

AMENDED IN SENATE APRIL 8, 2013

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 138

**Introduced by Senator Hernandez
(Coauthors: Senators DeSaulnier and Leno)**

January 28, 2013

An act to amend Sections 56.05, 56.104, and 56.16 of, and to add Section 56.107 to, the Civil Code, to amend Sections 1280.15, 1627, 117928, 120985, 121010, and 130201 of the Health and Safety Code, *to add Section 791.29 to the Insurance Code*, and to amend Section 3208.05 of the Labor Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 138, as amended, Hernandez. Confidentiality of medical information.

Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information.

Existing state law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions, including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. The act defines various terms relevant to its implementation.

This bill would declare the intent of the Legislature to incorporate HIPAA standards into state law and to clarify standards for protecting the confidentiality of medical information in insurance transactions. The bill would define additional terms in connection with maintaining the confidentiality of this information, including an “authorization for insurance communications,” which an insured individual may submit for the purpose of specifying disclosable medical information and insurance transactions, and permissible recipients.

This bill would specify the manner in which a health care service plan or health insurer would be required to maintain confidentiality of information regarding the treatment of insured individuals less than 26 years of age who are insured as dependents on another person’s policy, the treatment of an insured individual involving sensitive services, as defined, or situations in which disclosure would endanger the insured individual, as defined.

This bill would specifically authorize a provider of health care to communicate information regarding benefit cost-sharing arrangements to the health care service plan or health insurer, as specified.

This bill would also prohibit the health care service plan or health insurer from conditioning enrollment in the plan or eligibility for benefits on the provision of an authorization for insurance communications. The bill also would make conforming technical changes. By expanding the scope of a crime, the bill would create a state-mandated local program.

Existing state law, the Insurance Information and Privacy Protection Act, generally regulates how insurers collect, use, and disclose information gathered in connection with insurance transactions.

This bill would specify that a health insurer, as defined, shall comply with the requirements of the Confidentiality of Medical Information Act, if that act conflicts with the Insurance Information and Privacy Protection Act.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Privacy is a fundamental right of all Californians, protected
4 by the California Constitution, the federal Health Insurance
5 Portability and Accountability Act (HIPAA; Public Law 104-191),
6 and the Confidentiality of Medical Information Act, Part 2.6
7 (commencing with Section 56) of Division 1 of the Civil Code.

8 (b) Implementation of the recently enacted federal Patient
9 Protection and Affordable Care Act (Public Law 111-148) will
10 expand the number of individuals insured as dependents on a health
11 insurance policy held in another person's name, including adult
12 children under 26 years of age insured on a parent's insurance
13 policy.

14 (c) HIPAA explicitly protects the confidentiality of medical
15 care obtained by dependents insured under a health insurance
16 policy held by another person.

17 (d) Therefore, it is the intent of the Legislature in enacting this
18 act to incorporate HIPAA standards into state law and to clarify
19 the standards for protecting the confidentiality of medical
20 information in insurance transactions.

21 SEC. 2. Section 56.05 of the Civil Code is amended to read:

22 56.05. For purposes of this part:

23 (a) "Authorization" means permission granted in accordance
24 with Section 56.11 or 56.21 for the disclosure of medical
25 information.

26 (b) "Authorization for insurance communications" means
27 permission from the individual, that meets the requirements of
28 subdivisions (a) to (c), inclusive, of Section 56.11, specifying the
29 medical information and insurance transactions that may be
30 disclosed and the identity of the people to whom disclosures are
31 permitted as part of an insurance communication.

32 (c) "Authorized recipient" means any person who is authorized
33 to receive medical information pursuant to Section 56.10 or 56.20.

34 (d) "Confidential communications request" means a request by
35 an insured individual that insurance communications be
36 communicated by a specific method, such as by telephone, email,
37 or in a covered envelope rather than postcard, or to a specific mail

1 or email address or specific telephone number, as designated by
2 the insured individual.

3 (e) “Contractor” means any person or entity that is a medical
4 group, independent practice association, pharmaceutical benefits
5 manager, or a medical service organization and is not a health care
6 service plan or provider of health care. “Contractor” does not
7 include insurance institutions as defined in subdivision (k) of
8 Section 791.02 of the Insurance Code or pharmaceutical benefits
9 managers licensed pursuant to the Knox-Keene Health Care Service
10 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
11 of Division 2 of the Health and Safety Code).

