

1-1 By: Kolkhorst, Naishtat, et al. H.B. No. 300
1-2 (Senate Sponsor - Nelson)
1-3 (In the Senate - Received from the House May 5, 2011;
1-4 May 9, 2011, read first time and referred to Committee on Health
1-5 and Human Services; May 20, 2011, reported adversely, with
1-6 favorable Committee Substitute by the following vote: Yeas 9,
1-7 Nays 0; May 20, 2011, sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR H.B. No. 300 By: Nelson

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to the privacy of protected health information; providing
1-12 administrative and civil penalties.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 181.001(b), Health and Safety Code, is
1-15 amended by amending Subdivisions (1) and (3) and adding
1-16 Subdivisions (2-a) and (2-b) to read as follows:

1-17 (1) "Commission" [~~"Commissioner"~~] means the Health
1-18 and Human Services Commission [~~commissioner of health and human~~
1-19 ~~services~~].

1-20 (2-a) "Disclose" means to release, transfer, provide
1-21 access to, or otherwise divulge information outside the entity
1-22 holding the information.

1-23 (2-b) "Executive commissioner" means the executive
1-24 commissioner of the Health and Human Services Commission.

1-25 (3) "Health Insurance Portability and Accountability
1-26 Act and Privacy Standards" means the privacy requirements in
1-27 existence on September 1, 2011 [~~August 14, 2002~~], of the
1-28 Administrative Simplification subtitle of the Health Insurance
1-29 Portability and Accountability Act of 1996 (Pub. L. No. 104-191)
1-30 contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A
1-31 and E.

1-32 SECTION 2. Subchapter A, Chapter 181, Health and Safety
1-33 Code, is amended by adding Section 181.004 to read as follows:

1-34 Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a)
1-35 A covered entity, as that term is defined by 45 C.F.R. Section
1-36 160.103, shall comply with the Health Insurance Portability and
1-37 Accountability Act and Privacy Standards.

1-38 (b) Subject to Section 181.051, a covered entity, as that
1-39 term is defined by Section 181.001, shall comply with this chapter.

1-40 SECTION 3. Section 181.005, Health and Safety Code, is
1-41 amended to read as follows:

1-42 Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a)
1-43 The executive commissioner shall administer this chapter and may
1-44 adopt rules consistent with the Health Insurance Portability and
1-45 Accountability Act and Privacy Standards to administer this
1-46 chapter.

1-47 (b) The executive commissioner shall review amendments to
1-48 the definitions in 45 C.F.R. Parts 160 and 164 that occur after
1-49 September 1, 2011 [~~August 14, 2002~~], and determine whether it is in
1-50 the best interest of the state to adopt the amended federal
1-51 regulations. If the executive commissioner determines that it is
1-52 in the best interest of the state to adopt the amended federal
1-53 regulations, the amended regulations shall apply as required by
1-54 this chapter.

1-55 (c) In making a determination under this section, the
1-56 executive commissioner must consider, in addition to other factors
1-57 affecting the public interest, the beneficial and adverse effects
1-58 the amendments would have on:

1-59 (1) the lives of individuals in this state and their
1-60 expectations of privacy; and

1-61 (2) governmental entities, institutions of higher
1-62 education, state-owned teaching hospitals, private businesses, and
1-63 commerce in this state.

2-1 (d) The executive commissioner shall prepare a report of the
2-2 executive commissioner's determination made under this section and
2-3 shall file the report with the presiding officer of each house of
2-4 the legislature before the 30th day after the date the
2-5 determination is made. The report must include an explanation of
2-6 the reasons for the determination.

2-7 SECTION 4. Section 181.006, Health and Safety Code, is
2-8 amended to read as follows:

2-9 Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC.
2-10 Notwithstanding Sections 181.004 and 181.051, for [For] a covered
2-11 entity that is a governmental unit, an individual's protected
2-12 health information:

2-13 (1) includes any information that reflects that an
2-14 individual received health care from the covered entity; and

2-15 (2) is not public information and is not subject to
2-16 disclosure under Chapter 552, Government Code.

