

AMENDED IN SENATE AUGUST 4, 2014

AMENDED IN SENATE JULY 1, 2014

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**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 amended, 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 no later than 5 business days after the unlawful or unauthorized access, use, or disclosure has been detected. Existing law requires that the report to the patient or the patient's representative be made to that person's last known address. Existing law requires these entities to delay the report for specified law enforcement purposes and requires that the delayed report be submitted within 5 days of the end of the delay. Existing law authorizes the State Department of Public Health to assess administrative penalties for violation of these provisions and gives the department

discretion to consider all factors when determining the amount of a penalty.

This bill would instead require those entities to make those reports no later than 15 business days after the unlawful or unauthorized access, use, or disclosure has been detected and would authorize the report made to the patient or the patient’s representative to be made by alternative means, including email, as specified. The bill would also require a delayed report for law enforcement purposes to be made within 15 business days of the end of the delay. The bill would give the department full discretion to consider all factors when determining whether to investigate under 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  
5     shall prevent unlawful or unauthorized access to, and use or  
6     disclosure of, patients’ medical information, as defined in Section  
7     56.05 of the Civil Code and consistent with Section 1280.18. For  
8     purposes of this section, internal paper records, electronic mail,  
9     or facsimile transmissions inadvertently misdirected within the  
10    same facility or health care system within the course of  
11    coordinating care or delivering services shall not constitute  
12    unauthorized access to, or use or disclosure of, a patient’s medical  
13    information. The department, after investigation, may assess an  
14    administrative penalty for a violation of this section of up to  
15    twenty-five thousand dollars (\$25,000) per patient whose medical  
16    information was unlawfully or without authorization accessed,  
17    used, or disclosed, and up to seventeen thousand five hundred  
18    dollars (\$17,500) per subsequent occurrence of unlawful or  
19    unauthorized access, use, or disclosure of that patient’s medical  
20    information. For purposes of the investigation, the department  
21    shall consider the clinic’s, health facility’s, agency’s, or hospice’s  
22    history of compliance with this section and other related state and  
23    federal statutes and regulations, the extent to which the facility  
24    detected violations and took preventative action to immediately

1 correct and prevent past violations from recurring, and factors  
2 outside its control that restricted the facility's ability to comply  
3 with this section. The department shall have full discretion to  
4 consider all factors when determining *whether to investigate and*  
5 *the amount of an administrative penalty, if any,* pursuant to this  
6 section.

7 (b) (1) A clinic, health facility, home health agency, or hospice  
8 to which subdivision (a) applies shall report any unlawful or  
9 unauthorized access to, or use or disclosure of, a patient's medical  
10 information to the department no later than ~~five~~ 15 business days  
11 after the unlawful or unauthorized access, use, or disclosure has  
12 been detected by the clinic, health facility, home health agency,  
13 or hospice.

14 (2) Subject to subdivision (c), a clinic, health facility, home  
15 health agency, or hospice shall also report any unlawful or  
16 unauthorized access to, or use or disclosure of, a patient's medical  
17 information to the affected patient or the patient's representative  
18 at the last known address, *or by an alternative means or at an*  
19 *alternative location as specified by the patient or the patient's*  
20 *representative in writing pursuant to Section 164.522(b) of Title*  
21 *45 of the Code of Federal Regulations,* no later than ~~five~~ 15  
22 business days after the unlawful or unauthorized access, use, or  
23 disclosure has been detected by the clinic, health facility, home  
24 health agency, or hospice. *Notice may be provided by email only*  
25 *if the patient has previously agreed in writing to electronic notice*  
26 *by email.*

27 (c) (1) A clinic, health facility, home health agency, or hospice  
28 shall delay the reporting, as required pursuant to paragraph (2) of  
29 subdivision (b), of any unlawful or unauthorized access to, or use  
30 or disclosure of, a patient's medical information beyond ~~five~~ 15  
31 business days if a law enforcement agency or official provides the  
32 clinic, health facility, home health agency, or hospice with a written  
33 or oral statement that compliance with the reporting requirements  
34 of paragraph (2) of subdivision (b) would likely impede the law  
35 enforcement agency's investigation that relates to the unlawful or  
36 unauthorized access to, and use or disclosure of, a patient's medical  
37 information and specifies a date upon which the delay shall end,  
38 not to exceed 60 days after a written request is made, or 30 days  
39 after an oral request is made. A law enforcement agency or official  
40 may request an extension of a delay based upon a written

1 declaration that there exists a bona fide, ongoing, significant  
2 criminal investigation of serious wrongdoing relating to the  
3 unlawful or unauthorized access to, and use or disclosure of, a  
4 patient's medical information, that notification of patients will  
5 undermine the law enforcement agency's investigation, and that  
6 specifies a date upon which the delay shall end, not to exceed 60  
7 days after the end of the original delay period.