12 (f) “Endanger” means that the insured individual fears
13 harassment or abuse resulting from an insurance communication
14 sufficient to deter the patient from obtaining health care absent
15 confidentiality.

16 (g) “Health care service plan” means any entity regulated
17 pursuant to the Knox-Keene Health Care Service Plan Act of 1975
18 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
19 the Health and Safety Code).

20 (h) “Health insurer” means an entity *that issues health insurance,*
21 *as defined in subdivision (b) of Section 106 of the Insurance Code.*

22 (i) “Insured individual” means a person entitled to coverage
23 under a health care service plan or health insurer, including the
24 policyholder and dependents.

25 (j) “Insurance communication” means any communication from
26 the health care service plan or health insurer to policyholders or
27 insured individuals that discloses individually identifiable medical
28 information. Insurance communication includes, but is not limited
29 to, explanation of benefits forms, scheduling information, notices
30 of denial, and notices of contested claims.

31 (k) “Licensed health care professional” means any person
32 licensed or certified pursuant to Division 2 (commencing with
33 Section 500) of the Business and Professions Code, the Osteopathic
34 Initiative Act or the Chiropractic Initiative Act, or Division 2.5
35 (commencing with Section 1797) of the Health and Safety Code.

36 (l) “Marketing” means to make a communication about a product
37 or service that encourages recipients of the communication to
38 purchase or use the product or service.

39 “Marketing” does not include any of the following:

1 (1) Communications made orally or in writing for which the
2 communicator does not receive direct or indirect remuneration,
3 including, but not limited to, gifts, fees, payments, subsidies, or
4 other economic benefits, from a third party for making the
5 communication.

6 (2) Communications made to current enrollees solely for the
7 purpose of describing a provider’s participation in an existing
8 health care provider network or health plan network of a
9 Knox-Keene licensed health plan to which the enrollees already
10 subscribe; communications made to current enrollees solely for
11 the purpose of describing if, and the extent to which, a product or
12 service, or payment for a product or service, is provided by a
13 provider, contractor, or plan or included in a plan of benefits of a
14 Knox-Keene licensed health plan to which the enrollees already
15 subscribe; or communications made to plan enrollees describing
16 the availability of more cost-effective pharmaceuticals.

17 (3) Communications that are tailored to the circumstances of a
18 particular individual to educate or advise the individual about
19 treatment options, and otherwise maintain the individual’s
20 adherence to a prescribed course of medical treatment, as provided
21 in Section 1399.901 of the Health and Safety Code, for a chronic
22 and seriously debilitating or life-threatening condition as defined
23 in subdivisions (d) and (e) of Section 1367.21 of the Health and
24 Safety Code, if the health care provider, contractor, or health plan
25 receives direct or indirect remuneration, including, but not limited
26 to, gifts, fees, payments, subsidies, or other economic benefits,
27 from a third party for making the communication, if all of the
28 following apply:

29 (A) The individual receiving the communication is notified in
30 the communication in typeface no smaller than 14-point type of
31 the fact that the provider, contractor, or health plan has been
32 remunerated and the source of the remuneration.

33 (B) The individual is provided the opportunity to opt out of
34 receiving future remunerated communications.

35 (C) The communication contains instructions in typeface no
36 smaller than 14-point type describing how the individual can opt
37 out of receiving further communications by calling a toll-free
38 number of the health care provider, contractor, or health plan
39 making the remunerated communications. No further
40 communication may be made to an individual who has opted out

1 after 30 calendar days from the date the individual makes the opt
2 out request.

3 (m) “Medical information” means any individually identifiable
4 information, in electronic or physical form, in possession of or
5 derived from a provider of health care, health care service plan,
6 pharmaceutical company, or contractor regarding a patient’s
7 medical history, mental or physical condition, or treatment.
8 “Individually identifiable” means that the medical information
9 includes or contains any element of personal identifying
10 information sufficient to allow identification of the individual,
11 such as the patient’s name, address, electronic mail address,
12 telephone number, or social security number, or other information
13 that, alone or in combination with other publicly available
14 information, reveals the individual’s identity.

