

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 9, 2013

SENATE BILL

No. 249

Introduced by Senator Leno
(Principal coauthor: Assembly Member Stone)

February 12, 2013

An act to amend Sections 120975, 121010, 121022, and 121025 of, and to add Section 121026 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as amended, Leno. Public health: health records: confidentiality.

Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names on a form developed by the State Department of Public Health.

This bill would require laboratories, upon request by the department, to report cases of HIV infection by name directly to the department in addition to reports to the local health officer.

Existing law authorizes state public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff to disclose personally identifying information in public health records relating to HIV or AIDS to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her.

This bill would authorize local public health agency staff to further disclose acquired or developed information to the HIV-positive person

who is the subject of the record or the health care provider who provides his or her HIV care, for that purpose.

Existing law also provides specified health care coverage to individuals under the AIDS Drug Assistance Program (ADAP) and under federal Ryan White Act-funded programs, which are administered by the State Department of Public Health. Existing law, with some exceptions, prohibits the disclosure of the results of an HIV test to any 3rd party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply. Existing law also provides that public health records related to HIV or AIDS containing personal identifying information that were developed or acquired by a state or local public agency shall be confidential and shall not be disclosed, except as otherwise provided by law or pursuant to written authorization.

This bill would authorize the State Department of Public Health, subject to specified provisions, to share with qualified entities, as defined, health records involving the diagnosis, care, and treatment of HIV or AIDS related to a beneficiary enrolled in federal Ryan White Act-funded programs who may be eligible for services under the federal Patient Protection and Affordable Care Act (PPACA), as specified. ~~The bill would provide that any willful, negligent, or malicious disclosure of those records in violation of that provision would be a misdemeanor. By establishing a new crime, this bill would impose a state-mandated local program.~~ The bill would make other related changes.

~~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-no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 120975 of the Health and Safety Code
- 2 is amended to read:
- 3 120975. To protect the privacy of individuals who are the
- 4 subject of testing for human immunodeficiency virus (HIV), the
- 5 following shall apply:

1 Except as provided in Section 1603.1, 1603.3, or 121022, no
2 person shall be compelled in any state, county, city, or other local
3 civil, criminal, administrative, legislative, or other proceedings to
4 identify or provide identifying characteristics that would identify
5 any individual who is the subject of an HIV test, as defined in
6 subdivision (c) of Section 120775.

7 SEC. 2. Section 121010 of the Health and Safety Code is
8 amended to read:

9 121010. Notwithstanding Section 120975 or 120980, the results
10 of an HIV test, as defined in subdivision (c) of Section 120775, to
11 detect antibodies to the probable causative agent of AIDS may be
12 disclosed to any of the following persons without written
13 authorization of the subject of the test:

14 (a) To the subject of the test or the subject's legal representative,
15 conservator, or to any person authorized to consent to the test
16 pursuant to subdivision (b) of Section 120990.

17 (b) To a test subject's provider of health care, as defined in
18 subdivision (d) of Section 56.05 of the Civil Code, except that for
19 purposes of this section, "provider of health care" does not include
20 a health care service plan regulated pursuant to Chapter 2.2
21 (commencing with Section 1340) of Division 2.

22 (c) To an agent or employee of the test subject's provider of
23 health care who provides direct patient care and treatment.

24 (d) To a provider of health care who procures, processes,
25 distributes, or uses a human body part donated pursuant to the
26 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
27 Section 7150) of Part 1 of Division 7).

28 (e) (1) To the designated officer of an emergency response
29 employee, and from that designated officer to an emergency
30 response employee regarding possible exposure to HIV or AIDS,
31 but only to the extent necessary to comply with provisions of the
32 federal Ryan White Comprehensive AIDS Resources Emergency
33 Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

34 (2) For purposes of this subdivision, "designated officer" and
35 "emergency response employee" have the same meaning as these
36 terms are used in the federal Ryan White Comprehensive AIDS
37 Resources Emergency Act of 1990 (Public Law 101-381; 42 U.S.C.
38 Sec. 201).

39 (3) The designated officer shall be subject to the confidentiality
40 requirements specified in Section 120980, and may be personally

1 liable for unauthorized release of any identifying information about
2 the HIV results. Further, the designated officer shall inform the
3 exposed emergency response employee that the employee is also
4 subject to the confidentiality requirements specified in Section
5 120980, and may be personally liable for unauthorized release of
6 any identifying information about the HIV test results.

