

AN ACT

relating to programs to exchange certain health information between the Health and Human Services Commission and certain health care entities and facilities.

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

SECTION 1. Chapter 531, Government Code, is amended by adding Subchapter V to read as follows:

SUBCHAPTER V. HEALTH INFORMATION EXCHANGE SYSTEMS

Sec. 531.901. DEFINITIONS. In this subchapter:

(1) "Electronic health record" means an electronic record of aggregated health-related information concerning a person that conforms to nationally recognized interoperability standards and that can be created, managed, and consulted by authorized health care providers across two or more health care organizations.

(2) "Electronic medical record" means an electronic record of health-related information concerning a person that can be created, gathered, managed, and consulted by authorized clinicians and staff within a single health care organization.

(3) "Health information exchange system" means a health information exchange system created under this subchapter that moves health-related information among entities according to nationally recognized standards.

(4) "Local or regional health information exchange"

1 means a health information exchange operating in this state that
2 securely exchanges electronic health information, including
3 information for patients receiving services under the child health
4 plan or Medicaid program, among hospitals, clinics, physicians'
5 offices, and other health care providers that are not owned by a
6 single entity or included in a single operational unit or network.

7 Sec. 531.902. ELECTRONIC HEALTH INFORMATION EXCHANGE PILOT
8 PROJECT. (a) The commission shall establish a pilot project in at
9 least one urban area of this state to determine the feasibility,
10 costs, and benefits of exchanging secure electronic health
11 information between the commission and local or regional health
12 information exchanges. The pilot project must include the
13 participation of at least two local or regional health information
14 exchanges.

15 (b) A local or regional health information exchange
16 selected for the pilot project under this section must possess a
17 functioning health information exchange database that exchanges
18 secure electronic health information among hospitals, clinics,
19 physicians' offices, and other health care providers that are not
20 each owned by a single entity or included in a single operational
21 unit or network. The information exchanged by the local or regional
22 health information exchange must include health information for
23 patients receiving services from state and federal health and human
24 services programs administered by the commission.

25 (c) In developing the pilot project under this section, the
26 commission shall:

27 (1) establish specific written guidelines, in

1 conjunction with the health information exchanges participating in
2 the pilot project, to:

3 (A) ensure that information exchanged through
4 the pilot project is used only for the patient's benefit; and

5 (B) specify which health care providers will use
6 which data elements obtained from the commission and for what
7 purposes, including purposes related to reducing costs, improving
8 access, and improving quality of care for patients; and

9 (2) ensure compliance with all state and federal laws
10 and rules related to the transmission of health information,
11 including state privacy laws and the Health Insurance Portability
12 and Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and
13 rules adopted under that Act.

14 (d) The commission and the health information exchanges
15 participating in the pilot project shall at a minimum exchange a
16 patient's medication history under the pilot project. If the
17 executive commissioner determines that there will be no significant
18 cost to the state, the commission shall apply for and actively
19 pursue any waiver from the federal Centers for Medicare and
20 Medicaid Services that may be necessary for the pilot project and
21 shall actively pursue a waiver to use an electronic alternative to
22 the requirement for handwritten certification of certain drugs
23 under 42 C.F.R. Section 447.152. The pilot project may include
24 additional health care information, either at the inception of the
25 project or as part of a subsequent expansion of the scope of the
26 project.

27 (e) The pilot project shall initially use the method of

1 secure transmission that is available at the time implementation of
2 the pilot project begins, and subsequently move toward full
3 interoperability in conjunction with the health information
4 exchange system under Section 531.903.

5 (f) The commission may accept gifts, grants, and donations
6 from any public or private source for the operation of the pilot
7 project.

