under 45 C.F.R. Section 164.524; and

4 (2) may not deny access to the information for
5 nonpayment of the fee.

6 SECTION 19. Section 247.065, Health and Safety Code, is
7 amended by adding Subsection (c) to read as follows:

8 (c) Subsection (b)(7) does not authorize the disclosure or
9 use of protected health information by a covered entity, as those
10 terms are defined by the privacy rule of the Administrative
11 Simplification subtitle of the Health Insurance Portability and
12 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
13 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the
14 disclosure or use complies with all applicable requirements,
15 standards, or implementation specifications of the privacy rule.

16 SECTION 20. Section 262.030, Health and Safety Code, is
17 amended by adding Subsection (c) to read as follows:

18 (c) If destruction of a record under this section is
19 destruction of protected health information by a covered entity, as
20 those terms are defined by the privacy rule of the Administrative
21 Simplification subtitle of the Health Insurance Portability and
22 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
23 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
24 covered entity may not destroy the record before the later of:

25 (1) the sixth anniversary of the date the record was
26 created; or

27 (2) the date the entity is authorized to destroy the

1 record under Section 241.103, if applicable.

2 SECTION 21. Section 281.073, Health and Safety Code, is
3 amended by adding Subsection (c) to read as follows:

4 (c) If destruction of a record under this section is
5 destruction of protected health information by a covered entity, as
6 those terms are defined by the privacy rule of the Administrative
7 Simplification subtitle of the Health Insurance Portability and
8 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
9 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
10 covered entity may not destroy the record before the later of:

11 (1) the sixth anniversary of the date the record was
12 created; or

13 (2) the date the entity is authorized to destroy the
14 record under Section 241.103, if applicable.

15 SECTION 22. Section 595.003, Health and Safety Code, is
16 amended by adding Subsection (c) to read as follows:

17 (c) If consent under this section authorizes the disclosure
18 of protected health information by a covered entity, as those terms
19 are defined by the privacy rule of the Administrative
20 Simplification subtitle of the Health Insurance Portability and
21 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
22 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
23 covered entity shall ensure that the authorization complies with
24 all of the privacy rule's applicable requirements, standards, and
25 implementation specifications.

26 SECTION 23. Section 595.004, Health and Safety Code, is
27 amended by amending Subsection (a) and adding Subsection (c) to

1 read as follows:

2 (a) The content of a confidential record shall be made
3 available on the request of the person about whom the record was
4 made unless:

5 (1) the person is a client; and

6 (2) subject to Subsection (c), the qualified
7 professional responsible for supervising the client's habilitation
8 states in a signed written statement that having access to the
9 record is not in the client's best interest.

10 (c) A covered entity may not deny a request under this
11 section for protected health information, as those terms are
12 defined by the privacy rule of the Administrative Simplification
13 subtitle of the Health Insurance Portability and Accountability Act
14 of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45
15 C.F.R. Part 164, Subparts A and E, unless the qualified
16 professional responsible for supervising the client's
17 habilitation:

18 (1) determines that making the record available to the
19 client is reasonably likely to endanger the life or physical safety
20 of the client or another person; and

21 (2) complies with other requirements relating to
22 denial of access to an individual's protected health information
23 under 45 C.F.R. Section 164.524.

24 SECTION 24. Section 611.004, Health and Safety Code, is
25 amended by adding Subsection (e) to read as follows:

26 (e) If a disclosure under Subsection (a)(4) is a disclosure
27 of protected health information by a covered entity, as those terms

1 are defined by the privacy rule of the Administrative
2 Simplification subtitle of the Health Insurance Portability and
3 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
4 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
5 covered entity shall ensure that the consent to the disclosure
6 complies with all of the privacy rule's applicable requirements,
7 standards, and implementation specifications relating to
8 authorizations for uses and disclosures of protected health
9 information.

