

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1187
By: Nelson
Health & Human Services
3/30/2007
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 108, Health and Safety Code, currently refers to the Texas Health Care Information Council (council), which has been disbanded. The Department of State Health Services (DSHS) has taken over the role of the council.

C.S.S.B. 1187 updates references to the council in Chapter 108, Health and Safety Code, to refer to DSHS, and clarifies and updates the law to reflect current program operations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner the Health and Human Services Commission in SECTION 4 (Section 108.0055, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Health Care Information Council is rescinded in SECTION 5 (Section 108.006, Health and Safety Code), SECTION 9 (Section 108.010, Health and Safety Code), SECTION 12 (Section 108.013, Health and Safety Code) and SECTION 13 (Section 108.1035, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 108, Health and Safety Code, to read as follows:

CHAPTER 108. TEXAS HEALTH CARE INFORMATION COLLECTION PROGRAM

SECTION 2. Amends Section 108.001, Health and Safety Code, as follows:

Sec. 108.001. New heading: TEXAS HEALTH CARE INFORMATION COLLECTION PROGRAM. Requires the Department of State Health Services (DSHS), rather than the Texas Health Care Information Council (council), to administer this chapter and report to the governor, the legislature, and the public.

SECTION 3. Amends Section 108.002, Health and Safety Code, by amending Subdivisions (1), (3), (5), (6), (7), (8), (12), (16), (17), (20), (21), and (22) and adding Subdivisions (4-a), (8-a), (11-a), (14-a), (16-a), (17-a), and (21-a), as follows:

- (1) Redefines "accurate and consistent data."
- (3) Redefines "certification."
- (4-a) Defines "commission."
- (5) Defines "confidential data." Deletes the definition for "council."
- (6) Redefines "data."
- (7) Redefines "department."
- (8) Redefines "edit."
- (8-a) Defines "executive commissioner."

- (11-a) Defines "health practitioner."
- (12) Redefines "hospital."
- (14-a) Defines "program director."
- (16) Redefines "provider quality."
- (17) Redefines "public use data."
- (17-a) Defines "risk adjustment."
- (20) Redefines "uniform patient identifier."
- (21) Defines "uniform physician or health practitioner identifier."
- (21-a) Defines "utilization report."
- (22) Redefines "validation."

SECTION 4. Amends Chapter 108, Health and Safety Code, by adding Section 108.0055, as follows:

Sec. 108.0055. **POWERS AND DUTIES OF EXECUTIVE COMMISSIONER.** Requires the executive commissioner (executive commissioner) of the Health and Human Services Commission (HHSC) to adopt rules necessary to administer this chapter.

SECTION 5. Amends Section 108.006, Health and Safety Code, as follows:

Sec. 108.006. New heading: **POWERS AND DUTIES OF DEPARTMENT.** (a) Updates references to council to refer to DSHS. Updates references to data to refer to reports. Requires DSHS, rather than the council, to take certain actions and perform certain tasks.

(b) Authorizes DSHS, rather than the council, to recommend rules for clarifying which health care facilities are required to provide data under this chapter.

(c) Prohibits DSHS, rather than the council, from establishing or recommending rates of payment for health care services.

Deletes existing Subsection (d), prohibiting the council from taking an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with DSHS without the board's approval. Bill as drafted does not contain a Subsection (d) subsequent to the deletion.

(e) Requires DSHS, rather than the council, to consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and the Joint Commission on Accreditation of Healthcare Organizations to reduce potential duplication or inconsistencies. Prohibits the executive commissioner, rather than the council, from adopting rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) Requires DSHS, rather than the council, to recommend rules on, rather than prescribe by rule, a public use data element list, rather than file minimum data set, that maintains patient confidentiality and establishes data accuracy and consistency.

(g) Provides that the public use data element, rather than file minimum data set, as defined by rule, rather than council rule, is subject to annual review by DSHS,

rather than council with the assistance of the advisory committee under Section 108.003(g)(5), to evaluate requests to modify the existing public use data element list and editing process of those data elements. Requires a decision to modify the public use data element list by the addition or deletion of data elements to include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. Authorizes DSHS, rather than the council, to also consider the costs to DSHS, rather than the council, and providers associated with modifying the public use data element list.

(h) Authorizes DSHS to release data collected under Section 108.009 that is not included in the public use data element list established under this chapter, in accordance with Sections 108.013(k), (l), (m), and (n) and 108.0135.

