

## **BILL ANALYSIS**

C.S.H.B. 1875  
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Government Efficiency & Reform  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Over the past few decades, the Texas Legislature had added numerous new programs, councils, and task forces to various state codes. The effectiveness of these programs, councils, and task forces usually is not evaluated unless the agency that administers that program goes under a Texas Sunset Advisory Commission review. Even in those instances, it may be possible for an individual program, council, or task force buried inside large health-related state entities such as the Health and Human Services Commission either to be overlooked or to not receive a thorough review.

Considering the budgetary cuts currently experienced by state agencies, funds must be used in the most effective manner. Health-related state agencies currently provide administrative and personnel support for nearly all task forces, councils, and programs, but as the number of programs, councils, and perpetual task forces increases so does the burden on state agencies to support them, which may result in the diversion of agency resources from the agency's critical mission. C.S.H.B. 1875 seek to address these matters by amending statutory provisions to ensure that agency resources are used in the best possible manner to serve Texans.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of State Health Services and the executive commissioner of the Health and Human Service Commission in SECTION 51 of this bill.

### **ANALYSIS**

C.S.H.B. 1875 amends the Health and Safety Code to make each of the following health programs and systems subject to review under the Texas Sunset Act as if the program or system were a state agency subject to review under that act and to require the Department of State Health Services (DSHS) to perform a duty as it relates to the program or system to the extent that the act places a duty on a state agency subject to review under the act:

- the services program for children with special health care needs;
- the screening program for special senses and communication disorders;
- the program to detect abnormal spinal curvature in children;
- the program for the control and eradication of pediculosis in minors;
- the children's outreach heart program;
- the epilepsy program;
- the hemophilia assistance program;
- the oral health improvement services program;
- the system created to encourage hospitals to provide tertiary medical services and stabilization services;

- the newborn hearing screening, tracking, and intervention program;
- the assistance program for veterans exposed to a chemical defoliant or herbicide or other causative agent, including Agent Orange;
- the state grant program to nonprofit community organizations for HIV education, prevention, and risk reduction programs and for treatment, health, and social service programs for persons with HIV infection;
- the Texas HIV medication program;
- the testing, registration, and counseling programs for AIDS and HIV;
- the osteoporosis program;
- the prostate cancer education program;
- the arthritis control and prevention program; and
- the comprehensive health professions resource center.

The bill makes the following entities subject to review under the Texas Sunset Act:

- the kidney health care division;
- the Interagency Coordinating Council for HIV and Hepatitis;
- the advisory council on alternative treatments for breast cancer;
- the advisory committee created to advise the Office of Rural Health Care on breast cancer screenings;
- the lung cancer advisory council;
- the Council on Cardiovascular Disease and Stroke;
- the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events;
- the Texas Council on Alzheimer's Disease and Related Disorders;
- the Texas Diabetes Council;
- the health disparities task force; and
- the Border Health Foundation.

The bill sets the date on which a program, system, or entity subject to the Texas Sunset Act under the bill's provisions is abolished and related provisions of law expire, unless continued in existence as provided by that act, as September 1, 2019.

C.S.H.B. 1875 requires the executive commissioner of the Health and Human Services Commission (HHSC) to oversee the study of alternate ways to assure clinical competency of graduates of nursing education programs. The bill postpones the date on which the Texas Organ, Tissue, and Eye Donor Council is abolished and provisions of law relating to the council expire, unless continued in existence by the Texas Sunset Act, from September 1, 2017 to September 1, 2019. The bill postpones the date on which the Interagency Task Force for Children with Special Needs is abolished and provisions of law relating to the task force expire, unless continued in existence by the Texas Sunset Act, from September 1, 2015, to September 1, 2019.

C.S.H.B. 1875 repeals provisions of law relating to the Interagency Obesity Council, including provisions relating to the composition of the council, contracts for assistance, gifts and grants, requirements for the evidence-based public health awareness plan, and reporting and meeting requirements and creates the Obesity Coordination Effort. The bill requires the institutions of higher education that receive state money for obesity research to jointly review, under the Obesity Coordination Effort, the status of the programs of the Department of Agriculture, DSHS, and the Texas Education Agency that promote better health and nutrition and prevent obesity

among children and adults in Texas. The bill requires those institutions of higher education to jointly submit a report relating to the review of such programs to the governor, lieutenant governor, and the speaker of the house of representatives and changes the report submission date from not later than January 15 of each odd-numbered year to not later than January 15 of each even-numbered year. The bill provides for the meaning of "institution of higher education" by reference to the Education Code.

