

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 9, 2013

**SENATE BILL**

**No. 249**

---

---

**Introduced by Senator Leno**

(Principal coauthor: Assembly Member Stone)

February 12, 2013

---

---

An act to amend Sections 120975, 121010, 121022, and 121025 of, and to add Section 121026 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 249, as amended, Leno. Public health: health records: confidentiality.

Existing law requires health care providers and laboratories to report cases of HIV infection to the local health officer using patient names on a form developed by the State Department of Public Health.

This bill would require laboratories, upon request by the department, to report cases of HIV infection by name directly to the department in addition to reports to the local health officer.

~~Existing law authorizes state public health agency HIV surveillance staff, AIDS Drug Assistance Program staff, and care services staff to disclose personally identifying information in public health records relating to HIV or AIDS to local public health agency staff, who may further disclose the information to the HIV-positive person who is the subject of the record, or the health care provider who provides his or her HIV care, for the purpose of proactively offering and coordinating care and treatment services to him or her.~~

~~This bill would authorize local public health agency staff to further disclose acquired or developed information to the HIV-positive person who is the subject of the record or the health care provider who provides his or her HIV care, for that purpose.~~

Existing law also provides specified health care coverage to individuals under the AIDS Drug Assistance Program (ADAP) and under federal Ryan White ~~Act-funded~~ *Act funded* programs, which are administered by the State Department of Public Health. Existing law, with some exceptions, prohibits the disclosure of the results of an HIV test to any 3rd party in a manner that identifies or provides identifying characteristics of the person to whom the test results apply. Existing law also provides that public health records related to HIV or AIDS containing personal identifying information that were developed or acquired by a state or local public agency shall be confidential and shall not be disclosed, except as otherwise provided by law or pursuant to written authorization.

This bill would authorize the State Department of Public Health, subject to specified provisions, ~~to share with~~ *and* qualified entities, as defined, *to share with each other* health records involving the diagnosis, care, and treatment of HIV or AIDS related to a beneficiary enrolled in federal Ryan White ~~Act-funded~~ *Act funded* programs who may be eligible for services under the federal Patient Protection and Affordable Care Act (PPACA), as specified. The bill would make other related changes.

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

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

- 1 SECTION 1. Section 120975 of the Health and Safety Code
- 2 is amended to read:
- 3 120975. To protect the privacy of individuals who are the
- 4 subject of testing for human immunodeficiency virus (HIV), the
- 5 following shall apply:
- 6 Except as provided in Section 1603.1, 1603.3, or 121022, no
- 7 person shall be compelled in any state, county, city, or other local
- 8 civil, criminal, administrative, legislative, or other proceedings to
- 9 identify or provide identifying characteristics that would identify
- 10 any individual who is the subject of an HIV test, as defined in
- 11 subdivision (c) of Section 120775.

1 SEC. 2. Section 121010 of the Health and Safety Code is  
2 amended to read:

3 121010. Notwithstanding Section 120975 or 120980, the results  
4 of an HIV test, as defined in subdivision (c) of Section 120775, to  
5 detect antibodies to the probable causative agent of AIDS may be  
6 disclosed to any of the following persons without written  
7 authorization of the subject of the test:

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

11 (b) To a test subject's provider of health care, as defined in  
12 subdivision (d) of Section 56.05 of the Civil Code, except that for  
13 purposes of this section, "provider of health care" does not include  
14 a health care service plan regulated pursuant to Chapter 2.2  
15 (commencing with Section 1340) of Division 2.

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

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

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

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

33 (3) The designated officer shall be subject to the confidentiality  
34 requirements specified in Section 120980, and may be personally  
35 liable for unauthorized release of any identifying information about  
36 the HIV results. Further, the designated officer shall inform the  
37 exposed emergency response employee that the employee is also  
38 subject to the confidentiality requirements specified in Section  
39 120980, and may be personally liable for unauthorized release of  
40 any identifying information about the HIV test results.