2-17 SECTION 5. Chapter 181, Health and Safety Code, is amended
2-18 by adding Subchapter C to read as follows:

2-19 SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

2-20 Sec. 181.101. TRAINING REQUIRED. (a) Each covered entity
2-21 shall provide a training program to employees of the covered entity
2-22 regarding the state and federal law concerning protected health
2-23 information as it relates to:

2-24 (1) the covered entity's particular course of
2-25 business; and

2-26 (2) each employee's scope of employment.

2-27 (b) An employee of a covered entity must complete training
2-28 described by Subsection (a) not later than the 60th day after the
2-29 date the employee is hired by the covered entity.

2-30 (c) An employee of a covered entity shall receive training
2-31 described by Subsection (a) at least once every two years.

2-32 (d) A covered entity shall require an employee of the entity
2-33 who attends a training program described by Subsection (a) to sign,
2-34 electronically or in writing, a statement verifying the employee's
2-35 attendance at the training program. The covered entity shall
2-36 maintain the signed statement.

2-37 Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS.

2-38 (a) Except as provided by Subsection (b), if a health care
2-39 provider is using an electronic health records system that is
2-40 capable of fulfilling the request, the health care provider, not
2-41 later than the 15th business day after the date the health care
2-42 provider receives a written request from a person for the person's
2-43 electronic health record, shall provide the requested record to the
2-44 person in electronic form unless the person agrees to accept the
2-45 record in another form.

2-46 (b) A health care provider is not required to provide access
2-47 to a person's protected health information that is excepted from
2-48 access, or to which access may be denied, under 45 C.F.R. Section
2-49 164.524.

2-50 (c) For purposes of Subsection (a), the executive
2-51 commissioner, in consultation with the Department of State Health
2-52 Services, the Texas Medical Board, and the Texas Department of
2-53 Insurance, by rule may recommend a standard electronic format for
2-54 the release of requested health records. The standard electronic
2-55 format recommended under this section must be consistent, if
2-56 feasible, with federal law regarding the release of electronic
2-57 health records.

2-58 Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney
2-59 general shall maintain an Internet website that provides:

2-60 (1) information concerning a consumer's privacy rights
2-61 regarding protected health information under federal and state law;

2-62 (2) a list of the state agencies, including the
2-63 Department of State Health Services, the Texas Medical Board, and
2-64 the Texas Department of Insurance, that regulate covered entities
2-65 in this state and the types of entities each agency regulates;

2-66 (3) detailed information regarding each agency's
2-67 complaint enforcement process; and

2-68 (4) contact information, including the address of the
2-69 agency's Internet website, for each agency listed under Subdivision

