

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 436

Introduced by Assembly Member Salas

February 16, 2007

An act to ~~add Section 130316.5 to~~ amend Section 56.10 of the Civil Code, and to amend Section 123145 of, and to repeal Section 130317 of, the Health and Safety Code, relating to health records.

LEGISLATIVE COUNSEL'S DIGEST

AB 436, as amended, Salas. ~~Health Insurance Portability and Accountability Act of 2001.~~ *Medical records.*

Existing

(1) *Existing* federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information. Existing law, the Health Insurance Portability and Accountability Implementation Act of 2001, requires the Office of HIPAA Implementation, established by the Governor's office within the California Health and Human Services Agency, to perform specified activities required for compliance with this federal act. These provisions will be repealed on January 1, 2008.

~~This bill would, notwithstanding any other provision of law or regulation, prohibit any entity subject to HIPAA from disclosing a patient's medical information without first receiving that patient's written authorization.~~

This bill would eliminate the repeal date of the above-described provisions thereby extending their duration indefinitely.

(2) Existing law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions, including that medical information may be disclosed to any person or entity that provides billing or claims management, medical data processing, or other administrative services for providers of health care or health care service plans, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties.

This bill would revise this exception by eliminating any person or entity that provides medical data processing or other administrative services from the list of people or entities to whom medical information may be disclosed without the patient's written authorization under these provisions.

Existing law also permits the disclosure of medical information without a patient's consent to specified persons and entities responsible for the payment of health care services rendered to the patient, as provided.

This bill would prohibit these persons or entities from further disclosing this information in any way that would be violative of these provisions.

By creating new crimes, the bill would create a state-mandated local program.

(3) Existing law requires that if certain licensed providers of health services, as defined, cease to operate, the providers must preserve a patient's records for a minimum of 7 years following the discharge of the patient, as provided.

This bill would require that if a licensed provider of health services that is subject to these provisions plans to cease its operation or to store offsite a patient's records, that provider shall notify, as specified, the patient of this fact, and of the patient's option to request a copy of his or her medical records pursuant to existing law.

(4) 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: ~~no~~-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.

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

14 (3) By a party to a proceeding before a court or administrative
15 agency pursuant to a subpoena, subpoena duces tecum, notice to
16 appear served pursuant to Section 1987 of the Code of Civil
17 Procedure, or any provision authorizing discovery in a proceeding
18 before a court or administrative agency.

19 (4) By a board, commission, or administrative agency pursuant
20 to an investigative subpoena issued under Article 2 (commencing
21 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
22 2 of the Government Code.

23 (5) By an arbitrator or arbitration panel, when arbitration is
24 lawfully requested by either party, pursuant to a subpoena duces
25 tecum issued under Section 1282.6 of the Code of Civil Procedure,
26 or any other provision authorizing discovery in a proceeding before
27 an arbitrator or arbitration panel.

28 (6) By a search warrant lawfully issued to a governmental law
29 enforcement agency.

30 (7) By the patient or the patient's representative pursuant to
31 Chapter 1 (commencing with Section 123100) of Part 1 of Division
32 106 of the Health and Safety Code.

33 (8) By a coroner, when requested in the course of an
34 investigation by the coroner's office for the purpose of identifying
35 the decedent or locating next of kin, or when investigating deaths

1 that may involve public health concerns, organ or tissue donation,
2 child abuse, elder abuse, suicides, poisonings, accidents, sudden
3 infant deaths, suspicious deaths, unknown deaths, or criminal
4 deaths, or when otherwise authorized by the decedent's
5 representative. Medical information requested by the coroner under
6 this paragraph shall be limited to information regarding the patient
7 who is the decedent and who is the subject of the investigation and
8 shall be disclosed to the coroner without delay upon request.

9 (9) When otherwise specifically required by law.

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

12 (1) The information may be disclosed to providers of health
13 care, health care service plans, contractors, or other health care
14 professionals or facilities for purposes of diagnosis or treatment
15 of the patient. This includes, in an emergency situation, the
16 communication of patient information by radio transmission or
17 other means between emergency medical personnel at the scene
18 of an emergency, or in an emergency medical transport vehicle,
19 and emergency medical personnel at a health facility licensed
20 pursuant to Chapter 2 (commencing with Section 1250) of Division
21 2 of the Health and Safety Code.

22 (2) The information may be disclosed to an insurer, employer,
23 health care service plan, hospital service plan, employee benefit
24 plan, governmental authority, contractor, or any other person or
25 entity responsible for paying for health care services rendered to
26 the patient, to the extent necessary to allow responsibility for
27 payment to be determined and payment to be made. If (A) the
28 patient is, by reason of a comatose or other disabling medical
29 condition, unable to consent to the disclosure of medical
30 information and (B) no other arrangements have been made to pay
31 for the health care services being rendered to the patient, the
32 information may be disclosed to a governmental authority to the
33 extent necessary to determine the patient's eligibility for, and to
34 obtain, payment under a governmental program for health care
35 services provided to the patient. The information may also be
36 disclosed to another provider of health care or health care service
37 plan as necessary to assist the other provider or health care service
38 plan in obtaining payment for health care services rendered by that
39 provider of health care or health care service plan to the patient.