1 SEC. 3. Section 121022 of the Health and Safety Code is  
2 amended to read:

3 121022. (a) To ensure knowledge of current trends in the HIV  
4 epidemic and to ensure that California remains competitive for  
5 federal HIV and AIDS funding, health care providers and  
6 laboratories shall report cases of HIV infection to the local health  
7 officer using patient names on a form developed by the department.  
8 Upon request by the department, laboratories shall report cases of  
9 HIV infection by name directly to the department in a manner  
10 consistent with subdivision (g) of Section 120130, in addition to  
11 reports to the local health officer. Local health officers shall report  
12 unduplicated HIV cases by name to the department on a form  
13 developed by the department.

14 (b) (1) Health care providers and local health officers shall  
15 submit cases of HIV infection pursuant to subdivision (a) by courier  
16 service, United States Postal Service express mail or registered  
17 mail, other traceable mail, person-to-person transfer, facsimile, or  
18 electronically by a secure and confidential electronic reporting  
19 system established by the department.

20 (2) This subdivision shall be implemented using the existing  
21 resources of the department.

22 (c) The department and local health officers shall ensure  
23 continued reasonable access to anonymous HIV testing through  
24 alternative testing sites, as established by Section 120890, and in  
25 consultation with HIV planning groups and affected stakeholders,  
26 including representatives of persons living with HIV and health  
27 officers.

28 (d) The department shall promulgate emergency regulations to  
29 conform the relevant provisions of Article 3.5 (commencing with  
30 Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the  
31 California Code of Regulations, consistent with this chapter, by  
32 April 17, 2007. Notwithstanding the Administrative Procedure  
33 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
34 Division 3 of Title 2 of the Government Code), if the department  
35 revises the form used for reporting pursuant to subdivision (a) after  
36 consideration of the reporting guidelines published by the federal  
37 Centers for Disease Control and Prevention, the revised form shall  
38 be implemented without being adopted as a regulation, and shall  
39 be filed with the Secretary of State and printed in Title 17 of the  
40 California Code of Regulations.

1 (e) Pursuant to Section 121025, reported cases of HIV infection  
2 shall not be disclosed, discoverable, or compelled to be produced  
3 in any civil, criminal, administrative, or other proceeding.

4 (f) State and local health department employees and contractors  
5 shall be required to sign confidentiality agreements developed by  
6 the department that include information related to the penalties for  
7 a breach of confidentiality and the procedures for reporting a breach  
8 of confidentiality, prior to accessing confidential HIV-related  
9 public health records. Those agreements shall be reviewed annually  
10 by either the department or the appropriate local health department.

11 (g) No person shall disclose identifying information reported  
12 pursuant to subdivision (a) to the federal government, including,  
13 but not limited to, any agency, employee, agent, contractor, or  
14 anyone else acting on behalf of the federal government, except as  
15 permitted under subdivision (b) of Section 121025.

16 (h) (1) Any potential or actual breach of confidentiality of  
17 HIV-related public health records shall be investigated by the local  
18 health officer, in coordination with the department, when  
19 appropriate. The local health officer shall immediately report any  
20 evidence of an actual breach of confidentiality of HIV-related  
21 public health records at a city or county level to the department  
22 and the appropriate law enforcement agency.

23 (2) The department shall investigate any potential or actual  
24 breach of confidentiality of HIV-related public health records at  
25 the state level, and shall report any evidence of such a breach of  
26 confidentiality to an appropriate law enforcement agency.

27 (i) Any willful, negligent, or malicious disclosure of cases of  
28 HIV infection reported pursuant to subdivision (a) shall be subject  
29 to the penalties prescribed in Section 121025.

30 (j) Nothing in this section shall be construed to limit other  
31 remedies and protections available under state or federal law.