15 (n) “Nondisclosure request” means a written request to withhold
16 insurance communications that includes the insured individual’s
17 name and address, description of the medical or other information
18 that should not be disclosed, identity of the persons from whom
19 information shall be withheld, and contact information for the
20 individual for additional information or clarification necessary to
21 satisfy the request.

22 (o) “Patient” means any natural person, whether or not still
23 living, who received health care services from a provider of health
24 care and to whom medical information pertains.

25 (p) “Pharmaceutical company” means any company or business,
26 or an agent or representative thereof, that manufactures, sells, or
27 distributes pharmaceuticals, medications, or prescription drugs.
28 “Pharmaceutical company” does not include a pharmaceutical
29 benefits manager, as included in subdivision (c), or a provider of
30 health care.

31 (q) “Provider of health care” means any person licensed or
32 certified pursuant to Division 2 (commencing with Section 500)
33 of the Business and Professions Code; any person licensed pursuant
34 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
35 any person certified pursuant to Division 2.5 (commencing with
36 Section 1797) of the Health and Safety Code; any clinic, health
37 dispensary, or health facility licensed pursuant to Division 2
38 (commencing with Section 1200) of the Health and Safety Code.
39 “Provider of health care” does not include insurance institutions

1 as defined in subdivision (k) of Section 791.02 of the Insurance
2 Code.

3 (r) “Sensitive services” means all health care services described
4 in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family
5 Code, and Sections 121020 and 124260 of the Health and Safety
6 Code, obtained by any patient who has reached the minimum age
7 specified for consenting to the service specified in the section,
8 including patients 18 years of age and older.

9 SEC. 3. Section 56.104 of the Civil Code is amended to read:

10 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
11 except as provided in subdivision (e), no provider of health care,
12 health care service plan, or contractor may release medical
13 information to persons or entities who have requested that
14 information and who are authorized by law to receive that
15 information pursuant to subdivision (c) of Section 56.10, if the
16 requested information specifically relates to the patient’s
17 participation in outpatient treatment with a psychotherapist, unless
18 the person or entity requesting that information submits to the
19 patient pursuant to subdivision (b) and to the provider of health
20 care, health care service plan, or contractor a written request, signed
21 by the person requesting the information or an authorized agent
22 of the entity requesting the information, that includes all of the
23 following:

24 (1) The specific information relating to a patient’s participation
25 in outpatient treatment with a psychotherapist being requested and
26 its specific intended use or uses.

27 (2) The length of time during which the information will be
28 kept before being destroyed or disposed of. A person or entity may
29 extend that timeframe, provided that the person or entity notifies
30 the provider, plan, or contractor of the extension. Any notification
31 of an extension shall include the specific reason for the extension,
32 the intended use or uses of the information during the extended
33 time, and the expected date of the destruction of the information.

34 (3) A statement that the information will not be used for any
35 purpose other than its intended use.

36 (4) A statement that the person or entity requesting the
37 information will destroy the information and all copies in the
38 person’s or entity’s possession or control, will cause it to be
39 destroyed, or will return the information and all copies of it before

1 or immediately after the length of time specified in paragraph (2)
2 has expired.

3 (b) The person or entity requesting the information shall submit
4 a copy of the written request required by this section to the patient
5 within 30 days of receipt of the information requested, unless the
6 patient has signed a written waiver in the form of a letter signed
7 and submitted by the patient to the provider of health care or health
8 care service plan waiving notification.

9 (c) For purposes of this section, “psychotherapist” means a
10 person who is both a “psychotherapist” as defined in Section 1010
11 of the Evidence Code and a “provider of health care” as defined
12 in Section 56.05.

13 (d) This section does not apply to the disclosure or use of
14 medical information by a law enforcement agency or a regulatory
15 agency when required for an investigation of unlawful activity or
16 for licensing, certification, or regulatory purposes, unless the
17 disclosure is otherwise prohibited by law.

18 (e) This section shall not apply to any of the following:

19 (1) Information authorized to be disclosed pursuant to paragraph
20 (1) of subdivision (c) of Section 56.10.

21 (2) Information requested from a psychotherapist by law
22 enforcement or by the target of the threat subsequent to a disclosure
23 by that psychotherapist authorized by paragraph (19) of subdivision
24 (c) of Section 56.10, in which the additional information is clearly
25 necessary to prevent the serious and imminent threat disclosed
26 under that paragraph.

