

AB 2028 (Hernandez)- Confidentiality of Medical Information: Disclosure

Introduced February 17, 2010, Amended in Assembly March 10, 2010

This bill clarifies current law to explicitly authorize specified mandated reporters to release private health information during the course of a child abuse or child neglect investigation.

This bill is sponsored by the California Association of Marriage and Family Therapists to clarify that therapists are authorized to release private medical information in the course of child abuse or neglect investigation.

Information about health is highly sensitive and is protected by numerous provisions under state and federal law. Providers are generally prohibited from releasing medical information under California's Confidential Medical Information Act (CMIA). The federal Health Insurance Portability and Accountability Act (HIPAA) sets a national standard for privacy of health information, but HIPAA only applies to medical records maintained by health care providers, health plans, and health clearinghouses and only if the facility maintains and transmits records in electronic form.

A good deal of health-related information exists outside of health facilities and the records of health insurers. The extent of privacy protection given to medical information often depends on where the records are located and the purpose for which the information was collected. This bill ensures that health information is available to support child abuse and neglect investigations.

AMENDED IN ASSEMBLY MARCH 10, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2028

Introduced by Assembly Member Hernandez

February 17, 2010

An act to amend Sections 56.10 and 56.104 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Hernandez. Confidentiality of medical information: disclosure.

Existing law specifies certain agencies to which mandated reports of suspected child abuse or neglect shall be made. Existing law authorizes information relevant to the incident of child abuse or neglect to be given to an investigator from an agency that is investigating the case, as provided.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect that may be given to an investigator from an agency investigating the case, including the investigation report and other pertinent materials that may be given to the licensing agency. By changing the definition of a crime, the bill would impose a state-mandated local program.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient or that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

This bill would also except from these provisions disclosures that are specifically authorized by law, including, but not limited to disclosures made to the federal Food and Drug Administration of adverse events related to drug products or medical devices or disclosures that authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect in the report that may be given to an investigator from an agency investigating the case.

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: yes.
State-mandated local program: yes.

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

- 1 SECTION 1. Section 56.10 of the Civil Code is amended to
- 2 read:
- 3 56.10. (a) No provider of health care, health care service plan,
- 4 or contractor shall disclose medical information regarding a patient
- 5 of the provider of health care or an enrollee or subscriber of a
- 6 health care service plan without first obtaining an authorization,
- 7 except as provided in subdivision (b) or (c).
- 8 (b) A provider of health care, a health care service plan, or a
- 9 contractor shall disclose medical information if the disclosure is
- 10 compelled by any of the following:
- 11 (1) By a court pursuant to an order of that court.

1 (2) By a board, commission, or administrative agency for
2 purposes of adjudication pursuant to its lawful authority.

3 (3) By a party to a proceeding before a court or administrative
4 agency pursuant to a subpoena, subpoena duces tecum, notice to
5 appear served pursuant to Section 1987 of the Code of Civil
6 Procedure, or any provision authorizing discovery in a proceeding
7 before a court or administrative agency.

8 (4) By a board, commission, or administrative agency pursuant
9 to an investigative subpoena issued under Article 2 (commencing
10 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
11 2 of the Government Code.

12 (5) By an arbitrator or arbitration panel, when arbitration is
13 lawfully requested by either party, pursuant to a subpoena duces
14 tecum issued under Section 1282.6 of the Code of Civil Procedure,
15 or another provision authorizing discovery in a proceeding before
16 an arbitrator or arbitration panel.

17 (6) By a search warrant lawfully issued to a governmental law
18 enforcement agency.

19 (7) By the patient or the patient's representative pursuant to
20 Chapter 1 (commencing with Section 123100) of Part 1 of Division
21 106 of the Health and Safety Code.

22 (8) By a coroner, when requested in the course of an
23 investigation by the coroner's office for the purpose of identifying
24 the decedent or locating next of kin, or when investigating deaths
25 that may involve public health concerns, organ or tissue donation,
26 child abuse, elder abuse, suicides, poisonings, accidents, sudden
27 infant deaths, suspicious deaths, unknown deaths, or criminal
28 deaths, or when otherwise authorized by the decedent's
29 representative. Medical information requested by the coroner under
30 this paragraph shall be limited to information regarding the patient
31 who is the decedent and who is the subject of the investigation and
32 shall be disclosed to the coroner without delay upon request.

33 (9) When otherwise specifically required by law.

34 (c) A provider of health care or a health care service plan may
35 disclose medical information as follows:

36 (1) The information may be disclosed to providers of health
37 care, health care service plans, contractors, or other health care
38 professionals or facilities for purposes of diagnosis or treatment
39 of the patient. This includes, in an emergency situation, the
40 communication of patient information by radio transmission or

1 other means between emergency medical personnel at the scene
2 of an emergency, or in an emergency medical transport vehicle,
3 and emergency medical personnel at a health facility licensed
4 pursuant to Chapter 2 (commencing with Section 1250) of Division
5 2 of the Health and Safety Code.

