

1-1 By: Zerwas, Guillen, Shaheen H.B. No. 2641  
 1-2 (Senate Sponsor - Schwertner)  
 1-3 (In the Senate - Received from the House May 18, 2015;  
 1-4 May 18, 2015, read first time and referred to Committee on Health  
 1-5 and Human Services; May 22, 2015, reported adversely, with  
 1-6 favorable Committee Substitute by the following vote: Yeas 9,  
 1-7 Nays 0; May 22, 2015, sent to printer.)

1-8 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-9				
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			

1-19 COMMITTEE SUBSTITUTE FOR H.B. No. 2641 By: Schwertner

1-20 A BILL TO BE ENTITLED  
 1-21 AN ACT

1-22 relating to the exchange of health information in this state;  
 1-23 creating a criminal offense.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Title 4, Civil Practice and Remedies Code, is  
 1-26 amended by adding Chapter 74A to read as follows:

1-27 CHAPTER 74A. LIMITATION OF LIABILITY RELATING TO HEALTH  
 1-28 INFORMATION EXCHANGES

1-29 Sec. 74A.001. DEFINITIONS. In this chapter:

1-30 (1) "Gross negligence" has the meaning assigned by  
 1-31 Section 41.001.

1-32 (2) "Health care provider" means any individual,  
 1-33 partnership, professional association, corporation, facility, or  
 1-34 institution duly licensed, certified, registered, or chartered by  
 1-35 this state to provide health care or medical care, including a  
 1-36 physician. The term includes:

1-37 (A) an officer, director, shareholder, member,  
 1-38 partner, manager, owner, or affiliate of a physician or other  
 1-39 health care provider; and

1-40 (B) an employee, independent contractor, or  
 1-41 agent of a physician or other health care provider acting in the  
 1-42 course and scope of the employment or contractual relationship.

1-43 (3) "Health information exchange" has the meaning  
 1-44 assigned by Section 182.151, Health and Safety Code. The term  
 1-45 includes:

1-46 (A) an officer, director, shareholder, member,  
 1-47 partner, manager, owner, or affiliate of the health information  
 1-48 exchange; and

1-49 (B) an employee, independent contractor, or  
 1-50 agent of the health information exchange acting in the course and  
 1-51 scope of the employment or contractual relationship.

1-52 (4) "Physician" means:

1-53 (A) an individual licensed to practice medicine  
 1-54 in this state under Subtitle B, Title 3, Occupations Code;

1-55 (B) a professional association organized by an  
 1-56 individual physician or a group of physicians;

1-57 (C) a partnership or limited liability  
 1-58 partnership formed by a group of physicians;

1-59 (D) a limited liability company formed by a group  
 1-60 of physicians;

2-1 (E) a nonprofit health corporation certified by  
2-2 the Texas Medical Board under Chapter 162, Occupations Code; or  
2-3 (F) a single legal entity authorized to practice  
2-4 medicine in this state owned by a group of physicians.

2-5 Sec. 74A.002. LIMITATION ON LIABILITY OF HEALTH CARE  
2-6 PROVIDERS RELATING TO HEALTH INFORMATION EXCHANGES. (a) In this  
2-7 section, "health care liability claim" has the meaning assigned by  
2-8 Section 74.001.

2-9 (b) Notwithstanding any other law, the use of, failure to  
2-10 use, or existence of a health information exchange does not  
2-11 establish a standard of care, duty, or obligation that forms the  
2-12 basis for a cause of action applicable to a health care provider for  
2-13 obtaining, using, or disclosing patient information.

2-14 (c) Notwithstanding any other law, information or evidence  
2-15 relating to a health information exchange is not admissible in a  
2-16 civil or administrative proceeding for the purpose of establishing  
2-17 a standard of care, duty, or obligation that forms the basis for a  
2-18 cause of action in a proceeding, including a health care liability  
2-19 claim, involving a health care provider.

