AN ACT

relating to information submitted to and maintained in the
immunization registry after an individual becomes an adult.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 161.0001, Health and Safety Code, is
amended by adding Subdivisions (1-c) and (3) and amending
Subdivision (2) to read as follows:

(1-c) "Individual's legally authorized
representative" means:

(A) a parent, managing conservator, or guardian
of an individual, if the individual is a minor;

(B) a guardian of the individual, if the
individual has been adjudicated incompetent to manage the
individual's personal affairs; or

(C) an agent of the individual authorized under a
durable power of attorney for health care.

(2) "Payor" means an insurance company, a health
maintenance organization, or another organization that pays a
health care provider to provide health care benefits, including
providing immunizations [to a person younger than 18 years of age].

(3) "Electronically," as related to a communication
authorized under this chapter, means by e-mail, text message,
online communication, or another electronic method of
communication approved by the department.
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SECTION 2. Section 161.007, Health and Safety Code, is amended by amending Subsections (a), (a-1), (b), (b-1), (c), (d), (e), (f), (j), and (k) and adding Subsections (a-2) and (a-3) to read as follows:

(a) The department, for the primary purpose of establishing and maintaining a single repository of accurate, complete, and current immunization records to be used in aiding, coordinating, and promoting efficient and cost-effective childhood communicable disease prevention and control efforts, shall establish and maintain an immunization registry. The executive commissioner of the Health and Human Services Commission [department] by rule shall develop guidelines to:

(1) protect the confidentiality of patients in accordance with Section 159.002, Occupations Code;

(2) inform the individual or the individual's legally authorized representative [a parent, managing conservator, or guardian of each patient younger than 18 years of age] about the registry;

(3) require the written or electronic consent of the individual or the individual's legally authorized representative [a parent, managing conservator, or guardian of a patient younger than 18 years of age] before any information relating to the individual [patient] is included in the registry;

(4) permit the individual or the individual's legally authorized representative [a parent, managing conservator, or guardian of a patient younger than 18 years of age] to withdraw consent for the individual [patient] to be included in the
registry; and

(5) determine the process by which consent is verified, including affirmation by a health care provider, birth registrar, regional health information exchange, or local immunization registry that consent has been obtained.

(a-1) The written or electronic consent required by Subsection (a)(3) for an individual younger than 18 years of age is required to be obtained only one time. The written consent is valid until the individual [child] becomes 18 years of age unless the consent is withdrawn in writing or electronically. A parent, managing conservator, or guardian of a minor [child] may provide the [written] consent by using an electronic signature on the minor's [child's] birth certificate.

(a-2) An individual's legally authorized representative or the individual, after the individual has attained 18 years of age, may consent in writing or electronically for the individual's information to remain in the registry after the individual's 18th birthday and for the individual's subsequent immunizations to be included in the registry. The written or electronic consent of the minor's legally authorized representative as described by Section 161.0001(1-c)(A) must be submitted to the department before the individual's 18th birthday. The written or electronic consent of the individual or the individual's legally authorized representative as described by Section 161.0001(1-c)(B) or (C) must be submitted to the department not later than the individual's 19th birthday. The consent of the representative or individual is valid until the individual or the individual's legally authorized
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representative withdraws consent in writing or electronically. The
department may not include in the registry the immunization
information of an individual who is 18 years of age or older until
written or electronic consent has been obtained as provided by this
subsection. The department shall coordinate with the Texas
Education Agency to distribute materials described in Section
161.0095(a)(2) to students and parents through local school
districts.

(a-3) The executive commissioner of the Health and Human
Services Commission by rule shall develop guidelines and procedures
for obtaining consent from an individual after the individual's
18th birthday, including procedures for retaining immunization
information in a separate database that is inaccessible by any
person other than the department during the one-year period during
which an 18-year-old may consent to inclusion in the registry under
Subsection (a-2).

(b) Except as provided by Section 161.0071, the [The]
immunization registry must contain information on the immunization
history that is obtained by the department under:

(1) this section of each individual [person who is
younger than 18 years of age and] for whom consent has been obtained
in accordance with guidelines adopted under Subsection (a) or
(a-3), as applicable;

(2) Section 161.00705 of persons immunized to prepare
for or in response to a declared disaster, public health emergency,
terrorist attack, hostile military or paramilitary action, or
extraordinary law enforcement emergency; and
(3) Section 161.00706 of first responders or their immediate family members.

(b-1) The department shall remove from the registry information for any individual [person] for whom consent has been withdrawn. The department may not retain individually identifiable information about any individual [person]:

(1) for whom consent has been withdrawn;

(2) for whom a consent for continued inclusion in the registry following the end of the declared disaster, public health emergency, terrorist attack, hostile military or paramilitary action, or extraordinary law enforcement emergency has not been received under Section 161.00705(f); or

(3) for whom a request to be removed from the registry has been received under Section 161.00706(e).

