

BILL ANALYSIS

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C.S.H.B. 4272
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Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The state immunization registry provides for a variety of consent procedures for participation in the registry that may be burdensome to providers and patients. Additionally, there are inconsistencies in the retention schedule for registry records relating to information following the end of a declared disaster and certain other emergencies.

C.S.H.B. 4272 seeks to address these matters and make certain revisions to the requirements for information contained in the immunization registry by, among other things, standardizing those consent requirements and establishing a secure online portal through which an individual or the individual's legally authorized representative may request to exclude the individual's immunization records from the registry.

Additionally, C.S.H.B. 4272 seeks to prohibit third parties from using this information for the purposes of verifying vaccine passports, engaging in discriminatory employment practices, and to prevent businesses from denying customers based on their vaccination status.

C.S.H.B. 4272 amends current law relating to requirements for and prohibited uses of information contained in the immunization registry.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 1 (Section 161.007, Health and Safety Code) and SECTION 9 (Section 161.0107, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 2 (Section 161.00705, Health and Safety Code), SECTION 6 (Section 161.00735, Health and Safety Code), and SECTION 10 (Section 161.007, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 161.00705, Health and Safety Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 161.007(a) and (a-1), Health and Safety Code, as follows:

- (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to develop certain guidelines, including guidelines to determine the process by which consent for the individual's information to be included in the registry is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained and guidelines to determine the process by which the immunization information of a first responder or immediate family member of a first responder is authorized to be accessed under Section 161.00708 (Access to First Responder Immunization History).

(a-1) Provides that the written or electronic consent required by Subsection (a)(3) (relating to consent required before any information relating to the individual is included in an immunization registry) for an individual, rather than an individual younger than 18 years of age, is required to be obtained only one time. Requires that the written or electronic consent of the individual, or, for a minor child, the individual's parent, managing conservator, or guardian be submitted to the Department of State Health Services (DSHS), rather than requires the written or electronic consent of the individual's parent, managing conservator, or guardian be submitted to DSHS before the individual's 18th birthday. Deletes existing text authorizing an individual's immunization information, after consent is submitted, to be included in the registry until the individual becomes 26 years of age unless the consent is withdrawn in writing or electronically, or renewed after the individual's 18th birthday as provided by Subsection (a-2) (relating to requiring the written or electronic consent required by Subsection (a)(3) for an individual who is 18 years of age or older to be obtained only one time).

SECTION 2. Amends Section 161.00705, Health and Safety Code, by amending Subsections (d) and (e) and adding Subsections (f-1), (f-2), (f-3), and (f-4), as follows:

(d) Provides that certain sections, including Section 161.008 (Immunization Record), apply to the data elements submitted to DSHS under Section 161.00705 (Recording Administration of Immunization and Medication for Disasters and Emergencies), unless a provision in those sections conflicts with a requirement in Section 161.00705.

(e) Requires that the information collected under Section 161.00705 remain in the immunization registry for seven years following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency, rather than requiring the executive commissioner by rule to determine the period during which the information collected under Section 161.00705 is required to remain in the immunization registry following the end of the disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency.

(f-1) Requires the executive commissioner by rule to develop guidelines and procedures for obtaining the consent required by Subsection (f) (relating to requiring DSHS to remove immunization records from the registry at a certain time) from an individual or the individual's legally authorized representative for continued inclusion in the registry of information collected under Section 161.00705 beyond the period prescribed by Subsection (e).

(f-2) Requires DSHS to make a reasonable effort to provide notice to an individual or an individual's legally authorized representative of the inclusion of the individual's immunization history in the registry under Section 161.00705 if the consent required under Subsection (f) has not been obtained before expiration of the period prescribed by Subsection (e). Requires that the reasonable effort include at least two attempts by DSHS to provide the notice required by this subsection by telephone or e-mail, or by regular mail to the last known address of the individual or the individual's legally authorized representative. Requires that the notice inform the individual or the individual's legally authorized representative that the individual's immunization records collected under Section 161.00705 will be removed from immunization registry on the expiration of the period prescribed under Subsection (e) unless the individual or the individual's legally authorized representative consents to continued inclusion as provided by Subsection (f).

(f-3) Requires DSHS to make a reasonable effort to obtain current contact information for written or electronic notices sent by DSHS under Subsection (f-2) that are returned due to incorrect address information.

(f-4) Requires that consent for inclusion in the immunization registry obtained under Section 161.007(a-1) (relating to written or electronic consent for an individual younger than 18 years of age) meet the consent requirements of Subsection (f).

SECTION 3. Amends Section 161.00708, Health and Safety Code, as follows:

Sec. 161.00708. New heading: ACCESS TO FIRST RESPONDER AND IMMEDIATE FAMILY MEMBER IMMUNIZATION HISTORY. (a) Requires that the process to provide an employer of a first responder with direct access to the first responder's immunization information in the immunization registry to require certain consent, including affirmation by the employer that the first responder is a current employee of the employer. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Authorizes a first responder to withdraw consent provided under Subsection (a)(1) (relating to a first responder's electronic or written consent for an employer to access the first responder's immunization records) at any time.

(c) Creates this subsection from existing text. Authorizes DSHS to establish a process to provide a first responder or an immediate family member of a first responder with access to the individual's own immunization information in the immunization registry. Makes a nonsubstantive change.

