SB 1407 (Leno) – Medical Information: Disclosure

Introduced February 24, 2012, Amended April 30, 2012

This bill prohibits a psychotherapist from disclosing mental health records or information based solely on an authorization signed by a parent or guardian of that minor if the minor has been removed from the physical custody of that parent or guardian in dependency proceedings for severe abuse or neglect or risk of abuse, unless the court has issued an order authorizing the parent or guardian to be the minor's representative for the release of such information, upon finding that it would not be detrimental to the minor patient. This bill creates an exception for written mental health records maintained in electronic or physical form by hospitals, as specified, or for an oral disclosure of information.

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE MARCH 29, 2012

SENATE BILL **No. 1407**

Introduced by Senator Leno

February 24, 2012

An act to ~~amend Section 56.11 of~~ *add Section 56.106 to* the Civil Code, ~~and~~ to ~~amend Section 123105 of~~ *add Section 123116 to* the Health and Safety Code, *and to add Section 5328.03 to the Welfare and Institutions Code,* relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, as amended, Leno. Medical information: disclosure.

Existing law governs the release of a patient's medical records and medical information by a health care provider, health care service plan, pharmaceutical company, or provider. *A violation of these provisions that causes economic loss or personal injury to a patient is punishable as a misdemeanor.* Under existing law, a patient may inspect his or her medical records if the patient or his or her representative, as defined, presents a written request to the health care provider. Existing law also authorizes a health care provider, health care service plan, pharmaceutical company, or contractor to release a patient's medical information after receiving a valid signed authorization from the patient, the patient's legal representative, as defined, if the patient is a minor or incompetent, and other specified individuals. Existing law provides that a minor may be removed from the physical custody of his or her parents in dependency proceedings if there is a substantial danger to the physical health of the child or the child is suffering severe emotional

damage and there are no reasonable means to protect the child without removing him or her.

~~This bill would provide that a minor patient's parent shall not be considered the minor's representative for medical information release purposes if the minor has been removed from that parent's physical custody in dependency proceedings, except pursuant to court order, as specified.~~

This bill would prohibit a psychotherapist, as defined, from releasing or disclosing the information in the mental health records of a minor patient to the patient's parent or guardian based solely on an authorization to release those records signed by the parent or guardian, and from allowing the parent or guardian to inspect or obtain those records, if the minor has been removed from the parent's or guardian's physical custody in dependency proceedings, except if the juvenile court has authorized the parent or guardian to sign an authorization for the release of those records after finding that the authorization order would not be detrimental to the minor. Because a violation of these provisions that causes economic loss or personal injury to a patient would be punishable as a misdemeanor, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

1 *SECTION 1. Section 56.106 is added to the Civil Code, to read:*
2 *56.106. (a) Notwithstanding any other provision of law, a*
3 *psychotherapist shall not release mental health records of a minor*
4 *patient or disclose the information therein based solely on an*
5 *authorization to release those records signed by the minor's parent*
6 *or guardian if that minor has been removed from the physical*
7 *custody of the parent or guardian pursuant to Section 300 of the*
8 *Welfare and Institutions Code, unless the juvenile court has issued*
9 *an order authorizing the parent or guardian to sign an*

authorization for the release of the records after finding that the order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code, or an oral disclosure of information in compliance with Section 56.1007 by that facility.

SEC. 2. Section 123116 is added to the Health and Safety Code, to read:

123116. (a) Notwithstanding any other provision of law, a psychotherapist shall not allow a parent or guardian to inspect or obtain copies of mental health records of a minor patient if that minor has been removed from the physical custody of the parent or guardian pursuant to Section 300 of the Welfare and Institutions Code, unless the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records after finding that the order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250, or an oral disclosure of information in compliance with Section 56.1007 of the Civil Code by that facility.

SEC. 3. Section 5328.03 is added to the Welfare and Institutions Code, to read:

5328.03. (a) Notwithstanding Section 5328, a psychotherapist shall not release mental health records of a minor patient or disclose the information therein based solely on an authorization to release those records signed by the minor's parent or guardian

if that minor has been removed from the physical custody of the parent or guardian pursuant to Section 300, unless the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records after finding that the order would not be detrimental to the minor patient.

