

**ASSEMBLY BILL**

**No. 2059**

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**Introduced by Assembly Member Muratsuchi**

February 20, 2014

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An act to amend Section 1158 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2059, as introduced, Muratsuchi. Medical records: electronic delivery.

Existing law requires certain enumerated health care providers to make all of a patient's records under their custody or control available for inspection and copying by an attorney at law, or his or her representative, who presents a written authorization therefor, as specified.

This bill would require the medical provider or employer, or an agent thereof, to provide an electronic copy of a medical record, when an electronic a copy is requested, if the medical record exists in digital or electronic format and the medical record can be delivered electronically.

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 1158 of the Evidence Code is amended
- 2 to read:
- 3 1158. ~~Whenever, prior to~~(a) *Before* the filing of any action
- 4 or the appearance of a defendant in an action, *if* an attorney at law
- 5 or his or her representative presents a written authorization therefor

1 signed by an adult patient, by the guardian or conservator of his  
 2 or her person or estate, or, in the case of a minor, by a parent or  
 3 guardian of the minor, or by the personal representative or an heir  
 4 of a deceased patient, or a copy thereof, a physician and surgeon,  
 5 dentist, registered nurse, dispensing optician, registered physical  
 6 therapist, podiatrist, licensed psychologist, osteopathic physician  
 7 and surgeon, chiropractor, clinical laboratory bioanalyst, clinical  
 8 laboratory technologist, or pharmacist or pharmacy, duly licensed  
 9 as such under the laws of the state, or a licensed hospital, shall  
 10 make all of the patient’s records under ~~his, hers or its~~ *that person’s*  
 11 *or entity’s* custody or control available for inspection and copying  
 12 by the attorney at law or ~~his, or her,~~ *his or her* representative,  
 13 promptly upon the presentation of the written authorization.

14 ~~No copying may~~

15 (b) *Copying of medical records shall not* be performed by any  
 16 medical provider or employer ~~enumerated above,~~ *described in*  
 17 *subdivision (a),* or by an agent thereof, when the requesting  
 18 attorney has employed a professional photocopier or anyone  
 19 identified in Section 22451 of the Business and Professions Code  
 20 as his or her representative to obtain or review the records on his  
 21 or her behalf. The presentation of the authorization by the agent  
 22 on behalf of the attorney shall be sufficient proof that the agent is  
 23 the attorney’s representative.

24 ~~Failure~~

25 (c) *Failure to make the records* ~~available,~~ *available* during  
 26 business hours, within five days after the presentation of the written  
 27 authorization, may subject the person or entity having custody or  
 28 control of the records to liability for all reasonable expenses,  
 29 including attorney’s fees, incurred in any proceeding to enforce  
 30 this section.

31 ~~All~~

32 (d) (1) *All reasonable costs incurred by any person or entity*  
 33 ~~enumerated above~~ *described in subdivision (a)* in making patient  
 34 records available pursuant to this section may be charged against  
 35 the person whose written authorization required the availability  
 36 of the records.

37 ~~“Reasonable~~

38 (2) *“Reasonable cost,”* as used in this section, shall include, but  
 39 not be limited to, the following specific costs: ten cents (\$0.10)  
 40 per page for standard reproduction of documents of a size 8 ½ by

1 14 inches or less; twenty cents (\$0.20) per page for copying of  
2 documents from microfilm; actual costs for the reproduction of  
3 oversize documents or the reproduction of documents requiring  
4 special processing which are made in response to an authorization;  
5 reasonable clerical costs incurred in locating and making the  
6 records available to be billed at the maximum rate of sixteen dollars  
7 (\$16) per hour per person, computed on the basis of four dollars  
8 (\$4) per quarter hour or fraction thereof; actual postage charges;  
9 and actual costs, if any, charged to the witness by a third person  
10 for the retrieval and return of records held by that third person.

11 ~~Where~~

12 (e) *If the records are delivered to the attorney or the attorney's*  
13 *representative for inspection or photocopying at the record*  
14 *custodian's place of business, the only fee for complying with the*  
15 *authorization shall not exceed fifteen dollars (\$15), plus actual*  
16 *costs, if any, charged to the record custodian by a third person for*  
17 *retrieval and return of records held offsite by the third person.*

18 (f) *If an electronic copy of a medical record is requested, the*  
19 *medical provider or employer described in subdivision (a), or an*  
20 *agent thereof, shall provide an electronic copy of the requested*  
21 *medical record if the medical record exists in a digital or electronic*  
22 *format that can be delivered electronically.*