C.S.H.B. 1875 redefines "health care facility" for purposes of provisions relating to the limitation on inspection and other regulation of a health care facility to specify that the term does not include a chemical dependency treatment facility licensed by DSHS, rather than a treatment facility licensed by the Texas Commission on Alcohol and Drug Abuse. The bill incorporates into the statutory provisions relating to the powers and duties of hospitals a provision relating to procedures and civil penalties for a hospital that fails to submit required data to DSHS that previously was included among provisions relating to the statewide health coordinating council repealed by the bill and makes a conforming change.

C.S.H.B. 1875 authorizes DSHS to collect, and requires providers to submit to DSHS or another entity as determined by DSHS, all data as required by the bill's provisions governing the submission and collection of health care data. The bill requires the data to be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available. The bill requires DSHS to adopt rules to implement the data submission requirements in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. The bill prohibits a rule adopted by DSHS that requires submission of a data element that was not required to be submitted before adoption of the rule from taking effect before the 90th day after the date of the rule's adoption and requires that the rule take effect not later than the first anniversary after the date the rule is adopted. The bill authorizes a rural provider to provide the data. The bill authorizes a hospital to provide the data if the hospital is exempt from state franchise, sales, property, or other state or local taxes and does not seek or receive reimbursement for providing health care services to patients from any source.

C.S.H.B. 1875 prohibits DSHS from collecting data from an individual physician or an entity composed entirely of physicians that is formed under specified statutory provisions governing professional entities or is a professional association, a limited liability partnership, or a limited liability company, except to the extent that the entity owns and operates a health care facility in Texas. The bill establishes that these prohibitions do not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility.

C.S.H.B. 1875 establishes that DSHS is the single collection point for the receipt of data from providers and authorizes DSHS to transfer collection of any data required to be collected by DSHS under any other law to the statewide health care data collection system. The bill prohibits DSHS from requiring a provider to submit data more frequently than quarterly and authorizes a provider to submit data more frequently than quarterly. The bill requires DSHS to coordinate data collection with the data collection formats used by federally qualified health centers. The bill requires a federally qualified health center to submit annually to DSHS a copy of the Medicaid cost report of federally qualified health centers and requires a provider receiving federal funds under certain specified federal law to submit annually to DSHS a copy of the Bureau of Common Reporting Requirements data report developed by the United States Public Health Service. The bill requires DSHS to coordinate data collection with the data submission formats used by hospitals and other providers. The bill requires DSHS to accept data in the format developed by the National Uniform Billing Committee and HCFA-1500 or their successors or other universally accepted standardized forms that hospitals and other providers use for other complementary purposes. The bill requires DSHS by rule to develop reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

C.S.H.B. 1875 requires DSHS to collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers; to prioritize data collection efforts on inpatient and outpatient surgical and radiological procedures from hospitals, ambulatory surgical centers, and freestanding radiology centers; and to obtain, to the extent feasible, from public records the information that is available from those records.

C.S.H.B. 1875 requires a health benefit plan provider to submit annually to DSHS aggregate data by service area required by the Health Plan Employer Data and Information Set as operated by the National Committee for Quality Assurance. The bill authorizes DSHS to approve the submission of data in accordance with other methods generally used by the health benefit plan industry and requires DSHS, if the Health Plan Employer Data and Information Set does not generally apply to a health benefit plan, to require submission of data in accordance with other methods. The bill establishes that these provisions do not relieve a health care facility that provides services under a health benefit plan from the bill's data submission and collection requirements. The bill establishes that information submitted is subject to the bill's provisions governing dissemination of public use data and DSHS publications and exempt from the bill's provisions governing collection and dissemination of provider data quality.

C.S.H.B. 1875 requires DSHS to collect data reflecting provider quality based on a methodology and review process established through the department's rulemaking process, which methodology must identify and measure quality standards and adhere to any federal mandates. The bill requires DSHS to study and analyze initial methodologies for obtaining provider quality data, including outcome data, which data must be published and made available to the public on a time schedule DSHS considers appropriate.

C.S.H.B. 1875 establishes that, if DSHS determines that provider quality data does not provide the intended result or is inaccurate or inappropriate for dissemination, DSHS is not required to publish the data or reports based in whole or in part on the data and establishes that this provision does not affect the release of public use data in accordance with the bill's provisions or the release of information submitted under the bill's provisions.

