

SENATE AMENDMENTS

2nd Printing

By: Kolchorst, Naishtat, et al.

H.B. No. 300

A BILL TO BE ENTITLED

AN ACT

relating to the privacy of protected health information; providing administrative and 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 outside the entity holding the information.

(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 September 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:

1 Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a)

2 A covered entity, as that term is defined by 45 C.F.R. Section
3 160.103, shall comply with the Health Insurance Portability and
4 Accountability Act and Privacy Standards.

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

7 SECTION 3. Section 181.005, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a)

10 The executive commissioner shall administer this chapter and may
11 adopt rules consistent with the Health Insurance Portability and
12 Accountability Act and Privacy Standards to administer this
13 chapter.

14 (b) The executive commissioner shall review amendments to
15 the definitions in 45 C.F.R. Parts 160 and 164 that occur after
16 September 1, 2011 [~~August 14, 2002~~], and determine whether it is in
17 the best interest of the state to adopt the amended federal
18 regulations. If the executive commissioner determines that it is
19 in the best interest of the state to adopt the amended federal
20 regulations, the amended regulations shall apply as required by
21 this chapter.

22 (c) In making a determination under this section, the
23 executive commissioner must consider, in addition to other factors
24 affecting the public interest, the beneficial and adverse effects
25 the amendments would have on:

26 (1) the lives of individuals in this state and their
27 expectations of privacy; and

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

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

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

13 Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION
14 PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an
15 individual's protected health information to any other person in
16 exchange for direct or indirect remuneration, except that a covered
17 entity may disclose an individual's protected health information:

18 (1) to another covered entity, as that term is defined
19 by Section 181.001, or to a covered entity, as that term is defined
20 by Section 602.001, Insurance Code, for the purpose of:

- 21 (A) treatment;
22 (B) payment;
23 (C) health care operations; or
24 (D) performing an insurance or health
25 maintenance organization function described by Section 602.053,
26 Insurance Code; or

27 (2) as otherwise authorized or required by state or

1 federal law.

2 (b) The direct or indirect remuneration a covered entity
3 receives for making a disclosure of protected health information
4 authorized by Subsection (a)(1)(D) may not exceed the covered
5 entity's reasonable costs of preparing or transmitting the
6 protected health information.

7 Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR
8 ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS.

9 (a) A covered entity shall provide notice to an individual for whom
10 the covered entity creates or receives protected health information
11 if the individual's protected health information is subject to
12 electronic disclosure. A covered entity may provide general notice
13 by:

14 (1) posting a written notice in the covered entity's
15 place of business;

16 (2) posting a notice on the covered entity's Internet
17 website; or

18 (3) posting a notice in any other place where
19 individuals whose protected health information is subject to
20 electronic disclosure are likely to see the notice.

21 (b) Except as provided by Subsection (c), a covered entity
22 may not electronically disclose an individual's protected health
23 information to any person without a separate authorization from the
24 individual or the individual's legally authorized representative
25 for each disclosure. An authorization for disclosure under this
26 subsection may be made in written or electronic form or in oral form
27 if it is documented in writing by the covered entity.

1 (c) The authorization for electronic disclosure of
2 protected health information described by Subsection (b) is not
3 required if the disclosure is made:

4 (1) to another covered entity, as that term is defined
5 by Section 181.001, or to a covered entity, as that term is defined
6 by Section 602.001, Insurance Code, for the purpose of:

7 (A) treatment;

8 (B) payment; or

9 (C) health care operations; or

10 (2) as authorized or required by state or federal law.

11 (d) The attorney general by rule shall adopt a standard
12 authorization form for use in complying with this section. The form
13 must comply with the Health Insurance Portability and
14 Accountability Act and Privacy Standards and this chapter.

15 (e) This section does not apply to a covered entity, as
16 defined by Section 602.001, Insurance Code, if that entity is not a
17 covered entity as defined by 45 C.F.R. Section 160.103 or Section
18 181.001 of this code.

19 SECTION 5. Section 181.201, Health and Safety Code, is
20 amended by amending Subsection (c) and adding Subsections (d), (e),
21 and (f) to read as follows:

22 (c) If the court in which an action under Subsection (b) is
23 pending finds that the violations have occurred with a frequency as
24 to constitute a pattern or practice, the court may assess a civil
25 penalty not to exceed \$1.5 million annually [~~\$250,000~~].

26 (d) In determining the amount of a penalty imposed under
27 Subsection (b), the court shall consider:

1 (1) the seriousness of the violation, including the
2 nature, circumstances, extent, and gravity of the disclosure;

3 (2) the covered entity's compliance history;

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

7 (4) whether the covered entity was certified at the
8 time of the violation as described by Section 182.108;

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

10 and

11 (6) the covered entity's efforts to correct the
12 violation.

13 (e) The attorney general may institute an action against a
14 covered entity that is licensed by a licensing agency of this state
15 for a civil penalty under this section only if the licensing agency
16 refers the violation to the attorney general under Section
17 181.202(2).

18 (f) 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 a covered entity [~~an individual or facility~~] that is licensed by
27 an agency of this state is subject to investigation and

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

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

7 (2) refer the covered entity's case to the attorney
8 general for the institution of an action for civil penalties under
9 Section 181.201(b).

10 SECTION 7. Subchapter E, Chapter 181, Health and Safety
11 Code, is amended by adding Section 181.204 to read as follows:

12 Sec. 181.204. ADMINISTRATIVE PENALTY. (a) The executive
13 commissioner may impose an administrative penalty on a covered
14 entity that is not licensed by a licensing agency of this state and
15 that violates this chapter or a rule adopted under this chapter.

16 (b) The amount of the penalty may not exceed \$3,000 for each
17 violation, and each day a violation continues or occurs is a
18 separate violation for the purpose of imposing a penalty. The
19 amount shall be based on:

20 (1) the seriousness of the violation, including the
21 nature, circumstances, extent, and gravity of the disclosure;

22 (2) the covered entity's compliance history;

23 (3) whether the violation poses a significant risk of
24 financial, reputational, or other harm to an individual whose
25 protected health information is involved in the violation;

26 (4) whether the covered entity was certified at the
27 time of the violation as described by Section 182.108;

1 (5) the amount necessary to deter a future violation;
2 and
3 (6) the covered entity's efforts to correct the
4 violation.

5 (c) The enforcement of the penalty may be stayed during the
6 time the order is under judicial review if the covered entity pays
7 the penalty to the clerk of the court or files a supersedeas bond
8 with the court in the amount of the penalty. A covered entity that
9 cannot afford to pay the penalty or file the bond may stay the
10 enforcement by filing an affidavit in the manner required by the
11 Texas Rules of Civil Procedure for a party who cannot afford to file
12 security for costs, subject to the right of the executive
13 commissioner to contest the affidavit as provided by those rules.

14 (d) The attorney general may sue to collect the penalty.

15 (e) A proceeding to impose the penalty is a contested case
16 under Chapter 2001, Government Code.

