

1-1 By: Nelson S.B. No. 1187
1-2 (In the Senate - Filed March 6, 2007; March 14, 2007, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 2, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 2, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1187 By: Nelson

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

1-10 relating to data collection at the Department of State Health
1-11 Services.

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

1-13 SECTION 1. The heading to Chapter 108, Health and Safety
1-14 Code, is amended to read as follows:

1-15 CHAPTER 108. TEXAS HEALTH CARE INFORMATION COLLECTION PROGRAM
1-16 [COUNCIL]

1-17 SECTION 2. Section 108.001, Health and Safety Code, is
1-18 amended to read as follows:

1-19 Sec. 108.001. TEXAS HEALTH CARE INFORMATION COLLECTION
1-20 PROGRAM [CREATION OF COUNCIL]. The Department of State [Texas]
1-21 Health Services [Care Information Council] shall administer this
1-22 chapter and report to the governor, the legislature, and the
1-23 public.

1-24 SECTION 3. Section 108.002, Health and Safety Code, is
1-25 amended by amending Subdivisions (1), (3), (5), (6), (7), (8),
1-26 (12), (16), (17), (20), (21), and (22) and adding Subdivisions
1-27 (4-a), (8-a), (11-a), (14-a), (17-a), and (21-a) to read as
1-28 follows:

1-29 (1) "Accurate and consistent data" means data that has
1-30 been edited by the department [council] and subject to provider
1-31 validation and certification.

1-32 (3) "Certification" means the process by which a
1-33 provider confirms the accuracy and completeness of the data set
1-34 required to produce the public use data file in accordance with
1-35 department [council] rule.

1-36 (4-a) "Commission" means the Health and Human Services
1-37 Commission.

1-38 (5) "Confidential data" means data that is made
1-39 confidential under this chapter, other state law, or federal
1-40 law ["Council" means the Texas Health Care Information Council].

1-41 (6) "Data" means the material or collection of facts
1-42 on which a discussion or an inference is based [information
1-43 collected under Section 108.0065 or 108.009 in the form initially
1-44 received].

1-45 (7) "Department" means the [Texas] Department of State
1-46 Health Services.

1-47 (8) "Edit" means to use an electronic standardized
1-48 process developed and implemented by the department [council rule]
1-49 to identify potential errors and mistakes in data elements by
1-50 reviewing data fields for the presence or absence of data and the
1-51 accuracy and appropriateness of data.

1-52 (8-a) "Executive commissioner" means the executive
1-53 commissioner of the Health and Human Services Commission.

1-54 (11-a) "Health practitioner" means an individual
1-55 licensed under the laws of this state to practice chiropractic,
1-56 dentistry, nursing, podiatry, or psychology under Title 3,
1-57 Occupations Code.

1-58 (12) "Hospital" means a public, for-profit, or
1-59 nonprofit institution licensed or owned by this state that is a
1-60 general or special hospital, private mental hospital, [chronic
1-61 disease hospital] or other type of hospital.

1-62 (14-a) "Program director" means the primary
1-63 department employee responsible for performing the functions and

exercising the authority of the program director and includes the program director's designee.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern health profession disciplines ~~[medicine]~~, obtains for patients ~~[medically]~~ acceptable health outcomes and prognoses, after risk ~~[severity]~~ adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has ~~[not been summarized or analyzed, that has]~~ had patient identifying information removed, that identifies physicians and health practitioners only by use of uniform physician or health practitioner identifiers, and that is ~~[severity and risk adjusted,]~~ edited~~[,]~~ and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the department ~~[council]~~. Public use data does not include confidential data.

(17-a) "Risk adjustment" means a process applied to data to allow for statistical comparisons between providers to statistically control for different risk factors in patients that may affect their health care outcomes.

(20) "Uniform patient identifier" means an identifier ~~[a number]~~ assigned by the department ~~[council]~~ to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician or health practitioner identifier" means an identifier ~~[a number]~~ assigned by the department ~~[council]~~ to an individual physician or health practitioner and composed of numeric, alpha, or alphanumeric characters.

(21-a) "Utilization report" means a provider level report of aggregate data prepared to the specifications of a requestor in which the state expresses no finding or opinion.

