

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 28, 2013

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, 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 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 a "confidential communications request" which an insured individual may submit for the purpose of specifying the method for transmitting insurance communications.

This bill would specify the manner in which a health care service plan or health insurer would be required to maintain confidentiality of medical information regarding the treatment of insured individuals that involves sensitive services, as defined, including such treatment of those individuals who are insured or covered as dependents on another person's health care service plan or health insurance policy. The bill would require a health care service plan or health insurer to comply with a nondisclosure ~~request~~ *request* or a confidential communications request from an insured individual, as defined, in situations in which disclosure would endanger the insured individual.

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 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 require a health care services plan or a health insurer, as defined, 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:

1 (a) “Authorization” means permission granted in accordance
2 with Section 56.11 or 56.21 for the disclosure of medical
3 information.

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

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

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

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

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

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

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

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

1 (j) “Licensed health care professional” means any person
2 licensed or certified pursuant to Division 2 (commencing with
3 Section 500) of the Business and Professions Code, the Osteopathic
4 Initiative Act or the Chiropractic Initiative Act, or Division 2.5
5 (commencing with Section 1797) of the Health and Safety Code.

6 (k) “Marketing” means to make a communication about a
7 product or service that encourages recipients of the communication
8 to purchase or use the product or service.

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

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

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

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

38 (A) The individual receiving the communication is notified in
39 the communication in typeface no smaller than 14-point type of

1 the fact that the provider, contractor, or health plan has been
2 remunerated and the source of the remuneration.

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

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

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

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

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

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

1 (p) “Provider of health care” means any person licensed or
2 certified pursuant to Division 2 (commencing with Section 500)
3 of the Business and Professions Code; any person licensed pursuant
4 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
5 any person certified pursuant to Division 2.5 (commencing with
6 Section 1797) of the Health and Safety Code; any clinic, health
7 dispensary, or health facility licensed pursuant to Division 2
8 (commencing with Section 1200) of the Health and Safety Code.
9 “Provider of health care” does not include insurance institutions
10 as defined in subdivision (k) of Section 791.02 of the Insurance
11 Code.

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

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

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

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

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

1 the intended use or uses of the information during the extended
2 time, and the expected date of the destruction of the information.

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

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

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

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

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

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

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

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

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

39 (f) Nothing in this section shall be construed to grant any
40 additional authority to a provider of health care, health care service

1 plan, or contractor to disclose information to a person or entity
2 without the patient’s consent.

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

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

8 ~~(1) For an insured individual who is insured or covered as a~~
9 ~~dependent on another person’s health care service plan or health~~
10 ~~insurance policy, a health care service plan or health insurer shall~~
11 ~~not send insurance communications relating to sensitive~~
12 ~~services, unless the insurance communication is required by~~
13 ~~federal law. If required by federal law, the insurance~~
14 ~~communication shall comply with either of the following:~~

15 *(1) A health care service plan or health insurer shall not send*
16 *insurance communications relating to sensitive services for an*
17 *insured individual who is insured or covered as a dependent on*
18 *another person’s health care service plan or health insurance*
19 *policy, unless the insurance communication is required by federal*
20 *law. If required by federal law, the health care service plan or*
21 *health insurer shall comply with either of the following:*

22 (A) The health care service plan or health insurer shall send the
23 required insurance communication to the insured individual in
24 compliance with a confidential communications request received
25 from the insured individual.

26 (B) If the health care service plan or health insurer has not
27 received a confidential communications request, it shall send the
28 required insurance communication to the insured individual, and
29 may do so at the address furnished by the policyholder.

30 ~~(2) For an insured individual to whom paragraph (1) does not~~
31 ~~apply, a health care service plan or health insurer shall not send~~
32 ~~the insurance communication related to sensitive services if that~~
33 ~~insured individual has submitted a nondisclosure request.~~

34 ~~(3)~~

35 (2) A health care service plan or health insurer shall comply
36 with a nondisclosure request or a confidential communications
37 request from an insured individual who states that disclosure of
38 medical information will endanger the individual, and shall not
39 require an explanation as to the basis for the insured individual’s
40 statement that disclosure will endanger the individual.

