

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 238**

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**Introduced by Senator Calderon**

February 24, 2009

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An act to amend Section 56.10 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 238, as amended, Calderon. Medical information.

The 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, 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. 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.

~~This bill would state the Legislature's intent to amend these provisions to ensure that patients adhere to prescription refill requirements.~~

*This bill would, under those provisions, allow a pharmacy to mail specified written communications to a patient, without the patient's authorization under specified conditions. Those conditions include, among other things, that the written communication be written in the same language as the prescription label, that it instruct the patient when to contact the health care professional, that it shall pertain only to the prescribed course of medical treatment, that it may not mention any other pharmaceutical products, that it shall be limited to specified*

*diseases, that further written communication may not be provided under certain circumstances, that a copy of each version shall be submitted to the federal Food and Drug Administration, that it shall include specified disclosures regarding whether the pharmacy receives direct or indirect remuneration for making that written communication, and that the patient shall receive an opportunity to opt out of the written communication.*

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

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

1     SECTION 1. Section 56.10 of the Civil Code is amended to  
2     read:

3     56.10. (a) No provider of health care, health care service plan,  
4     or contractor shall disclose medical information regarding a patient  
5     of the provider of health care or an enrollee or subscriber of a  
6     health care service plan without first obtaining an authorization,  
7     except as provided in subdivision ~~(b) or (e)~~ (b), (c), or (d).

8     (b) A provider of health care, a health care service plan, or a  
9     contractor shall disclose medical information if the disclosure is  
10    compelled by any of the following:

11    (1) By a court pursuant to an order of that court.

12    (2) By a board, commission, or administrative agency for  
13    purposes of adjudication pursuant to its lawful authority.

14    (3) By a party to a proceeding before a court or administrative  
15    agency pursuant to a subpoena, subpoena duces tecum, notice to  
16    appear served pursuant to Section 1987 of the Code of Civil  
17    Procedure, or any provision authorizing discovery in a proceeding  
18    before a court or administrative agency.

19    (4) By a board, commission, or administrative agency pursuant  
20    to an investigative subpoena issued under Article 2 (commencing  
21    with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title  
22    2 of the Government Code.

23    (5) By an arbitrator or arbitration panel, when arbitration is  
24    lawfully requested by either party, pursuant to a subpoena duces  
25    tecum issued under Section 1282.6 of the Code of Civil Procedure,  
26    or ~~another~~ any other provision authorizing discovery in a  
27    proceeding before an arbitrator or arbitration panel.

1 (6) By a search warrant lawfully issued to a governmental law  
2 enforcement agency.

3 (7) By the patient or the patient’s representative pursuant to  
4 Chapter 1 (commencing with Section 123100) of Part 1 of Division  
5 106 of the Health and Safety Code.

6 (8) By a coroner, when requested in the course of an  
7 investigation by the coroner’s office for the purpose of identifying  
8 the decedent or locating next of kin, or when investigating deaths  
9 that may involve public health concerns, organ or tissue donation,  
10 child abuse, elder abuse, suicides, poisonings, accidents, sudden  
11 infant deaths, suspicious deaths, unknown deaths, or criminal  
12 deaths, or when otherwise authorized by the decedent’s  
13 representative. Medical information requested by the coroner under  
14 this paragraph shall be limited to information regarding the patient  
15 who is the decedent and who is the subject of the investigation and  
16 shall be disclosed to the coroner without delay upon request.

17 (9) When otherwise specifically required by law.

18 (c) A provider of health care or a health care service plan may  
19 disclose medical information as follows:

20 (1) The information may be disclosed to providers of health  
21 care, health care service plans, contractors, or other health care  
22 professionals or facilities for purposes of diagnosis or treatment  
23 of the patient. This includes, in an emergency situation, the  
24 communication of patient information by radio transmission or  
25 other means between emergency medical personnel at the scene  
26 of an emergency, or in an emergency medical transport vehicle,  
27 and emergency medical personnel at a health facility licensed  
28 pursuant to Chapter 2 (commencing with Section 1250) of Division  
29 2 of the Health and Safety Code.

