

## **BILL ANALYSIS**

Senate Research Center

S.B. 156  
By: Huffman  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Department of State Health Services (DSHS) handles the duties of the legacy agency Texas Health Care Information Council (HCIC), including the collection of hospital inpatient discharge data as authorized by Chapter 108 (Texas Health Care Information Council), Health and Safety Code. The discharge data is currently collected by DSHS's Center for Health Statistics (CHS). S.B. 156 amends the Health and Safety Code to clarify the transfer of powers and duties of HCIC to DSHS in accordance with Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003. The bill specifies that a reference to HCIC means DSHS and makes technical corrections and conforming changes.

Current statutory restrictions do not allow access to confidential data collected and as a result, cancer and birth defects data cannot be fully utilized by CHS or by other DSHS programs. Specifically, certain data cannot be used by the cancer and birth defects registries to obtain higher quality and more complete information on a number of conditions in Texas. These restrictions also mean that data cannot be linked with data collected by the Vital Statistics Unit (VSU) to determine 30-day mortality rates.

This bill amends Chapter 108 of the Health and Safety Code to permit access to certain confidential patient data collected by CHS. This access would be extremely valuable in accomplishing DSHS public health responsibilities, including cancer and birth defects surveillance and epidemiology studies.

This bill would allow for better use of data that the state and health care facilities in which the state has made a considerable investment. It would decrease the burden of disease and health condition reporting by health care facilities, as well as improve the quality of data maintained by the cancer and birth defect registries. This bill would improve public health capacity by allowing tracking of patients across services offered by different health programs.

This bill allows the data to be provided to the Health and Human Services Commission (HHSC) or a health and human services agency as defined by Section 531.001(4) (defining "health and human services agencies") of the Government Code. This data would help HHSC better study the clients they serve, and provide the agency the ability to move toward more quality and outcomes based initiatives.

This bill renames the Scientific Review Panel as the Institutional Review Board (IRB) and requires IRB to be established and to determine approval for a request for information, with the assistance of the executive commissioner of the HHSC.

This bill would not allow access to physician data, nor would it allow for the release or access to personal identifying information outside DSHS, HHSC, or certain health and human services agencies.

S.B. 156 amends current law relating to health care data collected by the DSHS and access to certain confidential patient information within DSHS, including data and confidential patient information concerning bleeding and clotting disorders, and other issues related to bleeding and clotting disorders.

## **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Health Care Information Council is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 5 (Section 108.013, Health and Safety Code) and SECTION 6 (Section 108.0135, Health and Safety Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle E, Title 2, Health and Safety Code, by adding Chapter 103A, as follows:

### **CHAPTER 103A. TEXAS BLEEDING DISORDERS ADVISORY COUNCIL**

Sec. 103A.001. DEFINITIONS. Defines, in this chapter, "commissioner," "council," "department," and "hemophilia."

Sec. 103A.002. COMPOSITION OF COUNCIL. (a) Provides that the Texas Bleeding Disorders Advisory Council (council) is composed of:

(1) the commissioner of state health services (commissioner) and the commissioner of insurance, or their designees, serving as nonvoting members; and

(2) 10 voting members jointly appointed by the commissioner and the commissioner of insurance as follows:

(A) one member who is a physician licensed to practice medicine in this state under Subtitle B (Physicians), Title 3 (Health Professions), Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(B) one member who is a nurse licensed under Chapter 301 (Nurses), Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(C) one member who is a social worker licensed under Chapter 505 (Social Workers), Occupations Code, who at the time of appointment treats individuals with hemophilia or other bleeding or clotting disorders;

(D) one member who is a representative of a hemophilia treatment center in this state that is federally funded;

(E) one member who is a representative of a health insurer or other health benefit plan issuer that holds a certificate of authority issued by the Texas Department of Insurance;

(F) one member who is a representative of a volunteer or nonprofit health organization that serves residents of this state who have hemophilia or another bleeding or clotting disorder;

(G) one member who has hemophilia or is a caregiver of a person with hemophilia;

(H) one member who has a bleeding disorder other than hemophilia or is a caregiver of a person with a bleeding disorder other than hemophilia;

(I) one member who has a clotting disorder or is a caregiver of a person with a clotting disorder; and

(J) one member who is a pharmacist licensed under Subtitle J (Pharmacy and Pharmacists), Title 3, Occupations Code, with hemophilia therapy experience, who at the time of appointment represents a pharmacy provider that is not a specialty pharmacy provider participating in the Drug Pricing Program under Section 340B, Public Health Service Act (42 U.S.C. Section 256b).