17 SECTION 8. Section 181.205, Health and Safety Code, is
18 amended by amending Subsection (b) and adding Subsection (c) to
19 read as follows:

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

23 (1) the seriousness of the violation, including the
24 nature, circumstances, extent, and gravity of the disclosure;

25 (2) the covered entity's compliance history;

26 (3) whether the violation poses a significant risk of
27 financial, reputational, or other harm to an individual whose

1 protected health information is involved in the violation;

2 (4) whether the covered entity was certified at the
3 time of the violation as described by Section 182.108;

4 (5) the amount necessary to deter a future violation;
5 and

6 (6) the covered entity's efforts to correct the
7 violation.

8 (c) On receipt of evidence under Subsections [~~Subsection~~]
9 (a) and (b), a court or state agency shall consider the evidence and
10 mitigate imposition of an administrative penalty or assessment of a
11 civil penalty accordingly.

12 SECTION 9. Subchapter E, Chapter 181, Health and Safety
13 Code, is amended by adding Sections 181.206, 181.207, 181.208,
14 181.209, and 181.210 to read as follows:

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

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

20 (1) may request that the United States secretary of
21 health and human services conduct an audit of a covered entity in
22 this state to determine compliance with the Health Insurance
23 Portability and Accountability Act and Privacy Standards; and

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

27 (b) If the commission has evidence that a covered entity has

1 committed violations of this chapter that are egregious and
2 constitute a pattern or practice, the commission may:

3 (1) require the covered entity to submit to the
4 commission the results of a risk analysis conducted by the covered
5 entity as described by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

6 (2) if the covered entity is licensed by a licensing
7 agency of this state, request that the licensing agency conduct an
8 audit of the covered entity's system to determine compliance with
9 the provisions of this chapter.

10 Sec. 181.208. REVIEW OF COMPLAINT BY COMMISSION. (a) The
11 commission shall review a complaint received from an individual or
12 an individual's legally authorized representative alleging that a
13 covered entity violated this chapter with respect to the
14 individual's protected health information.

15 (b) The commission shall refer a complaint reviewed under
16 Subsection (a) to the appropriate licensing agency or the attorney
17 general, as applicable.

18 Sec. 181.209. AUDIT AND COMPLAINT REPORT BY COMMISSION.

19 (a) The commission annually shall submit to the appropriate
20 standing committees of the senate and the house of representatives
21 a report that includes:

22 (1) the number and types of complaints received by the
23 commission regarding violations of this chapter;

24 (2) enforcement action taken by the commission, a
25 licensing agency, or the office of the attorney general under this
26 chapter; and

27 (3) the number of federal audits of covered entities

1 in this state conducted and the number of audits required under
2 Section 181.207(b).

3 (b) The commission and the Texas Health Services Authority
4 shall each publish the report required by Subsection (a) on the
5 agency's Internet website.

6 Sec. 181.210. FUNDING. The commission and the Texas
7 Department of Insurance, in consultation with the Texas Health
8 Services Authority, shall apply for and actively pursue available
9 federal funding for enforcement of this chapter.

10 SECTION 10. Section 182.002, Health and Safety Code, is
11 amended by adding Subdivisions (2-a), (3-a), and (3-b) to read as
12 follows:

13 (2-a) "Covered entity" has the meaning assigned by
14 Section 181.001.

15 (3-a) "Disclose" has the meaning assigned by Section
16 181.001.

17 (3-b) "Health Insurance Portability and
18 Accountability Act and Privacy Standards" has the meaning assigned
19 by Section 181.001.

20 SECTION 11. Subchapter C, Chapter 182, Health and Safety
21 Code, is amended by adding Section 182.108 to read as follows:

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

27 (b) The commission shall review and by rule adopt acceptable

1 standards submitted for ratification under Subsection (a).

2 (c) Standards adopted under Subsection (b) must be designed
3 to:

4 (1) comply with the Health Insurance Portability and
5 Accountability Act and Privacy Standards and Chapter 181;

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

9 (3) ensure the secure maintenance and disclosure of
10 personally identifiable health information;

11 (4) include strategies and procedures for disclosing
12 personally identifiable health information; and

13 (5) support a level of system interoperability with
14 existing health record databases in this state that is consistent
15 with emerging standards.

16 (d) The corporation shall establish a process by which a
17 covered entity may apply for certification by the corporation of a
18 covered entity's past compliance with standards adopted under
19 Subsection (b).

20 (e) The corporation shall publish the standards adopted
21 under Subsection (b) on the corporation's Internet website.

22 SECTION 12. Subchapter B, Chapter 602, Insurance Code, is
23 amended by adding Section 602.054 to read as follows:

24 Sec. 602.054. COMPLIANCE WITH OTHER LAW. A covered entity
25 shall comply with:

26 (1) Subchapter D, Chapter 181, Health and Safety Code,
27 except as otherwise provided by that subchapter; and

1 (2) the standards adopted under Section 182.108,
2 Health and Safety Code.

3 SECTION 13. (a) In this section, "unsustainable covered
4 entity" means a covered entity, as defined by Section 181.001,
5 Health and Safety Code, that ceases to operate.

6 (b) The Health and Human Services Commission, in
7 consultation with the Texas Health Services Authority and the Texas
8 Medical Board, shall review issues regarding the security and
9 accessibility of protected health information maintained by an
10 unsustainable covered entity.

11 (c) Not later than December 1, 2012, the Health and Human
12 Services Commission shall submit to the appropriate standing
13 committees of the senate and the house of representatives
14 recommendations for:

15 (1) the state agency to which the protected health
16 information maintained by an unsustainable covered entity should be
17 transferred for storage;

18 (2) ensuring the security of protected health
19 information maintained by unsustainable covered entities in this
20 state, including secure transfer methods from the covered entity to
21 the state;

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

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

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

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

4 SECTION 14. (a) A task force on health information
5 technology is created.

6 (b) The task force is composed of:

7 (1) 11 members appointed by the attorney general with
8 the advice of the chairs of the standing committees of the senate
9 and house of representatives having primary jurisdiction over
10 health information technology issues, including:

11 (A) at least two physicians;

12 (B) at least two individuals who represent
13 hospitals; and

14 (C) at least one private citizen who represents
15 patient and parental rights; and

16 (2) the following ex officio members:

17 (A) the executive commissioner of the Health and
18 Human Services Commission or an employee of the commission
19 designated by the executive commissioner;

20 (B) the commissioner of the Department of State
21 Health Services or an employee of the department designated by the
22 commissioner; and

23 (C) the presiding officer of the Texas Health
24 Services Authority or an employee of the authority designated by
25 the presiding officer.

26 (c) Not later than December 1, 2012, the attorney general
27 shall appoint the members of the task force and appoint a chair of

1 the task force from among its membership. The chair of the task
2 force must have expertise in:

- 3 (1) state and federal health information privacy law;
- 4 (2) patient rights; and
- 5 (3) electronic signatures and other consent tools.

6 (d) The task force shall develop recommendations regarding:

7 (1) the improvement of informed consent protocols for
8 the electronic exchange of protected health information, as that
9 term is defined by the Health Insurance Portability and
10 Accountability Act and Privacy Standards, as defined by Section
11 181.001, Health and Safety Code, as amended by this Act;

12 (2) the improvement of patient access to and use of
13 electronically maintained and disclosed protected health
14 information for the purpose of personal health and coordination of
15 health care services; and

16 (3) any other critical issues, as determined by the
17 task force, related to the exchange of protected health
18 information.