1 *However, no information so disclosed shall be further disclosed*
2 *by the recipient in any way that would be violative of this part.*

3 (3) The information may be disclosed to any person or entity
4 that provides billing; ~~or claims management, medical data~~
5 ~~processing, or other administrative~~ services for providers of health
6 care or health care service plans or for any of the persons or entities
7 specified in paragraph (2). However, no information so disclosed
8 shall be further disclosed by the recipient in any way that would
9 be violative of this part.

10 (4) The information may be disclosed to organized committees
11 and agents of professional societies or of medical staffs of licensed
12 hospitals, licensed health care service plans, professional standards
13 review organizations, independent medical review organizations
14 and their selected reviewers, utilization and quality control peer
15 review organizations as established by Congress in Public Law
16 97-248 in 1982, contractors, or persons or organizations insuring,
17 responsible for, or defending professional liability that a provider
18 may incur, if the committees, agents, health care service plans,
19 organizations, reviewers, contractors, or persons are engaged in
20 reviewing the competence or qualifications of health care
21 professionals or in reviewing health care services with respect to
22 medical necessity, level of care, quality of care, or justification of
23 charges.

24 (5) The information in the possession of any provider of health
25 care or health care service plan may be reviewed by any private
26 or public body responsible for licensing or accrediting the provider
27 of health care or health care service plan. However, no
28 patient-identifying medical information may be removed from the
29 premises except as expressly permitted or required elsewhere by
30 law, nor shall that information be further disclosed by the recipient
31 in any way that would violate this part.

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

36 (7) The information may be disclosed to public agencies, clinical
37 investigators, including investigators conducting epidemiologic
38 studies, health care research organizations, and accredited public
39 or private nonprofit educational or health care institutions for bona
40 fide research purposes. However, no information so disclosed shall

1 be further disclosed by the recipient in any way that would disclose
2 the identity of any patient or be violative of this part.

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

8 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
9 or challenge to which the employer and the employee are parties
10 and in which the patient has placed in issue his or her medical
11 history, mental or physical condition, or treatment, provided that
12 information may only be used or disclosed in connection with that
13 proceeding.

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

19 (9) Unless the provider of health care or health care service plan
20 is notified in writing of an agreement by the sponsor, insurer, or
21 administrator to the contrary, the information may be disclosed to
22 a sponsor, insurer, or administrator of a group or individual insured
23 or uninsured plan or policy that the patient seeks coverage by or
24 benefits from, if the information was created by the provider of
25 health care or health care service plan as the result of services
26 conducted at the specific prior written request and expense of the
27 sponsor, insurer, or administrator for the purpose of evaluating the
28 application for coverage or benefits.

29 (10) The information may be disclosed to a health care service
30 plan by providers of health care that contract with the health care
31 service plan and may be transferred among providers of health
32 care that contract with the health care service plan, for the purpose
33 of administering the health care service plan. Medical information
34 may not otherwise be disclosed by a health care service plan except
35 in accordance with the provisions of this part.

36 (11) Nothing in this part shall prevent the disclosure by a
37 provider of health care or a health care service plan to an insurance
38 institution, agent, or support organization, subject to Article 6.6
39 (commencing with Section 791) of Part 2 of Division 1 of the
40 Insurance Code, of medical information if the insurance institution,

1 agent, or support organization has complied with all requirements
2 for obtaining the information pursuant to Article 6.6 (commencing
3 with Section 791) of Part 2 of Division 1 of the Insurance Code.

4 (12) The information relevant to the patient’s condition and care
5 and treatment provided may be disclosed to a probate court
6 investigator engaged in determining the need for an initial
7 conservatorship or continuation of an existent conservatorship, if
8 the patient is unable to give informed consent, or to a probate court
9 investigator, probation officer, or domestic relations investigator
10 engaged in determining the need for an initial guardianship or
11 continuation of an existent guardianship.

12 (13) The information may be disclosed to an organ procurement
13 organization or a tissue bank processing the tissue of a decedent
14 for transplantation into the body of another person, but only with
15 respect to the donating decedent, for the purpose of aiding the
16 transplant. For the purpose of this paragraph, the terms “tissue
17 bank” and “tissue” have the same meaning as defined in Section
18 1635 of the Health and Safety Code.

19 (14) The information may be disclosed when the disclosure is
20 otherwise specifically authorized by law, such as the voluntary
21 reporting, either directly or indirectly, to the federal Food and Drug
22 Administration of adverse events related to drug products or
23 medical device problems.