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

11 (A) Document the oral statement, including, but not limited to,  
12 the identity of the law enforcement agency or official making the  
13 oral statement and the date upon which the oral statement was  
14 made.

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

21 (3) A clinic, health facility, home health agency, or hospice  
22 shall submit a report that is delayed pursuant to this subdivision  
23 not later than ~~five~~ 15 business days after the date designated as the  
24 end of the delay.

25 (d) If a clinic, health facility, home health agency, or hospice  
26 to which subdivision (a) applies violates subdivision (b), the  
27 department may assess the licensee a penalty in the amount of one  
28 hundred dollars (\$100) for each day that the unlawful or  
29 unauthorized access, use, or disclosure is not reported to the  
30 department or the affected patient, following the initial ~~five-day~~  
31 15-day period specified in subdivision (b). However, the total  
32 combined penalty assessed by the department under subdivision  
33 (a) and this subdivision shall not exceed two hundred fifty thousand  
34 dollars (\$250,000) per reported event. For enforcement purposes,  
35 it shall be presumed that the facility did not notify the affected  
36 patient if the notification was not documented. This presumption  
37 may be rebutted by a licensee only if the licensee demonstrates,  
38 by a preponderance of the evidence, that the notification was made.

39 (e) In enforcing subdivisions (a) and (d), the department shall  
40 take into consideration the special circumstances of small and rural

1 hospitals, as defined in Section 124840, and primary care clinics,  
2 as defined in subdivision (a) of Section 1204, in order to protect  
3 access to quality care in those hospitals and clinics. When assessing  
4 a penalty on a skilled nursing facility or other facility subject to  
5 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue  
6 only the higher of either a penalty for the violation of this section  
7 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,  
8 not both.

9 (f) All penalties collected by the department pursuant to this  
10 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited  
11 into the Internal Departmental Quality Improvement Account,  
12 which is hereby created within the Special Deposit Fund under  
13 Section 16370 of the Government Code. Upon appropriation by  
14 the Legislature, moneys in the account shall be expended for  
15 internal quality improvement activities in the Licensing and  
16 Certification Program.

17 (g) If the licensee disputes a determination by the department  
18 regarding a failure to prevent or failure to timely report unlawful  
19 or unauthorized access to, or use or disclosure of, patients' medical  
20 information, or the imposition of a penalty under this section, the  
21 licensee may, within 10 days of receipt of the penalty assessment,  
22 request a hearing pursuant to Section 131071. Penalties shall be  
23 paid when appeals have been exhausted and the penalty has been  
24 upheld.

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

31 (i) For purposes of this section, the following definitions shall  
32 apply:

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

36 (2) "Unauthorized" means the inappropriate access, review, or  
37 viewing of patient medical information without a direct need for  
38 medical diagnosis, treatment, or other lawful use as permitted by  
39 the Confidentiality of Medical Information Act (Part 2.6  
40 (commencing with Section 56) of Division 1 of the Civil Code)

1 or any other statute or regulation governing the lawful access, use,  
2 or disclosure of medical information.

3 SECTION 1. Section 1280.15 of the Health and Safety Code  
4 is amended to read:

5 1280.15. (a) A clinic, health facility, home health agency, or  
6 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745  
7 shall prevent unlawful or unauthorized access to, and use or  
8 disclosure of, patients' medical information, as defined in Section  
9 56.05 of the Civil Code and consistent with Section 130203. For  
10 purposes of this section, internal paper records, electronic mail,  
11 or facsimile transmissions inadvertently misdirected within the  
12 same facility or health care system within the course of  
13 coordinating care or delivering services shall not constitute  
14 unauthorized access to, or use or disclosure of, a patient's medical  
15 information. The department, after investigation, may assess an  
16 administrative penalty for a violation of this section of up to  
17 twenty-five thousand dollars (\$25,000) per patient whose medical  
18 information was unlawfully or without authorization accessed,  
19 used, or disclosed, and up to seventeen thousand five hundred  
20 dollars (\$17,500) per subsequent occurrence of unlawful or  
21 unauthorized access, use, or disclosure of that patient's medical  
22 information. For purposes of the investigation, the department  
23 shall consider the clinic's, health facility's, agency's, or hospice's  
24 history of compliance with this section and other related state and  
25 federal statutes and regulations, the extent to which the facility  
26 detected violations and took preventative action to immediately  
27 correct and prevent past violations from recurring, and factors  
28 outside its control that restricted the facility's ability to comply  
29 with this section. The department shall have full discretion to  
30 consider all factors when determining whether to investigate and  
31 the amount of an administrative penalty, if any, pursuant to this  
32 section.

