

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Department of State Health Services (DSHS) handles the duties of the legacy agency Texas Health Care Information Council, including the collection of hospital inpatient discharge data as authorized by Chapter 108 (Texas Health Care Information Council), Health and Safety Code. The discharge data is currently collected by DSHS's Center for Health Statistics (CHS). S.B. 156 amends the Health and Safety Code to clarify the transfer of powers and duties of the Texas Health Care Information Council to DSHS in accordance with Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003. The bill specifies that a reference to the council means DSHS and makes technical corrections and conforming changes.

Current statutory restrictions do not allow access to confidential data collected and as a result, cancer and birth defects data cannot be fully utilized by CHS or by other DSHS programs. Specifically, certain data cannot be used by the cancer and birth defects registries to obtain higher quality and more complete information on a number of conditions in Texas. These restrictions also mean that data cannot be linked with data collected by the Vital Statistics Unit (VSU) to determine 30-day mortality rates.

S.B. 156 amends Chapter 108 of the Health and Safety Code to permit access to certain confidential patient data collected by CHS. This access would be extremely valuable in accomplishing DSHS public health responsibilities, including cancer and birth defects surveillance and epidemiology studies.

S.B. 156 would allow for better use of data that the state and health care facilities in which the state has made a considerable investment. S.B. 156 would decrease the burden of disease and health condition reporting by health care facilities, as well as improve the quality of data maintained by the cancer and birth defect registries. This bill would improve public health capacity by allowing tracking of patients across services offered by different health programs.

S.B. 156 renames the Scientific Review Panel as the Institutional Review Board and requires the review board to be established and to determine approval for a request for information, with the assistance of the executive commissioner of the Health and Human Services Commission.

S.B. 156 would not allow access to physician data, nor would it allow for the release or access to personal identifying information outside DSHS.

As proposed, S.B. 156 amends current law relating to health care data collected by the Department of State Health Services and access to certain confidential patient information within the department.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Health Care Information Council is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 4 (Section 108.013, Health and Safety Code) and SECTION 5 (Section 108.0135, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 108.002, Health and Safety Code, by amending Subdivision (7), and by adding Subdivision (8-a), to redefine "department" and to define "executive commissioner."

SECTION 2. Amends Chapter 108, Health and Safety Code, by adding Section 108.0026, as follows:

Sec. 108.0026. TRANSFER OF DUTIES; REFERENCE TO COUNCIL. (a) Provides that the powers and duties of the Texas Health Care Information Council (council) under this chapter were transferred to the Department of State Health Services (DSHS) in accordance with Section 1.19, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003.

(b) Provides that in this chapter or other law, a reference to the Texas Health Care Information Council means DSHS.

SECTION 3. Amends Section 108.009(h), Health and Safety Code, as follows:

(h) Requires DSHS to coordinate data collection with the data submission formats used by hospitals and other providers. Requires DSHS to accept data in the format developed by the American National Standards Institute, rather than the National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500, or its successor or other nationally, rather than universally, accepted standardized forms that hospitals and other providers use for other complementary purposes. Makes a nonsubstantive change.

SECTION 4. Amends Section 108.013, Health and Safety Code, by amending Subsections (a), (b), (c), (d), (g), (i), and (j) and by adding Subsections (k), (l), (m), and (n), as follows:

(a) Requires that the data received by DSHS, rather than the council, under this chapter be used by DSHS for the benefit of the public. Requires DSHS, subject to specific information limitations established by this chapter and executive commissioner rule, to make determinations on requests for information in favor of access. Makes conforming changes.

(b) Requires the executive commissioner, rather than the council, by rule to designate the characters to be used as uniform patient identifiers. Provides that the basis for assignment of the characters and the manner in which the characters are assigned is confidential.

(c) Prohibits DSHS, rather than the council, unless otherwise authorized by this chapter, from releasing and a person or entity from gaining access to any data obtain under this chapter:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to DSHS, rather than the council, in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) Provides that all data collected and used by DSHS, rather than the council under this chapter, except as provided by this section, is subject to the confidentiality provisions and criminal penalties of:

(1) Section 311.037 (Confidential Data; Criminal Penalty), Health and Safety Code;

(2) Section 81.103 (Confidentiality; Criminal Penalty), Health and Safety Code; and

(3) Section 159.002 (Confidential Communications), Occupations Code.

(g) Prohibits DSHS, rather than the council, unless specifically authorized by this chapter, from releasing data elements in a manner that will reveal the identity of a patient. Prohibits DSHS, rather than the council, from releasing data elements in a manner that would reveal the identity of a physician.

(i) Prohibits DSHS, rather than the council and DSHS, notwithstanding any other law, from providing information made confidential by this section to any other agency of this state.

(j) Requires the executive commissioner, rather than the council with the assistance of the advisory committee under Section 108.003(g)(5) (relating to a technical advisory committee composed of providers, consumers, and individual who have expertise in hospital information systems, health information management, quality management, and security of confidential data), Health and Safety Code, by rule to develop and implement a mechanism to comply with Subsections (c)(1) and (2).

(k) Authorizes DSHS to disclose data collected under this chapter that is not included in public use data to any program within DSHS if the disclosure is reviewed and approved by the institutional review board under Section 108.0135.

(l) Provides that confidential data collected under this chapter that is disclosed to a program within DSHS remains subject to the confidentiality provisions of this chapter and other applicable law. Requires DSHS to identify the confidential data that is disclosed to a program under Subsection (k). Requires that the program maintain the confidentiality of the disclosed confidential data.

(m) Provides that the following provisions do not apply to the disclosure of data to a DSHS program:

(1) Section 81.103, Health and Safety Code;

(2) Sections 108.010(g) (relating to any release of provider quality data) and (h) (relating to identifying an individual physician in a quality data report not by name but by uniform physician identifier), Health and Safety Code;

(3) Sections 108.011(e) (relating to the notification requirement when public use data is requested from the council) and (f) (relating to a report issued by the council including a reasonable review and comment period for the affected providers before public release of the report), Health and Safety Code;

(4) Section 311.037, Health and Safety Code; and

(5) Section 159.002, Occupations Code.

(n) Provides that nothing in this section authorizes the disclosure of physician identifying data.

SECTION 5. Amends Section 108.0135, Health and Safety Code, as follows:

Sec. 108.0135. New heading: INSTITUTIONAL REVIEW BOARD. (a) Requires DSHS to establish an institutional review board, rather than a scientific review panel, to review and approve request for access to data not contained in, rather than information other than, public use data. Requires the members of the institutional review board to have experience and expertise in ethics, patient confidentiality, and health care data. Makes conforming changes.

(b) Requires the executive commissioner, to assist the institutional review board in determining whether to approve a request for information, to adopt rules similar to the federal Centers for Medicare and Medicaid Services', rather than Health Care Financing Administration's, guidelines on releasing data. Makes conforming changes.

(c) Requires that a request for information other than public use data be made on the form prescribed by DSHS, rather than created by the council.

(d) Requires that any approval to release information under this section require that the confidentiality provisions of this chapter be maintained and that any subsequent use of the information conform to the confidentiality provisions of this chapter.

SECTION 6. Repealer: Section 108.002(5) (relating to the definition of council), Health and Safety Code.

SECTION 7. Effective date: upon passage or September 1, 2011.