

By: Laubenberg

H.B. No. 3697

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a youth diabetes registry; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle D, Title 2, Health and Safety Code, is amended by adding Chapter 98 to read as follows:

CHAPTER 98. DIABETES IN YOUTH REGISTRY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 98.001. DEFINITIONS. In this chapter:

(1) "Clinical laboratory" means an accredited facility in which tests are performed to identify abnormal blood sugars.

(2) "Department" means the Department of State Health Services.

(3) "Diabetes" includes all types of diabetes.

(4) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(5) "Health care facility" means:

(A) a hospital licensed under Chapter 241;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) an institution licensed under Chapter 242; or

(D) any other facility licensed by this state that provides diagnosis or treatment services to patients with

1 diabetes.

2 (6) "Patient" means a person younger than 18 years of  
3 age who has been diagnosed by a physician as having diabetes.

4 (7) "Physician" means a person licensed to practice  
5 medicine in this state.

6 (8) "Registry" means the youth diabetes registry  
7 established under this chapter.

8 [Sections 98.002-98.050 reserved for expansion]

9 SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND  
10 DEPARTMENT

11 Sec. 98.051. REGISTRY: ESTABLISHMENT AND CONTENT. (a) The  
12 department shall maintain a youth diabetes registry of cases of  
13 diabetes diagnosed in persons younger than 18 years of age.

14 (b) The registry must be an accurate, precise, and current  
15 central information bank on the number of diabetes cases in this  
16 state to help determine the impact of diabetes in youth.

17 (c) Each registered case must include:

18 (1) the type of diabetes diagnosed;

19 (2) the age of the patient;

20 (3) the region in which the patient resides;

21 (4) the results of a test of the patient's glycated  
22 hemoglobin at the time of diagnosis; and

23 (5) any other appropriate information to assist in  
24 determining the impact of diabetes in youth.

25 Sec. 98.052. REGISTRY GUIDELINES. The executive  
26 commissioner, in consultation with the Texas Diabetes Council,  
27 shall by rule develop guidelines to:

1           (1) determine appropriate information to include in  
2 the registry under Section 98.051(b);

3           (2) protect the confidentiality of patients in  
4 accordance with Section 98.057 and Section 159.002, Occupations  
5 Code, to ensure that registry information is considered both  
6 confidential and privileged;

7           (3) create a means to inform a patient and the  
8 patient's parent or legal guardian about the existence, structure,  
9 and intent of the registry and of the option to be excluded from the  
10 registry before any personal information about the patient is  
11 transferred to the department;

12           (4) collect necessary information from clinical  
13 laboratories, health care facilities, and physicians;

14           (5) compile and analyze collected information;

15           (6) publish studies based on information collected  
16 under this chapter; and

17           (7) provide information based on registry information  
18 relating to youth diabetes that is useful to physicians, other  
19 medical personnel, and the public.

20           Sec. 98.053. RULES; CONTRACTS; GIFTS AND GRANTS. (a) The  
21 executive commissioner may adopt the rules necessary to administer  
22 this chapter.

23           (b) The department may enter into contracts as necessary for  
24 the purposes of this chapter.

25           (c) The department may accept and administer gifts and  
26 grants for the purposes of this chapter.

27           Sec. 98.054. ANNUAL REPORT; REPORT TO LEGISLATURE. (a) The

1 department shall publish an annual youth diabetes report based on  
2 registry information. The report may include:

3 (1) a summary of the statistical information compiled  
4 in the registry, including a specific discussion of any clusters,  
5 high or low incidences, or trends encountered; and

6 (2) any policy, research, educational, or other  
7 recommendations the department considers appropriate.

8 (b) The department shall present the annual youth diabetes  
9 report to the governor, the lieutenant governor, the speaker of the  
10 house of representatives, and the Legislative Budget Board.

11 (c) The department, in cooperation with other diabetes  
12 reporting organizations and research institutions, may publish  
13 reports the department determines necessary or desirable to  
14 implement the purposes of this chapter.

15 Sec. 98.055. INFORMATION FROM MEDICAL RECORDS. (a) Except  
16 as provided by Subsection (b), within six months of a new diagnosis  
17 of diabetes in a patient, the health care facility, clinical  
18 laboratory, or physician that makes the diagnosis or obtains  
19 information related to the diagnosis shall furnish to the  
20 department or the department's representative information the  
21 department, in accordance with rules adopted under Section 98.053,  
22 considers necessary and appropriate that is derived from the  
23 patient's medical record in the custody or under the control of the  
24 health care facility, clinical laboratory, or physician.

25 (b) Before transferring any information, the health care  
26 facility, clinical laboratory, or physician shall inform the  
27 patient and the patient's parent or legal guardian of the

1 existence, structure, and purpose of the registry.

2 (c) The health care facility, clinical laboratory, or  
3 physician may not transfer information about a patient if the  
4 patient or the patient's parent or legal guardian chooses to  
5 exclude the information from the registry.

6 (d) A health care facility, clinical laboratory, or  
7 physician shall furnish information required under Subsection (a)  
8 in the format prescribed by the department.

9 Sec. 98.056. FAILURE TO FURNISH INFORMATION; PENALTY. (a)  
10 A health care facility, clinical laboratory, or physician that  
11 knowingly or in bad faith fails to furnish information as required  
12 by this chapter shall reimburse the department for the costs  
13 incurred by the department in accessing and obtaining the  
14 information. Costs reimbursed under this subsection must be  
15 reasonable based on the actual costs incurred by the department in  
16 collecting the information and may include salary and travel  
17 expenses.