1 (b) For the purposes of this section, a confidential
2 communications request or a nondisclosure request is deemed
3 received by the health care service plan or the health insurer within
4 24 hours of electronic transmission or within 72 hours of posting
5 by first class mail.

6 (c) Notwithstanding subdivision (a), the provider of health care
7 may make arrangements with the insured individual for the
8 payment of benefit cost sharing and communicate that arrangement
9 with the health care service plan or health insurer.

10 (d) A health care service plan or health insurer shall not
11 condition enrollment or coverage in the health plan or health
12 insurance policy or eligibility for benefits on the provision of an
13 authorization for insurance communications.

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

15 56.16. For disclosures not addressed by Section 56.1007, unless
16 there is a specific written request by the patient to the contrary,
17 nothing in this part shall be construed to prevent a general acute
18 care hospital, as defined in subdivision (a) of Section 1250 of the
19 Health and Safety Code, upon an inquiry concerning a specific
20 patient, from releasing at its discretion any of the following
21 information: the patient's name, address, age, and sex; a general
22 description of the reason for treatment (whether an injury, a burn,
23 poisoning, or some unrelated condition); the general nature of the
24 injury, burn, poisoning, or other condition; the general condition
25 of the patient; and any information that is not medical information
26 as defined in Section 56.05.

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

29 1280.15. (a) A clinic, health facility, home health agency, or
30 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
31 shall prevent unlawful or unauthorized access to, and use or
32 disclosure of, patients' medical information, as defined in Section
33 56.05 of the Civil Code and consistent with Section 130203. For
34 purposes of this section, internal paper records, electronic mail,
35 or facsimile transmissions inadvertently misdirected within the
36 same facility or health care system within the course of
37 coordinating care or delivering services shall not constitute
38 unauthorized access to, or use or disclosure of, a patient's medical
39 information. The department, after investigation, may assess an
40 administrative penalty for a violation of this section of up to

1 twenty-five thousand dollars (\$25,000) per patient whose medical
2 information was unlawfully or without authorization accessed,
3 used, or disclosed, and up to seventeen thousand five hundred
4 dollars (\$17,500) per subsequent occurrence of unlawful or
5 unauthorized access, use, or disclosure of that patient's medical
6 information. For purposes of the investigation, the department
7 shall consider the clinic's, health facility's, agency's, or hospice's
8 history of compliance with this section and other related state and
9 federal statutes and regulations, the extent to which the facility
10 detected violations and took preventative action to immediately
11 correct and prevent past violations from recurring, and factors
12 outside its control that restricted the facility's ability to comply
13 with this section. The department shall have full discretion to
14 consider all factors when determining the amount of an
15 administrative penalty pursuant to this section.

16 (b) (1) A clinic, health facility, home health agency, or hospice
17 to which subdivision (a) applies shall report any unlawful or
18 unauthorized access to, or use or disclosure of, a patient's medical
19 information to the department no later than five business days after
20 the unlawful or unauthorized access, use, or disclosure has been
21 detected by the clinic, health facility, home health agency, or
22 hospice.

23 (2) Subject to subdivision (c), a clinic, health facility, home
24 health agency, or hospice shall also report any unlawful or
25 unauthorized access to, or use or disclosure of, a patient's medical
26 information to the affected patient or the patient's representative
27 at the last known address, no later than five business days after
28 the unlawful or unauthorized access, use, or disclosure has been
29 detected by the clinic, health facility, home health agency, or
30 hospice.

