

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1543

Introduced by Senator Emmerson

February 24, 2012

~~An act to amend Section 1367 of the Health and Safety Code, relating to health care service plans. An act to amend Sections 1158 and 1563 of the Evidence Code, and to amend Sections 123105 and 123110 of the Health and Safety Code, relating to patient records.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1543, as amended, Emmerson. ~~Health care service plans. Patient records: inspection and copies.~~

(1) Existing law authorizes an attorney or his or her representative to review and obtain certain patient records prior to filing any legal action if written authorization is given by the patient. Further, existing law prohibits the medical provider from copying the records if the attorney has employed a private photocopying service, as specified.

This bill would prescribe the fees for a health care provider or medical records management company to charge when providing copies of medical records to an attorney. This bill would also provide that an electronic copy of a medical record is required only if the entire request can be reproduced from an electronic health record system and can be delivered electronically. Further, the bill would require the Secretary of California Health and Human Services to make annual determinations concerning any increase or decrease in the fees in accordance with the Consumer Price Index prepared by the United States Department of Labor.

(2) Existing law authorizes issuance of a subpoena for the personal records of any consumer, as defined, including medical and employment

records. The party requesting the records is only required to pay one witness fee and one mileage fee to a witness or witness' business when requesting business records.

This bill would require a requesting party to pay a witness fee and mileage fee whenever a subpoena requires a witness, and would require the requesting party to pay for records produced in response to a subpoena duces tecum, including when those records are allowed in lieu of a witness appearance. This bill would also prescribe the costs to be paid in advance by the requesting party. Further, this bill would authorize the Secretary of California Health and Human Services to make annual determinations concerning any increase or decrease in those fees in accordance with the Consumer Price Index prepared by the United States Department of Labor.

(3) Existing law requires that, following a written request to his or her health care provider, a patient or his or her representative may inspect and obtain copies of patient records after paying a specified fee. If the patient or patient's representative presents proof to the provider that the records are needed to support an appeal regarding eligibility for a public benefit program, the health care provider must provide one copy of the relevant portion of the patient's record at no charge under specified circumstances. A willful violation of this requirement by certain health care providers is an infraction.

This bill would prescribe an hourly charge for a health care provider when the provider locates a patient's medical records, makes those records available, and supervises any inspection of the records by the patient or patient's representative, as defined. Further, this bill would prescribe the reproduction costs for the copies of the records, and would provide that an electronic copy of a medical record is only required if the entire request can be reproduced from an electronic health record system and the record can be delivered electronically. This bill would also permit a patient or patient's representative to obtain multiple copies of the relevant portion of the patient's medical record at no charge in public benefit eligibility appeals. Additionally, this bill would require the Secretary of California Health and Human Services to make annual determinations concerning any increase or decrease in the fees in accordance with the Consumer Price Index prepared by the United States Department of Labor.

~~Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. Existing law requires~~

~~health care service plans to meet certain requirements, including, but not limited to, having the organizational and administrative capacity to provide services to subscribers and enrollees and providing basic health care services, as defined, to those subscribers and enrollees.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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

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

1 SECTION 1. Section 1158 of the Evidence Code is amended
2 to read:

3 1158. (a) ~~Whenever, prior to the filing of any action or the~~
4 ~~appearance of a defendant in an action, an attorney at law~~ *attorney*
5 ~~at law~~ or his or her ~~representative~~ *agent* presents a written
6 authorization ~~therefor~~ signed by an adult patient, by the guardian
7 or conservator of his or her person or estate, or, in the case of a
8 minor, by a parent or guardian of the minor, or by the personal
9 representative or an heir of a deceased patient, or a copy thereof,
10 a physician and surgeon, dentist, registered nurse, dispensing
11 optician, registered physical therapist, podiatrist, licensed
12 psychologist, osteopathic physician and surgeon, chiropractor,
13 clinical laboratory bioanalyst, clinical laboratory technologist, or
14 pharmacist or pharmacy, duly licensed as such under the laws of
15 the state, or a licensed hospital, shall ~~make all of, or shall have its~~
16 ~~medical records management company make, a copy of the~~
17 ~~patient's records under his, hers or its~~ *the person's or entity's*
18 ~~custody or control available for inspection and copying by the~~
19 ~~attorney at law~~ *attorney at law* or his, or her, ~~representative, agent~~
20 promptly upon the presentation of the written authorization.

