

HEALTH & SAFETY CODE

CHAPTER 108. TEXAS HEALTH CARE INFORMATION COUNCIL

Sec. 108.001. CREATION OF COUNCIL. The Texas Health Care Information Council shall administer this chapter and report to the governor, the legislature, and the public.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.002. DEFINITIONS. In this chapter:

(1) "Accurate and consistent data" means data that has been edited by the council and subject to provider validation and certification.

(2) "Board" means the Texas Board of Health.

(3) "Certification" means the process by which a provider confirms the accuracy and completeness of the data set required to produce the public use data file in accordance with council rule.

(4) "Charge" or "rate" means the amount billed by a provider for specific procedures or services provided to a patient before any adjustment for contractual allowances. The term does not include copayment charges to enrollees in health benefit plans charged by providers paid by capitation or salary.

(5) "Council" means the Texas Health Care Information Council.

(6) "Data" means information collected under Section 108.0065 or 108.009 in the form initially received.

(7) "Department" means the Texas Department of Health.

(8) "Edit" means to use an electronic standardized process developed and implemented by council rule to identify potential errors and mistakes in data elements by reviewing data fields for the presence or absence of data and the accuracy and appropriateness of data.

(9) "Health benefit plan" means a plan provided by:

(A) a health maintenance organization; or

(B) an approved nonprofit health corporation that is certified under Section 162.001, Occupations Code, and that holds a certificate of authority issued by the commissioner of insurance under Chapter 844, Insurance Code.

(10) "Health care facility" means:

(A) a hospital;

(B) an ambulatory surgical center licensed under Chapter 243;

(C) a chemical dependency treatment facility licensed under Chapter 464;

(D) a renal dialysis facility;

(E) a birthing center;

(F) a rural health clinic; or

(G) a federally qualified health center as defined by 42 U.S.C. Section 1396d(1)(2)(B).

(11) "Health maintenance organization" means an organization as defined in Section 843.002, Insurance Code.

(12) "Hospital" means a public, for-profit, or nonprofit institution licensed or owned by this state that is a general or special hospital, private mental hospital, chronic disease hospital, or other type of hospital.

(13) "Outcome data" means measures related to the provision of care, including:

(A) patient demographic information;

(B) patient length of stay;

(C) mortality;

(D) co-morbidity;

(E) complications; and

(F) charges.

(14) "Physician" means an individual licensed under the laws of this state to practice medicine under Subtitle B, Title 3, Occupations Code.

(15) "Provider" means a physician or health care facility.

(16) "Provider quality" means the extent to which a provider renders care that, within the capabilities of modern medicine, obtains for patients medically acceptable health outcomes and prognoses, after severity adjustment.

(17) "Public use data" means patient level data relating to individual hospitalizations that has not been summarized or analyzed, that has had patient identifying information removed, that identifies physicians only by use of uniform physician identifiers, and that is severity and risk

adjusted, edited, and verified for accuracy and consistency. Public use data may exclude some data elements submitted to the council.

(18) "Rural provider" means a provider described by Section 108.0025.

(19) "Severity adjustment" means a method to stratify patient groups by degrees of illness and mortality.

(20) "Uniform patient identifier" means a number assigned by the council to an individual patient and composed of numeric, alpha, or alphanumeric characters.

(21) "Uniform physician identifier" means a number assigned by the council to an individual physician and composed of numeric, alpha, or alphanumeric characters.

(22) "Validation" means the process by which a provider verifies the accuracy and completeness of data and corrects any errors identified before certification in accordance with council rule.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1460, Sec. 8.02, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, Sec. 14.775, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.523, eff. Sept. 1, 2003.

