SUBJECT: Disclosure of health care information by certain providers

COMMITTEE: Public Health — favorable, without amendments

VOTE: 7 ayes — Berlanga, Hirschi, Glaze, Janek, Maxey, McDonald, Rodriguez

0 nays

2 absent — Coleman, Delisi

SENATE VOTE: On final passage, May 4 — voice vote

WITNESSES: For — Charles Bailey, Texas Hospital Association; Carol Taylor, Texas Trial Lawyers Association; Chet Brooks, Smart Corporation; Teresa Benavidez, Barbara Benich, Texas Health Information Management Association; Lance Seach; Denny O'Neill, Medical Interface, Inc; Rep. Craig Eiland; Ed Jackson, Texas Organization of Rural and Community Hospitals and HCA Columbia

Against — none

DIGEST: SB 667 would define the appropriate disclosure of patient health and mental health care information by hospitals, doctors and mental health professionals. The act would take effect September 1, 1995, and would apply to the disclosure of health care information on or after January 1, 1996.

Hospital disclosures

SB 667 would prohibit a hospital or agent of a hospital from disclosing health care information about a patient to any person other than the patient without the patient's written authorization, except in certain specified instances. A hospital also would be required to adopt necessary safeguards for the security of all health care information.

A patient's health care information could be disclosed without patient authorization if the disclosure was to a health care provider rendering services to the patient or to a hospital employee or agent who required

information for health care education or delivery, quality assurance, peer review and licensing or accreditation requirements. Health care information could also be disclosed to:

• a federal, state or local government agency to the extent authorized by law;
• a successor hospital;
• researchers authorized by an institutional review board under federal law;;

• health care personnel of a penal or custodial institution to which the patient is detained;
• a health benefit plan to facilitate reimbursement,
• an HMO for purposes of statistical reporting,
• a court pursuant to a court order or
• to satisfy a request for medical records of a deceased or incompetent person pursuant to the Medical Liability and Insurance Improvement Act.

Authorization. A disclosure authorization would be valid only if it was in writing, dated and signed by the patient or the patient's legal representative, if it identified the information to be disclosed and the person or entity to whom the information was to be disclosed. It would be valid for 90 days after the date it was signed and could be revoked at any time except if a disclosure was required for purposes of paying a hospital for rendered services. Revocation would also be required to be in writing, signed and dated.

A hospital would have 15 days from the receipt of the patient's written authorization to make requested information available or to inform the requestor that the information does not exist or cannot be found.

Fees. A hospital could charge a reasonable fee for providing the health care information that could not exceed the sum of $30 for retrieval and processing (or $45 if the requested records are on microfiche), specified per page charges and the actual cost of mailing or delivering. On and after September 1, 1996, the statutory fees would be adjusted according to the most recent consumer price index changes.

Patient remedies. A patient aggrieved by the unauthorized disclosure of information could bring action for appropriate injunctive relief and damages in a district court of the county in which the patient resides or in Travis County. A petition for injunctive relief would take precedent over all civil matters on the court docket except those matters given equal precedence by law.

Mental health records

Current provisions authorizing disclosure of confidential information would be restricted to proceedings other than administrative and court proceedings and would additionally include release of information to health personnel of a penal or custodial institution in which the patient is detained, to employees or agents of mental health professionals who are providing services or who are complying with licensing or accreditation requirements, and to satisfy a request under the Medical Liability and Insurance Improvement Act.

New provisions would be added authorizing disclosure in judicial or administrative proceedings including those:

• brought by the patient or legally authorized representative against a professional;
• regarding license revocation in which the patient is a complaining witness;
• in which the patient waives the right to confidentiality privileges;
• to substantiate and collect on mental health services claims;
• affecting a parent-child relationship;
• criminal proceedings;
• regarding abuse and neglect and
• regarding involuntary commitments.

Patients could revoke a disclosure consent at any time except for those required for the purposes of paying mental health professionals. A professional would be required to make requested information available within 15 days of receipt of the written request and could charge a reasonable copying fee.

Medical Practice Act changes

SB 667 would add to listed exceptions to confidentiality of physician-patient communications in court proceedings cases in which the patient's physical or mental condition is relevant to the execution of a will and in which the information is relevant to a proceeding brought by the patient against a physician. Exceptions would also apply to satisfy a request for medical records under the Medical Liability and Insurance Improvement Act and to a court or party pursuant to court order.

Exceptions to the privilege of confidentiality in proceedings other than court or administrative proceedings would exist for health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient.

Physicians would be required to furnish copies of medical records received from a physician or other health care provider involved in the care of the patient pursuant to written consent for release of the information.

Physicians could charge reasonable fees, set by the Board of Medical Examiners, for copying medical records and would not be required to permit record examination or copying until the fee is paid. Provisions in existing statute requiring the patient to pay copying fees would be removed.

Miscellaneous

A patient could not maintain an action against a hospital, mental health professional or a physician for a disclosure made in good-faith on an authorization if the hospital's medical record department did not have notice that the authorization was revoked.

Fee charges also would be limited to provisions, if enacted, in SB 133 by Luna.

SUPPORTERS SAY:

SB 667 would provide much needed uniform guidelines for the release of patient records and other information. Because standard guidelines do not exist, patients, lawyers, hospitals, other health care providers and medical records services are caught in a tangle of varying retrieval and copying

fees, ignored or delayed responses to requests and releases of information to unauthorized parties. Patient authorization requirements, specified response deadlines and fee schedules would create an orderly statewide process, protect patient information from being wrongfully released and improve patient access to medical records.

Hospital guidelines in patient information disclosure and confidentiality are long overdue. Medical Practice Act provisions protecting communications between doctors and patients have been applied through court decisions to protect hospital records generated by physicians, but a lot of patient health information is also created by other health professionals or employees in a hospital and is not clearly protected. Hospitals are often inundated with requests for patient information due the volume, variety and complexity of care they deliver and are often blamed for refusing to respond to requests or for releasing information inappropriately.

SB 667 would establish fair and reasonable hospital information retrieval and release charges that would not need to be amended in subsequent years. By doing so SB 667 would eliminate the widely varying copying charges used by hospitals, often with the intent to delay or to prevent the release of patient information.

OPPONENTS SAY:

Hospital fees for providing health care information are too low and restrictive and do not address special circumstances such as "rush jobs" and legal certification services. Fee schedules need to be flexible to accommodate the tremendous amount of free services and cost-shifting that goes on in health care information retrieval and release — about 60 percent of the requests for health care information are non-billable because the information is being released to other providers or payers.

SB 667 fee provisions also would not adequately compensate firms hired by many hospitals that specialize in medical records retrieval and copying. It has been estimated that about 70 percent of Texas hospitals use some form of copying services to respond to information requests.

OTHER OPPONENTS SAY:

SB 667 would be establishing new standards for hospitals and amending current standards for doctors and for mental health records. SB 548 by Madla, enacted this session, would enact protections for patient-podiatrist communications and release of information.

Instead of adopting provider-specific provisions for the release and protection of patient records, a uniform standard should be enacted, in one section of the law, so that patients would be guaranteed consistent protections and access to information and conforming changes would not have to be made in other sections of the law every time one section is amended.

The hospital information charges are too high and exceed those in other states with similar statutes, such as California and New Jersey. High charges can prevent a patient or a patient's legal representative from rightfully obtaining their own medical records.

NOTES:

SB 133 by Luna, which would prohibit health care providers from charging for the release of a medical or mental health record to be used to support an application for disability benefits or other public assistance, has been placed on the consent calendar for May 19.