

AMENDED IN SENATE JANUARY 6, 2010

AMENDED IN SENATE MAY 5, 2009

AMENDED IN SENATE APRIL 23, 2009

SENATE BILL

No. 270

Introduced by Senator Alquist

February 24, 2009

~~An act to add Division 109.5 (commencing with Section 130250) to An act to amend Sections 1280.15 and 130251 of the Health and Safety Code, relating to public health.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 270, as amended, Alquist. ~~Health Information Technology Advisory Panel.~~ *Health care providers: medical information.*

(1) Existing law provides for the licensing and regulation of clinics, health facilities, home health agencies, and hospices by the State Department of Public Health. Existing law requires these entities to prevent unlawful or unauthorized access to, and use or disclosure of, a patient's medical information. A violation of these provisions is a crime. Existing law requires these entities to report an instance of unlawful or unauthorized access to, and use or disclosure of, a patient's medical information to the department and to the affected patient or patient's representative, as prescribed, within 5 business days of its detection, except that an entity is required to delay compliance with this reporting requirement beyond this 5 business day period if a law enforcement agency or official provides the entity with a written or oral statement that compliance with the reporting requirement would impede the law enforcement agency's activities that relate to the unlawful or unauthorized access to, and use or disclosure of, a patient's medical

information and specifies the date upon which the delay shall end, as prescribed.

This bill would, instead, apply the provision requiring a delay in compliance with the reporting requirement only to a statement that compliance with that requirement would impede the law enforcement agency's investigations, rather than activities. By expanding circumstances to which a crime would apply, the bill would create a state-mandated local program.

(2) Existing law establishes the Office of Health Information Integrity within the California Health and Human Services Agency to ensure the enforcement of state law mandating confidentiality of medical information and to impose administrative fines for the unauthorized use of medical information. Existing law authorizes the California Health and Human Services Agency, or one of the departments under its jurisdiction, to apply for federal funds made available through the federal American Recovery and Reinvestment Act (ARRA) for health information technology and exchange and, if no application is made, requires the Governor to designate a nonprofit entity to be the state-designated entity for purposes of health information exchange. Existing law requires the agency or state-designated entity to facilitate and expand the use and disclosure of health information electronically among organizations, as prescribed, while protecting individual privacy and the confidentiality of electronic medical records.

This bill would, in addition, require the agency or state-designated entity to facilitate and expand the use and disclosure of health information electronically among organizations with no diminution of rights under state law.

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.

~~Existing law establishes the Office of Health Information Integrity within the California Health and Human Services Agency to ensure the enforcement of state law mandating confidentiality of medical information and to impose administrative fines for the unauthorized use of medical information.~~

~~This bill would, in addition, establish the Health Information Technology Advisory Panel to advise the Governor and the Legislature~~

~~on health information technology implementation. This bill would provide for the appointment of panel members, establish the qualifications of members, and set forth the duties of the panel.~~

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

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

1 SECTION 1. Section 1280.15 of the Health and Safety Code
2 is amended to read:

3 1280.15. (a) A clinic, health facility, home health agency, or
4 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
5 shall prevent unlawful or unauthorized access to, and use or
6 disclosure of, patients’ medical information, as defined in
7 subdivision (g) of Section 56.05 of the Civil Code and consistent
8 with Section 130203. The department, after investigation, may
9 assess an administrative penalty for a violation of this section of
10 up to twenty-five thousand dollars (\$25,000) per patient whose
11 medical information was unlawfully or without authorization
12 accessed, used, or disclosed, and up to seventeen thousand five
13 hundred dollars (\$17,500) per subsequent occurrence of unlawful
14 or unauthorized access, use, or disclosure of that patients’ medical
15 information. For purposes of the investigation, the department
16 shall consider the clinic’s, health facility’s, agency’s, or hospice’s
17 history of compliance with this section and other related state and
18 federal statutes and regulations, the extent to which the facility
19 detected violations and took preventative action to immediately
20 correct and prevent past violations from recurring, and factors
21 outside its control that restricted the facility’s ability to comply
22 with this section. The department shall have full discretion to
23 consider all factors when determining the amount of an
24 administrative penalty pursuant to this section.

25 (b) (1) A clinic, health facility, home health agency, or hospice
26 to which subdivision (a) applies shall report any unlawful or
27 unauthorized access to, or use or disclosure of, a patient’s medical
28 information to the department no later than five business days after
29 the unlawful or unauthorized access, use, or disclosure has been
30 detected by the clinic, health facility, home health agency, or
31 hospice.

1 (2) Subject to subdivision (c), a clinic, health facility, home
2 health agency, or hospice shall also report any unlawful or
3 unauthorized access to, or use or disclosure of, a patient's medical
4 information to the affected patient or the patient's representative
5 at the last known address, no later than five business days after
6 the unlawful or unauthorized access, use, or disclosure has been
7 detected by the clinic, health facility, home health agency, or
8 hospice.

