

AMENDED IN SENATE MAY 28, 2013  
AMENDED IN SENATE APRIL 8, 2013  
AMENDED IN SENATE MARCH 13, 2013

**SENATE BILL**

**No. 138**

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

January 28, 2013

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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, *and to add Section 1348.5 to*, 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 law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of its provisions a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.*

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~~ *require a health care services plan or a health insurer, as defined, shall to comply with the requirements of the Confidentiality of Medical Information Act, if that act conflicts with the Insurance Information and Privacy Protection Act, as specified. Because a willful violation of these provisions by a health care service plan would be a crime, this bill would thus impose a state-mandated local program.*

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

1 disclosed and the identity of the people to whom disclosures are  
2 permitted as part of an insurance communication.

3 (c) “Authorized recipient” means any person who is authorized  
4 to receive medical information pursuant to Section 56.10 or 56.20.

5 (d) “Confidential communications request” means a request by  
6 an insured individual that insurance communications be  
7 communicated by a specific method, such as by telephone, email,  
8 or in a covered envelope rather than postcard, or to a specific mail  
9 or email address or specific telephone number, as designated by  
10 the insured individual.

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

20 (f) “Endanger” means that the insured individual fears  
21 harassment or abuse resulting from an insurance communication  
22 sufficient to deter the patient from obtaining health care absent  
23 confidentiality.

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

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

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

33 (j) “Insurance communication” means any communication from  
34 the health care service plan or health insurer to policyholders or  
35 insured individuals that discloses individually identifiable medical  
36 information. Insurance communication includes, but is not limited  
37 to, explanation of benefits forms, scheduling information, notices  
38 of denial, and notices of contested claims.

39 (k) “Licensed health care professional” means any person  
40 licensed or certified pursuant to Division 2 (commencing with

1 Section 500) of the Business and Professions Code, the Osteopathic  
2 Initiative Act or the Chiropractic Initiative Act, or Division 2.5  
3 (commencing with Section 1797) of the Health and Safety Code.

4 (l) “Marketing” means to make a communication about a product  
5 or service that encourages recipients of the communication to  
6 purchase or use the product or service.

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

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

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

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

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

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

3 (C) The communication contains instructions in typeface no  
4 smaller than 14-point type describing how the individual can opt  
5 out of receiving further communications by calling a toll-free  
6 number of the health care provider, contractor, or health plan  
7 making the remunerated communications. No further  
8 communication may be made to an individual who has opted out  
9 after 30 calendar days from the date the individual makes the opt  
10 out request.

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

23 (n) “Nondisclosure request” means a written request to withhold  
24 insurance communications that includes the insured individual’s  
25 name and address, description of the medical or other information  
26 that should not be disclosed, identity of the persons from whom  
27 information shall be withheld, and contact information for the  
28 individual for additional information or clarification necessary to  
29 satisfy the request.

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

33 (p) “Pharmaceutical company” means any company or business,  
34 or an agent or representative thereof, that manufactures, sells, or  
35 distributes pharmaceuticals, medications, or prescription drugs.  
36 “Pharmaceutical company” does not include a pharmaceutical  
37 benefits manager, as included in subdivision (c), or a provider of  
38 health care.

39 (q) “Provider of health care” means any person licensed or  
40 certified pursuant to Division 2 (commencing with Section 500)

1 of the Business and Professions Code; any person licensed pursuant  
2 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;  
3 any person certified pursuant to Division 2.5 (commencing with  
4 Section 1797) of the Health and Safety Code; any clinic, health  
5 dispensary, or health facility licensed pursuant to Division 2  
6 (commencing with Section 1200) of the Health and Safety Code.  
7 “Provider of health care” does not include insurance institutions  
8 as defined in subdivision (k) of Section 791.02 of the Insurance  
9 Code.

