

By: Duncan, Uresti S.B. No. 1090  
(In the Senate - Filed March 2, 2007; March 14, 2007, read first time and referred to Committee on Health and Human Services; April 16, 2007, reported adversely, with favorable Committee Substitute by the following vote: Yeas 8, Nays 0; April 16, 2007, sent to printer.)

COMMITTEE SUBSTITUTE FOR S.B. No. 1090 By: Shapleigh

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) "Advanced practice nurse" has the meaning assigned by Section 301.152, Occupations Code.

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

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

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

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

(6) "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 diabetes.

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

(8) "Physician" means a person licensed to practice medicine in this state.

(9) "Physician assistant" means a person who holds a license under Chapter 204, Occupations Code.

(10) "Registry" means the youth diabetes registry established under this chapter.

[Sections 98.002-98.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT

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

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

(c) Each registered case must include:

(1) the type of diabetes diagnosed;  
(2) the age of the patient;  
(3) the region in which the patient resides;  
(4) the results of a test of the patient's glycated hemoglobin at the time of diagnosis; and

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

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

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

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

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

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

(5) compile and analyze collected information;

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

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

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

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

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

Sec. 98.054. ANNUAL REPORT; REPORT TO LEGISLATURE. (a) The department shall publish an annual youth diabetes report based on registry information. The report may include:

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

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

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

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

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

(b) Before transferring any information, the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant shall inform the patient and the patient's parent or legal guardian of the existence, structure, and purpose of the registry.

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

(d) A health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant shall furnish information required under Subsection (a) in the format prescribed by the department.

Sec. 98.056. FAILURE TO FURNISH INFORMATION; PENALTY. (a) A health care facility, clinical laboratory, physician,

advanced practice nurse, or physician assistant that knowingly or in bad faith fails to furnish information as required by this chapter shall reimburse the department for the costs incurred by the department in accessing and obtaining the information. Costs reimbursed under this subsection must be reasonable based on the actual costs incurred by the department in collecting the information and may include salary and travel expenses.

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

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

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

(2) are not subject to subpoena; and

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

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

(c) Information obtained under this chapter may be released to the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant that provided the information to the department, but the release is limited to information provided by that health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant.

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

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

(1) for statistical purposes in a manner that prevents identification of a patient, health care facility, clinical laboratory, physician, advanced practice nurse, physician assistant, or other health care practitioner;

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

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

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

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

(1) authorized department employees; and

(2) other persons who are:

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

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

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

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

(1) a health care facility or clinical laboratory;

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

(3) a physician or employee of a physician;

4-1                   (4) an advanced practice nurse or physician assistant;  
4-2 and  
4-3                   (5) an employee of the department.

4-4           Sec. 98.061. INJUNCTIVE RELIEF; CIVIL PENALTY. (a) The  
4-5 attorney general may institute an action for injunctive relief to  
4-6 restrain a release of information in violation of Section 98.057,  
4-7 98.058, 98.059, or 98.064.

4-8           (b) In addition to the injunctive relief provided by  
4-9 Subsection (a), the attorney general may institute an action for  
4-10 civil penalties against a person for a release of information in  
4-11 violation of Section 98.057, 98.058, 98.059, or 98.064. A civil  
4-12 penalty assessed under this section may not exceed \$3,000 for each  
4-13 violation.

4-14           (c) If the court in which an action under Subsection (b) is  
4-15 pending finds that the violations have occurred with a frequency as  
4-16 to constitute a pattern or practice, the court may assess a civil  
4-17 penalty not to exceed \$250,000.

4-18           Sec. 98.062. DISCIPLINARY ACTION. In addition to the  
4-19 penalties prescribed by this chapter, a release of information in  
4-20 violation of Section 98.057, 98.058, 98.059, or 98.064 by an  
4-21 individual or facility that is licensed by an agency of this state  
4-22 is subject to investigation and disciplinary proceedings,  
4-23 including probation or suspension by the licensing agency. If  
4-24 there is evidence that the violations of this chapter constitute a  
4-25 pattern or practice, the agency may revoke the individual's or  
4-26 facility's license.

4-27           Sec. 98.063. EXCLUSION FROM STATE PROGRAMS. In addition to  
4-28 the penalties prescribed by this chapter, a person shall be  
4-29 excluded from participating in any state-funded health care program  
4-30 if a court finds the person engaged in a pattern or practice of  
4-31 releasing information in violation of Section 98.057, 98.058,  
4-32 98.059, or 98.064.

4-33           Sec. 98.064. COMPLIANCE WITH FEDERAL LAW. (a) To the  
4-34 extent that this chapter authorizes the disclosure of protected  
4-35 health information by a covered entity, as those terms are defined  
4-36 by the privacy rule of the Administrative Simplification subtitle  
4-37 of the Health Insurance Portability and Accountability Act of 1996  
4-38 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R.  
4-39 Part 164, Subparts A and E, the covered entity shall ensure that the  
4-40 disclosure complies with all applicable requirements, standards,  
4-41 and implementation specifications of the privacy rule.

4-42           (b) To the extent that the provisions of this chapter, and  
4-43 the rules adopted under this chapter, relating to the use or  
4-44 disclosure of information in the registry are more stringent than  
4-45 the privacy rule described by Subsection (a), this chapter governs  
4-46 the use or disclosure of information in the registry.

4-47           Sec. 98.065. EXAMINATION AND SUPERVISION NOT REQUIRED.  
4-48 This chapter does not require an individual to submit to any medical  
4-49 examination or supervision or to examination or supervision by the  
4-50 department.

4-51           SECTION 2. (a) As soon as practicable after the effective  
4-52 date of this Act, the executive commissioner of the Health and Human  
4-53 Services Commission shall adopt the rules necessary to implement  
4-54 Chapter 98, Health and Safety Code, as added by this Act.

4-55           (b) The Department of State Health Services is not required  
4-56 to collect and a health care facility, clinical laboratory,  
4-57 physician, advanced practice nurse, or physician assistant is not  
4-58 required to report information for the registry established under  
4-59 Chapter 98, Health and Safety Code, as added by this Act, for a  
4-60 patient who was diagnosed before January 1, 2007.

4-61           SECTION 3. This Act takes effect September 1, 2007.

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