

AMENDED IN SENATE JUNE 15, 2014

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 a health care provider, as defined, to provide an electronic copy of *a an electronic medical record or electronic health 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 *request and* authorization after which a health care provider that fails to make the records available may be subject to reasonable expenses, *including court costs*, incurred to enforce these provisions from 5 days to ~~15~~ *20 business* days. The bill would additionally authorize a health care provider that provides electronic copies of medical records to charge the person whose written ~~authorization~~ *request* 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, *agent, or subcontractor* presents a written *request*
 6 *for medical records with an authorization* ~~therefor~~ signed by an
 7 adult patient, by the guardian or conservator of his or her person
 8 or estate, or, in the case of a minor, by a parent or guardian of the
 9 minor, or by the personal representative or an heir *or surviving*
 10 *spouse* of a deceased patient, or a copy thereof, a health care
 11 provider, as defined in Section 1375.7 of the Health and Safety
 12 Code, shall make all of the patient’s records under that person’s
 13 or entity’s custody or control available for inspection and copying
 14 by the attorney at law or his or her representative, ~~promptly upon~~
 15 *agent, or subcontractor within 20 business days* of the presentation
 16 of the written *request and* authorization.
 17 (b) Copying of medical records pursuant to this section shall
 18 not be performed by the health care provider or the health care
 19 provider’s employer, or by an agent thereof, if the requesting
 20 attorney has employed a professional photocopier or anyone
 21 identified in Section 22451 of the Business and Professions Code
 22 as his or her representative to obtain or review the records on his
 23 or her behalf. The presentation of the *written request and*
 24 authorization by the agent on behalf of the attorney shall be
 25 sufficient proof that the agent is the attorney’s representative.
 26 (c) Failure to make the records available during business hours,
 27 ~~within 15~~ *20 business* days after the presentation of the written

1 *request and* authorization, may subject the health care provider
2 having custody or control of the records to liability for all
3 reasonable expenses, including attorney’s fees *and court costs*,
4 incurred in any proceeding to enforce this section.

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

10 *(d) If the records requested pursuant to subdivision (a) are*
11 *electronic medical records or electronic health records stored on*
12 *a digital or other electronic medium and the requesting party*
13 *requests delivery in a digital or electronic medium, including*
14 *electronic mail, the health care provider shall provide an electronic*
15 *copy of the requested medical records.*

16 (e) (1) All reasonable costs incurred by the health care provider
17 in making patient records available pursuant to this section may
18 be charged against the person whose written authorization required
19 the availability of the records.

20 (2) “Reasonable cost,” as used in this section, ~~shall include,~~
21 *includes*, but *is not* be limited to, the following specific costs:

22 (A) For paper copies of medical records requested pursuant to
23 this section, all of the following apply:

24 (i) Ten cents (\$0.10) per page for standard reproduction of
25 documents of a size 8 ½ by 14 inches or less.

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

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

34 (iv) Actual postage charges.

35 (v) The actual cost, if any, charged to the witness by a third
36 party for the retrieval and return of records held by that third 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 (B) For electronic medical records or electronic health records
2 provided on a digital or other electronic medium, “reasonable
3 cost” includes only the following specific costs:
4 (i) ~~[X] cents (\$0.X) per page.~~
5 (i) Twenty-five cents (\$0.25) per page, not to exceed one hundred
6 twenty-five dollars (\$125).
7 (ii) A retrieval or processing fee of ~~[XX] dollars (\$XX).~~ in an
8 amount not to exceed thirty dollars (\$30).
9 (f) If the records are delivered to the attorney or the attorney’s
10 representative for inspection or photocopying at the record
11 custodian’s place of business, the only fee for complying with the
12 authorization shall not exceed fifteen dollars (\$15), plus actual
13 costs, if any, charged to the record custodian by a third party for
14 retrieval and return of records held offsite by the third party.
15 (g) This section shall not be construed to supersede the
16 requirements or replace or in any way modify any privacy and
17 information security requirements and protections in federal law
18 regarding protected health information or personally identifiable
19 information, including, but not limited to, the federal Health
20 Insurance Portability and Accountability Act (HIPAA) and its
21 implementing regulations, or any rule promulgated by the
22 Department of Industrial Relations, Division of Workers’
23 Compensation.