27 (3) Information disclosed by a psychotherapist pursuant to
28 paragraphs (14) and (22) of subdivision (c) of Section 56.10 and
29 requested by an agency investigating the abuse reported pursuant
30 to those paragraphs.

31 (f) Nothing in this section shall be construed to grant any
32 additional authority to a provider of health care, health care service
33 plan, or contractor to disclose information to a person or entity
34 without the patient’s consent.

35 SEC. 4. Section 56.107 is added to the Civil Code, to read:

36 56.107. (a) Notwithstanding any other law, and to the extent
37 permitted by federal law, a health care service plan or health insurer
38 shall take the following steps to protect the confidentiality of an
39 insured individual’s medical information as follows:

1 (1) A health care service plan or health insurer shall not send
2 insurance communications relating to sensitive services:

3 (A) Unless the health care service plan or health insurer has
4 received an authorization for insurance communications from an
5 insured individual who is under 26 years of age and insured as a
6 dependent on another person's insurance policy.

7 (B) For an insured individual to whom subparagraph (A) does
8 not apply, if that insured individual has submitted a nondisclosure
9 request.

10 (2) A health care service plan or health insurer shall comply
11 with a confidential communications request regarding sensitive
12 services from an insured individual.

13 (3) A health care service plan or health insurer shall comply
14 with a nondisclosure request or a confidential communications
15 request from an insured individual who states that disclosure of
16 ~~health~~ *medical* information will endanger the individual, and shall
17 not require an explanation as to the basis for the insured
18 individual's statement that disclosure will endanger the individual.

19 (b) Notwithstanding subdivision (a), the provider of health care
20 may make arrangements with the insured individual for the
21 payment of benefit cost sharing and communicate that arrangement
22 with the health care service plan or health insurer.

23 (c) A health care service plan or health insurer shall not
24 condition enrollment or coverage in the health plan or health
25 insurance policy or eligibility for benefits on the provision of an
26 authorization for insurance communications.

27 SEC. 5. Section 56.16 of the Civil Code is amended to read:

28 56.16. For disclosures not addressed by Section 56.1007, unless
29 there is a specific written request by the patient to the contrary,
30 nothing in this part shall be construed to prevent a general acute
31 care hospital, as defined in subdivision (a) of Section 1250 of the
32 Health and Safety Code, upon an inquiry concerning a specific
33 patient, from releasing at its discretion any of the following
34 information: the patient's name, address, age, and sex; a general
35 description of the reason for treatment (whether an injury, a burn,
36 poisoning, or some unrelated condition); the general nature of the
37 injury, burn, poisoning, or other condition; the general condition
38 of the patient; and any information that is not medical information
39 as defined in Section 56.05.

1 SEC. 6. Section 1280.15 of the Health and Safety Code is
2 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 130203. 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 ~~patients'~~ *patient's*
20 medical information. For purposes of the investigation, the
21 department shall consider the clinic's, health facility's, agency's,
22 or hospice's history of compliance with this section and other
23 related state and federal statutes and regulations, the extent to
24 which the facility detected violations and took preventative action
25 to immediately correct and prevent past violations from recurring,
26 and factors outside its control that restricted the facility's ability
27 to comply with this section. The department shall have full
28 discretion to consider all factors when determining the amount of
29 an administrative penalty pursuant to this section.

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

37 (2) Subject to subdivision (c), a clinic, health facility, home
38 health agency, or hospice shall also report any unlawful or
39 unauthorized access to, or use or disclosure of, a patient's medical
40 information to the affected patient or the patient's representative

1 at the last known address, no later than five business days after
2 the unlawful or unauthorized access, use, or disclosure has been
3 detected by the clinic, health facility, home health agency, or
4 hospice.

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

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

29 (A) Document the oral statement, including, but not limited to,
30 the identity of the law enforcement agency or official making the
31 oral statement and the date upon which the oral statement was
32 made.

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

39 (3) A clinic, health facility, home health agency, or hospice
40 shall submit a report that is delayed pursuant to this subdivision

1 not later than five business days after the date designated as the
2 end of the delay.