33 (b) (1) A clinic, health facility, home health agency, or hospice  
34 to which subdivision (a) applies shall report any unlawful or  
35 unauthorized access to, or use or disclosure of, a patient's medical  
36 information to the department no later than 15 business days after  
37 the unlawful or unauthorized access, use, or disclosure has been  
38 detected by the clinic, health facility, home health agency, or  
39 hospice.

1     ~~(2) Subject to subdivision (c), a clinic, health facility, home~~  
2 ~~health agency, or hospice shall also report any unlawful or~~  
3 ~~unauthorized access to, or use or disclosure of, a patient's medical~~  
4 ~~information to the affected patient or the patient's representative~~  
5 ~~at the last known address, or by an alternative means or at an~~  
6 ~~alternative location as specified by the patient or the patient's~~  
7 ~~representative in writing pursuant to Section 164.522(b) of Title~~  
8 ~~45 of the Code of Federal Regulations, no later than 15 business~~  
9 ~~days after the unlawful or unauthorized access, use, or disclosure~~  
10 ~~has been detected by the clinic, health facility, home health agency,~~  
11 ~~or hospice. Notice may be provided by email only if the patient~~  
12 ~~has previously agreed in writing to electronic notice by email.~~

13     ~~(e) (1) A clinic, health facility, home health agency, or hospice~~  
14 ~~shall delay the reporting, as required pursuant to paragraph (2) of~~  
15 ~~subdivision (b), of any unlawful or unauthorized access to, or use~~  
16 ~~or disclosure of, a patient's medical information beyond 15~~  
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 likely impede the law~~  
21 ~~enforcement agency's investigation that relates 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 investigation, 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 both of 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 15 business days after the date designated as the end~~  
10 ~~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 to the~~  
16 ~~department or the affected patient, following the initial 15-day~~  
17 ~~period specified in subdivision (b). However, the total combined~~  
18 ~~penalty assessed by the department under subdivision (a) and this~~  
19 ~~subdivision shall not exceed two hundred fifty thousand dollars~~  
20 ~~(\$250,000) per reported event. For enforcement purposes, it shall~~  
21 ~~be presumed that the facility did not notify the affected patient if~~  
22 ~~the notification was not documented. This presumption may be~~  
23 ~~rebutted by a licensee only if the licensee demonstrates, by a~~  
24 ~~preponderance of the evidence, that the notification was made.~~

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

35 ~~(f) All penalties collected by the department pursuant to this~~  
36 ~~section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited~~  
37 ~~into the Internal Departmental Quality Improvement Account,~~  
38 ~~which is hereby created within the Special Deposit Fund under~~  
39 ~~Section 16370 of the Government Code. Upon appropriation by~~  
40 ~~the Legislature, moneys in the account shall be expended for~~



1 ~~internal quality improvement activities in the Licensing and~~  
2 ~~Certification Program.~~

3 ~~(g) If the licensee disputes a determination by the department~~  
4 ~~regarding a failure to prevent or failure to timely report unlawful~~  
5 ~~or unauthorized access to, or use or disclosure of, patients' medical~~  
6 ~~information, or the imposition of a penalty under this section, the~~  
7 ~~licensee may, within 10 days of receipt of the penalty assessment,~~  
8 ~~request a hearing pursuant to Section 131071. Penalties shall be~~  
9 ~~paid when appeals have been exhausted and the penalty has been~~  
10 ~~upheld.~~

11 ~~(h) In lieu of disputing the determination of the department~~  
12 ~~regarding a failure to prevent or failure to timely report unlawful~~  
13 ~~or unauthorized access to, or use or disclosure of, patients' medical~~  
14 ~~information, transmit to the department 75 percent of the total~~  
15 ~~amount of the administrative penalty, for each violation, within~~  
16 ~~30 business days of receipt of the administrative penalty.~~

17 ~~(i) Notwithstanding any other law, the department may refer~~  
18 ~~violations of this section to the Office of Health Information~~  
19 ~~Integrity for enforcement pursuant to Section 130303.~~

20 ~~(j) For purposes of this section, the following definitions shall~~  
21 ~~apply:~~

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

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