30 (2) The information may be disclosed to an insurer, employer,  
31 health care service plan, hospital service plan, employee benefit  
32 plan, governmental authority, contractor, or any other person or  
33 entity responsible for paying for health care services rendered to  
34 the patient, to the extent necessary to allow responsibility for  
35 payment to be determined and payment to be made. If (A) the  
36 patient is, by reason of a comatose or other disabling medical  
37 condition, unable to consent to the disclosure of medical  
38 information and (B) no other arrangements have been made to pay  
39 for the health care services being rendered to the patient, the  
40 information may be disclosed to a governmental authority to the

1 extent necessary to determine the patient's eligibility for, and to  
2 obtain, payment under a governmental program for health care  
3 services provided to the patient. The information may also be  
4 disclosed to another provider of health care or health care service  
5 plan as necessary to assist the other provider or health care service  
6 plan in obtaining payment for health care services rendered by that  
7 provider of health care or health care service plan to the patient.

8 (3) The information may be disclosed to a person or entity that  
9 provides billing, claims management, medical data processing, or  
10 other administrative services for providers of health care or health  
11 care service plans or for any of the persons or entities specified in  
12 paragraph (2). However, *no* information so disclosed shall ~~not~~ be  
13 further disclosed by the recipient in ~~a~~ *any* way that would violate  
14 this part.

15 (4) The information may be disclosed to organized committees  
16 and agents of professional societies or of medical staffs of licensed  
17 hospitals, licensed health care service plans, professional standards  
18 review organizations, independent medical review organizations  
19 and their selected reviewers, utilization and quality control peer  
20 review organizations as established by Congress in Public Law  
21 97-248 in 1982, contractors, or persons or organizations insuring,  
22 responsible for, or defending professional liability that a provider  
23 may incur, if the committees, agents, health care service plans,  
24 organizations, reviewers, contractors, or persons are engaged in  
25 reviewing the competence or qualifications of health care  
26 professionals or in reviewing health care services with respect to  
27 medical necessity, level of care, quality of care, or justification of  
28 charges.

29 (5) The information in the possession of a provider of health  
30 care or health care service plan may be reviewed by a private or  
31 public body responsible for licensing or accrediting the provider  
32 of health care or health care service plan. However, no  
33 patient-identifying medical information may be removed from the  
34 premises except as expressly permitted or required elsewhere by  
35 law, nor shall that information be further disclosed by the recipient  
36 in a way that would violate this part.

37 (6) The information may be disclosed to the county coroner in  
38 the course of an investigation by the coroner's office when  
39 requested for all purposes not included in paragraph (8) of  
40 subdivision (b).

1 (7) The information may be disclosed to public agencies, clinical  
2 investigators, including investigators conducting epidemiologic  
3 studies, health care research organizations, and accredited public  
4 or private nonprofit educational or health care institutions for bona  
5 fide research purposes. However, no information so disclosed shall  
6 be further disclosed by the recipient in ~~a~~ *any* way that would  
7 disclose the identity of a patient or violate this part.

8 (8) A provider of health care or health care service plan that has  
9 created medical information as a result of employment-related  
10 health care services to an employee conducted at the specific prior  
11 written request and expense of the employer may disclose to the  
12 employee's employer that part of the information that:

13 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim  
14 or challenge to which the employer and the employee are parties  
15 and in which the patient has placed in issue his or her medical  
16 history, mental or physical condition, or treatment, provided that  
17 information may only be used or disclosed in connection with that  
18 proceeding.

19 (B) Describes functional limitations of the patient that may  
20 entitle the patient to leave from work for medical reasons or limit  
21 the patient's fitness to perform his or her present employment,  
22 provided that no statement of medical cause is included in the  
23 information disclosed.