Sec. 108.0025. RURAL PROVIDER. For purposes of this chapter, a provider is a rural provider if the provider:

(1) is located in a county that:

(A) has a population estimated by the United States Bureau of the Census to be not more than 35,000 as of July 1 of the most recent year for which county population estimates have been published; or

(B) has a population of more than 35,000, but that does not have more than 100 licensed hospital beds and is not located in an area that is delineated as an urbanized area by the United States Bureau of the Census; and

(2) is not a state-owned hospital or a hospital that is managed or directly or indirectly owned by an individual, association, partnership, corporation, or other legal entity that owns or manages one or more other hospitals.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 2, eff. Sept. 1, 1997.

Sec. 108.003. COUNCIL COMPOSITION; EXPENSES. (a) The council is composed of four ex officio state agency members and 15 members appointed by the governor in accordance with this section.

(b) The ex officio members of the council are:

(1) the commissioner of public health or the commissioner's designee;

(2) the commissioner of health and human services or the commissioner's designee;

(3) the commissioner of insurance or the commissioner's designee; and

(4) the public insurance counsel or the counsel's designee.

(c) The governor shall appoint the following members of the council:

(1) three representatives of the business community, with at least one representing small businesses, who are purchasers of health care but who are not involved in the provision of health care or health insurance;

(2) two representatives from labor, one of whom is not directly involved with management of health care benefits;

(3) two representatives of consumers who are not professionally involved in the purchase, provision, administration, or review of health care or health care insurance;

(4) two representatives of hospitals;

(5) one representative of health maintenance organizations;

(6) three representatives of physicians who are involved in direct patient care; and

(7) two members who are not professionally involved in the purchase, provision, administration, or utilization review of health care or health care insurance and who have expertise in:

(A) health planning;

(B) health economics;

(C) provider quality assurance;

(D) information systems; or

(E) the reimbursement of medical education and

research costs.

(d) The chairman is appointed by and serves at the pleasure of the governor. Members annually shall elect a vice chairman.

(e) A majority of voting members constitutes a quorum for the transaction of any business. An act by the majority of the voting members present at any meeting at which there is a quorum is considered to be an act of the council.

(f) The council may appoint committees and may elect any officers subordinate to those provided for in Subsection (d).

(g) The council shall appoint technical advisory committees and shall consult with the appropriate technical advisory committee with respect to a rule before the rule is finally adopted by the council. The council is not required to consult with a technical advisory committee before adopting an emergency rule in accordance with Section 2001.034, Government Code. The council shall submit an emergency rule adopted by the council to the appropriate advisory committee for review not later than the first advisory committee meeting that occurs after the rule is adopted. The council may consult with the appropriate technical advisory committee with respect to other formal action of the council. A technical advisory committee may consult with other professionals as necessary. Chapter 2110, Government Code, does not apply to an advisory committee appointed under this subsection. The technical advisory committees shall include:

(1) a technical advisory committee that includes, among other individuals, at least five practicing physicians licensed in this state to provide advice and recommendations to the council on the development and implementation of the methodology and the interpretation of a provider quality report and data under Section 108.010;

(2) a technical advisory committee composed of at least five practicing physicians licensed in this state who have been actively engaged in organized peer review at a hospital in this state to provide advice, recommendations, and peer review expertise to the council on:

(A) the use of peer review in the determination of quality inpatient care;

(B) the development and interpretation of data elements necessary to the determination of quality inpatient care; and

(C) the development and format of reports and information relating to provider quality;

(3) a technical advisory committee that includes providers and consumers to provide advice and recommendations to the council relating to education about the development and dissemination of provider reports and data;

(4) a technical advisory committee that includes representatives of consumers and each type of issuer of health benefit plans to assist the council in complying with Section 108.009(o); and

(5) a technical advisory committee composed of providers, consumers, and individuals who have expertise in hospital information systems, health information management, quality management, and security of confidential data.

(h) A member of the council may not receive compensation for service on the council. However, the member shall be reimbursed for the member's actual and necessary meals, lodging, transportation, and incidental expenses if incurred while performing council business.

(i) A member of an advisory committee appointed by the council may not receive compensation or reimbursement of any expense incurred while serving on the committee.

