

AMENDED IN SENATE JULY 17, 2007

AMENDED IN SENATE JULY 3, 2007

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. 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 for purposes of these provisions, a provider of health care may disclose ~~protected health medical~~ information to a county social worker, a probation officer, or ~~a custodial caregiver~~ if that information relates to a minor ~~adjudged to be a dependent child or ward of the juvenile court, as specified, and the county social worker, probation officer, or custodial caregiver is coordinating the medical treatment provided to the dependent child or ward~~ *any other person who is legally authorized to have custody or care of a minor, as defined, for the purpose of coordinating health care services and medical treatment provided to the minor.* 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~~ *any other person who is legally authorized to have custody or care of a minor* who receives ~~protected health medical~~ information from further disclosing that information unless the disclosure is for the purpose of coordinating *health care services and medical treatment of the dependent child or ward minor* and the disclosure is ~~either authorized by law or to a provider of health care, health care service plan, or health care contractor.~~ The bill would provide that if a provider of health care determines that the disclosure of ~~protected health medical~~ information concerning the diagnosis and treatment of ~~any mental illness, psychiatric condition, or psychological condition~~ *a mental health condition* of a minor ~~adjudged to be a dependent child or ward of the juvenile court~~ is reasonably necessary to coordinate the treatment and care of that dependent child or ward, ~~that protected health~~ *for the purpose of assisting in coordinating the treatment and care of the minor, that medical* information may be disclosed to a county social worker, probation officer, or ~~custodial caregiver~~ *any other person who is legally authorized to have custody or care of the minor.* The bill would also prohibit the further disclosure of information concerning the diagnosis and treatment of ~~any mental illness, psychiatric condition, or psychological condition~~ *a mental health condition* of a minor ~~adjudged to be a dependent child or ward of the juvenile court~~ unless the disclosure is for the purpose of coordinating *mental health services and treatment of the minor* and the disclosure is authorized by law. *The bill would also make related legislative findings and declarations.*

(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. *The Legislature finds and declares all of the*
2 *following:*

3 (a) *The State of California is responsible for the health care*
4 *needs of children and youth who have been removed from their*
5 *homes due to abuse, neglect, or delinquency, and for ensuring that*
6 *their health care and mental health needs are met. Access to health*
7 *care and mental health records is essential for ensuring that health*
8 *care and mental health needs of foster children and youth are*
9 *being met.*

10 (b) *A lack of clarity about who may be authorized to share health*
11 *care and mental health records with caregivers of children and*
12 *youth in the state’s care often results in inadequate health care*
13 *information being available to caregivers, which jeopardizes the*
14 *health of the children and youth in the state’s care.*

15 (c) *It is the intent of the Legislature to improve the sharing of*
16 *health care and mental health information concerning children*
17 *and youth in the state’s care by eliminating barriers caused by a*
18 *lack of clarity in existing law regarding who may be authorized*
19 *to share health care and mental health information. It is the further*
20 *intent of the Legislature not to expand existing law and to clarify*
21 *that existing provisions regarding confidentiality of medical*
22 *records and the federal Health Insurance Portability and*
23 *Accountability Act (HIPAA) authorizes psychotherapists to provide*
24 *health care and mental health information to caregivers of children*
25 *and youth in foster care to facilitate providing health care and*
26 *mental health care that meets the needs of these children and youth.*

27 ~~SECTION 1.~~

28 SEC. 2. Section 56.10 of the Civil Code is amended to read:

29 56.10. (a) No provider of health care, health care service plan,
30 or contractor shall disclose medical information regarding a patient

1 of the provider of health care or an enrollee or subscriber of a
2 health care service plan without first obtaining an authorization,
3 except as provided in subdivision (b) or (c).

4 (b) A provider of health care, a health care service plan, or a
5 contractor shall disclose medical information if the disclosure is
6 compelled by any of the following:

7 (1) By a court pursuant to an order of that court.

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

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

15 (4) By a board, commission, or administrative agency pursuant
16 to an investigative subpoena issued under Article 2 (commencing
17 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
18 2 of the Government Code.