8 Sec. 531.903. ELECTRONIC HEALTH INFORMATION EXCHANGE
9 SYSTEM. (a) The commission shall develop an electronic health
10 information exchange system to improve the quality, safety, and
11 efficiency of health care services provided under the child health
12 plan and Medicaid programs. In developing the system, the
13 commission shall ensure that:

14 (1) the confidentiality of patients' health
15 information is protected and the privacy of those patients is
16 maintained in accordance with applicable federal and state law,
17 including:

18 (A) Section 1902(a)(7), Social Security Act (42
19 U.S.C. Section 1396a(a)(7));

20 (B) the Health Insurance Portability and
21 Accountability Act of 1996 (Pub. L. No. 104-191);

22 (C) Chapter 552, Government Code;

23 (D) Subchapter G, Chapter 241, Health and Safety
24 Code;

25 (E) Section 12.003, Human Resources Code; and

26 (F) federal and state rules and regulations,
27 including:

1 (i) 42 C.F.R. Part 431, Subpart F; and

2 (ii) 45 C.F.R. Part 164;

3 (2) appropriate information technology systems used
4 by the commission and health and human services agencies are
5 interoperable;

6 (3) the system and external information technology
7 systems are interoperable in receiving and exchanging appropriate
8 electronic health information as necessary to enhance:

9 (A) the comprehensive nature of the information
10 contained in electronic health records; and

11 (B) health care provider efficiency by
12 supporting integration of the information into the electronic
13 health record used by health care providers;

14 (4) the system and other health information systems
15 not described by Subdivision (3) and data warehousing initiatives
16 are interoperable; and

17 (5) the system has the elements described by
18 Subsection (b).

19 (b) The health information exchange system must include the
20 following elements:

21 (1) an authentication process that uses multiple forms
22 of identity verification before allowing access to information
23 systems and data;

24 (2) a formal process for establishing data-sharing
25 agreements within the community of participating providers in
26 accordance with the Health Insurance Portability and
27 Accountability Act of 1996 (Pub. L. No. 104-191) and the American

1 Recovery and Reinvestment Act of 2009 (Pub. L. No. 111-5);

2 (3) a method by which the commission may open or
3 restrict access to the system during a declared state emergency;

4 (4) the capability of appropriately and securely
5 sharing health information with state and federal emergency
6 responders;

7 (5) compatibility with the Nationwide Health
8 Information Network (NHIN) and other national health information
9 technology initiatives coordinated by the Office of the National
10 Coordinator for Health Information Technology;

11 (6) technology that allows for patient identification
12 across multiple systems; and

13 (7) the capability of allowing a health care provider
14 to access the system if the provider has technology that meets
15 current national standards.

16 (c) The commission shall implement the health information
17 exchange system in stages as described by Sections 531.905 through
18 531.908, except that the commission may deviate from those stages
19 if technological advances make a deviation advisable or more
20 efficient.

21 (d) The health information exchange system must be
22 developed in accordance with the Medicaid Information Technology
23 Architecture (MITA) initiative of the Center for Medicaid and State
24 Operations and conform to other standards required under federal
25 law.

26 Sec. 531.904. ELECTRONIC HEALTH INFORMATION EXCHANGE
27 SYSTEM ADVISORY COMMITTEE. (a) The commission shall establish the

1 Electronic Health Information Exchange System Advisory Committee
2 to assist the commission in the performance of the commission's
3 duties under this subchapter.

4 (b) The executive commissioner shall appoint to the
5 advisory committee at least 12 and not more than 16 members who have
6 an interest in health information technology and who have
7 experience in serving persons receiving health care through the
8 child health plan and Medicaid programs.

9 (c) The advisory committee must include the following
10 members:

11 (1) Medicaid providers;

12 (2) child health plan program providers;

13 (3) fee-for-service providers;

14 (4) at least one representative of the Texas Health
15 Services Authority established under Chapter 182, Health and Safety
16 Code;

17 (5) at least one representative of each health and
18 human services agency;

19 (6) at least one representative of a major provider
20 association;

21 (7) at least one representative of a health care
22 facility;

23 (8) at least one representative of a managed care
24 organization;

25 (9) at least one representative of the pharmaceutical
26 industry;

27 (10) at least one representative of Medicaid

1 recipients and child health plan enrollees;

2 (11) at least one representative of a local or
3 regional health information exchange; and

4 (12) at least one representative who is skilled in
5 pediatric medical informatics.

