

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 1090  
By: Duncan, Uresti  
Health & Human Services  
4/11/2007  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, Texas is unable to track the number of youth diabetes diagnoses in the state. In order to prevent and control the impact of diabetes, the state needs reliable data for tracking and research.

C.S.S.B. 1090 requires certain health care professionals to report each new case of diabetes diagnosed in Texans under 18 years of age, but provides an opt-out provision for parents regarding the report.

### **RULEMAKING AUTHORITY**

Rule making authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Sections 98.052 and 98.053, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle D, Title 2, Health and Safety Code, by adding Chapter 98, as follows:

#### CHAPTER 98. DIABETES IN YOUTH REGISTRY

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 98.001. DEFINITIONS. Defines "advanced practice nurse," "clinical laboratory," "department," "diabetes," "executive commissioner," "health care facility," "patient," "physician," "physician assistant," and "registry."

[Reserves Sections 98.002-98.050 for expansion.]

##### SUBCHAPTER B. POWERS AND DUTIES OF EXECUTIVE COMMISSIONER AND DEPARTMENT

Sec. 98.051. REGISTRY: ESTABLISHMENT AND CONTENT. (a) Requires the Department of State Health Services (DSHS) to maintain a youth diabetes registry (registry) of cases of diabetes diagnosed in persons younger than 18 years of age.

(b) Requires the registry to be an accurate, precise, and current central information bank on the number of diabetes cases in this state to help determine the impact of diabetes in youth.

(c) Requires each registered case to include certain information.

Sec. 98.052. REGISTRY GUIDELINES. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), in consultation with the Texas Diabetes Council, by rule, to develop certain guidelines.

Sec. 98.053. RULES; CONTRACTS; GIFTS AND GRANTS. (a) Authorizes the executive commissioner to adopt the rules necessary to administer this chapter.

(b) Authorizes DSHS to enter into contracts as necessary for the purposes of this chapter.

(c) Authorizes DSHS to accept and administer gifts and grants for the purposes of this chapter.

Sec. 98.054. ANNUAL REPORT; REPORT TO LEGISLATURE. (a) Requires DSHS to publish an annual youth diabetes report based on registry information. Authorizes the report to include certain information.

(b) Requires DSHS to present the annual youth diabetes report to certain officials.

(c) Authorizes DSHS to publish reports it determines necessary or desirable to implement the purposes of this chapter, in cooperation with other diabetes reporting organizations and research institutions.

Sec. 98.055. INFORMATION FROM MEDICAL RECORDS. (a) Requires a health care facility, clinical laboratory, or physician that makes the diagnosis or the advanced practice nurse or physician assistant that obtains information related to the diagnosis to furnish to DSHS or DSHS's representative information DSHS considers necessary and appropriate that is derived from the patient's medical record in the custody or under the control of the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant within six months of a new diagnosis of diabetes in a patient, except as provided by Subsection (b).

(b) Requires the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant to inform the patient and the patient's parent or legal guardian of the existence, structure, and purpose of the registry before transferring any information.

(c) Prohibits the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant from transferring information about a patient if the patient or the patient's parent or legal guardian chooses to exclude the information from the registry.

(d) Requires a health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant to furnish information required under Subsection (a) in the format prescribed by DSHS.

Sec. 98.056. FAILURE TO FURNISH INFORMATION; PENALTY. (a) Requires a health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant that knowingly or in bad faith fails to furnish information to reimburse DSHS for the costs incurred by DSHS in accessing and obtaining the information. Requires costs reimbursed under this subsection to be reasonable based on the actual costs incurred by DSHS in collecting the information and authorizes the reimbursed costs to include salary and travel expenses.

(b) Authorizes DSHS to assess a late fee on an amount due under Subsection (a) that is at least 60 days overdue after providing an opportunity for hearing. Prohibits the late fee from exceeding one and one-half percent of the total amount due for each month or portion of a month the amount is not paid in full.

Sec. 98.057. CONFIDENTIALITY. (a) Provides that reports, records, and information obtained under this chapter are confidential and are not subject to disclosure under Chapter 552 (Public Information), Government Code, are not subject to subpoena, and may not otherwise be released or made public except as provided by this chapter.