19 (e) Not later than January 1, 2014, the task force shall
20 submit to the standing committees of the senate and house of
21 representatives having primary jurisdiction over health
22 information technology issues and the Texas Health Services
23 Authority a report including the task force's recommendations under
24 Subsection (d).

25 (f) The Texas Health Services Authority shall publish the
26 report submitted under Subsection (e) on the authority's Internet
27 website.

1 (g) This section expires February 1, 2014.

2 SECTION 15. Not later than January 1, 2013:

3 (1) the attorney general shall adopt the form required
4 by Section 181.154, Health and Safety Code, as added by this Act;
5 and

6 (2) the Health and Human Services Commission shall
7 adopt the standards required by Section 182.108, Health and Safety
8 Code, as added by this Act.

9 SECTION 16. The change in law made by Section 181.154,
10 Health and Safety Code, as added by this Act, applies only to an
11 electronic disclosure of protected health information made on or
12 after the effective date of this Act. An electronic disclosure of
13 protected health information made before the effective date of this
14 Act is governed by the law in effect at the time the disclosure was
15 made, and the former law is continued in effect for that purpose.

16 SECTION 17. This Act takes effect September 1, 2012.

ADOPTED

MAY 24 2011

Atty Gen
Secretary of the Senate

By: KOLKHORST

H.B. No. 300

Substitute the following for H.B. No. 300 :

By: *Gene Jelso*

C.S.H.B. No. 300

A BILL TO BE ENTITLED

1

AN ACT

2 relating to the privacy of protected health information; providing
3 administrative and civil penalties.

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

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

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

11 (2-a) "Disclose" means to release, transfer, provide
12 access to, or otherwise divulge information outside the entity
13 holding the information.

14 (2-b) "Executive commissioner" means the executive
15 commissioner of the Health and Human Services Commission.

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

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

1 Sec. 181.004. APPLICABILITY OF STATE AND FEDERAL LAW. (a)

2 A covered entity, as that term is defined by 45 C.F.R. Section
3 160.103, shall comply with the Health Insurance Portability and
4 Accountability Act and Privacy Standards.

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

7 SECTION 3. Section 181.005, Health and Safety Code, is
8 amended to read as follows:

9 Sec. 181.005. DUTIES OF THE EXECUTIVE COMMISSIONER. (a)

10 The executive commissioner shall administer this chapter and may
11 adopt rules consistent with the Health Insurance Portability and
12 Accountability Act and Privacy Standards to administer this
13 chapter.

14 (b) The executive commissioner shall review amendments to
15 the definitions in 45 C.F.R. Parts 160 and 164 that occur after
16 September 1, 2011 [~~August 14, 2002~~], and determine whether it is in
17 the best interest of the state to adopt the amended federal
18 regulations. If the executive commissioner determines that it is
19 in the best interest of the state to adopt the amended federal
20 regulations, the amended regulations shall apply as required by
21 this chapter.

22 (c) In making a determination under this section, the
23 executive commissioner must consider, in addition to other factors
24 affecting the public interest, the beneficial and adverse effects
25 the amendments would have on:

26 (1) the lives of individuals in this state and their
27 expectations of privacy; and

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

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

10 SECTION 4. Section 181.006, Health and Safety Code, is
11 amended to read as follows:

12 Sec. 181.006. PROTECTED HEALTH INFORMATION NOT PUBLIC.
13 Notwithstanding Sections 181.004 and 181.051, for [~~For~~] a covered
14 entity that is a governmental unit, an individual's protected
15 health information:

16 (1) includes any information that reflects that an
17 individual received health care from the covered entity; and

18 (2) is not public information and is not subject to
19 disclosure under Chapter 552, Government Code.

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

22 SUBCHAPTER C. ACCESS TO AND USE OF PROTECTED HEALTH INFORMATION

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

27 (1) the covered entity's particular course of

1 business; and

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

3 (b) An employee of a covered entity must complete training
4 described by Subsection (a) not later than the 60th day after the
5 date the employee is hired by the covered entity.

6 (c) An employee of a covered entity shall receive training
7 described by Subsection (a) at least once every two years.

8 (d) A covered entity shall require an employee of the entity
9 who attends a training program described by Subsection (a) to sign,
10 electronically or in writing, a statement verifying the employee's
11 attendance at the training program. The covered entity shall
12 maintain the signed statement.

13 Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS.

14 (a) Except as provided by Subsection (b), if a health care
15 provider is using an electronic health records system that is
16 capable of fulfilling the request, the health care provider, not
17 later than the 15th business day after the date the health care
18 provider receives a written request from a person for the person's
19 electronic health record, shall provide the requested record to the
20 person in electronic form unless the person agrees to accept the
21 record in another form.

22 (b) A health care provider is not required to provide access
23 to a person's protected health information that is excepted from
24 access, or to which access may be denied, under 45 C.F.R. Section
25 164.524.

26 (c) For purposes of Subsection (a), the executive
27 commissioner, in consultation with the Department of State Health

1 Services, the Texas Medical Board, and the Texas Department of
2 Insurance, by rule may recommend a standard electronic format for
3 the release of requested health records. The standard electronic
4 format recommended under this section must be consistent, if
5 feasible, with federal law regarding the release of electronic
6 health records.

7 Sec. 181.103. CONSUMER INFORMATION WEBSITE. The attorney
8 general shall maintain an Internet website that provides:

9 (1) information concerning a consumer's privacy rights
10 regarding protected health information under federal and state law;

11 (2) a list of the state agencies, including the
12 Department of State Health Services, the Texas Medical Board, and
13 the Texas Department of Insurance, that regulate covered entities
14 in this state and the types of entities each agency regulates;

15 (3) detailed information regarding each agency's
16 complaint enforcement process; and

17 (4) contact information, including the address of the
18 agency's Internet website, for each agency listed under Subdivision
19 (2) for reporting a violation of this chapter.

20 Sec. 181.104. CONSUMER COMPLAINT REPORT BY ATTORNEY
21 GENERAL. (a) The attorney general annually shall submit to the
22 legislature a report describing:

23 (1) the number and types of complaints received by the
24 attorney general and by the state agencies receiving consumer
25 complaints under Section 181.103; and

26 (2) the enforcement action taken in response to each
27 complaint reported under Subdivision (1).

1 (b) Each state agency that receives consumer complaints
2 under Section 181.103 shall submit to the attorney general, in the
3 form required by the attorney general, the information the attorney
4 general requires to compile the report required by Subsection (a).

5 (c) The attorney general shall de-identify protected health
6 information from the individual to whom the information pertains
7 before including the information in the report required by
8 Subsection (a).

9 SECTION 6. Subchapter D, Chapter 181, Health and Safety
10 Code, is amended by adding Sections 181.153 and 181.154 to read as
11 follows:

12 Sec. 181.153. SALE OF PROTECTED HEALTH INFORMATION
13 PROHIBITED; EXCEPTIONS. (a) A covered entity may not disclose an
14 individual's protected health information to any other person in
15 exchange for direct or indirect remuneration, except that a covered
16 entity may disclose an individual's protected health information:

17 (1) to another covered entity, as that term is defined
18 by Section 181.001, or to a covered entity, as that term is defined
19 by Section 602.001, Insurance Code, for the purpose of:

20 (A) treatment;

21 (B) payment;

22 (C) health care operations; or

23 (D) performing an insurance or health
24 maintenance organization function described by Section 602.053,
25 Insurance Code; or

26 (2) as otherwise permitted or required by state or
27 federal law.

