

AMENDED IN SENATE JUNE 21, 2007

AMENDED IN ASSEMBLY MAY 14, 2007

AMENDED IN ASSEMBLY MAY 3, 2007

AMENDED IN ASSEMBLY APRIL 16, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1687

Introduced by Assembly Member Brownley

February 23, 2007

An act to amend Section 56.10 of, *and to add Section 56.103 to*, the Civil Code, relating to confidential information.

LEGISLATIVE COUNSEL'S DIGEST

AB 1687, as amended, Brownley. ~~Mental health and developmental services: confidential~~ *Confidential* information.

(1) Existing law prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. Existing law also permits that medical information to be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient. Existing law provides that a violation of these provisions that results in economic loss or personal injury to a patient is punishable as a misdemeanor. Existing federal law

defines “covered entity” for purposes of the federal Health Insurance Portability and Accountability Act.

~~This bill would provide that these provisions apply to a psychotherapist, as defined. By expanding the definition of a crime, the bill would impose a state-mandated local program. The bill would also permit a covered entity who is a psychotherapist to use or disclose protected health information if the covered entity, in good faith, believes the use or disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and if the use or disclosure is to a person reasonably able to prevent or lessen that threat. The bill would also provide that for purposes of these provisions, treatment shall include the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination of management of health care by a health care provider with a third party, consultation between health care providers relating to a patient, or the referral of a patient for health care for one health care provider to another.~~

This bill would provide that for purposes of these provisions, a provider of health care may disclose protected health information to a county social worker, a probation officer, or a custodial caregiver if that information relates to a person taken into custody and declared a delinquent or ward of the juvenile court, and the county social worker, probation officer, or custodial caregiver is coordinating the medical treatment provided to the delinquent or ward. By expanding the definition of a crime, the bill would impose a state-mandated local program. The bill would also prohibit a county social worker, probation officer, or custodial caregiver who receives protected health information from further disclosing that information unless the disclosure is to a provider of health care, health care service plan, or health care contractor, and the disclosure is in the context of coordinating medical treatment of the delinquent or ward of the juvenile court. The bill would provide that if a provider of health care determines that the disclosure of information related to the delinquent or ward of the juvenile court is necessary to prevent serious harm to that delinquent or ward or to others, information relating to the diagnosis, treatment, participation in counseling, and other information obtained in the course of providing services may be disclosed to a county social worker, probation officer, or custodial caregiver.

(2) 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.

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.

1 (7) By the patient or the patient’s representative pursuant to
2 Chapter 1 (commencing with Section 123100) of Part 1 of Division
3 106 of the Health and Safety Code.

4 (8) By a coroner, when requested in the course of an
5 investigation by the coroner’s office for the purpose of identifying
6 the decedent or locating next of kin, or when investigating deaths
7 that may involve public health concerns, organ or tissue donation,
8 child abuse, elder abuse, suicides, poisonings, accidents, sudden
9 infant deaths, suspicious deaths, unknown deaths, or criminal
10 deaths, or when otherwise authorized by the decedent’s
11 representative. Medical information requested by the coroner under
12 this paragraph shall be limited to information regarding the patient
13 who is the decedent and who is the subject of the investigation and
14 shall be disclosed to the coroner without delay upon request.

15 (9) When otherwise specifically required by law.

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

18 (1) The information may be disclosed to providers of health
19 care, health care service plans, contractors, or other health care
20 professionals or facilities for purposes of diagnosis or treatment
21 of the patient. This includes, in an emergency situation, the
22 communication of patient information by radio transmission or
23 other means between emergency medical personnel at the scene
24 of an emergency, or in an emergency medical transport vehicle,
25 and emergency medical personnel at a health facility licensed
26 pursuant to Chapter 2 (commencing with Section 1250) of Division
27 2 of the Health and Safety Code.

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

1 services provided to the patient. The information may also be
2 disclosed to another provider of health care or health care service
3 plan as necessary to assist the other provider or health care service
4 plan in obtaining payment for health care services rendered by that
5 provider of health care or health care service plan to the patient.