(j) Appointments to the council shall be made without regard to the race, color, disability, sex, religion, age, or national origin of appointees. Additionally, in making the appointments to the council, the governor shall consider geographical representation.

(k) A person may not serve as a member of the council if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the council.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 2, eff. Sept. 1, 1999.

Sec. 108.004. MEETINGS. (a) The council, council committees, and technical advisory committees are subject to the open meetings law, Chapter 551, Government Code.

(b) The council shall meet as often as necessary, but not less often than quarterly, to perform its duties under this chapter.

(c) The council shall publish a notice of its meetings in the Texas Register.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 4, eff. Sept. 1, 1997.

Sec. 108.0045. OPEN RECORDS. Subject to the restrictions of this chapter, the council is subject to the open records law, Chapter 552, Government Code.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 5, eff. Sept. 1, 1997.

Sec. 108.005. TERMS. (a) The terms of the agency members are concurrent with their terms of office. The appointed council members serve six-year staggered terms, with the terms of five members expiring September 1 of each odd-numbered year.

(b) An appointed member may not serve more than two full consecutive terms.

(c) It is a ground for removal from the council if a member of the council:

(1) does not have at the time of appointment the qualifications required by Section 108.003;

(2) does not maintain during service the qualifications required by Section 108.003;

(3) cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability; or

(4) fails to attend at least one-half of the regularly scheduled meetings that the member is eligible to attend during a calendar year.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.006. POWERS AND DUTIES OF COUNCIL. (a) The council shall develop a statewide health care data collection system to collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care. The council shall:

(1) direct the collection, dissemination, and analysis of data under this chapter;

(2) contract with the department to collect the data under this chapter;

(3) adopt policies and rules necessary to carry out this chapter, including rules concerning data collection requirements;

(4) build on and not duplicate other data collection required by state or federal law, by an accreditation organization, or by board rule;

(5) working with appropriate agencies, review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation;

(6) assure that public use data is made available and accessible to interested persons;

(7) prescribe by rule the process for providers to submit data consistent with Section 108.009;

(8) adopt by rule and implement a methodology to collect and disseminate data reflecting provider quality in accordance with Section 108.010;

(9) make reports to the legislature, the governor, and the public on:

(A) the charges and rate of change in the charges for health care services in this state;

(B) the effectiveness of the council in carrying out the legislative intent of this chapter;

(C) if applicable, any recommendations on the need for further legislation; and

(D) the quality and effectiveness of health care and access to health care for all citizens of this state;

(10) develop an annual work plan and establish priorities to accomplish its duties;

(11) provide consumer education on the interpretation and understanding of the public use or provider quality data before

the data is disseminated to the public;

(12) work with the Health and Human Services Commission and each health and human services agency that administers a part of the state Medicaid program to avoid duplication of expenditures of state funds for computer systems, staff, or services in the collection and analysis of data relating to the state Medicaid program;

(13) work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards; and

(14) develop and implement a health care information plan to be used by the department to:

(A) support public health and preventative health initiatives;

(B) assist in the delivery of primary and preventive health care services;

(C) facilitate the establishment of appropriate benchmark data to measure performance improvements;

(D) establish and maintain a systematic approach to the collection, storage, and analysis of health care data for longitudinal, epidemiological, and policy impact studies; and

(E) develop and use system-based protocols to identify individuals and populations at risk.

(b) The council may:

(1) employ or contract with the department to employ an executive director and other staff, including administrative personnel, necessary to comply with this chapter and rules adopted under this chapter;

(2) engage professional consultants as it considers necessary to the performance of its duties;

(3) adopt rules clarifying which health care facilities must provide data under this chapter; and

(4) apply for and receive any appropriation, donation, or other funds from the state or federal government or any other public or private source, subject to Section 108.015 and limitations and conditions provided by legislative appropriation.

(c) The council may not establish or recommend rates of payment for health care services.

(d) The council may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the department without the board's approval.

