

AMENDED IN ASSEMBLY AUGUST 17, 2009

AMENDED IN ASSEMBLY JULY 7, 2009

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 requires these entities to prevent unlawful or unauthorized access to, and use or disclosure of, 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 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 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 *to the affected patient or patient's*

representative the unlawful or unauthorized access to, and 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~~ *that 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 patients medical information 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) 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

1 information to the department no later than five business days after
2 the unlawful or unauthorized access, use, or disclosure has been
3 detected by the clinic, health facility, home health agency, or
4 hospice.

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

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

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

37 (A) Document the oral statement, including, but not limited to,
38 the identity of the law enforcement agency or official making the
39 oral statement and the date upon which the oral statement was
40 made.

1 (B) Limit the delay in reporting the unlawful or unauthorized
2 access to, or use or disclosure of, the patient's medical information
3 to the date specified in the oral statement, not to exceed 30 calendar
4 days from the date that the oral statement is made, unless a written
5 statement that complies with the requirements of this subdivision
6 is received during that time.

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

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

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

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

38 (g) If the licensee disputes a determination by the department
39 regarding a failure to prevent or failure to timely report unlawful
40 or unauthorized access to, or use or disclosure of, patients' medical

1 information, or the imposition of a penalty under this section, the
2 licensee may, within 10 days of receipt of the penalty assessment,
3 request a hearing pursuant to Section 131071. Penalties shall be
4 paid when appeals have been exhausted and the penalty has been
5 upheld.

6 (h) In lieu of disputing the determination of the department
7 regarding a failure to prevent or failure to timely report unlawful
8 or unauthorized access to, or use or disclosure of, patients' medical
9 information, transmit to the department 75 percent of the total
10 amount of the administrative penalty, for each violation, within
11 30 business days of receipt of the administrative penalty.

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

15 (j) For purposes of this section, the following definitions shall
16 apply:

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

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