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

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

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

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

39 (7) The information may be disclosed to public agencies, clinical
40 investigators, including investigators conducting epidemiologic

1 studies, health care research organizations, and accredited public
2 or private nonprofit educational or health care institutions for bona
3 fide research purposes. However, no information so disclosed shall
4 be further disclosed by the recipient in any way that would disclose
5 the identity of ~~any a~~ patient or ~~be violative of~~ *violate* this part.

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

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

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

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

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

39 (11) Nothing in this part shall prevent the disclosure by a
40 provider of health care or a health care service plan to an insurance

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

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

15 (13) The information may be disclosed to an organ procurement
16 organization or a tissue bank processing the tissue of a decedent
17 for transplantation into the body of another person, but only with
18 respect to the donating decedent, for the purpose of aiding the
19 transplant. For the purpose of this paragraph, the terms “tissue
20 bank” and “tissue” have the same meaning as defined in Section
21 1635 of the Health and Safety Code.

22 (14) The information may be disclosed when the disclosure is
23 otherwise specifically authorized by law, ~~such as~~ *including, but*
24 *not limited to*, the voluntary reporting, either directly or indirectly,
25 to the federal Food and Drug Administration of adverse events
26 related to drug products or medical device problems.

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

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

38 (17) For purposes of disease management programs and services
39 as defined in Section 1399.901 of the Health and Safety Code,
40 information may be disclosed as follows: (A) to ~~any~~ *an* entity

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

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

25 (19) *The information may be disclosed as described in Section*
26 *56.103.*

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

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

1 providing direct health care services to the patient or his or her
2 provider of health care or health care service plan or insurer or
3 self-insured employer.

4 *SEC. 2. Section 56.103 is added to the Civil Code, to read:*

5 *56.103. (a) A provider of health care may disclose protected*
6 *health information to a county social worker, a probation officer,*
7 *or a custodial caregiver if that information relates to a person*
8 *taken into custody and declared a delinquent or ward of the*
9 *juvenile court, and the county social worker, probation officer, or*
10 *custodial caregiver is coordinating the medical treatment provided*
11 *to the delinquent or ward.*

12 *(b) For purposes of this section, medical treatment includes one*
13 *or more providers of health care providing, coordinating, or*
14 *managing health care and related services, including, but not*
15 *limited to, a provider of health care coordinating health care with*
16 *a third party, consultation between providers of health care*
17 *relating to a patient, or a provider of health care referring a patient*
18 *for health care services to another provider of health care.*

19 *(c) For purposes of this section, a county social worker, a*
20 *probation officer, or a custodial caregiver shall be considered a*
21 *third party who may receive any of the following:*

22 *(1) Medical information described in Section 56.10.*

23 *(2) Protected health information described in Section 164.501*
24 *of Title 45 of the Code of Federal Regulations.*

25 *(3) Protected health information described in subdivisions (a)*
26 *to (c), inclusive.*

27 *(d) Protected health information that is disclosed to a county*
28 *social worker, probation officer, or custodial caregiver shall not*
29 *be further disclosed by the recipient to any person unless the*
30 *disclosure is to a provider of health care, health care service plan,*
31 *or health care contractor, and the disclosure is in the context of*
32 *coordinating the medical treatment of the delinquent or ward of*
33 *the juvenile court.*

34 *(e) If a provider of health care determines that the disclosure*
35 *of information related to a delinquent or ward of the juvenile court*
36 *is necessary to prevent serious harm to that delinquent or ward*
37 *or to others, information relating to the diagnosis, treatment,*
38 *participation in counseling, and other information obtained in the*
39 *course of providing services may be disclosed to a county social*
40 *worker, probation officer, or custodial caregiver. The disclosure*

1 of information pursuant to this subdivision is not intended to limit
2 the disclosure of information when that disclosure is required by
3 law.

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

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**All matter omitted in this version of the bill
appears in the bill as introduced/amended
in Assembly, May 14, 2007 (JR11)**