

By: Nelson

S.B. No. 1328

Substitute the following for S.B. No. 1328:

By: Truitt

C.S.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(f), Family Code, is amended to read as follows:

(f) This section does not affect the destruction of:

(1) physical records and files authorized by the Texas State Library Records Retention Schedule; or

(2) protected health information maintained by a covered entity, as that term is defined by 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.

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 ~~is~~ is excepted from required public disclosure under Chapter 552, Government Code. A court ~~and~~ may not release an application ~~[be released]~~ to a person who is not a respondent to the application until after the date of service of notice of the application or the date of the hearing on the application, whichever date is sooner.

(c) Except as otherwise provided by law, an application

1 requesting the issuance of a temporary ex parte order under Chapter
2 83 is confidential and~~[,]~~ is excepted from required public
3 disclosure under Chapter 552, Government Code. A court~~[, and]~~ may
4 not release an application ~~[be released]~~ to a person who is not a
5 respondent to the application until after the date that the court or
6 law enforcement informs the respondent of the court's order.

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

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

- 15 (1) the child; and
16 (2) any otherwise privileged or confidential
17 information relating to the child.

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

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

26 (b) The department, licensed child-placing agency, person,
27 or entity placing the child for adoption shall, upon request,

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

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

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

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

22 (a) The files, reports, records, communications, and
23 working papers used or developed in providing services under this
24 chapter are confidential and not subject to public release under
25 Chapter 552, Government Code. A center ~~[, and]~~ may only disclose the
26 files, reports, records, communications, and working papers
27 developed in providing services under this chapter ~~[be disclosed]~~

1 for purposes consistent with this chapter. Disclosure may be to:

2 (1) the department, department employees, law
3 enforcement agencies, prosecuting attorneys, medical
4 professionals, and other state agencies that provide services to
5 children and families; and

6 (2) the attorney for the child who is the subject of
7 the records and a court-appointed volunteer advocate appointed for
8 the child under Section 107.031.

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

11 (e) Evidence collected under this section may not be
12 released unless the survivor of the offense or a legal
13 representative of the survivor signs a written consent to release
14 the evidence. If a disclosure under this subsection is a 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 to the disclosure
21 complies with all of the privacy rule's applicable requirements,
22 standards, and implementation specifications relating to
23 authorizations for uses and disclosures of protected health
24 information.

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

27 (h) If a disclosure under Subsection (b)(6) is a disclosure

1 of protected health information by a covered entity, as those terms
2 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 for the
7 disclosure complies with all of the privacy rule's applicable
8 requirements, standards, and implementation specifications
9 relating to authorizations for uses and disclosures of protected
10 health information.

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

13 (k) If a disclosure under Subsection (d) is a disclosure of
14 protected health information by a covered entity, as those terms
15 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 for the
20 disclosure complies with all of the privacy rule's applicable
21 requirements, standards, and implementation specifications
22 relating to authorizations for uses and disclosures of protected
23 health information.

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

26 (c-1) For purposes of this section, the council or other
27 entity as determined by the council under Subsection (a) is a public

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

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

11 (g) After a survey of a home and community support services
12 agency by the department, the department shall provide to the chief
13 executive officer of the home and community support services
14 agency:

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

17 (A) the specific nature of the survey;

18 (B) any alleged violations of a specific statute
19 or rule;

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

22 (D) if a deficiency is alleged, the severity of
23 the deficiency;

24 (2) information on the identity, including the
25 signature, of each department representative conducting,
26 reviewing, or approving the results of the survey and the date on
27 which the department representative acted on the matter; and

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

6 (m) If a disclosure under Subsection (d)(3) is a disclosure
7 of protected health information by a covered entity, as those terms
8 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 12. Section 162.006, Health and Safety Code, is
18 amended by adding Subsection (d) to read as follows:

19 (d) If a disclosure under this section is a disclosure of
20 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 disclosure complies with all
26 of the privacy rule's applicable requirements, standards, and
27 implementation specifications.

