

ASSEMBLY BILL

No. 2119

Introduced by Assembly Member Chu

February 17, 2016

An act to amend Section 56.10 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 2119, as introduced, Chu. Medical information: disclosure: medical examiners and forensic pathologists.

Existing law, the Confidentiality of Medical Information Act, generally prohibits a provider of health care, a health care service plan, or a contractor from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization. The act, as exceptions to this prohibition, requires disclosure of medical information by a provider of health care, a health care service plan, or a contractor to a coroner when requested by the coroner in the course of investigation for specified purposes, and authorizes disclosure when requested by the coroner in the course of investigation for any other purpose. Under existing law, medical information obtained in the course of providing certain services to specified persons is confidential and not subject to disclosure under these exceptions.

This bill would subject medical information obtained in the course of providing those services to disclosure under the above-described exceptions, would expand those exceptions to include medical information requested by a medical examiner or forensic pathologist, and would provide that a medical examiner, forensic pathologist, or

coroner is prohibited from disclosing medical information obtained pursuant to those exceptions to a 3rd party without a court order.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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) A provider of health care, health care service plan,
4 or contractor shall not disclose medical information regarding a
5 patient of the provider of health care or an enrollee or subscriber
6 of a health care service plan without first obtaining an
7 authorization, except as provided in subdivision (b) or (c).

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

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

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

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

19 (4) By a board, commission, or administrative agency pursuant
20 to an investigative subpoena issued under Article 2 (commencing
21 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
22 2 of the Government Code.

23 (5) By an arbitrator or arbitration panel, when arbitration is
24 lawfully requested by either party, pursuant to a subpoena duces
25 tecum issued under Section 1282.6 of the Code of Civil Procedure,
26 or another provision authorizing discovery in a proceeding before
27 an arbitrator or arbitration panel.

28 (6) By a search warrant lawfully issued to a governmental law
29 enforcement agency.

30 (7) By the patient or the patient’s representative pursuant to
31 Chapter 1 (commencing with Section 123100) of Part 1 of Division
32 106 of the Health and Safety Code.

1 (8) By a *medical examiner, forensic pathologist, or coroner,*
2 when requested in the course of an investigation by the *medical*
3 *examiner, forensic pathologist, or coroner's* office for the purpose
4 of identifying the decedent or locating next of kin, or when
5 investigating deaths that may involve public health concerns, organ
6 or tissue donation, child abuse, elder abuse, suicides, poisonings,
7 accidents, sudden infant deaths, suspicious deaths, unknown deaths,
8 or criminal deaths, or upon notification of, or investigation of,
9 imminent deaths that may involve organ or tissue donation pursuant
10 to Section 7151.15 of the Health and Safety Code, or when
11 otherwise authorized by the decedent's representative. Medical
12 information requested by the *medical examiner, forensic*
13 *pathologist, or coroner* under this paragraph shall be limited to
14 information regarding the patient who is the decedent and who is
15 the subject of the investigation or who is the prospective donor
16 and shall be disclosed to the *medical examiner, forensic*
17 *pathologist, or coroner* without delay upon request. *A medical*
18 *examiner, forensic pathologist, or coroner shall not disclose*
19 *medical information obtained pursuant to this paragraph to a third*
20 *party without a court order. Notwithstanding any other law,*
21 *Sections 4514 and 5328 of the Welfare and Institutions Code shall*
22 *not apply to information requested pursuant to this paragraph.*

23 (9) When otherwise specifically required by law.

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

26 (1) The information may be disclosed to providers of health
27 care, health care service plans, contractors, or other health care
28 professionals or facilities for purposes of diagnosis or treatment
29 of the patient. This includes, in an emergency situation, the
30 communication of patient information by radio transmission or
31 other means between emergency medical personnel at the scene
32 of an emergency, or in an emergency medical transport vehicle,
33 and emergency medical personnel at a health facility licensed
34 pursuant to Chapter 2 (commencing with Section 1250) of Division
35 2 of the Health and Safety Code.