18 (b) The department, after providing an opportunity for  
19 hearing, may assess a late fee on an amount due under Subsection (a)  
20 that is at least 60 days overdue. The late fee may not exceed one  
21 and one-half percent of the total amount due for each month or  
22 portion of a month the amount is not paid in full.

23 Sec. 98.057. CONFIDENTIALITY. (a) Reports, records, and  
24 information obtained under this chapter are confidential and:

25 (1) are not subject to disclosure under Chapter 552,  
26 Government Code;

27 (2) are not subject to subpoena; and

1           (3) may not otherwise be released or made public  
2 except as provided by this chapter.

3           (b) Except as provided by Subsection (c), reports, records,  
4 and information obtained under this chapter are for the  
5 confidential use of the department and any person the department  
6 determines necessary to carry out the intent of this chapter.

7           (c) Information obtained under this chapter may be released  
8 to the health care facility, clinical laboratory, or physician that  
9 provided the information to the department, but the release is  
10 limited to information provided by that health care facility,  
11 clinical laboratory, or physician.

12           (d) A state employee may not testify in a civil, criminal,  
13 special, or other proceeding as to the existence or contents of  
14 records, reports, or information concerning an individual whose  
15 medical records have been used in submitting information required  
16 under this chapter unless the individual consents in advance.

17           Sec. 98.058. RELEASE OF LIMITED INFORMATION. (a) Medical  
18 or epidemiological information may be released:

19           (1) for statistical purposes in a manner that prevents  
20 identification of a patient, health care facility, clinical  
21 laboratory, physician, or other health care practitioner;

22           (2) with the consent of each person identified in the  
23 information; or

24           (3) to promote diabetes research, including release of  
25 information to other diabetes registries and appropriate state and  
26 federal agencies, under rules adopted by the executive commissioner  
27 to ensure confidentiality as required by state and federal laws.

1       (b) Information furnished to a diabetes registry or a  
2 diabetes researcher under Subsection (a)(3) is for the confidential  
3 use of the diabetes registry or the diabetes researcher, as  
4 applicable, and is subject to Section 98.057.

5       Sec. 98.059. REGISTRY ACCESS. Access to the registry is  
6 limited to:

7           (1) authorized department employees; and

8           (2) other persons who are:

9                   (A) qualified researchers who are approved by an  
10 institutional review board and have a valid scientific interest;

11                   (B) engaged in demographic, epidemiological, or  
12 other studies related to health; and

13                   (C) agree to maintain the confidentiality  
14 requirements of this chapter.

15       Sec. 98.060. IMMUNITY FROM LIABILITY. The following  
16 persons subject to this chapter that act in compliance with this  
17 chapter are not civilly or criminally liable for furnishing the  
18 information required under this chapter:

19           (1) a health care facility or clinical laboratory;

20           (2) an administrator, officer, or employee of a health  
21 care facility or clinical laboratory;

22           (3) a physician or employee of a physician; and

23           (4) an employee of the department.

24       Sec. 98.061. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
25 attorney general may institute an action for injunctive relief to  
26 restrain a release of information in violation of Section 98.057,  
27 98.058, 98.059, or 98.064.

1       (b) In addition to the injunctive relief provided by  
2 Subsection (a), the attorney general may institute an action for  
3 civil penalties against a person for a release of information in  
4 violation of Section 98.057, 98.058, 98.059, or 98.064. A civil  
5 penalty assessed under this section may not exceed \$3,000 for each  
6 violation.

7       (c) If the court in which an action under Subsection (b) is  
8 pending finds that the violations have occurred with a frequency as  
9 to constitute a pattern or practice, the court may assess a civil  
10 penalty not to exceed \$250,000.

11       Sec. 98.062. DISCIPLINARY ACTION. In addition to the  
12 penalties prescribed by this chapter, a release of information in  
13 violation of Section 98.057, 98.058, 98.059, or 98.064 by an  
14 individual or facility that is licensed by an agency of this state  
15 is subject to investigation and disciplinary proceedings,  
16 including probation or suspension by the licensing agency. If  
17 there is evidence that the violations of this chapter constitute a  
18 pattern or practice, the agency may revoke the individual's or  
19 facility's license.

20       Sec. 98.063. EXCLUSION FROM STATE PROGRAMS. In addition to  
21 the penalties prescribed by this chapter, a person shall be  
22 excluded from participating in any state-funded health care program  
23 if a court finds the person engaged in a pattern or practice of  
24 releasing information in violation of Section 98.057, 98.058,  
25 98.059, or 98.064.

26       Sec. 98.064. COMPLIANCE WITH FEDERAL LAW. (a) To the  
27 extent that this chapter authorizes the disclosure of protected



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

8 (b) To the extent that the provisions of this chapter, and  
9 the rules adopted under this chapter, relating to the use or  
10 disclosure of information in the registry are more stringent than  
11 the privacy rule described by Subsection (a), this chapter governs  
12 the use or disclosure of information in the registry.

13 Sec. 98.065. EXAMINATION AND SUPERVISION NOT REQUIRED.  
14 This chapter does not require an individual to submit to any medical  
15 examination or supervision or to examination or supervision by the  
16 department.

17 SECTION 2. (a) As soon as practicable after the effective  
18 date of this Act, the executive commissioner of the Health and Human  
19 Services Commission shall adopt the rules necessary to implement  
20 Chapter 98, Health and Safety Code, as added by this Act.

21 (b) The Department of State Health Services is not required  
22 to collect and a health care facility, clinical laboratory, or  
23 physician is not required to report information for the registry  
24 established under Chapter 98, Health and Safety Code, as added by  
25 this Act, for a patient who was diagnosed before January 1, 2007.

26 SECTION 3. This Act takes effect September 1, 2007.