



September 2013

2013 Texas Legislative Update

The 83rd Texas Legislature that convened in 2013 went through three special sessions and passed over 1,400 bills. A large number of these bills are health-related and deal with Medicaid funding. Even though Texas has declined to participate in Medicaid expansion under the Affordable Care Act, the state is still working on its Section 1115 Medicaid waiver, disproportionate share funding and expansion of medical residency programs.

Of special note are a couple of bills that will impact healthcare providers in Texas:

- **SB 8** requires a data analysis unit within the Texas Health and Human Services Commission (HHSC) Office of the Inspector General (OIG) to review Medicaid claims. Separately, the Texas HHSC OIG has already licensed data analytics software program from HHS OIG, and his office has started several investigations based upon these results. Stick stated that Texas Medicaid providers can expect to see many more investigations as a result of the data analytics program.
- **SB 406** amends Texas Occ. Code Chapter 157, Subchapter B concerning delegation to advanced practice registered nurses (NPs) and physician assistants (PAs). It increases the number of prescriptive authority agreements to 7 that a physician can have with NPs and PAs (presently, physicians can only have 4 of these arrangements in place). SB 406 also places restrictions on the delegation of prescription writing for Schedule II drugs. SB 406 is effective Nov. 1, 2013. Proposed rules have been drafted by the Texas Medical Board, and a summary of the changes is attached. Current standing delegation orders should probably be reviewed to ensure compliance with the new statute and rules.
- **SB 1609** amends Texas Health & Safety Code Section 181, which regulates medical records privacy, and is more stringent than HIPAA. Pursuant to the former Section 181.101, all employees of a “covered entity” (as that term is defined pursuant to Texas Health & Safety Code Section 181.001, anyone who assembles, collects, analyzes, uses, evaluates, stores or transmits PHI for commercial, financial, professional gain is a “covered entity.”) had to receive privacy training within 60 days of employment and every two years thereafter. Also, the covered entity had to maintain records documenting the training. Under the new law (effective June 2013), new employees have 90 days to complete the training, and the training must only be given again when there is a “material change in state or federal law concerning [PHI].” In such a case, the employee must receive training within one year of the date the material change takes effect.

- Additionally, the new law requires that covered entities maintain records of employee training for six years after the training was provided. In lieu of having to determine when there is a “material change” to state or federal law, many health care entities are simply requiring all employees to receive annual HIPAA training.
- **SB 1610** amends Texas Business & Commerce Code Section 521 to specify how notice is to be provided to individuals in the event of a breach of “sensitive personal information” (which would include PHI). If there were a data breach in Texas, in addition to following HIPAA, counsel would also have to consult with this authority.

Although it did not pass, another Senate Bill (**SB 20**), to amend Texas Health & Safety Code Section 241, was introduced by Senator Jane Nelson (Chair of the Senate Health & Human Services Committee) in the third special session of the legislature. SB 20 was an attempt to increase the investigatory power of the Texas HHSC OIG and allow information sharing between agencies, as well as outlining a process of how a hospital can be placed into receivership under certain conditions, and increasing the amount of administrative penalties assessed against hospitals. The bill was prompted by a series of newspaper articles that examined how a chain of hospitals in Texas escaped the notice of state regulators despite numerous whistleblowers contacting state agencies regarding quality of care and billing issues. SB 20 did not pass because the third session of the legislature dealt only with the passage of a transportation bill. However, we can expect to see this bill re-filed in the next regular session of the Texas legislature in 2015.