

1-1 By: Delisi (Senate Sponsor - Nelson) H.B. No. 1066  
1-2 (In the Senate - Received from the House May 10, 2007;  
1-3 May 14, 2007, read first time and referred to Committee on Health  
1-4 and Human Services; May 19, 2007, reported adversely, with  
1-5 favorable Committee Substitute by the following vote: Yeas 7,  
1-6 Nays 0; May 19, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1066 By: Nelson

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

1-10 relating to health information technology and the creation of the  
1-11 Texas Health Services Authority.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subtitle I, Title 2, Health and Safety Code, is  
1-14 amended by adding Chapter 182 to read as follows:

1-15 CHAPTER 182. TEXAS HEALTH SERVICES AUTHORITY

1-16 SUBCHAPTER A. GENERAL PROVISIONS

1-17 Sec. 182.001. PURPOSE. This chapter establishes the Texas  
1-18 Health Services Authority as a public-private collaborative to  
1-19 implement the state-level health information technology functions  
1-20 identified by the Texas Health Information Technology Advisory  
1-21 Committee by serving as a catalyst for the development of a seamless  
1-22 electronic health information infrastructure to support the health  
1-23 care system in the state and to improve patient safety and quality  
1-24 of care.

1-25 Sec. 182.002. DEFINITIONS. In this chapter:

1-26 (1) "Board" means the board of directors of the  
1-27 corporation.

1-28 (2) "Corporation" means the Texas Health Services  
1-29 Authority.

1-30 (3) "De-identified protected health information"  
1-31 means protected health information that is not individually  
1-32 identifiable health information as that term is defined by the  
1-33 privacy rule of the Administrative Simplification subtitle of the  
1-34 Health Insurance Portability and Accountability Act of 1996 (Pub.  
1-35 L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part  
1-36 164, Subparts A and E.

1-37 (4) "Individually identifiable health information"  
1-38 means individually identifiable health information as that term is  
1-39 defined by the privacy rule of the Administrative Simplification  
1-40 subtitle of the Health Insurance Portability and Accountability Act  
1-41 of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45  
1-42 C.F.R. Part 164, Subparts A and E.

1-43 (5) "Physician" means:

1-44 (A) an individual licensed to practice medicine  
1-45 in this state under the authority of Subtitle B, Title 3,  
1-46 Occupations Code;

1-47 (B) a professional entity organized in  
1-48 conformity with Title 7, Business Organizations Code, and permitted  
1-49 to practice medicine under Subtitle B, Title 3, Occupations Code;

1-50 (C) a partnership organized in conformity with  
1-51 Title 4, Business Organizations Code, composed entirely of  
1-52 individuals licensed to practice medicine under Subtitle B, Title  
1-53 3, Occupations Code;

1-54 (D) an approved nonprofit health corporation  
1-55 certified under Chapter 162, Occupations Code;

1-56 (E) a medical school or medical and dental unit,  
1-57 as defined or described by Section 61.003, 61.501, or 74.601,  
1-58 Education Code, that employs or contracts with physicians to teach  
1-59 or provide medical services or employs physicians and contracts  
1-60 with physicians in a practice plan; or

1-61 (F) an entity wholly owned by individuals  
1-62 licensed to practice medicine under Subtitle B, Title 3,  
1-63 Occupations Code.

2-1 (6) "Protected health information" means protected  
2-2 health information as that term is defined by the privacy rule of  
2-3 the Administrative Simplification subtitle of the Health Insurance  
2-4 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)  
2-5 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A  
2-6 and E.

2-7 [Sections 182.003-182.050 reserved for expansion]

2-8 SUBCHAPTER B. ADMINISTRATION

2-9 Sec. 182.051. TEXAS HEALTH SERVICES AUTHORITY; PURPOSE.

2-10 (a) The corporation is established to:

2-11 (1) promote, implement, and facilitate the voluntary  
2-12 and secure electronic exchange of health information; and

2-13 (2) create incentives to promote, implement, and  
2-14 facilitate the voluntary and secure electronic exchange of health  
2-15 information.

2-16 (b) The corporation is a public nonprofit corporation and,  
2-17 except as otherwise provided in this chapter, has all the powers and  
2-18 duties incident to a nonprofit corporation under the Business  
2-19 Organizations Code.

2-20 (c) The corporation is subject to state law governing  
2-21 nonprofit corporations, except that:

2-22 (1) the corporation may not be placed in receivership;  
2-23 and

2-24 (2) the corporation is not required to make reports to  
2-25 the secretary of state under Section 22.357, Business Organizations  
2-26 Code.