2-20 (d) Unless a health care provider acts with intent or gross  
2-21 negligence, the health care provider is not liable for any damages,  
2-22 penalties, or other relief related to:

2-23 (1) the health care provider's or another health care  
2-24 provider's obtainment of or failure to obtain patient information  
2-25 from a health information exchange;

2-26 (2) the health care provider's or another health care  
2-27 provider's disclosure of or failure to disclose patient information  
2-28 to a health information exchange;

2-29 (3) the health care provider's or another health care  
2-30 provider's reliance on inaccurate patient information obtained  
2-31 from or disclosed by a health information exchange; or

2-32 (4) the obtainment, use, or disclosure by a health  
2-33 information exchange, another health care provider, or any other  
2-34 person, in violation of federal or state law, of any patient  
2-35 information that the health care provider provided to a health  
2-36 information exchange or to another health care provider in  
2-37 compliance with the Health Insurance Portability and  
2-38 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and  
2-39 other applicable federal and state law.

2-40 (e) Nothing in this section may be construed to create a  
2-41 cause of action or to create a standard of care, obligation, or duty  
2-42 that forms the basis for a cause of action.

2-43 Sec. 74A.003. LIMITATION ON LIABILITY OF HEALTH INFORMATION  
2-44 EXCHANGES. (a) Unless a health information exchange acts with  
2-45 intent or gross negligence, the health information exchange is not  
2-46 liable for any damages, penalties, or other relief related to:

2-47 (1) a health care provider's obtainment of or failure  
2-48 to obtain patient information from the health information exchange;

2-49 (2) a health care provider's disclosure of or failure  
2-50 to disclose patient information to the health information exchange;

2-51 (3) a health care provider's reliance on inaccurate  
2-52 patient information obtained from or disclosed by the health  
2-53 information exchange; or

2-54 (4) the obtainment, use, or disclosure by a health  
2-55 care provider or any other person, in violation of federal or state  
2-56 law, of any patient information that was provided to the person by  
2-57 the health information exchange in compliance with:

2-58 (A) the Health Insurance Portability and  
2-59 Accountability Act of 1996 (42 U.S.C. Section 1320d et seq.) and  
2-60 other applicable federal and state law; and

2-61 (B) the health information exchange's policies.

2-62 (b) Nothing in this section may be construed to create a  
2-63 cause of action or to create a standard of care, obligation, or duty  
2-64 that forms the basis for a cause of action.

2-65 Sec. 74A.004. APPLICABILITY OF OTHER LAW. The protections,  
2-66 immunities, and limitations of liability provided by this chapter  
2-67 are in addition to any other protections, immunities, and  
2-68 limitations of liability provided by other law.

2-69 SECTION 2. Section 531.0162, Government Code, is amended by

3-1 adding Subsections (e), (f), (g), and (h) to read as follows:

3-2 (e) The executive commissioner shall ensure that:

3-3 (1) all information systems available for use by the  
3-4 commission or a health and human services agency in sending  
3-5 protected health information to a health care provider or receiving  
3-6 protected health information from a health care provider, and for  
3-7 which planning or procurement begins on or after September 1, 2015,  
3-8 are capable of sending or receiving that information in accordance  
3-9 with the applicable data exchange standards developed by the  
3-10 appropriate standards development organization accredited by the  
3-11 American National Standards Institute;

3-12 (2) if national data exchange standards do not exist  
3-13 for a system described by Subdivision (1), the commission makes  
3-14 every effort to ensure the system is interoperable with the  
3-15 national standards for electronic health record systems; and

3-16 (3) the commission and each health and human services  
3-17 agency establish an interoperability standards plan for all  
3-18 information systems that exchange protected health information  
3-19 with health care providers.

3-20 (f) Not later than December 1 of each even-numbered year,  
3-21 the executive commissioner shall report to the governor and the  
3-22 Legislative Budget Board on the commission's and the health and  
3-23 human services agencies' measurable progress in ensuring that the  
3-24 information systems described in Subsection (e) are interoperable  
3-25 with one another and meet the appropriate standards specified by  
3-26 that subsection. The report must include an assessment of the  
3-27 progress made in achieving commission goals related to the exchange  
3-28 of health information, including facilitating care coordination  
3-29 among the agencies, ensuring quality improvement, and realizing  
3-30 cost savings.

3-31 (g) The executive commissioner by rule may develop and the  
3-32 commission may implement a system to reimburse providers of health  
3-33 care services under the state Medicaid program for review and  
3-34 transmission of electronic health information if feasible and  
3-35 cost-effective.

3-36 (h) In this section, "health care provider" and "provider of  
3-37 health care services" include a physician.