(22) "Validation" means the process that ~~[by which a provider]~~ verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with department ~~[council]~~ rule.

SECTION 4. Chapter 108, Health and Safety Code, is amended by adding Section 108.0055 to read as follows:

Sec. 108.0055. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER. The executive commissioner shall adopt rules necessary to administer this chapter.

SECTION 5. Section 108.006, Health and Safety Code, is amended to read as follows:

Sec. 108.006. POWERS AND DUTIES OF DEPARTMENT ~~[COUNCIL]~~. (a) The department ~~[council]~~ shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality reports ~~[data]~~, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The department ~~[council]~~ shall:

(1) direct the collection, dissemination, and analysis of data under this chapter;

(2) ~~[contract with the department to collect the data under this chapter,]~~

~~[(3)]~~ adopt policies and recommend rules necessary to carry out this chapter, including rules concerning data collection requirements;

(3) ~~[(4)]~~ build on and not duplicate other data collection required by state or federal law~~[, by an accreditation organization,]~~ or by executive commissioner ~~[board]~~ rule;

(4) ~~[(5)]~~ working with appropriate agencies, review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation or obtain data collected by other state agencies;

(5) ~~[(6)]~~ assure that public use data is made available and accessible to interested persons;

(6) recommend rules regarding ~~[(7) prescribe by rule]~~ the process for providers to submit data consistent with Section 108.009;

(7) ~~[(8)] adopt by rule and implement a methodology to~~

~~collect and disseminate data reflecting provider quality in accordance with Section 108.010;~~

~~[(9)] make annual reports to the legislature, the governor, and the public on:~~

(A) the charges and rate of change in the charges for health care services in this state;

(B) the effectiveness of the department ~~[council]~~ in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(8) ~~[(10)]~~ develop an annual work plan and establish priorities to accomplish its duties;

(9) ~~[(11)]~~ provide consumer education on the interpretation and understanding of the public use data or provider quality reports ~~[data]~~ before the data or reports are ~~[is]~~ disseminated to the public;

(10) ~~[(12)]~~ work with the commission ~~[Health and Human Services Commission]~~ and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program; and

(11) ~~provide data and [(13)] work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards, and~~

~~[(14)] develop and implement a health care~~ information ~~[plan]~~ to be used by the department to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify individuals and populations at risk.

(b) The department ~~[council]~~ may recommend ~~+~~

~~[(1)] employ or contract with the department to employ an executive director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;~~

~~[(2)] engage professional consultants as it considers necessary to the performance of its duties;~~

~~[(3)] adopt~~ rules clarifying which health care facilities must provide data under this chapter ~~[, and~~

~~[(4)] apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation].~~

(c) The department ~~[council]~~ may not establish or recommend rates of payment for health care services.

~~[(d)] The council may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the department without the board's approval.]~~

(e) In the collection of data, the department ~~[council]~~ shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and the Joint Commission on Accreditation of Healthcare Organizations to reduce potential duplication or inconsistencies. The executive commissioner ~~[council]~~ may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of

comparable scope.

(f) The department ~~[council]~~ shall recommend rules on ~~[prescribe by rule]~~ a public use data element list ~~[file minimum data set]~~ that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data element list ~~[file minimum data set]~~ as defined by ~~[council]~~ rule is subject to annual review by the department ~~[council with the assistance of the advisory committee under Section 108.003(g)(5)]~~. The purpose of the review is] to evaluate requests to modify the existing public use ~~[minimum]~~ data element list ~~[set]~~ and editing process of those data elements. A decision to modify the public use ~~[minimum]~~ data element list ~~[set]~~ by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The department ~~[council]~~ may also consider the costs to the department ~~[council]~~ and providers associated with modifying the public use ~~[minimum]~~ data element list ~~[set]~~.

(h) In accordance with Sections 108.013(k), (l), (m), and (n) and ~~[Section]~~ 108.0135, the department ~~[council]~~ may release data collected under Section 108.009 that is not included in the public use data element list ~~[file minimum data set]~~ established under this chapter ~~[Subsection (f)]~~.

