

AMENDED IN ASSEMBLY JUNE 17, 2009

AMENDED IN SENATE MAY 6, 2009

AMENDED IN SENATE APRIL 22, 2009

SENATE BILL

No. 337

Introduced by Senator Alquist

February 25, 2009

An act to amend Section 1280.15 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 337, as amended, Alquist. Patient medical information: disclosure: reporting.

Existing law establishes provisions for the licensing and certification of clinics, health facilities, home health agencies, and hospices under the jurisdiction of the State Department of Public Health. Existing law prohibits these entities from unlawfully accessing, using, or disclosing a patient's medical information, and authorizes the department to assess administrative penalties for violations. Existing law also requires these entities to report instances of unlawful access, use, or disclosure of a patient's medical information, as prescribed, within 5 days of detecting it.

This bill would specify that this period is 5 business days.

This bill would require a clinic, health facility, home health agency, or hospice to delay reporting the unlawful access, use, or disclosure of a patient's medical information beyond 5 business days, as specified, if a law enforcement agency or official provides a written or oral statement that compliance with the reporting requirements will impede

the law enforcement agency's activities and specifying the date upon which the delay shall end, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

32 (2) Subject to subdivision (c), a clinic, health facility, home
33 health agency, or hospice shall also report any unlawful or

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

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

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

27 (A) Document the oral statement, including, but not limited to,
28 the identity of the law enforcement agency or official making the
29 oral statement and the date upon which the oral statement was
30 made.

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

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

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

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

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

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

(h) In lieu of disputing the determination of the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients' medical information, transmit to the department 75 percent of the total

1 amount of the administrative penalty, for each violation, within
2 30 business days of receipt of the administrative penalty.

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

6 (j) For purposes of this section, the following definitions shall
7 apply:

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

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