1 (b) The direct or indirect remuneration a covered entity
2 receives for making a disclosure of protected health information
3 authorized by Subsection (a)(1)(D) may not exceed the covered
4 entity's reasonable costs of preparing or transmitting the
5 protected health information.

6 Sec. 181.154. NOTICE AND AUTHORIZATION REQUIRED FOR
7 ELECTRONIC DISCLOSURE OF PROTECTED HEALTH INFORMATION; EXCEPTIONS.

8 (a) A covered entity shall provide notice to an individual for whom
9 the covered entity creates or receives protected health information
10 if the individual's protected health information is subject to
11 electronic disclosure. A covered entity may provide general notice
12 by:

13 (1) posting a written notice in the covered entity's
14 place of business;

15 (2) posting a notice on the covered entity's Internet
16 website; or

17 (3) posting a notice in any other place where
18 individuals whose protected health information is subject to
19 electronic disclosure are likely to see the notice.

20 (b) Except as provided by Subsection (c), a covered entity
21 may not electronically disclose an individual's protected health
22 information to any person without a separate authorization from the
23 individual or the individual's legally authorized representative
24 for each disclosure. An authorization for disclosure under this
25 subsection may be made in written or electronic form or in oral form
26 if it is documented in writing by the covered entity.

27 (c) The authorization for electronic disclosure of

1 protected health information described by Subsection (b) is not
2 required if the disclosure is made:

3 (1) to another covered entity, as that term is defined
4 by Section 181.001, or to a covered entity, as that term is defined
5 by Section 602.001, Insurance Code, for the purpose of:

6 (A) treatment;

7 (B) payment;

8 (C) health care operations; or

9 (D) performing an insurance or health
10 maintenance organization function described by Section 602.053,
11 Insurance Code; or

12 (2) as otherwise permitted or required by state or
13 federal law.

14 (d) The attorney general shall adopt a standard
15 authorization form for use in complying with this section. The form
16 must comply with the Health Insurance Portability and
17 Accountability Act and Privacy Standards and this chapter.

18 (e) This section does not apply to a covered entity, as
19 defined by Section 602.001, Insurance Code, if that entity is not a
20 covered entity as defined by 45 C.F.R. Section 160.103.

21 SECTION 7. Section 181.201, Health and Safety Code, is
22 amended by amending Subsections (b) and (c) and adding Subsections
23 (b-1), (d), (e), and (f) to read as follows:

24 (b) In addition to the injunctive relief provided by
25 Subsection (a), the attorney general may institute an action for
26 civil penalties against a covered entity for a violation of this
27 chapter. A civil penalty assessed under this section may not

1 exceed:

2 (1) \$5,000 [~~\$3,000~~] for each violation committed
3 negligently;

4 (2) \$25,000 for each violation committed knowingly or
5 intentionally; or

6 (3) \$250,000 for each violation in which the covered
7 entity knowingly or intentionally uses protected health
8 information for financial gain.

9 (b-1) The total amount of a penalty assessed against a
10 covered entity under Subsection (b) in relation to a violation or
11 violations of Section 181.154 may not exceed \$250,000 annually if
12 the court finds that:

13 (1) the disclosure was made only to another covered
14 entity and only for a purpose described by Section 181.154(c);

15 (2) the protected health information disclosed was
16 encrypted or transmitted using encryption technology designed to
17 protect against improper disclosure;

18 (3) the recipient of the protected health information
19 did not use or release the protected health information; and

20 (4) at the time of the disclosure of the protected
21 health information, the covered entity had developed, implemented,
22 and maintained security policies, including the education and
23 training of employees responsible for the security of protected
24 health information.

25 (c) If the court in which an action under Subsection (b) is
26 pending finds that the violations have occurred with a frequency as
27 to constitute a pattern or practice, the court may assess a civil

1 penalty not to exceed \$1.5 million annually [~~\$250,000~~].

2 (d) In determining the amount of a penalty imposed under
3 Subsection (b), the court shall consider:

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

6 (2) the covered entity's compliance history;

7 (3) whether the violation poses a significant risk of
8 financial, reputational, or other harm to an individual whose
9 protected health information is involved in the violation;

10 (4) whether the covered entity was certified at the
11 time of the violation as described by Section 182.108;

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

13 and

14 (6) the covered entity's efforts to correct the
15 violation.

16 (e) The attorney general may institute an action against a
17 covered entity that is licensed by a licensing agency of this state
18 for a civil penalty under this section only if the licensing agency
19 refers the violation to the attorney general under Section
20 181.202(2).

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

25 SECTION 8. Section 181.202, Health and Safety Code, is
26 amended to read as follows:

27 Sec. 181.202. DISCIPLINARY ACTION. In addition to the

1 penalties prescribed by this chapter, a violation of this chapter
2 by a covered entity [~~an individual or facility~~] that is licensed by
3 an agency of this state is subject to investigation and
4 disciplinary proceedings, including probation or suspension by the
5 licensing agency. If there is evidence that the violations of this
6 chapter are egregious and constitute a pattern or practice, the
7 agency may:

8 (1) revoke the covered entity's [~~individual's or~~
9 ~~facility's~~] license; or

10 (2) refer the covered entity's case to the attorney
11 general for the institution of an action for civil penalties under
12 Section 181.201(b).

13 SECTION 9. Section 181.205, Health and Safety Code, is
14 amended by amending Subsection (b) and adding Subsection (c) to
15 read as follows:

16 (b) In determining the amount of a penalty imposed under
17 other law in accordance with Section 181.202, a court or state
18 agency shall consider the following factors:

19 (1) the seriousness of the violation, including the
20 nature, circumstances, extent, and gravity of the disclosure;

21 (2) the covered entity's compliance history;

22 (3) whether the violation poses a significant risk of
23 financial, reputational, or other harm to an individual whose
24 protected health information is involved in the violation;

25 (4) whether the covered entity was certified at the
26 time of the violation as described by Section 182.108;

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

1 and

2 (6) the covered entity's efforts to correct the
3 violation.

4 (c) On receipt of evidence under Subsections [~~Subsection~~]
5 (a) and (b), a court or state agency shall consider the evidence and
6 mitigate imposition of an administrative penalty or assessment of a
7 civil penalty accordingly.

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

11 Sec. 181.206. AUDITS OF COVERED ENTITIES. (a) The
12 commission, in coordination with the attorney general, the Texas
13 Health Services Authority, and the Texas Department of Insurance:

14 (1) may request that the United States secretary of
15 health and human services conduct an audit of a covered entity in
16 this state to determine compliance with the Health Insurance
17 Portability and Accountability Act and Privacy Standards; 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) If the commission has evidence that a covered entity has
22 committed violations of this chapter that are egregious and
23 constitute a pattern or practice, the commission may:

24 (1) require the covered entity to submit to the
25 commission the results of a risk analysis conducted by the covered
26 entity if required by 45 C.F.R. Section 164.308(a)(1)(ii)(A); or

27 (2) if the covered entity is licensed by a licensing

1 agency of this state, request that the licensing agency conduct an
2 audit of the covered entity's system to determine compliance with
3 the provisions of this chapter.