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

24 (6) By a search warrant lawfully issued to a governmental law
25 enforcement agency.

26 (7) By the patient or the patient's representative pursuant to
27 Chapter 1 (commencing with Section 123100) of Part 1 of Division
28 106 of the Health and Safety Code.

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

40 (9) When otherwise specifically required by law.

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

3 (1) The information may be disclosed to providers of health
4 care, health care service plans, contractors, or other health care
5 professionals or facilities for purposes of diagnosis or treatment
6 of the patient. This includes, in an emergency situation, the
7 communication of patient information by radio transmission or
8 other means between emergency medical personnel at the scene
9 of an emergency, or in an emergency medical transport vehicle,
10 and emergency medical personnel at a health facility licensed
11 pursuant to Chapter 2 (commencing with Section 1250) of Division
12 2 of the Health and Safety Code.

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

31 (3) The information may be disclosed to a person or entity that
32 provides billing, claims management, medical data processing, or
33 other administrative services for providers of health care or health
34 care service plans or for any of the persons or entities specified in
35 paragraph (2). However, no information so disclosed shall be
36 further disclosed by the recipient in any way that would violate
37 this part.

38 (4) The information may be disclosed to organized committees
39 and agents of professional societies or of medical staffs of licensed
40 hospitals, licensed health care service plans, professional standards

1 review organizations, independent medical review organizations
2 and their selected reviewers, utilization and quality control peer
3 review organizations as established by Congress in Public Law
4 97-248 in 1982, contractors, or persons or organizations insuring,
5 responsible for, or defending professional liability that a provider
6 may incur, if the committees, agents, health care service plans,
7 organizations, reviewers, contractors, or persons are engaged in
8 reviewing the competence or qualifications of health care
9 professionals or in reviewing health care services with respect to
10 medical necessity, level of care, quality of care, or justification of
11 charges.

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

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

24 (7) The information may be disclosed to public agencies, clinical
25 investigators, including investigators conducting epidemiologic
26 studies, health care research organizations, and accredited public
27 or private nonprofit educational or health care institutions for bona
28 fide research purposes. However, no information so disclosed shall
29 be further disclosed by the recipient in any way that would disclose
30 the identity of a patient or violate this part.

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

36 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
37 or challenge to which the employer and the employee are parties
38 and in which the patient has placed in issue his or her medical
39 history, mental or physical condition, or treatment, provided that

1 information may only be used or disclosed in connection with that
2 proceeding.

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

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

18 (10) The information may be disclosed to a health care service
19 plan by providers of health care that contract with the health care
20 service plan and may be transferred among providers of health
21 care that contract with the health care service plan, for the purpose
22 of administering the health care service plan. Medical information
23 may not otherwise be disclosed by a health care service plan except
24 in accordance with the provisions of this part.

25 (11) Nothing in this part shall prevent the disclosure by a
26 provider of health care or a health care service plan to an insurance
27 institution, agent, or support organization, subject to Article 6.6
28 (commencing with Section 791) of Part 2 of Division 1 of the
29 Insurance Code, of medical information if the insurance institution,
30 agent, or support organization has complied with all requirements
31 for obtaining the information pursuant to Article 6.6 (commencing
32 with Section 791) of Part 2 of Division 1 of the Insurance Code.

33 (12) The information relevant to the patient's condition and care
34 and treatment provided may be disclosed to a probate court
35 investigator engaged in determining the need for an initial
36 conservatorship or continuation of an existent conservatorship, if
37 the patient is unable to give informed consent, or to a probate court
38 investigator, probation officer, or domestic relations investigator
39 engaged in determining the need for an initial guardianship or
40 continuation of an existent guardianship.

1 (13) The information may be disclosed to an organ procurement
2 organization or a tissue bank processing the tissue of a decedent
3 for transplantation into the body of another person, but only with
4 respect to the donating decedent, for the purpose of aiding the
5 transplant. For the purpose of this paragraph, the terms “tissue
6 bank” and “tissue” have the same meaning as defined in Section
7 1635 of the Health and Safety Code.