2-27 (d) Except as otherwise provided by law, all expenses of the  
2-28 corporation shall be paid from income of the corporation.

2-29 (e) The corporation is subject to Chapter 551, Government  
2-30 Code.

2-31 Sec. 182.052. APPLICATION OF SUNSET ACT. The corporation  
2-32 is subject to Chapter 325, Government Code. Unless continued in  
2-33 existence as provided by that chapter, the corporation is abolished  
2-34 and this chapter expires September 1, 2011. The governor may order  
2-35 the dissolution of the corporation at any time the governor  
2-36 declares that the purposes of the corporation have been fulfilled  
2-37 or that the corporation is inoperative or abandoned.

2-38 Sec. 182.053. COMPOSITION OF BOARD OF DIRECTORS. (a) The  
2-39 corporation is governed by a board of 11 directors appointed by the  
2-40 governor, with the advice and consent of the senate.

2-41 (b) The governor shall also appoint at least two ex officio,  
2-42 nonvoting members representing the Department of State Health  
2-43 Services.

2-44 (c) The governor shall appoint as voting board members  
2-45 individuals who represent consumers, clinical laboratories, health  
2-46 benefit plans, hospitals, regional health information exchange  
2-47 initiatives, pharmacies, physicians, or rural health providers, or  
2-48 who possess expertise in any other area the governor finds  
2-49 necessary for the successful operation of the corporation.

2-50 (d) An individual may not serve on the board of the  
2-51 corporation if the individual serves on the board of any other  
2-52 governmental body in this state.

2-53 (e) Appointments to the board shall be made without regard  
2-54 to the race, color, disability, sex, religion, age, or national  
2-55 origin of the appointees.

2-56 (f) An individual may not serve on the board of the  
2-57 corporation, in any capacity, if the individual has made a gift or  
2-58 grant, in cash or in kind, to the corporation.

2-59 (g) An individual may not serve on the board of the  
2-60 corporation, in any capacity, if the individual is required to  
2-61 register as a lobbyist under Chapter 305, Government Code, because  
2-62 of the person's activities for compensation on behalf of a  
2-63 profession or entity that is engaged in the providing of health  
2-64 care, the review or analysis of health care, the payment for health  
2-65 care services or procedures, or the providing of information  
2-66 technology.

2-67 Sec. 182.054. TERMS OF OFFICE. Appointed members of the  
2-68 board serve two-year terms and may continue to serve until a  
2-69 successor has been appointed by the governor.

3-1 Sec. 182.055. EXPENSES. Members of the board serve without  
3-2 compensation but are entitled to reimbursement for actual and  
3-3 necessary expenses in attending meetings of the board or performing  
3-4 other official duties authorized by the presiding officer.

3-5 Sec. 182.056. OFFICERS; CONFLICT OF INTEREST. (a) The  
3-6 governor shall designate a member of the board as presiding officer  
3-7 to serve in that capacity at the pleasure of the governor.

3-8 (b) Any board member or a member of a committee formed by the  
3-9 board with direct interest in a matter, personally or through an  
3-10 employer, before the board shall abstain from deliberations and  
3-11 actions on the matter in which the conflict of interest arises and  
3-12 shall further abstain on any vote on the matter, and may not  
3-13 otherwise participate in a decision on the matter.

3-14 (c) Each board member shall file a conflict of interest  
3-15 statement and a statement of ownership interests with the board to  
3-16 ensure disclosure of all existing and potential personal interests  
3-17 related to board business.

3-18 Sec. 182.057. PROHIBITION ON CERTAIN CONTRACTS AND  
3-19 EMPLOYMENT. The board may not compensate, employ, or contract with  
3-20 any individual who serves as a member of the board or advisory  
3-21 council to any other governmental body, including any agency,  
3-22 council, or committee, in this state.

3-23 Sec. 182.058. MEETINGS. (a) The board may meet as often as  
3-24 necessary, but shall meet at least twice a year.

3-25 (b) The board shall develop and implement policies that  
3-26 provide the public with a reasonable opportunity to appear before  
3-27 the board and to speak on any issue under the authority of the  
3-28 corporation.