21 *Failure to make the records available may subject the person*
22 ~~or entity having custody or control of the records to liability for~~
23 ~~all reasonable expenses, including attorney's fees incurred in any~~
24 ~~proceeding to enforce this section.~~

25 (b) *Fees for copies of medical records shall be as follows:*

26 (1) *For a request by an attorney, a search and retrieval fee of*
27 ~~thirty dollars (\$30), plus a fee of fifty cents (\$0.50) per page for~~
28 ~~the first 25 pages, and twenty-five cents (\$0.25) for each additional~~
29 ~~page.~~

1 (2) *An electronic copy of a patient's medical record shall only*
2 *be required if the entire request can be reproduced from an*
3 *electronic health record system and, if it is requested, can be*
4 *delivered electronically. If a requester receives the records*
5 *electronically, no postage may be charged.*

6 (c) *On January 1 of each year beginning in 2013, all amounts*
7 *in subdivision (b) shall be increased or decreased by the average*
8 *percentage of increase or decrease in the Consumer Price Index*
9 *for All Urban Consumers (United States city average, all items),*
10 *prepared by the United States Department of Labor, Bureau of*
11 *Labor Statistics, for the 12-calendar-month period prior to the*
12 *immediately preceding first day of January over the immediately*
13 *preceding 12-calendar-month period, as reported by the bureau.*
14 *The Secretary of California Health and Human Services shall*
15 *make this determination and adjust the amounts accordingly. The*
16 *secretary shall provide a list of the adjusted amounts to any party*
17 *upon request, and the California Health and Human Services*
18 *Agency shall make the list available to the public on its Internet*
19 *Web site no later than December 31 of each calendar year.*

20 (d) *A health care provider or medical records management*
21 *company may enter into a contract with a patient's representative*
22 *for the copying of medical records at a fee other than as provided*
23 *in subdivision (b). Nothing in this section requires or precludes*
24 *the distribution of medical records at a contractual cost or fee to*
25 *insurers authorized to provide health, sickness, or property or*
26 *casualty insurance in this state, or to corporations having a*
27 *certificate of authority holding a certificate of authority under*
28 *applicable law.*

29 (e) *A patient who wishes to examine all or part of his or her*
30 *medical record shall submit a written request to the health provider*
31 *pursuant to Section 123110 of the Health and Safety Code.*

32 ~~No copying may be performed by any medical provider or~~
33 ~~employer enumerated above, or by an agent thereof, when the~~
34 ~~requesting attorney has employed a professional photocopier or~~
35 ~~anyone identified in Section 22451 of the Business and Professions~~
36 ~~Code as his or her representative to obtain or review the records~~
37 ~~on his or her behalf. The presentation of the authorization by the~~
38 ~~agent on behalf of the attorney shall be sufficient proof that the~~
39 ~~agent is the attorney's representative.~~

1 Failure to make the records available, during business hours,
2 within five days after the presentation of the written authorization;
3 may subject the person or entity having custody or control of the
4 records to liability for all reasonable expenses, including attorney's
5 fees, incurred in any proceeding to enforce this section.

6 All reasonable costs incurred by any person or entity enumerated
7 above in making patient records available pursuant to this section
8 may be charged against the person whose written authorization
9 required the availability of the records.

10 "Reasonable cost," as used in this section, shall include, but not
11 be limited to, the following specific costs: ten cents (\$0.10) per
12 page for standard reproduction of documents of a size 8 ½ by 14
13 inches or less; twenty cents (\$0.20) per page for copying of
14 documents from microfilm; actual costs for the reproduction of
15 oversize documents or the reproduction of documents requiring
16 special processing which are made in response to an authorization;
17 reasonable clerical costs incurred in locating and making the
18 records available to be billed at the maximum rate of sixteen dollars
19 (\$16) per hour per person, computed on the basis of four dollars
20 (\$4) per quarter hour or fraction thereof; actual postage charges;
21 and actual costs, if any, charged to the witness by a third person
22 for the retrieval and return of records held by that third person.

