

1-1 By: Nelson S.B. No. 1328
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 21, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 21, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1328 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the privacy of protected health information.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 58.0071, Family Code, is amended by
1-13 adding Subsection (g) to read as follows:

1-14 (g) If destruction of a physical record or file under this
1-15 section is destruction of protected health information by a covered
1-16 entity, as those terms are defined by the privacy rule of the
1-17 Administrative Simplification subtitle of the Health Insurance
1-18 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
1-19 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
1-20 and E, the covered entity may not destroy the record or file before
1-21 the later of:

1-22 (1) the sixth anniversary of the date the record or
1-23 file was created; or

1-24 (2) the date the entity is authorized to destroy the
1-25 record under other applicable law, including Section 241.103,
1-26 Health and Safety Code, if the entity is a hospital.

1-27 SECTION 2. Subsections (b) and (c), Section 82.010, Family
1-28 Code, are amended to read as follows:

1-29 (b) Except as otherwise provided by law, an application for
1-30 a protective order is confidential and~~[7]~~ is excepted from required
1-31 public disclosure under Chapter 552, Government Code. A court~~[7~~
1-32 ~~and]~~ may not release an application ~~[be released]~~ to a person who is
1-33 not a respondent to the application until after the date of service
1-34 of notice of the application or the date of the hearing on the
1-35 application, whichever date is sooner.

1-36 (c) Except as otherwise provided by law, an application
1-37 requesting the issuance of a temporary ex parte order under Chapter
1-38 83 is confidential and~~[7]~~ is excepted from required public
1-39 disclosure under Chapter 552, Government Code. A court~~[7, and]~~ may
1-40 not release an application ~~[be released]~~ to a person who is not a
1-41 respondent to the application until after the date that the court or
1-42 law enforcement informs the respondent of the court's order.

1-43 SECTION 3. Subsection (a), Section 107.006, Family Code, is
1-44 amended to read as follows:

1-45 (a) In ~~[Except as provided by Subsection (c), in]~~
1-46 conjunction with an appointment under this chapter, other than an
1-47 appointment of an attorney ad litem for an adult or a parent, the
1-48 court shall issue an order authorizing the attorney ad litem,
1-49 guardian ad litem for the child, or amicus attorney to have
1-50 immediate access to:

1-51 (1) the child; and

1-52 (2) any otherwise privileged or confidential
1-53 information relating to the child.

1-54 SECTION 4. Subsections (a) and (b), Section 162.018, Family
1-55 Code, are amended to read as follows:

1-56 (a) The department, licensed child-placing agency, person,
1-57 or entity placing a child for adoption shall provide to the ~~[The]~~
1-58 adoptive parents, upon request, ~~[are entitled to receive]~~ copies of
1-59 the records and other information relating to the history of the
1-60 child maintained by the department, licensed child-placing agency,
1-61 person, or entity placing the child for adoption.

1-62 (b) The department, licensed child-placing agency, person,
1-63 or entity placing the child for adoption shall, upon request,

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

2-9 SECTION 5. Section 162.414, Family Code, is amended by
2-10 adding Subsection (f) to read as follows:

2-11 (f) To the extent that Subsection (d) authorizes the use or
2-12 disclosure of protected health information by a covered entity, as
2-13 those terms are defined by the privacy rule of the Administrative
2-14 Simplification subtitle of the Health Insurance Portability and
2-15 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
2-16 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
2-17 covered entity shall ensure that the use or disclosure complies
2-18 with all applicable requirements, standards, or implementation
2-19 specifications of the privacy rule.

2-20 SECTION 6. Subsection (a), Section 264.408, Family Code, is
2-21 amended to read as follows:

2-22 (a) The files, reports, records, communications, and
2-23 working papers used or developed in providing services under this
2-24 chapter are confidential and not subject to public release under
2-25 Chapter 552, Government Code. A center~~[, and]~~ may only disclose the
2-26 files, reports, records, communications, and working papers
2-27 developed in providing services under this chapter ~~[be disclosed]~~
2-28 for purposes consistent with this chapter. Disclosure may be to:

2-29 (1) the department, department employees, law
2-30 enforcement agencies, prosecuting attorneys, medical
2-31 professionals, and other state agencies that provide services to
2-32 children and families; and

2-33 (2) the attorney for the child who is the subject of
2-34 the records and a court-appointed volunteer advocate appointed for
2-35 the child under Section 107.031.