32 SEC. 4. Section 121025 of the Health and Safety Code is  
33 amended to read:

34 121025. (a) Public health records relating to human  
35 immunodeficiency virus (HIV) or acquired immunodeficiency  
36 syndrome (AIDS), containing personally identifying information,  
37 that were developed or acquired by a state or local public health  
38 agency, or an agent of that agency, shall be confidential and shall  
39 not be disclosed, except as otherwise provided by law for public  
40 health purposes or pursuant to a written authorization by the person

1 who is the subject of the record or by his or her guardian or  
2 conservator.

3 (b) In accordance with subdivision (g) of Section 121022, a  
4 state or local public health agency, or an agent of that agency, may  
5 disclose personally identifying information in public health records,  
6 as described in subdivision (a), to other local, state, or federal  
7 public health agencies or to corroborating medical researchers,  
8 when the confidential information is necessary to carry out the  
9 duties of the agency or researcher in the investigation, control, or  
10 surveillance of disease, as determined by the state or local public  
11 health agency.

12 (c) Except as provided in paragraphs (1) to (3), inclusive, any  
13 disclosure authorized by subdivision (a) or (b) shall include only  
14 the information necessary for the purpose of that disclosure and  
15 shall be made only upon agreement that the information will be  
16 kept confidential and will not be further disclosed without written  
17 authorization, as described in subdivision (a).

18 (1) Notwithstanding any other provision of law, the following  
19 disclosures shall be authorized for the purpose of enhancing  
20 completeness of HIV/AIDS, tuberculosis, and sexually transmitted  
21 disease coinfection reporting to the federal Centers for Disease  
22 Control and Prevention (CDC):

23 (A) The local public health agency HIV surveillance staff may  
24 further disclose the information to the health care provider who  
25 provides HIV care to the HIV-positive person who is the subject  
26 of the record for the purpose of assisting in compliance with  
27 subdivision (a) of Section 121022.

28 (B) Local public health agency tuberculosis control staff may  
29 further disclose the information to state public health agency  
30 tuberculosis control staff, who may further disclose the information,  
31 without disclosing patient identifying information, to the CDC, to  
32 the extent the information is requested by the CDC and permitted  
33 by subdivision (b), for purposes of the investigation, control, or  
34 surveillance of HIV and tuberculosis coinfections.

35 ~~(C) Local public health agency sexually transmitted disease~~  
36 ~~control staff may further disclose the information to state public~~  
37 ~~health agency sexually transmitted disease control staff, who may~~  
38 ~~further disclose the information, without disclosing patient~~  
39 ~~identifying information, to the CDC, to the extent it is requested~~  
40 ~~by the CDC, and permitted by subdivision (b), for the purposes of~~

1 ~~the investigation, control, or surveillance of HIV and syphilis,~~  
2 ~~gonorrhea, or chlamydia coinfection.~~

3 (2) Notwithstanding any other provision of law, the following  
4 disclosures shall be authorized for the purpose of facilitating  
5 appropriate HIV/AIDS medical care and treatment:

6 (A) State public health agency HIV surveillance staff, AIDS  
7 Drug Assistance Program staff, and care services staff may further  
8 disclose the information to local public health agency staff, who  
9 may further disclose the information to the HIV-positive person  
10 who is the subject of the record, or the health care provider who  
11 provides his or her HIV care, for the purpose of proactively offering  
12 and coordinating care and treatment services to him or her.

13 (B) AIDS Drug Assistance Program staff and care services staff  
14 in the State Department of Public Health may further disclose the  
15 information directly to the HIV-positive person who is the subject  
16 of the record or the health care provider who provides his or her  
17 HIV care, for the purpose of proactively offering and coordinating  
18 care and treatment services to him or her.

19 (C) Local public health agency staff may further disclose  
20 acquired or developed information to the HIV-positive person who  
21 is the subject of the record or the health care provider who provides  
22 his or her HIV care for the purpose of proactively offering and  
23 coordinating care and treatment services to him or her.

