



TEXAS HOSPITAL ASSOCIATION

Testimony to the  
House Committee on Public Health  
House Bill 300

Presented by

Carolynn Renee Jones, J.D., CHC

Program Manager - Compliance Analysis

Harris County Hospital District – Corporate Compliance

March 16, 2011

Madame Chair and members of the committee, thank you for allowing me to testify on behalf of the Texas Hospital Association. I am Carolynn Jones, J.D., CHC, program manager for Compliance Analysis at the Harris County Hospital District, and I am here to provide comments on House Bill 300. At the Harris County Hospital District, I report directly to the Senior Vice President of Corporate Compliance, who also serves as the organization's Privacy Officer. The Harris County Hospital District is located in Houston and is comprised of three hospitals, 14 community health centers, nine school-based clinics, a dialysis center, and a homeless program. We currently have approximately 300,000 unduplicated patients in our system. We implemented and are currently using an electronic medical record and along with THA, are extremely supportive of standards that allow the appropriate exchange of electronic medical records to facilitate patient care and other activities.

The State of Texas is taking focused actions to create an infrastructure for the exchange of electronic medical records. The goals are to improve health outcomes and reduce costs by facilitating the adoption of technology by health care professionals and hospitals without compromising the privacy of patient information. The transition from ink and paper to the digital world must take place with careful consideration and sensitivities to avoid possible unintended consequences.

Hospitals recognize that achieving this transition requires significant financial resources and a change in the way care is rendered. This year is when the incentive programs and project really take off. Billions of dollars have been set aside for payments to health care professionals and hospitals to support the widespread use of electronic records. Texas will begin distributing some of these funds in the coming months. But even though payments are ready to be dispensed, many challenges remain, and House Bill 300 seeks to address some of these challenges. I would like to take the opportunity to comment on several of the provisions in this bill that significantly impact the exchange of health information in Texas.

#### Authorization for Disclosure of Protected Health Information

As the health care industry adapts to a digital environment, THA recognizes the need for public awareness about how health information is going to be exchanged and shared with other entities. Without confidence that their information will be viewed appropriately and with their authorization, patients may be reluctant to provide relevant medical information. The notice and authorization language in House Bill 300 guarantees that patients have an opportunity to determine how, and under what circumstances, their health information is shared throughout the state. We are pleased that the bill's language is consistent with adequate federal laws so as not to create confusion among hospitals and their staff. At the Harris County Hospital District, as well as other hospitals, the ability to exchange a patient's information to facilitate their care, payment for their care, or carry out other health care operations such as conducting quality assessments is critically important to the efficient delivery of medical services and should not be unnecessarily hindered. While obtaining authorization for disclosure is appropriate in some circumstances, it should not become overly time-consuming and redundant. As adoption of health technology continues to be encouraged, we caution the committee against passing state laws that are overly burdensome and dissuade provider's use of electronic health systems. THA is encouraged by the approach taken in House Bill 300 on patient notice and authorizations.

### Prohibited Sale of Protected Health Information

Hospitals support measures to ensure privacy so Texans can trust that their health information is protected and secure. Today, hospitals function under prescriptive federal laws such as the Health Insurance Portability and Accountability Act (HIPAA) to accomplish this goal. Section 181.153 in House Bill 300 reinforces federal laws prohibiting the sale of protected health information. THA believes the bill language carefully weighs and balances these prohibitions and a hospital's need to provide appropriate medical care.

### Enforcement and Civil Penalties

House Bill 300 provides several avenues for enforcement of the newly proposed language including enhanced civil penalties, auditing and reporting. Numerous methods currently exist in federal and state laws that stress the serious nature of a privacy violation. Our members take precautions daily to make certain the safekeeping of a patient's health information. For example, the Harris County Hospital District, as well as many other hospitals, conduct frequent audits to detect potential inappropriate access into the electronic medical record, conduct site audits and investigate allegations of wrongdoing with regard to patient privacy. It is in the hospital's best interest to take every precaution necessary to ensure the security of protected health information. We request that the bill language allowing the commission to require a covered entity to self-audit be limited to circumstances in which there is evidence of violations under the bill which constitute a pattern or practice over a 12-month period. In the event violations are confirmed, we caution the author against onerous penalties that ultimately could threaten the financial stability of a hospital and jeopardize access to care. For this reason, THA supports the inclusion of mitigating factors against which a civil penalty must be evaluated. We also support the inclusion of language allowing for judicial review of penalties imposed and request this right be afforded to all covered entities.

I hope we can agree that an overzealous push toward health information technology can lead to inadvertent consequences, which is why it is appropriate for the state to establish parameters for the safe exchange of health information. But in creating these parameters, the state must be careful not to impose unnecessary burdens that could hinder our progress and jeopardize the delivery of higher quality and more cost efficient care. For many hospitals, investing in an electronic medical record system is secondary, at best, to remaining financially viable in the face of massive cuts to state Medicaid reimbursement. THA cautions members of the Legislature to refrain from passing arduous provisions that could further dissuade the adoption of advanced technologies.

Thank you, Madame Chair, for your continued leadership on this issue and your careful consideration of our input during the drafting of this bill. Texas hospitals also applaud the committee for recognizing the importance of this topic to the citizens of this state and the care they receive. Hospitals look forward to an ongoing dialogue about this legislation and the challenges that may arise in the future.