8 (14) The information may be disclosed when the disclosure is
9 otherwise specifically authorized by law, including, but not limited
10 to, the voluntary reporting, either directly or indirectly, to the
11 federal Food and Drug Administration of adverse events related
12 to drug products or medical device problems.

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

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

24 (17) For purposes of disease management programs and services
25 as defined in Section 1399.901 of the Health and Safety Code,
26 information may be disclosed as follows: (A) to an entity
27 contracting with a health care service plan or the health care service
28 plan’s contractors to monitor or administer care of enrollees for a
29 covered benefit, if the disease management services and care are
30 authorized by a treating physician, or (B) to a disease management
31 organization, as defined in Section 1399.900 of the Health and
32 Safety Code, that complies fully with the physician authorization
33 requirements of Section 1399.902 of the Health and Safety Code,
34 if the health care service plan or its contractor provides or has
35 provided a description of the disease management services to a
36 treating physician or to the health care service plan’s or contractor’s
37 network of physicians. Nothing in this paragraph shall be construed
38 to require physician authorization for the care or treatment of the
39 adherents of a well-recognized church or religious denomination

1 who depend solely upon prayer or spiritual means for healing in
2 the practice of the religion of that church or denomination.

3 (18) The information may be disclosed, as permitted by state
4 and federal law or regulation, to a local health department for the
5 purpose of preventing or controlling disease, injury, or disability,
6 including, but not limited to, the reporting of disease, injury, vital
7 events, including, but not limited to, birth or death, and the conduct
8 of public health surveillance, public health investigations, and
9 public health interventions, as authorized or required by state or
10 federal law or regulation.

11 (19) The information may be disclosed as described in Section
12 56.103.

13 (d) Except to the extent expressly authorized by the patient or
14 enrollee or subscriber or as provided by subdivisions (b) and (c),
15 no provider of health care, health care service plan, contractor, or
16 corporation and its subsidiaries and affiliates shall intentionally
17 share, sell, use for marketing, or otherwise use any medical
18 information for any purpose not necessary to provide health care
19 services to the patient.

20 (e) Except to the extent expressly authorized by the patient or
21 enrollee or subscriber or as provided by subdivisions (b) and (c),
22 no contractor or corporation and its subsidiaries and affiliates shall
23 further disclose medical information regarding a patient of the
24 provider of health care or an enrollee or subscriber of a health care
25 service plan or insurer or self-insured employer received under
26 this section to a person or entity that is not engaged in providing
27 direct health care services to the patient or his or her provider of
28 health care or health care service plan or insurer or self-insured
29 employer.

30 ~~SEC. 2.~~

31 *SEC. 3.* Section 56.103 is added to the Civil Code, to read:

32 ~~56.103.—(a) A provider of health care may disclose protected~~
33 ~~health information to a county social worker, a probation officer,~~
34 ~~or a custodial caregiver if that information relates to a minor~~
35 ~~adjudged to be a dependent child or ward of the juvenile court~~
36 ~~pursuant to Section 300 or 600 of the Welfare and Institution Code,~~
37 ~~and the county social worker, probation officer, or custodial~~
38 ~~caregiver is coordinating the medical treatment provided to the~~
39 ~~dependent child or ward.~~

