

By: Hancock

S.B. No. 1235

A BILL TO BE ENTITLED

AN ACT

1
2 relating to a patient's access to health records and access to and
3 exchange of certain health benefit plan information; authorizing a
4 civil penalty; authorizing fees.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 15.05, Business & Commerce Code, is
7 amended by adding Subsection (a-1) to read as follows:

8 (a-1) It is unlawful for a person to place a restraint on
9 trade or commerce by intentionally violating federal laws
10 regulating information blocking, as that term is defined by 45
11 C.F.R. Section 171.103.

12 SECTION 2. Section 181.001(b), Health and Safety Code, is
13 amended by adding Subdivision (3-a) to read as follows:

14 (3-a) "Information blocking" has the meaning assigned
15 by 45 C.F.R. Section 171.103.

16 SECTION 3. Section 181.004(a), Health and Safety Code, is
17 amended to read as follows:

18 (a) A covered entity, as that term is defined by 45 C.F.R.
19 Section 160.103, shall comply with:

20 (1) the Health Insurance Portability and
21 Accountability Act and Privacy Standards; and

22 (2) federal laws regulating information blocking.

23 SECTION 4. Section 181.102, Health and Safety Code, is
24 amended to read as follows:

1 Sec. 181.102. CONSUMER ACCESS TO [~~ELECTRONIC~~] HEALTH
2 RECORDS. (a) Subject to the payment of fees required under this
3 section, a patient or the patient's legally authorized
4 representative on request is entitled to copies of the patient's
5 physical or electronic health records.

6 **(b)** Except as provided by Subsection **(d)** [~~(b)~~], if a health
7 care provider is using an electronic health records system that is
8 capable of fulfilling the request, the health care provider, as
9 soon as practicable but not later than the 15th business day after
10 the date the health care provider receives a written request from a
11 person for the person's electronic health record, shall provide the
12 requested record to the person in electronic form unless the person
13 agrees to accept the record in another form.

14 **(c)** Except as provided by Subsection (d) and Section
15 181.105, a health care provider's violation of federal laws
16 regulating information blocking constitutes a violation of this
17 section.

18 **(d)** [~~(b)~~] A health care provider is not required to provide
19 access to a person's protected health information that is excepted
20 from access, or to which access may be denied, under 45 C.F.R.
21 Section 164.524.

22 **(e)** [~~(c)~~] For purposes of this section [~~Subsection (a)~~],
23 the executive commissioner, in consultation with the department,
24 the Texas Medical Board, and the Texas Department of Insurance, by
25 rule may recommend a standard electronic format for the release of
26 requested health records. The standard electronic format
27 recommended under this section must be consistent, if feasible,

1 with federal law regarding the release of electronic health
2 records.

3 (f) A covered entity that receives a request from a patient
4 or the patient's legally authorized representative for a copy of
5 the patient's health records may charge a fee to produce those
6 records in an amount consistent with the requirements under 45
7 C.F.R. Section 164.524, except a covered entity may not charge an
8 aggregate amount that exceeds \$100 to produce the records if:

9 (1) the patient is a Medicaid recipient; or

10 (2) the patient's household income is at or below 200
11 percent of the federal poverty level.

12 (g) A covered entity shall post in a conspicuous location
13 for patients requesting health records notice of the option to
14 obtain a copy of the patient's health records under Subsection (f).

15 (h) A covered entity may require a patient or the patient's
16 legally authorized representative to submit a written or electronic
17 request for copies of the patient's health records but may not
18 require a patient or the patient's legally authorized
19 representative to submit a request by facsimile.

20 (i) Unless explicitly authorized by state or federal law, a
21 covered entity may not enter into a contract with terms restricting
22 a patient or the patient's legally authorized representative from
23 accessing the patient's health records. Any contract clause or
24 provision that restricts a patient or the patient's legally
25 authorized representative from accessing the patient's health
26 records is unenforceable.

27 SECTION 5. Subchapter C, Chapter 181, Health and Safety

1 Code, is amended by adding Section 181.105 to read as follows:

2 Sec. 181.105. DISCLOSURE OF SENSITIVE TEST RESULT. (a) In
3 this section, "sensitive test result" means a:

4 (1) pathology or radiology report reasonably likely to
5 show a malignancy;

6 (2) test result revealing a genetic marker;

7 (3) positive test for the human immunodeficiency virus
8 if the patient has not been previously informed of a positive test
9 result for the virus; or

10 (4) result showing a presence of antigens indicating a
11 hepatitis infection.