24 (9) Unless the provider of health care or health care service plan  
25 is notified in writing of an agreement by the sponsor, insurer, or  
26 administrator to the contrary, the information may be disclosed to  
27 a sponsor, insurer, or administrator of a group or individual insured  
28 or uninsured plan or policy that the patient seeks coverage by or  
29 benefits from, if the information was created by the provider of  
30 health care or health care service plan as the result of services  
31 conducted at the specific prior written request and expense of the  
32 sponsor, insurer, or administrator for the purpose of evaluating the  
33 application for coverage or benefits.

34 (10) The information may be disclosed to a health care service  
35 plan by providers of health care that contract with the health care  
36 service plan and may be transferred among providers of health  
37 care that contract with the health care service plan, for the purpose  
38 of administering the health care service plan. Medical information  
39 ~~shall~~ *may* not otherwise be disclosed by a health care service plan  
40 except in accordance with *the provisions of* this part.

1 (11) ~~This part does not~~ *Nothing in this part shall* prevent the  
2 disclosure by a provider of health care or a health care service plan  
3 to an insurance institution, agent, or support organization, subject  
4 to Article 6.6 (commencing with Section 791) of ~~Chapter 1 of Part~~  
5 2 of Division 1 of the Insurance Code, of medical information if  
6 the insurance institution, agent, or support organization has  
7 complied with all of the requirements for obtaining the information  
8 pursuant to Article 6.6 (commencing with Section 791) of ~~Chapter~~  
9 ~~1 of Part 2 of Division 1 of the Insurance Code.~~

10 (12) The information relevant to the patient's ~~condition, care,~~  
11 ~~and condition and care and~~ treatment provided may be disclosed  
12 to a probate court investigator in the course of ~~an~~ *any* investigation  
13 required or authorized in a conservatorship proceeding under the  
14 Guardianship-Conservatorship Law as defined in Section 1400 of  
15 the Probate Code, or to a probate court investigator, probation  
16 officer, or domestic relations investigator engaged in determining  
17 the need for an initial guardianship or continuation of an ~~existing~~  
18 *existent* guardianship.

19 (13) The information may be disclosed to an organ procurement  
20 organization or a tissue bank processing the tissue of a decedent  
21 for transplantation into the body of another person, but only with  
22 respect to the donating decedent, for the purpose of aiding the  
23 transplant. For the purpose of this paragraph, *the terms* "tissue  
24 bank" and "tissue" have the same ~~meanings~~ *meaning* as defined  
25 in Section 1635 of the Health and Safety Code.

26 (14) The information may be disclosed when the disclosure is  
27 otherwise specifically authorized by law, including, but not limited  
28 to, the voluntary reporting, either directly or indirectly, to the  
29 federal Food and Drug Administration of adverse events related  
30 to drug products or medical device problems.

31 (15) Basic information, including the patient's name, city of  
32 residence, age, sex, and general condition, may be disclosed to a  
33 ~~state-recognized state~~ or federally recognized disaster relief  
34 organization for the purpose of responding to disaster welfare  
35 inquiries.

36 (16) The information may be disclosed to a third party for  
37 purposes of encoding, encrypting, or otherwise anonymizing data.  
38 However, no information so disclosed shall be further disclosed  
39 by the recipient in ~~a~~ *any* way that would violate this part, including  
40 the unauthorized manipulation of coded or encrypted medical

1 information that reveals individually identifiable medical  
2 information.

