

BILL ANALYSIS

C.S.H.B. 1066
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Thousands of Americans die each year from preventable medical errors, and nearly a fifth of these errors arise from a lack of access to needed health information. Sources for these errors include miscommunications between physicians, inaccessible records, mislabeled lab specimens, misfiled or missing paper charts, and inadequate physician reminder systems. Moreover, these errors contribute to our rising health care costs, which, according to some estimates, are among the highest in the world. Future reductions in medical errors and health care costs may be possible through an emphasis on preventive care, by changing consumer and healthcare provider incentives, or through the establishment of fully interoperable health information technology (HIT), such as electronic health record (EHR) systems. Although President Bush in 2004 called for every American to have an electronic health record within a decade, adoption of electronic health record systems by health care providers has been slow. In fact, less than 20% of providers currently report using EHRs, citing many barriers, including costs, misaligned incentives, disincentives, and standards and interoperability issues. Current trends suggest that ubiquitous adoption of EHRs may not occur until after 2024.

States have begun assembling their key stakeholders to hasten their planning for, and adoption of statewide fully integrated and interoperable HIT systems. Some states have found that by establishing a public-private entity to promote health information technology, they are better able to assemble their key stakeholders, reduce barriers to adoption, raise private capital, and decrease the drain on state dollars required to promote HIT. C.S.H.B. 1066 sets out a framework for a public-private, nonprofit corporation known as the Texas Health Services Authority. It creates a Board of Directors composed of members from the key stakeholder groups, and it identifies the various functions its members and the entity will play to promote a statewide HIT infrastructure.

RULEMAKING AUTHORITY

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

ANALYSIS

C.S.H.B.1066 adds Chapter 182, TEXAS HEALTH SERVICES AUTHORITY, to the Health and Safety Code. The bill provides definitions for "board," "certifying entity," "corporation," "de-identified protected health information," "individually identifiable health information," "physician," and "protected health information."

C.S.H.B. 1066 establishes the Texas Health Services Authority (corporation), a public nonprofit corporation, to promote, implement, facilitate and create incentives for the voluntary and secure electronic exchange of health information. The bill establishes that the corporation has all the powers and duties of a nonprofit corporation, is subject to state laws governing nonprofit corporations with certain exceptions, its expenses are required to be paid from the corporation's income, and it is subject to Chapter 551 of the Government Code.

The bill establishes that the Sunset Act applies to the corporation, provides that unless continued under Chapter 325 of the Government Code, the corporation is abolished and the chapter expires on September 1, 2011, and authorizes the governor to dissolve the corporation at any time the governor declares that the purposes of the corporation have been fulfilled or that the corporation is inoperative or abandoned.

C.S.H.B. 1066 80(R)

C.S.H.B. 1066 establishes the composition of the corporation's board of directors, and provides that it is governed by a board of 11 directors appointed by the governor, with the advice and consent of the senate. The bill sets out the criteria for appointment to the board; establishes that appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor and that members of the board serve without compensation but are entitled to certain reimbursements; requires the governor to designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor; and establishes procedures for dealing with conflicts of interests. The bill authorizes the board to meet as often as necessary, but requires it to meet at least twice a year, and to develop and implement policies that provide the public with a reasonable opportunity to appear and to speak on certain issues before the board.

C.S.H.B.1066 authorizes the board to hire a chief executive officer (CEO) to perform certain duties and authorizes the CEO to hire additional staff to carry out the responsibilities of the corporation. The board is required to implement a policy requiring the corporation to use appropriate technological solutions to improve the corporation's ability to perform its functions. The policy must ensure that the public is able to interact with the corporation on the Internet. The bill establishes that the liabilities created by the corporation are not debts or obligations of the state, and prohibits the corporation from securing any liability with funds or assets of the state except as otherwise provided by law. The bill provides for board member immunities regarding certain acts or omissions made in good faith in the performance of the member's powers and duties.

C.S.H.B.1066 authorizes the corporation to establish certain statewide health information exchange capabilities; to seek funding relating to the exchange of secure electronic health information; to establish certain statewide health information exchange capabilities; to support certain health care quality improvement initiatives by contracting with a certifying entity to provide certain services; to support regional health information exchange initiatives by identifying certain data and messaging standards, administering programs providing financial incentives, and providing technical assistance where appropriate; to identify standards for streamlining health care administrative functions across payors and providers; and to support the secure, electronic exchange of health information through other strategies identified by the board.