C.S.H.B. 1875 requires DSHS to adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The bill requires DSHS to make the comments available to the public and in an electronic form accessible through the Internet and requires the comments to be attached to any public release of provider quality data. The bill requires providers to submit the comments to DSHS to be attached to the public release of provider quality data in the same format as the provider quality data that is to be released.

C.S.H.B. 1875 requires the methodology adopted by DSHS for measuring quality to include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality. The bill requires any release of provider quality data to comply with the bill's provisions relating to the dissemination of public use data. The bill prohibits a provider quality data report from identifying an individual physician by name and requires the report to identify a physician by the uniform physician identifier designated by DSHS. The bill requires DSHS to release provider quality data in an aggregate form without uniform physician identifiers if the data relates to a rural provider or the cell size of the data is less than the minimum size established by DSHS rule that would enable identification of an individual patient or physician.

C.S.H.B. 1875 requires DSHS to promptly provide public use data and health benefit plan data to those requesting it, provides that the public use data does not include provider quality data or confidential data prescribed by the bill's provisions, and requires DSHS to prepare and issue annual reports, subject to restrictions on access to DSHS data and using the public use data and other data, records, and matters of record available to DSHS, to the governor, legislature, and the

public. The bill requires DSHS to use public use data to prepare and issue reports that provide information relating to providers, including the incidence rate of selected medical or surgical procedures. The bill establishes certain requirements and prohibitions relating to such a report and requires DSHS by rule to designate the characters to be used as uniform physician identifiers. The bill requires DSHS to use public use data to prepare and issue reports that provide information for review and analysis by HHSC relating to services that are provided in a niche hospital and by a physician with an ownership interest in the niche hospital. The bill exempts from this provision an ownership interest in publicly available shares of a registered investment company, including a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns a niche hospital. The bill requires DSHS to adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public and, if public use data is requested from DSHS about a specific provider, to notify the provider about the release of the data. The bill prohibits a provider from interfering with the release of the data.

C.S.H.B. 1875 requires a report issued by DSHS to include a reasonable review and comment period for the affected providers before public release of the report. The bill requires DSHS to adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The bill establishes certain requirements relating to the comments. The bill requires electronic media containing public use data and provider quality reports that is released to the public to include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports. The bill requires DSHS to release public use data in an aggregate form without uniform physician identifiers if the data relates to a rural provider or the cell size of the data is less than the minimum size established by department rule that would enable identification of an individual patient or physician.

C.S.H.B. 1875 requires DSHS to provide for computer-to-computer access to the public use data. The bill requires a report to maintain patient confidentiality. The bill authorizes DSHS to charge a person requesting public use or provider quality data a fee for the data that may reflect the quantity of information provided and the expense incurred in collecting and providing the data but must be set at a level that will raise revenue sufficient for the DSHS operations relating to the submission and collection of health care data. The bill prohibits DSHS from charging a fee for providing public use data to a state agency.

C.S.H.B. 1875 requires DSHS to use data received by DSHS for the benefit of the public and to make determinations, subject to certain limitations and DSHS rule, on requests for information in favor of access. The bill requires DSHS by rule to designate the characters to be used as uniform patient identifiers. The bill establishes that the basis for assignment of the characters and the manner in which the characters are assigned are confidential. The bill prohibits DSHS, unless specifically authorized by the bill's provisions relating to submission and collection of health care data, from releasing, and prohibits a person from gaining access to, certain specified data. The bill establishes that all data collected and used by DSHS under the bill's provision relating to submission and collection of health care data is subject to the confidentiality provisions and criminal penalties of the Communicable Disease Prevention and Control Act and statutory provisions relating to the powers and duties of hospitals and physician-patient communication. The bill establishes that data on patients, compilations produced from the data collected that identifies a patient, data on physicians, and compilations produced from the data collected that identifies a physician are not subject to discovery, subpoena, or any other means of legal compulsion for release to any person or entity or admissible in any civil, administrative, or criminal proceeding.

C.S.H.B. 1875 prohibits DSHS from releasing data elements in a manner that will reveal the identity of a patient or a physician. The bill establishes that prohibitions on certain data releases do not prohibit the release of a uniform physician identifier in conjunction with a provider quality report or associated public use data. The bill prohibits DSHS from providing information

made confidential by this provision to any other agency of this state and requires DSHS by rule to develop and implement a mechanism to comply with the provisions of the bill prohibiting the release of and access to certain specified data.