24 (3) Notwithstanding any other provision of law, for the purpose  
25 of facilitating appropriate medical care and treatment of persons  
26 coinfectd with HIV, tuberculosis, and syphilis, gonorrhea, or  
27 chlamydia, local public health agency sexually transmitted disease  
28 control and tuberculosis control staff may further disclose the  
29 information to state or local public health agency sexually  
30 transmitted disease control and tuberculosis control staff, the  
31 HIV-positive person who is the subject of the record, or the health  
32 care provider who provides his or her HIV, tuberculosis, and  
33 sexually transmitted disease care.

34 (4) For the purposes of paragraphs (2) and (3), “staff” shall not  
35 include nongovernmental entities, but shall include state and local  
36 contracted employees *who work within state and local public health*  
37 *departments.*

38 (d) No confidential public health record, as defined in  
39 subdivision (c) of Section 121035, shall be disclosed, discoverable,

1 or compelled to be produced in any civil, criminal, administrative,  
2 or other proceeding.

3 (e) (1) A person who negligently discloses the content of a  
4 confidential public health record, as defined in subdivision (c) of  
5 Section 121035, to any third party, except pursuant to a written  
6 authorization, as described in subdivision (a), or as otherwise  
7 authorized by law, shall be subject to a civil penalty in an amount  
8 not to exceed five thousand dollars (\$5,000), plus court costs, as  
9 determined by the court, which penalty and costs shall be paid to  
10 the person whose record was disclosed.

11 (2) Any person who willfully or maliciously discloses the  
12 content of any confidential public health record, as defined in  
13 subdivision (c) of Section 121035, to any third party, except  
14 pursuant to a written authorization, or as otherwise authorized by  
15 law, shall be subject to a civil penalty in an amount not less than  
16 five thousand dollars (\$5,000) and not more than twenty-five  
17 thousand dollars (\$25,000), plus court costs, as determined by the  
18 court, which penalty and costs shall be paid to the person whose  
19 confidential public health record was disclosed.

20 (3) Any person who willfully, maliciously, or negligently  
21 discloses the content of any confidential public health record, as  
22 defined in subdivision (c) of Section 121035, to any third party,  
23 except pursuant to a written authorization, or as otherwise  
24 authorized by law, that results in economic, bodily, or  
25 psychological harm to the person whose confidential public health  
26 record was disclosed, is guilty of a misdemeanor, punishable by  
27 imprisonment in a county jail for a period not to exceed one year,  
28 or a fine of not to exceed twenty-five thousand dollars (\$25,000),  
29 or both, plus court costs, as determined by the court, which penalty  
30 and costs shall be paid to the person whose confidential public  
31 health record was disclosed.

32 (4) Any person who commits any act described in paragraph  
33 (1), (2), or (3), shall be liable to the person whose confidential  
34 public health record was disclosed for all actual damages for  
35 economic, bodily, or psychological harm that is a proximate result  
36 of the act.

37 (5) Each violation of this section is a separate and actionable  
38 offense.

1 (6) Nothing in this section limits or expands the right of an  
2 injured person whose confidential public health record was  
3 disclosed to recover damages under any other applicable law.

4 (f) In the event that a confidential public health record, as  
5 defined in subdivision (c) of Section 121035, is disclosed, the  
6 information shall not be used to determine employability, or  
7 insurability of any person.