2-36 SECTION 7. Subsection (e), Section 420.031, Government
2-37 Code, is amended to read as follows:

2-38 (e) Evidence collected under this section may not be
2-39 released unless the survivor of the offense or a legal
2-40 representative of the survivor signs a written consent to release
2-41 the evidence. If a disclosure under this subsection is a disclosure
2-42 of protected health information by a covered entity, as those terms
2-43 are defined by the privacy rule of the Administrative
2-44 Simplification subtitle of the Health Insurance Portability and
2-45 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
2-46 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
2-47 covered entity shall ensure that the consent to the disclosure
2-48 complies with all of the privacy rule's applicable requirements,
2-49 standards, and implementation specifications relating to
2-50 authorizations for uses and disclosures of protected health
2-51 information.

2-52 SECTION 8. Section 825.507, Government Code, is amended by
2-53 adding Subsection (h) to read as follows:

2-54 (h) If a disclosure under Subsection (b)(6) is a disclosure
2-55 of protected health information by a covered entity, as those terms
2-56 are defined by the privacy rule of the Administrative
2-57 Simplification subtitle of the Health Insurance Portability and
2-58 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
2-59 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
2-60 covered entity shall ensure that the authorization for the
2-61 disclosure complies with all of the privacy rule's applicable
2-62 requirements, standards, and implementation specifications
2-63 relating to authorizations for uses and disclosures of protected
2-64 health information.

2-65 SECTION 9. Section 81.103, Health and Safety Code, is
2-66 amended by adding Subsection (k) to read as follows:

2-67 (k) If a disclosure under Subsection (d) is a disclosure of
2-68 protected health information by a covered entity, as those terms
2-69 are defined by the privacy rule of the Administrative

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

3-9 SECTION 10. Section 108.009, Health and Safety Code, is
3-10 amended by adding Subsection (c-1) to read as follows:

3-11 (c-1) For purposes of this section, the council or other
3-12 entity as determined by the council under Subsection (a) is a public
3-13 health authority, as that term is defined by the privacy rule of the
3-14 Administrative Simplification subtitle of the Health Insurance
3-15 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
3-16 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
3-17 and E. Data voluntarily submitted by a rural provider to the
3-18 council under Subsection (c) is a use and disclosure for which an
3-19 authorization or an opportunity to agree or object is not required.

3-20 SECTION 11. Section 142.009, Health and Safety Code, is
3-21 amended by amending Subsection (g) and adding Subsection (m) to
3-22 read as follows:

3-23 (g) After a survey of a home and community support services
3-24 agency by the department, the department shall provide to the chief
3-25 executive officer of the home and community support services
3-26 agency:

3-27 (1) specific and timely written notice of the
3-28 preliminary findings of the survey, including:

3-29 (A) the specific nature of the survey;

3-30 (B) any alleged violations of a specific statute
3-31 or rule;

3-32 (C) the specific nature of any finding regarding
3-33 an alleged violation or deficiency; and

3-34 (D) if a deficiency is alleged, the severity of
3-35 the deficiency;

3-36 (2) information on the identity, including the
3-37 signature, of each department representative conducting,
3-38 reviewing, or approving the results of the survey and the date on
3-39 which the department representative acted on the matter; and

3-40 (3) if requested by the home and community support
3-41 services agency, copies of all documents relating to the survey
3-42 maintained by the department or provided by the department to any
3-43 other state or federal agency that are not confidential under state
3-44 law.

3-45 (m) If a disclosure under Subsection (d)(3) is a disclosure
3-46 of protected health information by a covered entity, as those terms
3-47 are defined by the privacy rule of the Administrative
3-48 Simplification subtitle of the Health Insurance Portability and
3-49 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
3-50 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
3-51 covered entity shall ensure that the consent to the disclosure
3-52 complies with all of the privacy rule's applicable requirements,
3-53 standards, and implementation specifications relating to
3-54 authorizations for uses and disclosures of protected health
3-55 information.