6 (2) The information may be disclosed to an insurer, employer,
7 health care service plan, hospital service plan, employee benefit
8 plan, governmental authority, contractor, or any other person or
9 entity responsible for paying for health care services rendered to
10 the patient, to the extent necessary to allow responsibility for
11 payment to be determined and payment to be made. If (A) the
12 patient is, by reason of a comatose or other disabling medical
13 condition, unable to consent to the disclosure of medical
14 information and (B) no other arrangements have been made to pay
15 for the health care services being rendered to the patient, the
16 information may be disclosed to a governmental authority to the
17 extent necessary to determine the patient's eligibility for, and to
18 obtain, payment under a governmental program for health care
19 services provided to the patient. The information may also be
20 disclosed to another provider of health care or health care service
21 plan as necessary to assist the other provider or health care service
22 plan in obtaining payment for health care services rendered by that
23 provider of health care or health care service plan to the patient.

24 (3) The information may be disclosed to a person or entity that
25 provides billing, claims management, medical data processing, or
26 other administrative services for providers of health care or health
27 care service plans or for any of the persons or entities specified in
28 paragraph (2). However, information so disclosed shall not be
29 further disclosed by the recipient in a way that would violate this
30 part.

31 (4) The information may be disclosed to organized committees
32 and agents of professional societies or of medical staffs of licensed
33 hospitals, licensed health care service plans, professional standards
34 review organizations, independent medical review organizations
35 and their selected reviewers, utilization and quality control peer
36 review organizations as established by Congress in Public Law
37 97-248 in 1982, contractors, or persons or organizations insuring,
38 responsible for, or defending professional liability that a provider
39 may incur, if the committees, agents, health care service plans,
40 organizations, reviewers, contractors, or persons are engaged in

1 reviewing the competence or qualifications of health care
2 professionals or in reviewing health care services with respect to
3 medical necessity, level of care, quality of care, or justification of
4 charges.

5 (5) The information in the possession of a provider of health
6 care or health care service plan may be reviewed by a private or
7 public body responsible for licensing or accrediting the provider
8 of health care or health care service plan. However, no
9 patient-identifying medical information may be removed from the
10 premises except as expressly permitted or required elsewhere by
11 law, nor shall that information be further disclosed by the recipient
12 in a way that would violate this part.

13 (6) The information may be disclosed to the county coroner in
14 the course of an investigation by the coroner's office when
15 requested for all purposes not included in paragraph (8) of
16 subdivision (b).

17 (7) The information may be disclosed to public agencies, clinical
18 investigators, including investigators conducting epidemiologic
19 studies, health care research organizations, and accredited public
20 or private nonprofit educational or health care institutions for bona
21 fide research purposes. However, no information so disclosed shall
22 be further disclosed by the recipient in a way that would disclose
23 the identity of a patient or violate this part.

24 (8) A provider of health care or health care service plan that has
25 created medical information as a result of employment-related
26 health care services to an employee conducted at the specific prior
27 written request and expense of the employer may disclose to the
28 employee's employer that part of the information that:

29 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
30 or challenge to which the employer and the employee are parties
31 and in which the patient has placed in issue his or her medical
32 history, mental or physical condition, or treatment, provided that
33 information may only be used or disclosed in connection with that
34 proceeding.

35 (B) Describes functional limitations of the patient that may
36 entitle the patient to leave from work for medical reasons or limit
37 the patient's fitness to perform his or her present employment,
38 provided that no statement of medical cause is included in the
39 information disclosed.

1 (9) Unless the provider of health care or health care service plan
2 is notified in writing of an agreement by the sponsor, insurer, or
3 administrator to the contrary, the information may be disclosed to
4 a sponsor, insurer, or administrator of a group or individual insured
5 or uninsured plan or policy that the patient seeks coverage by or
6 benefits from, if the information was created by the provider of
7 health care or health care service plan as the result of services
8 conducted at the specific prior written request and expense of the
9 sponsor, insurer, or administrator for the purpose of evaluating the
10 application for coverage or benefits.

11 (10) The information may be disclosed to a health care service
12 plan by providers of health care that contract with the health care
13 service plan and may be transferred among providers of health
14 care that contract with the health care service plan, for the purpose
15 of administering the health care service plan. Medical information
16 shall not otherwise be disclosed by a health care service plan except
17 in accordance with this part.

18 (11) This part does not prevent the disclosure by a provider of
19 health care or a health care service plan to an insurance institution,
20 agent, or support organization, subject to Article 6.6 (commencing
21 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
22 Insurance Code, of medical information if the insurance institution,
23 agent, or support organization has complied with all of the
24 requirements for obtaining the information pursuant to Article 6.6
25 (commencing with Section 791) of Chapter 1 of Part 2 of Division
26 1 of the Insurance Code.

