

AMENDED IN ASSEMBLY JULY 3, 2003
AMENDED IN ASSEMBLY JUNE 19, 2003
AMENDED IN SENATE MAY 6, 2003

SENATE BILL

No. 598

Introduced by Senator Machado

February 20, 2003

An act to ~~repeal and add~~ *amend* Section 56.104 of the Civil Code, relating to confidentiality of medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 598, as amended, Machado. Confidentiality of medical information: psychotherapy.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor.

This bill would ~~delete~~ *except from* those provisions. ~~The bill would instead prohibit a provider of health care, health care service plan, or contractor from using or disclosing psychotherapy notes, as defined, without authorization, unless for a specified purpose. Since a violation of these provisions would be punishable as a misdemeanor, the bill would create a new crime, thereby imposing a state-mandated local program.~~

~~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~~ *specified disclosures that are made for the purpose of diagnosis or treatment of a patient.*

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

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

1 ~~SECTION 1. Section 56.104 of the Civil Code is repealed.~~

2 SECTION 1. *Section 56.104 of the Civil Code is amended to*
3 *read:*

4 56.104. (a) Notwithstanding subdivision (c) of Section
5 56.10, *except as authorized in paragraph (1) of subdivision (c) of*
6 *Section 56.10*, no provider of health care, health care service plan,
7 or contractor may release medical information to persons or
8 entities authorized by law to receive that information pursuant to
9 subdivision (c) of Section 56.10, if the requested information
10 specifically relates to the patient’s participation in outpatient
11 treatment with a psychotherapist, unless the person or entity
12 requesting that information submits to the patient pursuant to
13 subdivision (b) and to the provider of health care, health care
14 service plan, or contractor a written request, signed by the person
15 requesting the information or an authorized agent of the entity
16 requesting the information, that includes all of the following:

17 (1) The specific information relating to a patient’s participation
18 in outpatient treatment with a psychotherapist being requested and
19 its specific intended use or uses.

20 (2) The length of time during which the information will be
21 kept before being destroyed or disposed of. A person or entity may
22 extend that timeframe, provided that the person or entity notifies
23 the provider, plan, or contractor of the extension. Any notification
24 of an extension shall include the specific reason for the extension,
25 the intended use or uses of the information during the extended
26 time, and the expected date of the destruction of the information.

27 (3) A statement that the information will not be used for any
28 purpose other than its intended use.

29 (4) A statement that the person or entity requesting the
30 information will destroy the information and all copies in the



1 person’s or entity’s possession or control, will cause it to be
2 destroyed, or will return the information and all copies of it before
3 or immediately after the length of time specified in paragraph (2)
4 has expired.

5 (b) The person or entity requesting the information shall
6 submit a copy of the written request required by this section to the
7 patient within 30 days of receipt of the information requested,
8 unless the patient has signed a written waiver in the form of a letter
9 signed and submitted by the patient to the provider of health care
10 or health care service plan waiving notification.

11 (c) For purposes of this section, “psychotherapist” means a
12 person who is both a “psychotherapist” as defined in Section 1010
13 of the Evidence Code and a “provider of health care” as defined
14 in subdivision ~~(d)~~ (i) of Section 56.05 of the Civil Code.

15 (d) This section does not apply to the disclosure or use of
16 medical information by a law enforcement agency or a regulatory
17 agency when required for an investigation of unlawful activity or
18 for licensing, certification, or regulatory purposes, unless the
19 disclosure is otherwise prohibited by law.

20 (e) Nothing in this section shall be construed to grant any
21 additional authority to a provider of health care, health care service
22 plan, or contractor to disclose information to a person or entity
23 without the patient’s consent.

24 ~~SEC. 2. Section 56.104 is added to the Civil Code, to read:~~

25 ~~56.104. (a) Notwithstanding subdivision (c) of Section~~
26 ~~56.10, a provider of health care, health care service plan, or~~
27 ~~contractor shall obtain an authorization for the use or disclosure of~~
28 ~~psychotherapy notes, except for any of the following purposes:~~

29 ~~(1) For use by the originator of the psychotherapy notes for~~
30 ~~treatment.~~

31 ~~(2) For use or disclosure by the provider of health care, health~~
32 ~~care service plan, or contractor for its own training programs in~~
33 ~~which students, trainees, or practitioners in mental health learn~~
34 ~~under supervision to practice or improve their skills in group, joint~~
35 ~~family, or individual counseling, provided that the psychotherapy~~
36 ~~notes used for these purposes have personally identifiable patient~~
37 ~~information removed.~~

38 ~~(3) For use or disclosure by the provider of health care, health~~
39 ~~care service plan, or contractor to defend itself in a legal action or~~



1 other proceeding brought by the individual whose treatment is
2 documented in the psychotherapy notes.

3 (4) To use or disclose psychotherapy notes to the extent that the
4 use or disclosure is required by law and the use or disclosure
5 complies with, and is limited to, the relevant requirements of that
6 law.

7 (5) To use or disclose psychotherapy notes to a law
8 enforcement agency or a regulatory agency if required for an
9 investigation of unlawful activity or for licensing, certification, or
10 regulatory purposes, but only with respect to the originator of the
11 psychotherapy notes for treatment, and only to the extent that the
12 disclosure is not otherwise prohibited by law.

13 (6) To use or disclose psychotherapy notes pursuant to
14 paragraph (6) of subdivision (c) of Section 56.10.

15 (7) To use or disclose psychotherapy notes by a provider of
16 health care, health care service plan, or contractor, consistent with
17 applicable law and standards of ethical conduct, if both of the
18 following apply:

19 (A) The provider of health care, health care service plan, or
20 contractor, in good faith, believes the use or disclosure is necessary
21 to prevent or lessen a serious and imminent threat to the safety of
22 a person or the public.

23 (B) The disclosure is made to any person who is reasonably
24 able to prevent or lessen the threat described in subparagraph (A),
25 including the target of the threat.

26 (b) A provider of health care, health care service plan, or
27 contractor shall make reasonable efforts to limit medical
28 information to the minimum that is necessary to accomplish the
29 intended purpose of the use, disclosure, or request.

30 (c) For purposes of this section, “psychotherapy notes” means
31 notes recorded in any medium by a person who is both a
32 “psychotherapist” as defined in Section 1010 of the Evidence
33 Code and a “provider of health care” as defined in subdivision (i)
34 of Section 56.05, documenting or analyzing the contents of
35 conversation during a private counseling session or a group, joint,
36 or family counseling session and that are separated from the rest
37 of the individual’s medical record. “Psychotherapy notes”
38 exclude medication prescription and monitoring, counseling
39 sessions start and stop times, the modalities and frequencies of
40 treatment furnished, results of clinic tests, and any summary of the



1 following items: diagnosis, functional status, the treatment plan,
2 symptoms, and the prognosis and progress to date.

3 (d) For purposes of this section, “treatment” means those
4 activities as described in paragraph (1) of subdivision (e) of
5 Section 56.10.

6 ~~SEC. 3.—No reimbursement is required by this act pursuant to~~
7 ~~Section 6 of Article XIII B of the California Constitution because~~
8 ~~the only costs that may be incurred by a local agency or school~~
9 ~~district will be incurred because this act creates a new crime or~~
10 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
11 ~~for a crime or infraction, within the meaning of Section 17556 of~~
12 ~~the Government Code, or changes the definition of a crime within~~
13 ~~the meaning of Section 6 of Article XIII B of the California~~
14 ~~Constitution.~~