(c) A payor that receives data elements from a health care provider who administers an immunization to an individual [a person] younger than 18 years of age shall provide the data elements to the department. A payor is required to provide the department with only the data elements the payor receives from a health care provider. A payor that receives data elements from a health care provider who administers an immunization to an individual 18 years of age or older may provide the data elements to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual [a person] for whom consent cannot be verified.
(d) A health care provider who administers an immunization to an individual [a person] younger than 18 years of age shall provide data elements regarding an immunization to the department. A health care provider who administers an immunization to an individual 18 years of age or older may submit data elements regarding an immunization to the department. The data elements shall be submitted in a format prescribed by the department. The department shall verify consent before including the information in the immunization registry. The department may not retain individually identifiable information about an individual [a person] for whom consent cannot be verified.

(e) The department shall provide notice to a health care provider that submits an immunization history for an individual [a person] for whom consent cannot be verified. The notice shall contain instructions for obtaining consent in accordance with guidelines adopted under Subsections [Subsection] (a) and (a-3) and resubmitting the immunization history to the department.

(f) The department and health care providers may use the registry to provide notices by mail, telephone, personal contact, or other means to an individual or the individual's legally authorized representative [a parent, managing conservator, or guardian] regarding an individual [his or her child or ward] who is due or overdue for a particular type of immunization according to the department's immunization schedule for children or another analogous schedule recognized by the department for individuals 18 years of age or older. The department shall consult with health care providers to determine the most efficient and cost-effective
manner of using the registry to provide those notices.
(j) Except as provided by Sections 161.00705, 161.00706, and 161.008, information obtained by the department for the immunization registry is confidential and may be disclosed only with the written or electronic consent of the individual or the individual's legally authorized representative [if a child, the child's parent, managing conservator, or guardian].
(k) The executive commissioner of the Health and Human Services Commission [board] shall adopt rules to implement this section.

SECTION 3. Subsection (f), Section 161.00705, Health and Safety Code, is amended to read as follows:
(f) Unless an individual or the individual's legally authorized representative [if a child, the child's parent, managing conservator, or guardian] consents in writing or electronically to continued inclusion of the [child's or other] individual's information in the registry, the department shall remove the immunization records collected under this section from the registry on expiration of the period prescribed under Subsection (e).

SECTION 4. Subsection (e), Section 161.00706, Health and Safety Code, is amended to read as follows:
(e) A person whose immunization records are included in the immunization registry as authorized by this section may request in writing or electronically that the department remove that information from the registry. Not later than the 10th day after receiving a request under this subsection, the department shall
remove the person's immunization records from the registry.

SECTION 5. Section 161.0071, Health and Safety Code, is amended to read as follows:

Sec. 161.0071. NOTICE OF RECEIPT OF REGISTRY DATA; EXCLUSION FROM REGISTRY. (a) The first time the department receives registry data for an individual [a child] for whom the department has received consent to be included in the registry, [from a person other than the child's parent, managing conservator, or guardian,] the department shall send [a written] notice to the individual or the individual's legally authorized representative [child's parent, managing conservator, or guardian] disclosing:

1. that providers and payors may be sending the individual's [child's] immunization information to the department;
2. the information that is included in the registry;
3. the persons to whom the information may be released under Section 161.008(d);
4. the purpose and use of the registry;
5. the procedure to exclude an individual [a child] from the registry; and
6. the procedure to report a violation if an individual's information [a parent, managing conservator, or guardian discovers a child] is included in the registry after exclusion has been requested or consent has been withdrawn.

(b) On discovering that consent to be included in the registry has not been granted or has been withdrawn, the department shall exclude the individual's [child's] immunization records from the registry and any other registry-related department record that
individually identifies the individual [child].

(c) On receipt of a written or electronic request to exclude an individual's [a child's] immunization records from the registry, the department shall send to the individual or the individual's legally authorized representative [a parent, managing conservator, or guardian] who makes the request a written confirmation of receipt of the request for exclusion and shall exclude the individual's [child's] records from the registry.

(d) The department commits a violation if the department fails to exclude an individual's [a child's] immunization information from the registry as required by Subsection (b) or (c).

(e) The department shall accept a written or electronic statement from an individual or the individual's legally authorized representative [a parent, managing conservator, or guardian] communicating to the department that an individual's information [a child] should be excluded from the registry, including a statement on a minor's [the child's] birth certificate, as a request for exclusion under Subsection (c). [The written statement may include the electronic signature on the child's birth certificate.]

