

**ASSEMBLY BILL**

**No. 1755**

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**Introduced by Assembly Member Gomez**

February 14, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1755, as introduced, Gomez. Medical information.

Existing law requires a clinic, health facility, home health agency, or hospice to prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined. Existing law requires the clinic, health facility, home health agency, or hospice to report any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to the State Department of Public Health and to the affected patient or the patient's representative, as prescribed. Existing law authorizes the State Department of Public Health to assess administrative penalties for violation of these provisions.

This bill would make technical, nonsubstantive changes to these provisions.

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

1 1747 shall prevent unlawful or unauthorized access to, and use or  
2 disclosure of, patients' medical information, as defined in Section  
3 56.05 of the Civil Code and consistent with Section 130203. For  
4 purposes of this section, internal paper records, electronic mail,  
5 or facsimile transmissions inadvertently misdirected within the  
6 same facility or health care system within the course of  
7 coordinating care or delivering services shall not constitute  
8 unauthorized access to, or use or disclosure of, a patient's medical  
9 information. The department, after investigation, may assess an  
10 administrative penalty for a violation of this section of up to  
11 twenty-five thousand dollars (\$25,000) per patient whose medical  
12 information was unlawfully or without authorization accessed,  
13 used, or disclosed, and up to seventeen thousand five hundred  
14 dollars (\$17,500) per subsequent occurrence of unlawful or  
15 unauthorized access, use, or disclosure of that patient's medical  
16 information. For purposes of the investigation, the department  
17 shall consider the clinic's, health facility's, agency's, or hospice's  
18 history of compliance with this section and other related state and  
19 federal statutes and regulations, the extent to which the facility  
20 detected violations and took preventative action to immediately  
21 correct and prevent past violations from recurring, and factors  
22 outside its control that restricted the facility's ability to comply  
23 with this section. The department shall have full discretion to  
24 consider all factors when determining the amount of an  
25 administrative penalty pursuant to this section.

26 (b) (1) A clinic, health facility, home health agency, or hospice  
27 to which subdivision (a) applies shall report any unlawful or  
28 unauthorized access to, or use or disclosure of, a patient's medical  
29 information to the department no later than five business days after  
30 the unlawful or unauthorized access, use, or disclosure has been  
31 detected by the clinic, health facility, home health agency, or  
32 hospice.

33 (2) Subject to subdivision (c), a clinic, health facility, home  
34 health agency, or hospice shall also report any unlawful or  
35 unauthorized access to, or use or disclosure of, a patient's medical  
36 information to the affected patient or the patient's representative  
37 at the last known address, no later than five business days after  
38 the unlawful or unauthorized access, use, or disclosure has been  
39 detected by the clinic, health facility, home health agency, or  
40 hospice.

1 (c) (1) A clinic, health facility, home health agency, or hospice  
2 shall delay the reporting, as required pursuant to paragraph (2) of  
3 subdivision (b), of any unlawful or unauthorized access to, or use  
4 or disclosure of, a patient's medical information beyond five  
5 business days if a law enforcement agency or official provides the  
6 clinic, health facility, home health agency, or hospice with a written  
7 or oral statement that compliance with the reporting requirements  
8 of paragraph (2) of subdivision (b) would likely impede the law  
9 enforcement agency's investigation that relates to the unlawful or  
10 unauthorized access to, and use or disclosure of, a patient's medical  
11 information and specifies a date upon which the delay shall end,  
12 not to exceed 60 days after a written request is made, or 30 days  
13 after an oral request is made. A law enforcement agency or official  
14 may request an extension of a delay based upon a written  
15 declaration that there exists a bona fide, ongoing, significant  
16 criminal investigation of serious wrongdoing relating to the  
17 unlawful or unauthorized access to, and use or disclosure of, a  
18 patient's medical information, that notification of patients will  
19 undermine the law enforcement agency's investigation, and that  
20 specifies a date upon which the delay shall end, not to exceed 60  
21 days after the end of the original delay period.

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

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

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

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

39 (d) If a clinic, health facility, home health agency, or hospice  
40 to which subdivision (a) applies violates subdivision (b), the

1 department may assess the licensee a penalty in the amount of one  
2 hundred dollars (\$100) for each day that the unlawful or  
3 unauthorized access, use, or disclosure is not reported to the  
4 department or the affected patient, following the initial five-day  
5 period specified in subdivision (b). However, the total combined  
6 penalty assessed by the department under subdivision (a) and this  
7 subdivision shall not exceed two hundred fifty thousand dollars  
8 (\$250,000) per reported event. For enforcement purposes, it shall  
9 be presumed that the facility did not notify the affected patient if  
10 the notification was not documented. This presumption may be  
11 rebutted by a licensee only if the licensee demonstrates, by a  
12 preponderance of the evidence, that the notification was made.

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

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

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

39 (h) In lieu of disputing the determination of the department  
40 regarding a failure to prevent or failure to timely report unlawful

1 or unauthorized access to, or use or disclosure of, patients' medical  
2 information, transmit to the department 75 percent of the total  
3 amount of the administrative penalty, for each violation, within  
4 30 business days of receipt of the administrative penalty.

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

8 (j) For purposes of this section, the following definitions shall  
9 apply:

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

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