

By: Kolkhorst

H.B. No. 2382

Substitute the following for H.B. No. 2382:

By: Coleman

C.S.H.B. No. 2382

A BILL TO BE ENTITLED

AN ACT

relating to information submitted to and maintained in the immunization registry after an individual becomes an adult.

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

SECTION 1. Section 161.0001, Health and Safety Code, is amended by adding Subdivisions (1-c) and (3) and amending Subdivision (2) to read as follows:

(1-c) "Individual's legally authorized representative" means:

(A) a parent, managing conservator, or guardian of an individual, if the individual is a minor;

(B) a guardian of the individual, if the individual has been adjudicated incompetent to manage the individual's personal affairs; or

(C) an agent of the individual authorized under a durable power of attorney for health care.

(2) "Payor" means an insurance company, a health maintenance organization, or another organization that pays a health care provider to provide health care benefits, including providing immunizations [~~to a person younger than 18 years of age~~].

(3) "Electronically," as related to a communication authorized under this chapter, means by e-mail, text message, online communication, or another electronic method of communication approved by the department.

1 SECTION 2. Section 161.007, Health and Safety Code, is
2 amended by amending Subsections (a), (a-1), (b), (b-1), (c), (d),
3 (e), (f), (j), and (k) and adding Subsections (a-2) and (a-3) to
4 read as follows:

5 (a) The department, for the primary purpose of establishing
6 and maintaining a single repository of accurate, complete, and
7 current immunization records to be used in aiding, coordinating,
8 and promoting efficient and cost-effective [~~childhood~~]
9 communicable disease prevention and control efforts, shall
10 establish and maintain an immunization registry. The executive
11 commissioner of the Health and Human Services Commission
12 [~~department~~] by rule shall develop guidelines to:

13 (1) protect the confidentiality of patients in
14 accordance with Section 159.002, Occupations Code;

15 (2) inform the individual or the individual's legally
16 authorized representative [~~a parent, managing conservator, or~~
17 ~~guardian of each patient younger than 18 years of age~~] about the
18 registry;

19 (3) require the written or electronic consent of the
20 individual or the individual's legally authorized
21 representative [~~a parent, managing conservator, or guardian of a~~
22 ~~patient younger than 18 years of age~~] before any information
23 relating to the individual [~~patient~~] is included in the registry;

24 (4) permit the individual or the individual's legally
25 authorized representative [~~a parent, managing conservator, or~~
26 ~~guardian of a patient younger than 18 years of age~~] to withdraw
27 consent for the individual [~~patient~~] to be included in the

1 registry; and

2 (5) determine the process by which consent is
3 verified, including affirmation by a health care provider, birth
4 registrar, regional health information exchange, or local
5 immunization registry that consent has been obtained.

6 (a-1) The written or electronic consent required by
7 Subsection (a)(3) for an individual younger than 18 years of age is
8 required to be obtained only one time. The [~~written~~] consent is
9 valid until the individual [~~child~~] becomes 18 years of age unless
10 the consent is withdrawn in writing or electronically. A parent,
11 managing conservator, or guardian of a minor [~~child~~] may provide
12 the [~~written~~] consent by using an electronic signature on the
13 minor's [~~child's~~] birth certificate.

14 (a-2) An individual's legally authorized representative or
15 the individual, after the individual has attained 18 years of age,
16 may consent in writing or electronically for the individual's
17 information to remain in the registry after the individual's 18th
18 birthday and for the individual's subsequent immunizations to be
19 included in the registry. The written or electronic consent of the
20 minor's legally authorized representative as described by Section
21 161.0001(1-c)(A) must be submitted to the department before the
22 individual's 18th birthday. The written or electronic consent of
23 the individual or the individual's legally authorized
24 representative as described by Section 161.0001(1-c)(B) or (C) must
25 be submitted to the department not later than the individual's 19th
26 birthday. The consent of the representative or individual is valid
27 until the individual or the individual's legally authorized

1 representative withdraws consent in writing or electronically. The
2 department may not include in the registry the immunization
3 information of an individual who is 18 years of age or older until
4 written or electronic consent has been obtained as provided by this
5 subsection. The department shall coordinate with the Texas
6 Education Agency to distribute materials described in Section
7 161.0095(a)(2) to students and parents through local school
8 districts.