6 (d) The members of the advisory committee must represent the
7 geographic and cultural diversity of the state.

8 (e) The executive commissioner shall appoint the presiding
9 officer of the advisory committee.

10 (f) The advisory committee shall advise the commission on
11 issues regarding the development and implementation of the
12 electronic health information exchange system, including any issue
13 specified by the commission and the following specific issues:

14 (1) data to be included in an electronic health
15 record;

16 (2) presentation of data;

17 (3) useful measures for quality of service and patient
18 health outcomes;

19 (4) federal and state laws regarding privacy and
20 management of private patient information;

21 (5) incentives for increasing health care provider
22 adoption and usage of an electronic health record and the health
23 information exchange system; and

24 (6) data exchange with local or regional health
25 information exchanges to enhance:

26 (A) the comprehensive nature of the information
27 contained in electronic health records; and

1 (B) health care provider efficiency by
2 supporting integration of the information into the electronic
3 health record used by health care providers.

4 (g) The advisory committee shall collaborate with the Texas
5 Health Services Authority to ensure that the health information
6 exchange system is interoperable with, and not an impediment to,
7 the electronic health information infrastructure that the
8 authority assists in developing.

9 Sec. 531.905. ELECTRONIC HEALTH INFORMATION EXCHANGE
10 SYSTEM STAGE ONE: ELECTRONIC HEALTH RECORD. (a) In stage one of
11 implementing the health information exchange system, the
12 commission shall develop and establish an electronic health record
13 for each person who receives medical assistance under the Medicaid
14 program. The electronic health record must be available through a
15 browser-based format.

16 (b) The commission shall consult and collaborate with, and
17 accept recommendations from, physicians and other stakeholders to
18 ensure that electronic health records established under this
19 section support health information exchange with electronic
20 medical records systems in use by physicians in the public and
21 private sectors.

22 (c) The executive commissioner shall adopt rules specifying
23 the information required to be included in the electronic health
24 record. The required information may include, as appropriate:

25 (1) the name and address of each of the person's health
26 care providers;

27 (2) a record of each visit to a health care provider,

1 including diagnoses, procedures performed, and laboratory test
2 results;

3 (3) an immunization record;

4 (4) a prescription history;

5 (5) a list of due and overdue Texas Health Steps
6 medical and dental checkup appointments; and

7 (6) any other available health history that health
8 care providers who provide care for the person determine is
9 important.

10 (d) Information under Subsection (c) may be added to any
11 existing electronic health record or health information technology
12 and may be exchanged with local and regional health information
13 exchanges.

14 (e) The commission shall make an electronic health record
15 for a patient available to the patient through the Internet.

16 Sec. 531.9051. ELECTRONIC HEALTH INFORMATION EXCHANGE
17 SYSTEM STAGE ONE: ENCOUNTER DATA. In stage one of implementing the
18 health information exchange system, the commission shall require
19 for purposes of the implementation each managed care organization
20 with which the commission contracts under Chapter 533 for the
21 provision of Medicaid managed care services or Chapter 62, Health
22 and Safety Code, for the provision of child health plan program
23 services to submit to the commission complete and accurate
24 encounter data not later than the 30th day after the last day of the
25 month in which the managed care organization adjudicated the claim.

26 Sec. 531.906. ELECTRONIC HEALTH INFORMATION EXCHANGE
27 SYSTEM STAGE ONE: ELECTRONIC PRESCRIBING. (a) In stage one of

1 implementing the health information exchange system, the
2 commission shall support and coordinate electronic prescribing
3 tools used by health care providers and health care facilities
4 under the child health plan and Medicaid programs.