36 (2) The information may be disclosed to an insurer, employer,
37 health care service plan, hospital service plan, employee benefit
38 plan, governmental authority, contractor, or other person or entity
39 responsible for paying for health care services rendered to the
40 patient, to the extent necessary to allow responsibility for payment

1 to be determined and payment to be made. If (A) the patient is, by
2 reason of a comatose or other disabling medical condition, unable
3 to consent to the disclosure of medical information and (B) no
4 other arrangements have been made to pay for the health care
5 services being rendered to the patient, the information may be
6 disclosed to a governmental authority to the extent necessary to
7 determine the patient's eligibility for, and to obtain, payment under
8 a governmental program for health care services provided to the
9 patient. The information may also be disclosed to another provider
10 of health care or health care service plan as necessary to assist the
11 other provider or health care service plan in obtaining payment
12 for health care services rendered by that provider of health care or
13 health care service plan to the patient.

14 (3) The information may be disclosed to a person or entity that
15 provides billing, claims management, medical data processing, or
16 other administrative services for providers of health care or health
17 care service plans or for any of the persons or entities specified in
18 paragraph (2). However, information so disclosed shall not be
19 further disclosed by the recipient in a way that would violate this
20 part.

21 (4) The information may be disclosed to organized committees
22 and agents of professional societies or of medical staffs of licensed
23 hospitals, licensed health care service plans, professional standards
24 review organizations, independent medical review organizations
25 and their selected reviewers, utilization and quality control peer
26 review organizations as established by Congress in Public Law
27 97-248 in 1982, contractors, or persons or organizations insuring,
28 responsible for, or defending professional liability that a provider
29 may incur, if the committees, agents, health care service plans,
30 organizations, reviewers, contractors, or persons are engaged in
31 reviewing the competence or qualifications of health care
32 professionals or in reviewing health care services with respect to
33 medical necessity, level of care, quality of care, or justification of
34 charges.

35 (5) The information in the possession of a provider of health
36 care or health care service plan may be reviewed by a private or
37 public body responsible for licensing or accrediting the provider
38 of health care or health care service plan. However, no
39 patient-identifying medical information may be removed from the
40 premises except as expressly permitted or required elsewhere by

1 law, nor shall that information be further disclosed by the recipient
2 in a way that would violate this part.

3 (6) The information may be disclosed to ~~the~~ *a medical examiner,*
4 *forensic pathologist, or county coroner* in the course of an
5 investigation by the *medical examiner, forensic pathologist, or*
6 *coroner's office* when requested for all purposes not included in
7 paragraph (8) of subdivision (b). *A medical examiner, forensic*
8 *pathologist, or coroner shall not disclose medical information*
9 *obtained pursuant to this paragraph to a third party without a*
10 *court order. Notwithstanding any other law, Sections 4514 and*
11 *5328 of the Welfare and Institutions Code shall not apply to*
12 *information requested pursuant to this paragraph.*

13 (7) The information may be disclosed to public agencies, clinical
14 investigators, including investigators conducting epidemiologic
15 studies, health care research organizations, and accredited public
16 or private nonprofit educational or health care institutions for bona
17 fide research purposes. However, no information so disclosed shall
18 be further disclosed by the recipient in a way that would disclose
19 the identity of a patient or violate this part.

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

25 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
26 or challenge to which the employer and the employee are parties
27 and in which the patient has placed in issue his or her medical
28 history, mental or physical condition, or treatment, provided that
29 information may only be used or disclosed in connection with that
30 proceeding.

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

36 (9) Unless the provider of health care or a health care service
37 plan is notified in writing of an agreement by the sponsor, insurer,
38 or administrator to the contrary, the information may be disclosed
39 to a sponsor, insurer, or administrator of a group or individual
40 insured or uninsured plan or policy that the patient seeks coverage

1 by or benefits from, if the information was created by the provider
2 of health care or health care service plan as the result of services
3 conducted at the specific prior written request and expense of the
4 sponsor, insurer, or administrator for the purpose of evaluating the
5 application for coverage or benefits.

6 (10) The information may be disclosed to a health care service
7 plan by providers of health care that contract with the health care
8 service plan and may be transferred among providers of health
9 care that contract with the health care service plan, for the purpose
10 of administering the health care service plan. Medical information
11 shall not otherwise be disclosed by a health care service plan except
12 in accordance with this part.

