

By: Kolkhorst

H.B. No. 300

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of protected health information; providing
civil penalties.

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

SECTION 1. Section 181.001(b), Health and Safety Code, is
amended by amending Subdivisions (1) and (3) and adding
Subdivisions (2-a) and (2-b) to read as follows:

(1) "Commission" [~~"Commissioner"~~] means the Health
and Human Services Commission [~~commissioner of health and human
services~~].

(2-a) "Disclose" means to release, transfer, provide
access to, or otherwise divulge information to another person.

(2-b) "Executive commissioner" means the executive
commissioner of the Health and Human Services Commission.

(3) "Health Insurance Portability and Accountability
Act and Privacy Standards" means the privacy requirements in
existence on April 1, 2011 [~~August 14, 2002~~], of the Administrative
Simplification subtitle of the Health Insurance Portability and
Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45
C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E.

SECTION 2. Subchapter A, Chapter 181, Health and Safety
Code, is amended by adding Section 181.004 to read as follows:

Sec. 181.004. APPLICABILITY OF FEDERAL LAW AND TEXAS HEALTH
SERVICES AUTHORITY STANDARDS. A covered entity shall comply with:

1 (1) the Health Insurance Portability and
2 Accountability Act and Privacy Standards; and

3 (2) the standards adopted under Section 182.108.

4 SECTION 3. Chapter 181, Health and Safety Code, is amended
5 by adding Subchapter C to read as follows:

6 SUBCHAPTER C. ACCESS TO AND USE OF

7 PROTECTED HEALTH INFORMATION

8 Sec. 181.101. ACCESS TO RECORDS AND DISCLOSURE ACCOUNTING.

9 Not later than the 15th day after the date a covered entity receives
10 a request from an individual:

11 (1) for a record containing the individual's protected
12 health information, the covered entity shall provide the record to
13 the individual in the form requested by the individual, including
14 printed or electronic form; and

15 (2) for an accounting of disclosures of the
16 individual's protected health information, the covered entity
17 shall provide the accounting to the individual in the form
18 requested by the individual, including printed or electronic form,
19 in accordance with 45 C.F.R. Section 164.528.

20 Sec. 181.102. FEES FOR COPIES OF RECORDS. A covered entity
21 may charge a reasonable fee for a photocopy of a record that
22 contains protected health information, subject to any limit or
23 restriction applicable to the record under other law.

24 Sec. 181.103. DUTY OF COVERED ENTITY. (a) A covered entity
25 that maintains or discloses protected health information bears the
26 responsibility of securely maintaining and disclosing the
27 information in compliance with this chapter and other law.

1 (b) Except as provided by other law, a covered entity may
2 not:

3 (1) prevent an individual from obtaining a copy of the
4 individual's record; or

5 (2) deny an individual's request to correct a
6 confirmed factual error in the individual's record.

7 Sec. 181.104. MINIMUM MAINTENANCE OF RECORDS OF PROTECTED
8 HEALTH INFORMATION. (a) A covered entity shall:

9 (1) for an individual 18 years of age or older on the
10 date of the last entry in a record that contains protected health
11 information, maintain the record until the seventh anniversary of
12 the date of the last entry in the record;

13 (2) for an individual younger than 18 years of age on
14 the date of the last entry in a record that contains protected
15 health information, maintain the record until the later of:

16 (A) the individual's 21st birthday; or

17 (B) the seventh anniversary of the date of the
18 last entry in the record; and

19 (3) maintain a medical record relating to a criminal,
20 civil, or administrative action until the later of:

21 (A) the date specified by Subdivision (1) or (2);

22 or

23 (B) the date of final disposition of the action.

24 (b) If another law requires a covered entity to maintain a
25 record described by Subsection (a) for a period longer than the
26 period specified by Subsection (a), the covered entity shall
27 maintain the record for the period required by the other law.