12 (b) A health care provider may not electronically disclose a
13 sensitive test result to a patient before the third day after the
14 date the results are finalized unless the provider directs the
15 release of the results before that date.

16 SECTION 6. Section 181.201, Health and Safety Code, is
17 amended by amending Subsections (b) and (d) and adding Subsections
18 (g) and (h) to read as follows:

19 (b) In addition to the injunctive relief provided by
20 Subsection (a), the attorney general may institute an action for
21 civil penalties against a covered entity for a violation of this
22 chapter, other than a violation of Section 181.102. A civil
23 penalty assessed under this section may not exceed:

24 (1) \$5,000 for each violation that occurs in one year,
25 regardless of how long the violation continues during that year,
26 committed negligently;

27 (2) \$25,000 for each violation that occurs in one

1 year, regardless of how long the violation continues during that
2 year, committed knowingly or intentionally; or

3 (3) \$250,000 for each violation in which the covered
4 entity knowingly or intentionally used protected health
5 information for financial gain.

6 (d) In determining the amount of a penalty imposed under
7 Subsections [~~Subsection~~] (b) and (g), the court shall consider:

8 (1) the seriousness of the violation, including the
9 nature, circumstances, extent, and gravity of the disclosure or
10 information blocking;

11 (2) the covered entity's compliance history;

12 (3) whether the violation poses a significant risk of
13 financial, reputational, or other harm to an individual whose
14 protected health information is involved in the violation;

15 (4) whether the covered entity was certified at the
16 time of the violation as described by Section [182.108](#);

17 (5) the amount necessary to deter a future violation;
18 [~~and~~]

19 (6) the covered entity's efforts to correct the
20 violation;

21 (7) the size and geographic location of the covered
22 entity; and

23 (8) the financial impact of the penalty on the covered
24 entity's financial viability and ability to adequately serve an
25 underserved community or population.

26 (g) In addition to the injunctive relief provided by
27 Subsection (a), the attorney general may institute an action for

1 civil penalties against a covered entity for a violation of Section
2 181.102. A civil penalty assessed under this subsection may not
3 exceed:

4 (1) \$10,000 for each negligent violation, regardless
5 of the time the violation continues during any year; or

6 (2) \$250,000 for each intentional violation committed
7 for the purpose of financial gain, regardless of the time the
8 violation continues during any year.

9 (h) If the court in a pending action under Subsection (g)
10 finds the violations occurred with a frequency constituting a
11 pattern or practice, the court may assess additional civil
12 penalties for each violation.

13 SECTION 7. Section 241.154(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) Except as provided by Subsection (d), the hospital or
16 its agent may charge a reasonable fee for providing the health care
17 information except payment information and is not required to
18 permit the examination, copying, or release of the information
19 requested until the fee is paid unless there is a medical
20 emergency. The fee may not exceed the aggregate amount specified
21 under Section 181.102(f) and ~~sum of:~~

22 ~~[(1) a basic retrieval or processing fee, which must~~
23 ~~include the fee for providing the first 10 pages of the copies and~~
24 ~~which may not exceed \$30, and~~

25 ~~[(A) a charge for each page of:~~

26 ~~[(i) \$1 for the 11th through the 60th page~~
27 ~~of the provided copies,~~

1 ~~[(ii) 50 cents for the 61st through the~~
2 ~~400th page of the provided copies; and~~

3 ~~[(iii) 25 cents for any remaining pages of~~
4 ~~the provided copies; and~~

5 ~~[(B) the actual cost of mailing, shipping, or~~
6 ~~otherwise delivering the provided copies;~~

7 ~~[(2) if the requested records are stored on microform,~~
8 ~~a retrieval or processing fee, which must include the fee for~~
9 ~~providing the first 10 pages of the copies and which may not exceed~~
10 ~~\$45; and~~

11 ~~[(A) \$1 per page thereafter; and~~

12 ~~[(B) the actual cost of mailing, shipping, or~~
13 ~~otherwise delivering the provided copies; or~~

14 ~~[(3) if the requested records are provided on a~~
15 ~~digital or other electronic medium and the requesting party~~
16 ~~requests delivery in a digital or electronic medium, including~~
17 ~~electronic mail.~~

18 ~~[(A) a retrieval or processing fee, which may not~~
19 ~~exceed \$75; and~~

20 ~~[(B)]~~ the actual cost of mailing, shipping, or
21 otherwise delivering the provided copies.