(b) Provides that reports, records, and information obtained under this chapter are for the confidential use of DSHS and any person it determines necessary to carry out the intent of this chapter except as provided by Subsection (c).

(c) Authorizes information obtained under this chapter to be released to the health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant that provided the information to the department, but stipulates that the release is limited to information provided by that health care facility, clinical laboratory, physician, advance practice nurse, or physician assistant.

(d) Prohibits a state employee from testifying in a civil, criminal, special, or other proceeding as to the existence or contents of records, reports, or information concerning an individual whose medical records have been used in submitting information required under this chapter unless the individual consents in advance.

Sec. 98.058. **RELEASE OF LIMITED INFORMATION.** (a) Authorizes medical or epidemiological information to be released under certain circumstances.

(b) Provides that information furnished to a diabetes registry or a diabetes researcher under Subsection (a)(3) is for confidential use of the diabetes registry or the diabetes researcher, as applicable, and is subject to Section 98.057.

Sec. 98.059. **REGISTRY ACCESS.** Provides that access to the registry is limited to certain persons.

Sec. 98.060. **IMMUNITY FROM LIABILITY.** Provides that certain persons subject to this chapter that act in compliance with this chapter are not civilly or criminally liable for furnishing the information required under this chapter.

Sec. 98.061. **INJUNCTIVE RELIEF; CIVIL PENALTY.** (a) Authorizes the attorney general to institute an action for injunctive relief to restrain a release of information in violation of Section 98.057, 98.058, 98.059, or 98.064.

(b) Authorizes the attorney general to institute an action for civil penalties against a person for a release of information in violation of Section 98.057, 98.058, 98.059, or 98.064 in addition to the injunctive relief provided by Subsection (a). Prohibits a civil penalty that is assessed under this section from exceeding \$3,000 for each violation.

(c) Authorizes the court to assess a civil penalty not to exceed \$250,000 if the court in which an action under Subsection (b) is pending finds that the violations have occurred with a frequency as to constitute a pattern or practice.

Sec. 98.062. **DISCIPLINARY ACTION.** Provides that a release of information in violation of Section 98.057, 98.058, 98.059, or 98.064 by an individual or facility that is licensed by an agency of this state is subject to investigation and disciplinary proceedings, including probation or suspension by the licensing agency in addition to the penalties prescribed by this chapter. Authorizes the agency to revoke the individual's or facility's license if there is evidence that the violations of this chapter constitute a pattern or practice.

Sec. 98.063. **EXCLUSION FROM STATE PROGRAMS.** Requires a person to be excluded from participating in any state-funded health care program if a court finds the person engaged in a pattern or practice of releasing information in violation of Section 98.057, 98.058, 98.059, or 98.064 in addition to the penalties prescribed by this chapter.

Sec. 98.064. **COMPLIANCE WITH FEDERAL LAW.** (a) Requires a covered entity to ensure that the disclosure complies with all applicable requirements, standards, and implementation specifications of the privacy rule to the extent that this chapter authorizes the disclosure of protected health information by a covered entity as those terms are defined by the privacy rule in federal laws.

(b) Provides that this chapter governs the use or disclosure of information in the registry to the extent that the provisions of this chapter, and the rules adopted

under this chapter, relating to the use or disclosure of information in the registry are more stringent than the privacy rule described by Subsection (a).

Sec. 98.065. EXAMINATION AND SUPERVISION NOT REQUIRED. Provides that this chapter does not require an individual to submit to any medical examination or supervision or to examination or supervision by DSHS.

SECTION 2. (a) Requires the executive commissioner to adopt the rules necessary to implement Chapter 98, Health and Safety Code, as added by this Act, as soon as practicable after the effective date of this Act.

(b) Provides that DSHS is not required to collect and a health care facility, clinical laboratory, physician, advanced practice nurse, or physician assistant is not required to report information for the registry established under Chapter 98, Health and Safety Code, as added by this Act, for a patient who was diagnosed before January 1, 2007.

SECTION 3. Effective date: September 1, 2007.