3-29 Sec. 182.059. CHIEF EXECUTIVE OFFICER; PERSONNEL. The  
3-30 board may hire a chief executive officer. Under the direction of  
3-31 the board, the chief executive officer shall perform the duties  
3-32 required by this chapter or designated by the board. The chief  
3-33 executive officer may hire additional staff to carry out the  
3-34 responsibilities of the corporation.

3-35 Sec. 182.060. TECHNOLOGY POLICY. The board shall implement  
3-36 a policy requiring the corporation to use appropriate technological  
3-37 solutions to improve the corporation's ability to perform its  
3-38 functions. The policy must ensure that the public is able to  
3-39 interact with the corporation on the Internet.

3-40 Sec. 182.061. LIABILITIES OF AUTHORITY. Liabilities  
3-41 created by the corporation are not debts or obligations of the  
3-42 state, and the corporation may not secure any liability with funds  
3-43 or assets of the state except as otherwise provided by law.

3-44 Sec. 182.062. BOARD MEMBER IMMUNITY. (a) A board member  
3-45 may not be held civilly liable for an act performed, or omission  
3-46 made, in good faith in the performance of the member's powers and  
3-47 duties under this chapter.

3-48 (b) A cause of action does not arise against a member of the  
3-49 board for an act or omission described by Subsection (a).

3-50 [Sections 182.063-182.100 reserved for expansion]

3-51 SUBCHAPTER C. POWERS AND DUTIES

3-52 Sec. 182.101. The corporation may:

3-53 (1) establish statewide health information exchange  
3-54 capabilities, including capabilities for electronic laboratory  
3-55 results, diagnostic studies, and medication history delivery, and,  
3-56 where applicable, promote definitions and standards for electronic  
3-57 interactions statewide;

3-58 (2) seek funding to:

3-59 (A) implement, promote, and facilitate the  
3-60 voluntary exchange of secure electronic health information between  
3-61 and among individuals and entities that are providing or paying for  
3-62 health care services or procedures; and

3-63 (B) create incentives to implement, promote, and  
3-64 facilitate the voluntary exchange of secure electronic health  
3-65 information between and among individuals and entities that are  
3-66 providing or paying for health care services or procedures;

3-67 (3) establish statewide health information exchange  
3-68 capabilities for streamlining health care administrative functions  
3-69 including:

4-1 (A) communicating point of care services,  
 4-2 including laboratory results, diagnostic imaging, and prescription  
 4-3 histories;

4-4 (B) communicating patient identification and  
 4-5 emergency room required information in conformity with state and  
 4-6 federal privacy laws;

4-7 (C) real-time communication of enrollee status  
 4-8 in relation to health plan coverage, including enrollee  
 4-9 cost-sharing responsibilities; and

4-10 (D) current census and status of health plan  
 4-11 contracted providers;

4-12 (4) support regional health information exchange  
 4-13 initiatives by:

4-14 (A) identifying data and messaging standards for  
 4-15 health information exchange;

4-16 (B) administering programs providing financial  
 4-17 incentives, including grants and loans for the creation and support  
 4-18 of regional health information networks, subject to available  
 4-19 funds;

4-20 (C) providing technical expertise where  
 4-21 appropriate;

4-22 (D) sharing intellectual property developed  
 4-23 under Section 182.105;

4-24 (E) waiving the corporation's fees associated  
 4-25 with intellectual property, data, expertise, and other services or  
 4-26 materials provided to regional health information exchanges  
 4-27 operated on a nonprofit basis; and

4-28 (F) applying operational and technical standards  
 4-29 developed by the corporation to existing health information  
 4-30 exchanges only on a voluntary basis, except for standards related  
 4-31 to ensuring effective privacy and security of individually  
 4-32 identifiable health information;

4-33 (5) identify standards for streamlining health care  
 4-34 administrative functions across payors and providers, including  
 4-35 electronic patient registration, communication of enrollment in  
 4-36 health plans, and information at the point of care regarding  
 4-37 services covered by health plans; and

4-38 (6) support the secure, electronic exchange of health  
 4-39 information through other strategies identified by the board.

