

By: Zaffirini

S.B. No. 1251

A BILL TO BE ENTITLED

AN ACT

relating to information submitted to, maintained in, and released from the immunization registry.

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. Sections 161.007(a), (a-1), (b), (b-1), (c), (d), (e), (f), (j), and (k), Health and Safety Code, are amended to read as follows:

(a) The department, for the primary purpose of establishing

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

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

10 (2) inform the individual or the individual's legally
11 authorized representative ~~[a parent, managing conservator, or~~
12 ~~guardian of each patient younger than 18 years of age]~~ about the
13 registry and that registry information may be released under
14 Section 161.00705(g)(2) or (3) in the event of certain disasters,
15 emergencies, attacks, or actions;

16 (3) require the written consent of the individual or
17 the individual's legally authorized representative for the
18 individual's inclusion in the registry ~~[a parent, managing~~
19 ~~conservator, or guardian of a patient younger than 18 years of age]~~
20 before any information relating to the individual ~~[patient]~~ is
21 disclosed to any other user of ~~[included in]~~ the registry except as
22 otherwise provided by this subchapter;

23 (4) permit the individual or the individual's legally
24 authorized representative ~~[a parent, managing conservator, or~~
25 ~~guardian of a patient younger than 18 years of age]~~ to withdraw
26 consent for the individual ~~[patient]~~ to be included in the
27 registry, except as provided by Section 161.00705(e); ~~[and]~~

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

5 (6) allow the department to retain information in the
6 registry until a person's death.

7 (a-1) The written consent required by Subsection (a)(3) is
8 required to be obtained only one time. The written consent is valid
9 until the individual or the individual's legally authorized
10 representative withdraws [~~child becomes 18 years of age unless~~] the
11 consent [~~is withdrawn~~] in writing. A parent, managing conservator,
12 or guardian of a minor [~~child~~] may provide the written consent by
13 using an electronic signature on the minor's [~~child's~~] birth
14 certificate. The executive commissioner of the Health and Human
15 Services Commission by rule shall develop procedures for obtaining
16 consent from an individual who is 18 years of age or older.

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);

23 (2) Section 161.00705 of persons immunized to prepare
24 for or in response to a declared disaster, public health emergency,
25 terrorist attack, hostile military or paramilitary action, or
26 extraordinary law enforcement emergency in this state or another
27 state; 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. Except as provided by this subchapter, the [~~The~~]
25 department shall verify consent before disclosing [~~including~~] the
26 reported information to other users of [~~in~~] the immunization
27 registry. The department may [~~not~~] retain individually

1 identifiable information about an individual obtained under this
2 subsection [~~a person~~] for whom consent cannot be verified. The
3 department may not disclose the information to other users of the
4 registry until consent is verified, except that the department may
5 disclose the information to public health officials or health
6 authorities during a disaster, emergency, attack, or action
7 described by Section 161.00705(a).

8 (d) A health care provider who administers an immunization
9 to an individual [~~a person~~] younger than 18 years of age shall
10 provide data elements regarding an immunization to the department.
11 A health care provider who administers an immunization to an
12 individual 18 years of age or older may submit data elements
13 regarding an immunization to the department. The data elements
14 shall be submitted in a format prescribed by the department. Except
15 as provided by this subchapter, the [~~The~~] department shall verify
16 consent before disclosing [~~including~~] the information to other
17 users of [~~in~~] the immunization registry. The department may [~~not~~]
18 retain individually identifiable information about an individual
19 obtained under this subsection [~~a person~~] for whom consent cannot
20 be verified. The department may not disclose the information to
21 other users of the registry until consent is verified, except that
22 the department may disclose the information to public health
23 officials or health authorities during a disaster, emergency,
24 attack, or action described by Section 161.00705(a).

25 (e) The department shall provide notice to a health care
26 provider that submits an immunization history for an individual [~~a~~
27 ~~person~~] for whom consent cannot be verified. The notice shall

1 contain instructions for obtaining consent in accordance with
2 guidelines adopted under Subsection (a) and resubmitting the
3 immunization history to the department.

