

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1066
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, 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 adoption of EHR offers potential benefits, only a small percentage of providers currently report adoption of the systems.

C.S.H.B. 1066 establishes the planning and coordination framework for the development of a seamless and interoperable EHR system and lays the ground work by bringing together public and private stakeholders in a partnership to foster common data standards, cooperative arrangements, and interoperability.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle I, Title 2, Health and Safety Code, by adding Chapter 182, as follows:

CHAPTER 182. TEXAS HEALTH SERVICES AUTHORITY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 182.001. PURPOSE. Provides that this chapter establishes the Texas Health Services Authority (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.

Sec. 182.002. DEFINITIONS. Defines "board," "corporation," "de-identified protected health information," "individually identifiable health information," "physician," and "protected health information."

[Reserves Sections 182.003-182.050 for expansion.]

SUBCHAPTER B. ADMINISTRATION

Sec. 182.051. TEXAS HEALTH SERVICES AUTHORITY; PURPOSE. (a) Provides that the corporation is established to promote, implement, and facilitate the voluntary and secure electronic exchange of health information, and create incentives to promote,

implement, and facilitate the voluntary and secure electronic exchange of health information.

(b) Provides that the corporation is a public nonprofit corporation and, except as otherwise provided in this chapter, has all the powers and duties incident to a nonprofit corporation under the Business Organizations Code.

(c) Provides that the corporation is subject to state law governing nonprofit corporations, except that the corporation may not be placed in receivership, and the corporation is not required to make reports to the secretary of state under Section 22.357 (Report of Domestic and Foreign Corporations), Business Organizations Code.

(d) Requires all expenses of the corporation to be paid from income of the corporation except as otherwise provided by law.

(e) Provides that the corporation is subject to Chapter 551 (Open Meetings), Government Code.

Sec. 182.052. APPLICATION OF SUNSET ACT. Provides that the corporation is subject to Chapter 325 (Sunset Law), Government Code. Provides that the corporation is abolished and this chapter expires September 1, 2011 unless continued in existence as provided by that chapter. Authorizes the governor to 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 inoperative or abandoned.

Sec. 182.053. COMPOSITION OF BOARD OF DIRECTORS. (a) Provides that the corporation is governed by a board of 11 directors (board) appointed by the governor, with the advice and consent of the senate.

(b) Requires the governor to also appoint at least two ex officio, nonvoting members representing the Department of State Health Services (DSHS).

(c) Requires the governor to 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 who possess expertise in any other area the governor finds necessary for the successful operation of the corporation.

(d) Prohibits an individual from serving on the board of the corporation if the individual serves on the board of any other governmental body in this state.

(e) Requires appointments to the board to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

(f) Prohibits an individual from serving on the board, in any capacity, if the individual has made a gift or grant, in cash or in kind, to the corporation.

(g) Prohibits an individual from serving on the board, in any capacity, if the individual is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists), Government Code, because of the person's activities for compensation on behalf of a profession or entity that is engaged in the providing of health care, the review or analysis of health care, the payment for health care services or procedures, or the providing of information technology.

Sec. 182.054. TERMS OF OFFICE. Provides that appointed members of the board serve two-year terms and may continue to serve until a successor has been appointed by the governor.

Sec. 182.055. EXPENSES. Provides that members of the board serve without compensation but are entitled to reimbursement for actual and necessary expenses in

attending meetings of the board or performing other official duties authorized by the presiding officer.

Sec. 182.056. OFFICERS; CONFLICT OF INTEREST. (a) Requires the governor to designate a member of the board as presiding officer to serve in that capacity at the pleasure of the governor.

(b) Requires any board member or a member of a committee formed by the board with direct interest in a matter, personally or through an employer, before the board to abstain from deliberations and actions on the matter in which the conflict of interest arises and to further abstain on any vote on the matter, and prohibits the board member from otherwise participating in a decision on the matter.

(c) Requires each board member to file a conflict of interest statement and a statement of ownership interests with the board to ensure disclosure of all existing and potential personal interests related to board business.