5 (b) The commission shall consult and collaborate with, and
6 accept recommendations from, physicians and other stakeholders to
7 ensure that the electronic prescribing tools described by
8 Subsection (a):

9 (1) are integrated with existing electronic
10 prescribing systems otherwise in use in the public and private
11 sectors; and

12 (2) to the extent feasible:

13 (A) provide current payer formulary information
14 at the time a health care provider writes a prescription; and

15 (B) support the electronic transmission of a
16 prescription.

17 (c) The commission may take any reasonable action to comply
18 with this section, including establishing information exchanges
19 with national electronic prescribing networks or providing health
20 care providers with access to an Internet-based prescribing tool
21 developed by the commission.

22 (d) The commission shall apply for and actively pursue any
23 waiver to the child health plan program or the state Medicaid plan
24 from the federal Centers for Medicare and Medicaid Services or any
25 other federal agency as necessary to remove an identified
26 impediment to supporting and implementing electronic prescribing
27 tools under this section, including the requirement for handwritten

1 certification of certain drugs under 42 C.F.R. Section 447.512. If
2 the commission, with assistance from the Legislative Budget Board,
3 determines that the implementation of operational modifications in
4 accordance with a waiver obtained as required by this subsection
5 has resulted in cost increases in the child health plan or Medicaid
6 program, the commission shall take the necessary actions to reverse
7 the operational modifications.

8 Sec. 531.907. ELECTRONIC HEALTH INFORMATION EXCHANGE
9 SYSTEM STAGE TWO: EXPANSION. (a) Based on the recommendations of
10 the advisory committee established under Section 531.904 and
11 feedback provided by interested parties, the commission in stage
12 two of implementing the health information exchange system may
13 expand the system by:

14 (1) providing an electronic health record for each
15 child enrolled in the child health plan program;

16 (2) including state laboratory results information in
17 an electronic health record, including the results of newborn
18 screenings and tests conducted under the Texas Health Steps
19 program, based on the system developed for the health passport
20 under Section 266.006, Family Code;

21 (3) improving data-gathering capabilities for an
22 electronic health record so that the record may include basic
23 health and clinical information in addition to available claims
24 information, as determined by the executive commissioner;

25 (4) using evidence-based technology tools to create a
26 unique health profile to alert health care providers regarding the
27 need for additional care, education, counseling, or health

1 management activities for specific patients; and

2 (5) continuing to enhance the electronic health record
3 created under Section 531.905 as technology becomes available and
4 interoperability capabilities improve.

5 (b) In expanding the system, the commission shall consult
6 and collaborate with, and accept recommendations from, physicians
7 and other stakeholders to ensure that electronic health records
8 provided under this section support health information exchange
9 with electronic medical records systems in use by physicians in the
10 public and private sectors.

11 Sec. 531.908. ELECTRONIC HEALTH INFORMATION EXCHANGE
12 SYSTEM STAGE THREE: EXPANSION. In stage three of implementing the
13 health information exchange system, the commission may expand the
14 system by:

15 (1) developing evidence-based benchmarking tools that
16 can be used by health care providers to evaluate their own
17 performances on health care outcomes and overall quality of care as
18 compared to aggregated performance data regarding peers; and

19 (2) expanding the system to include state agencies,
20 additional health care providers, laboratories, diagnostic
21 facilities, hospitals, and medical offices.

22 Sec. 531.909. INCENTIVES. The commission and the advisory
23 committee established under Section 531.904 shall develop
24 strategies to encourage health care providers to use the health
25 information exchange system, including incentives, education, and
26 outreach tools to increase usage.

27 Sec. 531.910. REPORTS. (a) The commission shall provide an

1 initial report to the Senate Committee on Health and Human Services
2 or its successor, the House Committee on Human Services or its
3 successor, and the House Committee on Public Health or its
4 successor regarding the health information exchange system not
5 later than January 1, 2011, and shall provide a subsequent report to
6 those committees not later than January 1, 2013. Each report must:

7 (1) describe the status of the implementation of the
8 system;

9 (2) specify utilization rates for each health
10 information technology implemented as a component of the system;
11 and

12 (3) identify goals for utilization rates described by
13 Subdivision (2) and actions the commission intends to take to
14 increase utilization rates.