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

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

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

24 SECTION 3. Section 161.00705, Health and Safety Code, is
25 amended by amending Subsections (a), (c), (e), (f), and (g) and
26 adding Subsections (a-1) and (j) to read as follows:

27 (a) The department shall maintain a registry of persons who

1 receive an immunization, antiviral, and other medication
2 administered to prepare for a potential disaster, public health
3 emergency, terrorist attack, hostile military or paramilitary
4 action, or extraordinary law enforcement emergency in this state or
5 another state or in response to a declared disaster, public health
6 emergency, terrorist attack, hostile military or paramilitary
7 action, or extraordinary law enforcement emergency in this state or
8 in another state. A health care provider who administers an
9 immunization, antiviral, or other medication to a resident of this
10 state or to a resident of another state that has relocated or
11 evacuated to this state shall provide the data elements to the
12 department.

13 (a-1) The department may accept from a health authority in
14 another state or a local health authority in another state
15 immunization information for inclusion in the registry under this
16 section if the department determines that:

17 (1) residents of that state have evacuated or
18 relocated to this state in response to a declared disaster, public
19 health emergency, terrorist attack, hostile military or
20 paramilitary action, or extraordinary law enforcement emergency in
21 that state; or

22 (2) residents of this state have evacuated or
23 relocated to that state in response to a declared disaster, public
24 health emergency, terrorist attack, hostile military or
25 paramilitary action, or extraordinary law enforcement emergency in
26 this state.

27 (c) The department shall track adverse reactions to an

1 immunization, antiviral, and other medication administered to
2 prepare for a potential disaster, public health emergency,
3 terrorist attack, hostile military or paramilitary action, or
4 extraordinary law enforcement emergency in this state or another
5 state or in response to a declared disaster, public health
6 emergency, terrorist attack, hostile military or paramilitary
7 action, or extraordinary law enforcement emergency in this state or
8 another state. A health care provider who administers an
9 immunization, antiviral, or other medication to a resident of this
10 state or to a resident of another state that has relocated or
11 evacuated to this state may provide data related to adverse
12 reactions to the department.

13 (e) The executive commissioner of the Health and Human
14 Services Commission by rule shall determine the period during which
15 the information collected under this section must remain in the
16 immunization registry following the end of the disaster, public
17 health emergency, terrorist attack, hostile military or
18 paramilitary action, or extraordinary law enforcement emergency in
19 this state or another state.

20 (f) Unless an individual or, if a minor [~~child~~], the minor's
21 [~~child's~~] parent, managing conservator, or guardian consents in
22 writing to continued inclusion of the minor's [~~child's~~] or other
23 individual's information in the registry, the department shall
24 remove the immunization records collected under this section from
25 the registry on expiration of the period prescribed under
26 Subsection (e).

27 (g) The immunization information of a minor [~~child~~] or other

1 individual received by the department under this section, including
2 individually identifiable information, may be released only:

3 (1) on consent of the individual or, if a minor
4 [~~child~~], the minor's [~~child's~~] parent, managing conservator, or
5 guardian; [~~or~~]

6 (2) to a state agency or health care provider in this
7 state consistent with the purposes of this subchapter or the
8 purposes of aiding or coordinating communicable disease prevention
9 and control efforts during a declared disaster, public health
10 emergency, terrorist attack, hostile military or paramilitary
11 action, or extraordinary law enforcement emergency in this state or
12 another state; or

13 (3) to an appropriate health authority or local health
14 authority of another state to which residents of this state have
15 evacuated or relocated in response to a declared disaster, public
16 health emergency, terrorist attack, hostile military or
17 paramilitary action, or extraordinary law enforcement emergency
18 consistent with the purposes of this subchapter or the purposes of
19 aiding or coordinating communicable disease prevention and control
20 efforts during a declared disaster, public health emergency,
21 terrorist attack, hostile military or paramilitary action, or
22 extraordinary law enforcement emergency.

23 (j) The executive commissioner of the Health and Human
24 Services Commission may enter into a memorandum of agreement with
25 another state on:

26 (1) the release and use of registry information under
27 this section to the appropriate health authority or local health

1 authority of that state; or

2 (2) the receipt and use of information submitted by
3 the health authority or local health authority of that state for
4 inclusion in the registry under this section.

