

Assembly Bill No. 3013

Passed the Assembly August 28, 2006

Chief Clerk of the Assembly

Passed the Senate August 23, 2006

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2006, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 56.16 of, and to add Section 56.1007 to, the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 3013, 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 of 1996 (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 revise that latter provision to have it apply only to a general acute care hospital, as defined, in specified situations, and would add to the state Confidentiality of Medical Information Act, HIPAA provisions related to 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, as specified.

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.

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

SECTION 1. Section 56.1007 is added to the Civil Code, to read:

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

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

(c) (1) Except as provided in paragraph (2), if the patient is present for, or otherwise available prior to, a use or disclosure permitted by subdivision (a) or (b) and has the capacity to make health care decisions, the provider of health care, health care service plan, or contractor may use or disclose the medical information if it does any of the following:

(A) Obtains the patient's agreement.

(B) Provides the patient with the opportunity to object to the disclosure, and the patient does not express an objection.

(C) Reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

(2) A provider of health care who is a psychotherapist, as defined in Section 1010 of the Evidence Code, may use or disclose medical information pursuant to this subdivision only if the psychotherapist complies with subparagraph (A) or (B) of paragraph (1).

(d) If the patient is not present, or the opportunity to agree or object to the use or disclosure cannot practicably be provided because of the patient's incapacity or an emergency circumstance, the provider of health care, health care service plan, or contractor may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the patient and, if so, disclose only the medical information that is directly relevant to the person's involvement with the patient's health care. A provider of health care, health care service plan, or contractor may use professional judgment and its experience with common practice to make reasonable inferences of the patient's best interest in allowing a person to act on behalf of the patient to pick up filled prescriptions, medical supplies, X-rays, or other similar forms of medical information.

(e) A provider of health care, health care service plan, or contractor may use or disclose medical information to a public or private entity authorized by law or by its charter to assist in disaster relief efforts, for the purpose of coordinating with those entities the uses or disclosures permitted by subdivision (b). The requirements in subdivisions (c) and (d) apply to those uses and disclosures to the extent that the provider of health care, health care service plan, or contractor, in the exercise of professional

judgment, determines that the requirements do not interfere with the ability to respond to the emergency circumstances.

(f) Nothing in this section shall be construed to interfere with or limit the access authority of Protection and Advocacy, Inc., the Office of Patients' Rights, or any county patients' rights advocates to access medical information pursuant to any state or federal law.

SEC. 2. Section 56.16 of the Civil Code is amended to read:

56.16. For disclosures not addressed by Section 56.1007, unless there is a specific written request by the patient to the contrary, nothing in this part shall be construed to prevent a general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, upon an inquiry concerning a specific patient, from releasing at its discretion any of the following information: the patient's name, address, age, and sex; a general description of the reason for treatment (whether an injury, a burn, poisoning, or some unrelated condition); 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 in subdivision (c) of Section 56.05.

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

Approved _____, 2006

Governor