31 (c) (1) A clinic, health facility, home health agency, or hospice
32 shall delay the reporting, as required pursuant to paragraph (2) of
33 subdivision (b), of any unlawful or unauthorized access to, or use
34 or disclosure of, a patient's medical information beyond five
35 business days if a law enforcement agency or official provides the
36 clinic, health facility, home health agency, or hospice with a written
37 or oral statement that compliance with the reporting requirements
38 of paragraph (2) of subdivision (b) would likely impede the law
39 enforcement agency's investigation that relates to the unlawful or
40 unauthorized access to, and use or disclosure of, a patient's medical

1 information and specifies a date upon which the delay shall end,
2 not to exceed 60 days after a written request is made, or 30 days
3 after an oral request is made. A law enforcement agency or official
4 may request an extension of a delay based upon a written
5 declaration that there exists a bona fide, ongoing, significant
6 criminal investigation of serious wrongdoing relating to the
7 unlawful or unauthorized access to, and use or disclosure of, a
8 patient's medical information, that notification of patients will
9 undermine the law enforcement agency's investigation, and that
10 specifies a date upon which the delay shall end, not to exceed 60
11 days after the end of the original delay period.

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

15 (A) Document the oral statement, including, but not limited to,
16 the identity of the law enforcement agency or official making the
17 oral statement and the date upon which the oral statement was
18 made.

19 (B) Limit the delay in reporting the unlawful or unauthorized
20 access to, or use or disclosure of, the patient's medical information
21 to the date specified in the oral statement, not to exceed 30 calendar
22 days from the date that the oral statement is made, unless a written
23 statement that complies with the requirements of this subdivision
24 is received during that time.

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

29 (d) If a clinic, health facility, home health agency, or hospice
30 to which subdivision (a) applies violates subdivision (b), the
31 department may assess the licensee a penalty in the amount of one
32 hundred dollars (\$100) for each day that the unlawful or
33 unauthorized access, use, or disclosure is not reported to the
34 department or the affected patient, following the initial five-day
35 period specified in subdivision (b). However, the total combined
36 penalty assessed by the department under subdivision (a) and this
37 subdivision shall not exceed two hundred fifty thousand dollars
38 (\$250,000) per reported event. For enforcement purposes, it shall
39 be presumed that the facility did not notify the affected patient if
40 the notification was not documented. This presumption may be

1 rebutted by a licensee only if the licensee demonstrates, by a
2 preponderance of the evidence, that the notification was made.

3 (e) In enforcing subdivisions (a) and (d), the department shall
4 take into consideration the special circumstances of small and rural
5 hospitals, as defined in Section 124840, and primary care clinics,
6 as defined in subdivision (a) of Section 1204, in order to protect
7 access to quality care in those hospitals and clinics. When assessing
8 a penalty on a skilled nursing facility or other facility subject to
9 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
10 only the higher of either a penalty for the violation of this section
11 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
12 not both.

13 (f) All penalties collected by the department pursuant to this
14 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
15 into the Internal Departmental Quality Improvement Account,
16 which is hereby created within the Special Deposit Fund under
17 Section 16370 of the Government Code. Upon appropriation by
18 the Legislature, moneys in the account shall be expended for
19 internal quality improvement activities in the Licensing and
20 Certification Program.

21 (g) If the licensee disputes a determination by the department
22 regarding a failure to prevent or failure to timely report unlawful
23 or unauthorized access to, or use or disclosure of, patients' medical
24 information, or the imposition of a penalty under this section, the
25 licensee may, within 10 days of receipt of the penalty assessment,
26 request a hearing pursuant to Section 131071. Penalties shall be
27 paid when appeals have been exhausted and the penalty has been
28 upheld.

29 (h) In lieu of disputing the determination of the department
30 regarding a failure to prevent or failure to timely report unlawful
31 or unauthorized access to, or use or disclosure of, patients' medical
32 information, transmit to the department 75 percent of the total
33 amount of the administrative penalty, for each violation, within
34 30 business days of receipt of the administrative penalty.

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

38 (j) For purposes of this section, the following definitions shall
39 apply:

1 (1) “Reported event” means all breaches included in any single
2 report that is made pursuant to subdivision (b), regardless of the
3 number of breach events contained in the report.