SECTION 6. Section 108.007, Health and Safety Code, is amended to read as follows:

Sec. 108.007. REVIEW POWERS. (a) The ~~[council, through the]~~ department, ~~[and]~~ subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The department ~~[council]~~ may enter into a memorandum of understanding with a state agency~~[, including the division of the Health and Human Services Commission responsible for the state Medicaid program,]~~ or with a school of public health or another institution of higher education~~[,]~~ to share data and expertise, to obtain data for the department ~~[council]~~, or to make data available to the department ~~[council]~~. An agreement entered into under this subsection must protect patient confidentiality.

SECTION 7. Section 108.009, Health and Safety Code, is amended to read as follows:

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The department ~~[council]~~ may collect, and, except as provided by Subsections (c) and (d), providers shall submit to the department ~~[council]~~ or another entity as determined by the department ~~[council]~~, all data required by this section or by rule. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The department ~~[council]~~ shall recommend ~~[adopt]~~ rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule ~~[adopted by the council]~~ that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is adopted.

(c) A rural provider may, but is not required to, provide the data required by this chapter. A hospital may, but is not required to, provide the data required by this chapter if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third-party payor; or

(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

(d) The department ~~[council]~~ may not collect data from individual physicians or health practitioners or from an entity that is composed entirely of physicians or health practitioners and that is a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes) or formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code, a limited liability partnership organized under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), or described by Subchapter J, Chapter 152, Business Organizations Code, or a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes) or formed under the Texas Limited Liability Company Law, as described by Section 1.008, Business Organizations Code, except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians or health practitioners using uniform physician or health practitioner identifiers that has been collected from a health care facility under this chapter.

~~[(e) The council shall establish the department as the single collection point for receipt of data from providers. With the approval of the council and the board, the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.]~~

(f) The department ~~[council]~~ may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The department may ~~[council shall]~~ coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the department ~~[council]~~ a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b, 254c, or 256 shall submit annually to the department ~~[council]~~ a copy of the Bureau of Common Reporting Requirements data report developed by the United States Public Health Service.

(h) The department ~~[council]~~ shall coordinate data collection with the data submission formats used by hospitals and other providers. The department ~~[council]~~ shall accept data in the format developed by the American National Standards Institute ~~[National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500]~~ or its ~~[their]~~ successors or other nationally ~~[universally]~~ accepted standardized format or forms that hospitals and other providers use for other complementary purposes.

(i) The department ~~[council]~~ shall recommend rules on ~~[develop by rule]~~ reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity to create electronic claims.

(k) The department ~~[council]~~ shall collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers.

(m) To the extent feasible, the department ~~[council]~~ shall obtain from public records the information that is available from those records.

(o) A provider of a health benefit plan shall annually submit to the department ~~[council]~~ aggregate data by service area required by the Health Plan Employer Data Information Set (HEDIS) data as operated by the National Committee for Quality Assurance. The department ~~[council]~~ may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the Health Plan Employer Data Information Set

does not generally apply to a health benefit plan, the department ~~[council]~~ shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Sections ~~[Section]~~ 108.011 and 108.013(k), (l), (m), and (n), but is not subject to Section 108.010.

SECTION 8. Chapter 108, Health and Safety Code, is amended by adding Section 108.0095 to read as follows:

Sec. 108.0095. CHANGE IN OWNERSHIP BY ENTITY REQUIRED TO SUBMIT DATA. An entity that acquires, by merger, acquisition, or other transfer, ownership of a health care facility or an organization that owns or operates a health benefit plan that is required to submit data under this chapter shall report the change in ownership to the department.

SECTION 9. Section 108.010, Health and Safety Code, is amended to read as follows:

Sec. 108.010. ~~[COLLECTION AND]~~ DISSEMINATION OF PROVIDER QUALITY REPORTS ~~[DATA]~~. (a) Subject to Section 108.009, the department ~~[council]~~ shall gather ~~[collect]~~ data reflecting provider quality and shall produce provider quality reports based on a methodology and review process established through the executive commissioner's ~~[council's]~~ rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

~~[(b) The council shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.]~~

(c) The department ~~[council]~~ shall test each initial provider quality report ~~[the]~~ methodology for a period of time to be determined by the department ~~[by collecting provider quality data for one year, subject to Section 108.009]~~. This requirement to test a methodology applies only to methodologies that have not previously been used by the department. The department ~~[council]~~ may test using pilot methodologies. ~~Any [After collecting provider quality data for one year, the council shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The council shall verify the accuracy of the data during this review and revision process. After the review and revision process,]~~ provider quality ~~[data for subsequent]~~ reports shall be published and made available to the public, on a time schedule the department ~~[council]~~ considers appropriate.