7 SEC. 3. Section 121022 of the Health and Safety Code is
8 amended to read:

9 121022. (a) To ensure knowledge of current trends in the HIV
10 epidemic and to ensure that California remains competitive for
11 federal HIV and AIDS funding, health care providers and
12 laboratories shall report cases of HIV infection to the local health
13 officer using patient names on a form developed by the department.
14 Upon request by the department, laboratories shall report cases of
15 HIV infection by name directly to the department in a manner
16 consistent with subdivision (g) of Section 120130, in addition to
17 reports to the local health officer. Local health officers shall report
18 unduplicated HIV cases by name to the department on a form
19 developed by the department.

20 (b) (1) Health care providers and local health officers shall
21 submit cases of HIV infection pursuant to subdivision (a) by courier
22 service, United States Postal Service express mail or registered
23 mail, other traceable mail, person-to-person transfer, facsimile, or
24 electronically by a secure and confidential electronic reporting
25 system established by the department.

26 (2) This subdivision shall be implemented using the existing
27 resources of the department.

28 (c) The department and local health officers shall ensure
29 continued reasonable access to anonymous HIV testing through
30 alternative testing sites, as established by Section 120890, and in
31 consultation with HIV planning groups and affected stakeholders,
32 including representatives of persons living with HIV and health
33 officers.

34 (d) The department shall promulgate emergency regulations to
35 conform the relevant provisions of Article 3.5 (commencing with
36 Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the
37 California Code of Regulations, consistent with this chapter, by
38 April 17, 2007. Notwithstanding the Administrative Procedure
39 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of
40 Division 3 of Title 2 of the Government Code), if the department

1 revises the form used for reporting pursuant to subdivision (a) after
2 consideration of the reporting guidelines published by the federal
3 Centers for Disease Control and Prevention, the revised form shall
4 be implemented without being adopted as a regulation, and shall
5 be filed with the Secretary of State and printed in Title 17 of the
6 California Code of Regulations.

7 (e) Pursuant to Section 121025, reported cases of HIV infection
8 shall not be disclosed, discoverable, or compelled to be produced
9 in any civil, criminal, administrative, or other proceeding.

10 (f) State and local health department employees and contractors
11 shall be required to sign confidentiality agreements developed by
12 the department that include information related to the penalties for
13 a breach of confidentiality and the procedures for reporting a breach
14 of confidentiality, prior to accessing confidential HIV-related
15 public health records. Those agreements shall be reviewed annually
16 by either the department or the appropriate local health department.

17 (g) No person shall disclose identifying information reported
18 pursuant to subdivision (a) to the federal government, including,
19 but not limited to, any agency, employee, agent, contractor, or
20 anyone else acting on behalf of the federal government, except as
21 permitted under subdivision (b) of Section 121025.

22 (h) (1) Any potential or actual breach of confidentiality of
23 HIV-related public health records shall be investigated by the local
24 health officer, in coordination with the department, when
25 appropriate. The local health officer shall immediately report any
26 evidence of an actual breach of confidentiality of HIV-related
27 public health records at a city or county level to the department
28 and the appropriate law enforcement agency.

29 (2) The department shall investigate any potential or actual
30 breach of confidentiality of HIV-related public health records at
31 the state level, and shall report any evidence of such a breach of
32 confidentiality to an appropriate law enforcement agency.

33 (i) Any willful, negligent, or malicious disclosure of cases of
34 HIV infection reported pursuant to subdivision (a) shall be subject
35 to the penalties prescribed in Section 121025.

36 (j) Nothing in this section shall be construed to limit other
37 remedies and protections available under state or federal law.

38 SEC. 4. Section 121025 of the Health and Safety Code is
39 amended to read:

1 121025. (a) Public health records relating to human
2 immunodeficiency virus (HIV) or acquired immunodeficiency
3 syndrome (AIDS), containing personally identifying information,
4 that were developed or acquired by a state or local public health
5 agency, or an agent of that agency, shall be confidential and shall
6 not be disclosed, except as otherwise provided by law for public
7 health purposes or pursuant to a written authorization by the person
8 who is the subject of the record or by his or her guardian or
9 conservator.

