

AMENDED IN SENATE JUNE 4, 2013
AMENDED IN ASSEMBLY APRIL 10, 2013
AMENDED IN ASSEMBLY MARCH 21, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1297

Introduced by Assembly Member John A. Pérez

February 22, 2013

An act to amend Section 56.10 of the Civil Code, and to amend Section 7151.15 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, as amended, John A. Pérez. Coroners: organ donation.

Existing law requires a coroner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. Existing law requires a coroner or designee to conduct a post mortem examination of a body or part that is available for or has been donated to a procurement organization in a manner and within a period compatible with the body or part's preservation for the purposes of the gift.

This bill would authorize a procurement organization, when specified circumstances are present, to notify a coroner, prior to the donor's death, that a donor has made or may make an anatomical gift, and would require a coroner to accept that notification, ~~if such~~ *whenever that* notification will facilitate the coroner's ability to conduct his or her duties in a manner and within a period compatible with the preservation of the body or part for the purposes of the gift. The bill would also require a coroner to conduct a post mortem investigation in a manner

and time period compatible with the preservation of the body or part for the purposes of the gift, thereby imposing a state-mandated local program.

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 requires the disclosure of medical information if the disclosure is compelled by a coroner when investigating deaths that may involve organ or tissue donation. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would additionally require the disclosure of medical information if the disclosure is compelled by a coroner upon notification of, or investigation of, imminent deaths that may involve organ or tissue donation pursuant to the above-described provisions.

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 shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

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 upon notification of, or investigation of, imminent deaths*
29 *that may involve organ or tissue donation pursuant to Section*
30 *7151.15 of the Health and Safety Code*, or when otherwise
31 authorized by the decedent's representative. Medical information
32 requested by the coroner under this paragraph shall be limited to
33 information regarding the patient who is the decedent and who is
34 the subject of the investigation *or who is the prospective donor*
35 and shall be disclosed to the coroner without delay upon request.

36 (9) When otherwise specifically required by law.

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

39 (1) The information may be disclosed to providers of health
40 care, health care service plans, contractors, or other health care

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

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

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

34 (4) The information may be disclosed to organized committees
35 and agents of professional societies or of medical staffs of licensed
36 hospitals, licensed health care service plans, professional standards
37 review organizations, independent medical review organizations
38 and their selected reviewers, utilization and quality control peer
39 review organizations as established by Congress in Public Law
40 97-248 in 1982, contractors, or persons or organizations insuring,

1 responsible for, or defending professional liability that a provider
2 may incur, if the committees, agents, health care service plans,
3 organizations, reviewers, contractors, or persons are engaged in
4 reviewing the competence or qualifications of health care
5 professionals or in reviewing health care services with respect to
6 medical necessity, level of care, quality of care, or justification of
7 charges.

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

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

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

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

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

38 (B) Describes functional limitations of the patient that may
39 entitle the patient to leave from work for medical reasons or limit
40 the patient's fitness to perform his or her present employment,

1 provided that no statement of medical cause is included in the
2 information disclosed.

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

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

20 (11) This part does not prevent the disclosure by a provider of
21 health care or a health care service plan to an insurance institution,
22 agent, or support organization, subject to Article 6.6 (commencing
23 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
24 Insurance Code, of medical information if the insurance institution,
25 agent, or support organization has complied with all of the
26 requirements for obtaining the information pursuant to Article 6.6
27 (commencing with Section 791) of Chapter 1 of Part 2 of Division
28 1 of the Insurance Code.

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

38 (13) The information may be disclosed to an organ procurement
39 organization or a tissue bank processing the tissue of a decedent
40 for transplantation into the body of another person, but only with

1 respect to the donating decedent, for the purpose of aiding the
2 transplant. For the purpose of this paragraph, “tissue bank” and
3 “tissue” have the same meanings as defined in Section 1635 of the
4 Health and Safety Code.

5 (14) The information may be disclosed when the disclosure is
6 otherwise specifically authorized by law, including, but not limited
7 to, the voluntary reporting, either directly or indirectly, to the
8 federal Food and Drug Administration of adverse events related
9 to drug products or medical device problems, or to disclosures
10 made pursuant to subdivisions (b) and (c) of Section 11167 of the
11 Penal Code by a person making a report pursuant to Sections
12 11165.9 and 11166 of the Penal Code, provided that those
13 disclosures concern a report made by that person.