(d) If the department ~~[council]~~ determines that a provider quality report ~~[data]~~ to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the department ~~[council]~~ is not required to publish or release the report ~~[data or reports based in whole or in part on the data]~~. This subsection does not affect the release of public use data in accordance with Section 108.011 or utilization reports requested under Chapter 552, Government Code ~~[the release of information submitted under Section 108.009(e)]~~.

(e) The department shall allow ~~[council shall adopt rules allowing]~~ a provider to submit concise written comments regarding any specific provider quality report ~~[data]~~ to be released concerning the provider. The department ~~[council]~~ shall make the comments available to the public at the department ~~[office of the council]~~ and in an electronic form accessible through the Internet. The comments shall be attached to any public release of a provider quality report ~~[data]~~. Providers shall submit the comments to the department ~~[council]~~ to be attached to the public release of a provider quality report ~~[data]~~ in the same format as the provider quality report ~~[data]~~ that is to be released.

(f) The methodology adopted by the department ~~[council]~~ for measuring quality shall include one or more adjustment methods, such as case-mix qualifiers, risk adjustment factors, severity adjustment factors, adjustments for medical education and research, or [and] any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality reports ~~[data]~~ shall comply with Section 108.011(f) ~~[Sections 108.011(e) and (f)]~~.

(h) A provider quality ~~[data]~~ report may not identify an individual physician or health practitioner by name, but must identify the physician by the uniform physician or health practitioner identifier designated by the department ~~[council]~~ under Section 108.011(c).

(i) The department may ~~[council shall]~~ release utilization reports without the review and comment by any provider ~~[quality data in an aggregate form without uniform physician identifiers when:]~~

~~[(1) the data relates to providers described by Section 108.0025(1), or~~

~~[(2) the cell size of the data is below the minimum size established by council rule that would enable identification of an individual patient or physician].~~

SECTION 10. Section 108.011, Health and Safety Code, is amended to read as follows:

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND DEPARTMENT ~~[COUNCIL]~~ PUBLICATIONS. (a) The department ~~[council]~~ shall promptly provide public use data and data collected in accordance with Section 108.009(o) to those requesting it. The public use data does not include ~~[provider quality data prescribed by Section 108.010 or]~~ confidential data prescribed by Section 108.013.

(b) Subject to the restrictions on access to department ~~[council]~~ data prescribed by Section ~~[Sections 108.010 and]~~ 108.013, and using the public use data and other data, records, and matters of record available to it, the department ~~[council]~~ shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The department ~~[council]~~ must issue the reports at least annually.

(c) Subject to the restrictions on access to department ~~[council]~~ data prescribed by Section ~~[Sections 108.010 and]~~ 108.013, the department ~~[council]~~ shall use public use data to prepare and issue reports that provide information relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians or health practitioners may not be identified by name, but shall be identified by uniform physician or health practitioner identifiers. The department ~~[council by rule]~~ shall recommend rules and designate the characters to be used as uniform physician or health practitioner identifiers.

(c-1) The department ~~[council]~~ shall use public use data to prepare and issue reports that provide information for review and analysis by the commission ~~[Health and Human Services Commission]~~ relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The department ~~[council]~~ shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public.

(e) If public use data is requested from the department ~~[council]~~ about a specific provider, the department ~~[council]~~ shall notify the provider about the release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the department ~~[council]~~ shall include a reasonable review ~~[and comment]~~ period for the affected providers before public release of the report.

