

1 AN ACT

2 relating to the exchange of health information in this state;
3 creating a criminal offense.

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

5 SECTION 1. Title 4, Civil Practice and Remedies Code, is
6 amended by adding Chapter 74A to read as follows:

7 CHAPTER 74A. LIMITATION OF LIABILITY RELATING TO HEALTH
8 INFORMATION EXCHANGES

9 Sec. 74A.001. DEFINITIONS. In this chapter:

10 (1) "Gross negligence" has the meaning assigned by
11 Section 41.001.

12 (2) "Health care provider" means any individual,
13 partnership, professional association, corporation, facility, or
14 institution duly licensed, certified, registered, or chartered by
15 this state to provide health care or medical care, including a
16 physician. The term includes:

17 (A) an officer, director, shareholder, member,
18 partner, manager, owner, or affiliate of a physician or other
19 health care provider; and

20 (B) an employee, independent contractor, or
21 agent of a physician or other health care provider acting in the
22 course and scope of the employment or contractual relationship.

23 (3) "Health information exchange" has the meaning
24 assigned by Section 182.151, Health and Safety Code. The term

1 includes:

2 (A) an officer, director, shareholder, member,
3 partner, manager, owner, or affiliate of the health information
4 exchange; and

5 (B) an employee, independent contractor, or
6 agent of the health information exchange acting in the course and
7 scope of the employment or contractual relationship.

8 (4) "Malice" has the meaning assigned by Section
9 41.001.

10 (5) "Physician" means:

11 (A) an individual licensed to practice medicine
12 in this state under Subtitle B, Title 3, Occupations Code;

13 (B) a professional association organized by an
14 individual physician or a group of physicians;

15 (C) a partnership or limited liability
16 partnership formed by a group of physicians;

17 (D) a limited liability company formed by a group
18 of physicians;

19 (E) a nonprofit health corporation certified by
20 the Texas Medical Board under Chapter 162, Occupations Code; or

21 (F) a single legal entity authorized to practice
22 medicine in this state owned by a group of physicians.

23 Sec. 74A.002. LIMITATION ON LIABILITY OF HEALTH CARE
24 PROVIDERS RELATING TO HEALTH INFORMATION EXCHANGES. (a) Unless the
25 health care provider acts with malice or gross negligence, a health
26 care provider who provides patient information to a health
27 information exchange is not liable for any damages, penalties, or

1 other relief related to the obtainment, use, or disclosure of that
2 information in violation of federal or state privacy laws by a
3 health information exchange, another health care provider, or any
4 other person.

5 (b) Nothing in this section may be construed to create a
6 cause of action or to create a standard of care, obligation, or duty
7 that forms the basis for a cause of action.

8 Sec. 74A.003. APPLICABILITY OF OTHER LAW. The protections,
9 immunities, and limitations of liability provided by this chapter
10 are in addition to any other protections, immunities, and
11 limitations of liability provided by other law.

12 SECTION 2. Section 531.0162, Government Code, is amended by
13 adding Subsections (e), (f), (g), and (h) to read as follows:

14 (e) The executive commissioner shall ensure that:

15 (1) all information systems available for use by the
16 commission or a health and human services agency in sending
17 protected health information to a health care provider or receiving
18 protected health information from a health care provider, and for
19 which planning or procurement begins on or after September 1, 2015,
20 are capable of sending or receiving that information in accordance
21 with the applicable data exchange standards developed by the
22 appropriate standards development organization accredited by the
23 American National Standards Institute;

24 (2) if national data exchange standards do not exist
25 for a system described by Subdivision (1), the commission makes
26 every effort to ensure the system is interoperable with the
27 national standards for electronic health record systems; and

1 (3) the commission and each health and human services
2 agency establish an interoperability standards plan for all
3 information systems that exchange protected health information
4 with health care providers.

5 (f) Not later than December 1 of each even-numbered year,
6 the executive commissioner shall report to the governor and the
7 Legislative Budget Board on the commission's and the health and
8 human services agencies' measurable progress in ensuring that the
9 information systems described in Subsection (e) are interoperable
10 with one another and meet the appropriate standards specified by
11 that subsection. The report must include an assessment of the
12 progress made in achieving commission goals related to the exchange
13 of health information, including facilitating care coordination
14 among the agencies, ensuring quality improvement, and realizing
15 cost savings.