23 Where the records are delivered to the attorney or the attorney's
24 representative for inspection or photocopying at the record
25 custodian's place of business, the only fee for complying with the
26 authorization shall not exceed fifteen dollars (\$15), plus actual
27 costs, if any, charged to the record custodian by a third person for
28 retrieval and return of records held offsite by the third person.

29 *SEC. 2. Section 1563 of the Evidence Code is amended to read:*

30 1563. (a) ~~This article shall not be interpreted to require tender~~
31 ~~or payment of more than~~ *A requesting party shall pay one* witness
32 *fee and one mileage fee or other charge; to a witness or witness'*
33 *business, unless there is an agreement to the contrary between the*
34 *witness and the requesting party. A requesting party shall also pay*
35 *for the reproduction of records produced in response to a subpoena*
36 *or if allowed in lieu of appearance.*

37 (b) All reasonable costs incurred in a civil proceeding by any
38 witness ~~which is not a party~~ with respect to the production of all
39 or any part of business records the production of which is requested

1 pursuant to a subpoena duces tecum ~~may shall be charged against~~
2 *paid in advance* by the party serving the subpoena duces tecum.

3 (1) “Reasonable ~~cost,~~” *costs,*” as used in this section, shall
4 include, but not be limited to, the following specific costs: ~~ten~~
5 ~~cents (\$0.10) per page for standard reproduction of documents of~~
6 ~~a size 8½ by 14 inches or less; twenty, and shall apply to all~~
7 *documents reproduced in response to a subpoena:*

8 (A) ~~Twenty-five cents (\$0.20)~~ *(\$0.25)* per page for copying of
9 documents ~~from microfilm~~ *actual stored on paper or electronically.*

10 (B) *Fifty cents (\$0.50) per page for reproduction of documents*
11 *stored on microfilm.*

12 (C) *Actual costs for the reproduction of oversize documents or*
13 *the reproduction of documents requiring special processing which*
14 *are made in response to a subpoena; reasonable clerical.*

15 (D) *Thirty dollars (\$30) for costs incurred in locating and*
16 *making the records available to be billed at the maximum rate of*
17 ~~twenty-four dollars (\$24) per hour per person, computed on the~~
18 ~~basis of six dollars (\$6) per quarter hour or fraction thereof, and~~
19 *actual postage charges as provided by subparagraph (E).*

20 (E) ~~The actual postage charges; and the if the record is requested~~
21 *to be mailed.*

22 (F) *The actual cost, if any, charged to the witness by a third*
23 *person for the retrieval and return of records held offsite by that*
24 *third person.*

25 (2) The requesting party, or the requesting party’s deposition
26 officer, shall not be required to pay those costs or any estimate
27 thereof prior to the time the records are available for delivery
28 pursuant to the subpoena, but the witness may demand payment
29 of costs pursuant to this section simultaneous with actual delivery
30 of the subpoenaed records, and until payment is made, is under no
31 obligation to deliver the records.

32 (3) The witness shall submit an itemized statement for ~~the costs~~
33 *under this subdivision* to the requesting party, or the requesting
34 party’s deposition officer, setting forth the reproduction and clerical
35 costs incurred by the witness. Should the costs exceed those
36 authorized in paragraph (1), or the witness refuses to produce an
37 itemized statement of costs as required by ~~paragraph (3)~~ *this*
38 *paragraph*, upon demand by the requesting party, or the requesting
39 party’s deposition officer, the witness shall furnish a statement

1 setting forth the actions taken by the witness in justification of the
2 costs.

3 (4) The requesting party may petition the court in which the
4 action is pending to recover from the witness all or a part of the
5 costs paid to the witness, or to reduce all or a part of the costs
6 charged by the witness, pursuant to this subdivision, on the grounds
7 that those costs were excessive *if those costs exceed the costs set*
8 *forth in paragraph (1) of subdivision (b)*. Upon the filing of the
9 petition the court shall issue an order to show cause and from the
10 time the order is served on the witness the court has jurisdiction
11 over the witness. The court may hear testimony on the order to
12 show cause and if it finds that the costs demanded and collected,
13 or charged but not collected, exceed the amount authorized by this
14 subdivision, it shall order the witness to remit to the requesting
15 party, or reduce its charge to the requesting party by an amount
16 equal to, the amount of the excess. In the event that the court finds
17 the costs excessive and charged in bad faith by the witness, the
18 court shall order the witness to remit the full amount of the costs
19 demanded and collected, or excuse the requesting party from any
20 payment of costs charged but not collected, and the court shall
21 also order the witness to pay the requesting party the amount of
22 the reasonable expenses incurred in obtaining the order including
23 attorney's fees. If the court finds the costs were not excessive, the
24 court shall order the requesting party to pay the witness the amount
25 of the reasonable expenses incurred in defending the petition,
26 including attorney's fees.

