

**ASSEMBLY BILL**

**No. 2688**

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**Introduced by Assembly Member Gordon**

February 19, 2016

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An act to amend Section 56.05 of the Civil Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2688, as introduced, Gordon. Medical information privacy: commercial health monitoring device.

Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, including provisions relating to the confidentiality of health records. HIPAA prohibits a covered entity that uses electronic means to perform HIPAA-covered transactions, from using or disclosing personal health information except pursuant to a written authorization signed by the patient or for treatment, payment, or health care operations. Notwithstanding those provisions, HIPAA allows a covered entity to maintain a directory of patients in its facility for specified purposes, and to disclose the protected health information of a patient to family members, relatives, or other persons identified by the patient, if certain conditions are met. Covered entities include health plans, health care clearinghouses, such as billing services and community health information systems, and health care providers that transmit health care data in a way that is regulated by HIPAA. HIPAA further provides that if its provisions conflict with a provision of state law, the provision that is most protective of patient privacy prevails.

Existing law, the Confidentiality of Medical Information Act, prohibits a provider of health care, a health care service plan, a contractor, a

corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. A violation of the provisions of this act that results in economic loss or personal injury to a patient is a crime.

The bill would include in the definition of “medical information” for these purposes any individually identifiable information in possession of or derived from a consumer health monitoring device, as defined.

By expanding the definition of an existing crime, this bill would impose a state-mandated local program by creating new crimes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 56.05 of the Civil Code is amended to  
2 read:  
3 56.05. For purposes of this part:  
4 (a) “Authorization” means permission granted in accordance  
5 with Section 56.11 or 56.21 for the disclosure of medical  
6 information.  
7 (b) “Authorized recipient” means any person who is authorized  
8 to receive medical information pursuant to Section 56.10 or 56.20.  
9 (c) “Confidential communications request” means a request by  
10 a subscriber or enrollee that health care service plan  
11 communications containing medical information be communicated  
12 to him or her at a specific mail or email address or specific  
13 telephone number, as designated by the subscriber or enrollee.  
14 (d) “Contractor” means any person or entity that is a medical  
15 group, independent practice association, pharmaceutical benefits  
16 manager, or a medical service organization and is not a health care

1 service plan or provider of health care. “Contractor” does not  
2 include insurance institutions as defined in subdivision (k) of  
3 Section 791.02 of the Insurance Code or pharmaceutical benefits  
4 managers licensed pursuant to the Knox-Keene Health Care Service  
5 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)  
6 of Division 2 of the Health and Safety Code).

7 (e) “Endanger” means that the subscriber or enrollee fears that  
8 disclosure of his or her medical information could subject the  
9 subscriber or enrollee to harassment or abuse.

10 (f) “Enrollee” has the same meaning as that term is defined in  
11 Section 1345 of the Health and Safety Code.

12 (g) “Health care service plan” means any entity regulated  
13 pursuant to the Knox-Keene Health Care Service Plan Act of 1975  
14 (Chapter 2.2 (commencing with Section 1340) of Division 2 of  
15 the Health and Safety Code).

16 (h) “Licensed health care professional” means any person  
17 licensed or certified pursuant to Division 2 (commencing with  
18 Section 500) of the Business and Professions Code, the Osteopathic  
19 Initiative Act or the Chiropractic Initiative Act, or Division 2.5  
20 (commencing with Section 1797) of the Health and Safety Code.

21 (i) “Marketing” means to make a communication about a product  
22 or service that encourages recipients of the communication to  
23 purchase or use the product or service.

24 “Marketing” does not include any of the following:

25 (1) Communications made orally or in writing for which the  
26 communicator does not receive direct or indirect remuneration,  
27 including, but not limited to, gifts, fees, payments, subsidies, or  
28 other economic benefits, from a third party for making the  
29 communication.

30 (2) Communications made to current enrollees solely for the  
31 purpose of describing a provider’s participation in an existing  
32 health care provider network or health plan network of a  
33 Knox-Keene licensed health plan to which the enrollees already  
34 subscribe; communications made to current enrollees solely for  
35 the purpose of describing if, and the extent to which, a product or  
36 service, or payment for a product or service, is provided by a  
37 provider, contractor, or plan or included in a plan of benefits of a  
38 Knox-Keene licensed health plan to which the enrollees already  
39 subscribe; or communications made to plan enrollees describing  
40 the availability of more cost-effective pharmaceuticals.

(3) Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual's adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:

(A) The individual receiving the communication is notified in the communication in typeface no smaller than 14-point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.

(B) The individual is provided the opportunity to opt out of receiving future remunerated communications.

(C) The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free number of the health care provider, contractor, or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt out request.

(j) "Medical information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, *commercial health monitoring device*, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment. "Individually identifiable" means that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient's name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity.

1 (k) “Patient” means any natural person, whether or not still  
2 living, who received health care services from a provider of health  
3 care and to whom medical information pertains.

4 (l) “Pharmaceutical company” means any company or business,  
5 or an agent or representative thereof, that manufactures, sells, or  
6 distributes pharmaceuticals, medications, or prescription drugs.  
7 “Pharmaceutical company” does not include a pharmaceutical  
8 benefits manager, as included in subdivision (c), or a provider of  
9 health care.

10 (m) “Provider of health care” means any person licensed or  
11 certified pursuant to Division 2 (commencing with Section 500)  
12 of the Business and Professions Code; any person licensed pursuant  
13 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;  
14 any person certified pursuant to Division 2.5 (commencing with  
15 Section 1797) of the Health and Safety Code; any clinic, health  
16 dispensary, or health facility licensed pursuant to Division 2  
17 (commencing with Section 1200) of the Health and Safety Code.  
18 “Provider of health care” does not include insurance institutions  
19 as defined in subdivision (k) of Section 791.02 of the Insurance  
20 Code.

21 (n) “Sensitive services” means all health care services described  
22 in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family  
23 Code, and Sections 121020 and 124260 of the Health and Safety  
24 Code, obtained by a patient at or above the minimum age specified  
25 for consenting to the service specified in the section.

26 (o) “Subscriber” has the same meaning as that term is defined  
27 in Section 1345 of the Health and Safety Code.

28 (p) “*commercial health monitoring device*” means a device  
29 capable of connecting to the Internet that uses sensors to collect  
30 biometric or physiologic data while in contact with the individual.

31 SEC. 2. No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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