

AMENDED IN SENATE AUGUST 19, 2013

AMENDED IN SENATE JUNE 4, 2013

AMENDED IN ASSEMBLY APRIL 10, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1297

Introduced by Assembly Member John A. Pérez
(Coauthor: Senator Anderson)

February 22, 2013

An act to amend Section 56.10 of the Civil Code, and to amend Section 7151.15 of the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1297, as amended, John A. Pérez. Coroners: organ donation.

Existing law requires a coroner to cooperate with procurement organizations to maximize the opportunity to recover anatomical gifts for the purpose of transplantation, therapy, research, or education. Existing law requires a coroner or designee to conduct a post mortem examination of a body or part that is available for or has been donated to a procurement organization in a manner and within a period compatible with the body or part's preservation for the purposes of the gift.

This bill would authorize a procurement organization, when specified circumstances are present, to notify a coroner, prior to the donor's death, that a donor has made or may make an anatomical gift, and would require a coroner to accept that notification, whenever that notification will facilitate the coroner's ability to conduct his or her duties in a

manner and within a period compatible with the preservation of the body or part for the purposes of the gift. The bill would also require a coroner to conduct a post mortem investigation in a manner and time period compatible with the preservation of the body or part for the purposes of the gift, thereby imposing a state-mandated local program.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing law requires the disclosure of medical information if the disclosure is compelled by a coroner when investigating deaths that may involve organ or tissue donation. Existing law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would additionally require the disclosure of medical information if the disclosure is compelled by a coroner upon notification of, or investigation of, imminent deaths that may involve organ or tissue donation pursuant to the above-described provisions.

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 shall be made pursuant to these statutory provisions for costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for these costs.

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 56.10 of the Civil Code is amended to
- 2 read:
- 3 56.10. (a) ~~No~~A provider of health care, health care service
- 4 plan, or contractor shall *not* disclose medical information regarding
- 5 a patient of the provider of health care or an enrollee or subscriber
- 6 of a health care service plan without first obtaining an
- 7 authorization, except as provided in subdivision (b) or (c).

1 (b) A provider of health care, a health care service plan, or a
2 contractor shall disclose medical information if the disclosure is
3 compelled by any of the following:

4 (1) By a court pursuant to an order of that court.

5 (2) By a board, commission, or administrative agency for
6 purposes of adjudication pursuant to its lawful authority.

7 (3) By a party to a proceeding before a court or administrative
8 agency pursuant to a subpoena, subpoena duces tecum, notice to
9 appear served pursuant to Section 1987 of the Code of Civil
10 Procedure, or any provision authorizing discovery in a proceeding
11 before a court or administrative agency.

12 (4) By a board, commission, or administrative agency pursuant
13 to an investigative subpoena issued under Article 2 (commencing
14 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
15 2 of the Government Code.

16 (5) By an arbitrator or arbitration panel, when arbitration is
17 lawfully requested by either party, pursuant to a subpoena duces
18 tecum issued under Section 1282.6 of the Code of Civil Procedure,
19 or another provision authorizing discovery in a proceeding before
20 an arbitrator or arbitration panel.

21 (6) By a search warrant lawfully issued to a governmental law
22 enforcement agency.

23 (7) By the patient or the patient's representative pursuant to
24 Chapter 1 (commencing with Section 123100) of Part 1 of Division
25 106 of the Health and Safety Code.

26 (8) By a coroner, when requested in the course of an
27 investigation by the coroner's office for the purpose of identifying
28 the decedent or locating next of kin, or when investigating deaths
29 that may involve public health concerns, organ or tissue donation,
30 child abuse, elder abuse, suicides, poisonings, accidents, sudden
31 infant deaths, suspicious deaths, unknown deaths, or criminal
32 deaths, or upon notification of, or investigation of, imminent deaths
33 that may involve organ or tissue donation pursuant to Section
34 7151.15 of the Health and Safety Code, or when otherwise
35 authorized by the decedent's representative. Medical information
36 requested by the coroner under this paragraph shall be limited to
37 information regarding the patient who is the decedent and who is
38 the subject of the investigation or who is the prospective donor
39 and shall be disclosed to the coroner without delay upon request.

40 (9) When otherwise specifically required by law.

1 (c) A provider of health care or a health care service plan may
2 disclose medical information as follows:

3 (1) The information may be disclosed to providers of health
4 care, health care service plans, contractors, or other health care
5 professionals or facilities for purposes of diagnosis or treatment
6 of the patient. This includes, in an emergency situation, the
7 communication of patient information by radio transmission or
8 other means between emergency medical personnel at the scene
9 of an emergency, or in an emergency medical transport vehicle,
10 and emergency medical personnel at a health facility licensed
11 pursuant to Chapter 2 (commencing with Section 1250) of Division
12 2 of the Health and Safety Code.