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

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

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

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

34 (2) The length of time during which the information will be  
35 kept before being destroyed or disposed of. A person or entity may  
36 extend that timeframe, provided that the person or entity notifies  
37 the provider, plan, or contractor of the extension. Any notification  
38 of an extension shall include the specific reason for the extension,  
39 the intended use or uses of the information during the extended  
40 time, and the expected date of the destruction of the information.

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

3 (4) A statement that the person or entity requesting the  
4 information will destroy the information and all copies in the  
5 person’s or entity’s possession or control, will cause it to be  
6 destroyed, or will return the information and all copies of it before  
7 or immediately after the length of time specified in paragraph (2)  
8 has expired.

9 (b) The person or entity requesting the information shall submit  
10 a copy of the written request required by this section to the patient  
11 within 30 days of receipt of the information requested, unless the  
12 patient has signed a written waiver in the form of a letter signed  
13 and submitted by the patient to the provider of health care or health  
14 care service plan waiving notification.

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

19 (d) This section does not apply to the disclosure or use of  
20 medical information by a law enforcement agency or a regulatory  
21 agency when required for an investigation of unlawful activity or  
22 for licensing, certification, or regulatory purposes, unless the  
23 disclosure is otherwise prohibited by law.

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

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

27 (2) Information requested from a psychotherapist by law  
28 enforcement or by the target of the threat subsequent to a disclosure  
29 by that psychotherapist authorized by paragraph (19) of subdivision  
30 (c) of Section 56.10, in which the additional information is clearly  
31 necessary to prevent the serious and imminent threat disclosed  
32 under that paragraph.

33 (3) Information disclosed by a psychotherapist pursuant to  
34 paragraphs (14) and (22) of subdivision (c) of Section 56.10 and  
35 requested by an agency investigating the abuse reported pursuant  
36 to those paragraphs.

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

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

2 56.107. (a) Notwithstanding any other law, and to the extent  
3 permitted by federal law, a health care service plan or health insurer  
4 shall take the following steps to protect the confidentiality of an  
5 insured individual's medical information as follows:

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

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

12 (B) For an insured individual to whom subparagraph (A) does  
13 not apply, if that insured individual has submitted a nondisclosure  
14 request.

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

18 (3) A health care service plan or health insurer shall comply  
19 with a nondisclosure request or a confidential communications  
20 request from an insured individual who states that disclosure of  
21 medical information will endanger the individual, and shall not  
22 require an explanation as to the basis for the insured individual's  
23 statement that disclosure will endanger the individual.

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

28 (c) A health care service plan or health insurer shall not  
29 condition enrollment or coverage in the health plan or health  
30 insurance policy or eligibility for benefits on the provision of an  
31 authorization for insurance communications.

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

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

1 poisoning, or some unrelated condition); the general nature of the  
2 injury, burn, poisoning, or other condition; the general condition  
3 of the patient; and any information that is not medical information  
4 as defined in Section 56.05.

5 SEC. 6. Section 1280.15 of the Health and Safety Code is  
6 amended to read:

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

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

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

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

33 (A) Document the oral statement, including, but not limited to,  
34 the identity of the law enforcement agency or official making the  
35 oral statement and the date upon which the oral statement was  
36 made.

37 (B) Limit the delay in reporting the unlawful or unauthorized  
38 access to, or use or disclosure of, the patient's medical information  
39 to the date specified in the oral statement, not to exceed 30 calendar  
40 days from the date that the oral statement is made, unless a written

1 statement that complies with the requirements of this subdivision  
2 is received during that time.

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

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

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

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

39 (g) If the licensee disputes a determination by the department  
40 regarding a failure to prevent or failure to timely report unlawful

1 or unauthorized access to, or use or disclosure of, patients' medical  
2 information, or the imposition of a penalty under this section, the  
3 licensee may, within 10 days of receipt of the penalty assessment,  
4 request a hearing pursuant to Section 131071. Penalties shall be  
5 paid when appeals have been exhausted and the penalty has been  
6 upheld.