9 (c) (1) A clinic, health facility, home health agency, or hospice
10 shall delay the reporting, as required pursuant to paragraph (2) of
11 subdivision (b), of any unlawful or unauthorized access to, or use
12 or disclosure of, a patient's medical information beyond five
13 business days if a law enforcement agency or official provides the
14 clinic, health facility, home health agency, or hospice with a written
15 or oral statement that compliance with the reporting requirements
16 of paragraph (2) of subdivision (b) would be likely to impede the
17 law enforcement agency's ~~activities~~ *investigation* that ~~relate~~ *relates*
18 to the unlawful or unauthorized access to, and use or disclosure
19 of, a patient's medical information and specifies a date upon which
20 the delay shall end, not to exceed 60 days after a written request
21 is made, or 30 days after an oral request is made. A law
22 enforcement agency or official may request an extension of a delay
23 based upon a written declaration that there exists a bona fide,
24 ongoing, significant criminal investigation of serious wrongdoing
25 relating to the unlawful or unauthorized access to, and use or
26 disclosure of, a patient's medical information, that notification of
27 patients will undermine the law enforcement agency's ~~activities~~
28 *investigation*, and that specifies a date upon which the delay shall
29 end, not to exceed 60 days after the end of the original delay period.

30 (2) If the statement of the law enforcement agency or official
31 is made orally, then the clinic, health facility, home health agency,
32 or hospice shall do the following:

33 (A) Document the oral statement, including, but not limited to,
34 the identity of the law enforcement agency or official making the
35 oral statement and the date upon which the oral statement was
36 made.

37 (B) Limit the delay in reporting the unlawful or unauthorized
38 access to, or use or disclosure of, the patient's medical information
39 to the date specified in the oral statement, not to exceed 30 calendar
40 days from the date that the oral statement is made, unless a written

1 statement that complies with the requirements of this subdivision
2 is received during that time.

3 (3) A clinic, health facility, home health agency, or hospice
4 shall submit a report that is delayed pursuant to this subdivision
5 not later than five business days after the date designated as the
6 end of the delay.

7 (d) If a clinic, health facility, home health agency, or hospice
8 to which subdivision (a) applies violates subdivision (b), the
9 department may assess the licensee a penalty in the amount of one
10 hundred dollars (\$100) for each day that the unlawful or
11 unauthorized access, use, or disclosure is not reported, following
12 the initial five-day period specified in subdivision (b). However,
13 the total combined penalty assessed by the department under
14 subdivision (a) and this subdivision shall not exceed two hundred
15 fifty thousand dollars (\$250,000) per reported event.

16 (e) In enforcing subdivisions (a) and (d), the department shall
17 take into consideration the special circumstances of small and rural
18 hospitals, as defined in Section 124840, and primary care clinics,
19 as defined in subdivision (a) of Section 1204, in order to protect
20 access to quality care in those hospitals and clinics. When assessing
21 a penalty on a skilled nursing facility or other facility subject to
22 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
23 only the higher of either a penalty for the violation of this section
24 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
25 not both.

26 (f) All penalties collected by the department pursuant to this
27 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
28 into the Internal Departmental Quality Improvement Account,
29 which is hereby created within the Special Deposit Fund under
30 Section 16370 of the Government Code. Upon appropriation by
31 the Legislature, moneys in the account shall be expended for
32 internal quality improvement activities in the Licensing and
33 Certification Program.

34 (g) If the licensee disputes a determination by the department
35 regarding a failure to prevent or failure to timely report unlawful
36 or unauthorized access to, or use or disclosure of, patients' medical
37 information, or the imposition of a penalty under this section, the
38 licensee may, within 10 days of receipt of the penalty assessment,
39 request a hearing pursuant to Section 131071. Penalties shall be

1 paid when appeals have been exhausted and the penalty has been
2 upheld.

3 (h) In lieu of disputing the determination of the department
4 regarding a failure to prevent or failure to timely report unlawful
5 or unauthorized access to, or use or disclosure of, patients' medical
6 information, transmit to the department 75 percent of the total
7 amount of the administrative penalty, for each violation, within
8 30 business days of receipt of the administrative penalty.

9 (i) Notwithstanding any other law, the department may refer
10 violations of this section to the Office of Health Information
11 Integrity for enforcement pursuant to Section 130303.

12 (j) For purposes of this section, the following definitions shall
13 apply:

14 (1) "Reported event" means all breaches included in any single
15 report that is made pursuant to subdivision (b), regardless of the
16 number of breach events contained in the report.