27 (5) If a subpoena is served to compel the production of business
28 records and is subsequently withdrawn, or is quashed, modified
29 or limited on a motion made other than by the witness, the witness
30 shall be entitled to reimbursement pursuant to paragraph (1) for
31 all costs incurred in compliance with the subpoena to the time that
32 the requesting party has notified the witness that the subpoena has
33 been withdrawn or quashed, modified or limited. In the event the
34 subpoena is withdrawn or quashed, if those costs are not paid
35 within 30 days after demand therefor, the witness may file a motion
36 in the court in which the action is pending for an order requiring
37 payment, and the court shall award the payment of expenses and
38 attorney's fees in the manner set forth in paragraph (4).

39 (6) Where the records are delivered to the attorney, the
40 attorney's representative, or the deposition officer for inspection

1 or photocopying at the witness' place of business, the only fee for
2 complying with the subpoena shall not exceed ~~fifteen dollars (\$15);~~
3 *the fees set forth in paragraph (1) of subdivision (b)* plus the actual
4 cost, if any, charged to the witness by a third person for retrieval
5 and return of records held offsite by that third person. If the records
6 are retrieved from microfilm, the reasonable cost, as defined in
7 paragraph (1), shall also apply.

8 (c) When the personal attendance of the custodian of a record
9 or other qualified witness is required pursuant to Section 1564, in
10 a civil proceeding, he or she shall be entitled to the same witness
11 fees and mileage permitted in a case where the subpoena requires
12 the witness to attend and testify before a court in which the action
13 or proceeding is pending and to any additional costs incurred as
14 provided by subdivision (b).

15 (d) *On January 1 of each year beginning in 2013, all amounts*
16 *under subdivision (b) shall be increased or decreased by the*
17 *average percentage of increase or decrease in the Consumer Price*
18 *Index for All Urban Consumers (United States city average, all*
19 *items), prepared by the United States Department of Labor, Bureau*
20 *of Labor Statistics, for the 12-calendar-month period prior to the*
21 *immediately preceding first day of January over the immediately*
22 *preceding 12-calendar-month period, as reported by the bureau.*
23 *The Secretary of California Health and Human Services shall*
24 *make this determination and adjust the amounts accordingly. The*
25 *secretary shall provide a list of the adjusted amounts to any party*
26 *upon request, and the California Health and Human Services*
27 *Agency shall make the list available to the public on its Internet*
28 *Web site no later than December 31 of each calendar year.*

29 SEC. 3. *Section 123105 of the Health and Safety Code is*
30 *amended to read:*

31 123105. As used in this chapter:

32 (a) "Health care provider" means any of the following:

33 (1) A health facility licensed pursuant to Chapter 2 (commencing
34 with Section 1250) of Division 2.

35 (2) A clinic licensed pursuant to Chapter 1 (commencing with
36 Section 1200) of Division 2.

37 (3) A home health agency licensed pursuant to Chapter 8
38 (commencing with Section 1725) of Division 2.