(e) In the collection of data, the council shall consider the research and initiatives being pursued by the United States Department of Health and Human Services, the National Committee for Quality Assurance, and the Joint Commission on Accreditation of Healthcare Organizations to reduce potential duplication or inconsistencies. The council may not adopt rules that conflict with or duplicate any federally mandated data collection programs or requirements of comparable scope.

(f) The council shall prescribe by rule a public use data file minimum data set that maintains patient confidentiality and establishes data accuracy and consistency.

(g) The public use data file minimum data set as defined by council rule is subject to annual review by the council with the assistance of the advisory committee under Section 108.003(g)(5). The purpose of the review is to evaluate requests to modify the existing minimum data set and editing process. A decision to modify the minimum data set by the addition or deletion of data elements shall include consideration of the value of the specific data to be added or deleted and the technical feasibility of establishing data accuracy and consistency. The council may also consider the costs to the council and providers associated with modifying the minimum data set.

(h) In accordance with Section 108.0135, the council may release data collected under Section 108.009 that is not included in the public use data file minimum data set established under Subsection (f).

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 6, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 3, eff. Sept. 1, 1999.

Sec. 108.0062. DRUG PURCHASING COOPERATIVES. (a) The council shall develop criteria for evaluating drug purchasing cooperatives that purchase drugs on behalf of consumers and create

an evaluation form for consumers to evaluate drug purchasing cooperatives.

(b) The council shall distribute the evaluation forms to the department, local health departments, the Texas Department of Insurance, and the consumer protection division of the office of the attorney general.

(c) The council shall compile the information from completed evaluation forms and make the information available to the public.

Added by Acts 2001, 77th Leg., ch. 1256, Sec. 1, eff. Sept. 1, 2001.

Sec. 108.0065. POWERS AND DUTIES OF COUNCIL RELATING TO MEDICAID MANAGED CARE. (a) In this section:

(1) "Commission" means the Health and Human Services Commission.

(2) "Medicaid managed care organization" means a managed care organization, as defined by Section 533.001, Government Code, that is contracting with the commission to implement the Medicaid managed care program under Chapter 533, Government Code.

(b) The commission may direct the council to collect data under this chapter with respect to Medicaid managed care organizations. The council shall coordinate the collection of the data with the collection of data for health benefit plan providers, but with the approval of the commission may collect data in addition to the data otherwise required of health benefit plan providers.

(c) Each Medicaid managed care organization shall provide the data required by the council in the form required by the council or, if the data is also being submitted to the commission or Medicaid operating agency, in the form required by the commission or Medicaid operating agency.

(d) Dissemination of data collected under this section is subject to Sections 108.010, 108.011, 108.012, 108.013, 108.014, and 108.0141.

(e) The commission shall analyze the data collected in accordance with this section and shall use the data to:

(1) evaluate the effectiveness and efficiency of the Medicaid managed care system;

(2) determine the extent to which Medicaid managed care does or does not serve the needs of Medicaid recipients in this state; and

(3) assess the cost-effectiveness of the Medicaid managed care system in comparison to the fee-for-service system, considering any improvement in the quality of care provided.

(f) Not later than October 1 of each even-numbered year, the commission shall report to the governor, the lieutenant governor, and the speaker of the house of representatives with respect to:

(1) the commission's conclusions under Subsection (e) and any improvement made in the delivery of services under the Medicaid managed care system since the date of the commission's last report under this section;

(2) recommendations for implementation by the state agencies operating the Medicaid managed care system for improvement to the Medicaid managed care system; and

(3) any recommendations for legislation.

(g) The report made under Subsection (f) may be consolidated with any report made under Section 108.006(a)(9).

(h) The commission, using existing funds, may contract with an entity to comply with the requirements under Subsections (e) and (f).

Added by Acts 1999, 76th Leg., ch. 1460, Sec. 8.03, eff. Sept. 1, 1999.

Sec. 108.007. REVIEW POWERS. (a) The council, through the department and subject to reasonable rules and guidelines, may:

(1) inspect documents and records used by data sources that are required to compile data and reports; and

(2) compel providers to produce accurate documents and records.