(b) Notwithstanding Section 5328, a psychotherapist shall not allow a parent or guardian to inspect or obtain copies of mental health records of a minor patient if that minor has been removed from the physical custody of the parent or guardian pursuant to Section 300, unless the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records after finding that the order would not be detrimental to the minor patient.

(c) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(d) This section shall not apply to either a written mental health record maintained by a health facility as defined in subdivision (a), (b), or (f) of Section 1250 of the Health and Safety Code, or an oral disclosure of information in compliance with Section 56.1007 of the Civil Code by that facility.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

~~SECTION 1. Section 56.11 of the Civil Code is amended to read:~~

~~56.11. Any person or entity that wishes to obtain medical information pursuant to subdivision (a) of Section 56.10, other than a person or entity authorized to receive medical information pursuant to subdivision (b) or (c) of Section 56.10, except as~~

~~provided in paragraph (21) of subdivision (c) of Section 56.10, shall obtain a valid authorization for the release of this information.~~

~~An authorization for the release of medical information by a provider of health care, health care service plan, pharmaceutical company, or contractor shall be valid if it:~~

~~(a) Is handwritten by the person who signs it or is in a typeface no smaller than 14-point type.~~

~~(b) Is clearly separate from any other language present on the same page and is executed by a signature which serves no other purpose than to execute the authorization.~~

~~(c) Is signed and dated by one of the following:~~

~~(1) The patient. A patient who is a minor may only sign an authorization for the release of medical information obtained by a provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which the minor could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60).~~

~~(2) The legal representative of the patient, if the patient is a minor or an incompetent. However, authorization may not be given under this subdivision for the disclosure of medical information obtained by the provider of health care, health care service plan, pharmaceutical company, or contractor in the course of furnishing services to which a minor patient could lawfully have consented under Part 1 (commencing with Section 25) or Part 2.7 (commencing with Section 60). Except pursuant to a court order authorizing the parent or guardian to sign an authorization for the release of medical information, a parent or guardian is not considered the legal representative of a minor patient for purposes of this paragraph if the minor has been removed from the physical custody of the parent or guardian pursuant to Section 300 of the Welfare and Institutions Code. The juvenile court may issue an order authorizing the parent or guardian to sign an authorization for the release of medical information upon finding that the order would not be detrimental to the minor patient.~~

~~(3) The spouse of the patient or the person financially responsible for the patient, where the medical information is being sought for the sole purpose of processing an application for health insurance or for enrollment in a nonprofit hospital plan, a health care service plan, or an employee benefit plan, and where the~~

~~patient is to be an enrolled spouse or dependent under the policy or plan.~~

~~(4) The beneficiary or personal representative of a deceased patient.~~

~~(d) States the specific uses and limitations on the types of medical information to be disclosed.~~

~~(e) States the name or functions of the provider of health care, health care service plan, pharmaceutical company, or contractor that may disclose the medical information.~~

~~(f) States the name or functions of the persons or entities authorized to receive the medical information.~~

~~(g) States the specific uses and limitations on the use of the medical information by the persons or entities authorized to receive the medical information.~~

~~(h) States a specific date after which the provider of health care, health care service plan, pharmaceutical company, or contractor is no longer authorized to disclose the medical information.~~

~~(i) Advises the person signing the authorization of the right to receive a copy of the authorization.~~

~~SEC. 2. Section 123105 of the Health and Safety Code is amended to read:~~

~~123105. As used in this chapter:~~

~~(a) "Health care provider" means any of the following:~~

~~(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.~~

~~(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.~~

~~(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.~~

~~(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.~~

~~(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.~~

~~(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.~~

~~(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.~~

~~(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.~~

~~(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.~~

~~(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.~~

~~(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.~~

~~(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.~~

~~(13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).~~

~~(14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.~~

~~(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.~~

~~(c) "Patient" means a patient or former patient of a health care provider.~~

~~(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.~~

~~(e) "Patient's representative" or "representative" means any of the following:~~

~~(1) A parent or guardian of a minor who is a patient, unless the minor patient has been removed from the physical custody of the parent or guardian pursuant to Section 300 of the Welfare and Institutions Code. The juvenile court may issue an order making that parent or guardian the patient representative of the minor patient upon finding that the order would not be detrimental to the minor patient.~~

~~(2) The guardian or conservator of the person of an adult patient.~~

~~(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill his or her duties as set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.~~

~~(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.~~

~~(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.~~

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