3-56 SECTION 12. Section 162.006, Health and Safety Code, is
3-57 amended by adding Subsection (d) to read as follows:

3-58 (d) If a disclosure under this section is a disclosure of
3-59 protected health information by a covered entity, as those terms
3-60 are defined by the privacy rule of the Administrative
3-61 Simplification subtitle of the Health Insurance Portability and
3-62 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
3-63 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
3-64 covered entity shall ensure that the disclosure complies with all
3-65 of the privacy rule's applicable requirements, standards, and
3-66 implementation specifications.

3-67 SECTION 13. Section 162.007, Health and Safety Code, is
3-68 amended by amending Subsection (a) and adding Subsection (d) to
3-69 read as follows:

4-1 (a) Except as provided by Subsection (d), a [A] blood bank
4-2 shall report blood test results for blood confirmed as HIV positive
4-3 by the normal procedures blood banks presently use or found to be
4-4 contaminated by any other infectious disease to:

4-5 (1) the hospital or other facility in which the blood
4-6 was transfused or provided;

4-7 (2) the physician who transfused the infected blood;
4-8 and [or]

4-9 (3) the recipient of the blood.

4-10 (d) If a blood bank is unable to report blood test results to
4-11 a person listed in Subsection (a), the blood bank shall maintain a
4-12 record of the blood bank's attempt to report to that person along
4-13 with the blood test results.

4-14 SECTION 14. Section 181.051, Health and Safety Code, is
4-15 amended to read as follows:

4-16 Sec. 181.051. PARTIAL EXEMPTION. Except for Subchapters
4-17 [Subchapter] D and E, this chapter does not apply to:

4-18 (1) a covered entity as defined by Section 602.001,
4-19 Insurance Code;

4-20 (2) an entity established under Article 5.76-3,
4-21 Insurance Code; or

4-22 (3) an employer.

4-23 SECTION 15. Section 241.103, Health and Safety Code, is
4-24 amended by adding Subsection (d) to read as follows:

4-25 (d) This section applies to a hospital that is a covered
4-26 entity, as that term is defined by the privacy rule of the
4-27 Administrative Simplification subtitle of the Health Insurance
4-28 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
4-29 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
4-30 and E.

4-31 SECTION 16. Section 241.152, Health and Safety Code, is
4-32 amended by adding Subsection (g) to read as follows:

4-33 (g) If an authorization under this section authorizes the
4-34 disclosure of protected health information by a covered entity, as
4-35 those terms are defined by the privacy rule of the Administrative
4-36 Simplification subtitle of the Health Insurance Portability and
4-37 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
4-38 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
4-39 covered entity shall ensure that the authorization complies with
4-40 all of the privacy rule's applicable requirements, standards, and
4-41 implementation specifications.

4-42 SECTION 17. Section 241.153, Health and Safety Code, is
4-43 amended to read as follows:

4-44 Sec. 241.153. DISCLOSURE WITHOUT WRITTEN AUTHORIZATION.

4-45 (a) Subject to Subsection (b), a [A] patient's health care
4-46 information may be disclosed without the patient's authorization if
4-47 the disclosure is:

4-48 (1) directory information, unless the patient has
4-49 instructed the hospital not to make the disclosure or the directory
4-50 information is otherwise protected by state or federal law;

4-51 (2) to a health care provider who is rendering health
4-52 care to the patient when the request for the disclosure is made;

4-53 (3) to a transporting emergency medical services
4-54 provider for the sole purpose of determining the patient's
4-55 diagnosis and the outcome of the patient's hospital admission;

4-56 (4) to a clergy member [~~of the clergy~~] specifically
4-57 designated by the patient;

4-58 (5) to a qualified organ or tissue procurement
4-59 organization as defined in Section 692.002 for the purpose of
4-60 making inquiries relating to donations according to the protocol
4-61 referred to in Section 692.013(d);

4-62 (6) to a prospective health care provider for the
4-63 purpose of securing the services of that health care provider as
4-64 part of the patient's continuum of care, as determined by the
4-65 patient's attending physician;

4-66 (7) to a person authorized to consent to medical
4-67 treatment under Chapter 313 or to a person in a circumstance
4-68 exempted from Chapter 313 to facilitate the adequate provision of
4-69 treatment;