(g) The department ~~[council]~~ shall provide a process ~~[adopt]~~

~~rules~~] allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The department ~~[council]~~ shall make the comments available to the public ~~[and the office of the council]~~ and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the department ~~[council]~~ to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Media devices ~~[Tapes]~~ containing public use data and provider quality reports that are released to the public must include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The department ~~[council]~~ shall release public use data ~~[in an aggregate form]~~ without uniform physician or health practitioner identifiers when:

(1) the data relates to providers described by Section 108.0025(1); or

(2) the ~~[cell size of the]~~ data ~~[is below the minimum size established by council rule that]~~ would enable easy identification of an individual patient, ~~[or]~~ physician, or health practitioner when combined with other data elements from the public use data element list.

(j) Notwithstanding Section 552.021 or 552.221, Government Code, the department is not required to make data available or produce data for inspection or duplication under Chapter 552, Government Code, until the program director has verified the data as reasonably accurate.

SECTION 11. Section 108.012, Health and Safety Code, is amended to read as follows:

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The department ~~[council]~~ shall provide a means for computer ~~[computer-to-computer]~~ access to the public use data. All data and reports shall maintain patient confidentiality as provided by Section 108.013.

(b) The department ~~[council]~~ may charge a person requesting public use data or data used in provider quality reports ~~[data]~~ a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the department ~~[council]~~ in collecting and providing the data ~~[and shall be set at a level that will raise revenue sufficient for the operation of the council. The council may not charge a fee for providing public use data to another state agency].~~

SECTION 12. Section 108.013, Health and Safety Code, is amended to read as follows:

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the department ~~[council]~~ shall be used by the department ~~[council]~~ for the benefit of the public. ~~[Subject to specific limitations established by this chapter and council rule, the council shall make determinations on requests for information in favor of access.]~~

(b) The department ~~[council by rule]~~ shall designate the characters to be used as uniform patient and physician or health practitioner identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the department ~~[council]~~ may not release and a person or entity may not gain access to any data:

(1) that could reasonably be expected to reveal the identity of a patient;

(2) that could reasonably be expected to reveal the identity of a physician or health practitioner;

(3) disclosing provider discounts or differentials between payments and billed charges;

(4) relating to actual payments to an identified provider made by a payer; or

(5) submitted to the department ~~[council]~~ in a uniform

submission format that is not included in the public use data element list described by ~~[set established under]~~ Sections 108.006(f) and (g), except in accordance with Subsections (k), (l), (m), and (n) and Section 108.0135.

(d) All data collected and used by the department ~~[and the council]~~ under this chapter is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037;

(2) Section 81.103; and

(3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians or health practitioners and compilations produced from the data collected that identify physicians or health practitioners are not:

(1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or

(2) admissible in any civil, administrative, or criminal proceeding.

(g) The department ~~[council]~~ may not release data elements in a manner that will reveal the identity of a patient. The department ~~[council]~~ may not release data elements in a manner that will reveal the identity of a physician or health practitioner.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician or health practitioner identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law, the ~~[council and the]~~ department may not provide information made confidential by this section to any other agency of this state.

(j) The department ~~[council]~~ shall recommend a [by] rule to ~~[, with the assistance of the advisory committee under Section 108.003(g)(5),]~~ develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) The department may disclose data collected under this chapter that is not included in public use data to any program within the department upon review and approval by the institutional or other review board established under Section 108.0135. This subsection does not authorize disclosure of physician and health care practitioner identifying data.

(l) The department shall implement safeguards to ensure that the department maintains the confidentiality of confidential data in the possession of the department. The department shall identify the confidential data to a program within the department receiving the data as described by Subsection (k). The program receiving the data must ensure that the confidential data remains confidential.

(m) Notwithstanding other law, the confidential data collected under this chapter that is disclosed to another program within the department under this section remains subject to the confidentiality provisions of this chapter.

(n) Subsections (c), (d), and (g) and Sections 108.010(g) and (h) and 108.011(e) and (f) do not apply to the disclosure of data to a department program with respect to which the department is given approval to disclose data under this section. This subsection does not authorize disclosure of physician and health care practitioner identifying data.