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

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

8 (1) the hospital or other facility in which the blood
9 was transfused or provided;

10 (2) the physician who transfused the infected blood;
11 and [or]

12 (3) the recipient of the blood.

13 (d) If a blood bank is unable to report blood test results to
14 a person listed in Subsection (a), the blood bank shall maintain a
15 record of the blood bank's attempt to report to that person along
16 with the blood test results.

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

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

21 (1) a covered entity as defined by Section 602.001,
22 Insurance Code;

23 (2) an entity established under Article 5.76-3,
24 Insurance Code; or

25 (3) an employer.

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

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

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

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

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

20 Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION.

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

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

27 (2) to a health care provider who is rendering health

1 care to the patient when the request for the disclosure is made;

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

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

7 (5) to a qualified organ or tissue procurement
8 organization as defined in Section 692.002 for the purpose of
9 making inquiries relating to donations according to the protocol
10 referred to in Section 692.013(d);

11 (6) to a prospective health care provider for the
12 purpose of securing the services of that health care provider as
13 part of the patient's continuum of care, as determined by the
14 patient's attending physician;

15 (7) to a person authorized to consent to medical
16 treatment under Chapter 313 or to a person in a circumstance
17 exempted from Chapter 313 to facilitate the adequate provision of
18 treatment;

19 (8) to an employee or agent of the hospital who
20 requires health care information for health care education, quality
21 assurance, or peer review or for assisting the hospital in the
22 delivery of health care or in complying with statutory, licensing,
23 accreditation, or certification requirements and if the hospital
24 takes appropriate action to ensure that the employee or agent:

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

27 (B) will take appropriate steps to protect the

1 health care information;

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

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

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

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

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

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

21 (15) to health care personnel of a penal or other
22 custodial institution in which the patient is detained if the
23 disclosure is for the sole purpose of providing health care to the
24 patient;

25 (16) to facilitate reimbursement to a hospital, other
26 health care provider, or the patient for medical services or
27 supplies;

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

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

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

13 (20) related to a judicial proceeding in which the
14 patient is a party and the disclosure is requested under a subpoena
15 issued under:

16 (A) the Texas Rules of Civil Procedure or Code of
17 Criminal Procedure; or

18 (B) Chapter 121, Civil Practice and Remedies
19 Code.

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

1 provisions relating to disclosures for:

2 (1) facility directories under 45 C.F.R. Section
3 164.510(a);

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

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

8 (4) law enforcement purposes under 45 C.F.R. Section
9 164.512(f);

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

12 (6) research purposes under 45 C.F.R. Section
13 164.512(i); and

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

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

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

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

- 1 (A) a charge for each page of:
2 (i) \$1 for the 11th through the 60th page of
3 the provided copies;
4 (ii) 50 cents for the 61st through the 400th
5 page of the provided copies; and
6 (iii) 25 cents for any remaining pages of
7 the provided copies; and

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

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

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

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

17 (f) A covered entity shall comply with the requirements of
18 45 C.F.R. Section 164.524, including the requirement that access to
19 protected health information, as those terms are defined by the
20 privacy rule of the Administrative Simplification subtitle of the
21 Health Insurance Portability and Accountability Act of 1996 (Pub.
22 L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part
23 164, Subparts A and E, for inspection purposes may not be denied to
24 an individual or legally authorized representative for nonpayment
25 of a fee.

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

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

9 SECTION 20. Section 595.003, Health and Safety Code, is
10 amended by adding Subsection (c) to read as follows:

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

20 SECTION 21. Section 595.004, Health and Safety Code, is
21 amended by amending Subsection (a) and adding Subsection (c) to
22 read as follows:

23 (a) The content of a confidential record shall be made
24 available on the request of the person about whom the record was
25 made unless:

26 (1) the person is a client; and

27 (2) subject to Subsection (c), the qualified

1 professional responsible for supervising the client's habilitation
2 states in a signed written statement that having access to the
3 record is not in the client's best interest.