16 (g) The executive commissioner by rule may develop and the
17 commission may implement a system to reimburse providers of health
18 care services under the state Medicaid program for review and
19 transmission of electronic health information if feasible and
20 cost-effective.

21 (h) In this section, "health care provider" and "provider of
22 health care services" include a physician.

23 SECTION 3. Section [531.02176](#), Government Code, as amended
24 by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is
25 amended to read as follows:

26 Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR
27 PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any

1 other law, the commission may not reimburse providers under
2 Medicaid for the provision of home telemonitoring services on or
3 after September 1, 2019 [~~2015~~].

4 SECTION 4. Section 81.044(a), Health and Safety Code, as
5 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,
6 2015, is amended to read as follows:

7 (a) The executive commissioner shall prescribe the form and
8 method of reporting under this chapter, which may be in writing, by
9 telephone, by electronic data transmission, through a health
10 information exchange as defined by Section 182.151 if requested and
11 authorized by the person required to report, or by other means.

12 SECTION 5. Section 82.008(a), Health and Safety Code, as
13 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,
14 2015, is amended to read as follows:

15 (a) To ensure an accurate and continuing source of data
16 concerning cancer, each health care facility, clinical laboratory,
17 and health care practitioner shall furnish to the department, on
18 request, data the executive commissioner considers necessary and
19 appropriate that is derived from each medical record pertaining to
20 a case of cancer that is in the custody or under the control of the
21 health care facility, clinical laboratory, or health care
22 practitioner. The department may not request data that is more than
23 three years old unless the department is investigating a possible
24 cancer cluster. At the request and with the authorization of the
25 applicable health care facility, clinical laboratory, or health
26 care practitioner, data may be furnished to the department through
27 a health information exchange as defined by Section 182.151.

1 SECTION 6. Section 161.007(d), Health and Safety Code, is
2 amended to read as follows:

3 (d) A health care provider who administers an immunization
4 to an individual younger than 18 years of age shall provide data
5 elements regarding an immunization to the department. A health
6 care provider who administers an immunization to an individual 18
7 years of age or older may submit data elements regarding an
8 immunization to the department. At the request and with the
9 authorization of the health care provider, the data elements may be
10 submitted through a health information exchange as defined by
11 Section 182.151. The data elements shall be submitted in a format
12 prescribed by the department. The department shall verify consent
13 before including the information in the immunization registry. The
14 department may not retain individually identifiable information
15 about an individual for whom consent cannot be verified.

16 SECTION 7. Section 161.00705(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) The department shall maintain a registry of persons who
19 receive an immunization, antiviral, and other medication
20 administered to prepare for a potential disaster, public health
21 emergency, terrorist attack, hostile military or paramilitary
22 action, or extraordinary law enforcement emergency or in response
23 to a declared disaster, public health emergency, terrorist attack,
24 hostile military or paramilitary action, or extraordinary law
25 enforcement emergency. A health care provider who administers an
26 immunization, antiviral, or other medication shall provide the data
27 elements to the department. At the request and with the

1 authorization of the health care provider, the data elements may be
2 provided through a health information exchange as defined by
3 Section 182.151.

4 SECTION 8. Section 161.00706(b), Health and Safety Code, is
5 amended to read as follows:

6 (b) A health care provider, on receipt of a request under
7 Subsection (a)(1), shall submit the data elements to the department
8 in a format prescribed by the department. At the request and with
9 the authorization of the health care provider, the data elements
10 may be submitted through a health information exchange as defined
11 by Section 182.151. The department shall verify the person's
12 request before including the information in the immunization
13 registry.

14 SECTION 9. Section 161.0073(c), Health and Safety Code, is
15 amended to read as follows:

16 (c) A person required to report information to the
17 department for registry purposes or authorized to receive
18 information from the registry may not disclose the individually
19 identifiable information of an individual to any other person
20 without the written or electronic consent of the individual or the
21 individual's legally authorized representative, except as provided
22 by Sections 161.007, 161.00705, 161.00706, and 161.008 of this
23 code, Chapter 159, Occupations Code, or Section 602.053, Insurance
24 Code.

