

## **BILL ANALYSIS**

C.S.S.B. 1467  
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Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The federal 21st Century Cures Act, signed into law on December 13, 2016, changed the way physicians communicate with their patients when serious or even tragic test results are received. While patients deserve to receive test results as quickly as possible, this federal law may prevent patients from receiving these serious results in a respectful way from their physicians. Patients who learn of cancer or other life-changing test results through impersonal electronic means, rather than from their physician, could experience heightened stress, anxiety, and uncertainty. In some cases, a patient's concerns may be based on their misunderstanding or misinterpretation of the test results and could have been avoided had the results been shared by the patient's physician. States are allowed to remedy this scenario by adopting a law that requires the release of electronic health information to be handled differently. C.S.S.B. 1467 seeks to prohibit sensitive test results from being disclosed to a patient or patient representative by electronic means by a person or entity who administers or controls the patient's electronic health record until at least three days after the sensitive test results are finalized. This change does not prevent sensitive test results from being communicated to a patient or patient representative earlier by other means, such as by phone or in person.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.S.B. 1467 amends the Occupations Code to prohibit sensitive test results from being disclosed to a patient or patient representative by electronic means by a person or entity who administers or controls the electronic health record of the patient before the third day after the date the sensitive test results are finalized. The bill requires a physician who is required to provide a patient's billing or medical records on the requisite written consent for release of confidential information under state law to provide that requested information in accordance with the bill's prohibition, if applicable. The bill establishes that a person or entity is not subject to civil, criminal, or administrative liability or professional disciplinary action for failure to comply with that requirement.

C.S.S.B. 1467 defines the following terms for purposes of the bill's provisions:

- "electronic health record" by reference as an electronic record of aggregated health-related information concerning a person that conforms to nationally recognized

interoperability standards and that can be created, managed, and consulted by authorized health care providers across two or more health care organizations;

- "electronic means" as publishing information on a secure electronic network or website, including a secure online patient portal or health software application:
  - that is accessible by an electronic device, including a computer, mobile device, or tablet; and
  - through which the patient or patient representative has consented to receive the patient's billing or medical records;
- "patient representative" as a person who is a parent or legal guardian of the patient if the patient is a minor, a legal guardian of the patient if the patient has been adjudicated incapacitated to manage the patient's personal affairs, or an attorney ad litem appointed for the patient as authorized by specified provisions of applicable state law; and
- "sensitive test result" as a pathology report or radiology report that has a reasonable likelihood of showing a finding of malignancy or test result that may reveal a genetic marker.

C.S.S.B. 1467 applies only to the disclosure of test results, and a request for information made, on or after the bill's effective date.

### **EFFECTIVE DATE**

September 1, 2023.

### **COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE**

While C.S.S.B. 1467 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

While both the engrossed and the substitute prohibit sensitive test results from being disclosed to a patient or patient representative by electronic means before the third day after the date the results are finalized, the engrossed established that a person who administers or controls a patient's electronic health records is responsible for implementing the prohibition, whereas the substitute instead specifies that the prohibition applies to the disclosure by a person or entity who administers or controls the patient's electronic health record. Additionally, while both the engrossed and substitute establish that a person is not subject to civil, criminal, or administrative liability or professional disciplinary action for failure to comply with the bill's requirement to provide certain requested confidential patient information in accordance with the bill's prohibition, the substitute also includes an entity among those who are not subject to such liability or action.