3-38 SECTION 3. Section 531.02176, Government Code, as amended  
3-39 by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, is  
3-40 amended to read as follows:

3-41 Sec. 531.02176. EXPIRATION OF MEDICAID REIMBURSEMENT FOR  
3-42 PROVISION OF HOME TELEMONITORING SERVICES. Notwithstanding any  
3-43 other law, the commission may not reimburse providers under  
3-44 Medicaid for the provision of home telemonitoring services on or  
3-45 after September 1, 2019 [~~2015~~].

3-46 SECTION 4. Section 81.044(a), Health and Safety Code, as  
3-47 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,  
3-48 2015, is amended to read as follows:

3-49 (a) The executive commissioner shall prescribe the form and  
3-50 method of reporting under this chapter, which may be in writing, by  
3-51 telephone, by electronic data transmission, through a health  
3-52 information exchange as defined by Section 182.151 if requested and  
3-53 authorized by the person required to report, or by other means.

3-54 SECTION 5. Section 82.008(a), Health and Safety Code, as  
3-55 amended by S.B. 219, Acts of the 84th Legislature, Regular Session,  
3-56 2015, is amended to read as follows:

3-57 (a) To ensure an accurate and continuing source of data  
3-58 concerning cancer, each health care facility, clinical laboratory,  
3-59 and health care practitioner shall furnish to the department, on  
3-60 request, data the executive commissioner considers necessary and  
3-61 appropriate that is derived from each medical record pertaining to  
3-62 a case of cancer that is in the custody or under the control of the  
3-63 health care facility, clinical laboratory, or health care  
3-64 practitioner. The department may not request data that is more than  
3-65 three years old unless the department is investigating a possible  
3-66 cancer cluster. At the request and with the authorization of the  
3-67 applicable health care facility, clinical laboratory, or health  
3-68 care practitioner, data may be furnished to the department through  
3-69 a health information exchange as defined by Section 182.151.

4-1 SECTION 6. Section 161.007(d), Health and Safety Code, is  
4-2 amended to read as follows:

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

4-16 SECTION 7. Section 161.00705(a), Health and Safety Code, is  
4-17 amended to read as follows:

4-18 (a) The department shall maintain a registry of persons who  
4-19 receive an immunization, antiviral, and other medication  
4-20 administered to prepare for a potential disaster, public health  
4-21 emergency, terrorist attack, hostile military or paramilitary  
4-22 action, or extraordinary law enforcement emergency or in response  
4-23 to a declared disaster, public health emergency, terrorist attack,  
4-24 hostile military or paramilitary action, or extraordinary law  
4-25 enforcement emergency. A health care provider who administers an  
4-26 immunization, antiviral, or other medication shall provide the data  
4-27 elements to the department. At the request and with the  
4-28 authorization of the health care provider, the data elements may be  
4-29 provided through a health information exchange as defined by  
4-30 Section 182.151.

4-31 SECTION 8. Section 161.00706(b), Health and Safety Code, is  
4-32 amended to read as follows:

4-33 (b) A health care provider, on receipt of a request under  
4-34 Subsection (a)(1), shall submit the data elements to the department  
4-35 in a format prescribed by the department. At the request and with  
4-36 the authorization of the health care provider, the data elements  
4-37 may be submitted through a health information exchange as defined  
4-38 by Section 182.151. The department shall verify the person's  
4-39 request before including the information in the immunization  
4-40 registry.

4-41 SECTION 9. Section 161.0073(c), Health and Safety Code, is  
4-42 amended to read as follows:

4-43 (c) A person required to report information to the  
4-44 department for registry purposes or authorized to receive  
4-45 information from the registry may not disclose the individually  
4-46 identifiable information of an individual to any other person  
4-47 without the written or electronic consent of the individual or the  
4-48 individual's legally authorized representative, except as provided  
4-49 by Sections 161.007, 161.00705, 161.00706, and 161.008 of this  
4-50 code, Chapter 159, Occupations Code, or Section 602.053, Insurance  
4-51 Code.

4-52 SECTION 10. Section 161.008, Health and Safety Code, is  
4-53 amended by adding Subsection (i) to read as follows:

4-54 (i) At the request and with the authorization of the  
4-55 applicable health care provider, immunization history or data may  
4-56 be submitted to or obtained by the department through a health  
4-57 information exchange as defined by Section 182.151.

