

BILL ANALYSIS

Senate Research Center
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H.B. 49
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Concerns have been raised regarding the lack of public access to certain hospital inspection and investigation information due to certain unintended consequences of state legislation adopted in response to the federal Health Insurance Portability and Accountability Act of 1996. It has been suggested that this has resulted in consumers and families seeking to make decisions on hospital care becoming dependent on other sources, such as online reviews, which should not be the only guide for finding quality hospitals.

H.B. 49 seeks to address these concerns by revising certain provisions that limit the public's ability to access certain hospital inspection and investigation information, while protecting the confidentiality of individually identifiable information concerning a patient or health care professional.

H.B. 49 amends the Health and Safety Code to make information relating to alleged violations, number of investigations, pleadings, investigation outcomes, and final reports subject to disclosure. Additionally, H.B. 49 creates a requirement for the Health and Human Services Commission to make available via their Internet website information regarding any final decisions, investigative reports, or orders to address a hospital's alleged violation. The posted information must include the notice of the alleged violation, the name and geographic location of the hospital, and the date and outcome of the investigation. This information is to remain posted for a minimum of two years. H.B. 49 also makes these disclosure requirements applicable to licensed mental hospitals.

This legislation faces no opposition and is supported by the Texas Hospital Association and several patient advocacy groups.

H.B. 49 amends current law relating to public access to certain hospital investigation information and materials.

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 241.051, Health and Safety Code, by amending Subsections (d) and (e) and adding Subsections (f), (g), and (h), as follows:

(d) Provides that all information and materials in the possession of or obtained or compiled by the Health and Human Services Commission (HHSC), rather than the Department of State Health Services (DSHS), in connection with a complaint and investigation concerning a hospital, except as provided by Subsection (e), are confidential and not subject to disclosure under Chapter 552 (Public Information), rather than under Section 552.001 (Policy; Construction) et seq., Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC, rather than DSHS, or its employees or agents involved in the enforcement action except that this information is authorized to be disclosed to certain

entities, including persons involved with HHSC, rather than DSHS, in the enforcement action against the hospital. Makes nonsubstantive changes.

(e) Provides that the following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

- (1) makes nonsubstantive changes;
- (2) the number of investigations HHSC has conducted of the hospital;
- (3) the pleadings in any administrative proceeding to impose a penalty against the hospital for the alleged violation;
- (4) the outcome of each investigation HHSC conducted of the hospital, including:
 - (A) the issuance of a reprimand;
 - (B) the denial or revocation of a license;
 - (C) the adoption of a corrective action plan; or
 - (D) the imposition of an administrative penalty and the penalty amount;and
- (5) a final decision, investigative report, or order issued by HHSC, rather than DSHS, to address the alleged violation.

Makes conforming and nonsubstantive changes.

(f) Requires HHSC, not later than the 90th day after the date HHSC issues a final decision, investigative report, or order to address a hospital's alleged violation, to post on HHSC's Internet website:

- (1) the notice of alleged violation described by Subsection (e)(1);
- (2) the name of the hospital;
- (3) the geographic location of the hospital;
- (4) the date HHSC issued the final decision, investigative report, or order; and
- (5) the outcome of HHSC's investigation of the hospital that includes the information described by Subsection (e)(4).

(g) Prohibits HHSC from removing information posted on HHSC's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Provides that nothing in Section 241.051 (Inspections) precludes a hospital from releasing medical records in the hospital's possession:

- (1) on the request of the patient who is the subject of the record; or
- (2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

SECTION 2. Amends Section 577.013, Health and Safety Code, by amending Subsections (d) and (e) and adding Subsections (f), (g), (h), and (i), as follows:

(d) Provides that all information and materials in the possession of or obtained or compiled by HHSC in connection with a complaint and investigation concerning a mental hospital licensed under Chapter 577 (Private Mental Hospitals and Other Mental Health Facilities), except as provided by Subsection (e), are confidential and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than HHSC or its employees or agents involved in the enforcement action except that this information is authorized to be disclosed to certain individuals. Makes conforming and nonsubstantive changes.

(e) Provides that the following information is subject to disclosure in accordance with Chapter 552, Government Code, only to the extent that all personally identifiable information of a patient or health care provider is omitted from the information:

(1) a notice of the licensed mental hospital's alleged violation, which is required to include the provisions of law the licensed mental hospital is alleged to have violated, and the nature of the alleged violation;

(2) the number of investigations HHSC has conducted of the licensed mental hospital;

(3) the pleadings in any administrative proceeding to impose a penalty against the licensed mental hospital for the alleged violation;

(4) the outcome of each investigation HHSC conducted of the licensed mental hospital, including:

(A) the issuance of a reprimand;

(B) the denial or revocation of a license;

(C) the adoption of a corrective action plan; or

(D) the imposition of an administrative penalty and the penalty amount;
and

(5) a final decision, investigative report, or order issued by HHSC to address the alleged violation.

Makes conforming and nonsubstantive changes.

(f) Requires HHSC, not later than the 90th day after the date HHSC issues a final decision, investigative report, or order to address a licensed mental hospital's alleged violation, to post on HHSC's Internet website:

(1) the notice of alleged violation described by Subsection (e)(1);

(2) the name of the licensed mental hospital;

(3) the geographic location of the licensed mental hospital;

(4) the date HHSC issued the final decision, investigative report, or order; and

(5) the outcome of HHSC's investigation of the licensed mental hospital that includes the information described by Subsection (e)(4).

(g) Prohibits HHSC from removing information posted on HHSC's Internet website under Subsection (f) before the second anniversary of the date the information is posted on the Internet website.

(h) Provides that nothing in Section 577.013 (Investigations) precludes a licensed mental hospital from releasing medical records in the licensed mental hospital's possession:

(1) on request of the patient who is the subject of the record; or

(2) to the patient, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased.

(i) Defines "commission."

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2023.