

AMENDED IN SENATE JANUARY 20, 2010

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 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 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~~ *in accordance with applicable state and federal 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.

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 1280.15 of the Health and Safety Code
- 2 is amended to read:

1 1280.15. (a) A clinic, health facility, home health agency, or
2 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
3 shall prevent unlawful or unauthorized access to, and use or
4 disclosure of, patients' medical information, as defined in
5 subdivision (g) of Section 56.05 of the Civil Code and consistent
6 with Section 130203. The department, after investigation, may
7 assess an administrative penalty for a violation of this section of
8 up to twenty-five thousand dollars (\$25,000) per patient whose
9 medical information was unlawfully or without authorization
10 accessed, used, or disclosed, and up to seventeen thousand five
11 hundred dollars (\$17,500) per subsequent occurrence of unlawful
12 or unauthorized access, use, or disclosure of that patients' medical
13 information. For purposes of the investigation, the department
14 shall consider the clinic's, health facility's, agency's, or hospice's
15 history of compliance with this section and other related state and
16 federal statutes and regulations, the extent to which the facility
17 detected violations and took preventative action to immediately
18 correct and prevent past violations from recurring, and factors
19 outside its control that restricted the facility's ability to comply
20 with this section. The department shall have full discretion to
21 consider all factors when determining the amount of an
22 administrative penalty pursuant to this section.

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

30 (2) Subject to subdivision (c), a clinic, health facility, home
31 health agency, or hospice shall also report any unlawful or
32 unauthorized access to, or use or disclosure of, a patient's medical
33 information to the affected patient or the patient's representative
34 at the last known address, no later than five business days after
35 the unlawful or unauthorized access, use, or disclosure has been
36 detected by the clinic, health facility, home health agency, or
37 hospice.

38 (c) (1) A clinic, health facility, home health agency, or hospice
39 shall delay the reporting, as required pursuant to paragraph (2) of
40 subdivision (b), of any unlawful or unauthorized access to, or use

1 or disclosure of, a patient’s medical information beyond five
2 business days if a law enforcement agency or official provides the
3 clinic, health facility, home health agency, or hospice with a written
4 or oral statement that compliance with the reporting requirements
5 of paragraph (2) of subdivision (b) would likely impede the law
6 enforcement agency’s investigation that relates to the unlawful or
7 unauthorized access to, and use or disclosure of, a patient’s medical
8 information and specifies a date upon which the delay shall end,
9 not to exceed 60 days after a written request is made, or 30 days
10 after an oral request is made. A law enforcement agency or official
11 may request an extension of a delay based upon a written
12 declaration that there exists a bona fide, ongoing, significant
13 criminal investigation of serious wrongdoing relating to the
14 unlawful or unauthorized access to, and use or disclosure of, a
15 patient’s medical information, that notification of patients will
16 undermine the law enforcement agency’s investigation, and that
17 specifies a date upon which the delay shall end, not to exceed 60
18 days after the end of the original delay period.

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

22 (A) Document the oral statement, including, but not limited to,
23 the identity of the law enforcement agency or official making the
24 oral statement and the date upon which the oral statement was
25 made.

26 (B) Limit the delay in reporting the unlawful or unauthorized
27 access to, or use or disclosure of, the patient’s medical information
28 to the date specified in the oral statement, not to exceed 30 calendar
29 days from the date that the oral statement is made, unless a written
30 statement that complies with the requirements of this subdivision
31 is received during that time.

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

36 (d) If a clinic, health facility, home health agency, or hospice
37 to which subdivision (a) applies violates subdivision (b), the
38 department may assess the licensee a penalty in the amount of one
39 hundred dollars (\$100) for each day that the unlawful or
40 unauthorized access, use, or disclosure is not reported, following

1 the initial five-day period specified in subdivision (b). However,
2 the total combined penalty assessed by the department under
3 subdivision (a) and this subdivision shall not exceed two hundred
4 fifty thousand dollars (\$250,000) per reported event.

5 (e) In enforcing subdivisions (a) and (d), the department shall
6 take into consideration the special circumstances of small and rural
7 hospitals, as defined in Section 124840, and primary care clinics,
8 as defined in subdivision (a) of Section 1204, in order to protect
9 access to quality care in those hospitals and clinics. When assessing
10 a penalty on a skilled nursing facility or other facility subject to
11 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
12 only the higher of either a penalty for the violation of this section
13 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
14 not both.

15 (f) All penalties collected by the department pursuant to this
16 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
17 into the Internal Departmental Quality Improvement Account,
18 which is hereby created within the Special Deposit Fund under
19 Section 16370 of the Government Code. Upon appropriation by
20 the Legislature, moneys in the account shall be expended for
21 internal quality improvement activities in the Licensing and
22 Certification Program.

23 (g) If the licensee disputes a determination by the department
24 regarding a failure to prevent or failure to timely report unlawful
25 or unauthorized access to, or use or disclosure of, patients' medical
26 information, or the imposition of a penalty under this section, the
27 licensee may, within 10 days of receipt of the penalty assessment,
28 request a hearing pursuant to Section 131071. Penalties shall be
29 paid when appeals have been exhausted and the penalty has been
30 upheld.

31 (h) In lieu of disputing the determination of the department
32 regarding a failure to prevent or failure to timely report unlawful
33 or unauthorized access to, or use or disclosure of, patients' medical
34 information, transmit to the department 75 percent of the total
35 amount of the administrative penalty, for each violation, within
36 30 business days of receipt of the administrative penalty.

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

1 (j) For purposes of this section, the following definitions shall
2 apply:

3 (1) “Reported event” means all breaches included in any single
4 report that is made pursuant to subdivision (b), regardless of the
5 number of breach events contained in the report.

6 (2) “Unauthorized” means the inappropriate access, review, or
7 viewing of patient medical information without a direct need for
8 medical diagnosis, treatment, or other lawful use as permitted by
9 the Confidentiality of Medical Information Act (Part 2.6
10 (commencing with Section 56) of Division 1 of the Civil Code)
11 or any other statute or regulation governing the lawful access, use,
12 or disclosure of medical information.

13 SEC. 2. Section 130251 of the Health and Safety Code is
14 amended to read:

15 130251. (a) The California Health and Human Services Agency
16 or one of the departments under its jurisdiction may apply for
17 federal funds made available through the federal American
18 Recovery and Reinvestment Act of 2009 (Public Law 111-5) for
19 health information technology and exchange.

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

26 (c) The agency or state-designated entity shall execute tasks
27 related to accessing federal stimulus funds made available through
28 ARRA, and facilitate and expand the use and disclosure of health
29 information electronically among organizations according to
30 nationally recognized standards and implementation specifications
31 while protecting, to the greatest extent possible, individual privacy
32 and the confidentiality of electronic medical records, ~~and with no~~
33 ~~diminution of rights under state~~ *in accordance with applicable*
34 *state and federal law.*

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

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

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

10 (g) As a condition of receiving the state designation, the
11 state-designated entity shall comply with all of the following
12 requirements:

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

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

19 (i) The Secretary of California Health and Human Services or
20 his or her designee.

21 (ii) The Chair of the Senate Committee on Health or his or her
22 designee.

23 (iii) The Chair of the Assembly Committee on Health or his or
24 her designee.

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

27 (B) The majority of the board shall be comprised of
28 nongovernmental employees.

29 (3) If the board convenes workgroups or subcommittees, the
30 workgroups or subcommittees shall be comprised of representatives
31 from multiple types of organizations from multiple regions
32 throughout the state, and meetings of any workgroup or
33 subcommittee shall be held in an open, public, and transparent
34 way.

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

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

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

O