10 (b) In accordance with subdivision (g) of Section 121022, a
11 state or local public health agency, or an agent of that agency, may
12 disclose personally identifying information in public health records,
13 as described in subdivision (a), to other local, state, or federal
14 public health agencies or to corroborating medical researchers,
15 when the confidential information is necessary to carry out the
16 duties of the agency or researcher in the investigation, control, or
17 surveillance of disease, as determined by the state or local public
18 health agency.

19 (c) Except as provided in paragraphs (1) to (3), inclusive, any
20 disclosure authorized by subdivision (a) or (b) shall include only
21 the information necessary for the purpose of that disclosure and
22 shall be made only upon agreement that the information will be
23 kept confidential and will not be further disclosed without written
24 authorization, as described in subdivision (a).

25 (1) Notwithstanding any other provision of law, the following
26 disclosures shall be authorized for the purpose of enhancing
27 completeness of HIV/AIDS, tuberculosis, and sexually transmitted
28 disease coinfection reporting to the federal Centers for Disease
29 Control and Prevention (CDC):

30 (A) The local public health agency HIV surveillance staff may
31 further disclose the information to the health care provider who
32 provides HIV care to the HIV-positive person who is the subject
33 of the record for the purpose of assisting in compliance with
34 subdivision (a) of Section 121022.

35 (B) Local public health agency tuberculosis control staff may
36 further disclose the information to state public health agency
37 tuberculosis control staff, who may further disclose the information,
38 without disclosing patient identifying information, to the CDC, to
39 the extent the information is requested by the CDC and permitted

1 by subdivision (b), for purposes of the investigation, control, or
2 surveillance of HIV and tuberculosis coinfections.

3 (C) Local public health agency sexually transmitted disease
4 control staff may further disclose the information to state public
5 health agency sexually transmitted disease control staff, who may
6 further disclose the information, without disclosing patient
7 identifying information, to the CDC, to the extent it is requested
8 by the CDC, and permitted by subdivision (b), for the purposes of
9 the investigation, control, or surveillance of HIV and syphilis,
10 gonorrhea, or chlamydia coinfection.

11 (2) Notwithstanding any other provision of law, the following
12 disclosures shall be authorized for the purpose of facilitating
13 appropriate HIV/AIDS medical care and treatment:

14 (A) State public health agency HIV surveillance staff, AIDS
15 Drug Assistance Program staff, and care services staff may further
16 disclose the information to local public health agency staff, who
17 may further disclose the information to the HIV-positive person
18 who is the subject of the record, or the health care provider who
19 provides his or her HIV care, for the purpose of proactively offering
20 and coordinating care and treatment services to him or her.

21 (B) AIDS Drug Assistance Program staff and care services staff
22 in the State Department of Public Health may further disclose the
23 information directly to the HIV-positive person who is the subject
24 of the record or the health care provider who provides his or her
25 HIV care, for the purpose of proactively offering and coordinating
26 care and treatment services to him or her.

27 (C) Local public health agency staff may further disclose
28 acquired or developed information to the HIV-positive person who
29 is the subject of the record or the health care provider who provides
30 his or her HIV care for the purpose of proactively offering and
31 coordinating care and treatment services to him or her.

32 (3) Notwithstanding any other provision of law, for the purpose
33 of facilitating appropriate medical care and treatment of persons
34 coinfectd with HIV, tuberculosis, and syphilis, gonorrhea, or
35 chlamydia, local public health agency sexually transmitted disease
36 control and tuberculosis control staff may further disclose the
37 information to state or local public health agency sexually
38 transmitted disease control and tuberculosis control staff, the
39 HIV-positive person who is the subject of the record, or the health

1 care provider who provides his or her HIV, tuberculosis, and
2 sexually transmitted disease care.

3 (4) For the purposes of paragraphs (2) and (3), “staff” shall not
4 include nongovernmental entities, but shall include state and local
5 contracted employees.

6 (d) No confidential public health record, as defined in
7 subdivision (c) of Section 121035, shall be disclosed, discoverable,
8 or compelled to be produced in any civil, criminal, administrative,
9 or other proceeding.