SECTION 6. Amends Section 108.007, Health and Safety Code, to update references to the council to refer to DSHS. Authorizes DSHS to enter into a memorandum of understanding with a state agency or with a school of public health or another institution of higher education. Deletes existing text including the division of HHSC responsible for the state Medicaid program.

SECTION 7. Amends Section 108.009, Health and Safety Code, as follows:

(a) Makes conforming changes.

(b) Makes conforming changes.

(c) Makes no changes to this subsection.

(d) Prohibits DSHS, rather than the council, from collecting data from individual physicians or health practitioners or from an entity that is composed entirely of physicians or health practitioners and that is a professional association organized under the Texas Professional Association Act (Article 1528f, V.T.C.S.) or formed under the Texas Professional Association Law, as described by Section 1.008, Business Organizations Code, or a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, V.T.C.S.) or formed under the Texas Limited Liability Company Law, as described by Section 1.008, Business Organizations Code, except to the extent the entity owns and operates a health care facility in this state. Provides that this subsection does not prohibit the release of data about physicians or health practitioners using uniform physician or health practitioner identifiers that has been collected from a health care facility under this chapter.

Deletes existing Subsection (e), requiring the council to establish DSHS as the single collection point for receipt of data from providers, and authorizing DSHS to transfer collection of any data required to be collected by DSHS under any other law to the statewide health care data collection system. Bill as drafted does not contain a Subsection (e) subsequent to the deletion.

(f) Makes conforming changes.

(g) Authorizes DSHS, rather than requiring the council, to coordinate data collection with the data collection formats used by federally qualified health centers. Makes conforming changes.

(h) Makes conforming changes. Requires DSHS to accept data in the format developed by the American National Standards Institute, rather than the National Uniform Billing Committee, or its successor or other nationally, rather than universally, accepted standardized format of forms that hospitals and other providers use for other complementary purposes.

(i) Requires DSHS to recommend rules on reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity to create electronic claims.

(k) Makes conforming changes.

(m) Makes conforming changes.

(o) Makes conforming changes. Provides that information submitted under this section is subject to 108.013(k), (l), (m), and (n).

SECTION 8. Amends Chapter 108, Health and Safety Code, by adding Section 108.0095, as follows:

Sec. 108.0095. CHANGE IN OWNERSHIP BY ENTITY REQUIRED TO SUBMIT DATA. Requires an entity that acquires, by merger, acquisition, or other transfer, ownership of a health care facility or an organization that owns or operates a health care facility or an organization that owns or operates a health benefit plan that is required to submit data under this chapter to report the change in ownership to DSHS.

SECTION 9. Amends Section 108.010, Health and Safety Code, as follows:

Sec. 108.010. New heading: DISSEMINATION OF PROVIDER QUALITY REPORTS. (a) Requires DSHS, subject to Section 108.009, to gather data reflecting provider quality and to produce provider quality reports based on a methodology and review process established through the executive commissioner's, rather than council's, rulemaking process. Requires the methodology to identify and measure quality standards and adhere to any federal mandates.

Deletes existing Subsection (b), requiring the council to study and analyze initial methodologies for obtaining provider quality data, including outcome data. Bill as drafted does not contain a subsection (b) subsequent to the deletion.

(c) Requires DSHS, rather than the council, to test each initial provider quality report methodology for a period of time to be determined by DSHS, rather than by collecting provider quality data for one year, subject to Section 108.009. Provides that this requirement to test a methodology applies only to methodologies that have not previously been used by DSHS. Authorizes DSHS, rather than the council, to test using pilot methodologies. Requires that any provider quality reports be published and made available to the public, on a time schedule DSHS, rather than the council, considers appropriate. Deletes existing text requiring the council to report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. Deletes existing text requiring the council to verify the accuracy of the data during this review and revision process.

(d) Makes conforming changes. Provides that this subsection does not affect the release of public use data in accordance with Section 108.011 or utilization reports requested under Chapter 552, Government Code, rather than the release of information submitted under Section 108.009(o).

(e) Requires DSHS to allow, rather than requires the council to adopt rules allowing, a provider to submit concise written comments regarding any specific provider quality report, rather than data, to be released concerning the provider. Makes conforming changes.

(f) Requires the methodology adopted by DSHS, rather than the council, for measuring quality to include one or more adjustment methods, such as case-mix qualifiers, risk adjustment factors, severity adjustment factors, adjustments for medical education and research, or any other factors necessary to accurately reflect provider quality.