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

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

16 (j) For purposes of this section, the following definitions shall  
17 apply:

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

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

28 *SEC. 7. Section 1348.5 is added to the Health and Safety Code,*  
29 *to read:*

30 *1348.5. (a) A health care service plan shall comply with the*  
31 *provisions of Section 56.107 of the Civil Code to the extent required*  
32 *by that section. To the extent this chapter conflicts with Section*  
33 *56.107 of the Civil Code, the provisions of Section 56.107 of the*  
34 *Civil Code shall control.*

35 *(b) The department shall review health care service plan*  
36 *contracts and privacy policies for compliance with this section*  
37 *only during the normal application approval or modification*  
38 *process conducted pursuant to Sections 1351 and 1352.*

1     ~~SEC. 7.~~

2     SEC. 8. Section 1627 of the Health and Safety Code is amended  
3 to read:

4     1627. (a) (1) On or before July 1, 2011, the University of  
5 California is requested to develop a plan to establish and administer  
6 the Umbilical Cord Blood Collection Program for the purpose of  
7 collecting units of umbilical cord blood for public use in  
8 transplantation and providing nonclinical units for research  
9 pertaining to biology and new clinical utilization of stem cells  
10 derived from the blood and tissue of the placenta and umbilical  
11 cord. The program shall conclude no later than January 1, 2018.

12     (2) For purposes of this article, “public use” means both of the  
13 following:

14     (A) The collection of umbilical cord blood units from genetically  
15 diverse donors that will be owned by the University of California.  
16 This inventory shall be accessible by the National Registry and by  
17 qualified California-based and other United States and international  
18 registries and transplant centers to increase the likelihood of  
19 providing suitably matched donor cord blood units to patients or  
20 research participants who are in need of a transplant.

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

26     (b) (1) In order to implement the collection goals of this  
27 program, the University of California may, commensurate with  
28 available funds appropriated to the University of California for  
29 this program, contract with one or more selected applicant entities  
30 that have demonstrated the competence to collect and ship cord  
31 blood units in compliance with federal guidelines and regulations.

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

35     (A) The University of California may use a competitive process  
36 to identify the best proposals submitted by applicant entities to  
37 administer the collection and research objectives of the program,  
38 to the extent that the University of California chooses not to  
39 undertake these activities itself.

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

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

13 (3) A medical provider or research facility shall comply with,  
14 and shall be subject to, existing penalties for violations of all  
15 applicable state and federal laws with respect to the protection of  
16 any medical information, as defined in Section 56.05 of the Civil  
17 Code, and any personally identifiable information contained in the  
18 umbilical cord blood inventory.

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

22 (d) (1) All information collected pursuant to the program shall  
23 be confidential, and shall be used solely for the purposes of the  
24 program, including research. Access to confidential information  
25 shall be limited to authorized persons who are bound by appropriate  
26 institutional policies or who otherwise agree, in writing, to maintain  
27 the confidentiality of that information.

28 (2) Any person who, in violation of applicable institutional  
29 policies or a written agreement to maintain confidentiality,  
30 discloses any information provided pursuant to this section, or  
31 who uses information provided pursuant to this section in a manner  
32 other than as approved pursuant to this section, may be denied  
33 further access to any confidential information maintained by the  
34 University of California, and shall be subject to a civil penalty not  
35 exceeding one thousand dollars (\$1,000). The penalty provided  
36 for in this section shall not be construed to limit or otherwise  
37 restrict any remedy, provisional or otherwise, provided by law for  
38 the benefit of the University of California or any other person  
39 covered by this section.

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

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

6 (1) Limit fees for access to cord blood units to the reasonable  
7 and actual costs of storage, handling, and providing units, as well  
8 as for related services such as donor matching and testing of cord  
9 blood and other programs and services typically provided by cord  
10 blood banks and public use programs.

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

13 (f) It is additionally the intent of the Legislature that the plan  
14 and implementation of the program attempt to provide for all of  
15 the following:

16 (1) Development of a strategy to increase voluntary participation  
17 by hospitals in the collection and storage of umbilical cord blood  
18 and identify funding sources to offset the financial impact on  
19 hospitals.