13 (2) The information may be disclosed to an insurer, employer,
14 health care service plan, hospital service plan, employee benefit
15 plan, governmental authority, contractor, or ~~any~~ other person or
16 entity responsible for paying for health care services rendered to
17 the patient, to the extent necessary to allow responsibility for
18 payment to be determined and payment to be made. If (A) the
19 patient is, by reason of a comatose or other disabling medical
20 condition, unable to consent to the disclosure of medical
21 information and (B) no other arrangements have been made to pay
22 for the health care services being rendered to the patient, the
23 information may be disclosed to a governmental authority to the
24 extent necessary to determine the patient's eligibility for, and to
25 obtain, payment under a governmental program for health care
26 services provided to the patient. The information may also be
27 disclosed to another provider of health care or health care service
28 plan as necessary to assist the other provider or health care service
29 plan in obtaining payment for health care services rendered by that
30 provider of health care or health care service plan to the patient.

31 (3) The information may be disclosed to a person or entity that
32 provides billing, claims management, medical data processing, or
33 other administrative services for providers of health care or health
34 care service plans or for any of the persons or entities specified in
35 paragraph (2). However, information so disclosed shall not be
36 further disclosed by the recipient in a way that would violate this
37 part.

38 (4) The information may be disclosed to organized committees
39 and agents of professional societies or of medical staffs of licensed
40 hospitals, licensed health care service plans, professional standards

1 review organizations, independent medical review organizations
2 and their selected reviewers, utilization and quality control peer
3 review organizations as established by Congress in Public Law
4 97-248 in 1982, contractors, or persons or organizations insuring,
5 responsible for, or defending professional liability that a provider
6 may incur, if the committees, agents, health care service plans,
7 organizations, reviewers, contractors, or persons are engaged in
8 reviewing the competence or qualifications of health care
9 professionals or in reviewing health care services with respect to
10 medical necessity, level of care, quality of care, or justification of
11 charges.

12 (5) The information in the possession of a provider of health
13 care or health care service plan may be reviewed by a private or
14 public body responsible for licensing or accrediting the provider
15 of health care or health care service plan. However, no
16 patient-identifying medical information may be removed from the
17 premises except as expressly permitted or required elsewhere by
18 law, nor shall that information be further disclosed by the recipient
19 in a way that would violate this part.

20 (6) The information may be disclosed to the county coroner in
21 the course of an investigation by the coroner's office when
22 requested for all purposes not included in paragraph (8) of
23 subdivision (b).

24 (7) The information may be disclosed to public agencies, clinical
25 investigators, including investigators conducting epidemiologic
26 studies, health care research organizations, and accredited public
27 or private nonprofit educational or health care institutions for bona
28 fide research purposes. However, no information so disclosed shall
29 be further disclosed by the recipient in a way that would disclose
30 the identity of a patient or violate this part.

31 (8) A provider of health care or health care service plan that has
32 created medical information as a result of employment-related
33 health care services to an employee conducted at the specific prior
34 written request and expense of the employer may disclose to the
35 employee's employer that part of the information that:

36 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
37 or challenge to which the employer and the employee are parties
38 and in which the patient has placed in issue his or her medical
39 history, mental or physical condition, or treatment, provided that

1 information may only be used or disclosed in connection with that
2 proceeding.

3 (B) Describes functional limitations of the patient that may
4 entitle the patient to leave from work for medical reasons or limit
5 the patient's fitness to perform his or her present employment,
6 provided that no statement of medical cause is included in the
7 information disclosed.

8 (9) Unless the provider of health care or a health care service
9 plan is notified in writing of an agreement by the sponsor, insurer,
10 or administrator to the contrary, the information may be disclosed
11 to a sponsor, insurer, or administrator of a group or individual
12 insured or uninsured plan or policy that the patient seeks coverage
13 by or benefits from, if the information was created by the provider
14 of health care or health care service plan as the result of services
15 conducted at the specific prior written request and expense of the
16 sponsor, insurer, or administrator for the purpose of evaluating the
17 application for coverage or benefits.

18 (10) The information may be disclosed to a health care service
19 plan by providers of health care that contract with the health care
20 service plan and may be transferred among providers of health
21 care that contract with the health care service plan, for the purpose
22 of administering the health care service plan. Medical information
23 shall not otherwise be disclosed by a health care service plan except
24 in accordance with this part.

25 (11) This part does not prevent the disclosure by a provider of
26 health care or a health care service plan to an insurance institution,
27 agent, or support organization, subject to Article 6.6 (commencing
28 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
29 Insurance Code, of medical information if the insurance institution,
30 agent, or support organization has complied with all of the
31 requirements for obtaining the information pursuant to Article 6.6
32 (commencing with Section 791) of Chapter 1 of Part 2 of Division
33 1 of the Insurance Code.