5-1 (8) to an employee or agent of the hospital who
5-2 requires health care information for health care education, quality
5-3 assurance, or peer review or for assisting the hospital in the
5-4 delivery of health care or in complying with statutory, licensing,
5-5 accreditation, or certification requirements and if the hospital
5-6 takes appropriate action to ensure that the employee or agent:
5-7 (A) will not use or disclose the health care
5-8 information for any other purpose; and
5-9 (B) will take appropriate steps to protect the
5-10 health care information;
5-11 (9) to a federal, state, or local government agency or
5-12 authority to the extent authorized or required by law;
5-13 (10) to a hospital that is the successor in interest to
5-14 the hospital maintaining the health care information;
5-15 (11) to the American Red Cross for the specific
5-16 purpose of fulfilling the duties specified under its charter
5-17 granted as an instrumentality of the United States government;
5-18 (12) to a regional poison control center, as the term
5-19 is used in Chapter 777, to the extent necessary to enable the center
5-20 to provide information and education to health professionals
5-21 involved in the management of poison and overdose victims,
5-22 including information regarding appropriate therapeutic use of
5-23 medications, their compatibility and stability, and adverse drug
5-24 reactions and interactions;
5-25 (13) to a health care utilization review agent who
5-26 requires the health care information for utilization review of
5-27 health care under Article 21.58A, Insurance Code;
5-28 (14) for use in a research project authorized by an
5-29 institutional review board under federal law;
5-30 (15) to health care personnel of a penal or other
5-31 custodial institution in which the patient is detained if the
5-32 disclosure is for the sole purpose of providing health care to the
5-33 patient;
5-34 (16) to facilitate reimbursement to a hospital, other
5-35 health care provider, or the patient for medical services or
5-36 supplies;
5-37 (17) to a health maintenance organization for purposes
5-38 of maintaining a statistical reporting system as required by a rule
5-39 adopted by a state agency or regulations adopted under the federal
5-40 Health Maintenance Organization Act of 1973, as amended (42 U.S.C.
5-41 Section 300 et seq.);
5-42 (18) to satisfy a request for medical records of a
5-43 deceased or incompetent person pursuant to Section 74.051(e), Civil
5-44 Practice and Remedies Code [4.01(c), ~~Medical Liability and~~
5-45 ~~Insurance Improvement Act of Texas (Article 4590i, Vernon's Texas~~
5-46 ~~Civil Statutes)];
5-47 (19) to comply with a court order except as provided by
5-48 Subdivision (20); or
5-49 (20) related to a judicial proceeding in which the
5-50 patient is a party and the disclosure is requested under a subpoena
5-51 issued under:
5-52 (A) the Texas Rules of Civil Procedure or Code of
5-53 Criminal Procedure; or
5-54 (B) Chapter 121, Civil Practice and Remedies
5-55 Code.
5-56 (b) A hospital that is a covered entity disclosing protected
5-57 health information under this section, as those terms are defined
5-58 by the privacy rule of the Administrative Simplification subtitle
5-59 of the Health Insurance Portability and Accountability Act of 1996
5-60 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R.
5-61 Part 164, Subparts A and E, shall ensure that the disclosure
5-62 complies with all applicable requirements, standards, or
5-63 implementation specifications of the privacy rule, including
5-64 provisions relating to disclosures for:
5-65 (1) facility directories under 45 C.F.R. Section
5-66 164.510(a);
5-67 (2) treatment, payment, or health care operations
5-68 under 45 C.F.R. Section 164.506;
5-69 (3) cadaveric organ, eye, or tissue donation purposes~~

6-1 under 45 C.F.R. Section 164.512(h);
 6-2 (4) law enforcement purposes under 45 C.F.R. Section
 6-3 164.512(f);
 6-4 (5) health oversight activities under 45 C.F.R.
 6-5 Section 164.512(d);
 6-6 (6) research purposes under 45 C.F.R. Section
 6-7 164.512(i); and
 6-8 (7) a judicial or administrative proceeding under 45
 6-9 C.F.R. Section 164.512(e).

