

Assembly Bill No. 2253

Passed the Assembly August 30, 2012

Chief Clerk of the Assembly

Passed the Senate August 29, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 123148 of the Health and Safety Code, relating to health records.

LEGISLATIVE COUNSEL'S DIGEST

AB 2253, Pan. Clinical laboratory test results: electronic conveyance.

Existing law authorizes the results of a clinical laboratory test performed at the request of a health care professional to be conveyed to the patient in electronic form if requested by the patient and if deemed most appropriate by the health care professional, except that existing law prohibits the conveyance by Internet posting or other electronic means of test results relating to HIV antibodies, the presence of hepatitis antigens, and the abuse of drugs, and specified test results that reveal a malignancy.

This bill would revise these provisions to refer to the disclosure of test results, would provide that the telephone is not a form of electronic communication, and would authorize the disclosure by Internet posting or other electronic means of clinical laboratory test results related to HIV antibodies, the presence of hepatitis antigens, and the abuse of drugs, and specified test results that reveal a malignancy if requested by the patient, the means of conveyance is deemed appropriate by the health care professional, and a health care professional has already discussed the results with the patient.

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

SECTION 1. Section 123148 of the Health and Safety Code is amended to read:

123148. (a) Notwithstanding any other provision of law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be disclosed in plain language and in oral or written form, except the results may be disclosed in electronic form if requested by the

patient and if deemed most appropriate by the health care professional who requested the test. The telephone shall not be considered an electronic form of disclosing laboratory results subject to the limits on electronic disclosure of test results for the purpose of this section.

(b) (1) Consent of the patient to receive his or her laboratory results by Internet posting or other electronic means shall be obtained in a manner consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event that a health care professional arranges for the provision of test results by Internet posting or other electronic manner, the results shall be disclosed to a patient in a reasonable time period, but only after the results have been reviewed by the health care professional. Access to clinical laboratory test results shall be restricted by the use of a secure personal identification number when the results are disclosed to a patient by Internet posting or other electronic manner.

(2) Nothing in paragraph (1) shall prohibit direct communication by Internet posting or the use of other electronic means to disclose clinical laboratory test results by a treating health care professional who ordered the test for his or her patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests access to his or her laboratory test results by Internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic disclosure of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute, if enacted, that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received at the offices of the health care professional who requested the test.

(f) Notwithstanding subdivision (a), unless the patient requests the disclosure, the health care professional deems this disclosure as an appropriate means, and a health care professional has first discussed in person, by telephone, or by any other means of oral communication, the test results with the patient, in compliance with any other applicable laws, none of the following clinical laboratory test results and any other related results shall be disclosed to a patient by Internet posting or other electronic means:

- (1) HIV antibody test.
- (2) Presence of antigens indicating a hepatitis infection.
- (3) Abusing the use of drugs.
- (4) Test results related to routinely processed tissues, including skin biopsies, Pap smear tests, products of conception, and bone marrow aspirations for morphological evaluation, if they reveal a malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code. In no event shall patient identifiable HIV-related test results and health information disclosed in this section be used in violation of subdivision (f) of Section 120980.

(h) Any third party to whom laboratory test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay any cost, or be charged any fee, for electing to receive his or her laboratory results in any manner other than by Internet posting or other electronic form.

(j) A patient or his or her physician may revoke any consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

Approved _____, 2012

Governor