15 (b) This section expires September 2, 2013.

16 Sec. 531.911. RULES. The executive commissioner may adopt
17 rules to implement Sections 531.903 through 531.910.

18 Sec. 531.912. QUALITY OF CARE HEALTH INFORMATION EXCHANGE
19 WITH CERTAIN NURSING FACILITIES. (a) In this section, "nursing
20 facility" means a convalescent or nursing home or related
21 institution licensed under Chapter 242, Health and Safety Code,
22 that provides long-term care services, as defined by Section
23 22.0011, Human Resources Code, to medical assistance recipients.

24 (b) If feasible, the executive commissioner by rule shall
25 establish a quality of care health information exchange with
26 nursing facilities that choose to participate in a program designed
27 to improve the quality of care and services provided to medical

1 assistance recipients. Subject to Subsection (f), the program may
2 provide incentive payments in accordance with this section to
3 encourage facilities to participate in the program.

4 (c) In establishing a quality of care health information
5 exchange program under this section, the executive commissioner
6 shall, subject to Subsection (d), exchange information with
7 participating nursing facilities regarding performance measures.

8 The performance measures:

9 (1) must be:

10 (A) recognized by the executive commissioner as
11 valid indicators of the overall quality of care received by medical
12 assistance recipients; and

13 (B) designed to encourage and reward
14 evidence-based practices among nursing facilities; and

15 (2) may include measures of:

16 (A) quality of life;

17 (B) direct-care staff retention and turnover;

18 (C) recipient satisfaction;

19 (D) employee satisfaction and engagement;

20 (E) the incidence of preventable acute care
21 emergency room services use;

22 (F) regulatory compliance;

23 (G) level of person-centered care; and

24 (H) level of occupancy or of facility
25 utilization.

26 (d) The executive commissioner shall maximize the use of
27 available information technology and limit the number of

1 performance measures adopted under Subsection (c) to achieve
2 administrative cost efficiency and avoid an unreasonable
3 administrative burden on participating nursing facilities.

4 (e) The executive commissioner may:

5 (1) determine the amount of any incentive payment
6 under the program; and

7 (2) enter into a contract with a qualified person, as
8 determined by the executive commissioner, for the following
9 services related to the program:

10 (A) data collection;

11 (B) data analysis; and

12 (C) technical support.

13 (f) The commission may make incentive payments under the
14 program only if money is specifically appropriated for that
15 purpose.

16 Sec. 531.913. HOSPITAL HEALTH INFORMATION EXCHANGE. (a)

17 In this section, "potentially preventable readmission" means a
18 return hospitalization of a person within a period specified by the
19 commission that results from deficiencies in the care or treatment
20 provided to the person during a previous hospital stay or from
21 deficiencies in post-hospital discharge follow-up. The term does
22 not include a hospital readmission necessitated by the occurrence
23 of unrelated events after the discharge. The term includes the
24 readmission of a person to a hospital for:

25 (1) the same condition or procedure for which the
26 person was previously admitted;

27 (2) an infection or other complication resulting from

1 care previously provided;

2 (3) a condition or procedure that indicates that a
3 surgical intervention performed during a previous admission was
4 unsuccessful in achieving the anticipated outcome; or

5 (4) another condition or procedure of a similar
6 nature, as determined by the executive commissioner.

7 (b) The executive commissioner shall adopt rules for
8 identifying potentially preventable readmissions of Medicaid
9 recipients and the commission shall exchange data with hospitals on
10 present-on-admission indicators for purposes of this section.

11 (c) The commission shall establish a health information
12 exchange program to exchange confidential information with each
13 hospital in this state regarding the hospital's performance with
14 respect to potentially preventable readmissions. A hospital shall
15 distribute the information received from the commission to health
16 care providers providing services at the hospital.