4-58 SECTION 11. Chapter 182, Health and Safety Code, is amended  
4-59 by adding Subchapter D to read as follows:

4-60 SUBCHAPTER D. HEALTH INFORMATION EXCHANGES

4-61 Sec. 182.151. DEFINITION. In this subchapter, "health  
4-62 information exchange" means an organization that:

4-63 (1) assists in the transmission or receipt of  
4-64 health-related information among organizations transmitting or  
4-65 receiving the information according to nationally recognized  
4-66 standards and under an express written agreement with the  
4-67 organizations;

4-68 (2) as a primary business function, compiles or  
4-69 organizes health-related information designed to be securely

5-1 transmitted by the organization among physicians, other health care  
5-2 providers, or entities within a region, state, community, or  
5-3 hospital system; or

5-4 (3) assists in the transmission or receipt of  
5-5 electronic health-related information among physicians, other  
5-6 health care providers, or entities within:

5-7 (A) a hospital system;

5-8 (B) a physician organization;

5-9 (C) a health care collaborative, as defined by  
5-10 Section 848.001, Insurance Code;

5-11 (D) an accountable care organization  
5-12 participating in the Pioneer Model under the initiative by the  
5-13 Innovation Center of the Centers for Medicare and Medicaid  
5-14 Services; or

5-15 (E) an accountable care organization  
5-16 participating in the Medicare Shared Savings Program under 42  
5-17 U.S.C. Section 1395jjj.

5-18 Sec. 182.152. AUTHORITY OF HEALTH INFORMATION EXCHANGE.

5-19 (a) Notwithstanding Sections 81.046, 82.009, 161.0073, and  
5-20 161.008, a health information exchange may access and transmit  
5-21 health-related information under Sections 81.044(a), 82.008(a),  
5-22 161.007(d), 161.00705(a), 161.00706(b), and 161.008(i) if the  
5-23 access or transmittal is:

5-24 (1) made for the purpose of assisting in the reporting  
5-25 of health-related information to the appropriate agency;

5-26 (2) requested and authorized by the appropriate health  
5-27 care provider, practitioner, physician, facility, clinical  
5-28 laboratory, or other person who is required to report  
5-29 health-related information;

5-30 (3) made in accordance with the applicable consent  
5-31 requirements for the immunization registry under Subchapter A,  
5-32 Chapter 161, if the information being accessed or transmitted  
5-33 relates to the immunization registry; and

5-34 (4) made in accordance with the requirements of this  
5-35 subchapter and all other state and federal law.

5-36 (b) A health information exchange may only use and disclose  
5-37 the information that it accesses or transmits under Subsection (a)  
5-38 in compliance with this subchapter and all applicable state and  
5-39 federal law, and may not exchange, sell, trade, or otherwise make  
5-40 any prohibited use or disclosure of the information.

5-41 Sec. 182.153. COMPLIANCE WITH LAW; SECURITY. A health  
5-42 information exchange that collects, transmits, disseminates,  
5-43 accesses, or reports health-related information under this  
5-44 subchapter shall comply with all applicable state and federal law,  
5-45 including secure electronic data submission requirements.

5-46 Sec. 182.154. CRIMINAL PENALTY. (a) A person who collects,  
5-47 transmits, disseminates, accesses, or reports information under  
5-48 this subchapter on behalf of or as a health information exchange  
5-49 commits an offense if the person, with the intent to violate this  
5-50 subchapter, allows health-related information in the possession of  
5-51 a health information exchange to be used or disclosed in a manner  
5-52 that violates this subchapter.

5-53 (b) An offense under this section is a Class A misdemeanor.

5-54 Sec. 182.155. IMMUNITIES AND DEFENSES CONTINUED.  
5-55 Collecting, transmitting, disseminating, accessing, or reporting  
5-56 information through a health information exchange does not alone  
5-57 deprive a physician or health care provider of an otherwise  
5-58 applicable immunity or defense.

5-59 SECTION 12. Chapter 74A, Civil Practice and Remedies Code,  
5-60 as added by this Act, applies only to a cause of action that accrues  
5-61 on or after the effective date of this Act. A cause of action that  
5-62 accrues before the effective date of this Act is governed by the law  
5-63 in effect immediately before the effective date of this Act, and  
5-64 that law is continued in effect for that purpose.

5-65 SECTION 13. This Act takes effect September 1, 2015.

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