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

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

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

18 SECTION 22. Section 611.004, Health and Safety Code, is
19 amended by adding Subsection (e) to read as follows:

20 (e) If a disclosure under Subsection (a)(4) is a disclosure
21 of protected health information by a covered entity, 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, the
26 covered entity shall ensure that the consent to the disclosure
27 complies with all of the privacy rule's applicable requirements,

1 standards, and implementation specifications relating to
2 authorizations for uses and disclosures of protected health
3 information.

4 SECTION 23. Subsection (b), Section 611.0045, Health and
5 Safety Code, is amended to read as follows:

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

15 (1) determines that making the record available to the
16 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 24. Subsection (b), Section 611.008, Health and
22 Safety Code, is amended to read as follows:

23 (b) Except as provided by this subsection, unless ~~Unless~~
24 provided for by other state law, the professional may charge a
25 reasonable fee for retrieving or copying mental health care
26 information and is not required to permit examination or copying
27 until the fee is paid unless there is a medical emergency. A

1 covered entity shall comply with the requirements of 45 C.F.R.
2 Section 164.524, including the requirement that access to protected
3 health information, as those terms are defined by the privacy rule
4 of the Administrative Simplification subtitle of the Health
5 Insurance Portability and Accountability Act of 1996 (Pub. L. No.
6 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164,
7 Subparts A and E, for inspection purposes may not be denied to an
8 individual or legally authorized representative for nonpayment of a
9 fee.

10 SECTION 25. Section 773.093, Health and Safety Code, is
11 amended by adding Subsection (d) to read as follows:

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

21 SECTION 26. Section 8, Article 21.58A, Insurance Code, is
22 amended by adding Subsection (j) to read as follows:

23 (j) If an authorization under Subsection (b) authorizes the
24 disclosure of protected health information by a covered entity, as
25 those terms 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 authorization complies with
3 all of the privacy rule's applicable requirements, standards, and
4 implementation specifications.

5 SECTION 27. Section 546.104, Insurance Code, as effective
6 April 1, 2005, is amended to read as follows:

7 Sec. 546.104. AUTHORIZED DISCLOSURE. (a) An individual or
8 an individual's legal representative may authorize disclosure of
9 genetic information relating to the individual by an authorization
10 that:

11 (1) is written in plain language;

12 (2) is dated;

13 (3) contains a specific description of the information
14 to be disclosed;

15 (4) identifies or describes each person authorized to
16 disclose the genetic information to a group health benefit plan
17 issuer;

18 (5) identifies or describes the individuals or
19 entities to whom the disclosure or subsequent redisclosure of the
20 genetic information may be made;

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

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

25 (8) advises the individual or legal representative
26 that the individual's authorized representative is entitled to
27 receive a copy of the authorization.

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

10 SECTION 28. Section 21.4032, Labor Code, is amended to read
11 as follows:

12 Sec. 21.4032. AUTHORIZED DISCLOSURE. (a) An individual or
13 the legal representative of an individual may authorize disclosure
14 of genetic information relating to the individual by a written
15 authorization that includes:

- 16 (1) a description of the information to be disclosed;
17 (2) the name of the person to whom the disclosure is
18 made; and
19 (3) the purpose for the disclosure.

20 (b) If an authorization under this section authorizes the
21 disclosure of protected health information by a covered entity, as
22 those terms 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, the
26 covered entity shall ensure that the authorization complies with
27 all of the privacy rule's applicable requirements, standards, and

1 implementation specifications.

2 SECTION 29. Subsection (c), Section 201.009, Local
3 Government Code, is amended to read as follows:

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

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

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

13 SECTION 30. Section 58.104, Occupations Code, is amended to
14 read as follows:

15 Sec. 58.104. AUTHORIZED DISCLOSURE. (a) An individual or
16 the legal representative of an individual may authorize disclosure
17 of genetic information relating to the individual by a written
18 authorization that includes:

- 19 (1) a description of the information to be disclosed;
20 (2) the name of the person to whom the disclosure is
21 made; and
22 (3) the purpose for the disclosure.

23 (b) If an authorization under this section authorizes the
24 disclosure of protected health information by a covered entity, as
25 those terms 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 authorization complies with
3 all of the privacy rule's applicable requirements, standards, and
4 implementation specifications.

5 SECTION 31. Section 159.005, Occupations Code, is amended
6 by adding Subsection (f) to read as follows:

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

16 SECTION 32. Section 159.006, Occupations Code, is amended
17 by amending Subsection (a) and adding Subsection (f) to read as
18 follows:

19 (a) Subject to Subsection (f), unless ~~[Unless]~~ the
20 physician determines that access to the information would be
21 harmful to the physical, mental, or emotional health of the
22 patient, a physician who receives a written consent for release of
23 information as provided by Section 159.005 shall furnish copies of
24 the requested billing or medical records, or a summary or narrative
25 of the records, including records received from a physician or
26 other health care provider involved in the care or treatment of the
27 patient.

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

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

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

14 SECTION 33. Section 159.008, Occupations Code, is amended
15 by amending Subsection (a) and adding Subsection (c) to read as
16 follows:

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

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

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

24 (c) A covered entity shall comply with the requirements of
25 45 C.F.R. Section 164.524, including the requirement that access to
26 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, for inspection purposes may not be denied to
4 an individual or legally authorized representative for nonpayment
5 of a fee.

6 SECTION 34. Section 201.405, Occupations Code, is amended
7 by amending Subsection (g) and adding Subsection (h) to read as
8 follows:

9 (g) A chiropractor who determines that access to
10 information requested under Subsection (f) would be harmful to the
11 physical, mental, or emotional health of the patient may refuse to
12 release the information requested under this section. A
13 chiropractor who is a covered entity may not deny a request under
14 this subsection for protected health information, as those terms
15 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, unless the
19 chiropractor:

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

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

26 (h) If a consent under this section authorizes the
27 disclosure of protected health information by a covered entity, as

1 those terms 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 complies with all of
6 the privacy rule's applicable requirements, standards, and
7 implementation specifications.

8 SECTION 35. Section 202.406, Occupations Code, is amended
9 by amending Subsection (d) and adding Subsection (f) to read as
10 follows:

11 (d) A podiatrist shall furnish copies of podiatric records
12 requested or a summary or narrative of the records under a written
13 consent for release of the information as provided by this section
14 unless the podiatrist determines that access to the information
15 would be harmful to the physical, mental, or emotional health of the
16 patient. The podiatrist may delete confidential information about
17 another person who has not consented to the release. A podiatrist
18 who is a covered entity may not deny a request under this subsection
19 for protected health information, as those terms are defined by the
20 privacy rule of the Administrative Simplification subtitle of the
21 Health Insurance Portability and Accountability Act of 1996 (Pub.
22 L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part
23 164, Subparts A and E, unless the podiatrist:

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

27 (2) complies with other requirements relating to

1 denial of access to an individual's protected health information
2 under 45 C.F.R. Section 164.524.

3 (f) If consent under this section authorizes the disclosure
4 of protected health information by a covered entity, as those terms
5 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 consent complies with all of
10 the privacy rule's applicable requirements, standards, and
11 implementation specifications.

12 SECTION 36. Section 258.104, Occupations Code, is amended
13 by adding Subsection (e) to read as follows:

14 (e) 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 37. Section 32, Texas Local Fire Fighters
24 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is
25 amended by adding Subsection (d) to read as follows:

26 (d) If a disclosure under Subsection (a)(1)(D) is a
27 disclosure of protected health information by a covered entity, as

1 those terms 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 38. The state auditor shall conduct an audit of
11 state agencies to determine which agencies have designated
12 themselves covered entities for the purposes of the federal Health
13 Insurance Portability and Accountability Act and whether the agency
14 should be designated as a hybrid of a covered entity. The auditor
15 shall report the results of the audit to the office of the attorney
16 general and the appropriate legislative committees not later than
17 March 1, 2006. The report must include any recommendations for
18 changes in agency designation.

19 SECTION 39. Subsection (c), Section 107.006, Family Code,
20 is repealed.

21 SECTION 40. This Act takes effect September 1, 2005.