4-40 Sec. 182.102. PROHIBITED ACTS. (a) The corporation has no  
 4-41 authority and shall not engage in any of the following:

4-42 (1) the collection and analysis of clinical data;

4-43 (2) the comparison of physicians to other physicians,  
 4-44 including comparisons to peer group physicians, physician groups,  
 4-45 and physician teams, and to national specialty society adopted  
 4-46 quality measurements;

4-47 (3) the creation of a tool to measure physician  
 4-48 performance compared to:

4-49 (A) peer group physicians on state and specialty  
 4-50 levels; or

4-51 (B) objective standards;

4-52 (4) the providing of access to aggregated,  
 4-53 de-identified protected health information to local health  
 4-54 information exchanges and other users of quality care studies,  
 4-55 disease management and population health assessments;

4-56 (5) providing to public health programs trended,  
 4-57 aggregated, de-identified protected health information to help  
 4-58 assess the health status of populations and the providing of  
 4-59 regular reports of trends and important incidence of events to  
 4-60 public health avenues for intervention, education, and prevention  
 4-61 programs; or

4-62 (6) the creation of evidence-based standards for the  
 4-63 practice of medicine.

4-64 (b) The corporation has no authority and shall not  
 4-65 disseminate information, in any manner, to the public that  
 4-66 compares, rates, tiers, classifies, measures, or ranks a  
 4-67 physician's performance, efficiency, or quality of practice.

4-68 Sec. 182.103. PRIVACY OF INFORMATION. (a) Protected  
 4-69 health information and individually identifiable health

5-1 information collected, assembled, or maintained by the corporation  
5-2 is confidential and is not subject to disclosure under Chapter 552,  
5-3 Government Code.

5-4 (b) The corporation shall comply with all state and federal  
5-5 laws and rules relating to the transmission of health information,  
5-6 including the Health Insurance Portability and Accountability Act  
5-7 of 1996 (Pub. L. No. 104-191) and rules adopted under that Act.

5-8 (c) The corporation shall develop privacy, security,  
5-9 operational, and technical standards to assist health information  
5-10 networks in the state to ensure effective statewide privacy, data  
5-11 security, efficiency, and interoperability across networks. The  
5-12 network's standards shall be guided by reference to the standards  
5-13 of the Certification Commission for Healthcare Information  
5-14 Technology or the Health Information Technology Standards Panel, or  
5-15 other federally approved certification standards, that exist on May  
5-16 1, 2007, as to the process of implementation, acquisition, upgrade,  
5-17 or installation of electronic health information technology.

5-18 Sec. 182.104. SECURITY COMPLIANCE. The corporation shall:

5-19 (1) establish appropriate security standards to  
5-20 protect both the transmission and the receipt of individually  
5-21 identifiable health information or health care data;

5-22 (2) establish appropriate security standards to  
5-23 protect access to any individually identifiable health information  
5-24 or health care data collected, assembled, or maintained by the  
5-25 corporation;

5-26 (3) establish the highest levels of security and  
5-27 protection for access to and control of individually identifiable  
5-28 health information, including mental health care data and data  
5-29 relating to specific disease status, that is governed by more  
5-30 stringent state or federal privacy laws; and

5-31 (4) establish policies and procedures for the  
5-32 corporation for taking disciplinary actions against a board member,  
5-33 employee, or other person with access to individually identifiable  
5-34 health care information that violates state or federal privacy laws  
5-35 related to health care information or data maintained by the  
5-36 corporation.

5-37 Sec. 182.105. INTELLECTUAL PROPERTY. The corporation shall  
5-38 take commercially reasonable measures to protect its intellectual  
5-39 property, including obtaining patents, trademarks, and copyrights  
5-40 where appropriate.

5-41 Sec. 182.106. ANNUAL REPORT. The corporation shall submit  
5-42 an annual report to the governor, the lieutenant governor, the  
5-43 speaker of the house of representatives, and the appropriate  
5-44 oversight committee in the senate and the house of representatives.  
5-45 The annual report must include financial information and a progress  
5-46 update on the corporation's efforts to carry out its mission.

5-47 Sec. 182.107. FUNDING. (a) The corporation may be funded  
5-48 through the General Appropriations Act and may request, accept, and  
5-49 use gifts and grants as necessary to implement its functions.

5-50 (b) The corporation may assess transaction, convenience, or  
5-51 subscription fees to cover costs associated with implementing its  
5-52 functions. All fees must be voluntary but receipt of services  
5-53 provided by the corporation may be conditioned on payment of fees.

5-54 (c) The corporation may participate in other  
5-55 revenue-generating activities that are consistent with the  
5-56 corporation's purposes.

5-57 SECTION 2. This Act takes effect immediately if it receives  
5-58 a vote of two-thirds of all the members elected to each house, as  
5-59 provided by Section 39, Article III, Texas Constitution. If this  
5-60 Act does not receive the vote necessary for immediate effect, this  
5-61 Act takes effect September 1, 2007.

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