27 (12) The information relevant to the patient's condition, care,
28 and treatment provided may be disclosed to a probate court
29 investigator in the course of an investigation required or authorized
30 in a conservatorship proceeding under the
31 Guardianship-Conservatorship Law as defined in Section 1400 of
32 the Probate Code, or to a probate court investigator, probation
33 officer, or domestic relations investigator engaged in determining
34 the need for an initial guardianship or continuation of an existing
35 guardianship.

36 (13) The information may be disclosed to an organ procurement
37 organization or a tissue bank processing the tissue of a decedent
38 for transplantation into the body of another person, but only with
39 respect to the donating decedent, for the purpose of aiding the
40 transplant. For the purpose of this paragraph, "tissue bank" and

1 “tissue” have the same meanings as defined in Section 1635 of the
2 Health and Safety Code.

3 (14) The information may be disclosed when the disclosure is
4 otherwise specifically authorized by law, including, but not limited
5 to, the voluntary reporting, either directly or indirectly, to the
6 federal Food and Drug Administration of adverse events related
7 to drug products or medical device problems, or to disclosures
8 made pursuant to subdivisions (b) and (c) of Section 11167 of the
9 Penal Code.

10 (15) Basic information, including the patient’s name, city of
11 residence, age, sex, and general condition, may be disclosed to a
12 state-recognized or federally recognized disaster relief organization
13 for the purpose of responding to disaster welfare inquiries.

14 (16) The information may be disclosed to a third party for
15 purposes of encoding, encrypting, or otherwise anonymizing data.
16 However, no information so disclosed shall be further disclosed
17 by the recipient in a way that would violate this part, including the
18 unauthorized manipulation of coded or encrypted medical
19 information that reveals individually identifiable medical
20 information.

21 (17) For purposes of disease management programs and services
22 as defined in Section 1399.901 of the Health and Safety Code,
23 information may be disclosed as follows: (A) to an entity
24 contracting with a health care service plan or the health care service
25 plan’s contractors to monitor or administer care of enrollees for a
26 covered benefit, if the disease management services and care are
27 authorized by a treating physician, or (B) to a disease management
28 organization, as defined in Section 1399.900 of the Health and
29 Safety Code, that complies fully with the physician authorization
30 requirements of Section 1399.902 of the Health and Safety Code,
31 if the health care service plan or its contractor provides or has
32 provided a description of the disease management services to a
33 treating physician or to the health care service plan’s or contractor’s
34 network of physicians. This paragraph does not require physician
35 authorization for the care or treatment of the adherents of a
36 well-recognized church or religious denomination who depend
37 solely upon prayer or spiritual means for healing in the practice
38 of the religion of that church or denomination.

39 (18) The information may be disclosed, as permitted by state
40 and federal law or regulation, to a local health department for the

1 purpose of preventing or controlling disease, injury, or disability,
2 including, but not limited to, the reporting of disease, injury, vital
3 events, including, but not limited to, birth or death, and the conduct
4 of public health surveillance, public health investigations, and
5 public health interventions, as authorized or required by state or
6 federal law or regulation.

7 (19) The information may be disclosed, consistent with
8 applicable law and standards of ethical conduct, by a
9 psychotherapist, as defined in Section 1010 of the Evidence Code,
10 if the psychotherapist, in good faith, believes the disclosure is
11 necessary to prevent or lessen a serious and imminent threat to the
12 health or safety of a reasonably foreseeable victim or victims, and
13 the disclosure is made to a person or persons reasonably able to
14 prevent or lessen the threat, including the target of the threat.

15 (20) The information may be disclosed as described in Section
16 56.103.

17 (21) (A) The information may be disclosed to an employee
18 welfare benefit plan, as defined under Section 3(1) of the Employee
19 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
20 which is formed under Section 302(c)(5) of the Taft-Hartley Act
21 (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
22 benefit plan provides medical care, and may also be disclosed to
23 an entity contracting with the employee welfare benefit plan for
24 billing, claims management, medical data processing, or other
25 administrative services related to the provision of medical care to
26 persons enrolled in the employee welfare benefit plan for health
27 care coverage, if all of the following conditions are met:

28 (i) The disclosure is for the purpose of determining eligibility,
29 coordinating benefits, or allowing the employee welfare benefit
30 plan, or the contracting entity, to advocate on the behalf of a patient
31 or enrollee with a provider, a health care service plan, or a state
32 or federal regulatory agency.

33 (ii) The request for the information is accompanied by a written
34 authorization for the release of the information submitted in a
35 manner consistent with subdivision (a) and Section 56.11.

36 (iii) The disclosure is authorized by and made in a manner
37 consistent with the Health Insurance Portability and Accountability
38 Act of 1996 (Public Law 104-191).