C.S.H.B. 1066 provides for the privacy of information. It establishes that protected health information and individually identifiable health information acquired by the corporation are confidential and not subject to disclosure under Chapter 552, Government Code. It requires the corporation to comply with all state and federal privacy laws and rules related to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 and rules adopted under that Act. The corporation is also required to develop certain standards to ensure statewide privacy, data security, efficiency, and interoperability across networks.

The corporation is required to establish appropriate security standards to protect the transmission and receipt of, and access to certain individually identifiable health information or health care data, to establish the highest levels of security and protection for access to and control of certain individually identifiable health information, and establish policies and procedures for the corporation to take disciplinary actions against certain persons or entities with access to individually identifiable health care information that violates state or federal privacy laws related to health care information or data maintained by the corporation.

C.S.H.B.1066 requires the corporation to take commercially reasonable measures to protect its intellectual property. The corporation is also required to submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committees in the senate and the house of representatives, and must include financial information and a progress update on the corporation's efforts to carry out its mission. The bill authorizes the corporation to be funded through the General Appropriations Act and to request, accept, and use gifts and grants as necessary to implement its functions. The bill provides that the corporation is authorized to assess certain transaction, convenience, or subscription fees; all fees must be voluntary but receipt of services provided by the corporation may be conditioned on payment of fees; and the corporation may participate in other revenue-generating activities that are consistent with the corporation's purposes.

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EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B.1066 modifies the original by revising the caption to read relating to health information technology and the creation of the Texas Health Services Authority. It changes the title of Chapter 182 to Texas Health Services Authority, and provides that the chapter establishes the Texas Health Services Authority as a public-private collaborative to implement the state-level health information technology functions identified by the Texas Health Information Technology Advisory Committee by serving as a catalyst for the development of a seamless electronic health information infrastructure to support the health care system in the state and to improve patient safety and quality of care.

C.S.H.B. 1066 adds the definitions for "certifying entity", "de-identified protected health information", "individually identifiable health information", "physician", and "protected health information," deletes definitions for "health information technology", "interoperability", and "recognized interoperability standard, " and redefines corporation, and replaces references to the Texas Health Services Authority Corporation with the term corporation.

The substitute revises the purpose for which the corporation is created to being to promote, implement, and facilitate the voluntary and secure electronic exchange of health information, and to create incentives for these goals to be promoted, implemented, and facilitated. It changes a reference to the corporation having all of the powers and duties incident to a nonprofit corporation under the "Business Organization Code", as opposed to referencing "state law". Adds language clarifying that the corporation is subject to state law governing nonprofit corporations, except that the corporation may not be placed in receivership and that the corporation is not required to make reports to the Secretary of State under Section 22.357, Business Organizations Code.

The substitute moves a subsection on the confidentiality of health record information in the ADMINISTRATION section to the PRIVACY OF INFORMATION section and revises it to establish that protected health information and individually identifiable health information collected, assembled, or maintained by the corporation is confidential and is not subject to disclosure under Chapter 552, Government Code. It also directs that the corporation shall comply with all state and federal laws and rules relating to the transmission of health information, and requires the corporation to develop privacy, security, operational, and technical standards for health information networks in the state. The substitute adds a provision relating to security compliance which requires the corporation to establish security standards for the protection of individually identifiable health information and policies for dealing with violations of state or federal privacy laws.

The substitute changes the abolition date of the corporation is from September 1, 2019, to September 1, 2011. Language is added stating that the governor may order the dissolution of the corporation at any time the governor declares that the purposes of the corporation have been fulfilled or that the corporation is inoperable or abandoned.

The substitute changes the size of the board from 15 directors to 11, and changes the appointment procedures for board members from being appointed by and serving at the discretion of the governor to being appointed by the governor with the advice and consent of the senate. It replaces specific membership slots reserved for various stakeholder groups with a requirement that the governor must appoint as voting board members individuals who represent consumers, clinical laboratories, health benefit plans, hospitals, regional health information exchange initiatives, pharmacies, physicians, rural health providers, or others who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

The original bill called for five ex-officio non-voting member slots for the CEO, Executive Commissioner of the Health and Human Services Commission or designee, the Commissioner of the Department of State Health Services or designee, the Commissioner of the Department of Insurance or designee, and the Texas Attorney General or designee. The substitute states the governor shall appoint at least two ex officio, nonvoting members representing the Department of State Health Services and the certifying entity. The substitute deletes a requirement that each board member must be a Texas resident, and adds a prohibition on board membership if the person serves on the board of any other governmental body in this state, and deletes the provision regarding vacancies.