6-10 SECTION 18. Section 241.154, Health and Safety Code, is
 6-11 amended by amending Subsection (b) and adding Subsection (f) to
 6-12 read as follows:

6-13 (b) Except as provided by Subsections [Subsection] (d) and
 6-14 (f), the hospital or its agent may charge a reasonable fee for
 6-15 providing the health care information and is not required to permit
 6-16 the examination, copying, or release of the information requested
 6-17 until the fee is paid unless there is a medical emergency. The fee
 6-18 may not exceed the sum of:

6-19 (1) a basic retrieval or processing fee, which must
 6-20 include the fee for providing the first 10 pages of the copies and
 6-21 which may not exceed \$30; and

6-22 (A) a charge for each page of:
 6-23 (i) \$1 for the 11th through the 60th page of
 6-24 the provided copies;

6-25 (ii) 50 cents for the 61st through the 400th
 6-26 page of the provided copies; and

6-27 (iii) 25 cents for any remaining pages of
 6-28 the provided copies; and

6-29 (B) the actual cost of mailing, shipping, or
 6-30 otherwise delivering the provided copies; or

6-31 (2) if the requested records are stored on any
 6-32 microform or other electronic medium, a retrieval or processing
 6-33 fee, which must include the fee for providing the first 10 pages of
 6-34 the copies and which may not exceed \$45; and

6-35 (A) \$1 per page thereafter; and

6-36 (B) the actual cost of mailing, shipping, or
 6-37 otherwise delivering the provided copies.

6-38 (f) A hospital that is a covered entity releasing protected
 6-39 health information, as those terms are defined by the privacy rule
 6-40 of the Administrative Simplification subtitle of the Health
 6-41 Insurance Portability and Accountability Act of 1996 (Pub. L. No.
 6-42 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164,
 6-43 Subparts A and E, to an individual who is the subject of the
 6-44 information or the individual's personal representative:

6-45 (1) must comply with the privacy rule requirements
 6-46 regarding access of individuals to protected health information
 6-47 under 45 C.F.R. Section 164.524; and

6-48 (2) may not deny access to the information for
 6-49 nonpayment of the fee.

6-50 SECTION 19. Section 247.065, Health and Safety Code, is
 6-51 amended by adding Subsection (c) to read as follows:

6-52 (c) Subsection (b)(7) does not authorize the disclosure or
 6-53 use of protected health information by a covered entity, as those
 6-54 terms are defined by the privacy rule of the Administrative
 6-55 Simplification subtitle of the Health Insurance Portability and
 6-56 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 6-57 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, unless the
 6-58 disclosure or use complies with all applicable requirements,
 6-59 standards, or implementation specifications of the privacy rule.

6-60 SECTION 20. Section 262.030, Health and Safety Code, is
 6-61 amended by adding Subsection (c) to read as follows:

6-62 (c) If destruction of a record under this section is
 6-63 destruction of protected health information by a covered entity, as
 6-64 those terms are defined by the privacy rule of the Administrative
 6-65 Simplification subtitle of the Health Insurance Portability and
 6-66 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 6-67 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 6-68 covered entity may not destroy the record before the later of:

6-69 (1) the sixth anniversary of the date the record was

7-1 created; or
7-2 (2) the date the entity is authorized to destroy the
7-3 record under Section 241.103, if applicable.

7-4 SECTION 21. Section 281.073, Health and Safety Code, is
7-5 amended by adding Subsection (c) to read as follows:

7-6 (c) If destruction of a record under this section is
7-7 destruction of protected health information by a covered entity, as
7-8 those terms are defined by the privacy rule of the Administrative
7-9 Simplification subtitle of the Health Insurance Portability and
7-10 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
7-11 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
7-12 covered entity may not destroy the record before the later of:

7-13 (1) the sixth anniversary of the date the record was
7-14 created; or

7-15 (2) the date the entity is authorized to destroy the
7-16 record under Section 241.103, if applicable.

7-17 SECTION 22. Section 595.003, Health and Safety Code, is
7-18 amended by adding Subsection (c) to read as follows:

7-19 (c) If consent under this section authorizes the disclosure
7-20 of protected health information by a covered entity, as those terms
7-21 are defined by the privacy rule of the Administrative
7-22 Simplification subtitle of the Health Insurance Portability and
7-23 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
7-24 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
7-25 covered entity shall ensure that the authorization complies with
7-26 all of the privacy rule's applicable requirements, standards, and
7-27 implementation specifications.

