

By: Nelson

S.B. No. 346

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 Subdivision (1-c) 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]~~.

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

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

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

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

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

20 (4) permit the individual or the individual's legally
21 authorized representative ~~[a parent, managing conservator, or~~
22 ~~guardian of a patient younger than 18 years of age]~~ to withdraw
23 consent for the individual ~~[patient]~~ to be included in the
24 registry; and

25 (5) determine the process by which consent is
26 verified, including affirmation by a health care provider, birth
27 registrar, regional health information exchange, or local

immunization registry that consent has been obtained.

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 The written consent is valid until the individual [~~child~~] becomes 18 years of age unless the consent is withdrawn in writing.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

(a-2) Not later than the 30th day before the 18th birthday of an individual included in the immunization registry, the department shall notify the individual and the individual's legally authorized representative that the individual or representative may consent in writing for the individual's information to remain in the registry and the individual's subsequent immunizations to be included in the registry. The written consent of the representative must be submitted to the department before the individual's 18th birthday. The written consent of the individual must be submitted to the department not later than the 30th day after the individual's 18th birthday. The written consent of the representative or individual is valid until the individual or the individual's legally authorized representative withdraws consent in writing. The executive commissioner of the Health and Human Services Commission by rule shall develop guidelines and procedures for obtaining consent from an individual who is 18 years of age, including procedures for retaining immunization information during the 30-day period during which an 18-year-old may consent to inclusion in the registry under this subsection.

1 (b) Except as provided by Section 161.0071, the ~~[The]~~
2 immunization registry must contain information on the immunization
3 history that is obtained by the department under:

4 (1) this section of each individual ~~[person who is~~
5 ~~younger than 18 years of age and]~~ for whom consent has been obtained
6 in accordance with guidelines adopted under Subsection (a) or
7 (a-2), as applicable;

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

12 (3) Section 161.00706 of first responders or their
13 immediate family members.

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

18 (1) for whom consent has been withdrawn;

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

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

26 (c) A payor that receives data elements from a health care
27 provider who administers an immunization to an individual ~~[a~~

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

12 (d) A health care provider who administers an immunization
13 to an individual [~~a person~~] younger than 18 years of age shall
14 provide data elements regarding an immunization to the department.
15 A health care provider who administers an immunization to an
16 individual 18 years of age or older may submit data elements
17 regarding an immunization to the department. The data elements
18 shall be submitted in a format prescribed by the department. The
19 department shall verify consent before including the information in
20 the immunization registry. The department may not retain
21 individually identifiable information about an individual [~~a~~
22 ~~person~~] for whom consent cannot be verified.

23 (e) The department shall provide notice to a health care
24 provider that submits an immunization history for an individual [~~a~~
25 ~~person~~] for whom consent cannot be verified. The notice shall
26 contain instructions for obtaining consent in accordance with
27 guidelines adopted under Subsections [~~Subsection~~] (a) and (a-2) and

resubmitting the immunization history to the department.

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

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

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

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

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual [~~a child~~] for whom the department has received consent to be included in the registry,

1 ~~[from a person other than the child's parent, managing conservator,~~
 2 ~~or guardian,]~~ the department shall send a written notice to the
 3 individual or the individual's legally authorized representative
 4 ~~[child's parent, managing conservator, or guardian]~~ disclosing:

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

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

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

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

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

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

17 (b) On discovering that consent to be included in the
 18 registry has not been granted or has been withdrawn, the department
 19 shall exclude the individual's ~~[child's]~~ immunization records from
 20 the registry and any other registry-related department record that
 21 individually identifies the individual ~~[child]~~.

22 (c) On receipt of a written request to exclude an
 23 individual's ~~[a child's]~~ immunization records from the registry,
 24 the department shall send to the individual or the individual's
 25 legally authorized representative ~~[a parent, managing conservator,~~
 26 ~~or guardian]~~ who makes the request a written confirmation of
 27 receipt of the request for exclusion and shall exclude the

individual's ~~[child's]~~ records from the registry.

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

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

SECTION 4. Section 161.0072, Health and Safety Code, is amended to read as follows:

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative ~~[parent, managing conservator, or guardian of a child]~~ has reasonable concern that the individual's ~~[child's]~~ health care provider is not submitting the immunization history to the department ~~[and the parent, managing conservator, or guardian wants the child included in the registry]~~, the individual or the individual's legally authorized representative ~~[parent, managing conservator, or guardian]~~ may provide the individual's ~~[child's]~~ immunization history directly to the department to be included in the immunization registry.

(b) The individual or the individual's legally authorized representative ~~[parent, managing conservator, or guardian of a~~

1 ~~child~~] may send evidence of the individual's ~~[child's]~~ immunization
2 history to the department by facsimile transmission or by mail. The
3 evidence may include a copy of:

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

6 (2) an invoice from a health care provider for the
7 immunization; or

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

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

14 SECTION 5. Sections 161.0073(a), (b), and (c), Health and
15 Safety Code, are amended to read as follows:

16 (a) Except as provided by Section 161.00705, information
17 that individually identifies an ~~[a child or other]~~ individual that
18 is received by the department for the immunization registry is
19 confidential and may be used by the department for registry
20 purposes only.

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

26 (c) A person required to report information to the
27 department for registry purposes or authorized to receive

1 information from the registry may not disclose the individually
 2 identifiable information of an ~~[a child or other]~~ individual to any
 3 other person without written consent of the individual or the
 4 individual's legally authorized representative ~~[, if a child, the~~
 5 ~~parent, managing conservator, or guardian of the child]~~, except as
 6 provided by Chapter 159, Occupations Code, or Section 602.053,
 7 Insurance Code.

8 SECTION 6. Sections 161.008(c), (d), (e), (g), and (h),
 9 Health and Safety Code, are amended to read as follows:

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

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

- 23 (1) any entity that is described by Subsection (c);
- 24 (2) ~~[, to]~~ a school or child care facility in which the
 25 individual ~~[child]~~ is enrolled; or
- 26 (3) ~~[, or to]~~ a state agency having legal custody of
 27 the individual ~~[child]~~.

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

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

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

12 SECTION 7. Section 161.009(a), Health and Safety Code, is
13 amended to read as follows:

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

15 (1) negligently releases or discloses immunization
16 registry information in violation of Section 161.007, 161.0071,
17 161.0073, or 161.008;

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

20 (3) fails to remove a person's immunization
21 information in violation of Section 161.00705 or 161.00706; or

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

26 SECTION 8. This Act takes effect September 1, 2009.