SECTION 4. Amends Subchapter A, Chapter 161, Health and Safety Code, by adding Section 161.00709, as follows:

Sec. 161.00709. CONSENT PORTAL. Requires DSHS to develop and maintain a secure Internet portal accessible through DSHS's Internet website through which an individual or the individual's legally authorized representative is authorized to request exclusion of the individual's immunization records from the registry in accordance with Section 161.0071(f).

SECTION 5. Amends Section 161.0071, Health and Safety Code, by adding Subsection (f), to authorize an individual or the individual's legally authorized representative to request exclusion of the individual's immunization records from the registry through a secure portal accessed through DSHS's website.

SECTION 6. Amends Section 161.00735(e), Health and Safety Code, as follows:

(e) Requires that the information collected under Subsection (c) (relating to authorizing DSHS to receive immunization information from a health authority of another state or a local health authority in another state under certain circumstances) remain in the immunization registry for seven years following the end of the disaster. Deletes existing text requiring the executive commissioner by rule to determine the period during which the information collected under Subsection (c) is required to remain in the immunization registry following the end of the disaster.

SECTION 7. Amends Section 161.008, Health and Safety Code, by amending Subsections (c) and (d) and adding Subsection (c-1), as follows:

(c) Makes no changes to the text of this subsection.

(c-1) Creates this subsection from a portion of existing text of Subsection (c). Creates an exception as provided by Section 161.00705 to the requirement that DSHS verify consent before including the reported information in the immunization registry and to the prohibition from retaining individually identifiable information about an individual for whom consent cannot be verified. Makes nonsubstantive changes.

(d) Authorizes DSHS to release the data constituting an immunization record for the individual to certain entities or individuals, including to an immediate family member of a first responder in accordance with Section 161.00708.

SECTION 8. Amends Subchapter A, Chapter 161, Health and Safety Code, by adding Section 161.0085, as follows:

Sec. 161.0085. COVID-19 VACCINE PASSPORTS AND VACCINATION AS EMPLOYMENT CONDITION PROHIBITED. (a) Defines "COVID-19."

(b) Prohibits a governmental entity in this state, using information from the immunization registry authorized by Section 161.007, from issuing a vaccine passport, vaccine pass, or other standardized documentation to certify an individual's COVID-19 vaccination status to a third party for a purpose other than health care or otherwise publishing or sharing any individual's COVID-19 immunization record or similar health information for a purpose other than health care.

(c) Prohibits a business in this state, using information from the immunization registry authorized by Section 161.007, from requiring a customer to provide any documentation certifying the customer's COVID-19 vaccination or post-transmission recovery on entry to, to gain access to, or to receive service from the business. Provides that a business that fails to comply with this subsection is not eligible to receive a grant or enter into a contract payable with state funds.

(d) Prohibits an employer in this state, using information from the immunization registry authorized by Section 161.007, from failing or refusing to hire, discharging, or otherwise discriminating against an individual with respect to compensation or the terms, conditions, or privileges of employment because the individual does not provide any documentation or other proof certifying the individual's COVID-19 vaccination status.

(e) Requires each appropriate state agency, notwithstanding any other law, to ensure that business and employers in this state comply with Subsections (c) and (d), as applicable, and authorizes each agency to require compliance with those subsections as a condition for a license, permit, or other state authorization necessary for conducting business or employing individuals in this state.

(f) Prohibits this section from being construed to:

(1) restrict a business or employer from implementing COVID-19 screening and infection control protocols in accordance with state and federal law to protect public health; or

(2) interfere with an individual's right to access the individual's personal health information under federal law.

SECTION 9. Amends Section 161.0107, Health and Safety Code, by amending Subsection (c) and adding Subsection (e), as follows:

(c) Requires the executive commissioner by rule to specify certain information, including the fields necessary to populate the immunization registry, including a "yes" or "no" field, rather than including a field, that indicates the patient's consent to be listed in the immunization registry has been obtained.

(e) Prohibits the fields and data standards described by Subsection (c) from including demographic information relating to the patient.

SECTION 10. Repealer: Section 161.007(a-2) (relating to written or electronic consent for an individual who is 18 years of age or older to be included in the immunization registry), Health and Safety Code.

Repealer: Section 161.007 (a-3) (relating to guidelines and procedures for obtaining consent after an individual's 18th birthday), Health and Safety Code.

Repealer: Section 161.007 (a-4) (relating to requiring DSHS to make a reasonable effort to notify an individual, after the individual's 18th birthday, whose immunization information is included in the registry with consent that was provided by a parent, managing conservator, or guardian), Health and Safety Code.

Repealer: Section 161.007 (a-5) (relating to requiring DSHS to make a reasonable effort to notify an individual after the individual's 25th birthday whose immunization information is included in the registry with consent that was provided by a parent, managing conservator, or guardian and has not been renewed), Health and Safety Code.

Repealer: Section 161.007 (a-6) (relating to requiring DSHS to make a reasonable effort to obtain current contact information for written or electronic notices that are returned due to incorrect address information), Health and Safety Code.

SECTION 11. Requires DSHS, as soon as practicable after September 1, 2021, to develop the Internet portal required by Section 161.00709, Health and Safety Code, as added by this Act.

SECTION 12. Effective date: September 1, 2021.