



Physicians Caring for Texans

House Committee on Public Health
House Bill 3468 by Rep. Giovanni Capriglione
Written Testimony from Texas Medical Association
April 17, 2023

Chair Klick, Vice Chair Campos, and committee members, on behalf of the Texas Medical Association (TMA) and its more than 57,000 members, *we respectfully oppose* House Bill 3468, which adds state penalties related to federal regulations, changes the ownership of patient records, reduces fees for medical record copies, and restricts contracts related to accessing patient records.

TMA believes patients should have the right to access their medical records in a timely manner as allowed by current law. We understand Representative Capriglione’s desire to ensure there is no unnecessary delay in a patient obtaining copies of the medical records he or she needs.

We also are very appreciative of his office meeting with us and expressing a willingness to work with us. However, we have concerns with the filed version of the bill.

First, Sections 1 and 3 amend Section 15.05 of the Business & Commerce Code and Section 181.102 of the Health and Safety Code, respectively, by adding language to both sections making it illegal under state law to violate federal laws related to information blocking. Since April 2021, federal information-blocking laws generally require physicians and other providers, such as hospitals, to promptly – and, in some cases, immediately – fulfill patients’ requests to access their electronic health information. The related federal regulations are complex, however, and create significant uncertainty for physicians and providers, as there is no specific response time period that ensures compliance with the laws (for example, within 15 business days). Even people acting in good faith may learn their actions constitute information blocking. Additionally, due to this vagueness, the Texas attorney general may interpret and apply information blocking laws differently than the federal Office of Inspector General would in a similar situation. For these reasons, TMA feels federal enforcement, with its own pending disincentives, is a sufficient and more appropriate deterrent against information blocking than new state laws.

Section 4 amends Chapter 181 of the Health and Safety Code by adding language related to a patient’s ownership of his or her health records. TMA agrees patients should have access to their medical records but disagrees that the patient “owns” the medical record. The physical record, whether paper or electronic, is purchased by the physician or other covered entity, and the contents within are created using the physician’s intellectual property. The patient should have access to copies of his or her health records as permitted by law but is not the owner of the medical record.

Section 4 goes on to add another provision to Chapter 181 of the Health and Safety Code that reduces the amount a covered entity can charge for physical copies of a patient’s record and prohibits fees for

electronic copies when the health record is maintained in an electronic format. The Texas Medical Board has adopted rules, which can be found in Chapter 165, Title 22, of the Texas Administrative Code, that establish reasonable charges for providing the requested records to a patient. As reflected in these rules, a fixed fee cap is not appropriate for copies provided in paper format, and there still can be costs associated with providing the information to the patient in an electronic format (for example, a patient requests records in a specific electronic format). TMA opposes a reduction to the already reasonable fees for copies of medical records set forth under current law and regulations.

Additionally, Section 4 has a provision that prohibits covered entities from entering into a contract with a person that includes terms restricting a patient or patient's representative from accessing the patient's health records. This prohibition does not take into account situations in which a physician may legally refuse to provide a patient access to her or his health record, such as when it is necessary to prevent harm to the patient or another individual. TMA seeks to add language to allow any restrictions permitted by state or federal law.

Section 5 authorizes separate injunctive relief and civil penalties for violators of the new Chapter 181 provisions. In accordance with TMA's opposition to these new provisions, TMA opposes adding this related enforcement authority since Chapter 181 already has attorney general enforcement, monetary damages, and disciplinary action by the appropriate licensing board.

Thank you for the opportunity to provide comments expressing our serious concerns with the bill as filed. We are happy to discuss further, or answer questions committee members may have. Please contact Matt Dowling, TMA director of Public Affairs, at matt.dowling@texmed.org. Again, we are thankful to Representative Capriglione's office for expressing a willingness to work with us on this legislation. We urge you to not vote this bill out of committee unless these concerns are addressed.