4 (c) The commission annually shall submit to the appropriate
5 standing committees of the senate and the house of representatives
6 a report regarding the number of federal audits of covered entities
7 in this state and the number of audits required under Subsection
8 (b).

9 Sec. 181.207. REVIEW OF COMPLAINT BY COMMISSION. (a) The
10 commission shall review a complaint received from an individual or
11 an individual's legally authorized representative alleging that a
12 covered entity violated this chapter with respect to the
13 individual's protected health information.

14 (b) The commission shall refer a complaint reviewed under
15 Subsection (a) to the appropriate licensing agency or the attorney
16 general, as applicable.

17 Sec. 181.208. FUNDING. The commission and the Texas
18 Department of Insurance, in consultation with the Texas Health
19 Services Authority, shall apply for and actively pursue available
20 federal funding for enforcement of this chapter.

21 SECTION 11. Section 182.002, Health and Safety Code, is
22 amended by adding Subdivisions (2-a), (3-a), and (3-b) to read as
23 follows:

24 (2-a) "Covered entity" has the meaning assigned by
25 Section 181.001.

26 (3-a) "Disclose" has the meaning assigned by Section
27 181.001.

1 (3-b) "Health Insurance Portability and
2 Accountability Act and Privacy Standards" has the meaning assigned
3 by Section 181.001.

4 SECTION 12. Subchapter C, Chapter 182, Health and Safety
5 Code, is amended by adding Section 182.108 to read as follows:

6 Sec. 182.108. STANDARDS FOR ELECTRONIC SHARING OF PROTECTED
7 HEALTH INFORMATION; COVERED ENTITY CERTIFICATION. (a) The
8 corporation shall develop and submit to the commission for
9 ratification privacy and security standards for the electronic
10 sharing of protected health information.

11 (b) The commission shall review and by rule adopt acceptable
12 standards submitted for ratification under Subsection (a).

13 (c) Standards adopted under Subsection (b) must be designed
14 to:

15 (1) comply with the Health Insurance Portability and
16 Accountability Act and Privacy Standards and Chapter 181;

17 (2) comply with any other state and federal law
18 relating to the security and confidentiality of information
19 electronically maintained or disclosed by a covered entity;

20 (3) ensure the secure maintenance and disclosure of
21 personally identifiable health information;

22 (4) include strategies and procedures for disclosing
23 personally identifiable health information; and

24 (5) support a level of system interoperability with
25 existing health record databases in this state that is consistent
26 with emerging standards.

27 (d) The corporation shall establish a process by which a

1 covered entity may apply for certification by the corporation of a
2 covered entity's past compliance with standards adopted under
3 Subsection (b).

4 (e) The corporation shall publish the standards adopted
5 under Subsection (b) on the corporation's Internet website.

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

9 (b) A person who conducts business in this state and owns or
10 licenses computerized data that includes sensitive personal
11 information shall disclose any breach of system security, after
12 discovering or receiving notification of the breach, to any
13 individual [~~resident of this state~~] whose sensitive personal
14 information was, or is reasonably believed to have been, acquired
15 by an unauthorized person. The disclosure shall be made as quickly
16 as possible, except as provided by Subsection (d) or as necessary to
17 determine the scope of the breach and restore the reasonable
18 integrity of the data system.

19 (b-1) Notwithstanding Subsection (b), the requirements of
20 Subsection (b) apply only if the individual whose sensitive
21 personal information was or is reasonably believed to have been
22 acquired by an unauthorized person is a resident of this state or
23 another state that does not require a person described by
24 Subsection (b) to notify the individual of a breach of system
25 security. If the individual is a resident of a state that requires
26 a person described by Subsection (b) to provide notice of a breach
27 of system security, the notice of the breach of system security

1 provided under that state's law satisfies the requirements of
2 Subsection (b).

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

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

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

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

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

26 SECTION 16. Subchapter B, Chapter 602, Insurance Code, is
27 amended by adding Section 602.054 to read as follows:

1 Sec. 602.054. COMPLIANCE WITH OTHER LAW. A covered entity
2 shall comply with:

3 (1) Subchapter D, Chapter 181, Health and Safety Code,
4 except as otherwise provided by that subchapter; and

5 (2) the standards adopted under Section 182.108,
6 Health and Safety Code.

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

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

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

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

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

26 (3) the method and period of time for which protected
27 health information should be maintained by the state after transfer

1 from an unsustainable covered entity;

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

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

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

8 SECTION 18. (a) A task force on health information
9 technology is created.

10 (b) The task force is composed of:

11 (1) 11 members appointed by the attorney general with
12 the advice of the chairs of the standing committees of the senate
13 and house of representatives having primary jurisdiction over
14 health information technology issues, including:

15 (A) at least two physicians;

16 (B) at least two individuals who represent
17 hospitals; and

18 (C) at least one private citizen who represents
19 patient and parental rights; and

20 (2) the following ex officio members:

21 (A) the executive commissioner of the Health and
22 Human Services Commission or an employee of the commission
23 designated by the executive commissioner;

24 (B) the commissioner of the Department of State
25 Health Services or an employee of the department designated by the
26 commissioner; and

27 (C) the presiding officer of the Texas Health

1 Services Authority or an employee of the authority designated by
2 the presiding officer.

3 (c) Not later than December 1, 2012, the attorney general
4 shall appoint the members of the task force and appoint a chair of
5 the task force from among its membership. The chair of the task
6 force must have expertise in:

- 7 (1) state and federal health information privacy law;
- 8 (2) patient rights; and
- 9 (3) electronic signatures and other consent tools.

10 (d) The task force shall develop recommendations regarding:

11 (1) the improvement of informed consent protocols for
12 the electronic exchange of protected health information, as that
13 term is defined by the Health Insurance Portability and
14 Accountability Act and Privacy Standards, as defined by Section
15 181.001, Health and Safety Code, as amended by this Act;

16 (2) the improvement of patient access to and use of
17 electronically maintained and disclosed protected health
18 information for the purpose of personal health and coordination of
19 health care services; and

20 (3) any other critical issues, as determined by the
21 task force, related to the exchange of protected health
22 information.

23 (e) Not later than January 1, 2014, the task force shall
24 submit to the standing committees of the senate and house of
25 representatives having primary jurisdiction over health
26 information technology issues and the Texas Health Services
27 Authority a report including the task force's recommendations under

1 Subsection (d).

2 (f) The Texas Health Services Authority shall publish the
3 report submitted under Subsection (e) on the authority's Internet
4 website.

5 (g) This section expires February 1, 2014.

6 SECTION 19. Section 531.0315(b), Government Code, is
7 repealed.

8 SECTION 20. Not later than January 1, 2013:

9 (1) the attorney general shall adopt the form required
10 by Section 181.154, Health and Safety Code, as added by this Act;
11 and

12 (2) the Health and Human Services Commission shall
13 adopt the standards required by Section 182.108, Health and Safety
14 Code, as added by this Act.

15 SECTION 21. (a) Not later than May 1, 2012, the attorney
16 general shall establish the Internet website required by Section
17 181.103, Health and Safety Code, as added by this Act.

18 (b) Not later than December 1, 2013, the attorney general
19 shall submit the initial report required by Section 181.104, Health
20 and Safety Code, as added by this Act.