10 (e) (1) A person who negligently discloses the content of a
11 confidential public health record, as defined in subdivision (c) of
12 Section 121035, to any third party, except pursuant to a written
13 authorization, as described in subdivision (a), or as otherwise
14 authorized by law, shall be subject to a civil penalty in an amount
15 not to exceed five thousand dollars (\$5,000), plus court costs, as
16 determined by the court, which penalty and costs shall be paid to
17 the person whose record was disclosed.

18 (2) Any person who willfully or maliciously discloses the
19 content of any confidential public health record, as defined in
20 subdivision (c) of Section 121035, to any third party, except
21 pursuant to a written authorization, or as otherwise authorized by
22 law, shall be subject to a civil penalty in an amount not less than
23 five thousand dollars (\$5,000) and not more than twenty-five
24 thousand dollars (\$25,000), plus court costs, as determined by the
25 court, which penalty and costs shall be paid to the person whose
26 confidential public health record was disclosed.

27 (3) Any person who willfully, maliciously, or negligently
28 discloses the content of any confidential public health record, as
29 defined in subdivision (c) of Section 121035, to any third party,
30 except pursuant to a written authorization, or as otherwise
31 authorized by law, that results in economic, bodily, or
32 psychological harm to the person whose confidential public health
33 record was disclosed, is guilty of a misdemeanor, punishable by
34 imprisonment in a county jail for a period not to exceed one year,
35 or a fine of not to exceed twenty-five thousand dollars (\$25,000),
36 or both, plus court costs, as determined by the court, which penalty
37 and costs shall be paid to the person whose confidential public
38 health record was disclosed.

39 (4) Any person who commits any act described in paragraph
40 (1), (2), or (3), shall be liable to the person whose confidential

1 public health record was disclosed for all actual damages for
2 economic, bodily, or psychological harm that is a proximate result
3 of the act.

4 (5) Each violation of this section is a separate and actionable
5 offense.

6 (6) Nothing in this section limits or expands the right of an
7 injured person whose confidential public health record was
8 disclosed to recover damages under any other applicable law.

9 (f) In the event that a confidential public health record, as
10 defined in subdivision (c) of Section 121035, is disclosed, the
11 information shall not be used to determine employability, or
12 insurability of any person.

13 SEC. 5. Section 121026 is added to the Health and Safety Code,
14 to read:

15 121026. (a) Notwithstanding subdivision (f) of Section 120980,
16 Section 121010, subdivision (g) of Section 121022, subdivision
17 (f) of Section 121025, Section 121115, and Section 121280, the
18 State Department of Public Health may share with qualified entities
19 health records involving the diagnosis, care, and treatment of
20 human immunodeficiency virus (HIV) or acquired
21 immunodeficiency syndrome (AIDS) related to a beneficiary
22 enrolled in federal Ryan White Act funded programs who may be
23 eligible for services under the federal Patient Protection and
24 Affordable Care Act (~~PPACA~~) (Public Law 111-148), as amended
25 by the Health Care and Education Reconciliation Act of 2010
26 (Public Law 111-152). The qualified entities may share health
27 records relating to persons diagnosed with HIV/AIDS with the
28 State Department of Public Health for the purpose of ~~proactively~~
29 ~~offering and coordinating care and treatment services offered by~~
30 ~~new health coverage options offered under the PPACA, including,~~
31 ~~but not limited to, ensuring safe transitions to enrollment without~~
32 ~~disruption in Medi-Cal, the bridge programs, Medicaid expansion~~
33 ~~programs, and any insurance plan certified by the California Health~~
34 ~~Benefit Exchange (Exchange) established pursuant to Title 22~~
35 (commencing with Section 100500) of the Government Code.

36 (b) The information provided by the State Department of Public
37 Health pursuant to this section shall be limited to only the
38 information necessary for the purposes of this section and shall
39 not be further disclosed by a qualified entity, except to any or all
40 of the following:

1 (1) The person who is the subject of the record or to his or her
2 guardian or conservator.

3 (2) The provider of health care for the person with HIV or AIDS
4 to whom the information pertains.

5 (3) The Office of AIDS within the State Department of Public
6 Health.