3-1 (2) for reporting a violation of this chapter.
 3-2 Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY
 3-3 GENERAL. (a) The attorney general annually shall submit to the
 3-4 legislature a report describing:
 3-5 (1) the number and types of complaints received by the
 3-6 attorney general and by the state agencies receiving consumer
 3-7 complaints under Section 181.103; and
 3-8 (2) the enforcement action taken in response to each
 3-9 complaint reported under Subdivision (1).
 3-10 (b) Each state agency that receives consumer complaints
 3-11 under Section 181.103 shall submit to the attorney general, in the
 3-12 form required by the attorney general, the information the attorney
 3-13 general requires to compile the report required by Subsection (a).
 3-14 (c) The attorney general shall de-identify protected health
 3-15 information from the individual to whom the information pertains
 3-16 before including the information in the report required by
 3-17 Subsection (a).
 3-18 SECTION 6. Subchapter D, Chapter 181, Health and Safety
 3-19 Code, is amended by adding Sections 181.153 and 181.154 to read as
 3-20 follows:
 3-21 Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION
 3-22 PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an
 3-23 individual's protected health information to any other person in
 3-24 exchange for direct or indirect remuneration, except that a covered
 3-25 entity may disclose an individual's protected health information:
 3-26 (1) to another covered entity, as that term is defined
 3-27 by Section 181.001, or to a covered entity, as that term is defined
 3-28 by Section 602.001, Insurance Code, for the purpose of:
 3-29 (A) treatment;
 3-30 (B) payment;
 3-31 (C) health care operations; or
 3-32 (D) performing an insurance or health
 3-33 maintenance organization function described by Section 602.053,
 3-34 Insurance Code; or
 3-35 (2) as otherwise permitted or required by state or
 3-36 federal law.
 3-37 (b) The direct or indirect remuneration a covered entity
 3-38 receives for making a disclosure of protected health information
 3-39 authorized by Subsection (a)(1)(D) may not exceed the covered
 3-40 entity's reasonable costs of preparing or transmitting the
 3-41 protected health information.
 3-42 Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR
 3-43 ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS.
 3-44 (a) A covered entity shall provide notice to an individual for whom
 3-45 the covered entity creates or receives protected health information
 3-46 if the individual's protected health information is subject to
 3-47 electronic disclosure. A covered entity may provide general notice
 3-48 by:
 3-49 (1) posting a written notice in the covered entity's
 3-50 place of business;
 3-51 (2) posting a notice on the covered entity's Internet
 3-52 website; or
 3-53 (3) posting a notice in any other place where
 3-54 individuals whose protected health information is subject to
 3-55 electronic disclosure are likely to see the notice.
 3-56 (b) Except as provided by Subsection (c), a covered entity
 3-57 may not electronically disclose an individual's protected health
 3-58 information to any person without a separate authorization from the
 3-59 individual or the individual's legally authorized representative
 3-60 for each disclosure. An authorization for disclosure under this
 3-61 subsection may be made in written or electronic form or in oral form
 3-62 if it is documented in writing by the covered entity.
 3-63 (c) The authorization for electronic disclosure of
 3-64 protected health information described by Subsection (b) is not
 3-65 required if the disclosure is made:
 3-66 (1) to another covered entity, as that term is defined
 3-67 by Section 181.001, or to a covered entity, as that term is defined
 3-68 by Section 602.001, Insurance Code, for the purpose of:
 3-69 (A) treatment;

4-1 (B) payment;
 4-2 (C) health care operations; or
 4-3 (D) performing an insurance or health
 4-4 maintenance organization function described by Section 602.053,
 4-5 Insurance Code; or
 4-6 (2) as otherwise permitted or required by state or
 4-7 federal law.
 4-8 (d) The attorney general shall adopt a standard
 4-9 authorization form for use in complying with this section. The form
 4-10 must comply with the Health Insurance Portability and
 4-11 Accountability Act and Privacy Standards and this chapter.
 4-12 (e) This section does not apply to a covered entity, as
 4-13 defined by Section 602.001, Insurance Code, if that entity is not a
 4-14 covered entity as defined by 45 C.F.R. Section 160.103.
 4-15 SECTION 7. Section 181.201, Health and Safety Code, is
 4-16 amended by amending Subsections (b) and (c) and adding Subsections
 4-17 (b-1), (d), (e), and (f) to read as follows:
 4-18 (b) In addition to the injunctive relief provided by
 4-19 Subsection (a), the attorney general may institute an action for
 4-20 civil penalties against a covered entity for a violation of this
 4-21 chapter. A civil penalty assessed under this section may not
 4-22 exceed:
 4-23 (1) \$5,000 [~~\$3,000~~] for each violation committed
 4-24 negligently;
 4-25 (2) \$25,000 for each violation committed knowingly or
 4-26 intentionally; or
 4-27 (3) \$250,000 for each violation in which the covered
 4-28 entity knowingly or intentionally uses protected health
 4-29 information for financial gain.
 4-30 (b-1) The total amount of a penalty assessed against a
 4-31 covered entity under Subsection (b) in relation to a violation or
 4-32 violations of Section 181.154 may not exceed \$250,000 annually if
 4-33 the court finds that:
 4-34 (1) the disclosure was made only to another covered
 4-35 entity and only for a purpose described by Section 181.154(c);
 4-36 (2) the protected health information disclosed was
 4-37 encrypted or transmitted using encryption technology designed to
 4-38 protect against improper disclosure;
 4-39 (3) the recipient of the protected health information
 4-40 did not use or release the protected health information; and
 4-41 (4) at the time of the disclosure of the protected
 4-42 health information, the covered entity had developed, implemented,
 4-43 and maintained security policies, including the education and
 4-44 training of employees responsible for the security of protected
 4-45 health information.
 4-46 (c) If the court in which an action under Subsection (b) is
 4-47 pending finds that the violations have occurred with a frequency as
 4-48 to constitute a pattern or practice, the court may assess a civil
 4-49 penalty not to exceed \$1.5 million annually [~~\$250,000~~].
 4-50 (d) In determining the amount of a penalty imposed under
 4-51 Subsection (b), the court shall consider:
 4-52 (1) the seriousness of the violation, including the
 4-53 nature, circumstances, extent, and gravity of the disclosure;
 4-54 (2) the covered entity's compliance history;
 4-55 (3) whether the violation poses a significant risk of
 4-56 financial, reputational, or other harm to an individual whose
 4-57 protected health information is involved in the violation;
 4-58 (4) whether the covered entity was certified at the
 4-59 time of the violation as described by Section 182.108;
 4-60 (5) the amount necessary to deter a future violation;
 4-61 and
 4-62 (6) the covered entity's efforts to correct the
 4-63 violation.
 4-64 (e) The attorney general may institute an action against a
 4-65 covered entity that is licensed by a licensing agency of this state
 4-66 for a civil penalty under this section only if the licensing agency
 4-67 refers the violation to the attorney general under Section
 4-68 181.202(2).
 4-69 (f) The office of the attorney general may retain a