4 (2) “Unauthorized” means the inappropriate access, review, or
5 viewing of patient medical information without a direct need for
6 medical diagnosis, treatment, or other lawful use as permitted by
7 the Confidentiality of Medical Information Act (Part 2.6
8 (commencing with Section 56) of Division 1 of the Civil Code)
9 or any other statute or regulation governing the lawful access, use,
10 or disclosure of medical information.

11 SEC. 7. Section 1348.5 is added to the Health and Safety Code,
12 to read:

13 1348.5. (a) A health care service plan shall comply with the
14 provisions of Section 56.107 of the Civil Code to the extent
15 required by that section. To the extent this chapter conflicts with
16 Section 56.107 of the Civil Code, the provisions of Section 56.107
17 of the Civil Code shall control.

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

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

24 1627. (a) (1) On or before July 1, 2011, the University of
25 California is requested to develop a plan to establish and administer
26 the Umbilical Cord Blood Collection Program for the purpose of
27 collecting units of umbilical cord blood for public use in
28 transplantation and providing nonclinical units for research
29 pertaining to biology and new clinical utilization of stem cells
30 derived from the blood and tissue of the placenta and umbilical
31 cord. The program shall conclude no later than January 1, 2018.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (f) It is additionally the intent of the Legislature that the plan
32 and implementation of the program attempt to provide for all of
33 the following:

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

38 (2) Consideration of a medical contingency response program
39 to prepare for and respond effectively to biological, chemical, or

1 radiological attacks, accidents, and other public health emergencies
2 where victims potentially benefit from treatment.

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

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

8 117928. (a) Any common storage facility for the collection
9 of medical waste produced by small quantity generators operating
10 independently, but sharing common storage facilities, shall have
11 a permit issued by the enforcement agency.

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

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

16 (2) The registered hazardous waste transporter.

17 (3) The property owner.

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

20 SEC. 10. Section 120985 of the Health and Safety Code is
21 amended to read:

22 120985. (a) Notwithstanding Section 120980, the results of
23 an HIV test that identifies or provides identifying characteristics
24 of the person to whom the test results apply may be recorded by
25 the physician who ordered the test in the test subject's medical
26 record or otherwise disclosed without written authorization of the
27 subject of the test, or the subject's representative as set forth in
28 Section 121020, to the test subject's providers of health care, as
29 defined in Section 56.05 of the Civil Code, for purposes of
30 diagnosis, care, or treatment of the patient, except that for purposes
31 of this section, "providers of health care" does not include a health
32 care service plan regulated pursuant to Chapter 2.2 (commencing
33 with Section 1340) of Division 2.

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

37 SEC. 11. Section 121010 of the Health and Safety Code is
38 amended to read:

39 121010. Notwithstanding Section 120975 or 120980, the results
40 of a blood test to detect antibodies to the probable causative agent

1 of AIDS may be disclosed to any of the following persons without
2 written authorization of the subject of the test:

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

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

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

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

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

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

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

36 SEC. 12. Section 130201 of the Health and Safety Code is
37 amended to read:

38 130201. For purposes of this division, the following definitions
39 apply:

1 (a) “Director” means the Director of the Office of Health
2 Information Integrity.

3 (b) “Medical information” means the term as defined in Section
4 56.05 of the Civil Code.

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

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

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

15 SEC. 13. Section 791.29 is added to the Insurance Code, to
16 read:

17 791.29. (a) A health insurer, as defined in subdivision (h) of
18 Section 56.05 of the Civil Code, shall comply with the provisions
19 of Section 56.107 of the Civil Code to the extent required by that
20 section. To the extent this article conflicts with Section 56.107 of
21 the Civil Code, the provisions of Section 56.107 of the Civil Code
22 shall control.

23 (b) The department shall review insurance products and privacy
24 policies for compliance with this section only during the normal
25 policy issuance process conducted pursuant to Sections 10290 and
26 10291.

27 SEC. 14. Section 3208.05 of the Labor Code is amended to
28 read:

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

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

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

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

30 SEC. 15. 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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