

SB 1250 (Alquist) – Medical Records: Confidentiality

Introduced February 23, 2012

This bill would amend the Confidentiality of Medical Information Act (CMIA) to require a health care provider, health care service plan, or contractor, if there is a breach in the security of a patient's personal or financial information, as specified, and that provider, plan, or contractor is required to issue a breach notification, to offer in the breach notification one year of free credit monitoring services to the patient.

Fiscal Impact: No state costs as a result of exempting all state agencies and the University of California from the bill's provisions. Non-reimbursable local costs for enforcement offset in part by fine revenue for violations resulting from the requirements set forth in this bill.

Background: Under existing law, any person or business that conducts business in the state, and that owns, licenses, or maintains computerized data that includes personal information, is required to disclose any breach of the security of the system following discovery or notification of the breach in the security to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. Existing law specifies the timing and manner in which the disclosure is required to be made, as well as the specific information to be included in the security breach notification.

In addition to the general description of the breach incident, notices are required to include the toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed a social security number or a driver's license or California identification card number. Additionally, the security breach notification may also include information about what the person or business has done to protect individuals whose information has been breached and advice on steps that the person whose information has been breached may take to protect him or herself.

Proposed Law: This bill would provide that when there is a breach in the security of a patient's social security number, driver's license number, California identification number, or financial information, and a health care provider, health care service plan, or contractor is required to issue a breach notification under any applicable state or federal law, the provider, plan, or contractor must offer in the breach notification one year of free credit monitoring services to the patient. If the patient accepts the offer, the provider, plan, or contractor would be required to provide the service to the patient. This bill defines "financial information" for purposes of this bill to mean credit card or debit card numbers.

Introduced by Senator Alquist

February 23, 2012

An act to ~~amend Section 56.36 of~~ *add Section 56.08* to the Civil Code, relating to medical records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1250, as amended, Alquist. Medical records: confidentiality.

The Confidentiality of Medical Information Act requires that every provider of health care, health care service plan, pharmaceutical company, and contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records do so in a manner that preserves the confidentiality of the information contained in the records, and provides that negligence in conducting these activities may result in damages or an administrative fine or civil penalty, as specified. *Existing law also makes a violation of these provision that results in economic loss or personal injury to a patient punishable as a misdemeanor.*

~~This bill would provide that negligence in conducting these activities may result in the defendant being required to provide each person who is the subject of the medical records with access to a credit monitoring and reporting service for one year~~ *require a health care provider, health care service plan, or contractor, if there is a breach in the security of a patient's social security number, driver's license number, California identification card number, or financial information and that provider, plan, or contractor is required to issue a breach notification, to offer, in the breach notification, one year of free credit monitoring services to the patient. Because a violation of this requirement that results in*

economic loss or personal injury to a patient would be punishable as a crime, 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 56.08 is added to the Civil Code, to read:
2 56.08. If there is a breach in the security of a patient's social
3 security number, driver's license number, California identification
4 card number, or financial information and a health care provider,
5 health care service plan, or contractor is required to issue a breach
6 notification pursuant to Section 1798.82 or any applicable federal
7 law, the provider, plan, or contractor shall offer, in the breach
8 notification, one year of free credit monitoring services to the
9 patient. If the patient accepts that offer, the health care provider,
10 health care service plan, or contractor shall provide the credit
11 monitoring service to the patient. For purposes of this subdivision,
12 "financial information" means credit card or debit card number.

13 SEC. 2. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

22 ~~SECTION 1. Section 56.36 of the Civil Code is amended to~~
23 ~~read:~~

24 ~~56.36. (a) Any violation of this part that results in economic~~
25 ~~loss or personal injury to a patient is punishable as a misdemeanor.~~

26 ~~(b) In addition to any other remedies available at law, any~~
27 ~~individual may bring an action against any person or entity that~~

1 has negligently released confidential information or records
2 concerning him or her in violation of this part, for access, at the
3 defendant's expense, to a nationally recognized credit monitoring
4 and reporting service for one year from the date of release of any
5 medical information and either or both of the following:

6 (1) Nominal damages of one thousand dollars (\$1,000). In order
7 to recover under this paragraph, it shall not be necessary that the
8 plaintiff suffered or was threatened with actual damages:

9 (2) The amount of actual damages, if any, sustained by the
10 patient.

11 (c) (1) In addition, any person or entity that negligently
12 discloses medical information in violation of the provisions of this
13 part shall also be liable, irrespective of the amount of damages
14 suffered by the patient as a result of that violation, for an
15 administrative fine or civil penalty not to exceed two thousand
16 five hundred dollars (\$2,500) per violation.

17 (2) (A) Any person or entity, other than a licensed health care
18 professional, who knowingly and willfully obtains, discloses, or
19 uses medical information in violation of this part shall be liable
20 for an administrative fine or civil penalty not to exceed twenty-five
21 thousand dollars (\$25,000) per violation.

22 (B) Any licensed health care professional, who knowingly and
23 willfully obtains, discloses, or uses medical information in violation
24 of this part shall be liable on a first violation, for an administrative
25 fine or civil penalty not to exceed two thousand five hundred
26 dollars (\$2,500) per violation, or on a second violation for an
27 administrative fine or civil penalty not to exceed ten thousand
28 dollars (\$10,000) per violation, or on a third and subsequent
29 violation for an administrative fine or civil penalty not to exceed
30 twenty-five thousand dollars (\$25,000) per violation. Nothing in
31 this subdivision shall be construed to limit the liability of a health
32 care service plan, a contractor, or a provider of health care that is
33 not a licensed health care professional for any violation of this
34 part.