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

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

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

35 (g) If the licensee disputes a determination by the department
36 regarding a failure to prevent or failure to timely report unlawful
37 or unauthorized access to, or use or disclosure of, patients' medical
38 information, or the imposition of a penalty under this section, the
39 licensee may, within 10 days of receipt of the penalty assessment,
40 request a hearing pursuant to Section 131071. Penalties shall be

1 paid when appeals have been exhausted and the penalty has been
2 upheld.

3 (h) In lieu of disputing the determination of 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, transmit to the department 75 percent of the total
7 amount of the administrative penalty, for each violation, within
8 30 business days of receipt of the administrative penalty.

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

12 (j) For purposes of this section, the following definitions shall
13 apply:

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

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

24 SEC. 7. Section 1627 of the Health and Safety Code is amended
25 to read:

26 1627. (a) (1) On or before July 1, 2011, the University of
27 California is requested to develop a plan to establish and administer
28 the Umbilical Cord Blood Collection Program for the purpose of
29 collecting units of umbilical cord blood for public use in
30 transplantation and providing nonclinical units for research
31 pertaining to biology and new clinical utilization of stem cells
32 derived from the blood and tissue of the placenta and umbilical
33 cord. The program shall conclude no later than January 1, 2018.

34 (2) For purposes of this article, "public use" means both of the
35 following:

36 (A) The collection of umbilical cord blood units from genetically
37 diverse donors that will be owned by the University of California.
38 This inventory shall be accessible by the National Registry and by
39 qualified California-based and other United States and international
40 registries and transplant centers to increase the likelihood of

1 providing suitably matched donor cord blood units to patients or
2 research participants who are in need of a transplant.

3 (B) Cord blood units with a lower number of cells than deemed
4 necessary for clinical transplantation and units that meet clinical
5 requirements, but for other reasons are unsuitable, unlikely to be
6 transplanted, or otherwise unnecessary for clinical use, may be
7 made available for research.

8 (b) (1) In order to implement the collection goals of this
9 program, the University of California may, commensurate with
10 available funds appropriated to the University of California for
11 this program, contract with one or more selected applicant entities
12 that have demonstrated the competence to collect and ship cord
13 blood units in compliance with federal guidelines and regulations.

14 (2) It is the intent of the Legislature that, if the University of
15 California contracts with another entity pursuant to this subdivision,
16 the following shall apply:

17 (A) The University of California may use a competitive process
18 to identify the best proposals submitted by applicant entities to
19 administer the collection and research objectives of the program,
20 to the extent that the University of California chooses not to
21 undertake these activities itself.

22 (B) In order to qualify for selection under this section to receive,
23 process, cryopreserve, or bank cord blood units, the entity shall,
24 at a minimum, have obtained an investigational new drug (IND)
25 exemption from the FDA or a biologic license from the FDA, as
26 appropriate, to manufacture clinical grade cord blood stem cell
27 units for clinical indications.

28 (C) In order to qualify to receive appropriate cord blood units
29 and placental tissue to advance the research goals of this program,
30 an entity shall, at a minimum, be a laboratory recognized as having
31 performed peer-reviewed research on stem and progenitor cells,
32 including those derived from placental or umbilical cord blood
33 and postnatal tissue.

34 (3) A medical provider or research facility shall comply with,
35 and shall be subject to, existing penalties for violations of all
36 applicable state and federal laws with respect to the protection of
37 any medical information, as defined in Section 56.05 of the Civil
38 Code, and any personally identifiable information contained in the
39 umbilical cord blood inventory.

1 (c) The University of California is encouraged to make every
2 effort to avoid duplication or conflicts with existing and ongoing
3 programs and to leverage existing resources.

4 (d) (1) All information collected pursuant to the program shall
5 be confidential, and shall be used solely for the purposes of the
6 program, including research. Access to confidential information
7 shall be limited to authorized persons who are bound by appropriate
8 institutional policies or who otherwise agree, in writing, to maintain
9 the confidentiality of that information.

10 (2) Any person who, in violation of applicable institutional
11 policies or a written agreement to maintain confidentiality,
12 discloses any information provided pursuant to this section, or
13 who uses information provided pursuant to this section in a manner
14 other than as approved pursuant to this section, may be denied
15 further access to any confidential information maintained by the
16 University of California, and shall be subject to a civil penalty not
17 exceeding one thousand dollars (\$1,000). The penalty provided
18 for in this section shall not be construed to limit or otherwise
19 restrict any remedy, provisional or otherwise, provided by law for
20 the benefit of the University of California or any other person
21 covered by this section.