5-1 reasonable portion of a civil penalty recovered under this section,
5-2 not to exceed amounts specified in the General Appropriations Act,
5-3 for the enforcement of this subchapter.

5-4 SECTION 8. Section 181.202, Health and Safety Code, is
5-5 amended to read as follows:

5-6 Sec. 181.202. DISCIPLINARY ACTION. In addition to the
5-7 penalties prescribed by this chapter, a violation of this chapter
5-8 by a covered entity [~~an individual or facility~~] that is licensed by
5-9 an agency of this state is subject to investigation and
5-10 disciplinary proceedings, including probation or suspension by the
5-11 licensing agency. If there is evidence that the violations of this
5-12 chapter are egregious and constitute a pattern or practice, the
5-13 agency may:

5-14 (1) revoke the covered entity's [~~individual's or~~
5-15 facility's] license; or

5-16 (2) refer the covered entity's case to the attorney
5-17 general for the institution of an action for civil penalties under
5-18 Section 181.201(b).

5-19 SECTION 9. Section 181.205, Health and Safety Code, is
5-20 amended by amending Subsection (b) and adding Subsection (c) to
5-21 read as follows:

5-22 (b) In determining the amount of a penalty imposed under
5-23 other law in accordance with Section 181.202, a court or state
5-24 agency shall consider the following factors:

5-25 (1) the seriousness of the violation, including the
5-26 nature, circumstances, extent, and gravity of the disclosure;

5-27 (2) the covered entity's compliance history;

5-28 (3) whether the violation poses a significant risk of
5-29 financial, reputational, or other harm to an individual whose
5-30 protected health information is involved in the violation;

5-31 (4) whether the covered entity was certified at the
5-32 time of the violation as described by Section 182.108;

5-33 (5) the amount necessary to deter a future violation;

5-34 and
5-35 (6) the covered entity's efforts to correct the
5-36 violation.

5-37 (c) On receipt of evidence under Subsections [~~Subsection~~
5-38 (a) and (b), a court or state agency shall consider the evidence and
5-39 mitigate imposition of an administrative penalty or assessment of a
5-40 civil penalty accordingly.

5-41 SECTION 10. Subchapter E, Chapter 181, Health and Safety
5-42 Code, is amended by adding Sections 181.206, 181.207, and 181.208
5-43 to read as follows:

5-44 Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The
5-45 commission, in coordination with the attorney general, the Texas
5-46 Health Services Authority, and the Texas Department of Insurance:

5-47 (1) may request that the United States secretary of
5-48 health and human services conduct an audit of a covered entity in
5-49 this state to determine compliance with the Health Insurance
5-50 Portability and Accountability Act and Privacy Standards; and

5-51 (2) shall periodically monitor and review the results
5-52 of audits of covered entities in this state conducted by the United
5-53 States secretary of health and human services.

