

BILL ANALYSIS

Senate Research Center

H.B. 2891
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2003, the Texas legislature required a statutory authorization form to be included with a notice asserting a health care liability claim. The form requirement ensures that the disclosure of medical records required in response to a health care liability claim notice complies with the requirements of the federal Health Insurance Portability and Accountability ACT (HIPAA). The language was taken virtually verbatim from the federal requirements, and the relevant Code of Federal Regulations (CFR) provisions specifically referenced in the statute.

Unfortunately, the HIPAA requirements changed only a few months after Texas' 2003 medical liability reforms (H.B. 4) were signed into law. Therefore, the official form was technically non-compliant. While some hospitals, health insurers, and physician carriers continued to use the outdated form, others took it upon themselves to craft language that made their authorization forms HIPAA-compliant but inconsistent with the prescribed language in H.B. 4.

Everyone now has or wants their own form to protect themselves from a HIPAA violation. This disparity delays the process when records are requested from multiple parties. The process is expensive and inefficient and benefits no one. H.B. 2891 addresses this issue by creating an updated medical authorization form that is HIPAA compliant, and uniformly recognized by plaintiff and defense, health care providers, and insurers as the singular, legislatively-approved form authorizing the release of protected health information.

H.B. 2891 amends Chapter 74, Civil Practice and Remedies Code, to provide for a state and federally-blessed HIPAA compliant form that everyone—plaintiff and defense, health care provider and insurer—can use that is universally recognized as the official form.

The proposed medical authorization form mirrors the prescribed language in the 2003 reforms, but is once again HIPAA-compliant, and allows the patient's or patient's legal representative to exclude from the list of medical information released:

- HIV test results and/or treatment;
- Drug, alcohol or substance abuse treatment;
- Mental health records (other than psychotherapy notes); and
- Genetic information (including genetic test results).

H.B. 2891 amends current law relating to the medical authorization required to release protected health information in a health care liability claim.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 74.052(c), Civil Practice and Remedies Code, as follows:

(c) Requires that the medical authorization required by this section (Authorization Form for Release of Protected Health Information) be in a certain form and be construed in accordance with the “Standards for Privacy of Individually Identifiable Health Information” (45 C.F.R. Parts 160 and 164). Sets forth the text of the required medical authorization form.

SECTION 2. Effective date: upon passage or September 1, 2017.