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

24 (3) Exploration of the feasibility of operating the program as a  
25 self-funding program, including the potential for charging users a  
26 reimbursement fee.

27 ~~SEC. 8.~~

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

30 117928. (a) Any common storage facility for the collection  
31 of medical waste produced by small quantity generators operating  
32 independently, but sharing common storage facilities, shall have  
33 a permit issued by the enforcement agency.

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

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

38 (2) The registered hazardous waste transporter.

39 (3) The property owner.

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

3 ~~SEC. 9.~~

4 *SEC. 10.* Section 120985 of the Health and Safety Code is  
5 amended to read:

6 120985. (a) Notwithstanding Section 120980, the results of  
7 an HIV test that identifies or provides identifying characteristics  
8 of the person to whom the test results apply may be recorded by  
9 the physician who ordered the test in the test subject's medical  
10 record or otherwise disclosed without written authorization of the  
11 subject of the test, or the subject's representative as set forth in  
12 Section 121020, to the test subject's providers of health care, as  
13 defined in Section 56.05 of the Civil Code, for purposes of  
14 diagnosis, care, or treatment of the patient, except that for purposes  
15 of this section, "providers of health care" does not include a health  
16 care service plan regulated pursuant to Chapter 2.2 (commencing  
17 with Section 1340) of Division 2.

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

21 ~~SEC. 10.~~

22 *SEC. 11.* Section 121010 of the Health and Safety Code is  
23 amended to read:

24 121010. Notwithstanding Section 120975 or 120980, the results  
25 of a blood test to detect antibodies to the probable causative agent  
26 of AIDS may be disclosed to any of the following persons without  
27 written authorization of the subject of the test:

28 (a) To the subject of the test or the subject's legal representative,  
29 conservator, or to any person authorized to consent to the test  
30 pursuant to subdivision (b) of Section 120990.

31 (b) To a test subject's provider of health care, as defined in  
32 Section 56.05 of the Civil Code, except that for purposes of this  
33 section, "provider of health care" does not include a health care  
34 service plan regulated pursuant to Chapter 2.2 (commencing with  
35 Section 1340) of Division 2.

36 (c) To an agent or employee of the test subject's provider of  
37 health care who provides direct patient care and treatment.

38 (d) To a provider of health care who procures, processes,  
39 distributes, or uses a human body part donated pursuant to the

1 Uniform Anatomical Gift Act (Chapter 3.5 (commencing with  
2 Section 7150) of Part 1 of Division 7).

3 (e) (1) To the designated officer of an emergency response  
4 employee, and from that designated officer to an emergency  
5 response employee regarding possible exposure to HIV or AIDS,  
6 but only to the extent necessary to comply with provisions of the  
7 Ryan White Comprehensive AIDS Resources Emergency Act of  
8 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

9 (2) For purposes of this subdivision, “designated officer” and  
10 “emergency response employee” have the same meaning as these  
11 terms are used in the Ryan White Comprehensive AIDS Resources  
12 Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec.  
13 201).

14 (3) The designated officer shall be subject to the confidentiality  
15 requirements specified in Section 120980, and may be personally  
16 liable for unauthorized release of any identifying information about  
17 the HIV results. Further, the designated officer shall inform the  
18 exposed emergency response employee that the employee is also  
19 subject to the confidentiality requirements specified in Section  
20 120980, and may be personally liable for unauthorized release of  
21 any identifying information about the HIV test results.

22 ~~SEC. 11.~~

23 *SEC. 12.* Section 130201 of the Health and Safety Code is  
24 amended to read:

25 130201. For purposes of this division, the following definitions  
26 apply:

27 (a) “Director” means the Director of the Office of Health  
28 Information Integrity.

29 (b) “Medical information” means the term as defined in Section  
30 56.05 of the Civil Code.