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

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

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

1 solely upon prayer or spiritual means for healing in the practice
2 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, consistent with
12 applicable law and standards of ethical conduct, by a
13 psychotherapist, as defined in Section 1010 of the Evidence Code,
14 if the psychotherapist, in good faith, believes the disclosure is
15 necessary to prevent or lessen a serious and imminent threat to the
16 health or safety of a reasonably foreseeable victim or victims, and
17 the disclosure is made to a person or persons reasonably able to
18 prevent or lessen the threat, including the target of the threat.

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

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

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

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

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

4 (iv) Any information disclosed is not further used or disclosed
5 by the recipient in any way that would directly or indirectly violate
6 this part or the restrictions imposed by Part 164 of Title 45 of the
7 Code of Federal Regulations, including the manipulation of the
8 information in any way that might reveal individually identifiable
9 medical information.

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

12 (22) Information may be disclosed pursuant to subdivision (a)
13 of Section 15633.5 of the Welfare and Institutions Code by a person
14 required to make a report pursuant to Section 15630 of the Welfare
15 and Institutions Code, provided that the disclosure under
16 subdivision (a) of Section 15633.5 concerns a report made by that
17 person. Covered entities, as they are defined in Section 160.103
18 of Title 45 of the Code of Federal Regulations, shall comply with
19 the requirements of the Health Insurance Portability and
20 Accountability Act (HIPAA) privacy rule pursuant to subsection
21 (c) of Section 164.512 of Title 45 of the Code of Federal
22 Regulations if the disclosure is not for the purpose of public health
23 surveillance, investigation, intervention, or reporting an injury or
24 death.

25 (d) Except to the extent expressly authorized by a patient or
26 enrollee or subscriber or as provided by subdivisions (b) and (c),
27 a provider of health care, health care service plan, contractor, or
28 corporation and its subsidiaries and affiliates shall not intentionally
29 share, sell, use for marketing, or otherwise use medical information
30 for a purpose not necessary to provide health care services to the
31 patient.

32 (e) Except to the extent expressly authorized by a patient or
33 enrollee or subscriber or as provided by subdivisions (b) and (c),
34 a contractor or corporation and its subsidiaries and affiliates shall
35 not further disclose medical information regarding a patient of the
36 provider of health care or an enrollee or subscriber of a health care
37 service plan or insurer or self-insured employer received under
38 this section to a person or entity that is not engaged in providing
39 direct health care services to the patient or his or her provider of

1 health care or health care service plan or insurer or self-insured
2 employer.

3 ~~SECTION 1.~~

4 *SEC. 2.* Section 7151.15 of the Health and Safety Code is
5 amended to read:

6 7151.15. (a) A county coroner shall cooperate with
7 procurement organizations to maximize the opportunity to recover
8 anatomical gifts for the purpose of transplantation, therapy,
9 research, or education.

10 (b) If a county coroner receives notice from a procurement
11 organization that an anatomical gift might be available or was
12 made with respect to a decedent whose body is under the
13 jurisdiction of the coroner and a post mortem examination or
14 investigation is going to be performed, unless the coroner denies
15 recovery in accordance with Section 7151.20, the coroner or
16 designee shall conduct a post mortem examination or investigation
17 of the body or the part in a manner and within a period compatible
18 with its preservation for the purposes of the gift.

19 (c) A part shall not be removed from the body of a decedent
20 under the jurisdiction of a coroner for transplantation, therapy,
21 research, or education unless the part is the subject of an anatomical
22 gift. The body of a decedent under the jurisdiction of the coroner
23 shall not be delivered to a person for research or education unless
24 the body is the subject of an anatomical gift. This subdivision does
25 not preclude a coroner from performing the medico legal
26 investigation upon the body or parts of a decedent under the
27 jurisdiction of the coroner.

28 (d) Notwithstanding any other law, when an anatomical gift
29 might be available or has been made by a person whose death is
30 imminent due to the lawful withdrawal of medical treatment and
31 if that person’s body, post mortem, will be subject to the coroner’s
32 jurisdiction pursuant to Section 27491 of the Government Code,
33 a procurement organization may notify a coroner of the anatomical
34 gift, and a coroner shall accept the notification, ~~if such~~ *whenever*
35 *that* notification will facilitate the coroner’s ability to conduct a
36 post mortem examination or investigation of the body or the part
37 in a manner and within a period compatible with its preservation
38 for the purposes of the gift.

1 ~~SEC. 2.~~

2 *SEC. 3.* No reimbursement shall be made pursuant to Part 7
3 (commencing with Section 17500) of Division 4 of Title 2 of the
4 Government Code for costs mandated by the state pursuant to this
5 act. It is recognized, however, that a local agency or school district
6 may pursue any remedies to obtain reimbursement available to it
7 under Part 7 (commencing with Section 17500) and any other
8 provisions of law.

O