- 1 (4) A physician and surgeon licensed pursuant to Chapter 5
2 (commencing with Section 2000) of Division 2 of the Business
3 and Professions Code or pursuant to the Osteopathic Act.
- 4 (5) A podiatrist licensed pursuant to Article 22 (commencing
5 with Section 2460) of Chapter 5 of Division 2 of the Business and
6 Professions Code.
- 7 (6) A dentist licensed pursuant to Chapter 4 (commencing with
8 Section 1600) of Division 2 of the Business and Professions Code.
- 9 (7) A psychologist licensed pursuant to Chapter 6.6
10 (commencing with Section 2900) of Division 2 of the Business
11 and Professions Code.
- 12 (8) An optometrist licensed pursuant to Chapter 7 (commencing
13 with Section 3000) of Division 2 of the Business and Professions
14 Code.
- 15 (9) A chiropractor licensed pursuant to the Chiropractic Initiative
16 Act.
- 17 (10) A marriage and family therapist licensed pursuant to
18 Chapter 13 (commencing with Section 4980) of Division 2 of the
19 Business and Professions Code.
- 20 (11) A clinical social worker licensed pursuant to Chapter 14
21 (commencing with Section 4990) of Division 2 of the Business
22 and Professions Code.
- 23 (12) A physical therapist licensed pursuant to Chapter 5.7
24 (commencing with Section 2600) of Division 2 of the Business
25 and Professions Code.
- 26 (13) An occupational therapist licensed pursuant to Chapter 5.6
27 (commencing with Section 2570).
- 28 (14) A professional clinical counselor licensed pursuant to
29 Chapter 16 (commencing with Section 4999.10) of Division 2 of
30 the Business and Professions Code.
- 31 (b) “Mental health records” means patient records, or discrete
32 portions thereof, specifically relating to evaluation or treatment of
33 a mental disorder. “Mental health records” includes, but is not
34 limited to, all alcohol and drug abuse records.
- 35 (c) “Patient” means a patient or former patient of a health care
36 provider.
- 37 (d) “Patient records” means records in any form or medium
38 maintained by, or in the custody or control of, a health care
39 provider relating to the health history, diagnosis, or condition of
40 a patient, or relating to treatment provided or proposed to be

1 provided to the patient. “Patient records” includes only records
 2 pertaining to the patient requesting the records or whose
 3 representative requests the records. “Patient records” does not
 4 include information given in confidence to a health care provider
 5 by a person other than another health care provider or the patient,
 6 and that material may be removed from any records prior to
 7 inspection or copying under Section 123110 or 123115. “Patient
 8 records” does not include information contained in aggregate form,
 9 such as indices, registers, or logs.

10 (e) “Patient’s representative” or “representative” means any of
 11 the following:

- 12 (1) A parent or guardian of a minor who is a patient.
- 13 (2) The guardian or conservator of the person of an adult patient.
- 14 (3) An agent as defined in Section 4607 of the Probate Code,
 15 to the extent necessary for the agent to fulfill his or her duties as
 16 set forth in Division 4.7 (commencing with Section 4600) of the
 17 Probate Code.
- 18 (4) The beneficiary as defined in Section 24 of the Probate Code
 19 or personal representative as defined in Section 58 of the Probate
 20 Code, of a deceased patient.
- 21 (5) *The patient’s personal representative as defined in Section*
 22 *164.502(g) of Title 45 of the Code of Federal Regulations.*

23 (f) “Alcohol and drug abuse records” means patient records, or
 24 discrete portions thereof, specifically relating to evaluation and
 25 treatment of alcoholism or drug abuse.

26 *SEC. 4. Section 123110 of the Health and Safety Code is*
 27 *amended to read:*

28 ~~123110. (a) Notwithstanding Section 5328 of the Welfare and~~
 29 ~~Institutions Code, and except as provided in Sections 123115 and~~
 30 ~~123120, any~~ Any adult patient of a health care provider, any minor
 31 patient authorized by law to consent to medical treatment, and any
 32 ~~patient~~ *patient’s personal* representative shall be entitled to inspect
 33 patient records upon presenting to the health care provider a written
 34 request for those records and upon payment of ~~reasonable clerical~~
 35 ~~costs~~ *a charge of twenty-five dollars (\$25) per hour* incurred in
 36 locating and making the records available *and in supervising any*
 37 *inspection session*. However, a patient who is a minor shall be
 38 entitled to inspect patient records pertaining only to health care of
 39 a type for which the minor is lawfully authorized to consent. A
 40 health care provider shall permit this inspection during business

1 hours within five working days after receipt of the written request.
2 The inspection shall be conducted by the patient or patient's
3 *personal* representative requesting the inspection, who may be
4 accompanied by one other person of his or her choosing.