5-54 (b) If the commission has evidence that a covered entity has
5-55 committed violations of this chapter that are egregious and
5-56 constitute a pattern or practice, the commission may:

5-57 (1) require the covered entity to submit to the
5-58 commission the results of a risk analysis conducted by the covered
5-59 entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

5-60 (2) if the covered entity is licensed by a licensing
5-61 agency of this state, request that the licensing agency conduct an
5-62 audit of the covered entity's system to determine compliance with
5-63 the provisions of this chapter.

5-64 (c) The commission annually shall submit to the appropriate
5-65 standing committees of the senate and the house of representatives
5-66 a report regarding the number of federal audits of covered entities
5-67 in this state and the number of audits required under Subsection
5-68 (b).

5-69 Sec. 181.207. REVIEW OF COMPLAINT BY COMMISSION. (a) The

6-1 commission shall review a complaint received from an individual or
 6-2 an individual's legally authorized representative alleging that a
 6-3 covered entity violated this chapter with respect to the
 6-4 individual's protected health information.

6-5 (b) The commission shall refer a complaint reviewed under
 6-6 Subsection (a) to the appropriate licensing agency or the attorney
 6-7 general, as applicable.

6-8 Sec. 181.208. FUNDING. The commission and the Texas
 6-9 Department of Insurance, in consultation with the Texas Health
 6-10 Services Authority, shall apply for and actively pursue available
 6-11 federal funding for enforcement of this chapter.

6-12 SECTION 11. Section 182.002, Health and Safety Code, is
 6-13 amended by adding Subdivisions (2-a), (3-a), and (3-b) to read as
 6-14 follows:

6-15 (2-a) "Covered entity" has the meaning assigned by
 6-16 Section 181.001.

6-17 (3-a) "Disclose" has the meaning assigned by Section
 6-18 181.001.

6-19 (3-b) "Health Insurance Portability and
 6-20 Accountability Act and Privacy Standards" has the meaning assigned
 6-21 by Section 181.001.

6-22 SECTION 12. Subchapter C, Chapter 182, Health and Safety
 6-23 Code, is amended by adding Section 182.108 to read as follows:

6-24 Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED
 6-25 HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The
 6-26 corporation shall develop and submit to the commission for
 6-27 ratification privacy and security standards for the electronic
 6-28 sharing of protected health information.

6-29 (b) The commission shall review and by rule adopt acceptable
 6-30 standards submitted for ratification under Subsection (a).

6-31 (c) Standards adopted under Subsection (b) must be designed
 6-32 to:

6-33 (1) comply with the Health Insurance Portability and
 6-34 Accountability Act and Privacy Standards and Chapter 181;

6-35 (2) comply with any other state and federal law
 6-36 relating to the security and confidentiality of information
 6-37 electronically maintained or disclosed by a covered entity;

6-38 (3) ensure the secure maintenance and disclosure of
 6-39 personally identifiable health information;

6-40 (4) include strategies and procedures for disclosing
 6-41 personally identifiable health information; and

6-42 (5) support a level of system interoperability with
 6-43 existing health record databases in this state that is consistent
 6-44 with emerging standards.

6-45 (d) The corporation shall establish a process by which a
 6-46 covered entity may apply for certification by the corporation of a
 6-47 covered entity's past compliance with standards adopted under
 6-48 Subsection (b).

6-49 (e) The corporation shall publish the standards adopted
 6-50 under Subsection (b) on the corporation's Internet website.

6-51 SECTION 13. Section 521.053, Business & Commerce Code, is
 6-52 amended by amending Subsection (b) and adding Subsection (b-1) to
 6-53 read as follows:

6-54 (b) A person who conducts business in this state and owns or
 6-55 licenses computerized data that includes sensitive personal
 6-56 information shall disclose any breach of system security, after
 6-57 discovering or receiving notification of the breach, to any
 6-58 individual [~~resident of this state~~] whose sensitive personal
 6-59 information was, or is reasonably believed to have been, acquired
 6-60 by an unauthorized person. The disclosure shall be made as quickly
 6-61 as possible, except as provided by Subsection (d) or as necessary to
 6-62 determine the scope of the breach and restore the reasonable
 6-63 integrity of the data system.