9 (a-3) The executive commissioner of the Health and Human
10 Services Commission by rule shall develop guidelines and procedures
11 for obtaining consent from an individual after the individual's
12 18th birthday, including procedures for retaining immunization
13 information in a separate database that is inaccessible by any
14 person other than the department during the one-year period during
15 which an 18-year-old may consent to inclusion in the registry under
16 Subsection (a-2).

17 (b) Except as provided by Section 161.0071, the [The]
18 immunization registry must contain information on the immunization
19 history that is obtained by the department under:

20 (1) this section of each individual [person who is
21 younger than 18 years of age and] for whom consent has been obtained
22 in accordance with guidelines adopted under Subsection (a) or
23 (a-3), as applicable;

24 (2) Section 161.00705 of persons immunized to prepare
25 for or in response to a declared disaster, public health emergency,
26 terrorist attack, hostile military or paramilitary action, or
27 extraordinary law enforcement emergency; and

1 (3) Section 161.00706 of first responders or their
2 immediate family members.

3 (b-1) The department shall remove from the registry
4 information for any individual [~~person~~] for whom consent has been
5 withdrawn. The department may not retain individually identifiable
6 information about any individual [~~person~~]:

7 (1) for whom consent has been withdrawn;

8 (2) for whom a consent for continued inclusion in the
9 registry following the end of the declared disaster, public health
10 emergency, terrorist attack, hostile military or paramilitary
11 action, or extraordinary law enforcement emergency has not been
12 received under Section 161.00705(f); or

13 (3) for whom a request to be removed from the registry
14 has been received under Section 161.00706(e).

15 (c) A payor that receives data elements from a health care
16 provider who administers an immunization to an individual [~~a~~
17 ~~person~~] younger than 18 years of age shall provide the data elements
18 to the department. A payor is required to provide the department
19 with only the data elements the payor receives from a health care
20 provider. A payor that receives data elements from a health care
21 provider who administers an immunization to an individual 18 years
22 of age or older may provide the data elements to the department.

23 The data elements shall be submitted in a format prescribed by the
24 department. The department shall verify consent before including
25 the reported information in the immunization registry. The
26 department may not retain individually identifiable information
27 about an individual [~~a person~~] for whom consent cannot be verified.

1 (d) A health care provider who administers an immunization
2 to an individual [~~a person~~] younger than 18 years of age shall
3 provide data elements regarding an immunization to the department.
4 A health care provider who administers an immunization to an
5 individual 18 years of age or older may submit data elements
6 regarding an immunization to the department. The data elements
7 shall be submitted in a format prescribed by the department. The
8 department shall verify consent before including the information in
9 the immunization registry. The department may not retain
10 individually identifiable information about an individual [~~a~~
11 ~~person~~] for whom consent cannot be verified.

12 (e) The department shall provide notice to a health care
13 provider that submits an immunization history for an individual [~~a~~
14 ~~person~~] for whom consent cannot be verified. The notice shall
15 contain instructions for obtaining consent in accordance with
16 guidelines adopted under Subsections [~~Subsection~~] (a) and (a-3) and
17 resubmitting the immunization history to the department.

18 (f) The department and health care providers may use the
19 registry to provide notices by mail, telephone, personal contact,
20 or other means to an individual or the individual's legally
21 authorized representative [~~a parent, managing conservator, or~~
22 ~~guardian~~] regarding an individual [~~his or her child or ward~~] who is
23 due or overdue for a particular type of immunization according to
24 the department's immunization schedule for children or another
25 analogous schedule recognized by the department for individuals 18
26 years of age or older. The department shall consult with health
27 care providers to determine the most efficient and cost-effective

1 manner of using the registry to provide those notices.

2 (j) Except as provided by Sections 161.00705, 161.00706,
3 and 161.008, information obtained by the department for the
4 immunization registry is confidential and may be disclosed only
5 with the written or electronic consent of the individual or the
6 individual's legally authorized representative [~~, if a child, the~~
7 ~~child's parent, managing conservator, or guardian~~].

8 (k) The executive commissioner of the Health and Human
9 Services Commission [~~board~~] shall adopt rules to implement this
10 section.