(g) Requires that any release of provider quality reports comply with Section 108.011(f), rather than Sections 108.011(o) and (f), in addition to the requirements of this section.

(h) Makes conforming changes.

(i) Authorizes DSHS, rather than requires the council, to release utilization reports without the review and comment by any provider, rather than quality data in an aggregate form without uniform physician identifiers in certain situations.

SECTION 10. Amends Section 108.011, Health and Safety Code, as follows:

Sec. 108.011. New heading: DISSEMINATION OF PUBLIC USE DATA AND DEPARTMENT PUBLICATIONS. (a) Makes conforming changes. Provides that the public use data does not include confidential data prescribed by Section 108.013, rather than provider quality data prescribed by Section 108.010 or confidential data prescribed by Section 108.013.

(b) Makes conforming changes.

(c) Makes conforming changes.

(c-1) Makes conforming changes.

(c-2) Makes no changes to this subsection.

(d) Makes conforming changes.

(e) Makes conforming changes.

(f) Requires a report issued by DSHS, rather than the council, to include a reasonable review, rather than review and comment, period for the affected providers before public release of the report.

(g) Requires DSHS, rather than the council, to provide a process, rather than adopt rules, allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. Requires DSHS, rather than the council, to make the comments available to the public, rather than the public and the office of the council, and in an electronic form accessible through the Internet. Makes conforming changes.

(h) Requires media devices, rather than tapes, containing public use data and provider quality reports that are released to the public to include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) Requires DSHS to release public use data, rather than public use data in an aggregate form, without uniform physician or health practitioner identifiers when the data relates to providers described by Section 108.0025(1), or the data, rather than the cell size of the data, would enable, rather than is below the minimum size established by council rule, easy identification of an individual patient, physician, or health practitioner when combined with other data elements from the public use data element list.

(j) Provides that DSHS is not required to make data available or produce data for inspection or duplication under Chapter 552 (Public Information), Government Code, until the program director has verified the data as reasonably accurate, notwithstanding Section 552.021 or 552.221, Government Code.

SECTION 11. Amends Section 108.012, Health and Safety Code, as follows:

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) Requires DSHS, rather than the council, to provide a means for computer access, rather than computer-to-computer

access, to the public use data. Requires that all data and reports maintain patient confidentiality as provided by Section 108.013.

(b) Authorizes DSHS, rather than the council, to charge a person requesting public use data or data used in provider quality reports a fee for the data. Authorizes the fees to reflect the quantity of information provided and the expense incurred by DSHS in collecting and providing the data. Deletes existing text requiring the fee to be set at a level that will raise revenue sufficient for the operation of the council and prohibiting the council from charging a fee for providing public use data to another state agency.

SECTION 12 Amends Section 108.013, Health and Safety Code, as follows:

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) Makes conforming changes.

(b) Makes conforming changes.

(c) Makes conforming changes. Prohibits DSHS from releasing and prohibits a person or entity from gaining access to data submitted to DSHS in a uniform submission format that is not included in the public use data element list described by, rather than public use data set established under, Sections 108.006(f) and (g), except in accordance with Subsection (k), (l), (m), and (n) and Section 108.0135, in addition to other specified data.

(d) Makes conforming changes.

(e) Makes no changes to this subsection.

(f) Makes conforming changes.

(g) Makes conforming changes.

(h) Makes a conforming change.

(i) Makes a conforming change.

(j) Requires DSHS to recommend a rule to develop and implement a mechanism to comply with Subsections (c)(1) and (2), rather than the council with the assistance of the advisory committee under Section 108.003(g)(5).

(k) Authorizes DSHS to disclose data collected under this chapter that is not included in public use data to any program within DSHS upon review and approval by the institutional or other review board established under Section 108.0135. Provides that this subsection does not authorize disclosure of physician and health care practitioner identifying data.

(l) Requires DSHS to implement safeguards to ensure that DSHS maintains the confidentiality of confidential data in the possession of DSHS. Requires DSHS to identify the confidential data to a program within DSHS receiving the data as described by Subsection (k). Requires the program receiving the data to ensure that the confidential data remains confidential.

(m) Provides that the confidential data collected under this chapter that is disclosed to another program within DSHS under this section remains subject to the confidentiality provisions of this chapter, notwithstanding other law.