22 SECTION 8. Subtitle A, Title 8, Insurance Code, is amended
23 by adding Chapter 1212 to read as follows:

24 CHAPTER 1212. ELECTRONIC ACCESS TO AND EXCHANGE OF CERTAIN HEALTH
25 BENEFIT PLAN INFORMATION

26 Sec. 1212.001. APPLICABILITY OF CHAPTER. (a) This chapter
27 applies only to a health benefit plan that provides benefits for

1 medical or surgical expenses incurred as a result of a health
2 condition, accident, or sickness, including an individual, group,
3 blanket, or franchise insurance policy or insurance agreement, a
4 group hospital service contract, or an individual or group evidence
5 of coverage or similar coverage document that is issued by:

6 (1) an insurance company;

7 (2) a group hospital service corporation operating
8 under Chapter 842;

9 (3) a health maintenance organization operating under
10 Chapter 843;

11 (4) an approved nonprofit health corporation that
12 holds a certificate of authority under Chapter 844;

13 (5) a multiple employer welfare arrangement that holds
14 a certificate of authority under Chapter 846;

15 (6) a stipulated premium company operating under
16 Chapter 884;

17 (7) a fraternal benefit society operating under
18 Chapter 885;

19 (8) a Lloyd's plan operating under Chapter 941; or

20 (9) an exchange operating under Chapter 942.

21 (b) Notwithstanding any other law, this chapter applies to:

22 (1) a basic coverage plan under Chapter 1551;

23 (2) a basic plan under Chapter 1575;

24 (3) a primary care coverage plan under Chapter 1579;

25 and

26 (4) a plan providing basic coverage under Chapter

27 1601.

1 Sec. 1212.002. CONSTRUCTION OF CHAPTER. This chapter may
2 not be construed to limit the requirements of Chapter 181, Health
3 and Safety Code.

4 Sec. 1212.003. RULEMAKING. The commissioner may adopt
5 rules necessary to implement this chapter.

6 Sec. 1212.004. REQUIRED APPLICATION PROGRAMMING
7 INTERFACES. (a) To facilitate patient and health care provider
8 access to health information, a health benefit plan issuer shall
9 establish and maintain the following application programming
10 interfaces for the benefit of all enrollees and contracted health
11 care providers, as applicable, as if the issuer were a Medicare
12 advantage organization:

13 (1) a patient access interface described by 42 C.F.R.
14 Sections 422.119(a)-(e);

15 (2) a provider directory interface described by 42
16 C.F.R. Section 422.120; and

17 (3) a payer-to-payer data exchange interface
18 described by 42 C.F.R. Section 422.121(b).

19 (b) In addition to the application programming interfaces
20 described by Subsection (a) and subject to Subsection (c), the
21 commissioner by rule may require a health benefit plan issuer to
22 establish and maintain the following application programming
23 interfaces after the date final rules associated with the
24 interfaces are published by the federal Centers for Medicare and
25 Medicaid Services:

26 (1) a provider access interface; and

27 (2) a prior authorization support interface.

1 (c) In implementing the requirements described by
2 Subsection (b), the commissioner shall adopt rules that conform to:

3 (1) any associated standard published in a final rule
4 issued by the Centers for Medicare and Medicaid Services; and

5 (2) federal effective dates, including enforcement
6 delays and suspension, issued by the Centers for Medicare and
7 Medicaid Services.

8 SECTION 9. If any provision of this Act or its application
9 to any person or circumstance is held invalid, the invalidity does
10 not affect other provisions or applications of this Act which can be
11 given effect without the invalid provision or application, and to
12 this end the provisions of this Act are severable.

13 SECTION 10. (a) The changes in law made by this Act to the
14 Business & Commerce Code and the Health and Safety Code apply only
15 to a violation of law that occurs on or after the effective date of
16 this Act. A violation that occurs before the effective date of this
17 Act is governed by the law in effect on the date the violation
18 occurred, and the former law is continued in effect for that
19 purpose. For purposes of this section, a violation of law occurred
20 before the effective date of this Act if any element of the
21 violation occurred before that date.

22 (b) Chapter 1212, Insurance Code, as added by this Act,
23 applies only to a health benefit plan delivered, issued for
24 delivery, or renewed on or after January 1, 2026.

25 SECTION 11. This Act takes effect September 1, 2025.