17 (2) "Unauthorized" means the inappropriate access, review, or
18 viewing of patient medical information without a direct need for
19 medical diagnosis, treatment, or other lawful use as permitted by
20 the Confidentiality of Medical Information Act (Part 2.6
21 (commencing with Section 56) of Division 1 of the Civil Code)
22 or any other statute or regulation governing the lawful access, use,
23 or disclosure of medical information.

24 *SEC. 2. Section 130251 of the Health and Safety Code is*
25 *amended to read:*

26 130251. (a) The California Health and Human Services Agency
27 or one of the departments under its jurisdiction may apply for
28 federal funds made available through the federal American
29 Recovery and Reinvestment Act of 2009 (Public Law 111-5) for
30 health information technology and exchange.

31 (b) In the event that the California Health and Human Services
32 Agency or one of the departments under its jurisdiction elects not
33 to submit an application described in subdivision (a), the Governor
34 shall designate a qualified nonprofit entity to be the
35 state-designated entity for the purposes of health information
36 exchange, pursuant to the requirements set forth in ARRA.

37 (c) The agency or state-designated entity shall execute tasks
38 related to accessing federal stimulus funds made available through
39 ARRA, and facilitate and expand the use and disclosure of health
40 information electronically among organizations according to

1 nationally recognized standards and implementation specifications
2 while protecting, to the greatest extent possible, individual privacy
3 and the confidentiality of electronic medical records, *and with no*
4 *diminution of rights under state law.*

5 (d) The agency or state-designated entity shall develop a plan
6 to ensure that health information exchange capabilities are
7 available, adopted, and utilized statewide so that patients do not
8 experience disparities in access to the benefits of this technology
9 by age, race, ethnicity, language, income, insurance status,
10 geography, or otherwise.

11 (e) The agency or state-designated entity shall create a plan for
12 a self-sustaining funding mechanism that does not include use of
13 General Fund moneys that shall cover all reasonable costs of the
14 administration of health information exchange when federal ARRA
15 funds expire or are exhausted.

16 (f) The state-designated entity shall continually meet any
17 conditions for being so designated as determined by the Secretary
18 of California Health and Human Services. Failure to comply with
19 this subdivision may result in the entity losing its designation.

20 (g) As a condition of receiving the state designation, the
21 state-designated entity shall comply with all of the following
22 requirements:

23 (1) It shall be subject to oversight by the California Health and
24 Human Services Agency.

25 (2) (A) It shall be governed by a board with a diverse
26 composition from multiple types of organizations from multiple
27 regions throughout the state. The governing board shall include,
28 at a minimum, all of the following:

29 (i) The Secretary of California Health and Human Services ~~on~~
30 *or his or her designee.*

31 (ii) The Chair of the Senate Committee on Health ~~or~~ *or his or her*
32 *designee.*

33 (iii) The Chair of the Assembly Committee on Health ~~or~~ *or his*
34 *or her designee.*

35 (iv) At least two consumer representatives, one of whom shall
36 have expertise in privacy and security of health information.

37 (B) The majority of the board shall be comprised of
38 nongovernmental employees.

39 (3) If the board convenes workgroups or subcommittees, the
40 workgroups or subcommittees shall be comprised of representatives

1 from multiple types of organizations from multiple regions
 2 throughout the state, and meetings of any workgroup or
 3 subcommittee shall be held in an open, public, and transparent
 4 way.

5 (4) It shall have nondiscrimination and conflict-of-interest
 6 policies that demonstrate a commitment to open, fair, and
 7 nondiscriminatory participation by stakeholders.

8 (h) The state-designated entity shall report to the California
 9 Health and Human Services Agency and the Legislature on its
 10 progress and activities at least annually.

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

20 ~~SECTION 1. Division 109.5 (commencing with Section~~
 21 ~~130250) is added to the Health and Safety Code, to read:~~

22

23 ~~DIVISION 109.5. HEALTH INFORMATION TECHNOLOGY~~
 24 ~~ADVISORY PANEL~~

25

26 ~~130250. (a) There is hereby created a health information~~
 27 ~~technology advisory panel to advise the Governor and the~~
 28 ~~Legislature on health information technology implementation in~~
 29 ~~California. The panel shall be composed of the following voting~~
 30 ~~members:~~

31 ~~(1) Two representatives of consumers, one of whom shall have~~
 32 ~~expertise in privacy and security of health information:~~

33 ~~(2) One representative from a hospital.~~

34 ~~(3) One representative from a primary care clinic.~~

35 ~~(4) One representative from a health plan or health insurer.~~

36 ~~(5) Two representatives from a medical group, one of whom~~
 37 ~~shall represent a group of specialists.~~

38 ~~(6) Two representatives from health care professions who are~~
 39 ~~not physicians.~~