7-28 SECTION 23. Section 595.004, Health and Safety Code, is
7-29 amended by amending Subsection (a) and adding Subsection (c) to
7-30 read as follows:

7-31 (a) The content of a confidential record shall be made
7-32 available on the request of the person about whom the record was
7-33 made unless:

- 7-34 (1) the person is a client; and
- 7-35 (2) subject to Subsection (c), the qualified
7-36 professional responsible for supervising the client's habilitation
7-37 states in a signed written statement that having access to the
7-38 record is not in the client's best interest.

7-39 (c) A covered entity may not deny a request under this
7-40 section for protected health information, as those terms are
7-41 defined by the privacy rule of the Administrative Simplification
7-42 subtitle of the Health Insurance Portability and Accountability Act
7-43 of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45
7-44 C.F.R. Part 164, Subparts A and E, unless the qualified
7-45 professional responsible for supervising the client's
7-46 habilitation:

7-47 (1) determines that making the record available to the
7-48 client is reasonably likely to endanger the life or physical safety
7-49 of the client or another person; and

7-50 (2) complies with other requirements relating to
7-51 denial of access to an individual's protected health information
7-52 under 45 C.F.R. Section 164.524.

7-53 SECTION 24. Section 611.004, Health and Safety Code, is
7-54 amended by adding Subsection (e) to read as follows:

7-55 (e) If a disclosure under Subsection (a)(4) is a disclosure
7-56 of protected health information by a covered entity, as those terms
7-57 are defined by the privacy rule of the Administrative
7-58 Simplification subtitle of the Health Insurance Portability and
7-59 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
7-60 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
7-61 covered entity shall ensure that the consent to the disclosure
7-62 complies with all of the privacy rule's applicable requirements,
7-63 standards, and implementation specifications relating to
7-64 authorizations for uses and disclosures of protected health
7-65 information.

7-66 SECTION 25. Subsection (b), Section 611.0045, Health and
7-67 Safety Code, is amended to read as follows:

7-68 (b) The professional may deny access to any portion of a
7-69 record if the professional determines that release of that portion

8-1 would be harmful to the patient's physical, mental, or emotional
 8-2 health. A covered entity may not deny a request under this
 8-3 subsection for protected health information, as those terms are
 8-4 defined by the privacy rule of the Administrative Simplification
 8-5 subtitle of the Health Insurance Portability and Accountability Act
 8-6 of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45
 8-7 C.F.R. Part 164, Subparts A and E, unless the professional:

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

8-11 (2) complies with other requirements relating to
 8-12 denial of access to an individual's protected health information
 8-13 under 45 C.F.R. Section 164.524.

8-14 SECTION 26. Subsection (b), Section 611.008, Health and
 8-15 Safety Code, is amended to read as follows:

8-16 (b) Except as provided by this subsection, unless [Unless]
 8-17 provided for by other state law, the professional may charge a
 8-18 reasonable fee for retrieving or copying mental health care
 8-19 information and is not required to permit examination or copying
 8-20 until the fee is paid unless there is a medical emergency. A
 8-21 covered entity charging a fee for protected health information, as
 8-22 those terms are defined by the privacy rule of the Administrative
 8-23 Simplification subtitle of the Health Insurance Portability and
 8-24 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 8-25 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E:

8-26 (1) must comply with the privacy rule requirements
 8-27 regarding access of individuals to protected health information
 8-28 under 45 C.F.R. Section 164.524; and

8-29 (2) may not deny access to information for nonpayment
 8-30 of the fee.

8-31 SECTION 27. Section 773.093, Health and Safety Code, is
 8-32 amended by adding Subsection (d) to read as follows:

8-33 (d) If consent under this section authorizes the disclosure
 8-34 of protected health information by a covered entity, as those terms
 8-35 are defined by the privacy rule of the Administrative
 8-36 Simplification subtitle of the Health Insurance Portability and
 8-37 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 8-38 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 8-39 covered entity shall ensure that the consent complies with all of
 8-40 the privacy rule's applicable requirements, standards, and
 8-41 implementation specifications.

8-42 SECTION 28. Section 8, Article 21.58A, Insurance Code, is
 8-43 amended by adding Subsection (j) to read as follows:

8-44 (j) If an authorization under Subsection (b) authorizes the
 8-45 disclosure of protected health information by a covered entity, as
 8-46 those terms are defined by the privacy rule of the Administrative
 8-47 Simplification subtitle of the Health Insurance Portability and
 8-48 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 8-49 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 8-50 covered entity shall ensure that the authorization complies with
 8-51 all of the privacy rule's applicable requirements, standards, and
 8-52 implementation specifications.