34 (12) The information relevant to the patient's condition, care,
35 and treatment provided may be disclosed to a probate court
36 investigator in the course of an investigation required or authorized
37 in a conservatorship proceeding under the
38 Guardianship-Conservatorship Law as defined in Section 1400 of
39 the Probate Code, or to a probate court investigator, probation
40 officer, or domestic relations investigator engaged in determining

1 the need for an initial guardianship or continuation of an existing
2 guardianship.

3 (13) The information may be disclosed to an organ procurement
4 organization or a tissue bank processing the tissue of a decedent
5 for transplantation into the body of another person, but only with
6 respect to the donating decedent, for the purpose of aiding the
7 transplant. For the purpose of this paragraph, “tissue bank” and
8 “tissue” have the same meanings as defined in Section 1635 of the
9 Health and Safety Code.

10 (14) The information may be disclosed when the disclosure is
11 otherwise specifically authorized by law, including, but not limited
12 to, the voluntary reporting, either directly or indirectly, to the
13 federal Food and Drug Administration of adverse events related
14 to drug products or medical device problems, or to disclosures
15 made pursuant to subdivisions (b) and (c) of Section 11167 of the
16 Penal Code by a person making a report pursuant to Sections
17 11165.9 and 11166 of the Penal Code, provided that those
18 disclosures concern a report made by that person.

19 (15) Basic information, including the patient’s name, city of
20 residence, age, sex, and general condition, may be disclosed to a
21 state-recognized or federally recognized disaster relief organization
22 for the purpose of responding to disaster welfare inquiries.

23 (16) The information may be disclosed to a third party for
24 purposes of encoding, encrypting, or otherwise anonymizing data.
25 However, no information so disclosed shall be further disclosed
26 by the recipient in a way that would violate this part, including the
27 unauthorized manipulation of coded or encrypted medical
28 information that reveals individually identifiable medical
29 information.

30 (17) For purposes of disease management programs and services
31 as defined in Section 1399.901 of the Health and Safety Code,
32 information may be disclosed as follows: (A) to an entity
33 contracting with a health care service plan or the health care service
34 plan’s contractors to monitor or administer care of enrollees for a
35 covered benefit, if the disease management services and care are
36 authorized by a treating physician, or (B) to a disease management
37 organization, as defined in Section 1399.900 of the Health and
38 Safety Code, that complies fully with the physician authorization
39 requirements of Section 1399.902 of the Health and Safety Code,
40 if the health care service plan or its contractor provides or has

1 provided a description of the disease management services to a
2 treating physician or to the health care service plan's or contractor's
3 network of physicians. This paragraph does not require physician
4 authorization for the care or treatment of the adherents of a
5 well-recognized church or religious denomination who depend
6 solely upon prayer or spiritual means for healing in the practice
7 of the religion of that church or denomination.

8 (18) The information may be disclosed, as permitted by state
9 and federal law or regulation, to a local health department for the
10 purpose of preventing or controlling disease, injury, or disability,
11 including, but not limited to, the reporting of disease, injury, vital
12 events, including, but not limited to, birth or death, and the conduct
13 of public health surveillance, public health investigations, and
14 public health interventions, as authorized or required by state or
15 federal law or regulation.

16 (19) The information may be disclosed, consistent with
17 applicable law and standards of ethical conduct, by a
18 psychotherapist, as defined in Section 1010 of the Evidence Code,
19 if the psychotherapist, in good faith, believes the disclosure is
20 necessary to prevent or lessen a serious and imminent threat to the
21 health or safety of a reasonably foreseeable victim or victims, and
22 the disclosure is made to a person or persons reasonably able to
23 prevent or lessen the threat, including the target of the threat.

24 (20) The information may be disclosed as described in Section
25 56.103.

26 (21) (A) The information may be disclosed to an employee
27 welfare benefit plan, as defined under Section 3(1) of the Employee
28 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
29 which is formed under Section 302(c)(5) of the Taft-Hartley Act
30 (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
31 benefit plan provides medical care, and may also be disclosed to
32 an entity contracting with the employee welfare benefit plan for
33 billing, claims management, medical data processing, or other
34 administrative services related to the provision of medical care to
35 persons enrolled in the employee welfare benefit plan for health
36 care coverage, if all of the following conditions are met:

37 (i) The disclosure is for the purpose of determining eligibility,
38 coordinating benefits, or allowing the employee welfare benefit
39 ~~plan, plan~~ or the contracting ~~entity, entity~~ to advocate on the behalf

1 of a patient or enrollee with a provider, a health care service plan,
2 or a state or federal regulatory agency.

