

AMENDED IN ASSEMBLY MAY 1, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2059

Introduced by Assembly Member Muratsuchi

February 20, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2059, as amended, 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. *Existing law provides that a person or entity that fails to make the records available 5 days after the presentation of the written authorization may be subject to reasonable expenses incurred to enforce these provisions. Existing law further authorizes any person or enumerated health care provider to charge the person whose written authorization required the availability of the records for the reasonable costs incurred in making the patient records available, as specified.*

This bill would require ~~the medical~~ a health care provider ~~or employer, or an agent thereof,~~ as defined, 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. *The bill would extend the period following presentation of the written authorization after which a health care provider that fails to make the records available may be subject*

to reasonable expenses incurred to enforce these provisions from 5 days to 15 days. The bill would additionally authorize a health care provider that provides electronic copies of medical records to charge the person whose written authorization required the availability of the records for the reasonable costs incurred to provide the electronic copies, as specified.

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. (a) Before the filing of any action or the appearance of
4 a defendant in an action, if an attorney at law or his or her
5 representative presents a written authorization therefor signed by
6 an adult patient, by the guardian or conservator of his or her person
7 or estate, or, in the case of a minor, by a parent or guardian of the
8 minor, or by the personal representative or an heir of a deceased
9 patient, or a copy thereof, a ~~physician and surgeon, dentist,~~
10 ~~registered nurse, dispensing optician, registered physical therapist,~~
11 ~~podiatrist, licensed psychologist, osteopathic physician and~~
12 ~~surgeon, chiropractor, clinical laboratory bioanalyst, clinical~~
13 ~~laboratory technologist, or pharmacist or pharmacy, duly licensed~~
14 ~~as such under the laws of the state, or a licensed hospital, health~~
15 ~~care provider, as defined in Section 1375.7 of the Health and Safety~~
16 ~~Code, shall make all of the patient’s records under that person’s~~
17 ~~or entity’s custody or control available for inspection and copying~~
18 ~~by the attorney at law or his or her representative, promptly upon~~
19 ~~the presentation of the written authorization.~~

20 (b) Copying of medical records *pursuant to this section* shall
21 not be performed by ~~any medical~~ *the health care provider or the*
22 *health care provider’s employer* ~~described in subdivision (a),~~ or
23 by an agent thereof, ~~when~~ *if* the requesting attorney has employed
24 a professional photocopier or anyone identified in Section 22451
25 of the Business and Professions Code as his or her representative
26 to obtain or review the records on his or her behalf. The
27 presentation of the authorization by the agent on behalf of the
28 attorney shall be sufficient proof that the agent is the attorney’s
29 representative.

1 (c) Failure to make the records available during business hours,
2 within ~~five~~ 15 days after the presentation of the written
3 authorization, may subject the ~~person or entity~~ *health care provider*
4 having custody or control of the records to liability for all
5 reasonable expenses, including attorney's fees, incurred in any
6 proceeding to enforce this section.

7 (d) *If an electronic copy of a medical record is requested*
8 *pursuant to this section, the health care provider shall provide an*
9 *electronic copy of the requested medical record if the medical*
10 *record exists in a digital or electronic format that can be delivered*
11 *electronically.*

12 ~~(e)~~

13 (e) (1) All reasonable costs incurred by ~~any person or entity~~
14 ~~described in subdivision (a)~~ *the health care provider* in making
15 patient records available pursuant to this section may be charged
16 against the person whose written authorization required the
17 availability of the records.

18 (2) "Reasonable cost," as used in this section, shall include, but
19 not be limited to, the following specific costs: ~~ten~~

20 (A) *For paper copies of medical records requested pursuant to*
21 *this section, all of the following apply:-*

22 (i) *Ten cents (\$0.10) per page for standard reproduction of*
23 *documents of a size 8 ½ by 14 inches or less; less. ~~twenty~~*

24 (ii) *Twenty cents (\$0.20) per page for copying of documents*
25 *from microfilm; actual costs for the reproduction of oversize*
26 *documents or the reproduction of documents requiring special*
27 *processing which are made in response to an ~~authorization;~~*
28 *authorization. ~~reasonable~~*

29 (iii) *Reasonable clerical costs incurred in locating and making*
30 *the records available to be billed at the maximum rate of sixteen*
31 *dollars (\$16) per hour per person, computed on the basis of four*
32 *dollars (\$4) per quarter hour or fraction ~~thereof; thereof. ~~actual~~~~*

33 (iv) *Actual postage ~~charges; charges. ~~and~~~~*

34 (v) *The actual ~~costs; cost,~~ if any, charged to the witness by a*
35 *third ~~person~~ party for the retrieval and return of records held by*
36 *that third ~~person.~~ party.*

37 (B) *For electronic copies of medical records requested pursuant*
38 *to subdivision (d) that are provided by the health care provider in*
39 *a digital or other electronic medium including, but not limited to,*
40 *e-mail, both of the following apply:*

- 1 (i) *[X] cents (\$0.X) per page.*
- 2 (ii) *A retrieval or processing fee of [XX] dollars (\$XX).*

3 ~~(e)~~

4 (f) If the records are delivered to the attorney or the attorney's
5 representative for inspection or photocopying at the record
6 custodian's place of business, the only fee for complying with the
7 authorization shall not exceed fifteen dollars (\$15), plus actual
8 costs, if any, charged to the record custodian by a third-person
9 party for retrieval and return of records held offsite by the third
10 person: party.

11 ~~(f) If an electronic copy of a medical record is requested, the~~
12 ~~medical provider or employer described in subdivision (a), or an~~
13 ~~agent thereof, shall provide an electronic copy of the requested~~
14 ~~medical record if the medical record exists in a digital or electronic~~
15 ~~format that can be delivered electronically.~~