8-53 SECTION 29. Section 546.104, Insurance Code, as effective
 8-54 April 1, 2005, is amended to read as follows:

8-55 Sec. 546.104. AUTHORIZED DISCLOSURE. (a) An individual or
 8-56 an individual's legal representative may authorize disclosure of
 8-57 genetic information relating to the individual by an authorization
 8-58 that:

8-59 (1) is written in plain language;
 8-60 (2) is dated;
 8-61 (3) contains a specific description of the information
 8-62 to be disclosed;

8-63 (4) identifies or describes each person authorized to
 8-64 disclose the genetic information to a group health benefit plan
 8-65 issuer;

8-66 (5) identifies or describes the individuals or
 8-67 entities to whom the disclosure or subsequent redisclosure of the
 8-68 genetic information may be made;

8-69 (6) describes the specific purpose of the disclosure;

9-1 (7) is signed by the individual or legal
9-2 representative and, if the disclosure is made to claim proceeds of
9-3 an affected life insurance policy, the claimant; and

9-4 (8) advises the individual or legal representative
9-5 that the individual's authorized representative is entitled to
9-6 receive a copy of the authorization.

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

9-16 SECTION 30. Section 21.4032, Labor Code, is amended to read
9-17 as follows:

9-18 Sec. 21.4032. AUTHORIZED DISCLOSURE. (a) An individual or
9-19 the legal representative of an individual may authorize disclosure
9-20 of genetic information relating to the individual by a written
9-21 authorization that includes:

9-22 (1) a description of the information to be disclosed;
9-23 (2) the name of the person to whom the disclosure is
9-24 made; and

9-25 (3) the purpose for the disclosure.
9-26 (b) If an authorization under this section authorizes the
9-27 disclosure of protected health information by a covered entity, as
9-28 those terms are defined by the privacy rule of the Administrative
9-29 Simplification subtitle of the Health Insurance Portability and
9-30 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
9-31 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
9-32 covered entity shall ensure that the authorization complies with
9-33 all of the privacy rule's applicable requirements, standards, and
9-34 implementation specifications.

9-35 SECTION 31. Subsection (c), Section 201.009, Local
9-36 Government Code, is amended to read as follows:

9-37 (c) Subsection (b) does not apply to:
9-38 (1) a local government record whose public disclosure
9-39 is prohibited by an order of a court or by another state law; or
9-40 (2) a local government that is a covered entity
9-41 disclosing protected health information, as those terms are defined
9-42 by the privacy rule of the Administrative Simplification subtitle
9-43 of the Health Insurance Portability and Accountability Act of 1996
9-44 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R.
9-45 Part 164, Subparts A and E.

9-46 SECTION 32. Section 58.104, Occupations Code, is amended to
9-47 read as follows:

9-48 Sec. 58.104. AUTHORIZED DISCLOSURE. (a) An individual or
9-49 the legal representative of an individual may authorize disclosure
9-50 of genetic information relating to the individual by a written
9-51 authorization that includes:

9-52 (1) a description of the information to be disclosed;
9-53 (2) the name of the person to whom the disclosure is
9-54 made; and

9-55 (3) the purpose for the disclosure.
9-56 (b) If an authorization under this section authorizes the
9-57 disclosure of protected health information by a covered entity, as
9-58 those terms are defined by the privacy rule of the Administrative
9-59 Simplification subtitle of the Health Insurance Portability and
9-60 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
9-61 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
9-62 covered entity shall ensure that the authorization complies with
9-63 all of the privacy rule's applicable requirements, standards, and
9-64 implementation specifications.

9-65 SECTION 33. Section 159.005, Occupations Code, is amended
9-66 by adding Subsection (f) to read as follows:

9-67 (f) If consent under this section authorizes the disclosure
9-68 of protected health information by a covered entity, as those terms
9-69 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 shall ensure that the consent complies with all of the privacy rule's applicable requirements, standards, and implementation specifications.

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

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

(f) A physician who is a covered entity may not deny a request under this section for protected health information, 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, unless the physician:

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

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

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

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

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

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

(c) A covered entity providing protected health information, 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, to the person who is the subject of the information or the personal representative of the subject of the information may not deny access to the information for examination purposes for nonpayment of the fee.

