

Senate Bill No. 249

Passed the Senate September 10, 2013

Secretary of the Senate

Passed the Assembly September 9, 2013

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2013, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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. Existing law, commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, requires a report generated pursuant to that provision by a laboratory to be submitted electronically in a manner specified by the department.

This bill would authorize both the local health officer and the department to access reports of HIV infection that are electronically submitted by laboratories pursuant to the above-described provision.

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 that person's HIV care, for the purpose of proactively offering and coordinating care and treatment services to that person.

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 that person's 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, and qualified entities, as defined, to share with each other 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 make other related changes.

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

SECTION 1. Section 120975 of the Health and Safety Code is amended to read:

120975. To protect the privacy of individuals who are the subject of testing for human immunodeficiency virus (HIV), the following shall apply:

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

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

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

(a) To the subject of the test or the subject's legal representative, conservator, or to any person authorized to consent to the test

pursuant to Section 120990 of this code and Section 6926 of the Family Code.

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

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

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

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

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

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

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

121022. (a) To ensure knowledge of current trends in the HIV epidemic and to ensure that California remains competitive for federal HIV and AIDS funding, health care providers and laboratories shall report cases of HIV infection to the local health officer using patient names on a form developed by the department. Both the local health officer and the department shall be authorized

to access reports of HIV infection that are electronically submitted by laboratories pursuant to subdivision (g) of Section 120130. Local health officers shall report unduplicated HIV cases by name to the department on a form developed by the department.

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

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

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

(d) The department shall promulgate emergency regulations to conform the relevant provisions of Article 3.5 (commencing with Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the California Code of Regulations, consistent with this chapter, by April 17, 2007. Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), if the department revises the form used for reporting pursuant to subdivision (a) after consideration of the reporting guidelines published by the federal Centers for Disease Control and Prevention, the revised form shall be implemented without being adopted as a regulation, and shall be filed with the Secretary of State and printed in Title 17 of the California Code of Regulations.

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

(f) State and local health department employees and contractors shall be required to sign confidentiality agreements developed by the department that include information related to the penalties for a breach of confidentiality and the procedures for reporting a breach of confidentiality, prior to accessing confidential HIV-related

public health records. Those agreements shall be reviewed annually by either the department or the appropriate local health department.

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

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

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

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

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

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

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

(b) In accordance with subdivision (g) of Section 121022, a state or local public health agency, or an agent of that agency, may disclose personally identifying information in public health records, as described in subdivision (a), to other local, state, or federal public health agencies or to corroborating medical researchers, when the confidential information is necessary to carry out the

duties of the agency or researcher in the investigation, control, or surveillance of disease, as determined by the state or local public health agency.

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

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

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

(B) Local public health agency tuberculosis control staff may further disclose the information to state public health agency tuberculosis control staff, who may further disclose the information, without disclosing patient identifying information, to the CDC, to the extent the information is requested by the CDC and permitted by subdivision (b), for purposes of the investigation, control, or surveillance of HIV and tuberculosis coinfections.

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

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

(A) State public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff may further disclose the information 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.

(B) AIDS Drug Assistance Program staff and care services staff in the State Department of Public Health may further disclose the information directly 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.

(C) Local public health agency staff may 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 the purpose of proactively offering and coordinating care and treatment services to him or her.

(3) Notwithstanding any other provision of law, for the purpose of facilitating appropriate medical care and treatment of persons coinfecting with HIV, tuberculosis, and syphilis, gonorrhea, or chlamydia, local public health agency sexually transmitted disease control and tuberculosis control staff may further disclose the information to state or local public health agency sexually transmitted disease control and tuberculosis control staff, the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV, tuberculosis, and sexually transmitted disease care.

(4) For the purposes of paragraphs (2) and (3), “staff” shall not include nongovernmental entities, but shall include state and local contracted employees who work within state and local public health departments.

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

(e) (1) A person who negligently discloses the content of a confidential public health record, as defined in subdivision (c) of Section 121035, to any third party, except pursuant to a written authorization, as described in subdivision (a), or as otherwise authorized by law, shall be subject to a civil penalty in an amount not to exceed five thousand dollars (\$5,000), plus court costs, as

determined by the court, which penalty and costs shall be paid to the person whose record was disclosed.

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

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

(4) Any person who commits any act described in paragraph (1), (2), or (3), shall be liable to the person whose confidential public health record was disclosed for all actual damages for economic, bodily, or psychological harm that is a proximate result of the act.

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

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

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

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

121026. (a) Notwithstanding subdivision (f) of Section 120980, Section 121010, subdivision (g) of Section 121022, subdivision (f) of Section 121025, Section 121115, and Section 121280, the State Department of Public Health and qualified entities may share with each other health records involving the diagnosis, care, and treatment of human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (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 (Public Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152). The qualified entities, who shall be covered entities under the Health Insurance Portability and Accountability Act (42 U.S.C. Sec. 300gg) and the final regulations issued pursuant to the act by the United States Department of Health and Human Services (45 C.F.R. Parts 160 and 164), may share records only for the purpose of enrolling the beneficiary in Medi-Cal, the bridge programs, Medicaid expansion programs, and any insurance plan certified by the California Health Benefit Exchange established pursuant to Title 22 (commencing with Section 100500) of the Government Code, or any other programs authorized under the federal Patient Protection and Affordable Care Act (Public Law 111-148), and for the purpose of continuing his or her access to those programs and plans without disruption.

(b) The information provided by the State Department of Public Health pursuant to this section shall be limited to only the information necessary for the purposes of this section and shall not include HIV or AIDS surveillance data. This information shall not be further disclosed by a qualified entity, except to any or all of the following as necessary for the purposes of this section:

- (1) The person who is the subject of the record or to his or her guardian or conservator.
- (2) The provider of health care for the person with HIV or AIDS to whom the information pertains.
- (3) The Office of AIDS within the State Department of Public Health.

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

- (1) “Contractor” means any person or entity that is a medical group, independent practice association, pharmaceutical benefits

manager, or a medical service organization and is not a health care service plan or provider of health care.

(2) “Provider of health care” means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

(3) “Qualified entity” means any of the following:

(A) The State Department of Health Care Services.

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

(C) Medi-Cal managed care plans.

(D) Health plans participating in the Bridge Program.

(E) Health plans offered through the Exchange.

(F) County health departments delivering HIV or AIDS health care services.

(d) Notwithstanding any other law, information shared pursuant to this section shall not be disclosed, discoverable, or compelled to be produced in any civil, criminal, administrative, or other proceeding.

(e) This section shall be implemented only to the extent permitted by federal law. All employees and contractors of a qualified entity who have access to confidential HIV-related medical records pursuant to this section shall be subject to, and all information shared pursuant to this section shall be protected in accordance with, the federal Health Insurance Portability and Accountability Act (42 U.S.C. Sec. 300gg) and the final regulations issued pursuant to that act by the United States Department of Health and Human Services (45 C.F.R. Parts 160 and 164), the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), and the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Part 2 of Division 1 of the Insurance Code).

Approved _____, 2013

Governor