10 SECTION 25. Subsection (b), Section 611.0045, Health and
11 Safety Code, is amended to read as follows:

12 (b) The professional may deny access to any portion of a
13 record if the professional determines that release of that portion
14 would be harmful to the patient's physical, mental, or emotional
15 health. A covered entity may not deny a request under this
16 subsection for protected health information, as those terms are
17 defined by the privacy rule of the Administrative Simplification
18 subtitle of the Health Insurance Portability and Accountability Act
19 of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45
20 C.F.R. Part 164, Subparts A and E, unless the professional:

21 (1) determines that making the record available to the
22 patient is reasonably likely to endanger the life or physical
23 safety of the patient or another person; and

24 (2) complies with other requirements relating to
25 denial of access to an individual's protected health information
26 under 45 C.F.R. Section 164.524.

27 SECTION 26. Subsection (b), Section 611.008, Health and

1 Safety Code, is amended to read as follows:

2 (b) Except as provided by this subsection, unless [~~Unless~~]
3 provided for by other state law, the professional may charge a
4 reasonable fee for retrieving or copying mental health care
5 information and is not required to permit examination or copying
6 until the fee is paid unless there is a medical emergency. A
7 covered entity charging a fee for protected health information, as
8 those terms are defined by the privacy rule of the Administrative
9 Simplification subtitle of the Health Insurance Portability and
10 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
11 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E:

12 (1) must comply with the privacy rule requirements
13 regarding access of individuals to protected health information
14 under 45 C.F.R. Section 164.524; and

15 (2) may not deny access to information for nonpayment
16 of the fee.

17 SECTION 27. Section 773.093, Health and Safety Code, is
18 amended by adding Subsection (d) to read as follows:

19 (d) If consent under this section authorizes the disclosure
20 of protected health information by a covered entity, as those terms
21 are defined by the privacy rule of the Administrative
22 Simplification subtitle of the Health Insurance Portability and
23 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
24 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
25 covered entity shall ensure that the consent complies with all of
26 the privacy rule's applicable requirements, standards, and
27 implementation specifications.

1 SECTION 28. Section 8, Article 21.58A, Insurance Code, is
2 amended by adding Subsection (j) to read as follows:

3 (j) If an authorization under Subsection (b) authorizes the
4 disclosure of protected health information by a covered entity, as
5 those terms are defined by the privacy rule of the Administrative
6 Simplification subtitle of the Health Insurance Portability and
7 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
8 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
9 covered entity shall ensure that the authorization complies with
10 all of the privacy rule's applicable requirements, standards, and
11 implementation specifications.

12 SECTION 29. Section 546.104, Insurance Code, as effective
13 April 1, 2005, is amended to read as follows:

14 Sec. 546.104. AUTHORIZED DISCLOSURE. (a) An individual or
15 an individual's legal representative may authorize disclosure of
16 genetic information relating to the individual by an authorization
17 that:

- 18 (1) is written in plain language;
- 19 (2) is dated;
- 20 (3) contains a specific description of the information
21 to be disclosed;
- 22 (4) identifies or describes each person authorized to
23 disclose the genetic information to a group health benefit plan
24 issuer;
- 25 (5) identifies or describes the individuals or
26 entities to whom the disclosure or subsequent redisclosure of the
27 genetic information may be made;

1 (6) describes the specific purpose of the disclosure;

2 (7) is signed by the individual or legal
3 representative and, if the disclosure is made to claim proceeds of
4 an affected life insurance policy, the claimant; and

5 (8) advises the individual or legal representative
6 that the individual's authorized representative is entitled to
7 receive a copy of the authorization.

8 (b) If an authorization under this section authorizes the
9 disclosure of protected health information by a covered entity, as
10 those terms are defined by the privacy rule of the Administrative
11 Simplification subtitle of the Health Insurance Portability and
12 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
13 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
14 covered entity shall ensure that the authorization complies with
15 all of the privacy rule's applicable requirements, standards, and
16 implementation specifications.

17 SECTION 30. Section 21.4032, Labor Code, is amended to read
18 as follows:

19 Sec. 21.4032. AUTHORIZED DISCLOSURE. (a) An individual or
20 the legal representative of an individual may authorize disclosure
21 of genetic information relating to the individual by a written
22 authorization that includes:

23 (1) a description of the information to be disclosed;

24 (2) the name of the person to whom the disclosure is
25 made; and

26 (3) the purpose for the disclosure.