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

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

34 (e) “Unauthorized access” means the inappropriate review or  
35 viewing of patient medical information without a direct need for  
36 diagnosis, treatment, or other lawful use as permitted by the  
37 Confidentiality of Medical Information Act (Part 2.6 (commencing  
38 with Section 56) of Division 1 of the Civil Code) or by other  
39 statutes or regulations governing the lawful access, use, or  
40 disclosure of medical information.

1 ~~SEC. 12.~~

2 *SEC. 13.* Section 791.29 is added to the Insurance Code, to  
3 read:

4 791.29. (a) A health insurer, as defined in subdivision (h) of  
5 Section 56.05 of the Civil Code, shall comply with the provisions  
6 of Section 56.107 of the Civil Code to the extent required by that  
7 section. To the extent this article conflicts with Section 56.107 of  
8 the Civil Code, the provisions of Section 56.107 of the Civil Code  
9 shall control.

10 (b) *The department shall review insurance products and privacy*  
11 *policies for compliance with this section only during the normal*  
12 *policy issuance process conducted pursuant to Sections 10290 and*  
13 *10291.*

14 ~~SEC. 13.~~

15 *SEC. 14.* Section 3208.05 of the Labor Code is amended to  
16 read:

17 3208.05. (a) “Injury” includes a reaction to or a side effect  
18 arising from health care provided by an employer to a health care  
19 worker, which health care is intended to prevent the development  
20 or manifestation of any bloodborne disease, illness, syndrome, or  
21 condition recognized as occupationally incurred by Cal-OSHA,  
22 the federal Centers for Disease Control and Prevention, or other  
23 appropriate governmental entities. This section shall apply only  
24 to preventive health care that the employer provided to a health  
25 care worker under the following circumstances: (1) prior to an  
26 exposure because of risk of occupational exposure to such a  
27 disease, illness, syndrome, or condition, or (2) where the preventive  
28 care is provided as a consequence of a documented exposure to  
29 blood or bodily fluid containing blood that arose out of and in the  
30 course of employment. Such a disease, illness, syndrome, or  
31 condition includes, but is not limited to, hepatitis, and the human  
32 immunodeficiency virus. Such preventive health care, and any  
33 disability indemnity or other benefits required as a result of the  
34 preventive health care provided by the employer, shall be  
35 compensable under the workers’ compensation system. The  
36 employer may require the health care worker to document that the  
37 employer provided the preventive health care and that the reaction  
38 or side effects arising from the preventive health care resulted in  
39 lost work time, health care costs, or other costs normally  
40 compensable under workers’ compensation.

1 (b) The benefits of this section shall not be provided to a health  
 2 care worker for a reaction to or side effect from health care  
 3 intended to prevent the development of the human  
 4 immunodeficiency virus if the worker claims a work-related  
 5 exposure and if the worker tests positive within 48 hours of that  
 6 exposure to a test to determine the presence of the human  
 7 immunodeficiency virus.

8 (c) For purposes of this section, “health care worker” includes  
 9 any person who is an employee of a provider of health care as  
 10 defined in Section 56.05 of the Civil Code, and who is exposed to  
 11 human blood or other bodily fluids contaminated with blood in  
 12 the course of employment, including, but not limited to, a registered  
 13 nurse, a licensed vocational nurse, a certified nurse aide, clinical  
 14 laboratory technologist, dental hygienist, physician, janitor, and  
 15 housekeeping worker. “Health care worker” does not include an  
 16 employee who provides employee health services for an employer  
 17 primarily engaged in a business other than providing health care.

18 ~~SEC. 14.~~

19 *SEC. 15.* No reimbursement is required by this act pursuant to  
 20 Section 6 of Article XIII B of the California Constitution because  
 21 the only costs that may be incurred by a local agency or school  
 22 district will be incurred because this act creates a new crime or  
 23 infraction, eliminates a crime or infraction, or changes the penalty  
 24 for a crime or infraction, within the meaning of Section 17556 of  
 25 the Government Code, or changes the definition of a crime within  
 26 the meaning of Section 6 of Article XIII B of the California  
 27 Constitution.

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