1 SECTION 4. Subchapter D, Chapter 181, Health and Safety
2 Code, is amended by adding Sections 181.153 and 181.154 to read as
3 follows:

4 Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION
5 PROHIBITED; EXCEPTIONS. A covered entity may not disclose an
6 individual's protected health information to any other person in
7 exchange for direct or indirect remuneration, except that a covered
8 entity may disclose an individual's protected health information to
9 another covered entity for the purpose of:

- 10 (1) provision of medical treatment to the individual;
11 (2) payment of the individual's health care costs; or
12 (3) health care operations between the covered
13 entities.

14 Sec. 181.154. AUTHORIZATION REQUIRED FOR DISCLOSURE OF
15 PROTECTED HEALTH INFORMATION; EXCEPTIONS. (a) Except as provided
16 by Subsections (c) and (d), a covered entity may not disclose an
17 individual's protected health information to any person without a
18 separate authorization for each record disclosed signed by the
19 individual or the individual's legally authorized representative.

20 (b) For purposes of this section, an individual may sign an
21 authorization of disclosure in writing or electronically.

22 (c) The consent required by Subsection (a) to disclose
23 protected health information for medical treatment, payment of
24 health care costs, or health care operations may be provided in a
25 signed general authorization form.

26 (d) A covered entity may disclose an individual's protected
27 health information to another person only as necessary to

1 facilitate the individual's medical treatment if:

2 (1) an agent of the covered entity reasonably believes
3 the individual requires lifesaving medical treatment;

4 (2) the individual is not able to provide
5 authorization for disclosure under this section; and

6 (3) a legally authorized representative of the
7 individual is not available to provide authorization for disclosure
8 under this section.

9 (e) The attorney general by rule shall adopt standard
10 authorization forms for use in complying with this section.

11 SECTION 5. Section 181.201, Health and Safety Code, is
12 amended by amending Subsection (c) and adding Subsection (d) to
13 read as follows:

14 (c) If the court in which an action under Subsection (b) is
15 pending finds that the violations have occurred with a frequency as
16 to constitute a pattern or practice, the court may assess a civil
17 penalty not to exceed \$5 million [~~\$250,000~~].

18 (d) The office of the attorney general may retain a
19 reasonable portion of a civil penalty recovered under this section,
20 not to exceed amounts specified in the General Appropriations Act,
21 for the enforcement of this subchapter.

22 SECTION 6. Section 181.202, Health and Safety Code, is
23 amended to read as follows:

24 Sec. 181.202. DISCIPLINARY ACTION. In addition to the
25 penalties prescribed by this chapter, a violation of this chapter
26 by an individual or facility that is licensed by an agency of this
27 state is subject to investigation and disciplinary proceedings,

1 including probation or suspension by the licensing agency. If
2 there is evidence that the violations of this chapter constitute a
3 pattern or practice, the agency may:

- 4 (1) revoke the individual's or facility's license; or
5 (2) refer the individual's or facility's case to the
6 attorney general for the institution of an action for civil
7 penalties under Section 181.201(b).

8 SECTION 7. Subchapter E, Chapter 181, Health and Safety
9 Code, is amended by adding Sections 181.206, 181.207, 181.208,
10 181.209, and 181.210 to read as follows:

11 Sec. 181.206. RULES. The attorney general may adopt rules
12 as necessary to enforce this chapter.

13 Sec. 181.207. AUDITS OF COVERED ENTITIES. (a) The attorney
14 general, in coordination with the commission, the Texas Health
15 Services Authority, and the Texas Department of Insurance:

16 (1) may conduct periodic audits of covered entities in
17 this state to determine compliance with this chapter; and

18 (2) shall periodically monitor and review the results
19 of audits of covered entities in this state conducted by the United
20 States secretary of health and human services.

21 (b) In addition to periodic audits conducted under
22 Subsection (a)(1), the attorney general may require a covered
23 entity to:

24 (1) conduct an audit of the covered entity's system;
25 and

26 (2) submit to the attorney general a report regarding
27 the results of an audit conducted under Subdivision (1).

1 Sec. 181.208. REVIEW OF COMPLAINT BY ATTORNEY GENERAL. The
2 attorney general shall review a complaint received from an
3 individual or an individual's authorized legal representative
4 alleging that a covered entity violated this chapter with respect
5 to the individual's protected health information.