3 (ii) The request for the information is accompanied by a written
4 authorization for the release of the information submitted in a
5 manner consistent with subdivision (a) and Section 56.11.

6 (iii) The disclosure is authorized by and made in a manner
7 consistent with the Health Insurance Portability and Accountability
8 Act of 1996 (Public Law 104-191).

9 (iv) Any information disclosed is not further used or disclosed
10 by the recipient in any way that would directly or indirectly violate
11 this part or the restrictions imposed by Part 164 of Title 45 of the
12 Code of Federal Regulations, including the manipulation of the
13 information in any way that might reveal individually identifiable
14 medical information.

15 (B) For purposes of this paragraph, Section 1374.8 of the Health
16 and Safety Code shall not apply.

17 (22) Information may be disclosed pursuant to subdivision (a)
18 of Section 15633.5 of the Welfare and Institutions Code by a person
19 required to make a report pursuant to Section 15630 of the Welfare
20 and Institutions Code, provided that the disclosure under
21 subdivision (a) of Section 15633.5 concerns a report made by that
22 person. Covered entities, as they are defined in Section 160.103
23 of Title 45 of the Code of Federal Regulations, shall comply with
24 the requirements of the Health Insurance Portability and
25 Accountability Act (HIPAA) privacy rule pursuant to subsection
26 (c) of Section 164.512 of Title 45 of the Code of Federal
27 Regulations if the disclosure is not for the purpose of public health
28 surveillance, investigation, intervention, or reporting an injury or
29 death.

30 (d) Except to the extent expressly authorized by a patient ~~or~~,
31 enrollee, or subscriber, or as provided by subdivisions (b) and (c),
32 a provider of health care, health care service plan, contractor, or
33 corporation and its subsidiaries and affiliates shall not intentionally
34 share, sell, use for marketing, or otherwise use medical information
35 for a purpose not necessary to provide health care services to the
36 patient.

37 (e) Except to the extent expressly authorized by a patient or
38 enrollee or subscriber or as provided by subdivisions (b) and (c),
39 a contractor or corporation and its subsidiaries and affiliates shall
40 not further disclose medical information regarding a patient of the

1 provider of health care or an enrollee or subscriber of a health care
2 service plan or insurer or self-insured employer received under
3 this section to a person or entity that is not engaged in providing
4 direct health care services to the patient or his or her provider of
5 health care or health care service plan or insurer or self-insured
6 employer.

7 SEC. 2. Section 7151.15 of the Health and Safety Code is
8 amended to read:

9 7151.15. (a) A county coroner shall cooperate with
10 procurement organizations to maximize the opportunity to recover
11 anatomical gifts for the purpose of transplantation, therapy,
12 research, or education.

13 (b) If a county coroner receives notice from a procurement
14 organization that an anatomical gift might be available or was
15 made with respect to a decedent whose body is under the
16 jurisdiction of the coroner and a post mortem examination or
17 investigation is going to be performed, unless the coroner denies
18 recovery in accordance with Section 7151.20, the coroner or
19 designee shall conduct a post mortem examination or investigation
20 of the body or the part in a manner and within a period compatible
21 with its preservation for the purposes of the gift.

22 (c) A part shall not be removed from the body of a decedent
23 under the jurisdiction of a coroner for transplantation, therapy,
24 research, or education unless the part is the subject of an anatomical
25 gift. The body of a decedent under the jurisdiction of the coroner
26 shall not be delivered to a person for research or education unless
27 the body is the subject of an anatomical gift. This subdivision does
28 not preclude a coroner from performing the medicolegal
29 investigation upon the body or parts of a decedent under the
30 jurisdiction of the coroner.

31 (d) Notwithstanding any other law, when an anatomical gift
32 might be available or has been made by a person whose death is
33 imminent due to the lawful withdrawal of medical treatment and
34 if that person's body, post mortem, will be subject to the coroner's
35 jurisdiction pursuant to Section 27491 of the Government Code,
36 a procurement organization may notify a coroner of the anatomical
37 gift, and a coroner shall accept the notification, whenever that
38 notification will facilitate the coroner's ability to conduct a post
39 mortem examination or investigation of the body or the part in a

1 manner and within a period compatible with its preservation for
2 the purposes of the gift.

3 SEC. 3. No reimbursement shall be made pursuant to Part 7
4 (commencing with Section 17500) of Division 4 of Title 2 of the
5 Government Code for costs mandated by the state pursuant to this
6 act. It is recognized, however, that a local agency or school district
7 may pursue any remedies to obtain reimbursement available to it
8 under Part 7 (commencing with Section 17500) and any other
9 provisions of law.

O