(n) Provides that Subsections (c), (d), and (g) and Sections 108.010(g) and (h) and 108.011(e) and (f) do not apply to the disclosure of data to a department program with respect to which DSHS is given approval to disclose data under this

section. Provides that this subsection does not authorize disclosure of physician and health care practitioner identifying data.

SECTION 13. Amends Section 108.0135, Health and Safety Code, as follows:

Sec. 108.0135. New heading: INSTITUTIONAL REVIEW BOARD. (a) Requires DSHS to establish a department institutional review board or similar privacy board (board), rather than a scientific review panel, to review and approve valid requests for access to data not contained in the public use data element list established by rule, excluding the names and identification numbers of the patients, physicians, and health practitioners. Requires the members of the board to have experience and expertise in ethics, patient confidentiality, and health care data.

(b) Provides that, for purposes of Subsection (a), an identification number is any unique identifier composed of numeric, alpha, or alphanumeric characters assigned by a person to the patient, physician, or health care practitioner, but does not include a uniform identifier assigned by DSHS under this chapter.

Deletes text of existing Subsection (b) requiring the council to adopt rules similar to the federal Health Care Financing Administration's guidelines on releasing data.

Deletes existing Subsection (c) requiring a request for information other than public use data to be made on the form created by the council.

SECTION 14. Amends Sections 108.014(b), (c), and (d), Health and Safety Code, as follows:

(b) Provides that a person who fails to supply available data under this chapter, rather than Section 108.009 and 108.010, is liable for a civil penalty of not less than \$500, rather \$1,000 or more than \$10,000, for each day after the date of the last day on which the entity may timely submit the data. Requires the court to consider certain factors, in determining the amount of the civil penalty.

(c) Makes a conforming change.

(d) Requires a civil penalty recovered in a suit instituted by the attorney general under this chapter to be deposited in the general revenue fund and authorizes it to be appropriated to DSHS, rather than to the credit of health care information account.

SECTION 15. Amends Chapter 108, Health and Safety Code, by adding Section 108.0142 and 108.0143, as follows:

Sec. 108.0142. INJUNCTION. (a) Authorizes DSHS to bring an action for an injunction or other process against a person who knowingly or negligently releases data in violation of this chapter or who fails to file data or reports required by this chapter.

(b) Authorizes the district court to grant any prohibitory or mandatory relief warranted by the facts, including a temporary restraining order, temporary injunction, or permanent injunction.

Sec. 108.0143. REMEDIES CUMULATIVE. Provides that the civil penalty and injunction authorized by this chapter are in addition to any other civil, administrative, or criminal action provided by law.

SECTION 16. Amends Section 531.021(b), Government Code, to require HHSC to establish requirements for and define the scope of the ongoing evaluation of the Medicaid managed care system conducted in conjunction with the Texas Health Care Information Collection Program, rather than the Texas Health Care Information Council, under Chapter 108, rather than 108.0065, Health and Safety Code, in addition to other specified requirements of the commission.

SECTION 17. Amends Section 2054.0541, Government Code, to require the Department of Information Resources to assist DSHS, rather than the council, with planning, analyses, and management functions relating to the procurement, use, and implementation of a statewide health care data collection system under Chapter 108, Health and Safety Code.

SECTION 18. Amends Section 501.253(b), Insurance Code, to require the Texas Department of Insurance (TDI) and DSHS, rather than the TDI and council, to provide any information or data as requested by the office of public insurance counsel in furtherance of the duties under this subchapter.

SECTION 19. Repealer:

- (1) Section 108.002(2), Health and Safety Code (defining "board");
- (2) Section 108.003, Health and Safety Code (Council Composition; Expenses);
- (3) Section 108.004, Health and Safety Code (Meetings);
- (4) Section 108.0045, Health and Safety Code (Open Records);
- (5) Section 108.005, Health and Safety Code (Terms);
- (6) Section 108.0062, Health and Safety Code (Drug Purchasing Cooperatives);
- (7) Section 108.0065, Health and Safety Code (Powers and Duties of Council Relating to Medicaid Managed Care);
- (8) Section 108.008, Health and Safety Code (Duties of Department);
- (9) Section 108.0081, Health and Safety Code (Memorandum of Understanding);
- (10) Section 108.0085, Health and Safety Code (Duties of Attorney General); and
- (11) Section 108.015, Health and Safety Code (Conflict of Interest).

SECTION 20. Provides that a reference in law to the Texas Health Care Information Council means the Texas Health Care Information Collection Program.

SECTION 21. Effective date: September 1, 2007.