6 Sec. 181.209. AUDIT AND COMPLAINT REPORT BY ATTORNEY
7 GENERAL. (a) The attorney general annually shall submit to the
8 appropriate standing committees of the senate and the house of
9 representatives a report that includes:

10 (1) the number and types of complaints received by the
11 office of the attorney general regarding violations of this
12 chapter;

13 (2) enforcement action taken by the office of the
14 attorney general under this chapter; and

15 (3) the number of federal and state audits of covered
16 entities in this state conducted.

17 (b) The attorney general and the Texas Health Services
18 Authority shall each publish the report required by Subsection (a)
19 on the agency's Internet website.

20 Sec. 181.210. FUNDING. The commission and the Texas
21 Department of Insurance, in consultation with the Texas Health
22 Services Authority, shall apply for and actively pursue available
23 federal funding for enforcement of this chapter, including the
24 audits described by Section 181.207.

25 SECTION 8. Section 182.002, Health and Safety Code, is
26 amended by adding Subdivisions (2-a), (3-a), and (3-b) to read as
27 follows:

1 (2-a) "Covered entity" has the meaning assigned by
2 Section 181.001.

3 (3-a) "Disclose" has the meaning assigned by Section
4 181.001.

5 (3-b) "Health Insurance Portability and
6 Accountability Act and Privacy Standards" has the meaning assigned
7 by Section 181.001.

8 SECTION 9. Section 182.101, Health and Safety Code, is
9 amended to read as follows:

10 Sec. 182.101. GENERAL POWERS AND DUTIES. The corporation
11 [~~may~~]:

12 (1) may establish statewide health information
13 exchange capabilities, including capabilities for electronic
14 laboratory results, diagnostic studies, and medication history
15 delivery, and, where applicable, establish [~~promote~~] definitions
16 and standards for electronic interactions statewide;

17 (2) may seek funding to:

18 (A) implement, promote, and facilitate the
19 voluntary exchange of secure electronic health information between
20 and among individuals and entities that are providing or paying for
21 health care services or procedures; and

22 (B) create incentives to implement, promote, and
23 facilitate the voluntary exchange of secure electronic health
24 information between and among individuals and entities that are
25 providing or paying for health care services or procedures;

26 (3) may establish statewide health information
27 exchange capabilities for streamlining health care administrative

1 functions including:

2 (A) communicating point of care services,
3 including laboratory results, diagnostic imaging, and prescription
4 histories;

5 (B) communicating patient identification and
6 emergency room required information in conformity with state and
7 federal privacy laws;

8 (C) real-time communication of enrollee status
9 in relation to health plan coverage, including enrollee
10 cost-sharing responsibilities; and

11 (D) current census and status of health plan
12 contracted providers;

13 (4) shall support regional health information
14 exchange initiatives by:

15 (A) identifying data and messaging standards for
16 health information exchange and for ensuring that the data that is
17 exchanged is accurate and complete;

18 (B) administering programs providing financial
19 incentives, including grants and loans for the creation and support
20 of regional health information networks, subject to available
21 funds;

22 (C) providing technical expertise where
23 appropriate;

24 (D) sharing intellectual property developed
25 under Section 182.105;

26 (E) waiving the corporation's fees associated
27 with intellectual property, data, expertise, and other services or

1 materials provided to regional health information exchanges
2 operated on a nonprofit basis; and

3 (F) applying operational and technical standards
4 developed by the corporation to existing health information
5 exchanges only on a voluntary basis, except for standards related
6 to ensuring effective privacy and security of individually
7 identifiable health information;

8 (5) shall adopt, publish, and distribute [identify]
9 standards for streamlining health care administrative functions
10 across payors and providers, including standards for the electronic
11 disclosure of protected health information as required by Section
12 182.108, electronic patient registration, communication of
13 enrollment in health plans, and information at the point of care
14 regarding services covered by health plans; and

15 (6) shall support the secure, electronic exchange of
16 health information through other strategies identified by the
17 board.