5 (b) Additionally, any patient or patient's *personal* representative
6 shall be entitled to copies of all or any portion of the patient records
7 that he or she has a right to inspect, upon presenting a written
8 request to the health care provider specifying the records to be
9 copied, together with a fee ~~to defray the cost of copying for~~
10 *reproducing the records*, that shall not exceed twenty-five cents
11 (\$0.25) per page or fifty cents (\$0.50) per page for records that are
12 copied from microfilm and any additional reasonable clerical costs
13 incurred in making the records available. *The patient shall also*
14 *pay for the actual postage if the patient requests the records to be*
15 *mailed to him or her.* The health care provider shall ensure that
16 the copies are transmitted *to the patient* within 15 days after
17 receiving the written request.

18 (1) *An electronic copy of a patient's medical record shall only*
19 *be required if the entire request can be reproduced from an*
20 *electronic health record system. If a patient receives his or her*
21 *records electronically, no postage may be charged.*

22 (2) *On January 1 of each year beginning in 2013, all amounts*
23 *under subdivision (a) and this subdivision shall be increased or*
24 *decreased by the average percentage of increase or decrease in*
25 *the Consumer Price Index for all urban consumers (United States*
26 *city average, all items), prepared by the United States Department*
27 *of Labor, Bureau of Labor Statistics, for the 12-calendar-month*
28 *period prior to the immediately preceding first day of January*
29 *over the immediately preceding 12-calendar-month period, as*
30 *reported by the bureau. The Secretary of California Health and*
31 *Human Services shall make this determination and adjust the*
32 *amounts accordingly. The secretary shall provide a list of the*
33 *adjusted amounts to any party upon request, and the California*
34 *Health and Human Services Agency shall make the list available*
35 *to the public on its Internet Web site no later than December 31*
36 *of each calendar year.*

37 (c) Copies of X-rays or ~~tracings~~ *images* derived from
38 electrocardiography, electroencephalography, or electromyography
39 need not be provided to the patient or patient's *personal*
40 representative under this section, ~~if provided that~~ the original

1 X-rays or ~~traicngs~~ *images* are transmitted to another health care
 2 provider upon written request of the patient or patient's *personal*
 3 representative and within 15 days after receipt of the request. The
 4 request shall specify the name and address of the health care
 5 provider to whom the records are to be delivered. ~~All reasonable~~
 6 ~~costs, not exceeding actual costs, incurred by a health care provider~~
 7 ~~in providing copies pursuant to this subdivision may~~ *The costs set*
 8 *forth in subdivision (b) shall be charged to paid by* the patient or
 9 *personal* representative requesting the copies.

10 (d) (1) Notwithstanding any provision of this section, and except
 11 as provided in Sections 123115 and 123120, any patient or former
 12 patient or the patient's *personal* representative shall be entitled to
 13 a copy, at no charge, of the relevant portion of the patient's records,
 14 upon presenting to the provider a written request, ~~and accompanied~~
 15 ~~by proof that the records are needed to support an appeal regarding~~
 16 ~~eligibility for a public benefit program. These programs shall be~~
 17 ~~the Medi-Cal program, social security disability insurance benefits,~~
 18 ~~and Supplemental Security Income/State Supplementary Program~~
 19 ~~for the Aged, Blind and Disabled (SSI/SSP) benefits. For purposes~~
 20 ~~of this subdivision, "relevant portion of the patient's records"~~
 21 ~~means those records regarding services rendered to the patient~~
 22 ~~during the time period beginning with the date of the patient's~~
 23 ~~initial application for public benefits up to and including the date~~
 24 ~~that a final determination is made by the public benefits program~~
 25 ~~with which the patient's application is pending.~~

26 ~~(2) Although a patient shall not be limited to a single request,~~
 27 ~~the patient or patient's representative shall be entitled to no more~~
 28 ~~than one copy of any relevant portion of his or her record free of~~
 29 ~~charge.~~

30 ~~(3)~~

31 (2) This subdivision shall not apply to any patient who is
 32 represented by a private attorney who is paying for the costs related
 33 to the patient's appeal, pending the outcome of that appeal. For
 34 purposes of this subdivision, "private attorney" means any attorney
 35 not employed by a nonprofit legal services entity.