(b) Authorizes the commissioner and the commissioner of insurance, in addition to council members appointed under Subsection (a), to jointly appoint up to five nonvoting members, including:

(1) persons with hemophilia or other bleeding or clotting disorders or caregivers of persons with hemophilia or other bleeding or clotting disorders; and

(2) persons experienced in the diagnosis, treatment, care, and support of persons with hemophilia or other bleeding or clotting disorders.

Sec. 103A.003. VACANCY. Requires the commissioner and the commissioner of insurance, if a vacancy occurs on the council, to jointly appoint a person to serve for the remainder of the unexpired term.

Sec. 103A.004. PRESIDING OFFICER. Requires council members to elect from among the voting council members a presiding officer. Provides that the presiding officer retains all voting rights.

Sec. 103A.005. COMPENSATION AND REIMBURSEMENT. Prohibits a council member from receiving compensation for service on the council, and being reimbursed for actual and necessary expenses incurred while performing council business except to the extent that money available under Section 103A.009 is designated for that purpose.

Sec. 103A.006. MEETINGS. Requires the council to meet at least quarterly and at the call of the commissioner or presiding officer.

Sec. 103A.007. DUTIES OF COUNCIL. Authorizes the council using existing resources to conduct studies and advise the Department of State Health Services (DSHS), the Health and Human Services Commission, and the Texas Department of Insurance on:

(1) public use data, outcome data, and other information submitted to or collected by DSHS under Chapter 108 (Texas Health Care Information Council) or other law related to hemophilia or other bleeding or clotting disorders and DSHS's disclosure and dissemination of that information within and outside DSHS; and

(2) other issues that affect the health and wellness of persons living with hemophilia or other bleeding or clotting disorders.

Sec. 103A.008. ANNUAL REPORTS BY COUNCIL AND COMMISSIONER. (a) Authorizes the council using existing resources, not later than December 1 of each even-numbered year, to submit a report of its findings and recommendations to the governor, the lieutenant governor, and the speaker of the house of representatives. Requires that the council's report be made public and is subject to public review and comment before adoption by the council.

(b) Requires the commissioner, not later than six months after the date the council's annual report is issued, to report on efforts to implement the recommendations in the report. Requires that the commissioner's annual report be

made available to the public, and include any related state or national activities in which the council participates.

Sec. 103A.009. GIFTS, GRANTS, AND DONATIONS. Authorizes the commissioner to accept for the council gifts, grants, and donations to fulfill the council's purposes and duties under this chapter. Provides that DSHS is not required to perform any fund-raising activities or to solicit donations for the council.

Sec. 103A.010. CERTAIN FUNDING PROHIBITED. Prohibits the council from accepting any funds that are appropriated by the legislature for the state fiscal biennium beginning September 1, 2011. Provides that this section expires September 1, 2013.

Sec. 103A.011. EXPIRATION. Provides that this chapter expires and the council is abolished September 1, 2015.

SECTION 2. Amends Section 108.002, Health and Safety Code, by amending Subdivision (7) and by adding Subdivision (8-a), to redefine "department" and to define "executive commissioner."

SECTION 3. Amends Chapter 108, Health and Safety Code, by adding Section 108.0026, as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL. (a) Provides that the powers and duties of the Texas Health Care Information Council (HCIC) under this chapter were transferred to DSHS in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) Provides that in this chapter or other law, a reference to HCIC means DSHS.

SECTION 4. Amends Section 108.009(h), Health and Safety Code, as follows:

(h) Requires DSHS, rather than HCIC, to coordinate data collection with the data submission formats used by hospitals and other providers. Requires DSHS to accept data in the format developed by the American National Standards Institute, rather than the National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500, or its successor or other nationally, rather than universally, accepted standardized forms that hospitals and other providers use for other complementary purposes. Makes a nonsubstantive change.

SECTION 5. Amends Section 108.013, Health and Safety Code, by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and by adding Subsections (k), (l), (m), and (n), as follows:

(a) Requires that the data received by DSHS, rather than HCIC, under this chapter be used by DSHS for the benefit of the public. Requires DSHS, subject to specific information limitations established by this chapter and the executive commissioner of Health and Human Services Commission (executive commissioner), rather than HCIC, rule, to make determinations on requests for information in favor of access. Makes conforming changes.