- 1 ~~(7) One representative who is a solo or small group physician.~~
2 ~~For purposes of this section, “small group physician” means a~~
3 ~~physician who is part of a group of five or fewer physicians.~~
4 ~~(8) One representative who is a solo or small group physician~~
5 ~~representing specialty care.~~
6 ~~(9) One representative who has expertise in telemedicine or~~
7 ~~telehealth.~~
8 ~~(10) Two representatives from institutions of higher education~~
9 ~~that offer medical or clinical education or health informatics, one~~
10 ~~of whom represents a public institution.~~
11 ~~(11) One representative from the California Council on Science~~
12 ~~and Technology.~~
13 ~~(12) One representative from a nonprofit entity who has~~
14 ~~demonstrated expertise in health information technology.~~
15 ~~(13) One representative with expertise in the use of health~~
16 ~~information technology to manage chronic disease.~~
17 ~~(b) Of the panel members as provided for in subdivision (a) the~~
18 ~~Governor shall appoint ___ members, the Senate Committee on~~
19 ~~Rules shall appoint ___ members, and the Speaker of the Assembly~~
20 ~~shall appoint ___ members.~~
21 ~~(c) The following shall also participate in the panel as ex officio,~~
22 ~~nonvoting members:~~
23 ~~(1) The Secretary of Business, Transportation and Housing, or~~
24 ~~his or her designee.~~
25 ~~(2) The Secretary of Health and Human Services, or his or her~~
26 ~~designee.~~
27 ~~(3) The chair of the Senate Committee on Health, or his or her~~
28 ~~designee.~~
29 ~~(4) The chair of the Assembly Committee on Health, or his or~~
30 ~~her designee.~~
31 ~~(5) The State Chief Information Officer, or his or her designee.~~
32 ~~130251. (a) Voting members shall have demonstrated expertise~~
33 ~~in the provision, use, or deployment of health information~~
34 ~~technologies to providers, provider groups, provider facilities,~~
35 ~~consumers, patients, or communities.~~
36 ~~(b) The initial term of voting members shall be staggered, with~~
37 ~~eight members being appointed for a two-year term and nine~~
38 ~~members being appointed for a four-year term. Upon the expiration~~
39 ~~of the initial term, all voting members shall be appointed for a~~
40 ~~four-year term.~~

1 ~~(e) The panel shall elect, from among its members, a chair who~~
2 ~~shall regularly report to the Governor and the Legislature on behalf~~
3 ~~of the panel.~~

4 ~~130252. (a) The panel shall do all of the following:~~

5 ~~(1) Make recommendations to maximize the state's eligibility~~
6 ~~and award of federal stimulus funds, authorized by the American~~
7 ~~Recovery and Reinvestment Act of 2009 (ARRA) (Public Law~~
8 ~~111-5), related to the use of health information technology.~~

9 ~~(2) Advise the Governor and the Legislature on a mechanism~~
10 ~~for designating a nonstate entity, and whether such a nonstate entity~~
11 ~~is desirable, for executing tasks related to accessing federal~~
12 ~~stimulus funds made available through ARRA.~~

13 ~~(3) Make recommendations to ensure that safety net providers~~
14 ~~have access to federal stimulus funds for which they are eligible.~~

15 ~~(4) Make recommendations for sources necessary to match~~
16 ~~federal dollars in the award of funds made available through~~
17 ~~ARRA.~~

18 ~~(5) Make recommendations for working with higher education~~
19 ~~entities to incorporate medical informatics and health care~~
20 ~~information enterprise integration into the higher education~~
21 ~~curriculum, and information technology into clinical education.~~

22 ~~(6) Make recommendations for standards and certification to~~
23 ~~federal policy makers and the Office of the National Coordinator~~
24 ~~for Health Information Technology in the federal Department of~~
25 ~~Health and Human Services.~~

26 ~~(7) Make recommendations on qualifications for centers in the~~
27 ~~state that may provide technical assistance and best practices related~~
28 ~~to health information technology and meaningful assistance on its~~
29 ~~implementation.~~

30 ~~(8) Make recommendations to ensure that providers have access~~
31 ~~to information on federal incentive payments available under~~
32 ~~ARRA that will help them maximize their eligibility under ARRA,~~
33 ~~including understanding of "meaningful use" as defined in federal~~
34 ~~law.~~

35 ~~(9) Meet at least monthly in the first year, and, thereafter, as~~
36 ~~deemed necessary by the chair.~~

37 ~~(b) The panel shall make a recommendation in 2014 whether~~
38 ~~continued need for the advisory panel exists beyond 2016.~~

39 ~~(c) All members of the advisory panel shall serve without~~
40 ~~compensation. Members of the panel shall be reimbursed for all~~

~~1 necessary travel expenses associated with the activities of the
2 panel. Consumer representatives on the panel may receive per
3 diem compensation if they are otherwise economically unable to
4 attend and participate in panel activities.~~

O