22 (3) Notwithstanding the restrictions of this section, an individual
23 to whom the confidential information pertains shall have access
24 to his or her own personal information.

25 (e) It is the intent of the Legislature that the plan and
26 implementation of the program provide for both of the following:

27 (1) Limit fees for access to cord blood units to the reasonable
28 and actual costs of storage, handling, and providing units, as well
29 as for related services such as donor matching and testing of cord
30 blood and other programs and services typically provided by cord
31 blood banks and public use programs.

32 (2) The submittal of the plan developed pursuant to subdivision
33 (a) to the health and fiscal committees of the Legislature.

34 (f) It is additionally the intent of the Legislature that the plan
35 and implementation of the program attempt to provide for all of
36 the following:

37 (1) Development of a strategy to increase voluntary participation
38 by hospitals in the collection and storage of umbilical cord blood
39 and identify funding sources to offset the financial impact on
40 hospitals.

1 (2) Consideration of a medical contingency response program
2 to prepare for and respond effectively to biological, chemical, or
3 radiological attacks, accidents, and other public health emergencies
4 where victims potentially benefit from treatment.

5 (3) Exploration of the feasibility of operating the program as a
6 self-funding program, including the potential for charging users a
7 reimbursement fee.

8 SEC. 8. Section 117928 of the Health and Safety Code is
9 amended to read:

10 117928. (a) Any common storage facility for the collection
11 of medical waste produced by small quantity generators operating
12 independently, but sharing common storage facilities, shall have
13 a permit issued by the enforcement agency.

14 (b) A permit for any common storage facility specified in
15 subdivision (a) may be obtained by any one of the following:

16 (1) A provider of health care as defined in Section 56.05 of the
17 Civil Code.

18 (2) The registered hazardous waste transporter.

19 (3) The property owner.

20 (4) The property management firm responsible for providing
21 tenant services to the medical waste generators.

22 SEC. 9. Section 120985 of the Health and Safety Code is
23 amended to read:

24 120985. (a) Notwithstanding Section 120980, the results of
25 an HIV test that identifies or provides identifying characteristics
26 of the person to whom the test results apply may be recorded by
27 the physician who ordered the test in the test subject's medical
28 record or otherwise disclosed without written authorization of the
29 subject of the test, or the subject's representative as set forth in
30 Section 121020, to the test subject's providers of health care, as
31 defined in Section 56.05 of the Civil Code, for purposes of
32 diagnosis, care, or treatment of the patient, except that for purposes
33 of this section, "providers of health care" does not include a health
34 care service plan regulated pursuant to Chapter 2.2 (commencing
35 with Section 1340) of Division 2.

36 (b) Recording or disclosure of HIV test results pursuant to
37 subdivision (a) does not authorize further disclosure unless
38 otherwise permitted by law.

39 SEC. 10. Section 121010 of the Health and Safety Code is
40 amended to read:

1 121010. Notwithstanding Section 120975 or 120980, the results
2 of a blood test to detect antibodies to the probable causative agent
3 of AIDS may be disclosed to any of the following persons without
4 written authorization of the subject of the test:

5 (a) To the subject of the test or the subject’s legal representative,
6 conservator, or to any person authorized to consent to the test
7 pursuant to subdivision (b) of Section 120990.

8 (b) To a test subject’s provider of health care, as defined in
9 Section 56.05 of the Civil Code, except that for purposes of this
10 section, “provider of health care” does not include a health care
11 service plan regulated pursuant to Chapter 2.2 (commencing with
12 Section 1340) of Division 2.

13 (c) To an agent or employee of the test subject’s provider of
14 health care who provides direct patient care and treatment.

15 (d) To a provider of health care who procures, processes,
16 distributes, or uses a human body part donated pursuant to the
17 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with
18 Section 7150) of Part 1 of Division 7).

19 (e) (1) To the designated officer of an emergency response
20 employee, and from that designated officer to an emergency
21 response employee regarding possible exposure to HIV or AIDS,
22 but only to the extent necessary to comply with provisions of the
23 Ryan White Comprehensive AIDS Resources Emergency Act of
24 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

25 (2) For purposes of this subdivision, “designated officer” and
26 “emergency response employee” have the same meaning as these
27 terms are used in the Ryan White Comprehensive AIDS Resources
28 Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec.
29 201).