27 (b) If an authorization under this section authorizes the

1 disclosure of protected health information by a covered entity, as
2 those terms are defined by the privacy rule of the Administrative
3 Simplification subtitle of the Health Insurance Portability and
4 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
5 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
6 covered entity shall ensure that the authorization complies with
7 all of the privacy rule's applicable requirements, standards, and
8 implementation specifications.

9 SECTION 31. Subsection (c), Section 201.009, Local
10 Government Code, is amended to read as follows:

11 (c) Subsection (b) does not apply to:

12 (1) a local government record whose public disclosure
13 is prohibited by an order of a court or by another state law; or

14 (2) a local government that is a covered entity
15 disclosing protected health information, as those terms are defined
16 by the privacy rule of the Administrative Simplification subtitle
17 of the Health Insurance Portability and Accountability Act of 1996
18 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R.
19 Part 164, Subparts A and E.

20 SECTION 32. Section 58.104, Occupations Code, is amended to
21 read as follows:

22 Sec. 58.104. AUTHORIZED DISCLOSURE. (a) An individual or
23 the legal representative of an individual may authorize disclosure
24 of genetic information relating to the individual by a written
25 authorization that includes:

26 (1) a description of the information to be disclosed;

27 (2) the name of the person to whom the disclosure is

1 made; and

2 (3) the purpose for the disclosure.

3 (b) If an authorization under this section authorizes the
4 disclosure of protected health information by a covered entity, as
5 those terms are defined by the privacy rule of the Administrative
6 Simplification subtitle of the Health Insurance Portability and
7 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
8 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
9 covered entity shall ensure that the authorization complies with
10 all of the privacy rule's applicable requirements, standards, and
11 implementation specifications.

12 SECTION 33. Section 159.005, Occupations Code, is amended
13 by adding Subsection (f) to read as follows:

14 (f) If consent under this section authorizes the disclosure
15 of protected health information by a covered entity, as those terms
16 are defined by the privacy rule of the Administrative
17 Simplification subtitle of the Health Insurance Portability and
18 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
19 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
20 covered entity shall ensure that the consent complies with all of
21 the privacy rule's applicable requirements, standards, and
22 implementation specifications.

23 SECTION 34. Section 159.006, Occupations Code, is amended
24 by amending Subsection (a) and adding Subsection (f) to read as
25 follows:

26 (a) Subject to Subsection (f), unless [~~Unless~~] the
27 physician determines that access to the information would be

1 harmful to the physical, mental, or emotional health of the
2 patient, a physician who receives a written consent for release of
3 information as provided by Section 159.005 shall furnish copies of
4 the requested billing or medical records, or a summary or narrative
5 of the records, including records received from a physician or
6 other health care provider involved in the care or treatment of the
7 patient.

8 (f) A physician who is a covered entity may not deny a
9 request under this section for protected health information, as
10 those terms are defined by the privacy rule of the Administrative
11 Simplification subtitle of the Health Insurance Portability and
12 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
13 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the
14 physician:

15 (1) determines that making the information available
16 to the patient is reasonably likely to endanger the life or physical
17 safety of the patient or another person; and

18 (2) complies with other requirements relating to
19 denial of access to an individual's protected health information
20 under 45 C.F.R. Section 164.524.

21 SECTION 35. Section 159.008, Occupations Code, is amended
22 by amending Subsection (a) and adding Subsection (c) to read as
23 follows:

24 (a) Except as provided by Subsections [~~Subsection~~] (b) and
25 (c), a physician:

26 (1) may charge a reasonable fee, as prescribed by
27 board rule, for copying billing or medical records; and

1 (2) is not required to permit examination or copying
2 of the records until the fee is paid unless there is a medical
3 emergency.

4 (c) A covered entity providing protected health
5 information, as those terms are defined by the privacy rule of the
6 Administrative Simplification subtitle of the Health Insurance
7 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
8 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
9 and E, to the person who is the subject of the information or the
10 personal representative of the subject of the information may not
11 deny access to the information for examination purposes for
12 nonpayment of the fee.