17 SECTION 2. Subchapter B, Chapter 62, Health and Safety
18 Code, is amended by adding Section 62.060 to read as follows:

19 Sec. 62.060. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a)
20 In this section, "health information technology" means information
21 technology used to improve the quality, safety, or efficiency of
22 clinical practice, including the core functionalities of an
23 electronic health record, an electronic medical record, a
24 computerized health care provider order entry, electronic
25 prescribing, and clinical decision support technology.

26 (b) The commission shall ensure that any health information
27 technology used by the commission or any entity acting on behalf of

1 the commission in the child health plan program conforms to
2 standards required under federal law.

3 SECTION 3. Section 32.060(a), Human Resources Code, as
4 added by Section 16.01, Chapter 204 (H.B. 4), Acts of the 78th
5 Legislature, Regular Session, 2003, is amended to read as follows:

6 (a) The following are not admissible as evidence in a civil
7 action:

8 (1) any finding by the department that an institution
9 licensed under Chapter 242, Health and Safety Code, has violated a
10 standard for participation in the medical assistance program under
11 this chapter; ~~or~~

12 (2) the fact of the assessment of a monetary penalty
13 against an institution under Section 32.021 or the payment of the
14 penalty by an institution; or

15 (3) any information exchanged between the department
16 and a nursing facility under Section 531.912, Government Code.

17 SECTION 4. Subchapter B, Chapter 32, Human Resources Code,
18 is amended by adding Section 32.073 to read as follows:

19 Sec. 32.073. HEALTH INFORMATION TECHNOLOGY STANDARDS. (a)
20 In this section, "health information technology" means information
21 technology used to improve the quality, safety, or efficiency of
22 clinical practice, including the core functionalities of an
23 electronic health record, an electronic medical record, a
24 computerized health care provider order entry, electronic
25 prescribing, and clinical decision support technology.

26 (b) The Health and Human Services Commission shall ensure
27 that any health information technology used by the commission or

1 any entity acting on behalf of the commission in the medical
2 assistance program conforms to standards required under federal
3 law.

4 SECTION 5. The Health and Human Services Commission shall
5 begin implementing the pilot project established under Section
6 531.902, Government Code, as added by this Act, as soon as feasible
7 after September 1, 2009, but not later than the 60th day after the
8 effective date of this Act.

9 SECTION 6. Not later than January 1, 2011, the Health and
10 Human Services Commission shall:

11 (1) assess, in conjunction with the health information
12 exchanges selected for participation in the pilot project
13 established under Section 531.902, Government Code, as added by
14 this Act, the benefits to the state, patients, and health care
15 providers of exchanging secure health information with local or
16 regional health information exchanges;

17 (2) include, as part of the assessment required by
18 Subdivision (1) of this section, a return on investment analysis
19 for the guidelines developed under Section 531.902(c)(1),
20 Government Code, as added by this Act; and

21 (3) report the commission's findings to the standing
22 committees of the senate and house of representatives having
23 primary jurisdiction over health and human services issues.

24 SECTION 7. As soon as practicable after the effective date
25 of this Act, the executive commissioner of the Health and Human
26 Services Commission shall:

27 (1) adopt rules to implement the health information

1 exchange systems required by Subchapter V, Chapter 531, Government
2 Code, as added by this Act; and

3 (2) appoint the members of the Electronic Health
4 Information Exchange System Advisory Committee established under
5 Section 531.904, Government Code, as added by this Act.

6 SECTION 8. If before implementing any provision of this Act
7 a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 9. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 1218 was passed by the House on May 12, 2009, by the following vote: Yeas 140, Nays 1, 1 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1218 on May 29, 2009, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1218 on May 31, 2009, by the following vote: Yeas 140, Nays 0, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1218

I certify that H.B. No. 1218 was passed by the Senate, with amendments, on May 26, 2009, by the following vote: Yeas 28, Nays 2; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1218 on May 31, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor