

BILL ANALYSIS

S.B. 1188
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State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Medical records provide vital patient information to health care providers, informing patient care. The bill sponsor has informed the committee that some electronic medical record systems are programmed to require a medical office to input specific information that may be needed to treat that individual. Additionally, the bill sponsor has informed the committee that some electronic medical record systems have limited parental access to a child's medical records, that these records can be vulnerable to exposure or misinterpretation if used in the wrong ways, and that current statute lacks important safeguards around Texans' medical records, both on the side of the patient and the provider. S.B. 1188 seeks to address this issue by providing for electronic health record requirements, ensuring that these records are secure, accessible to the relevant parties, accurate, and used for their intended purpose.

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 rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission, the Texas Medical Board, the Texas Department of Licensing and Regulation, the Texas Department of Insurance, and each appropriate regulatory agency in SECTION 1 of this bill.

ANALYSIS

S.B. 1188 amends the Health and Safety Code to require a covered entity to ensure that the following electronic health records under the control of the entity that contain patient information are physically maintained in the United States or a U.S. territory:

- electronic health records that are stored by a third-party or subcontracted computing facility or an entity that provides cloud computing services; and
- electronic health records that are stored using a technology through which patient information may be electronically retrieved, accessed, or transmitted.

The bill requires a covered entity to ensure that the electronic health record information of Texas residents, other than open data, is accessible only to individuals who require the information to perform duties within the scope of the individual's employment related to treatment, payment, or health care operations. The bill requires each covered entity to implement reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of electronic health record information. These bill provisions regarding requirements for electronic health storage apply to the storage of an electronic health record on or after January 1, 2026, regardless of the date on which the electronic health record was prepared.

S.B. 1188 defines "covered entity" by reference to statutory provisions governing medical records privacy, including a health care practitioner, but not including the following:

- a licensed home and community support services agency;
- a licensed nursing facility;
- a continuing care facility regulated under the Texas Continuing Care Facility Disclosure and Rehabilitation Act;
- an assisted living facility licensed under the Assisted Living Facility Licensing Act;
- a licensed intermediate care facility;
- a day activity and health services facility licensed under the Day Activity and Health Services Act; or
- a provider under the Texas home living (TxHmL) or home and community-based services (HCS) waiver program.

S.B. 1188 requires a covered entity to ensure each electronic health record maintained for an individual includes the option for a health practitioner to collect and record communications between two or more covered entities related to the individual's metabolic health and diet in the treatment of a chronic disease or illness. The bill prohibits such an entity from collecting, storing, or sharing any information regarding an individual's credit score or voter registration status in the individual's electronic health record.

S.B. 1188 requires a health care practitioner who uses artificial intelligence (AI) for diagnostic purposes, including the use of AI for recommendations on a diagnosis or course of treatment based on a patient's medical record, to review all records created with AI to ensure that the data is accurate and properly managed. The bill requires a health care practitioner who uses AI for such diagnostic purposes to disclose the practitioner's use of that technology to the practitioner's patients.

S.B. 1188 requires a covered entity to ensure each electronic health record system the entity uses to store electronic health records of minors allows a minor's parent or, if applicable, the minor's managing conservator or guardian to obtain complete and unrestricted access to the minor's electronic health record immediately upon request, unless access to all or part of the record is restricted under state or federal law or by a court order. For these purposes, the bill defines "minor" as an individual 17 years of age or younger who has not had the disabilities of minority removed for general purposes.

S.B. 1188 requires the Health and Human Services Commission (HHSC), the Texas Medical Board (TMB), and the Texas Department of Insurance (TDI) to jointly ensure the following:

- each electronic health record prepared or maintained by a covered entity in Texas includes a separate space for the health care practitioner to document the following:
 - an individual's biological sex as either male or female based on the individual's observed biological sex recorded by a health care practitioner at birth; and
 - information on any sexual development disorder of the individual, whether identified at birth or later in the individual's life; and
- any algorithm or decision assistance tool included in an electronic health record to assist a health care practitioner in making medical treatment decisions includes an individual's biological sex as recorded in such a separate space for documenting an individual's biological sex as it was recorded at birth.

These bill provisions regarding electronic health record requirements regarding biological sex expressly do not prohibit an electronic health record from including spaces for recording other information related to an individual's biological sex or gender identity.

S.B. 1188 authorizes a covered entity to amend on an electronic health record an individual's biological sex as recorded in the applicable space only if the amendment is to correct a clerical error or the individual is diagnosed with a sexual development disorder and the amendment changes the individual's listed biological sex to the opposite biological sex. If an individual's

biological sex is so amended, the covered entity must include in the individual's electronic health record information on the individual's sexual development disorder in the applicable space.

S.B. 1188 authorizes HHSC or the appropriate regulatory agency to conduct an investigation of any credible allegation of a violation of the bill's provisions by a covered entity and requires HHSC or the agency to ensure the investigation is conducted in compliance with all applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996. The bill authorizes the appropriate regulatory agency to take disciplinary action against a covered entity that violates the bill's provisions three or more times in the same manner as if the covered entity violated an applicable licensing or regulatory law. The bill authorizes such disciplinary action to include license, registration, or certification suspension or revocation for a period the agency determines appropriate.

S.B. 1188 authorizes the attorney general to institute an action for injunctive relief to restrain a violation of the bill's provisions. The bill authorizes the attorney general to institute an action for civil penalties against a covered entity for a violation of the bill's provisions, which civil penalty is capped as follows:

- \$5,000 for each violation that is committed negligently and that occurs in a single year, regardless of how long the violation continues during that year;
- \$25,000 for each violation that is committed knowingly or intentionally and that occurs in a single year, regardless of how long the violation continues during that year; or
- \$250,000 for each violation in which the covered entity knowingly or intentionally used protected health information for financial gain.

S.B. 1188 requires the executive commissioner of HHSC, the TMB, the Texas Department of Licensing and Regulation (TDLR), TDI, and each regulatory agency subject to the bill's provisions to enter into a memorandum of understanding and, as necessary, adopt rules to implement the bill's provisions. Except as otherwise provided, the bill's provisions apply only to an electronic health record prepared on or after the bill's effective date.

S.B. 1188 establishes that if before implementing any provision of the bill a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision must request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

S.B. 1188 defines the following terms for purposes of its provisions:

- "biological sex" as the biological trait that determines whether a sexually reproducing organism produces male or female gametes;
- "female" as an individual whose reproductive system is developed to produce ova;
- "health care practitioner" as an individual who is licensed, certified, or otherwise authorized to provide health care services in Texas;
- "male" as an individual whose reproductive system is developed to produce sperm; and
- "sexual development disorder" as a congenital condition associated with atypical development of internal or external genital structures, including a chromosomal, gonadal, and anatomic abnormality.

EFFECTIVE DATE

September 1, 2025.