SECTION 13. Section 108.0135, Health and Safety Code, is amended to read as follows:

Sec. 108.0135. INSTITUTIONAL [SCIENTIFIC] REVIEW BOARD [PANEL]. (a) The department ~~[council]~~ shall establish a department institutional review board or similar privacy board ~~[scientific review panel]~~ to review and approve valid requests for

access to data not contained in the ~~[information other than]~~ public use data element list established by rule, excluding the names and identification numbers of the patients, physicians, and health practitioners. The members of the board ~~[panel]~~ shall have experience and expertise in ethics, patient confidentiality, and health care data.

(b) For purposes of Subsection (a), an identification number is any unique identifier composed of numeric, alpha, or alphanumeric characters assigned by a person to the patient, physician, or health care practitioner, but does not include a uniform identifier assigned by the department under this chapter ~~[To assist the panel in determining whether to approve a request for information, the council shall adopt rules similar to the federal Health Care Financing Administration's guidelines on releasing data].~~

~~[(c) A request for information other than public use data must be made on the form created by the council.]~~

SECTION 14. Subsections (b), (c), and (d), Section 108.014, Health and Safety Code, are amended to read as follows:

(b) A person who fails to supply available data under this chapter ~~[Sections 108.009 and 108.010]~~ is liable for a civil penalty of not less than \$500 ~~[\$1,000 or more than \$10,000]~~ for each day after the date of the last day on which the entity may timely submit the data. In determining the amount of the civil penalty, the court shall consider:

- (1) the person's previous violations;
- (2) the seriousness ~~[act]~~ of the violation, including the nature, circumstances, extent, and gravity of the violation;
- (3) whether the health and safety of the public was threatened by the violation;
- (4) the demonstrated good faith of the person; and
- (5) the amount necessary to deter future violations.

(c) The attorney general, at the request of the ~~council~~ department, shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund and may be appropriated to ~~[the credit of]~~ the department ~~[health care information account]~~.

SECTION 15. Chapter 108, Health and Safety Code, is amended by adding Sections 108.0142 and 108.0143 to read as follows:

Sec. 108.0142. INJUNCTION. (a) The department may bring an action for an injunction or other process against a person who knowingly or negligently releases data in violation of this chapter or who fails to file data or reports required by this chapter.

(b) The district court may grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 108.0143. REMEDIES CUMULATIVE. The civil penalty and injunction authorized by this chapter are in addition to any other civil, administrative, or criminal action provided by law.

SECTION 16. Subsection (b), Section 531.021, Government Code, is amended to read as follows:

(b) The commission shall:

(1) plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program, including the management of the Medicaid managed care system and the development, procurement, management, and monitoring of contracts necessary to implement the Medicaid managed care system;

(2) adopt reasonable rules and standards governing the determination of fees, charges, and rates for medical assistance payments under Chapter 32, Human Resources Code, in consultation with the agencies that operate the Medicaid program; and

(3) establish requirements for and define the scope of the ongoing evaluation of the Medicaid managed care system conducted in conjunction with the Texas Health Care Information Collection Program ~~[Council]~~ under Chapter 108 ~~[Section 108.0065]~~, Health and Safety Code.

SECTION 17. Section 2054.0541, Government Code, is amended

to read as follows:

Sec. 2054.0541. STATEWIDE HEALTH CARE DATA COLLECTION SYSTEM. The department shall assist the [~~Texas Health Care Information Council and the Texas~~] Department of State Health Services with planning, analyses, and management functions relating to the procurement, use, and implementation of a statewide health care data collection system under Chapter 108, Health and Safety Code.

SECTION 18. Subsection (b), Section 501.253, Insurance Code, is amended to read as follows:

(b) The department and the Department of State Health Services [~~Texas Health Care Information Council~~] shall provide any information or data as requested by the office in furtherance of the duties under this subchapter.

SECTION 19. The following provisions of the Health and Safety Code are repealed:

- (1) Subdivision (2), Section 108.002;
- (2) Section 108.003;
- (3) Section 108.004;
- (4) Section 108.0045;
- (5) Section 108.005;
- (6) Section 108.0062;
- (7) Section 108.0065;
- (8) Section 108.008;
- (9) Section 108.0081;
- (10) Section 108.0085; and
- (11) Section 108.015.

SECTION 20. A reference in law to the Texas Health Care Information Council means the Texas Health Care Information Collection Program.

SECTION 21. This Act takes effect September 1, 2007.

* * * * *