

AMENDED IN SENATE JUNE 20, 2006

AMENDED IN ASSEMBLY APRIL 26, 2006

AMENDED IN ASSEMBLY APRIL 6, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 3013

Introduced by Assembly Member Koretz
(Coauthor: Assembly Member Leslie)

February 24, 2006

An act to *amend Section 56.16 of*, and to add Sections 56.1005 and 56.1007 to, ~~and to repeal Section 56.16 of~~, the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 3013, as amended, Koretz. Medical information: disclosures.

The state Confidentiality of Medical Information Act prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, 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.

Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in economic loss or personal injury to a patient, it is punishable as a misdemeanor.

The federal Health Insurance Portability and Accountability Act (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 disclose the protected health information of a patient to family members, relatives, or other persons identified by the patient, if certain conditions are met. HIPAA further provides that if its provisions conflict with a provision of state law, the provision that is most protective of patient privacy prevails.

The state Confidentiality of Medical Information Act allows a provider of health care, upon an inquiry concerning a specific patient, to release at its discretion a patient's name, address, age, and sex; a general description of the reason for treatment; the general nature of the injury, burn, poisoning, or other condition; the general condition of the patient; and any information that is not medical information, as defined, unless there is a specific written request by the patient to prohibit that release.

This bill would ~~delete~~ *revise* that latter provision *to have it apply only to a general acute care hospital, as defined, in specified situations, and* ~~instead~~ would add to the state Confidentiality of Medical Information Act, the HIPAA provisions related to patient directories and medical information disclosures to family members, relatives, or other persons identified by a patient, thereby requiring a provider of health care, health care service plan, or contractor to comply with those provisions.

By expanding the definition of a crime under the Confidentiality of Medical Information Act, this bill would impose 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.

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 56.1005 is added to the Civil Code, to
2 read:

3 56.1005. (a) Except when an objection is expressed in
4 accordance with subdivision (b) or (c), a provider of health care,
5 health care service plan, or contractor may do any of the
6 following:

7 (1) Use the following medical information to maintain a
8 directory of patients in its facility:

9 (A) The patient's name.

10 (B) The patient's location in the facility.

11 (C) The patient's condition described in general terms that
12 does not communicate specific medical information about the
13 patient.

14 (D) The patient's religious affiliation.

15 (2) Disclose for directory purposes that information to either
16 of the following:

17 (A) A member of the clergy.

18 (B) Except for religious affiliation, any other person who asks
19 for the patient by name.

20 (b) A provider of health care, health care service plan, or
21 contractor shall inform a patient of the medical information that
22 it may include in a directory and the persons to whom it may
23 disclose that information, including disclosures to clergy of
24 information regarding religious affiliation, and provide the
25 patient with the opportunity to restrict or prohibit some or all of
26 the uses or disclosures permitted by subdivision (a).

27 (c) If the opportunity to object to uses or disclosures required
28 by subdivision (b) cannot practicably be provided because of the
29 patient's incapacity or an emergency treatment circumstance, a
30 provider of health care, health care service plan, or contractor
31 may use or disclose some or all of the medical information
32 permitted by subdivision (a) for the facility's directory, if that
33 disclosure is all of the following:

34 (1) Consistent with a prior expressed preference of the patient,
35 if any, that is known to the provider of health care, health care
36 service plan, or contractor.

1 (2) In the patient’s best interest as determined by the provider
2 of health care, health care service plan, or contractor, in the
3 exercise of professional judgment.

4 (d) The provider of health care, health care service plan, or
5 contractor shall inform the patient and provide an opportunity to
6 object to uses or disclosures for directory purposes as required by
7 subdivision (b) when it becomes practicable to do so.

8 SEC. 2. Section 56.1007 is added to the Civil Code, to read:

9 56.1007. (a) A provider of health care, health care service
10 plan, or contractor may, in accordance with subdivision (c) or
11 (d), disclose to a family member, other relative, domestic partner,
12 or a close personal friend of the patient, or any other person
13 identified by the patient, the medical information directly
14 relevant to that person’s involvement with the patient’s care or
15 payment related to the patient’s health care.

16 (b) A provider of health care, health care service plan, or
17 contractor may use or disclose medical information to notify, or
18 assist in the notification of, including identifying or locating, a
19 family member, a personal representative of the patient, a
20 domestic partner, or another person responsible for the care of
21 the patient of the patient’s location, general condition, or death.
22 Any use or disclosure of medical information for those
23 notification purposes shall be in accordance with the provisions
24 of subdivision (c), (d), or (e), as applicable.

25 (c) If the patient is present for, or otherwise available prior to,
26 a use or disclosure permitted by subdivision (a) or (b) and has the
27 capacity to make health care decisions, the provider of health
28 care, health care service plan, or contractor may use or disclose
29 the medical information if it does any of the following:

- 30 (1) Obtains the patient’s agreement.
- 31 (2) Provides the patient with the opportunity to object to the
32 disclosure, and the patient does not express an objection.
- 33 (3) Reasonably infers from the circumstances, based on the
34 exercise of professional judgment, that the patient does not object
35 to the disclosure.

36 (d) If the patient is not present, or the opportunity to agree or
37 object to the use or disclosure cannot practicably be provided
38 because of the patient’s incapacity or an emergency
39 circumstance, the provider of health care, health care service
40 plan, or contractor may, in the exercise of professional judgment,

1 determine whether the disclosure is in the best interests of the
2 patient and, if so, disclose only the medical information that is
3 directly relevant to the person's involvement with the patient's
4 health care. A provider of health care, health care service plan, or
5 contractor may use professional judgment and its experience with
6 common practice to make reasonable inferences of the patient's
7 best interest in allowing a person to act on behalf of the patient to
8 pick up filled prescriptions, medical supplies, X-rays, or other
9 similar forms of medical information.

10 (e) A provider of health care, health care service plan, or
11 contractor may use or disclose medical information to a public or
12 private entity authorized by law or by its charter to assist in
13 disaster relief efforts, for the purpose of coordinating with those
14 entities the uses or disclosures permitted by subdivision (b). The
15 requirements in subdivisions (c) and (d) apply to those uses and
16 disclosures to the extent that the provider of health care, health
17 care service plan, or contractor, in the exercise of professional
18 judgment, determines that the requirements do not interfere with
19 the ability to respond to the emergency circumstances.

20 ~~SEC. 3.—Section 56.16 of the Civil Code is repealed.~~

21 *SEC. 3. Section 56.16 of the Civil Code is amended to read:*

22 56.16. ~~Unless~~*For disclosures not addressed by Section*
23 *56.1005 or 56.1007, unless there is a specific written request by*
24 *the patient to the contrary, nothing in this part shall be construed*
25 *to prevent a*~~provider~~ *general acute care hospital, as defined in*
26 *subdivision (a) of Section 1250 of the Health and Safety Code,*
27 *upon an inquiry concerning a specific patient, from releasing at*
28 *its discretion any of the following information: the patient's*
29 *name, address, age, and sex; a general description of the reason*
30 *for treatment (whether an injury, a burn, poisoning, or some*
31 *unrelated condition); the general nature of the injury, burn,*
32 *poisoning, or other condition; the general condition of the*
33 *patient; and any information that is not medical information as*
34 *defined in subdivision (c) of Section 56.05.*

35 SEC. 4. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the
40 penalty for a crime or infraction, within the meaning of Section

- 1 17556 of the Government Code, or changes the definition of a
- 2 crime within the meaning of Section 6 of Article XIII B of the
- 3 California Constitution.

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