(b) The council may enter into a memorandum of understanding with a state agency, including the division of the Health and Human Services Commission responsible for the state Medicaid program, or with a school of public health or another institution of higher education, to share data and expertise, to obtain data for the council, or to make data available to the council. An agreement entered into under this subsection must protect patient confidentiality.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.

Sec. 108.008. DUTIES OF DEPARTMENT. (a) The department, as the state health planning and development agency under Chapter 104, is responsible for the collection of data under Chapter 311.

(b) The department shall:

(1) contract with the council to collect data under this chapter;

(2) provide administrative assistance to the council;

(3) coordinate administrative responsibilities with the council to avoid unnecessary duplication of the collection of data and other duties;

(4) on request of the council, give the council access to data collected by the department;

(5) submit or assist in the council's budget request to the legislature; and

(6) work with the Department of Information Resources in developing and implementing the statewide health care data collection system and maintain consistency with Department of Information Resources standards.

(c) The department may not take an action that affects or relates to the validity, status, or terms of an interagency agreement or a contract with the council without the council's approval.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 7, eff. Sept. 1, 1997.

Sec. 108.0081. MEMORANDUM OF UNDERSTANDING. The council and the department shall enter into a memorandum of understanding to implement the department's duties under Section 108.008(b). The memorandum of understanding must address:

(1) payroll and travel reimbursement services;

(2) purchasing services;

(3) personnel services;

(4) budget management services;

(5) computer support and maintenance services;

(6) meeting coordination services;

(7) any other administrative support or other services to be provided by the department for the council; and

(8) the manner in which the council will reimburse the department for the cost of services provided by the department for the council.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.

Sec. 108.0085. DUTIES OF ATTORNEY GENERAL. The attorney general shall furnish the council with advice and legal assistance that may be required to implement this chapter.

Added by Acts 1997, 75th Leg., ch. 261, Sec. 8, eff. Sept. 1, 1997.

Sec. 108.009. DATA SUBMISSION AND COLLECTION. (a) The council may collect, and, except as provided by Subsections (c) and (d), providers shall submit to the council or another entity as determined by the council, all data required by this section. The data shall be collected according to uniform submission formats, coding systems, and other technical specifications necessary to make the incoming data substantially valid, consistent, compatible, and manageable using electronic data processing, if available.

(b) The council shall adopt rules to implement the data submission requirements imposed by Subsection (a) in appropriate stages to allow for the development of efficient systems for the collection and submission of the data. A rule adopted by the council that requires submission of a data element that, before adoption of the rule, was not required to be submitted may not take effect before the 90th day after the date the rule is adopted and must take effect not later than the first anniversary after the date the rule is adopted.

(c) A rural provider may, but is not required to, provide the data required by this chapter. A hospital may, but is not required to, provide the data required by this chapter if the hospital:

(1) is exempt from state franchise, sales, ad valorem, or other state or local taxes; and

(2) does not seek or receive reimbursement for providing health care services to patients from any source, including:

(A) the patient or any person legally obligated to support the patient;

(B) a third-party payor; or
(C) Medicaid, Medicare, or any other federal, state, or local program for indigent health care.

(d) The council may not collect data from individual physicians or from an entity that is composed entirely of physicians and that is a professional association organized under the Texas Professional Association Act (Article 1528f, Vernon's Texas Civil Statutes), a limited liability partnership organized under Section 3.08, Texas Revised Partnership Act (Article 6132b-3.08, Vernon's Texas Civil Statutes), or a limited liability company organized under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes), except to the extent the entity owns and operates a health care facility in this state. This subsection does not prohibit the release of data about physicians using uniform physician identifiers that has been collected from a health care facility under this chapter.

(e) The council shall establish the department as the single collection point for receipt of data from providers. With the approval of the council and the board, the department may transfer collection of any data required to be collected by the department under any other law to the statewide health care data collection system.