3 (17) For purposes of disease management programs and services  
4 as defined in Section 1399.901 of the Health and Safety Code,  
5 information may be disclosed as follows: (A) to an entity  
6 contracting with a health care service plan or the health care service  
7 plan's contractors to monitor or administer care of enrollees for a  
8 covered benefit, if the disease management services and care are  
9 authorized by a treating physician, or (B) to a disease management  
10 organization, as defined in Section 1399.900 of the Health and  
11 Safety Code, that complies fully with the physician authorization  
12 requirements of Section 1399.902 of the Health and Safety Code,  
13 if the health care service plan or its contractor provides or has  
14 provided a description of the disease management services to a  
15 treating physician or to the health care service plan's or contractor's  
16 network of physicians. ~~This paragraph does not~~ *Nothing in this*  
17 *paragraph shall be construed to* require physician authorization  
18 for the care or treatment of the adherents of a well-recognized  
19 church or religious denomination who depend solely upon prayer  
20 or spiritual means for healing in the practice of the religion of that  
21 church or denomination.

22 (18) The information may be disclosed, as permitted by state  
23 and federal law or regulation, to a local health department for the  
24 purpose of preventing or controlling disease, injury, or disability,  
25 including, but not limited to, the reporting of disease, injury, vital  
26 events, including, but not limited to, birth or death, and the conduct  
27 of public health surveillance, public health investigations, and  
28 public health interventions, as authorized or required by state or  
29 federal law or regulation.

30 (19) The information may be disclosed, consistent with  
31 applicable law and standards of ethical conduct, by a  
32 psychotherapist, as defined in Section 1010 of the Evidence Code,  
33 if the psychotherapist, in good faith, believes the disclosure is  
34 necessary to prevent or lessen a serious and imminent threat to the  
35 health or safety of a reasonably foreseeable victim or victims, and  
36 the disclosure is made to a person or persons reasonably able to  
37 prevent or lessen the threat, including the target of the threat.

38 (20) The information may be disclosed as described in Section  
39 56.103.

1 (d) Except to the extent expressly authorized by ~~a~~ *the* patient  
2 or enrollee or subscriber or as provided by subdivisions (b) and  
3 (c), ~~a~~ *no* provider of health care, health care service plan,  
4 contractor, or corporation and its subsidiaries and affiliates shall  
5 ~~not~~ intentionally share, sell, use for marketing, or otherwise use  
6 *any* medical information for ~~a~~ *any* purpose not necessary to provide  
7 health care services to the patient. *For purposes of this section, a*  
8 *written communication mailed to a patient by a pharmacy shall*  
9 *be deemed to be necessary to provide health care services to the*  
10 *patient and shall not require prior authorization, if all of the*  
11 *following conditions are met:*

12 (1) *The written communication encourages the patient to adhere*  
13 *to the prescribed course of medical treatment as prescribed by a*  
14 *licensed health care professional and may include information*  
15 *about that particular pharmaceutical drug as authorized in this*  
16 *section.*

17 (2) *The communication is written in the same language as the*  
18 *prescription label produced by the pharmacy when the medication*  
19 *was dispensed.*

20 (3) *The written communication instructs the patient to contact*  
21 *the prescribing or dispensing health care professional if:*

22 (A) *The patient has questions about the medication.*

23 (B) *The patient is having difficulty adhering to the medication*  
24 *due to adverse effects, dosing requirements, or other causes.*

25 (4) *The written communication pertains only to the prescribed*  
26 *course of medical treatment, and does not describe or mention*  
27 *any other pharmaceutical products. The written communication*  
28 *shall be limited to the following diseases:*

29 (A) *Diabetes.*

30 (B) *Osteoporosis.*

31 (C) *Asthma.*

32 (D) *Chronic obstructive pulmonary disease.*

33 (E) *Cancer.*

34 (F) *Gastric disorder.*

35 (G) *Hypertension.*

36 (H) *Cardiovascular disease.*

37 (I) *Thyroid disorder.*

38 (J) *Organ transplantation.*

39 (K) *Chronic eye disorder.*

40 (L) *Rheumatoid arthritis and osteoarthritis.*

1 (M) Renal disorders.

2 (N) Parkinson's disease.

3 (O) Seizures.

4 (P) Multiple sclerosis.

5 (Q) Depression.

6 (R) Schizophrenia.

7 (S) Bipolar disorder.