6-64 (b-1) Notwithstanding Subsection (b), the requirements of
 6-65 Subsection (b) apply only if the individual whose sensitive
 6-66 personal information was or is reasonably believed to have been
 6-67 acquired by an unauthorized person is a resident of this state or
 6-68 another state that does not require a person described by
 6-69 Subsection (b) to notify the individual of a breach of system

7-1 security. If the individual is a resident of a state that requires
 7-2 a person described by Subsection (b) to provide notice of a breach
 7-3 of system security, the notice of the breach of system security
 7-4 provided under that state's law satisfies the requirements of
 7-5 Subsection (b).

7-6 SECTION 14. Section 521.151, Business & Commerce Code, is
 7-7 amended by adding Subsection (a-1) to read as follows:

7-8 (a-1) In addition to penalties assessed under Subsection
 7-9 (a), a person who fails to take reasonable action to comply with
 7-10 Section 521.053(b) is liable to this state for a civil penalty of
 7-11 not more than \$100 for each individual to whom notification is due
 7-12 under that subsection for each consecutive day that the person
 7-13 fails to take reasonable action to comply with that subsection.
 7-14 Civil penalties under this section may not exceed \$250,000 for all
 7-15 individuals to whom notification is due after a single breach. The
 7-16 attorney general may bring an action to recover the civil penalties
 7-17 imposed under this subsection.

7-18 SECTION 15. Subchapter B, Chapter 531, Government Code, is
 7-19 amended by adding Section 531.0994 to read as follows:

7-20 Sec. 531.0994. STUDY; ANNUAL REPORT. (a) The commission,
 7-21 in consultation with the Department of State Health Services, the
 7-22 Texas Medical Board, and the Texas Department of Insurance, shall
 7-23 explore and evaluate new developments in safeguarding protected
 7-24 health information.

7-25 (b) Not later than December 1 each year, the commission
 7-26 shall report to the legislature on new developments in safeguarding
 7-27 protected health information and recommendations for the
 7-28 implementation of safeguards within the commission.

7-29 SECTION 16. Subchapter B, Chapter 602, Insurance Code, is
 7-30 amended by adding Section 602.054 to read as follows:

7-31 Sec. 602.054. COMPLIANCE WITH OTHER LAW. A covered entity
 7-32 shall comply with:

7-33 (1) Subchapter D, Chapter 181, Health and Safety Code,
 7-34 except as otherwise provided by that subchapter; and

7-35 (2) the standards adopted under Section 182.108,
 7-36 Health and Safety Code.

7-37 SECTION 17. (a) In this section, "unsustainable covered
 7-38 entity" means a covered entity, as defined by Section 181.001,
 7-39 Health and Safety Code, that ceases to operate.

7-40 (b) The Health and Human Services Commission, in
 7-41 consultation with the Texas Health Services Authority and the Texas
 7-42 Medical Board, shall review issues regarding the security and
 7-43 accessibility of protected health information maintained by an
 7-44 unsustainable covered entity.

7-45 (c) Not later than December 1, 2012, the Health and Human
 7-46 Services Commission shall submit to the appropriate standing
 7-47 committees of the senate and the house of representatives
 7-48 recommendations for:

7-49 (1) the state agency to which the protected health
 7-50 information maintained by an unsustainable covered entity should be
 7-51 transferred for storage;

7-52 (2) ensuring the security of protected health
 7-53 information maintained by unsustainable covered entities in this
 7-54 state, including secure transfer methods from the covered entity to
 7-55 the state;

7-56 (3) the method and period of time for which protected
 7-57 health information should be maintained by the state after transfer
 7-58 from an unsustainable covered entity;

7-59 (4) methods and processes by which an individual
 7-60 should be able to access the individual's protected health
 7-61 information after transfer to the state; and

7-62 (5) funding for the storage of protected health
 7-63 information after transfer to the state.