21 SECTION 22. Not later than December 1, 2013, the Health and
22 Human Services Commission shall submit the initial report required
23 by Section 531.0994, Government Code, as added by this Act.

24 SECTION 23. The changes in law made by Section 181.201,
25 Health and Safety Code, as amended by this Act, Section 521.053,
26 Business & Commerce Code, as amended by this Act, and Section
27 521.151(a-1), Business & Commerce Code, as added by this Act, apply

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

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

FLOOR AMENDMENT NO. 1

BY: Jane Nelson

1 Amend CSHB 300 (Senate Committee Report) by striking page
2 5, line 69 through page 6, line 7 and renumbering all subsequent
3 sections as necessary.

ADOPTED

MAY 24 2011

Atay Spaul
Secretary of the Senate

ADOPTED

MAY 24 2011

FLOOR AMENDMENT NO. 2

Lotay Spaw
Secretary of the Senate

BY: *J. J. King*

1 Amend C.S.H.B. No. 300 (senate committee printing) as
2 follows:

3 (1) In SECTION 7 of the bill, strike proposed Sections
4 181.201(b) and (b-1), Health and Safety Code (page 4, lines 18
5 through 45), and substitute the following:

6 (b) In addition to the injunctive relief provided by
7 Subsection (a), the attorney general may institute an action for
8 civil penalties against a covered entity for a violation of this
9 chapter. A civil penalty assessed under this section may not
10 exceed:

11 (1) \$5,000 [~~\$3,000~~ for each violation that occurs in
12 one year, regardless of how long the violation continues during
13 that year, committed negligently;

14 (2) \$25,000 for each violation that occurs in one
15 year, regardless of how long the violation continues during that
16 year, committed knowingly or intentionally; or

17 (3) \$250,000 for each violation in which the covered
18 entity knowingly or intentionally uses protected health
19 information for financial gain.

20 (b-1) The total amount of a penalty assessed against a
21 covered entity under Subsection (b) in relation to a violation or
22 violations of Section 181.154 may not exceed \$250,000 annually if
23 the court finds that the disclosure was made only to another covered
24 entity and only for a purpose described by Section 181.154(c) and
25 the court finds that:

26 (1) the protected health information disclosed was
27 encrypted or transmitted using encryption technology designed to
28 protect against improper disclosure;

29 (2) the recipient of the protected health information

1 did not use or release the protected health information; or

2 (3) at the time of the disclosure of the protected
3 health information, the covered entity had developed, implemented,
4 and maintained security policies, including the education and
5 training of employees responsible for the security of protected
6 health information.

7 (2) In SECTION 10 of the bill, in added Section
8 181.206(a)(1), Health and Safety Code (page 5, line 48), between
9 "entity" and "in", insert ", as that term is defined by 45 C.F.R.
10 Section 160.103,".

11 (3) Add the following appropriately numbered SECTIONS to
12 the bill and renumber subsequent SECTIONS of the bill accordingly:

13 SECTION _____. Section 522.002(b), Business & Commerce Code,
14 is amended to read as follows:

15 (b) An offense under this section is a Class B misdemeanor,
16 except that the offense is a state jail felony if the information
17 accessed, read, scanned, stored, or transferred was protected
18 health information as defined by the Health Insurance Portability
19 and Accountability Act and Privacy Standards, as defined by Section
20 181.001, Health and Safety Code.

21 SECTION _____. The change in law made by Section 522.002(b),
22 Business & Commerce Code, as amended by this Act, applies only to an
23 offense committed on or after the effective date of this Act. An
24 offense committed before the effective date of this Act is governed
25 by the law in effect at the time the offense was committed, and the
26 former law is continued in effect for that purpose. For purposes of
27 this section, an offense was committed before the effective date of
28 this Act if any element of the offense was committed before that
29 date.

ADOPTED

MAY 24 2011

FLOOR AMENDMENT NO. 3

Debra Daw
Secretary of the Senate

BY: *P. Hest*

1 Amend C.S.H.B. No. 300 (senate committee printing) in SECTION
2 18 of the bill as follows:

3 (1) In proposed Subsection (b)(1)(B) (page 8, line 5),
4 strike "and".

5 (2) In proposed Subsection (b)(1), following Paragraph (C)
6 (page 8, between lines 7 and 8), insert:

7 (D) at least one pharmacist; and

ADOPTED

MAY 24 2011

Atty Gen
Secretary of the Senate

FLOOR AMENDMENT NO. 4

By: Dewell

1 Amend C.S.H.B. No. 300 by adding a new SECTION 4 and
2 renumbering subsequent SECTIONS appropriately:

3 SECTION 4. Subchapter B, Chapter 181, health and Safety
4 Code, is amended by adding Section 181.059 as follows:

5 Sec. 181.059. CRIME VICTIM COMPENSATION. This Chapter does not
6 apply to any person or entity in connection with providing,
7 administering, supporting, or coordinating any of the benefits
8 regarding compensation to victims of crime as provided by
9 Subchapter B, Article 56, Code of Criminal Procedure.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB300 by Kolkhorst (Relating to the privacy of protected health information; providing administrative and civil penalties.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

There are certain provisions of the bill that could increase revenues for penalties or increase costs for enforcement purposes; while the specific impact cannot be determined at this time, this analysis assumes no significant impact to the State.

The bill would amend Chapter 181 of the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy (HIPAA) standards and rules regarding access to and use of protected health information. The bill would require employees at covered entities receive training regarding protected health information. The bill would also require a health care provider to provide a person's electronic health record within fifteen business days of receiving a request for the information if a health care provider has a system capable of fulfilling the request.

The bill would require the Office of the Attorney General (OAG) to maintain an internet website with information for consumers regarding privacy rights under federal and state law related to protected health information, a list of state agencies that regulate covered entities in the state, information regarding the complaint enforcement process, and contact information for each agency. The bill would also require the OAG to submit annually to the legislature a report on the number and types of complaints received.

The bill would prohibit a covered entity from disclosing protected health information to any person in exchange for direct or indirect remuneration, with certain exemptions. The bill would require the OAG to adopt a standard authorization form for use in complying with authorized requests for disclosure of protected health information.

The bill would authorize the Attorney General to institute an action against a covered entity that is licensed by a licensing agency of the state for a civil penalty and to retain a reasonable portion of a civil penalty for enforcement. The bill would increase the maximum civil penalties for violations of the Medical Privacy Act. The bill would authorize the Health and Human Services Commission (HHSC) to refer disciplinary licensing actions involving violations to the OAG for civil enforcement. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to request that the United States Secretary of Health and Human Services conduct a compliance audit of covered entities. The bill would authorize HHSC and the OAG to require a covered entity to conduct periodic compliance audits and submit a report to HHSC. HHSC could require certain audits or submission of risk analysis reports if the commission finds a covered entity commits egregious violations. HHSC would be required to submit an annual report to the Legislature regarding the number of audits performed.

The bill would direct the Texas Health Services Authority (THSA) to develop privacy and security

standards in compliance with HIPAA for the electronic sharing of protected health information. THSA would be required to publish the standards on its website.

The bill would amend the Business and Commerce Code by adding a liability to the state for a civil penalty of no more than \$100 for each individual to whom notification of a breach of system security is due and the person or entity fails to take reasonable action to notify the individual.

