



Physicians Caring for Texans

**Senate Committee on Business and Commerce  
House Bill 3746 by Rep. Giovanni Capriglione  
Texas Medical Association  
May 18, 2021**

Dear Chairman Hancock and committee members:

The Texas Medical Association (TMA) appreciates the opportunity to submit this testimony ON House Bill 3746. As a nonprofit organization with more than 55,000 physician and medical student members, we have great interest in this legislation and its impact on Texas physicians.

HB 3746 amends current Texas law to, among other things, require the attorney general to post a listing of certain breach notifications on the Office of the Attorney General website. As noted in our testimony on the filed version of the bill, we have concerns that this language is duplicative and may be overly punitive as applied to physicians and other “covered entities” under HIPAA, who are already subject to large breach postings on the U.S. secretary of health and human services’ website under the HITECH ACT. *See* Section 13402(e)(4) of the HITECH Act. In order to inform the public of a breach, notices are not necessary on two separate websites for HIPAA-covered entities (which are also already subject to notification requirements to individuals, the media, and the secretary of the U.S. Department of Health and Human Services for larger breaches).

With this overarching concern being stated, we also appreciate the amendments made to the filed version of the bill that (1) provide for maintenance of only the most recently updated listing on the website, and (2) expressly exclude any information that may compromise a data system’s security from the listing. These amendments are directed at making the website postings more up to date and reduce the risk of sensitive data being posted on the website (consistent with the underlying goal of the bill).

Additionally, we strongly support the amendment made to the filed version of the bill that requires removal of a notification from the listing not later than the first anniversary of the date the attorney general added the notification to the listing if the person who provided the notification has not notified the attorney general of any additional breaches under Subsection (i) during that period. This is an important provision to avoid the overly punitive application of the law to persons who have taken good faith, corrective actions to improve the security of their systems and have had no further breaches in that time frame. **We stress the importance of this language being retained.**

However, since breaches may sometimes occur despite best efforts to prevent them from occurring (as cyberhackers become more sophisticated each day), we would like to see notifications that do not fall into (j)(2)'s criteria removed from the website listing not later than the third anniversary of the date the attorney general added the notification to the listing. There should not be a need to retain the information on the attorney general's website listing for longer than this period because the individuals affected by the breach will have been notified long before its removal.

We look forward to continuing to work with you on HB 3746 to address our concerns, and we thank you for your time and consideration. If you have any questions, please do not hesitate to contact Troy Alexander, director of public affairs, TMA, by email at [troy.alexander@texmed.org](mailto:troy.alexander@texmed.org) or by phone at (512) 370-1360.