1 ~~(b) For purposes of this section, medical treatment includes one~~
2 ~~or more providers of health care providing, coordinating, or~~
3 ~~managing health care and related services, including, but not~~
4 ~~limited to, a provider of health care coordinating health care with~~
5 ~~a third party, consultation between providers of health care relating~~
6 ~~to a patient, or a provider of health care referring a patient for~~
7 ~~health care services to another provider of health care.~~
8 ~~(c) For purposes of this section, a county social worker, a~~
9 ~~probation officer, or a custodial caregiver shall be considered a~~
10 ~~third party who may receive any of the following:~~
11 ~~(1) Medical information described in Sections 56.05 and 56.10.~~
12 ~~(2) Protected health information described in Section 164.501~~
13 ~~of Title 45 of the Code of Federal Regulations.~~
14 ~~(3) Protected health information described in subdivisions (a)~~
15 ~~to (c), inclusive.~~
16 ~~(d) Protected health information related to a minor adjudged to~~
17 ~~be a dependent child or ward of the juvenile court that is disclosed~~
18 ~~to a county social worker, probation officer, or custodial caregiver~~
19 ~~shall not be further disclosed by the recipient to any person unless~~
20 ~~the disclosure is for the purpose of coordinating medical treatment~~
21 ~~of the dependent child or ward and either of the following apply:~~
22 ~~(1) The disclosure is authorized by law.~~
23 ~~(2) The disclosure is to a provider of health care, health care~~
24 ~~service plan, or health care contractor.~~
25 ~~(e) If a provider of health care determines that the disclosure of~~
26 ~~protected health information concerning the diagnosis and~~
27 ~~treatment of any mental illness, psychiatric condition, or~~
28 ~~psychological condition of a minor adjudged to be a dependent~~
29 ~~child or ward of the juvenile court is reasonably necessary to~~
30 ~~coordinate the treatment and care of the dependent child or ward~~
31 ~~of the juvenile court, that information may be disclosed to a county~~
32 ~~social worker, probation officer, or custodial caregiver. Information~~
33 ~~concerning the diagnosis and treatment of any mental illness,~~
34 ~~psychiatric condition, or psychological condition of a minor~~
35 ~~adjudged to be a dependent child or ward of the juvenile court~~
36 ~~shall not be further disclosed by the recipient to any person unless~~
37 ~~the disclosure is for the purpose of coordinating treatment and that~~
38 ~~disclosure is authorized by law.~~

1 ~~(f) The disclosure of information pursuant to this section is not~~
2 ~~intended to limit the disclosure of information when that disclosure~~
3 ~~is required by law.~~

4 56.103. (a) A provider of health care may disclose medical
5 information to a county social worker, a probation officer, or any
6 other person who is legally authorized to have custody or care of
7 a minor for the purpose of coordinating health care services and
8 medical treatment provided to the minor.

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

17 (c) For purposes of this section, a county social worker, a
18 probation officer, or any other person who is legally authorized
19 to have custody or care of a minor shall be considered a third
20 party who may receive any of the following:

21 (1) Medical information described in Sections 56.05 and 56.10.

22 (2) Protected health information described in Section 160.103
23 of Title 45 of the Code of Federal Regulations.

24 (d) Medical information disclosed to a county social worker,
25 probation officer, or any other person who is legally authorized
26 to have custody or care of a minor shall not be further disclosed
27 by the recipient unless the disclosure is for the purpose of
28 coordinating health care services and medical treatment of the
29 minor and the disclosure is authorized by law.

30 (e) (1) If a provider of health care determines that the disclosure
31 of medical information concerning the diagnosis and treatment of
32 a mental health condition of a minor is reasonably necessary for
33 the purpose of assisting in coordinating the treatment and care of
34 the minor, that information may be disclosed to a county social
35 worker, probation officer, or any other person who is legally
36 authorized to have custody or care of the minor. The information
37 shall not be further disclosed by the recipient unless the disclosure
38 is for the purpose of coordinating mental health services and
39 treatment of the minor and the disclosure is authorized by law.

1 (2) *As used in this subdivision, “medical information” does not*
2 *include a health care provider’s notes, written or otherwise.*

3 (f) *The disclosure of information pursuant to this section is not*
4 *intended to limit the disclosure of information when that disclosure*
5 *is otherwise required by law.*

6 (g) *For purposes of this section, “minor” means a minor taken*
7 *into temporary custody or as to who a petition has been filed with*
8 *the court, or who has been adjudged to be a dependent child or*
9 *ward of the juvenile court pursuant to Section 300 or 600 of the*
10 *Welfare and Institutions Code.*

11 (h) *Nothing in this section shall be construed to limit or*
12 *otherwise effect existing protections provided for in state or federal*
13 *law.*

14 ~~SEC. 3.~~

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