The bill would direct HHSC, in consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, to provide a report to the legislature on new developments in safeguarding protected health information.

The bill would direct HHSC, with the Texas Health Services Authority and the Texas Medical Board, to review issues regarding security and accessibility of protected health information maintained by "unsustainable" covered entities (assumed to mean a covered entity that goes out of business).

The bill would direct the OAG to establish a task force on health information technology to develop recommendations regarding the informed consent protocols, improvements in patient access to electronic protected health information, and other issues. The bill would require the task force to submit its report of recommendations to the Legislature by January 1, 2014.

The bill would take effect September 1, 2012.

The federal Health Information Technology for Economic and Clinical Health Act (HITECH Act), which included enhanced medical record and HIPAA privacy provisions, provided funding for health information technology development at the state level. Health Information Technology provides a framework for the management of health information and its exchange between consumers, providers, insurers, government, and quality review entities. The Health Information Exchange (HIE) Plan was developed by HHSC and the Texas Health Service Authority and approved in November of 2010. The plan is extensive and provides a four-year outline for the state's HIE implementation schedule, which includes policy and technology system development for several state agencies.

This analysis assumes costs of implementing the provisions of the bill specific to electronic transfer of protected health information and related technology costs could be absorbed within the agencies' current resources, which include Federal Funds specifically for this purpose.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 454 Department of Insurance, 503 Texas Medical Board, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

LBB Staff: JOB, ES, CL, MB, VJC, GD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 20, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB300 by Kolkhorst (Relating to the privacy of protected health information; providing administrative and civil penalties.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

There are certain provisions of the bill that could increase revenues for penalties or increase costs for enforcement purposes; while the specific impact cannot be determined at this time, this analysis assumes no significant impact to the State.

The bill would amend Chapter 181 of the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy (HIPAA) standards and rules regarding access to and use of protected health information. The bill would require employees at covered entities receive training regarding protected health information. The bill would also require a health care provider to provide a person's electronic health record within fifteen business days of receiving a request for the information if a health care provider has a system capable of fulfilling the request.

The bill would require the Office of the Attorney General (OAG) to maintain an internet website with information for consumers regarding privacy rights under federal and state law related to protected health information, a list of state agencies that regulate covered entities in the state, information regarding the complaint enforcement process, and contact information for each agency. The bill would also require the OAG to submit annually to the legislature a report on the number and types of complaints received.

The bill would prohibit a covered entity from disclosing protected health information to any person in exchange for direct or indirect remuneration, with certain exemptions. The bill would require the OAG to adopt a standard authorization form for use in complying with authorized requests for disclosure of protected health information.

The bill would authorize the Attorney General to institute an action against a covered entity that is licensed by a licensing agency of the state for a civil penalty and to retain a reasonable portion of a civil penalty for enforcement. The bill would increase the maximum civil penalties for violations of the Medical Privacy Act. The bill would authorize the Health and Human Services Commission (HHSC) to refer disciplinary licensing actions involving violations to the OAG for civil enforcement. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to request that the United States Secretary of Health and Human Services conduct a compliance audit of covered entities. The bill would authorize HHSC and the OAG to require a covered entity to conduct periodic compliance audits and submit a report to HHSC. HHSC could require certain audits or submission of risk analysis reports if the commission finds a covered entity commits egregious violations. HHSC would be required to submit an annual report to the Legislature regarding the number of audits performed.

The bill would require HHSC to review all complaints alleging Public Health Information compliance

violations and refer complaints to appropriate licensing agencies or the attorney general. HHSC indicates there could be an increased cost for responding to the increased complaint volumes, as HHSC does not currently regulate all of the covered entities; however, the increased number of complaints and potential costs to HHSC cannot be estimated at this time.

The bill would direct the Texas Health Services Authority (THSA) to develop privacy and security standards in compliance with HIPAA for the electronic sharing of protected health information. THSA would be required to publish the standards on its website.

The bill would amend the Business and Commerce Code by adding a liability to the state for a civil penalty of no more than \$100 for each individual to whom notification of a breach of system security is due and the person or entity fails to take reasonable action to notify the individual.

The bill would direct HHSC, in consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, to provide a report to the legislature on new developments in safeguarding protected health information.

The bill would direct HHSC, with the Texas Health Services Authority and the Texas Medical Board, to review issues regarding security and accessibility of protected health information maintained by "unsustainable" covered entities (assumed to mean a covered entity that goes out of business).

The bill would direct the OAG to establish a task force on health information technology to develop recommendations regarding the informed consent protocols, improvements in patient access to electronic protected health information, and other issues. The bill would require the task force to submit its report of recommendations to the Legislature by January 1, 2014.

The bill would take effect September 1, 2012.

The federal Health Information Technology for Economic and Clinical Health Act (HITECH Act), which included enhanced medical record and HIPAA privacy provisions, provided funding for health information technology development at the state level. Health Information Technology provides a framework for the management of health information and its exchange between consumers, providers, insurers, government, and quality review entities. The Health Information Exchange (HIE) Plan was developed by HHSC and the Texas Health Service Authority and approved in November of 2010. The plan is extensive and provides a four-year outline for the state's HIE implementation schedule, which includes policy and technology system development for several state agencies.

This analysis assumes costs of implementing the provisions of the bill specific to electronic transfer of protected health information and related technology costs could be absorbed within the agencies' current resources, which include Federal Funds specifically for this purpose.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 454 Department of Insurance, 503 Texas Medical Board, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

LBB Staff: JOB, ES, CL, MB, VJC, GD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 17, 2011

TO: Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB300 by Kolkhorst (Relating to the privacy of protected health information; providing administrative and civil penalties.), **As Engrossed**

No significant fiscal implication to the State is anticipated. There are certain provisions of the bill that could increase revenues for penalties or increase costs for enforcement purposes; while the specific impact cannot be determined at this time, this analysis assumes no significant impact to the State.

The bill would amend Chapter 181 of the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy (HIPAA) standards and rules regarding access to and use of protected health information.

The bill would require the Office of the Attorney General (OAG) to adopt rules, no later than January 1, 2013, to create and adopt a standard authorization form for use in complying with authorized requests for disclosure of protected health information.

The bill would increase the maximum civil penalties for violations of the Medical Privacy Act. The bill would authorize the Health and Human Services Commission (HHSC) to refer disciplinary licensing actions involving violations to the OAG for civil enforcement. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to impose an administrative penalty on an unlicensed entity that violates the health information privacy regulations. The bill would establish the criteria for assessing the financial penalty and for court or state agency mitigation of the penalty. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to request that the United States Secretary of Health and Human Services conduct a compliance audit of covered entities. The bill would authorize HHSC and the OAG to require a covered entity to conduct periodic compliance audits and submit a report to HHSC. The bill would authorize HHSC to require certain audits or submission of risk analysis reports if the commission finds a covered entity commits egregious violations. The bill would require HHSC to review all complaints alleging Public Health Information compliance violations and refer complaints to appropriate licensing agencies or the attorney general. HHSC would be required to submit an annual report to the Legislature regarding the complaints received and the enforcement action taken. HHSC indicates there could be an increased cost for responding to the increased complaint volumes, as HHSC does not currently regulate all of the covered entities; however, the increased number of complaints and potential costs to HHSC cannot be estimated at this time.