C.S.H.B. 1875 requires DSHS to establish a scientific review panel to review and approve requests for information other than public use data. The bill requires members of the panel to have experience and expertise in ethics, patient confidentiality, and health care data. The bill requires DSHS, to assist the panel in determining whether to approve a request for information, to adopt rules similar to the guidelines on releasing data of the Health Care Financing Administration of the United States Department of Health and Human Services. The bill requires a request for information other than public use data to be made on the form created by DSHS.

C.S.H.B. 1875 makes a person who knowingly or negligently releases data in violation of the bill's provisions relating to the submission and collection of health care data liable for a civil penalty of not more than \$10,000. The bill makes a person who fails to supply available data under the bill's applicable provisions liable for a civil penalty of not less than \$1,000 or more than \$10,000 for each violation. The bill requires the attorney general, if requested by DSHS, to enforce the bill's provisions relating to the submission and collection of health care data. The bill establishes venue for an action brought is in Travis County. The bill requires a civil penalty recovered in a suit instituted by the attorney general to be deposited in the general revenue fund to the credit of the health care information account. The bill makes it a state jail felony to knowingly access data or release data, with criminal negligence, in violation of the bill's provisions relating to the submission and collection of health care data.

C.S.H.B. 1875 authorizes the executive commissioner of the Health and Human Services Commission to adopt rules as necessary to implement the bill's provisions relating to the submission and collection of health care data. The bill defines, for purposes of the bill's provisions governing the submission and collection of health care data by DSHS, "rural provider."

C.S.H.B. 1875 amends the Insurance Code to entitle the office of public insurance counsel to information that is confidential under the bill's provisions governing the submission and collection of health care data by DSHS.

C.S.H.B. 1875 abolishes the statewide health coordinating council, the Texas Health Care Policy Council, and the Interagency Obesity Council on September 1, 2011. The bill transfers all property in the custody of the abolished entities to DSHS and transfers all contracts, leases, rights, and obligations of the abolished entities to DSHS on September 1, 2011. The bill repeals provisions of law relating to the abolished entities and makes conforming changes relating to the repeal of those provisions.

C.S.H.B. 1875 amends the Government Code, in provisions of law relating to the Medicaid data collection system and the statewide health care data collection system, to make conforming changes to reflect the repeal of statutory provisions relating to the Texas Health Care Information Council and to replace references to the council with references to the Department of State Health Services.

C.S.H.B. 1875 amends the Education Code, the Insurance Code, and the Occupations Code to make conforming changes.

C.S.H.B. 1875 repeals the following provisions of the Health and Safety Code:

- Chapter 104, relating to the statewide health coordinating council and state health plan
- Chapter 108, relating to the Texas Health Care Information Council
- Chapter 109, relating to the Texas Health Care Policy Council

C.S.H.B. 1875 repeals the following provisions of Chapter 114, Health and Safety Code, relating to the Interagency Obesity Council:

- Section 114.002
- Section 114.003
- Section 114.004
- Section 114.006
- Section 114.007(c)
- Section 114.008

**EFFECTIVE DATE**

September 1, 2011.

**COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.H.B. 1875 differs from the original by making conforming changes related to the abolishment of the statewide health coordinating council and the transferring of its contracts, leases, rights, and obligations to the Department of State Health Services (DSHS).

C.S.H.B. 1875 differs from the original by making the comprehensive health professions resource center subject to review under the Texas Sunset Act as if the center were a state agency subject to review under that act; requiring DSHS to perform a duty as it relates to the center to the extent that the act places a duty on a state agency subject to review under the act; and providing for the center's abolishment, unless continued in existence as provided by that act, on September 1, 2019, whereas the original provides for the expiration of the statutes governing the center on July 1, 2014.

C.S.H.B. 1875 differs from the original by making the health disparities task force subject to review under the Texas Sunset Act and providing for the task force's abolishment, unless continued in existence as provided by that act, on September 1, 2019, whereas the original repeals the task force's governing statutes, abolishes the task force on September 1, 2011, and transfers all property in the task force's custody and all task force contracts, lease, rights, and obligations to DSHS on that date.

C.S.H.B. 1875 includes provisions not included in the original governing the submission and collection of health care data by DSHS and making a conforming change related to those provisions.

C.S.H.B. 1875 contains a provision not included in the original entitling the office of public insurance counsel to information that is confidential under the bill's provisions governing the submission and collection of health care data by DSHS.

C.S.H.B. 1875 contains provisions not included in the original making conforming changes to the Education Code and the Occupations Code.