25 SECTION 10. Section 161.008, Health and Safety Code, is
26 amended by adding Subsection (i) to read as follows:

27 (i) At the request and with the authorization of the

1 applicable health care provider, immunization history or data may
2 be submitted to or obtained by the department through a health
3 information exchange as defined by Section 182.151.

4 SECTION 11. Chapter 182, Health and Safety Code, is amended
5 by adding Subchapter D to read as follows:

6 SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

7 Sec. 182.151. DEFINITION. In this subchapter, "health
8 information exchange" means an organization that:

9 (1) assists in the transmission or receipt of
10 health-related information among organizations transmitting or
11 receiving the information according to nationally recognized
12 standards and under an express written agreement with the
13 organizations;

14 (2) as a primary business function, compiles or
15 organizes health-related information designed to be securely
16 transmitted by the organization among physicians, other health care
17 providers, or entities within a region, state, community, or
18 hospital system; or

19 (3) assists in the transmission or receipt of
20 electronic health-related information among physicians, other
21 health care providers, or entities within:

22 (A) a hospital system;

23 (B) a physician organization;

24 (C) a health care collaborative, as defined by
25 Section 848.001, Insurance Code;

26 (D) an accountable care organization
27 participating in the Pioneer Model under the initiative by the

1 Innovation Center of the Centers for Medicare and Medicaid
2 Services; or

3 (E) an accountable care organization
4 participating in the Medicare Shared Savings Program under 42
5 U.S.C. Section 1395jjj.

6 Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE.

7 (a) Notwithstanding Sections 81.046, 82.009, 161.0073, and
8 161.008, a health information exchange may access and transmit
9 health-related information under Sections 81.044(a), 82.008(a),
10 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the
11 access or transmittal is:

12 (1) made for the purpose of assisting in the reporting
13 of health-related information to the appropriate agency;

14 (2) requested and authorized by the appropriate health
15 care provider, practitioner, physician, facility, clinical
16 laboratory, or other person who is required to report
17 health-related information;

18 (3) made in accordance with the applicable consent
19 requirements for the immunization registry under Subchapter A,
20 Chapter 161, if the information being accessed or transmitted
21 relates to the immunization registry; and

22 (4) made in accordance with the requirements of this
23 subchapter and all other state and federal law.

24 (b) A health information exchange may only use and disclose
25 the information that it accesses or transmits under Subsection (a)
26 in compliance with this subchapter and all applicable state and
27 federal law, and may not exchange, sell, trade, or otherwise make

1 any prohibited use or disclosure of the information.

2 Sec. 182.153. COMPLIANCE WITH LAW; SECURITY. A health
3 information exchange that collects, transmits, disseminates,
4 accesses, or reports health-related information under this
5 subchapter shall comply with all applicable state and federal law,
6 including secure electronic data submission requirements.

7 Sec. 182.154. CRIMINAL PENALTY. (a) A person who collects,
8 transmits, disseminates, accesses, or reports information under
9 this subchapter on behalf of or as a health information exchange
10 commits an offense if the person, with the intent to violate this
11 subchapter, allows health-related information in the possession of
12 a health information exchange to be used or disclosed in a manner
13 that violates this subchapter.

14 (b) An offense under this section is a Class A misdemeanor.

15 Sec. 182.155. IMMUNITIES AND DEFENSES CONTINUED.
16 Collecting, transmitting, disseminating, accessing, or reporting
17 information through a health information exchange does not alone
18 deprive a physician or health care provider of an otherwise
19 applicable immunity or defense.

20 SECTION 12. Chapter 74A, Civil Practice and Remedies Code,
21 as added by this Act, applies only to a cause of action that accrues
22 on or after the effective date of this Act. A cause of action that
23 accrues before the effective date of this Act is governed by the law
24 in effect immediately before the effective date of this Act, and
25 that law is continued in effect for that purpose.

26 SECTION 13. This Act takes effect September 1, 2015.

President of the Senate

Speaker of the House

I certify that H.B. No. 2641 was passed by the House on May 15, 2015, by the following vote: Yeas 120, Nays 5, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2641 on May 27, 2015, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2641 on May 31, 2015, by the following vote: Yeas 127, Nays 17, 2 present, not voting.

Chief Clerk of the House

H.B. No. 2641

I certify that H.B. No. 2641 was passed by the Senate, with amendments, on May 25, 2015, by the following vote: Yeas 30, Nays 1; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2641 on May 30, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor