



Texas Department of Health

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December 17, 2002

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The Honorable Gregg Abbott
Attorney General
209 West 14th Street
Austin, Texas 78701

Dear General Abbott:

This is a request for an opinion regarding the use and disclosure of information between the Texas Department of Health (TDH) and the Texas Health Care Information Council (the Council), under TEX. HEALTH & SAFETY CODE §§108.001, et seq. (Vernon 2001 & Supp. 2003).

The Council collects detailed health care data from health care providers under its authority to "develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost effective, good quality health care." TEX. HEALTH & SAFETY CODE §108.006(a) (Vernon 2001). Providers are required to submit the data to the Council under rules adopted by the Council in 25 TEX. ADMIN. CODE §§1301.11, et seq. These rules require the submission of very detailed, individually identifiable health information.

The Council is required to establish TDH as the single collection point for receipt of data from providers. TDH may transfer data collected under other laws to the statewide health care data collection system. TEX. HEALTH & SAFETY CODE §§108.009 (a) and (e) (Vernon 2001). TDH is required to coordinate with the Council to avoid the unnecessary duplication of the collection of data and other duties. TEX. HEALTH & SAFETY CODE §108.008 (Vernon 2001). Additionally, under TEX. HEALTH & SAFETY CODE §108.006(a)(14) (Vernon 2001) the Council is required to develop and implement a health care information plan to be used by TDH to:

- (A) support public health and preventive health initiatives;
- (B) assist in the delivery of primary and preventative health care services;
- (C) facilitate the establishment of appropriate benchmark data to measure performance improvements;
- (D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and
- (E) develop and use the system-based protocols to identify individuals and populations at risk.

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OPINION COMMITTEE

FILE # ML-42943-03

I.D. # 042943

RQ-0010-GA

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OPEN RECORDS DIVISION

This plan has not yet been developed and implemented by the Council. At the present time TDH receives only publicly available health care information from the Council, which does not provide sufficient information for the TDH to accomplish the above purposes.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. No. 104-191, 110 Stat. 1936, codified at 42 U.S.C §§1320d, et seq. (1996), required the adoption of privacy standards by the Congress or by the federal Department of Health & Human Services, if Congress failed to act. These privacy standards are found at 45 C.F.R., Parts 160 and 164. The implementation date for the privacy standards is April 14, 2003. The federal privacy standards allow a HIPAA covered entity to use and disclose protected health information (PHI) without consent or authorization of the individual in certain situations. These situations are listed in 45 C.F.R. §164.512. The situations relevant to this request are the use and disclosure of PHI that is authorized or required by law (45 C.F.R. §164.512(a)) or the use and disclosure of PHI for public health activities (45 C.F.R. §164.512(b)). Although the public health functions of TDH and the Council are not covered entities as that term is defined in 45 C.F.R. §160.103, TEX. HEALTH & SAFETY CODE Ch. 181 (Vernon Supp. 2003) will apply these standards to "any person who...comes into possession of protected health information." TEX. HEALTH & SAFETY CODE §181.001(b)(1)(B) (Vernon Supp. 2003). The implementation date for TEX. HEALTH & SAFETY CODE Ch. 181 (Vernon Supp. 2003) is September 1, 2003.

The Confidentiality and General Access to Data provision in TEX. HEALTH & SAFETY CODE §108.013 (Vernon Supp. 2003) provides that unless specifically authorized by this chapter, the council may not release and a person or entity may not gain access to certain identifiable data collected by the Council. TDH believes that TEX. HEALTH & SAFETY CODE §§ 108.006, 108.008, and 108.009 (Vernon 2001) provide the specific authority required by TEX. HEALTH & SAFETY CODE §108.013 (Vernon Supp. 2003) and 45 C. F. R. §§164.512(a) and (b) (as applied to TDH and the Council by TEX. HEALTH & SAFETY CODE Ch. 181 (Vernon Supp. 2003)).

TDH requests your opinion regarding whether the specific provisions of TEX. HEALTH & SAFETY CODE Ch. 108 (Vernon 2001 & Supp. 2003) authorize and/or require the Council to provide the complete individually identifiable data sets collected and received by the Council to TDH to accomplish the purposes of the chapter, including the public health responsibilities of TDH, and to avoid the unnecessary duplication of the collection of data and other duties. If you have any questions, please contact Joan Bates at (512) 458-7236.

Sincerely,



Eduardo J. Sanchez, M.D., M.P.H.
Commissioner of Health