36 (e) If the patient's appeal regarding eligibility for a public benefit
 37 program specified in subdivision (d) is successful, ~~the hospital or~~
 38 ~~other health care provider may bill~~ the patient *or the patient's*
 39 *personal representative shall pay the hospital or other health care*
 40 *provider, at the rates specified in subdivisions subdivision (b) and*

1 ~~(e)~~, for the copies of ~~the~~ any medical records previously provided
2 free of charge.

3 (f) If a patient or ~~his or her~~ *the patient's personal* representative
4 requests a record pursuant to subdivision (d), the health care
5 provider shall ensure that the copies are transmitted within 30 days
6 after receiving the written request.

7 ~~This section shall not be construed to preclude a~~ A health
8 care provider ~~from requiring~~ *shall require* reasonable verification
9 of identity prior to permitting inspection or copying of patient
10 records, provided this requirement is not used oppressively or
11 discriminatorily to frustrate or delay compliance with this section.
12 Nothing in this chapter shall be deemed to supersede any rights
13 that a patient or representative might otherwise have or exercise
14 under Section 1158 of the Evidence Code or any other provision
15 of law. Nothing in this chapter shall require a health care provider
16 to retain records longer than required by applicable statutes or
17 administrative regulations.

18 (h) This chapter shall not be construed to render a health care
19 provider liable for the quality of his or her records or the copies
20 provided in excess of existing law and regulations with respect to
21 the quality of medical records. A health care provider shall not be
22 liable to the patient or any other person for any consequences that
23 result from disclosure of patient records as required by this chapter.
24 A health care provider shall not discriminate against classes or
25 categories of providers in the transmittal of X-rays or other patient
26 records, or copies of these X-rays or records, to other providers as
27 authorized by this section.

28 Every health care provider shall adopt policies and establish
29 procedures for the uniform transmittal of X-rays and other patient
30 records that effectively prevent the discrimination described in
31 this subdivision. A health care provider may establish reasonable
32 conditions, including a reasonable deposit fee, to ensure the return
33 of original X-rays transmitted to another health care provider,
34 provided the conditions do not discriminate on the basis of, or in
35 a manner related to, the license of the provider to which the X-rays
36 are transmitted.

37 (i) Any health care provider described in paragraphs (4) to (10),
38 inclusive, of subdivision (a) of Section 123105 who willfully
39 violates this chapter is guilty of unprofessional conduct. Any health
40 care provider described in paragraphs (1) to (3), inclusive, of

1 subdivision (a) of Section 123105 that willfully violates this chapter
2 is guilty of an infraction punishable by a fine of not more than one
3 hundred dollars (\$100). The state agency, board, or commission
4 that issued the health care provider’s professional or institutional
5 license shall consider a violation as grounds for disciplinary action
6 with respect to the licensure, including suspension or revocation
7 of the license or certificate.

8 (j) This section shall be construed as prohibiting a health care
9 provider from withholding patient records or summaries of patient
10 records because of an unpaid bill for health care services. Any
11 health care provider who willfully withholds patient records or
12 summaries of patient records because of an unpaid bill for health
13 care services shall be subject to the sanctions specified in
14 subdivision (i).

15 ~~SECTION 1. Section 1367 of the Health and Safety Code is~~
16 ~~amended to read:~~

17 ~~1367. A health care service plan and, if applicable, a specialized~~
18 ~~health care service plan shall meet the following requirements:~~

19 ~~(a) Facilities located in this state including, but not limited to,~~
20 ~~clinics, hospitals, and skilled nursing facilities to be utilized by~~
21 ~~the plan shall be licensed by the State Department of Public Health,~~
22 ~~where licensure is required by law. Facilities not located in this~~
23 ~~state shall conform to all licensing and other requirements of the~~
24 ~~jurisdiction in which they are located.~~

25 ~~(b) Personnel employed by or under contract to the plan shall~~
26 ~~be licensed or certified by their respective board or agency, where~~
27 ~~licensure or certification is required by law.~~

28 ~~(c) Equipment required to be licensed or registered by law shall~~
29 ~~be so licensed or registered, and the operating personnel for that~~
30 ~~equipment shall be licensed or certified as required by law.~~

31 ~~(d) The plan shall furnish services in a manner providing~~
32 ~~continuity of care and ready referral of patients to other providers~~
33 ~~at times as may be appropriate, consistent with good professional~~
34 ~~practice.~~