7-64 (d) This section expires January 1, 2013.

7-65 SECTION 18. (a) A task force on health information
 7-66 technology is created.

7-67 (b) The task force is composed of:

7-68 (1) 11 members appointed by the attorney general with
 7-69 the advice of the chairs of the standing committees of the senate

8-1 and house of representatives having primary jurisdiction over
8-2 health information technology issues, including:
8-3 (A) at least two physicians;
8-4 (B) at least two individuals who represent
8-5 hospitals; and
8-6 (C) at least one private citizen who represents
8-7 patient and parental rights; and
8-8 (2) the following ex officio members:
8-9 (A) the executive commissioner of the Health and
8-10 Human Services Commission or an employee of the commission
8-11 designated by the executive commissioner;
8-12 (B) the commissioner of the Department of State
8-13 Health Services or an employee of the department designated by the
8-14 commissioner; and
8-15 (C) the presiding officer of the Texas Health
8-16 Services Authority or an employee of the authority designated by
8-17 the presiding officer.
8-18 (c) Not later than December 1, 2012, the attorney general
8-19 shall appoint the members of the task force and appoint a chair of
8-20 the task force from among its membership. The chair of the task
8-21 force must have expertise in:
8-22 (1) state and federal health information privacy law;
8-23 (2) patient rights; and
8-24 (3) electronic signatures and other consent tools.
8-25 (d) The task force shall develop recommendations regarding:
8-26 (1) the improvement of informed consent protocols for
8-27 the electronic exchange of protected health information, as that
8-28 term is defined by the Health Insurance Portability and
8-29 Accountability Act and Privacy Standards, as defined by Section
8-30 181.001, Health and Safety Code, as amended by this Act;
8-31 (2) the improvement of patient access to and use of
8-32 electronically maintained and disclosed protected health
8-33 information for the purpose of personal health and coordination of
8-34 health care services; and
8-35 (3) any other critical issues, as determined by the
8-36 task force, related to the exchange of protected health
8-37 information.
8-38 (e) Not later than January 1, 2014, the task force shall
8-39 submit to the standing committees of the senate and house of
8-40 representatives having primary jurisdiction over health
8-41 information technology issues and the Texas Health Services
8-42 Authority a report including the task force's recommendations under
8-43 Subsection (d).
8-44 (f) The Texas Health Services Authority shall publish the
8-45 report submitted under Subsection (e) on the authority's Internet
8-46 website.
8-47 (g) This section expires February 1, 2014.
8-48 SECTION 19. Section 531.0315(b), Government Code, is
8-49 repealed.
8-50 SECTION 20. Not later than January 1, 2013:
8-51 (1) the attorney general shall adopt the form required
8-52 by Section 181.154, Health and Safety Code, as added by this Act;
8-53 and
8-54 (2) the Health and Human Services Commission shall
8-55 adopt the standards required by Section 182.108, Health and Safety
8-56 Code, as added by this Act.
8-57 SECTION 21. (a) Not later than May 1, 2012, the attorney
8-58 general shall establish the Internet website required by Section
8-59 181.103, Health and Safety Code, as added by this Act.
8-60 (b) Not later than December 1, 2013, the attorney general
8-61 shall submit the initial report required by Section 181.104, Health
8-62 and Safety Code, as added by this Act.
8-63 SECTION 22. Not later than December 1, 2013, the Health and
8-64 Human Services Commission shall submit the initial report required
8-65 by Section 531.0994, Government Code, as added by this Act.
8-66 SECTION 23. The changes in law made by Section 181.201,
8-67 Health and Safety Code, as amended by this Act, Section 521.053,
8-68 Business & Commerce Code, as amended by this Act, and Section
8-69 521.151(a-1), Business & Commerce Code, as added by this Act, apply

9-1 only to conduct that occurs on or after the effective date of this
9-2 Act. Conduct that occurs before the effective date of this Act is
9-3 governed by the law in effect at the time the conduct occurred, and
9-4 the former law is continued in effect for that purpose.

9-5 SECTION 24. This Act takes effect September 1, 2012.

9-6

* * * * *