13 (11) This part does not prevent the disclosure by a provider of
14 health care or a health care service plan to an insurance institution,
15 agent, or support organization, subject to Article 6.6 (commencing
16 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
17 Insurance Code, of medical information if the insurance institution,
18 agent, or support organization has complied with all of the
19 requirements for obtaining the information pursuant to Article 6.6
20 (commencing with Section 791) of Chapter 1 of Part 2 of Division
21 1 of the Insurance Code.

22 (12) The information relevant to the patient’s condition, care,
23 and treatment provided may be disclosed to a probate court
24 investigator in the course of an investigation required or authorized
25 in a conservatorship proceeding under the
26 Guardianship-Conservatorship Law as defined in Section 1400 of
27 the Probate Code, or to a probate court investigator, probation
28 officer, or domestic relations investigator engaged in determining
29 the need for an initial guardianship or continuation of an existing
30 guardianship.

31 (13) The information may be disclosed to an organ procurement
32 organization or a tissue bank processing the tissue of a decedent
33 for transplantation into the body of another person, but only with
34 respect to the donating decedent, for the purpose of aiding the
35 transplant. For the purpose of this paragraph, “tissue bank” and
36 “tissue” have the same meanings as defined in Section 1635 of the
37 Health and Safety Code.

38 (14) The information may be disclosed when the disclosure is
39 otherwise specifically authorized by law, including, but not limited
40 to, the voluntary reporting, either directly or indirectly, to the

1 federal Food and Drug Administration of adverse events related
2 to drug products or medical device problems, or to disclosures
3 made pursuant to subdivisions (b) and (c) of Section 11167 of the
4 Penal Code by a person making a report pursuant to Sections
5 11165.9 and 11166 of the Penal Code, provided that those
6 disclosures concern a report made by that person.

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

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

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

36 (18) The information may be disclosed, as permitted by state
37 and federal law or regulation, to a local health department for the
38 purpose of preventing or controlling disease, injury, or disability,
39 including, but not limited to, the reporting of disease, injury, vital
40 events, including, but not limited to, birth or death, and the conduct

1 of public health surveillance, public health investigations, and
2 public health interventions, as authorized or required by state or
3 federal law or regulation.

4 (19) The information may be disclosed, consistent with
5 applicable law and standards of ethical conduct, by a
6 psychotherapist, as defined in Section 1010 of the Evidence Code,
7 if the psychotherapist, in good faith, believes the disclosure is
8 necessary to prevent or lessen a serious and imminent threat to the
9 health or safety of a reasonably foreseeable victim or victims, and
10 the disclosure is made to a person or persons reasonably able to
11 prevent or lessen the threat, including the target of the threat.

12 (20) The information may be disclosed as described in Section
13 56.103.

14 (21) (A) The information may be disclosed to an employee
15 welfare benefit plan, as defined under Section 3(1) of the Employee
16 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
17 which is formed under Section 302(c)(5) of the Taft-Hartley Act
18 (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
19 benefit plan provides medical care, and may also be disclosed to
20 an entity contracting with the employee welfare benefit plan for
21 billing, claims management, medical data processing, or other
22 administrative services related to the provision of medical care to
23 persons enrolled in the employee welfare benefit plan for health
24 care coverage, if all of the following conditions are met:

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

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

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

36 (iv) Any information disclosed is not further used or disclosed
37 by the recipient in any way that would directly or indirectly violate
38 this part or the restrictions imposed by Part 164 of Title 45 of the
39 Code of Federal Regulations, including the manipulation of the

1 information in any way that might reveal individually identifiable
2 medical information.

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

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

18 (d) Except to the extent expressly authorized by a patient,
19 enrollee, or subscriber, or as provided by subdivisions (b) and (c),
20 a provider of health care, health care service plan, contractor, or
21 corporation and its subsidiaries and affiliates shall not intentionally
22 share, sell, use for marketing, or otherwise use medical information
23 for a purpose not necessary to provide health care services to the
24 patient.

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

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