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

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

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

(2) complies with other requirements relating to denial of access to an individual's protected health information

11-1 under 45 C.F.R. Section 164.524.

11-2 (h) If a consent under this section authorizes the
 11-3 disclosure of protected health information by a covered entity, as
 11-4 those terms are defined by the privacy rule of the Administrative
 11-5 Simplification subtitle of the Health Insurance Portability and
 11-6 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 11-7 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 11-8 covered entity shall ensure that the consent complies with all of
 11-9 the privacy rule's applicable requirements, standards, and
 11-10 implementation specifications.

11-11 SECTION 37. Section 202.406, Occupations Code, is amended
 11-12 by amending Subsection (d) and adding Subsection (f) to read as
 11-13 follows:

11-14 (d) A podiatrist shall furnish copies of podiatric records
 11-15 requested or a summary or narrative of the records under a written
 11-16 consent for release of the information as provided by this section
 11-17 unless the podiatrist determines that access to the information
 11-18 would be harmful to the physical, mental, or emotional health of the
 11-19 patient. The podiatrist may delete confidential information about
 11-20 another person who has not consented to the release. A podiatrist
 11-21 who is a covered entity may not deny a request under this subsection
 11-22 for protected health information, as those terms are defined by the
 11-23 privacy rule of the Administrative Simplification subtitle of the
 11-24 Health Insurance Portability and Accountability Act of 1996 (Pub.
 11-25 L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part
 11-26 164, Subparts A and E, unless the podiatrist:

11-27 (1) determines that making the record available to the
 11-28 patient is reasonably likely to endanger the life or physical
 11-29 safety of the patient or another person; and

11-30 (2) complies with other requirements relating to
 11-31 denial of access to an individual's protected health information
 11-32 under 45 C.F.R. Section 164.524.

11-33 (f) If consent under this section authorizes the disclosure
 11-34 of protected health information by a covered entity, as those terms
 11-35 are defined by the privacy rule of the Administrative
 11-36 Simplification subtitle of the Health Insurance Portability and
 11-37 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 11-38 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 11-39 covered entity shall ensure that the consent complies with all of
 11-40 the privacy rule's applicable requirements, standards, and
 11-41 implementation specifications.

11-42 SECTION 38. Section 258.104, Occupations Code, is amended
 11-43 by adding Subsection (e) to read as follows:

11-44 (e) If consent under this section authorizes the disclosure
 11-45 of protected health information by a covered entity, as those terms
 11-46 are defined by the privacy rule of the Administrative
 11-47 Simplification subtitle of the Health Insurance Portability and
 11-48 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 11-49 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 11-50 covered entity shall ensure that the consent complies with all of
 11-51 the privacy rule's applicable requirements, standards, and
 11-52 implementation specifications.

11-53 SECTION 39. Section 32, Texas Local Fire Fighters
 11-54 Retirement Act (Article 6243e, Vernon's Texas Civil Statutes), is
 11-55 amended by adding Subsection (d) to read as follows:

11-56 (d) If a disclosure under Subsection (a)(1)(D) is a
 11-57 disclosure of protected health information by a covered entity, as
 11-58 those terms are defined by the privacy rule of the Administrative
 11-59 Simplification subtitle of the Health Insurance Portability and
 11-60 Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
 11-61 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E, the
 11-62 covered entity shall ensure that the consent to the disclosure
 11-63 complies with all of the privacy rule's applicable requirements,
 11-64 standards, and implementation specifications relating to
 11-65 authorizations for uses and disclosures of protected health
 11-66 information.

11-67 SECTION 40. The state auditor shall conduct an audit of
 11-68 state agencies to determine which agencies have designated
 11-69 themselves covered entities for the purposes of the federal Health

12-1 Insurance Portability and Accountability Act and whether the agency
12-2 should be designated as a hybrid of a covered entity. The auditor
12-3 shall report the results of the audit to the office of the attorney
12-4 general and the appropriate legislative committees not later than
12-5 March 1, 2006. The report must include any recommendations for
12-6 changes in agency designation.

12-7 SECTION 41. Subsection (c), Section 107.006, Family Code,
12-8 is repealed.

12-9 SECTION 42. This Act takes effect September 1, 2005.

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