The substitute changes the original by establishing that the chairman selected by the governor serves at the pleasure of the governor. The substitute deletes references to the board electing a vice-chairman and other officers, the terms of all board officers, and the reappointment of members for additional terms.

The substitute authorizes the board to hire a CEO as opposed to the original bill, which required the board to hire a CEO. It removes reference to the CEO serving at the pleasure of the board; adds language directing that the CEO now serves under the direction of the board and that the performance of duties are as designated by the chapter or board; and permits the CEO to hire additional staff. The substitute deletes language regarding the board appointing employees and fixing their salaries; delegating its powers to the CEO and corporation employees; a biennial report from the governor's office to the legislature based upon information received from the board; and the board developing and implementing policies to clearly separate policymaking responsibilities of the board from the management policies of the CEO and staff.

It also deletes Sec. 182.062. APPLICATION OF TEXAS NON-PROFIT CORPORATION ACT and language regarding receivership and reports to the Secretary of State appears in Sec. 182.051 of the substitute.

The substitute renames LIABILITIES OF CORPORATION to LIABILITIES OF AUTHORITY, and clarifies that in addition to liabilities of the corporation not being debts of the state that they are also not obligations.

The substitute adds sec. 182.061 BOARD MEMBER IMMUNITY regarding protection from civil liability for acts or omissions made in good faith in the performance of a members powers and duties.

The Title of SUBCHAPTER C. POWERS AND DUTIES OF CORPORATION is shortened to POWERS AND DUTIES in the substitute. The original bill required the corporation to assist in the development of a statewide, integrated electronic health information network (network) as a public-private partnership among certain groups, and to develop, implement, and periodically update a plan and performance standards for the operation of a network. It authorized the corporation to implement the plan for a network in phases or by using pilot projects or a regional approach. Under the bill as filed, the corporation is required to provide certain leadership and encourage the adoption and effective use of, HIT; promote the widespread use of a network; identify, adopt, and promote the use of standards for interoperability; procure outside sources of funding by certain means to finance the formation and expansion of a statewide integrated electronic health information exchange network; provide consumer access to certain information; and adopt certain rules necessary to implement this chapter. Under the bill as filed, the corporation is required to regularly assess the adoption of certain EHR systems and use of the statewide health information network to identify and regularly reevaluate the state's health information infrastructure strengths and weaknesses, assess opportunities to increase consumer access to the consumer's health records, and incorporate the information into the corporation's regular strategic planning process. The bill as filed requires the corporation, in developing and periodically revising a HIT plan, to request public comment on the proposed plan, hold one or more public meetings to receive certain public comments, and take steps to assure the greatest possible collaboration between the private and public sectors.

The substitute states that the corporation may establish certain statewide health information exchange capabilities for clinical information; seek funding relating to exchanges of secure electronic health information; establish certain statewide health information exchange

capabilities for administrative information; support certain health care quality improvement initiatives by contracting with a certifying entity to provide certain services; support regional health information exchange initiatives by identifying certain data and messaging standards, administering programs providing financial incentives, and providing technical assistance; identify standards for streamlining health care administrative functions across payors and providers; and support the secure, electronic exchange of health information through other strategies identified by the board.

The substitute deletes Sec. 182.102. LOCAL, REGIONAL, STATE HEALTH INFORMATION NETWORKS, Sec. 182.104. ANNUAL BUDGET, Sec. 182.107. COMPLIANCE WITH STANDARDS, and Sec. 182.060. PUBLIC INTEREST INFORMATION AND COMPLAINTS.

The substitute changes REPORT TO LEGISLATURE to ANNUAL REPORT, and replaces the five points of specific detail required in the original with a requirement for the reporting of financial information and a progress update on the corporation's efforts to carry out its mission.

The substitute expands the provision relating to funding. The original stated the corporation may be funded through the General Appropriations Act and seek funding through public and private entities to accomplish its goals and missions. The substitute allows for the same Appropriations Act funding and adds that the corporation may request, accept and use gifts and grants as necessary. The corporation may also assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. All fees must be voluntary, but receipt of services provided by the corporation may be conditioned on payment of fees. The corporation may also participate in other revenue-generating activities that are consistent with the corporation's purpose.

The substitute also makes conforming and other non-substantive changes.