35 ~~(e) (1) All services shall be readily available at reasonable times~~
36 ~~to each enrollee consistent with good professional practice. To the~~
37 ~~extent feasible, the plan shall make all services readily accessible~~
38 ~~to all enrollees consistent with Section 1367.03.~~

39 ~~(2) To the extent that telemedicine services are appropriately~~
40 ~~provided through telemedicine, as defined in subdivision (a) of~~

1 ~~Section 2290.5 of the Business and Professions Code, these~~
2 ~~services shall be considered in determining compliance with~~
3 ~~Section 1300.67.2 of Title 28 of the California Code of~~
4 ~~Regulations.~~

5 ~~(3) The plan shall make all services accessible and appropriate~~
6 ~~consistent with Section 1367.04.~~

7 ~~(f) The plan shall employ and utilize allied health manpower~~
8 ~~for the furnishing of services to the extent permitted by law and~~
9 ~~consistent with good medical practice.~~

10 ~~(g) The plan shall have the organizational and administrative~~
11 ~~capacity to provide services to subscribers and enrollees. The plan~~
12 ~~shall be able to demonstrate to the department that medical~~
13 ~~decisions are rendered by qualified medical providers, unhindered~~
14 ~~by fiscal and administrative management.~~

15 ~~(h) (1) Contracts with subscribers and enrollees, including~~
16 ~~group contracts, and contracts with providers, and other persons~~
17 ~~furnishing services, equipment, or facilities to or in connection~~
18 ~~with the plan, shall be fair, reasonable, and consistent with the~~
19 ~~objectives of this chapter. All contracts with providers shall contain~~
20 ~~provisions requiring a fast, fair, and cost-effective dispute~~
21 ~~resolution mechanism under which providers may submit disputes~~
22 ~~to the plan, and requiring the plan to inform its providers upon~~
23 ~~contracting with the plan, or upon change to these provisions, of~~
24 ~~the procedures for processing and resolving disputes, including~~
25 ~~the location and telephone number where information regarding~~
26 ~~disputes may be submitted.~~

27 ~~(2) A health care service plan shall ensure that a dispute~~
28 ~~resolution mechanism is accessible to nonecontracting providers~~
29 ~~for the purpose of resolving billing and claims disputes.~~

30 ~~(3) On and after January 1, 2002, a health care service plan shall~~
31 ~~annually submit a report to the department regarding its dispute~~
32 ~~resolution mechanism. The report shall include information on the~~
33 ~~number of providers who utilized the dispute resolution mechanism~~
34 ~~and a summary of the disposition of those disputes.~~

35 ~~(i) A health care service plan contract shall provide to~~
36 ~~subscribers and enrollees all of the basic health care services~~
37 ~~included in subdivision (b) of Section 1345, except that the director~~
38 ~~may, for good cause, by rule or order exempt a plan contract or~~
39 ~~any class of plan contracts from that requirement. The director~~
40 ~~shall by rule define the scope of each basic health care service that~~

1 health care service plans are required to provide as a minimum for
2 licensure under this chapter. Nothing in this chapter shall prohibit
3 a health care service plan from charging subscribers or enrollees
4 a copayment or a deductible for a basic health care service or from
5 setting forth, by contract, limitations on maximum coverage of
6 basic health care services, provided that the copayments,
7 deductibles, or limitations are reported to, and held unobjectionable
8 by, the director and set forth to the subscriber or enrollee pursuant
9 to the disclosure provisions of Section 1363.

10 (j) A health care service plan shall not require registration under
11 the Controlled Substances Act of 1970 (21 U.S.C. Sec. 801 et seq.)
12 as a condition for participation by an optometrist certified to use
13 therapeutic pharmaceutical agents pursuant to Section 3041.3 of
14 the Business and Professions Code.

15 Nothing in this section shall be construed to permit the director
16 to establish the rates charged subscribers and enrollees for
17 contractual health care services.

18 The director's enforcement of Article 3.1 (commencing with
19 Section 1357) shall not be deemed to establish the rates charged
20 subscribers and enrollees for contractual health care services.

21 The obligation of the plan to comply with this section shall not
22 be waived when the plan delegates any services that it is required
23 to perform to its medical groups, independent practice associations,
24 or other contracting entities.