(f) The council may not require providers to submit data more frequently than quarterly, but providers may submit data on a more frequent basis.

(g) The council shall coordinate data collection with the data collection formats used by federally qualified health centers. To satisfy the requirements of this chapter:

(1) a federally qualified health center shall submit annually to the council a copy of the Medicaid cost report of federally qualified health centers; and

(2) a provider receiving federal funds under 42 U.S.C. Section 254b, 254c, or 256 shall submit annually to the council a copy of the Bureau of Common Reporting Requirements data report developed by the United States Public Health Service.

(h) The council shall coordinate data collection with the data submission formats used by hospitals and other providers. The council shall accept data in the format developed by the National Uniform Billing Committee (Uniform Hospital Billing Form UB 92) and HCFA-1500 or their successors or other universally accepted standardized forms that hospitals and other providers use for other complementary purposes.

(i) The council shall develop by rule reasonable alternate data submission procedures for providers that do not possess electronic data processing capacity.

(j) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(k) The council shall collect health care data elements relating to payer type, the racial and ethnic background of patients, and the use of health care services by consumers.

(l) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(m) To the extent feasible, the council shall obtain from public records the information that is available from those records.

(n) Repealed by Acts 1997, 75th Leg., ch. 261, Sec. 14, eff. Sept. 1, 1997.

(o) A provider of a health benefit plan shall annually submit to the council aggregate data by service area required by the Health Plan Employer Data Information Set (HEDIS) as operated by the National Committee for Quality Assurance. The council may approve the submission of data in accordance with other methods generally used by the health benefit plan industry. If the Health Plan Employer Data Information Set does not generally apply to a health benefit plan, the council shall require submission of data in accordance with other methods. This subsection does not relieve a health care facility that provides services under a health benefit plan from the requirements of this chapter. Information submitted under this section is subject to Section 108.011 but is not subject to Section 108.010.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 9, 14, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 4, eff. Sept. 1, 1999.

Sec. 108.010. COLLECTION AND DISSEMINATION OF PROVIDER QUALITY DATA. (a) Subject to Section 108.009, the council shall

collect data reflecting provider quality based on a methodology and review process established through the council's rulemaking process. The methodology shall identify and measure quality standards and adhere to any federal mandates.

(b) The council shall study and analyze initial methodologies for obtaining provider quality data, including outcome data.

(c) The council shall test the methodology by collecting provider quality data for one year, subject to Section 108.009. The council may test using pilot methodologies. After collecting provider quality data for one year, the council shall report findings applicable to a provider to that provider and allow the provider to review and comment on the initial provider quality data applicable to that provider. The council shall verify the accuracy of the data during this review and revision process. After the review and revision process, provider quality data for subsequent reports shall be published and made available to the public, on a time schedule the council considers appropriate.

(d) If the council determines that provider quality data to be published under Subsection (c) does not provide the intended result or is inaccurate or inappropriate for dissemination, the council is not required to publish the data or reports based in whole or in part on the data. This subsection does not affect the release of public use data in accordance with Section 108.011 or the release of information submitted under Section 108.009(o).

(e) The council shall adopt rules allowing a provider to submit concise written comments regarding any specific provider quality data to be released concerning the provider. The council shall make the comments available to the public at the office of the council and in an electronic form accessible through the Internet. The comments shall be attached to any public release of provider quality data. Providers shall submit the comments to the council to be attached to the public release of provider quality data in the same format as the provider quality data that is to be released.

(f) The methodology adopted by the council for measuring quality shall include case-mix qualifiers, severity adjustment factors, adjustments for medical education and research, and any other factors necessary to accurately reflect provider quality.

(g) In addition to the requirements of this section, any release of provider quality data shall comply with Sections 108.011(e) and (f).

(h) A provider quality data report may not identify an individual physician by name, but must identify the physician by the uniform physician identifier designated by the council under Section 108.011(c).

(i) The council shall release provider quality data in an aggregate form without uniform physician identifiers when:

(1) the data relates to providers described by Section 108.0025(1); or

(2) the cell size of the data is below the minimum size established by council rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 10, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 5, eff. Sept. 1, 1999.