39 (iv) Any information disclosed is not further used or disclosed
40 by the recipient in any way that would directly or indirectly violate

1 this part or the restrictions imposed by Part 164 of Title 45 of the
2 Code of Federal Regulations, including the manipulation of the
3 information in any way that might reveal individually identifiable
4 medical information.

5 (B) For purposes of this paragraph, Section 1374.8 of the Health
6 and Safety Code shall not apply.

7 (d) Except to the extent expressly authorized by a patient or
8 enrollee or subscriber or as provided by subdivisions (b) and (c),
9 a provider of health care, health care service plan, contractor, or
10 corporation and its subsidiaries and affiliates shall not intentionally
11 share, sell, use for marketing, or otherwise use medical information
12 for a purpose not necessary to provide health care services to the
13 patient.

14 (e) Except to the extent expressly authorized by a patient or
15 enrollee or subscriber or as provided by subdivisions (b) and (c),
16 a contractor or corporation and its subsidiaries and affiliates shall
17 not further disclose medical information regarding a patient of the
18 provider of health care or an enrollee or subscriber of a health care
19 service plan or insurer or self-insured employer received under
20 this section to a person or entity that is not engaged in providing
21 direct health care services to the patient or his or her provider of
22 health care or health care service plan or insurer or self-insured
23 employer.

24 SEC. 2. Section 56.104 of the Civil Code is amended to read:

25 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
26 except as provided in subdivision (e), no provider of health care,
27 health care service plan, or contractor may release medical
28 information to persons or entities who have requested that
29 information and who are authorized by law to receive that
30 information pursuant to subdivision (c) of Section 56.10, if the
31 requested information specifically relates to the patient's
32 participation in outpatient treatment with a psychotherapist, unless
33 the person or entity requesting that information submits to the
34 patient pursuant to subdivision (b) and to the provider of health
35 care, health care service plan, or contractor a written request, signed
36 by the person requesting the information or an authorized agent
37 of the entity requesting the information, that includes all of the
38 following:

1 (1) The specific information relating to a patient's participation
2 in outpatient treatment with a psychotherapist being requested and
3 its specific intended use or uses.

4 (2) The length of time during which the information will be
5 kept before being destroyed or disposed of. A person or entity may
6 extend that timeframe, provided that the person or entity notifies
7 the provider, plan, or contractor of the extension. Any notification
8 of an extension shall include the specific reason for the extension,
9 the intended use or uses of the information during the extended
10 time, and the expected date of the destruction of the information.

11 (3) A statement that the information will not be used for any
12 purpose other than its intended use.

13 (4) A statement that the person or entity requesting the
14 information will destroy the information and all copies in the
15 person's or entity's possession or control, will cause it to be
16 destroyed, or will return the information and all copies of it before
17 or immediately after the length of time specified in paragraph (2)
18 has expired.

19 (b) The person or entity requesting the information shall submit
20 a copy of the written request required by this section to the patient
21 within 30 days of receipt of the information requested, unless the
22 patient has signed a written waiver in the form of a letter signed
23 and submitted by the patient to the provider of health care or health
24 care service plan waiving notification.

25 (c) For purposes of this section, "psychotherapist" means a
26 person who is both a "psychotherapist" as defined in Section 1010
27 of the Evidence Code and a "provider of health care" as defined
28 in subdivision (i) of Section 56.05.

29 (d) This section does not apply to the disclosure or use of
30 medical information by a law enforcement agency or a regulatory
31 agency when required for an investigation of unlawful activity or
32 for licensing, certification, or regulatory purposes, unless the
33 disclosure is otherwise prohibited by law.

34 (e) This section shall not apply to either of the following:

35 (1) Information authorized to be disclosed pursuant to paragraph
36 (1) of subdivision (c) of Section 56.10.

37 (2) Information requested by law enforcement or by the target
38 of the threat subsequent to a disclosure authorized by paragraph
39 (19) of subdivision (c) of Section 56.10, in which the additional

1 information is clearly necessary to prevent the serious and
2 imminent threat disclosed under that paragraph.

3 (3) Information *relevant to an incident of child abuse or neglect*
4 authorized to be disclosed by a psychotherapist pursuant to
5 paragraph (14) of subdivision (c) of Section 56.10.

6 (f) Nothing in this section shall be construed to grant any
7 additional authority to a provider of health care, health care service
8 plan, or contractor to disclose information to a person or entity
9 without the patient's consent.

10 SEC. 3. No reimbursement is required by this act pursuant to
11 Section 6 of Article XIII B of the California Constitution because
12 the only costs that may be incurred by a local agency or school
13 district will be incurred because this act creates a new crime or
14 infraction, eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section 17556 of
16 the Government Code, or changes the definition of a crime within
17 the meaning of Section 6 of Article XIII B of the California
18 Constitution.