

AMENDED IN ASSEMBLY MARCH 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2590**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 19, 2010

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~~An act to amend Section 121010 of the Health and Safety Code, relating to public health.~~ *An act to add Section 14132.31 to the Welfare and Institutions Code, relating to Medi-Cal.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2590, as amended, Bonnie Lowenthal. ~~AIDS testing: disclosure of results.~~ *Medi-Cal: disease management programs: HIV/AIDS: disclosure of data: contractors.*

*Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services and under which qualified low-income persons receive health care services. Existing law requires the department to apply for a waiver of federal law to test the efficacy of providing a disease management benefit, as described, to specified beneficiaries under the Medi-Cal program.*

*This bill would authorize the department to, in accordance with federal law, provide to an entity that contracts with the state to provide disease management services to persons with the human immunodeficiency virus (HIV) or acquired immunodeficiency syndrome (AIDS) all data in the department's possession that is necessary to identify and enroll persons who are eligible for the disease management program. This bill would impose certain requirements on the above-described contractors to protect the confidentiality of the data provided to the contractor by the department.*

~~Existing law establishes the State Department of Public Health and sets forth its powers and duties relating to the administration of public health programs, including programs relating to the prevention and control of communicable diseases. Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names, and requires local health officers to report unduplicated HIV cases by name to the department, but otherwise protects the confidentiality of the reported cases, with certain exception. Unauthorized willful or malicious disclosure of related confidential information that results in economic, physiological, or emotional harm is a crime.~~

~~Existing law specifies persons who may, without the consent of the subject, receive information regarding the results of blood tests to detect the probable causative agent of AIDS.~~

~~This bill would, instead, specify who may receive information regarding the results of blood tests to detect HIV. The bill would also permit disclosure of results to an agent or contractor of the state that is authorized by contract with the state to provide treatment to the subject of the test.~~

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

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

- 1     SECTION 1. Section 14132.31 is added to the Welfare and
- 2     Institutions Code, to read:
- 3     14132.31. (a) Notwithstanding any other provision of state
- 4     law, the department may, in accordance with federal law, provide
- 5     to an entity that contracts with the state to provide disease
- 6     management services to persons with the human immunodeficiency
- 7     virus (HIV) or acquired immunodeficiency syndrome (AIDS) all
- 8     data in the department’s possession that is necessary to identify
- 9     and enroll persons who are eligible for the disease management
- 10    program.
- 11    (b) (1) The contractor described in subdivision (a) shall do all
- 12    of the following:
- 13    (A) Use only materials that are approved by the department for
- 14    outreach to potential enrollees in the disease management
- 15    program.

1 (B) Implement and maintain procedures that are approved by  
2 the department that guard against disclosure of confidential  
3 information to unauthorized persons.

4 (C) Inform each enrollee in the disease management program  
5 of his or her right to confidentiality and obtain the enrollee's  
6 consent prior to release of confidential information, unless prior  
7 consent is specifically not required.

8 (2) The contractor shall not disclose protected health  
9 information supplied by the department to subcontractors for  
10 outreach and enrollment purposes.

11 (c) Nothing in this section shall be construed to allow the  
12 department to access the data reported and collected pursuant to  
13 Section 121022 of the Health and Safety Code.

14 SECTION 1. ~~Section 121010 of the Health and Safety Code~~  
15 ~~is amended to read:~~

16 ~~121010. Notwithstanding Section 120975 or 120980, the results~~  
17 ~~of a blood test to detect HIV may be disclosed to any of the~~  
18 ~~following persons without written authorization of the subject of~~  
19 ~~the test:~~

20 ~~(a) To the subject of the test or the subject's legal representative,~~  
21 ~~conservator, or to any person authorized to consent to the test~~  
22 ~~pursuant to subdivision (b) of Section 120990.~~

23 ~~(b) To a test subject's provider of health care, as defined in~~  
24 ~~subdivision (d) of Section 56.05 of the Civil Code, except that for~~  
25 ~~purposes of this section, "provider of health care" does not include~~  
26 ~~a health care service plan regulated pursuant to Chapter 2.2~~  
27 ~~(commencing with Section 1340) of Division 2.~~

28 ~~(c) To an agent or employee of the test subject's provider of~~  
29 ~~health care who provides direct patient care and treatment.~~

30 ~~(d) To a provider of health care who procures, processes,~~  
31 ~~distributes, or uses a human body part donated pursuant to the~~  
32 ~~Uniform Anatomical Gift Act (Chapter 3.5 (commencing with~~  
33 ~~Section 7150) of Part 1 of Division 7).~~

34 ~~(e) (1) To the designated officer of an emergency response~~  
35 ~~employee, and from that designated officer to an emergency~~  
36 ~~response employee regarding possible exposure to HIV or AIDS,~~  
37 ~~but only to the extent necessary to comply with provisions of the~~  
38 ~~Ryan White Comprehensive AIDS Resources Emergency Act of~~  
39 ~~1990 (Public Law 101-381; 42 U.S.C. Sec. 201).~~

1     ~~(2) For purposes of this subdivision, “designated officer” and~~  
2     ~~“emergency response employee” have the same meaning as these~~  
3     ~~terms are used in the Ryan White Comprehensive AIDS Resources~~  
4     ~~Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec.~~  
5     ~~201).~~

6     ~~(3) The designated officer shall be subject to the confidentiality~~  
7     ~~requirements specified in Section 120980, and may be personally~~  
8     ~~liable for unauthorized release of any identifying information about~~  
9     ~~the HIV results. Further, the designated officer shall inform the~~  
10    ~~exposed emergency response employee that the employee is also~~  
11    ~~subject to the confidentiality requirements specified in Section~~  
12    ~~120980, and may be personally liable for unauthorized release of~~  
13    ~~any identifying information about the HIV test results.~~

14    ~~(f) To an agent or contractor of the state that, by contract with~~  
15    ~~the state, is authorized to provide medical care and treatment to~~  
16    ~~the subject of the test.~~