Sec. 108.011. DISSEMINATION OF PUBLIC USE DATA AND COUNCIL PUBLICATIONS. (a) The council shall promptly provide public use data and data collected in accordance with Section 108.009(o) to those requesting it. The public use data does not include provider quality data prescribed by Section 108.010 or confidential data prescribed by Section 108.013.

(b) Subject to the restrictions on access to council data prescribed by Sections 108.010 and 108.013, and using the public use data and other data, records, and matters of record available to it, the council shall prepare and issue reports to the governor, the legislature, and the public as provided by this section and Section 108.006(a). The council must issue the reports at least annually.

(c) Subject to the restrictions on access to council data prescribed by Sections 108.010 and 108.013, the council shall use public use data to prepare and issue reports that provide information relating to providers, such as the incidence rate of selected medical or surgical procedures. The reports must provide the data in a manner that identifies individual providers, including individual physicians, and that identifies and compares data elements for all providers. Individual physicians may not be

identified by name, but shall be identified by uniform physician identifiers. The council by rule shall designate the characters to be used as uniform physician identifiers.

(c-1) The council shall use public use data to prepare and issue reports that provide information for review and analysis by the Health and Human Services Commission relating to services that are provided in a niche hospital, as defined by Section 105.002, Occupations Code, and that are provided by a physician with an ownership interest in the niche hospital.

(c-2) Subsection (c-1) does not apply to an ownership interest in publicly available shares of a registered investment company, such as a mutual fund, that owns publicly traded equity securities or debt obligations issued by a niche hospital or an entity that owns the niche hospital.

(d) The council shall adopt procedures to establish the accuracy and consistency of the public use data before releasing the public use data to the public.

(e) If public use data is requested from the council about a specific provider, the council shall notify the provider about the release of the data. This subsection does not authorize the provider to interfere with the release of that data.

(f) A report issued by the council shall include a reasonable review and comment period for the affected providers before public release of the report.

(g) The council shall adopt rules allowing a provider to submit concise written comments regarding any specific public use data to be released concerning the provider. The council shall make the comments available to the public and the office of the council and in an electronic form accessible through the Internet. The comments shall be attached to any public release of the public use data. Providers shall submit the comments to the council to be attached to the public release of public use data in the same format as the public use data that is to be released.

(h) Tapes containing public use data and provider quality reports that are released to the public must include general consumer education material, including an explanation of the benefits and limitations of the information provided in the public use data and provider quality reports.

(i) The council shall release public use data in an aggregate form without uniform physician identifiers when:

(1) the data relates to providers described by Section 108.0025(1); or

(2) the cell size of the data is below the minimum size established by council rule that would enable identification of an individual patient or physician.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 802, Sec. 6, eff. Sept. 1, 1999; Acts 2005, 79th Leg., ch. 836, Sec. 4, eff. Sept. 1, 2005.

Sec. 108.012. COMPUTER ACCESS TO DATA. (a) The council shall provide a means for computer-to-computer access to the public use data. All reports shall maintain patient confidentiality as provided by Section 108.013.

(b) The council may charge a person requesting public use or provider quality data a fee for the data. The fees may reflect the quantity of information provided and the expense incurred by the council in collecting and providing the data and shall be set at a level that will raise revenue sufficient for the operation of the council. The council may not charge a fee for providing public use data to another state agency.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 261, Sec. 11, eff. Sept. 1, 1997.

Sec. 108.013. CONFIDENTIALITY AND GENERAL ACCESS TO DATA. (a) The data received by the council shall be used by the council for the benefit of the public. Subject to specific limitations established by this chapter and council rule, the council shall make determinations on requests for information in favor of access.

(b) The council by rule shall designate the characters to be used as uniform patient identifiers. The basis for assignment of the characters and the manner in which the characters are assigned are confidential.