35 (3) (A) Any person or entity, other than a licensed health care
36 professional, who knowingly or willfully obtains or uses medical
37 information in violation of this part for the purpose of financial
38 gain shall be liable for an administrative fine or civil penalty not
39 to exceed two hundred fifty thousand dollars (\$250,000) per

1 violation and shall also be subject to disgorgement of any proceeds
2 or other consideration obtained as a result of the violation.

3 (B) Any licensed health care professional, who knowingly and
4 willfully obtains, discloses, or uses medical information in violation
5 of this part for financial gain shall be liable on a first violation, for
6 an administrative fine or civil penalty not to exceed five thousand
7 dollars (\$5,000) per violation, or on a second violation for an
8 administrative fine or civil penalty not to exceed twenty-five
9 thousand dollars (\$25,000) per violation, or on a third and
10 subsequent violation for an administrative fine or civil penalty not
11 to exceed two hundred fifty thousand dollars (\$250,000) per
12 violation and shall also be subject to disgorgement of any proceeds
13 or other consideration obtained as a result of the violation. Nothing
14 in this subdivision shall be construed to limit the liability of a
15 health care service plan, a contractor, or a provider of health care
16 that is not a licensed health care professional for any violation of
17 this part.

18 (4) Nothing in this subdivision shall be construed as authorizing
19 an administrative fine or civil penalty under both paragraphs (2)
20 and (3) for the same violation.

21 (5) Any person or entity that is not permitted to receive medical
22 information pursuant to this part and who knowingly and willfully
23 obtains, discloses, or uses medical information without written
24 authorization from the patient shall be liable for a civil penalty not
25 to exceed two hundred fifty thousand dollars (\$250,000) per
26 violation.

27 (d) In assessing the amount of an administrative fine or civil
28 penalty pursuant to subdivision (c), the Office of Health
29 Information Integrity, licensing agency, or certifying board or
30 court shall consider any one or more of the relevant circumstances
31 presented by any of the parties to the case including, but not limited
32 to, the following:

33 (1) Whether the defendant has made a reasonable, good faith
34 attempt to comply with this part.

35 (2) The nature and seriousness of the misconduct.

36 (3) The harm to the patient, enrollee, or subscriber.

37 (4) The number of violations.

38 (5) The persistence of the misconduct.

39 (6) The length of time over which the misconduct occurred.

40 (7) The willfulness of the defendant's misconduct.

- 1 ~~(8) The defendant's assets, liabilities, and net worth.~~
2 ~~(c) (1) The civil penalty pursuant to subdivision (c) shall be~~
3 ~~assessed and recovered in a civil action brought in the name of the~~
4 ~~people of the State of California in any court of competent~~
5 ~~jurisdiction by any of the following:~~
6 ~~(A) The Attorney General.~~
7 ~~(B) Any district attorney.~~
8 ~~(C) Any county counsel authorized by agreement with the~~
9 ~~district attorney in actions involving violation of a county~~
10 ~~ordinance.~~
11 ~~(D) Any city attorney of a city.~~
12 ~~(E) Any city attorney of a city and county having a population~~
13 ~~in excess of 750,000, with the consent of the district attorney.~~
14 ~~(F) A city prosecutor in any city having a full-time city~~
15 ~~prosecutor or, with the consent of the district attorney, by a city~~
16 ~~attorney in any city and county.~~
17 ~~(G) The Director of the Office of Health Information Integrity~~
18 ~~may recommend that any person described in subparagraphs (A)~~
19 ~~to (F), inclusive, bring a civil action under this section.~~
20 ~~(2) If the action is brought by the Attorney General, one-half~~
21 ~~of the penalty collected shall be paid to the treasurer of the county~~
22 ~~in which the judgment was entered, and one-half to the General~~
23 ~~Fund. If the action is brought by a district attorney or county~~
24 ~~counsel, the penalty collected shall be paid to the treasurer of the~~
25 ~~county in which the judgment was entered. Except as provided in~~
26 ~~paragraph (3), if the action is brought by a city attorney or city~~
27 ~~prosecutor, one-half of the penalty collected shall be paid to the~~
28 ~~treasurer of the city in which the judgment was entered and one-half~~
29 ~~to the treasurer of the county in which the judgment was entered.~~
30 ~~(3) If the action is brought by a city attorney of a city and~~
31 ~~county, the entire amount of the penalty collected shall be paid to~~
32 ~~the treasurer of the city and county in which the judgment was~~
33 ~~entered.~~
34 ~~(4) Nothing in this section shall be construed as authorizing~~
35 ~~both an administrative fine and civil penalty for the same violation.~~
36 ~~(5) Imposition of a fine or penalty provided for in this section~~
37 ~~shall not preclude imposition of any other sanctions or remedies~~
38 ~~authorized by law.~~
39 ~~(6) Administrative fines or penalties issued pursuant to Section~~
40 ~~1280.15 of the Health and Safety Code shall offset any other~~

1 administrative fine or civil penalty imposed under this section for
2 the same violation.

3 ~~(f) For purposes of this section, “knowing” and “willful” shall~~
4 ~~have the same meanings as in Section 7 of the Penal Code.~~

5 ~~(g) No person who discloses protected medical information in~~
6 ~~accordance with the provisions of this part shall be subject to the~~
7 ~~penalty provisions of this part.~~

8 ~~(h) Paragraph (6) of subdivision (c) shall only become operative~~
9 ~~if Senate Bill 541 of the 2007–08 Regular Session is enacted and~~
10 ~~becomes effective on or before January 1, 2009.~~