7 (c) For purposes of this section, the following definitions shall
8 apply:

9 (1) “Contractor” means any person or entity that is a medical
10 group, independent practice association, pharmaceutical benefits
11 manager, or a medical service organization and is not a health care
12 service plan or provider of health care. ~~“Contractor” does not~~
13 ~~include insurance institutions as defined in subdivision (k) of~~
14 ~~Section 791.02 of the Insurance Code or pharmaceutical benefits~~
15 ~~managers licensed pursuant to the Knox-Keene Health Care Service~~
16 ~~Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)~~
17 ~~of Division 2 of the Health and Safety Code).~~

18 (2) “Provider of health care” means any person licensed or
19 certified pursuant to Division 2 (commencing with Section 500)
20 of the Business and Professions Code; any person licensed pursuant
21 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
22 any person certified pursuant to Division 2.5 (commencing with
23 Section 1797) of the Health and Safety Code; any clinic, health
24 dispensary, or health facility licensed pursuant to Division 2
25 (commencing with Section 1200) of the Health and Safety Code.
26 ~~“Provider of health care” does not include insurance institutions~~
27 ~~as defined in subdivision (k) of Section 791.02 of the Insurance~~
28 ~~Code.~~

29 (3) “Qualified entity” means ~~health care providers and~~
30 ~~administrative staff for one of the following, who are HIPAA~~
31 ~~trained and who have legal access to confidential HIV-related~~
32 ~~medical records any of the following:~~

33 (A) The State Department of Health Care Services.

34 (B) The California Health Benefit Exchange ~~(Exchange)~~
35 established pursuant to Title 22 (commencing with Section 100500)
36 of the Government Code.

37 (C) Medi-Cal managed care plans.

38 (D) Health plans participating in the Bridge Program.

39 (E) Health plans offered through the Exchange.

40 ~~(F) County health care services.~~

1 ~~(G) Any other medical coverage option provided pursuant to~~
2 ~~the PPACA.~~

3 ~~(H)~~

4 ~~(F) The Department of Managed Health Care.~~

5 (d) Information shared pursuant to this section shall not be
6 disclosed, discoverable, or compelled to be produced in any civil,
7 criminal, administrative, or other proceeding.

8 (e) All employees and contractors of a qualified entity who have
9 legal access to confidential HIV-related medical records shall be
10 required to sign confidentiality agreements developed by the State
11 Department of Public Health that include information related to
12 the penalties for a breach of confidentiality and the procedures for
13 reporting a breach of confidentiality, prior to accessing confidential
14 HIV-related medical records. Those agreements shall be reviewed
15 annually by either the State Department of Public Health or the
16 appropriate local health department pursuant to subdivision (f)
17 Section 121022.

18 ~~(f) (1) Any potential or actual breach of confidentiality of~~
19 ~~HIV-related public health records shall be investigated by the local~~
20 ~~health officer, in coordination with the department, when~~
21 ~~appropriate. The local health officer shall immediately report any~~
22 ~~evidence of an actual breach of confidentiality of HIV-related~~
23 ~~public health records at a city or county level to the department~~
24 ~~and the appropriate law enforcement agency as required by Section~~
25 ~~121022. Any potential or actual breach of confidentiality of~~
26 ~~HIV-related public health records shall be subject to subdivision~~
27 ~~(h) of Section 121022.~~

28 ~~(2) The department shall investigate any potential or actual~~
29 ~~breach of confidentiality of HIV-related public health records at~~
30 ~~the state level, and shall report any evidence of such a breach of~~
31 ~~confidentiality to an appropriate law enforcement agency.~~

32 ~~(g) Any willful, negligent, or malicious disclosure of reported~~
33 ~~cases of HIV infection in violation of subdivision (a) shall be~~
34 ~~subject to the penalties prescribed in Section 121025.~~

35 ~~(h) Nothing in this section shall be construed to limit other~~
36 ~~remedies and protections available under state or federal law,~~
37 ~~including, but not limited to, the federal Health Insurance~~
38 ~~Portability and Accountability Act of 1996 (Public Law 104-191).~~

39 (i) If a confidential public health record, as defined in
40 subdivision (c) of Section 121035, is disclosed, the information

1 shall not be used to determine employability, or insurability of any
2 person as provided under subdivision (f) of Section 120980,
3 subdivision (f) of Section 121025, Section 121115, and Section
4 121280.

5 (j)

6 (f) This section shall ~~only~~ be implemented *only* to the extent
7 permitted by federal law.

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