The bill would direct HHSC, with the Texas Health Services Authority and the Texas Medical Board, to review issues regarding security and accessibility of protected health information maintained by "unsustainable" covered entities (assumed to mean a covered entity that goes out of business).

The bill would direct the OAG to establish a task force on health information technology to develop

recommendations regarding the informed consent protocols, improvements in patient access to electronic protected health information, and other issues. The bill would require the task force to submit its report of recommendations to the Legislature by January 1, 2014.

The bill would take effect September 1, 2012.

The federal Health Information Technology for Economic and Clinical Health Act (HITECH Act), which included enhanced medical record and HIPAA privacy provisions, provided funding for health information technology development at the state level. Health Information Technology provides a framework for the management of health information and its exchange between consumers, providers, insurers, government, and quality review entities. The Health Information Exchange (HIE) Plan was developed by HHSC and the Texas Health Service Authority and approved in November of 2010. The plan is extensive and provides a four-year outline for the state's HIE implementation schedule, which includes policy and technology system development for several state agencies.

This analysis assumes costs of implementing the provisions of the bill specific to electronic transfer of protected health information and related technology costs could be absorbed within the agencies' current resources, which include Federal Funds specifically for this purpose.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 454 Department of Insurance, 503 Texas Medical Board, 304 Comptroller of Public Accounts, 529 Health and Human Services Commission

LBB Staff: JOB, ES, CL, MB, VJC, GD

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 29, 2011

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB300 by Kolkhorst (Relating to the privacy of protected health information; providing administrative and civil penalties.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated. There are certain provisions of the bill that could increase revenues for penalties or increase costs for enforcement purposes; while the specific impact cannot be determined at this time, this analysis assumes no significant impact to the State.

The bill would amend Chapter 181 of the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy (HIPAA) standards and rules regarding access to and use of protected health information.

The bill would require the Office of the Attorney General (OAG) to adopt rules, no later than January 1, 2012, to create and adopt a standard authorization form for use in complying with authorized requests for disclosure of protected health information.

The bill would increase the maximum civil penalties for violations of the Medical Privacy Act. The bill would authorize the Health and Human Services Commission (HHSC) to refer disciplinary licensing actions involving violations to the OAG for civil enforcement. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to impose an administrative penalty on an unlicensed entity that violates the health information privacy regulations. The bill would establish the criteria for assessing the financial penalty and for court or state agency mitigation of the penalty. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would authorize HHSC to request that the United States Secretary of Health and Human Services conduct a compliance audit of covered entities. The bill would authorize HHSC and the OAG to require a covered entity to conduct periodic compliance audits and submit a report to HHSC. The bill would require HHSC to review all complaints alleging Public Health Information compliance violations and refer complaints to appropriate licensing agencies or the attorney general. HHSC would be required to submit an annual report to the Legislature regarding the complaints received and the enforcement action taken. HHSC indicates there could be an increased cost for responding to the increased complaint volumes, as HHSC does not currently regulate all of the covered entities; however, the increased number of complaints and potential costs to HHSC cannot be estimated at this time.

The bill would direct HHSC, with the Texas Health Services Authority and the Texas Medical Board, to review issues regarding security and accessibility of protected health information maintained by "unsustainable" covered entities (assumed to mean a covered entity that goes out of business).

The bill would direct the OAG to establish a task force on health information technology to develop recommendations regarding the informed consent protocols, improvements in patient access to

electronic protected health information, and other issues. The bill would require the task force to submit its report of recommendations to the Legislature by January 1, 2014.

The bill would take effect September 1, 2012.

The federal Health Information Technology for Economic and Clinical Health Act (HITECH Act), which included enhanced medical record and HIPAA privacy provisions, provided funding for health information technology development at the state level. Health Information Technology provides a framework for the management of health information and its exchange between consumers, providers, insurers, government, and quality review entities. The Health Information Exchange (HIE) Plan was developed by HHSC and the Texas Health Service Authority and approved in November of 2010. The plan is extensive and provides a four-year outline for the state's HIE implementation schedule, which includes policy and technology system development for several state agencies.

This analysis assumes costs of implementing the provisions of the bill specific to electronic transfer of protected health information and related technology costs could be absorbed within the agencies' current resources, which include Federal Funds specifically for this purpose.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 304 Comptroller of Public Accounts, 454 Department of Insurance, 503 Texas Medical Board, 529 Health and Human Services Commission

LBB Staff: JOB, ES, CL, MB, VJC, GD

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 15, 2011

TO: Honorable Lois W. Kolkhorst, Chair, House Committee on Public Health

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB300 by Kolkhorst (Relating to the privacy of protected health information; providing civil penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend Chapter 181 of the Health and Safety Code to direct all covered entities to comply with the Health Insurance Portability and Accountability Act and Privacy (HIPAA) standards and rules regarding access to and use of protected health information. The bill would require a covered entity to provide a person's electronic health record within fifteen days of receiving the request for the information and would authorize the entity to charge a fee for the copy of the public health information. The bill would also establish new rules regarding record retention periods at covered entities.

The bill would require the Office of the Attorney General (OAG) to adopt rules, no later than January 1, 2012, to create and adopt a standard authorization form for use in complying with authorized requests for disclosure of protected health information.

The bill would increase the maximum civil penalties for violations of the Medical Privacy Act. The bill would authorize the Health and Human Services Commission (HHSC) to refer disciplinary licensing actions involving violations to the OAG for civil enforcement. The number of potential violations and the amount of penalties levied are unknown; therefore, there could be an indeterminate revenue increase to the state.

The bill would direct the OAG, in coordination with HHSC, the Texas Health Services Authority, and the Texas Department of Insurance (TDI) to conduct periodic audits of covered entities. The bill would require the OAG to adopt rules to administer the audit provisions, to review a complaint received from any individual, and to report annually to the Legislature regarding the number and type of complaints, enforcement actions, and state and federal audits.

The bill would direct HHSC, with the Texas Health Services Authority and the Texas Medical Board, to review issues regarding security and accessibility of protected health information maintained by "unsustainable" covered entities (assumed to mean a covered entity that goes out of business). The bill would require HHSC to report to the Legislature on recommendations for state agency maintenance and retention of those records.

The bill would direct the OAG to establish a task force on health information technology to develop recommendations regarding the informed consent protocols, improvements in patient access to electronic protected health information, and other issues. The bill would require the task force to submit its report of recommendations to the Legislature by January 1, 2013.

The bill would take effect September 1, 2011.

The federal Health Information Technology for Economic and Clinical Health Act (HITECH Act), which included enhanced medical record and HIPAA privacy provisions, provided funding for health information technology development at the state level. Health Information Technology provides a

framework for the management of health information and its exchange between consumers, providers, insurers, government, and quality review entities. The Health Information Exchange (HIE) Plan was developed by HHSC and the Texas Health Service Authority and approved in November of 2010. The plan is extensive and provides a four-year outline for the state's HIE implementation schedule, which includes policy and technology system development for several state agencies.

This analysis assumes costs of implementing the provisions of the bill could be absorbed within the agencies' current resources, which include Federal Funds specifically for this purpose.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 302 Office of the Attorney General, 454 Department of Insurance, 503 Texas Medical Board, 529 Health and Human Services Commission

LBB Staff: JOB, ES, CL, MB, VJC, GD