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

28 (16) The information may be disclosed to a third party for
29 purposes of encoding, encrypting, or otherwise anonymizing data.
30 However, no information so disclosed shall be further disclosed
31 by the recipient in any way that would be violative of this part,
32 including the unauthorized manipulation of coded or encrypted
33 medical information that reveals individually identifiable medical
34 information.

35 (17) For purposes of disease management programs and services
36 as defined in Section 1399.901 of the Health and Safety Code,
37 information may be disclosed as follows: (A) to any entity
38 contracting with a health care service plan or the health care service
39 plan’s contractors to monitor or administer care of enrollees for a
40 covered benefit, provided that the disease management services

1 and care are authorized by a treating physician, or (B) to any
2 disease management organization, as defined in Section 1399.900
3 of the Health and Safety Code, that complies fully with the
4 physician authorization requirements of Section 1399.902 of the
5 Health and Safety Code, provided that the health care service plan
6 or its contractor provides or has provided a description of the
7 disease management services to a treating physician or to the health
8 care service plan's or contractor's network of physicians. Nothing
9 in this paragraph shall be construed to require physician
10 authorization for the care or treatment of the adherents of any
11 well-recognized church or religious denomination who depend
12 solely upon prayer or spiritual means for healing in the practice
13 of the religion of that church or denomination.

14 (18) The information may be disclosed, as permitted by state
15 and federal law or regulation, to a local health department for the
16 purpose of preventing or controlling disease, injury, or disability,
17 including, but not limited to, the reporting of disease, injury, vital
18 events such as birth or death, and the conduct of public health
19 surveillance, public health investigations, and public health
20 interventions, as authorized or required by state or federal law or
21 regulation.

22 (d) Except to the extent expressly authorized by the patient or
23 enrollee or subscriber or as provided by subdivisions (b) and (c),
24 no provider of health care, health care service plan, contractor, or
25 corporation and its subsidiaries and affiliates shall intentionally
26 share, sell, use for marketing, or otherwise use any medical
27 information for any purpose not necessary to provide health care
28 services to the patient.

29 (e) Except to the extent expressly authorized by the patient or
30 enrollee or subscriber or as provided by subdivisions (b) and (c),
31 no contractor or corporation and its subsidiaries and affiliates shall
32 further disclose medical information regarding a patient of the
33 provider of health care or an enrollee or subscriber of a health care
34 service plan or insurer or self-insured employer received under
35 this section to any person or entity that is not engaged in providing
36 direct health care services to the patient or his or her provider of
37 health care or health care service plan or insurer or self-insured
38 employer.

39 *SEC. 2. Section 123145 of the Health and Safety Code is*
40 *amended to read:*

1 123145. (a) Providers of health services that are licensed
2 pursuant to Sections 1205, 1253, 1575, and 1726 have an
3 obligation, if the licensee ceases operation, to preserve records for
4 a minimum of seven years following discharge of the patient,
5 except that the records of unemancipated minors shall be kept at
6 least one year after the minor has reached the age of 18 years, and
7 in any case, not less than seven years.

8 (b) The department or any person injured as a result of the
9 licensee's abandonment of health records may bring an action in
10 a proper court for the amount of damage suffered as a result thereof.
11 In the event that the licensee is a corporation or partnership that
12 is dissolved, the person injured may take action against that
13 corporation's or partnership's principle officers of record at the
14 time of dissolution.

15 (c) Abandoned means violating subdivision (a) and leaving
16 patients treated by the licensee without access to medical
17 information to which they are entitled pursuant to Section 123110.

18 (d) (1) *Any provider of health services described in subdivision*
19 *(a) that plans to cease operation or to store offsite a patient's*
20 *records shall, as soon as is practicable, notify the patient of this*
21 *fact and of the patient's right to request a copy of his or her*
22 *medical records pursuant to Section 123110.*

23 (2) *The notice requirements set forth in paragraph (1) may be*
24 *met by either written or verbal means, provided that whatever*
25 *method is used is reasonable in light of the patient's needs and*
26 *condition.*

27 *SEC. 3. Section 130317 of the Health and Safety Code is*
28 *repealed.*

29 ~~130317. This division shall remain in effect only until January~~
30 ~~1, 2008, and as of that date is repealed, unless a later enacted~~
31 ~~statute, that is enacted before January 1, 2008, deletes or extends~~
32 ~~that date.~~

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

1 *the meaning of Section 6 of Article XIII B of the California*
2 *Constitution.*

3 ~~SECTION 1. Section 130316.5 is added to the Health and~~
4 ~~Safety Code, to read:~~

5 ~~130316.5. Notwithstanding any other provision of law or~~
6 ~~regulation, no entity subject to HIPAA shall disclose a patient's~~
7 ~~medical information without first obtaining that patient's written~~
8 ~~authorization.~~