8 (T) Anxiety disorders.

9 (U) Attention deficit disorder.

10 (5) Further written communication shall not be provided if there  
11 are no refills remaining on the prescribed course of therapy and  
12 there are no doses remaining on the final prescribed refill, or the  
13 pharmacy has been notified by a health care provider that a  
14 prescribed course of therapy has been discontinued or substituted  
15 with a different drug.

16 (6) All product-related information in the written communication  
17 shall be consistent with the current federal Food and Drug  
18 Administration (FDA) approved product package insert, and  
19 provide fair and balanced information regarding the product's  
20 benefits and risks in accordance with the FDA requirements and  
21 policies.

22 (7) A copy of each written communication version shall be  
23 submitted to the FDA Center for Drug Evaluation and Research,  
24 Division of Drug Marketing, Advertising and Communications,  
25 prior to program implementation.

26 (8) Evidence-based or consensus-based practice guidelines  
27 shall be the basis of any information that is provided to patients  
28 in order to improve their overall health, prevent clinical  
29 exacerbations or complications, or promote patient  
30 self-management strategies.

31 (9) All personally identifiable medical information collected,  
32 used, and disclosed pursuant to this subdivision shall be  
33 confidential and shall be used solely to deliver the written  
34 communication to the patient. Access to the information shall be  
35 limited to authorized persons. Any entity that receives the  
36 information pursuant to this subdivision shall comply with existing  
37 requirements, including Sections 56.101 and 1798.84, concerning  
38 confidentiality and security of information. The pharmacy must  
39 have a written agreement with any entity that receives the  
40 information. The written agreement shall require the entity to

1 *maintain the confidentiality of the information it receives from the*  
2 *pharmacy and prohibit the entity from disclosing or using the*  
3 *information for any purpose other than to deliver to the patient*  
4 *the written communication that is the subject of the written*  
5 *agreement.*

6 *(10) If the written communication is paid for, in whole or in*  
7 *part, by a manufacturer, distributor, or provider of a health care*  
8 *product or service, the written communication shall disclose*  
9 *whether the pharmacy receives direct or indirect remuneration,*  
10 *including, but not limited to, gifts, fees, payments, subsidies, or*  
11 *other economic benefits from a third party for making the written*  
12 *communication and shall disclose, in a clear and conspicuous*  
13 *location, the source of any sponsorship in a typeface no smaller*  
14 *than 14-point type.*

15 *(11) A pharmacy offers the patient, at the time the patient picks*  
16 *up his or her initial prescription, an opportunity to opt out of*  
17 *receiving a written communication from a pharmacy. If the patient*  
18 *opts out, then no sponsored message shall be made to the patient.*  
19 *If, at the time the patient picks up his or her initial prescription,*  
20 *the patient does not opt out, then the written communication shall*  
21 *contain instructions in a typeface no smaller than 14-point type*  
22 *describing how the patient may opt out of future communications*  
23 *by, for example, calling a toll-free telephone number or visiting*  
24 *an Internet Web site, and no further sponsored message shall be*  
25 *made to the patient after 30 calendar days from the date the*  
26 *individual makes the opt out request.*

27 *(e) Except to the extent expressly authorized by a the patient or*  
28 *enrollee or subscriber or as provided by subdivisions (b) and (c),*  
29 *a no contractor or corporation and its subsidiaries and affiliates*  
30 *shall not further disclose medical information regarding a patient*  
31 *of the provider of health care or an enrollee or subscriber of a*  
32 *health care service plan or insurer or self-insured employer received*  
33 *under this section to a person or entity that is not engaged in*  
34 *providing direct health care services to the patient or his or her*  
35 *provider of health care or health care service plan or insurer or*  
36 *self-insured employer.*

1     SECTION 1.—It is the intent of the Legislature to amend Section  
2     56.10 of the Civil Code, relating to medical information, to ensure  
3     that patients adhere to prescription refill requirements.

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