Sec. 182.057. PROHIBITION ON CERTAIN CONTRACTS AND EMPLOYMENT. Prohibits the board from compensating, employing, or contracting with any individual who serves as a member of the board or advisory council to any other governmental body, including any agency, council, or committee, in Texas.

Sec. 182.058. MEETINGS. (a) Authorizes the board to meet as often as necessary, but requires the board to meet at least twice a year.

(b) Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the authority of the corporation.

Sec. 182.059. CHIEF EXECUTIVE OFFICER; PERSONNEL. Authorizes the board to hire a chief executive officer. Requires the chief executive officer to perform the duties required by this chapter or designated by the board under the direction of the board. Authorizes the chief executive officer to hire additional staff to carry out the responsibilities of the corporation.

Sec. 182.060. TECHNOLOGY POLICY. Requires the board to implement a policy requiring the corporation to use appropriate technological solutions to improve the corporation's ability to perform its functions. Requires the policy to ensure that the public is able to interact with the corporation on the Internet.

Sec. 182.061. LIABILITIES OF AUTHORITY. Provides that 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.

Sec. 182.062. BOARD MEMBER IMMUNITY. (a) Prohibits a board member from being held civilly liable for an act performed, or omission made, in good faith in the performance of the member's powers and duties under this chapter.

(b) Provides that a cause of action does not arise against a member of the board for an act or omission described by Subsection (a).

[Reserves Sections 182.063-182.100 for expansion.]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 182.101. Authorizes the corporation to take certain tasks and perform certain duties. Sets forth those duties and tasks.

Sec. 182.102. PROHIBITED ACTS. (a) Provides that the corporation has no authority and prohibits the corporation from engaging in certain activities.

(b) Provides that the corporation has no authority and prohibits the corporation from disseminating information, in any manner, to the public that compares, rates, tiers, classifies, measures, or ranks a physician's performance, efficiency, or quality of practice.

Sec. 182.103. **PRIVACY OF INFORMATION.** (a) Provides 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 (Public Information), Government Code.

(b) Requires the corporation to comply with all state and federal laws and rules relating to the transmission of health information, including the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

(c) Requires the corporation to develop privacy, security, operational, and technical standards to assist health information networks in the state to ensure effective statewide privacy, data security, efficiency, and interoperability across networks. Requires the network's standards to be guided by reference to the standards of the Certification Commission for Healthcare Information Technology or the Health Information Technology Standards Panel, or other federally approved certification standards, that exist on May 1, 2007, as to the process of implementation, acquisition, upgrade, or installation of electronic health information technology.

Sec. 182.104. **SECURITY COMPLIANCE.** Requires the corporation to establish appropriate security standards to protect both the transmission and the receipt of individually identifiable health information or health care data; establish appropriate security standards to protect access to any individually identifiable health information or health care data collected, assembled, or maintained by the corporation; establish the highest levels of security and protection for access to and control of individually identifiable health information, including mental health care data and data relating to specific disease status, that is governed by more stringent state or federal privacy laws; and establish policies and procedures for the corporation for taking disciplinary actions against a board member, employee, or other person 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.

Sec. 182.105. **INTELLECTUAL PROPERTY.** Requires the corporation to take commercially reasonable measures to protect its intellectual property, including obtaining patents, trademarks, and copyrights where appropriate.

Sec. 182.106. **ANNUAL REPORT.** Requires the corporation to submit an annual report to the governor, the lieutenant governor, the speaker of the house of representatives, and the appropriate oversight committee in the senate and the house of representatives. Requires the annual report to include financial information and a progress update on the corporation's efforts to carry out its mission.

Sec. 182.107. **FUNDING.** (a) Authorizes the corporation to be funded through the General Appropriations Act and authorizes it to request, accept, and use gifts and grants as necessary to implement its functions.

(b) Authorizes the corporation to assess transaction, convenience, or subscription fees to cover costs associated with implementing its functions. Requires all fees to be voluntary but receipt of services provided by the corporation is authorized to be conditioned on payment of fees.

(c) Authorizes the corporation to participate in other revenue-generating activities that are consistent with the corporation's purposes.

SECTION 2. Effective date: upon passage or September 1, 2007.