11 SECTION 3. Section 161.00705(f), Health and Safety Code, is
12 amended to read as follows:

13 (f) Unless an individual or the individual's legally
14 authorized representative [~~, if a child, the child's parent,~~
15 ~~managing conservator, or guardian~~] consents in writing or
16 electronically to continued inclusion of the [~~child's or other~~]
17 individual's information in the registry, the department shall
18 remove the immunization records collected under this section from
19 the registry on expiration of the period prescribed under
20 Subsection (e).

21 SECTION 4. Section 161.00706(e), Health and Safety Code, is
22 amended to read as follows:

23 (e) A person whose immunization records are included in the
24 immunization registry as authorized by this section may request in
25 writing or electronically that the department remove that
26 information from the registry. Not later than the 10th day after
27 receiving a request under this subsection, the department shall

1 remove the person's immunization records from the registry.

2 SECTION 5. Section 161.0071, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA;
5 EXCLUSION FROM REGISTRY. (a) The first time the department
6 receives registry data for an individual [~~a child~~] for whom the
7 department has received consent to be included in the registry,
8 [~~from a person other than the child's parent, managing conservator,~~
9 ~~or guardian,~~] the department shall send [~~a written~~] notice to the
10 individual or the individual's legally authorized representative
11 [~~child's parent, managing conservator, or guardian~~] disclosing:

12 (1) that providers and payors may be sending the
13 individual's [~~child's~~] immunization information to the department;

14 (2) the information that is included in the registry;

15 (3) the persons to whom the information may be
16 released under Section 161.008(d);

17 (4) the purpose and use of the registry;

18 (5) the procedure to exclude an individual [~~a child~~]
19 from the registry; and

20 (6) the procedure to report a violation if an
21 individual's information [~~a parent, managing conservator, or~~
22 ~~guardian discovers a child~~] is included in the registry after
23 exclusion has been requested or consent has been withdrawn.

24 (b) On discovering that consent to be included in the
25 registry has not been granted or has been withdrawn, the department
26 shall exclude the individual's [~~child's~~] immunization records from
27 the registry and any other registry-related department record that

1 individually identifies the individual [~~child~~].

2 (c) On receipt of a written or electronic request to exclude
3 an individual's [~~a child's~~] immunization records from the registry,
4 the department shall send to the individual or the individual's
5 legally authorized representative [~~a parent, managing conservator,~~
6 ~~or guardian~~] who makes the request a written confirmation of
7 receipt of the request for exclusion and shall exclude the
8 individual's [~~child's~~] records from the registry.

9 (d) The department commits a violation if the department
10 fails to exclude an individual's [~~a child's~~] immunization
11 information from the registry as required by Subsection (b) or (c).

12 (e) The department shall accept a written or electronic
13 statement from an individual or the individual's legally authorized
14 representative [~~a parent, managing conservator, or guardian~~]
15 communicating to the department that an individual's information [~~a~~
16 ~~child~~] should be excluded from the registry, including a statement
17 on a minor's [~~the child's~~] birth certificate, as a request for
18 exclusion under Subsection (c). [~~The written statement may include~~
19 ~~the electronic signature on the child's birth certificate.~~]

20 SECTION 6. Section 161.0072, Health and Safety Code, is
21 amended to read as follows:

22 Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO
23 DEPARTMENT. (a) If the individual or the individual's legally
24 authorized representative [~~parent, managing conservator, or~~
25 ~~guardian of a child~~] has reasonable concern that the individual's
26 [~~child's~~] health care provider is not submitting the immunization
27 history to the department [~~and the parent, managing conservator, or~~

1 ~~guardian wants the child included in the registry],~~ the individual
2 or the individual's legally authorized representative [~~parent,~~
3 ~~managing conservator, or guardian~~] may provide the individual's
4 ~~[child's]~~ immunization history directly to the department to be
5 included in the immunization registry.

6 (b) The individual or the individual's legally authorized
7 representative [~~parent, managing conservator, or guardian of a~~
8 ~~child~~] may send evidence of the individual's ~~[child's]~~ immunization
9 history to the department electronically, by facsimile
10 transmission, or by mail. The evidence may include a copy of:

11 (1) the individual's ~~[child's]~~ medical record
12 indicating the immunization history;

13 (2) an invoice from a health care provider for the
14 immunization; or

15 (3) documentation showing that a claim for the
16 immunization was paid by a payor.

17 (c) The board shall develop rules to ensure that the
18 immunization history submitted by an individual or the individual's
19 legally authorized representative [~~a parent, managing conservator,~~
20 ~~or guardian~~] is medically verified immunization information.