13 SECTION 36. Section 201.405, Occupations Code, is amended
14 by amending Subsection (g) and adding Subsection (h) to read as
15 follows:

16 (g) A chiropractor who determines that access to
17 information requested under Subsection (f) would be harmful to the
18 physical, mental, or emotional health of the patient may refuse to
19 release the information requested under this section. A
20 chiropractor who is a covered entity may not deny a request under
21 this subsection for protected health information, as those terms
22 are defined by the privacy rule of the Administrative
23 Simplification subtitle of the Health Insurance Portability and
24 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
25 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the
26 chiropractor:

27 (1) determines that making the record available to the

1 patient is reasonably likely to endanger the life or physical
2 safety of the patient or another person; and

3 (2) complies with other requirements relating to
4 denial of access to an individual's protected health information
5 under 45 C.F.R. Section 164.524.

6 (h) If a consent under this section authorizes the
7 disclosure of protected health information by a covered entity, as
8 those terms are defined by the privacy rule of the Administrative
9 Simplification subtitle of the Health Insurance Portability and
10 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
11 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
12 covered entity shall ensure that the consent complies with all of
13 the privacy rule's applicable requirements, standards, and
14 implementation specifications.

15 SECTION 37. Section 202.406, Occupations Code, is amended
16 by amending Subsection (d) and adding Subsection (f) to read as
17 follows:

18 (d) A podiatrist shall furnish copies of podiatric records
19 requested or a summary or narrative of the records under a written
20 consent for release of the information as provided by this section
21 unless the podiatrist determines that access to the information
22 would be harmful to the physical, mental, or emotional health of the
23 patient. The podiatrist may delete confidential information about
24 another person who has not consented to the release. A podiatrist
25 who is a covered entity may not deny a request under this subsection
26 for protected health information, as those terms are defined by the
27 privacy rule of the Administrative Simplification subtitle of the

1 Health Insurance Portability and Accountability Act of 1996 (Pub.
2 L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part
3 164, Subparts A and E, unless the podiatrist:

4 (1) determines that making the record available to the
5 patient is reasonably likely to endanger the life or physical
6 safety of the patient or another person; and

7 (2) complies with other requirements relating to
8 denial of access to an individual's protected health information
9 under 45 C.F.R. Section 164.524.

10 (f) If consent under this section authorizes the disclosure
11 of protected health information by a covered entity, as those terms
12 are defined by the privacy rule of the Administrative
13 Simplification subtitle of the Health Insurance Portability and
14 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
15 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
16 covered entity shall ensure that the consent complies with all of
17 the privacy rule's applicable requirements, standards, and
18 implementation specifications.

19 SECTION 38. Section 258.104, Occupations Code, is amended
20 by adding Subsection (e) to read as follows:

21 (e) If consent under this section authorizes the disclosure
22 of protected health information by a covered entity, as those terms
23 are defined by the privacy rule of the Administrative
24 Simplification subtitle of the Health Insurance Portability and
25 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
26 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
27 covered entity shall ensure that the consent complies with all of

1 the privacy rule's applicable requirements, standards, and
2 implementation specifications.

3 SECTION 39. Section 32, Texas Local Fire Fighters
4 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is
5 amended by adding Subsection (d) to read as follows:

6 (d) If a disclosure under Subsection (a)(1)(D) is a
7 disclosure of protected health information by a covered entity, as
8 those terms are defined by the privacy rule of the Administrative
9 Simplification subtitle of the Health Insurance Portability and
10 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
11 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
12 covered entity shall ensure that the consent to the disclosure
13 complies with all of the privacy rule's applicable requirements,
14 standards, and implementation specifications relating to
15 authorizations for uses and disclosures of protected health
16 information.

17 SECTION 40. The state auditor shall conduct an audit of
18 state agencies to determine which agencies have designated
19 themselves covered entities for the purposes of the federal Health
20 Insurance Portability and Accountability Act and whether the agency
21 should be designated as a hybrid of a covered entity. The auditor
22 shall report the results of the audit to the office of the attorney
23 general and the appropriate legislative committees not later than
24 March 1, 2006. The report must include any recommendations for
25 changes in agency designation.

26 SECTION 41. Subsection (c), Section 107.006, Family Code,
27 is repealed.

1 SECTION 42. This Act takes effect September 1, 2005.