(b) Requires the executive commissioner, rather than HCIC, by rule to designate the characters to be used as uniform patient identifiers. Provides that the basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Prohibits DSHS, rather than HCIC, unless specifically authorized by this chapter, from releasing and a person or entity from gaining access to any data obtained under this chapter:

(1) that could reasonably be expected to reveal the identity of a patient;

- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to DSHS, rather than HCIC, in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Provides that all data collected and used by DSHS, rather than by DSHS and HCIC, under this chapter, except as provided by this section, is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037 (Confidential Data; Criminal Penalty), Health and Safety Code;
- (2) Section 81.103 (Confidentiality; Criminal Penalty), Healthy and Safety Code; and
- (3) Section 159.002 (Confidential Communications), Occupations Code.

(g) Prohibits DSHS, rather than HCIC, except as provided by Subsection (i), from releasing data elements in a manner that will reveal the identity of a patient, or a physician. Deletes existing text relating to prohibiting HCIC from releasing data elements in a manner that would reveal the identity of a physician.

(i) Authorizes DSHS, notwithstanding any other law, to provide information made confidential by this section to the Health and Human Services Commission or a health and human services agency as defined by Section 531.001(4) (relating to defining Health and Human Services Agencies), Government Code, provided that the receiving agency has appropriate controls in place to ensure the confidentiality of any personal information contained in the information shared by DSHS under this subsection is subject to the limits on further disclosure described by Subsection (d). Deletes existing text prohibiting DSHS and HCIC from providing information made confidential by this section to any other agency of this state.

(j) Requires the executive commissioner, rather than HCIC with the assistance of the advisory committee under Section 108.003(g)(5) (relating to a technical advisory committee composed of providers, consumers, and individual who have expertise in hospital information systems, health information management, quality management, and security of confidential data), Health and Safety Code, by rule to develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) Authorizes DSHS to disclose data collected under this chapter that is not included in public use data to any program within DSHS if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Provides that confidential data collected under this chapter that is disclosed to a program within DSHS remains subject to the confidentiality provisions of this chapter and other applicable law. Requires DSHS to identify the confidential data that is disclosed to a program under Subsection (k). Requires that the program maintain the confidentiality of the disclosed confidential data.

(m) Provides that the following provisions do not apply to the disclosure of data to a DSHS program:

- (1) Section 81.103, Health and Safety Code;

(2) Sections 108.010(g) (relating to any release of provider quality data) and (h) (relating to identifying an individual physician in a quality data report not by name but by uniform physician identifier), Health and Safety Code;

(3) Sections 108.011(e) (relating to the notification requirement when public use data is requested from HCIC) and (f) (relating to a report issued by HCIC including a reasonable review and comment period for the affected providers before public release of the report), Health and Safety Code;

(4) Section 311.037, Health and Safety Code; and

(5) Section 159.002, Occupations Code.

(n) Provides that nothing in this section authorizes the disclosure of physician identifying data.

SECTION 6. Amends Section 108.0135, Health and Safety Code, as follows:

Sec. 108.0135. New heading: INSTITUTIONAL REVIEW BOARD. (a) Requires DSHS to establish an institutional review board, rather than requires the council to establish a scientific review panel, to review and approve requests for access to data not contained in, rather than information other than, public use data. Requires the members of the institutional review board to have experience and expertise in ethics, patient confidentiality, and health care data. Makes conforming changes.

(b) Requires the executive commissioner, to assist the institutional review board in determining whether to approve a request for information, to adopt rules similar to the federal Centers for Medicare and Medicaid Services', rather than Health Care Financing Administration's, guidelines on releasing data. Makes conforming changes.

(c) Requires that a request for information other than public use data be made on the form prescribed by DSHS, rather than created by HCIC.

(d) Requires that any approval to release information under this section require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 7. Repealer: Section 108.002(5) (defining "council"), Health and Safety Code.

SECTION 8. Requires the commissioner and the commissioner of insurance, as soon as practicable after the effective date of this Act and not later than December 1, 2011, to jointly appoint members to the council as required by Section 103A.002, Health and Safety Code, as added by this Act.

SECTION 9. Effective date: upon passage or September 1, 2011.