5 SECTION 4. Sections 161.00706(c) and (d), Health and Safety
6 Code, are amended to read as follows:

7 (c) The executive commissioner of the Health and Human
8 Services Commission shall:

9 (1) develop rules to ensure that immunization history
10 submitted under Subsection (a)(2) is medically verified
11 immunization information;

12 (2) develop guidelines for use by the department in
13 informing first responders about the registry and that registry
14 information may be released under Section 161.00705 in the event of
15 certain disasters, emergencies, attacks, or actions; and

16 (3) adopt rules necessary for the implementation of
17 this section.

18 (d) Except as provided by Section 161.00705, in the event of
19 certain disasters, emergencies, attacks, or actions, a [A] person's
20 immunization history or data received by the department under this
21 section may be released only:

22 (1) on consent of the person; or

23 (2) to any health care provider licensed or otherwise
24 authorized to administer vaccines.

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

27 Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA;

1 EXCLUSION FROM REGISTRY. (a) The first time the department
2 receives registry data for an individual [~~a child~~] for whom the
3 department has received consent to be included in the registry,
4 [~~from a person other than the child's parent, managing conservator,~~
5 ~~or guardian,~~] the department shall send a written notice to the
6 individual or the individual's legally authorized representative
7 [~~child's parent, managing conservator, or guardian~~] disclosing:

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

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

11 (3) the persons to whom the information may be
12 released under Section 161.00705(g)(2) or (3) and Section
13 161.008(d);

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

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

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

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

26 (c) On receipt of a written request to exclude an
27 individual's [~~a child's~~] immunization records from the registry,

1 the department shall send to the individual or the individual's
2 legally authorized representative [~~a parent, managing conservator,~~
3 ~~or guardian~~] who makes the request a written confirmation of
4 receipt of the request for exclusion and shall exclude the
5 individual's [~~child's~~] records from the registry.

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

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

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

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

1 ~~[child's]~~ immunization history directly to the department to be
2 included in the immunization registry.

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

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

10 (2) an invoice from a health care provider for the
11 immunization; or

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

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

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

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

25 (b) Unless specifically authorized under this subchapter,
26 the department may not release registry information to any
27 individual or entity without the consent of the individual or the

1 individual's legally authorized representative [~~person or, if a~~
2 ~~minor, the parent, managing conservator, or guardian of the child~~].

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

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

14 (c) The department may obtain the data constituting an
15 immunization record for an individual [~~a child~~] from a public
16 health district, a local health department, the individual or the
17 individual's legally authorized representative [~~child's parent,~~
18 ~~managing conservator, or guardian~~], a physician to the individual
19 [~~child~~], a payor, or any health care provider licensed or otherwise
20 authorized to administer vaccines. Except as provided by this
21 subchapter, the [~~The~~] department shall verify consent before
22 disclosing [~~including~~] the reported information in the
23 immunization registry. The department may [~~not~~] retain
24 individually identifiable information about an individual obtained
25 under this subsection [~~a person~~] for whom consent cannot be
26 verified. The department may not disclose the information to other
27 users of the registry until consent is verified, except that the

1 department may disclose the information to public health officials
2 or health authorities during a disaster, emergency, attack, or
3 action described by Section 161.00705 in accordance with that
4 section.

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

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

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

10 (3) [~~or to~~] a state agency having legal custody of
11 the individual; or

12 (4) any entity as necessary to verify an immunization
13 required for:

14 (A) admittance in a professional school,
15 college, or university;

16 (B) certification in a health care profession;

17 (C) enlistment in the United States armed forces;

18 or

19 (D) any other purpose at the request of the
20 individual [~~child~~].

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

26 (g) The department may release nonidentifying summary
27 statistics related to the registry that do not individually

1 identify an individual [~~a child~~].

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

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

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

8 (1) negligently releases or discloses immunization
9 registry information in violation of Section 161.007, 161.0071,
10 161.0073, or 161.008;

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

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

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

19 SECTION 10. This Act takes effect September 1, 2009.