SECTION 6. Section 161.0072, Health and Safety Code, is amended to read as follows:

Sec. 161.0072. PROVIDING IMMUNIZATION INFORMATION TO DEPARTMENT. (a) If the individual or the individual's legally authorized representative [parent, managing conservator, or guardian of a child] has reasonable concern that the individual's [child's] health care provider is not submitting the immunization history to the department [and the parent, managing conservator, or
guardian wants the child included in the registry], the individual
or the individual's legally authorized representative [parent,
managing conservator, or guardian] may provide the individual's
[child's] immunization history directly to the department to be
included in the immunization registry.
(b) The individual or the individual's legally authorized
representative [parent, managing conservator, or guardian of a
child] may send evidence of the individual's [child's] immunization
history to the department electronically, by facsimile
transmission or by mail. The evidence may include a copy of:
(1) the individual's [child's] medical record
indicating the immunization history;
(2) an invoice from a health care provider for the
immunization; or
(3) documentation showing that a claim for the
immunization was paid by a payer.
(c) The board shall develop rules to ensure that the
immunization history submitted by an individual or the individual's
legally authorized representative [parent, managing conservator,
or guardian] is medically verified immunization information.

SECTION 7. Subsections (a), (b), and (c), Section 161.0073,
Health and Safety Code, are amended to read as follows:
(a) Except as provided by Section 161.00705, information
that individually identifies an [a child or other] individual that
is received by the department for the immunization registry is
confidential and may be used by the department for registry
purposes only.
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(b) Unless specifically authorized under this subchapter, the department may not release registry information to any individual or entity without the consent of the individual or the individual's legally authorized representative [person or, if a minor, the parent, managing conservator, or guardian of the child].

c) A person required to report information to the department for registry purposes or authorized to receive information from the registry may not disclose the individually identifiable information of an [a child or other] individual to any other person without the written or electronic consent of the individual or the individual's legally authorized representative [if a child, the parent, managing conservator, or guardian of the child], except as provided by Chapter 159, Occupations Code, or Section 602.053, Insurance Code.

SECTION 8. Subsections (c), (d), (e), (g), and (h), Section 161.008, Health and Safety Code, are amended to read as follows:

c) The department may obtain the data constituting an immunization record for an individual [a child] from a public health district, a local health department, the individual or the individual's legally authorized representative [child's parent, managing conservator, or guardian], a physician to the individual [child], a payor, or any health care provider licensed or otherwise authorized to administer vaccines. The department shall verify consent before including the reported information in the immunization registry. The department may not retain individually identifiable information about an individual [a person] for whom consent cannot be verified.
(d) The department may release the data constituting an immunization record for the individual [child] to:

(1) any entity that is described by Subsection (c);

(2) [to] a school or child care facility in which the individual [child] is enrolled; or

(3) [or to] a state agency having legal custody of the individual [child].

(e) An individual or the individual's legally authorized representative [parent, managing conservator, or legal guardian] may obtain and on request to the department shall be provided with all individually identifiable immunization registry information concerning the individual [his or her child or ward].

(g) The department may release nonidentifying summary statistics related to the registry that do not individually identify an individual [a child].

(h) The executive commissioner of the Health and Human Services Commission [board] shall adopt rules to implement this section.

SECTION 9. Subsection (a), Section 161.009, Health and Safety Code, is amended to read as follows:

(a) A person commits an offense if the person:

(1) negligently releases or discloses immunization registry information in violation of Section 161.007, 161.0071, 161.0073, or 161.008;

(2) fails to exclude an individual's [a child's] immunization information in violation of Section 161.0071;

(3) fails to remove a person's immunization
information in violation of Section 161.00705 or 161.00706; or

(4) negligently uses information in the immunization
registry to solicit new patients or clients or for other purposes
that are not associated with immunization or quality-of-care
purposes, unless authorized under this section.

SECTION 10. Section 161.0095, Health and Safety Code, is
amended to read as follows:

Sec. 161.0095. [PROVIDER] EDUCATION PROGRAMS AND
INFORMATION. (a) The department shall develop:

(1) continuing education programs for health care
providers relating to immunizations and the vaccines for children
program operated by the department under authority of 42 U.S.C.
Section 1396s; and

(2) educational information, for health care
providers, health care clinics, hospitals, and any other health
care facility that provides health care to children 14 to 18 years
of age, relating to the immunization registry and the option for an
individual who is 18 years of age or older to consent to submission
and retention of the individual's information in the immunization
registry, as amended).

(b) The department shall establish a work group to assist
the department in developing the continuing education programs and
educational information [materials]. The work group shall include
physicians, nurses, department representatives, representatives of
managed care organizations that provide health care services under
Chapter 533, Government Code, representatives of health plan
providers that provide health care services under Chapter 62, and
SECTION 11. This Act takes effect September 1, 2009.

[Signatures]

President of the Senate
Speaker of the House

I hereby certify that S.B. No. 346 passed the Senate on April 2, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 346 passed the House on April 24, 2009, by the following vote: Yeas 134, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

5 MAY '09

Date

Rick Perry
Governor