30 (3) The designated officer shall be subject to the confidentiality
31 requirements specified in Section 120980, and may be personally
32 liable for unauthorized release of any identifying information about
33 the HIV results. Further, the designated officer shall inform the
34 exposed emergency response employee that the employee is also
35 subject to the confidentiality requirements specified in Section
36 120980, and may be personally liable for unauthorized release of
37 any identifying information about the HIV test results.

38 SEC. 11. Section 130201 of the Health and Safety Code is
39 amended to read:

1 130201. For purposes of this division, the following definitions
2 apply:

3 (a) “Director” means the Director of the Office of Health
4 Information Integrity.

5 (b) “Medical information” means the term as defined in Section
6 56.05 of the Civil Code.

7 (c) “Office” means the Office of Health Information Integrity.

8 (d) “Provider of health care” means the term as defined in
9 Sections 56.05 and 56.06 of the Civil Code.

10 (e) “Unauthorized access” means the inappropriate review or
11 viewing of patient medical information without a direct need for
12 diagnosis, treatment, or other lawful use as permitted by the
13 Confidentiality of Medical Information Act (Part 2.6 (commencing
14 with Section 56) of Division 1 of the Civil Code) or by other
15 statutes or regulations governing the lawful access, use, or
16 disclosure of medical information.

17 *SEC. 12. Section 791.29 is added to the Insurance Code, to*
18 *read:*

19 *791.29. A health insurer, as defined in subdivision (h) of*
20 *Section 56.05 of the Civil Code, shall comply with the provisions*
21 *of Section 56.107 of the Civil Code to the extent required by that*
22 *section. To the extent this article conflicts with Section 56.107 of*
23 *the Civil Code, the provisions of Section 56.107 of the Civil Code*
24 *shall control.*

25 ~~SEC. 12.~~

26 *SEC. 13. Section 3208.05 of the Labor Code is amended to*
27 *read:*

28 3208.05. (a) “Injury” includes a reaction to or a side effect
29 arising from health care provided by an employer to a health care
30 worker, which health care is intended to prevent the development
31 or manifestation of any bloodborne disease, illness, syndrome, or
32 condition recognized as occupationally incurred by Cal-OSHA,
33 the federal Centers for Disease Control and Prevention, or other
34 appropriate governmental entities. This section shall apply only
35 to preventive health care that the employer provided to a health
36 care worker under the following circumstances: (1) prior to an
37 exposure because of risk of occupational exposure to such a
38 disease, illness, syndrome, or condition, or (2) where the preventive
39 care is provided as a consequence of a documented exposure to
40 blood or bodily fluid containing blood that arose out of and in the

1 course of employment. Such a disease, illness, syndrome, or
2 condition includes, but is not limited to, hepatitis, and the human
3 immunodeficiency virus. Such preventive health care, and any
4 disability indemnity or other benefits required as a result of the
5 preventive health care provided by the employer, shall be
6 compensable under the workers' compensation system. The
7 employer may require the health care worker to document that the
8 employer provided the preventive health care and that the reaction
9 or side effects arising from the preventive health care resulted in
10 lost work time, health care costs, or other costs normally
11 compensable under workers' compensation.

12 (b) The benefits of this section shall not be provided to a health
13 care worker for a reaction to or side effect from health care
14 intended to prevent the development of the human
15 immunodeficiency virus if the worker claims a work-related
16 exposure and if the worker tests positive within 48 hours of that
17 exposure to a test to determine the presence of the human
18 immunodeficiency virus.

19 (c) For purposes of this section, "health care worker" includes
20 any person who is an employee of a provider of health care as
21 defined in Section 56.05 of the Civil Code, and who is exposed to
22 human blood or other bodily fluids contaminated with blood in
23 the course of employment, including, but not limited to, a registered
24 nurse, a licensed vocational nurse, a certified nurse aide, clinical
25 laboratory technologist, dental hygienist, physician, janitor, and
26 housekeeping worker. "Health care worker" does not include an
27 employee who provides employee health services for an employer
28 primarily engaged in a business other than providing health care.

29 ~~SEC. 13.~~

30 *SEC. 14.* No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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