

## BILL ANALYSIS

Senate Research Center  
78R1037 MCK-D

S.B. 39  
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Health and Human Services  
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### DIGEST AND PURPOSE

In 1994, the Texas Department of Health (TDH) established an immunization tracking system to monitor immunization rates for children across Texas. Additionally, this system serves as an information depository for providers who are then able to determine if a child's immunization record is up to date. For children who do not consistently see the same health care provider, the system serves to protect them from "over immunization." However, the current system lacks data from the private sector, and thus does not present an accurate report of the immunization rates in Texas. As proposed, S.B. 39 would modify the state's current immunization tracking system, ImmTrac, to increase collection data. The primary goal is to increase the reporting to ImmTrac by changing the registry from an opt-in to an opt-out system.

### RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Department of Health is modified in SECTION 1 (Section 161.007, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Texas Board of Health in SECTION 5 and is modified in SECTION 1 (Section 161.007, Health and Safety Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 161.007, Health and Safety Code, as follows:

(a) Requires the Texas Department of Health (TDH) by rule to develop certain guidelines to:

protect the confidentiality of registrants in accordance with state and federal law, rather than patients in accordance with Section 159.002 (Confidential Communications), Occupations Code;

inform a parent, managing conservator, or guardian of each registrant, rather than each patient, about the registry; and

permit the written consent of a parent, managing conservator, or guardian of a registrant to choose in writing to have the registrant excluded from the registry, rather than require the written consent of such persons before any information relating to the patient is included in the registry.

Makes conforming changes.

(b) Requires the childhood immunization registry to contain information on the immunization history that is obtained by TDH under this section of each person who is younger than 18 years of age, except as provided by Section 161.0071. Deletes

existing language regarding consent to guidelines in accordance with guidelines adopted under Subsection (a). Deletes existing language regarding TDH removing registry information.

(c) Requires the report to contain the elements prescribed by TDH. Authorizes the report to be submitted in writing or by electronic means. Deletes existing language exempting certain entities from providing an immunization history.

(d) Requires the report to contain the elements, rather than be in a format, prescribed by the department. Authorizes the report to be submitted in writing or by electronic means and deletes language authorizing submission by voice. Deletes language exempting a health care provider from providing certain immunization histories to TDH. Makes a nonsubstantive change.

(e) Requires the notice to contain instructions for the parent, managing conservator, or guardian to request that future notices not be sent and to remove the child's immunization record from the registry and any other registry-related record that individually identifies the child. Requires the notice to describe the procedures to report a violation if a child is included in the registry after the submission of a written request for exclusion.

(f) Provides that nothing in this subchapter diminishes a parent's, managing conservator's, or guardian's responsibility for having a child immunized properly, subject to Section 161.004(d).

(g) Provides that a person, including a health care provider or an insurance company, a health maintenance organization, or another organization that pays or reimburses a claim for immunization, and submits or obtains in good faith an immunization history or data to or from TDH in compliance with both the provision of this subchapter and any rules adopted in this subchapter is not liable for any civil damages. Makes conforming changes.

(h) Deletes language regarding the confidentiality and the disclosure of the information obtained by TDH. Requires the board to adopt rules to implement this subchapter, rather than this section. Reletters Subsection (i) as Subsection (h).

SECTION 2. Amends Chapter 161A, Health and Safety Code, by adding Sections 161.0071, 161.0072, 161.0073, and 161.0074, as follows:

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) Requires TDH to send a written notification to a child's parent, managing conservator, or guardian disclosing certain information, the first time it receives registry data for the child.

(b) Requires TDH to delete the child's immunization records from the registry and any other registry-related TDH record that individually identifies the child by the 30th day after the date the TDH receives from the parent, managing conservator, or guardian of the child a written request that the child be excluded from registry. Requires the TDH to maintain only those records related to the child necessary to ensure that the child continues to be excluded from the registry and prohibits release of the identity of a child excluded from the registry.

(c) Requires for TDH to send a written confirmation of receipt of the request for exclusion and the exclusion of child's record from the registry to a parent, managing conservator, or guardian who makes a written a request under Subsection (b).

(d) Provides that TDH commits a violation if it fails to exclude a child from the registry within the period required by Subsection (b).

(e) Requires TDH to accept a written statement from a parent, managing conservator, or guardian communicating the exclusion of the child from the registry, including a statement on the child's birth certificate, as a request for exclusion under Subsection (b).

Sec. 161.0072. REGISTRY CONFIDENTIALITY. (a) Provides that the information that individually identifies a child received by TDH for the immunization registry is confidential and may only be used for TDH's registry purposes.

(b) Prohibits TDH from releasing registry information to any individual or entity without the consent of the person, or if a minor, the parent, managing conservator, or guardian of the child, unless specifically authorized by this subchapter.

(c) Provides that a person required to report information to TDH for registry purposes or authorized to receive information from registry may not disclose the individually identifiable information to any other person without the written consent from the parent, managing conservator, or guardian of the child, except as provided by Chapter 159 (Physician-Patient Communication), Occupations Code.

(d) Provides that registry information is not subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this subchapter or admissible in any civil, administrative, or criminal proceeding.

Sec. 161.0073. REPORT TO LEGISLATURE. Requires TDH to report to certain officials by September 30 of each even-numbered year. Require TDH to use the report required under Subsection (a) to develop ways to increase immunization rates using state and federal resources. Requires the report to include certain information.

Sec. 161.0074. IMMUNITY FROM LIABILITY. Provides that an insurance company, HMO, or other organization that pays or reimburses a claim for immunization, a healthcare provider who administers immunizations, and an employee of TDH who acts in compliance with Section 161.007, 161.0071, 161.0072, 161.0073 and 161.008 is not civilly or criminally liable for furnishing the information required under this subchapter, except as provided by Section 161.009 (Penalties for Disclosure of Information).

SECTION 3. Amends Section 161.008, Health and Safety Code, by amending Subsections (c)-(d) and by adding Subsections (e)-(g), as follows:

(c) Authorizes TDH to obtain data constituting an immunization record for the child from a public health district, local health department, an insurance company, HMO, or any other organization that pays or reimburses a claim for immunization, or any health care provider licensed or otherwise authorized to administer vaccines. Makes a nonsubstantive change.

(d) Requires the TDH, if it has not received a written request to exclude the child from the registry within the 30th day after the date notice was sent by the department to the child's parent, managing conservator, or guardian under Section 161.007 to enter the child into the registry and release the data constituting an immunization record for a child to any entity in this state that is described by Subsection (c) and is providing immunization services to the child or is paying or reimbursing a claim for immunization for the child, to a school or child care facility in which a child is enrolled, or to a state agency responsible for the health care child.

(e) Reletters existing Subsection (d).

(f) Authorizes TDH to release nonidentifying summary statistics related to the registry that do not individually identify a child.

(g) Prohibits TDH from releasing individually identifiable information under Subsection (d) (2) to an entity outside of this state.

SECTION 4. Amends Section 161.009(a), Health and Safety Code, to make conforming changes.

SECTION 5. Requires the Texas Board of Health, as soon as practicable or by August 1, 2004, to adopt rules necessary to implement the procedure for excluding children from the immunization registry required by this Act; and make available for use a form for requesting exclusion from the immunization registry required under Section 161.0071, Health and Safety Code, as added by this Act. Prohibits the report required under Section 161.007(c), Health and Safety Code, as amended by this Act and the data obtained or released under Section 161.008, Health and Safety Code, as amended by this Act, from being accepted or released by the department until TDH has adopted rules and prescribed forms required by this Act.

SECTION 6. Effective date: upon passage or September 1, 2003.