21 SECTION 7. Sections 161.0073(a), (b), and (c), Health and
22 Safety Code, are amended to read as follows:

23 (a) Except as provided by Section 161.00705, information
24 that individually identifies an [~~a child or other~~] individual that
25 is received by the department for the immunization registry is
26 confidential and may be used by the department for registry
27 purposes only.

1 (b) Unless specifically authorized under this subchapter,
2 the department may not release registry information to any
3 individual or entity without the consent of the individual or the
4 individual's legally authorized representative [~~person or, if a~~
5 ~~minor, the parent, managing conservator, or guardian of the child~~].

6 (c) A person required to report information to the
7 department for registry purposes or authorized to receive
8 information from the registry may not disclose the individually
9 identifiable information of an [~~a child or other~~] individual to any
10 other person without the written or electronic consent of the
11 individual or the individual's legally authorized representative
12 [~~, if a child, the parent, managing conservator, or guardian of the~~
13 ~~child~~], except as provided by Chapter 159, Occupations Code, or
14 Section 602.053, Insurance Code.

15 SECTION 8. Sections 161.008(c), (d), (e), (g), and (h),
16 Health and Safety Code, are amended to read as follows:

17 (c) The department may obtain the data constituting an
18 immunization record for an individual [~~a child~~] from a public
19 health district, a local health department, the individual or the
20 individual's legally authorized representative [~~child's parent,~~
21 ~~managing conservator, or guardian~~], a physician to the individual
22 [~~child~~], a payor, or any health care provider licensed or otherwise
23 authorized to administer vaccines. The department shall verify
24 consent before including the reported information in the
25 immunization registry. The department may not retain individually
26 identifiable information about an individual [~~a person~~] for whom
27 consent cannot be verified.

1 (d) The department may release the data constituting an
2 immunization record for the individual [~~child~~] to:

3 (1) any entity that is described by Subsection (c);

4 (2) [~~to~~] a school or child care facility in which the
5 individual [~~child~~] is enrolled; or

6 (3) [~~or to~~] a state agency having legal custody of
7 the individual [~~child~~].

8 (e) An individual or the individual's legally authorized
9 representative [~~A parent, managing conservator, or legal guardian~~]
10 may obtain and on request to the department shall be provided with
11 all individually identifiable immunization registry information
12 concerning the individual [~~his or her child or ward~~].

13 (g) The department may release nonidentifying summary
14 statistics related to the registry that do not individually
15 identify an individual [~~a child~~].

16 (h) The executive commissioner of the Health and Human
17 Services Commission [~~board~~] shall adopt rules to implement this
18 section.

19 SECTION 9. Section 161.009(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) A person commits an offense if the person:

22 (1) negligently releases or discloses immunization
23 registry information in violation of Section 161.007, 161.0071,
24 161.0073, or 161.008;

25 (2) fails to exclude an individual's [~~a child's~~]
26 immunization information in violation of Section 161.0071;

27 (3) fails to remove a person's immunization

1 information in violation of Section 161.00705 or 161.00706; or

2 (4) negligently uses information in the immunization
3 registry to solicit new patients or clients or for other purposes
4 that are not associated with immunization or quality-of-care
5 purposes, unless authorized under this section.

6 SECTION 10. Section 161.0095, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 161.0095. [~~PROVIDER~~] EDUCATION PROGRAMS AND
9 INFORMATION. (a) The department shall develop:

10 (1) continuing education programs for health care
11 providers relating to immunizations and the vaccines for children
12 program operated by the department under authority of 42 U.S.C.
13 Section 1396s; and

14 (2) educational information, for health care
15 providers, health care clinics, hospitals, and any other health
16 care facility that provides health care to children 14 to 18 years
17 of age, relating to the immunization registry and the option for an
18 individual who is 18 years of age or older to consent to submission
19 and retention of the individual's information in the immunization
20 registry[~~, as amended~~].

21 (b) The department shall establish a work group to assist
22 the department in developing the continuing education programs and
23 educational information [~~materials~~]. The work group shall include
24 physicians, nurses, department representatives, representatives of
25 managed care organizations that provide health care services under
26 Chapter 533, Government Code, representatives of health plan
27 providers that provide health care services under Chapter 62, and

1 members of the public.

2 SECTION 11. This Act takes effect September 1, 2009.