18 SECTION 10. Subchapter C, Chapter 182, Health and Safety
19 Code, is amended by adding Section 182.108 to read as follows:

20 Sec. 182.108. STANDARDS FOR ELECTRONIC DISCLOSURE OF
21 PROTECTED HEALTH INFORMATION. (a) The corporation by rule shall
22 adopt security standards for the electronic disclosure of protected
23 health information, as defined by the Health Insurance Portability
24 and Accountability Act and Privacy Standards. The standards must:

25 (1) comply with federal and state law relating to the
26 security and confidentiality of information electronically
27 maintained or disclosed by a covered entity;

1 (2) ensure the secure maintenance and disclosure of
2 personally identifiable health information;

3 (3) include strategies and procedures for disclosing
4 personally identifiable information; and

5 (4) support a level of system interoperability with
6 existing health record databases in this state that is consistent
7 with emerging standards.

8 (b) The corporation shall publish the standards adopted
9 under Subsection (a) on the corporation's Internet website.

10 SECTION 11. (a) In this section, "unsustainable covered
11 entity" means a covered entity that ceases to operate.

12 (b) The Health and Human Services Commission, in
13 consultation with the Texas Health Services Authority and the Texas
14 Medical Board, shall review issues regarding the security and
15 accessibility of protected health information maintained by an
16 unsustainable covered entity.

17 (c) Not later than December 1, 2012, the Health and Human
18 Services Commission shall submit to the appropriate standing
19 committees of the senate and the house of representatives
20 recommendations for:

21 (1) the state agency to which the protected health
22 information maintained by an unsustainable covered entity should be
23 transferred for storage;

24 (2) ensuring the security of protected health
25 information maintained by unsustainable covered entities in this
26 state, including secure transfer methods from the covered entity to
27 the state;

1 (3) the method and period of time for which protected
2 health information should be maintained by the state after transfer
3 from an unsustainable covered entity;

4 (4) methods and processes by which an individual
5 should be able to access the individual's protected health
6 information after transfer to the state; and

7 (5) funding for the storage of protected health
8 information after transfer to the state.

9 (d) This section expires January 1, 2013.

10 SECTION 12. (a) A task force on health information
11 technology is created.

12 (b) The task force is composed of seven members appointed by
13 the attorney general with the advice of the chairs of the standing
14 committees of the senate and house of representatives having
15 primary jurisdiction over health information technology issues.
16 Not later than December 1, 2011, the attorney general shall appoint
17 the members of the task force and appoint a chair of the task force
18 from among its membership. The chair of the task force must have
19 expertise in:

20 (1) state and federal health information privacy law;

21 (2) patient rights; and

22 (3) electronic signatures and other consent tools.

23 (c) The task force shall develop recommendations regarding:

24 (1) the improvement of informed consent protocols for
25 the electronic exchange of protected health information, as that
26 term is defined by the Health Insurance Portability and
27 Accountability Act and Privacy Standards, as defined by Section

1 181.001, Health and Safety Code, as amended by this Act;

2 (2) the improvement of patient access to and use of
3 electronically maintained and disclosed protected health
4 information for the purpose of personal health and coordination of
5 health care services; and

6 (3) any other critical issues, as determined by the
7 task force, related to the exchange of protected health
8 information.

9 (d) Not later than January 1, 2013, the task force shall
10 submit to the standing committees of the senate and house of
11 representatives having primary jurisdiction over health
12 information technology issues and the Texas Health Services
13 Authority a report including the task force's recommendations under
14 Subsection (c).

15 (e) The Texas Health Services Authority shall publish the
16 report submitted under Subsection (d) on the authority's Internet
17 website.

18 (f) This section expires February 1, 2013.

19 SECTION 13. Not later than January 1, 2012:

20 (1) the attorney general shall adopt the forms
21 required by Section 181.154, Health and Safety Code, as added by
22 this Act; and

23 (2) the Texas Health Services Authority shall adopt
24 the standards required by Section 182.101, Health and Safety Code,
25 as amended by this Act, and Section 182.108, Health and Safety Code,
26 as added by this Act.

27 SECTION 14. This Act takes effect September 1, 2011.