(c) Unless specifically authorized by this chapter, the council may not release and a person or entity may not gain access

to any data:

- (1) that could reasonably be expected to reveal the identity of a patient;
- (2) that could reasonably be expected to reveal the identity of a physician;
- (3) disclosing provider discounts or differentials between payments and billed charges;
- (4) relating to actual payments to an identified provider made by a payer; or
- (5) submitted to the council in a uniform submission format that is not included in the public use data set established under Sections 108.006(f) and (g), except in accordance with Section 108.0135.

(d) All data collected and used by the department and the council under this chapter is subject to the confidentiality provisions and criminal penalties of:

- (1) Section 311.037;
- (2) Section 81.103; and
- (3) Section 159.002, Occupations Code.

(e) Data on patients and compilations produced from the data collected that identify patients are not:

- (1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or
- (2) admissible in any civil, administrative, or criminal proceeding.

(f) Data on physicians and compilations produced from the data collected that identify physicians are not:

- (1) subject to discovery, subpoena, or other means of legal compulsion for release to any person or entity except as provided by this section; or
- (2) admissible in any civil, administrative, or criminal proceeding.

(g) The council may not release data elements in a manner that will reveal the identity of a patient. The council may not release data elements in a manner that will reveal the identity of a physician.

(h) Subsections (c) and (g) do not prohibit the release of a uniform physician identifier in conjunction with associated public use data in accordance with Section 108.011 or a provider quality report in accordance with Section 108.010.

(i) Notwithstanding any other law, the council and the department may not provide information made confidential by this section to any other agency of this state.

(j) The council shall by rule, with the assistance of the advisory committee under Section 108.003(g)(5), develop and implement a mechanism to comply with Subsections (c)(1) and (2).
Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1997, 75th Leg., ch. 261, Sec. 12, eff. Sept. 1, 1997;
Acts 1999, 76th Leg., ch. 802, Sec. 7, eff. Sept. 1, 1999;
Acts 2001, 77th Leg., ch. 1420, Sec. 14.776, eff. Sept. 1, 2001.

Sec. 108.0135. SCIENTIFIC REVIEW PANEL. (a) The council shall establish a scientific review panel to review and approve requests for information other than public use data. The members of the panel shall have experience and expertise in ethics, patient confidentiality, and health care data.

(b) To assist the panel in determining whether to approve a request for information, the council shall adopt rules similar to the federal Health Care Financing Administration's guidelines on releasing data.

(c) A request for information other than public use data must be made on the form created by the council.

Added by Acts 1999, 76th Leg., ch. 802, Sec. 8, eff. Sept. 1, 1999.

Sec. 108.014. CIVIL PENALTY. (a) A person who knowingly or negligently releases data in violation of this chapter is liable for a civil penalty of not more than \$10,000.

(b) A person who fails to supply available data under Sections 108.009 and 108.010 is liable for a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation.

(c) The attorney general, at the request of the council, shall enforce this chapter. The venue of an action brought under this section is in Travis County.

(d) A civil penalty recovered in a suit instituted by the attorney general under this chapter shall be deposited in the general revenue fund to the credit of the health care information

account.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.
Amended by Acts 1999, 76th Leg., ch. 802, Sec. 9, eff. Sept. 1, 1999.

Sec. 108.0141. CRIMINAL PENALTY. (a) A person who knowingly accesses data in violation of this chapter or who with criminal negligence releases data in violation of this chapter commits an offense.

(b) An offense under this section is a state jail felony.
Added by Acts 1997, 75th Leg., ch. 261, Sec. 13, eff. Sept. 1, 1997.
Amended by Acts 1999, 76th Leg., ch. 802, Sec. 10, eff. Sept. 1, 1999.

Sec. 108.015. CONFLICT OF INTEREST. The council may not accept a donation from a person required to provide data under this chapter or from a person or business entity who provides goods or services to the council for compensation.

Added by Acts 1995, 74th Leg., ch. 726, Sec. 1, eff. Sept. 1, 1995.