8 SEC. 5. Section 121026 is added to the Health and Safety Code,  
9 to read:

10 121026. (a) Notwithstanding subdivision (f) of Section 120980,  
11 Section 121010, subdivision (g) of Section 121022, subdivision  
12 (f) of Section 121025, Section 121115, and Section 121280, the  
13 State Department of Public Health ~~may share with~~ *and* qualified  
14 entities *may share with each other* health records involving the  
15 diagnosis, care, and treatment of human immunodeficiency virus  
16 (HIV) or acquired immunodeficiency syndrome (AIDS) related  
17 to a beneficiary enrolled in federal Ryan White Act funded  
18 programs who may be eligible for services under the federal Patient  
19 Protection and Affordable Care Act (Public Law 111-148), as  
20 amended by the Health Care and Education Reconciliation Act of  
21 2010 (Public Law 111-152). The qualified entities ~~may share health~~  
22 ~~records relating to persons diagnosed with HIV/AIDS with the~~  
23 ~~State Department of Public Health, who shall be covered entities~~  
24 ~~under the Health Insurance Portability and Accountability Act (42~~  
25 ~~U.S.C. Sec. 300gg) and the final regulations issued pursuant to~~  
26 ~~the act by the United States Department of Health and Human~~  
27 ~~Services (45 C.F.R. Parts 160 and 164), may share records only~~  
28 ~~for the purpose of enrollment without disruption enrolling the~~  
29 ~~beneficiary in Medi-Cal, the bridge programs, Medicaid expansion~~  
30 ~~programs, and any insurance plan certified by the California Health~~  
31 ~~Benefit Exchange established pursuant to Title 22 (commencing~~  
32 ~~with Section 100500) of the Government Code, or any other~~  
33 ~~programs authorized under the federal Patient Protection and~~  
34 ~~Affordable Care Act (Public Law 111-148), and for the purpose~~  
35 ~~of continuing his or her access to those programs and plans without~~  
36 ~~disruption.~~

37 (b) The information provided by the State Department of Public  
38 Health pursuant to this section shall be limited to only the  
39 information necessary for the purposes of this section and *shall*  
40 *not include HIV or AIDS surveillance data. This information shall*

1 not be further disclosed by a qualified entity, except to any or all  
2 of the following *as necessary for the purposes of this section*:

3 (1) The person who is the subject of the record or to his or her  
4 guardian or conservator.

5 (2) The provider of health care for the person with HIV or AIDS  
6 to whom the information pertains.

7 (3) The Office of AIDS within the State Department of Public  
8 Health.

9 (c) For purposes of this section, the following definitions shall  
10 apply:

11 (1) “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.

15 (2) “Provider of health care” means any person licensed or  
16 certified pursuant to Division 2 (commencing with Section 500)  
17 of the Business and Professions Code; any person licensed pursuant  
18 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;  
19 any person certified pursuant to Division 2.5 (commencing with  
20 Section 1797) of the Health and Safety Code; any clinic, health  
21 dispensary, or health facility licensed pursuant to Division 2  
22 (commencing with Section 1200) of the Health and Safety Code.

23 (3) “Qualified entity” means any of the following:

24 (A) The State Department of Health Care Services.

25 (B) The California Health Benefit Exchange established pursuant  
26 to Title 22 (commencing with Section 100500) of the Government  
27 Code.

28 (C) Medi-Cal managed care plans.

29 (D) Health plans participating in the Bridge Program.

30 (E) Health plans offered through the Exchange.

31 ~~(F) The Department of Managed Health Care.~~

32 (F) *County health departments delivering HIV or AIDS health*  
33 *care services.*

34 (d) ~~Information~~ *Notwithstanding any other law, information*  
35 *shared pursuant to this section shall not be disclosed, discoverable,*  
36 *or compelled to be produced in any civil, criminal, administrative,*  
37 *or other proceeding.*

38 (e) All employees and contractors of a qualified entity who have  
39 legal access to confidential HIV-related medical records shall be

1 required to sign confidentiality agreements pursuant to subdivision  
2 (f) of Section 121022.

3 (f) This section shall be implemented only to the extent  
4 permitted by federal law. *Information shared pursuant to this*  
5 *section shall be protected in accordance with the federal Health*  
6 *Insurance Portability and Accountability Act (42 U.S.C. Sec.*  
7 *300gg) and the final regulations issued pursuant to that act by the*  
8 *United States Department of Health and Human Services (45*  
9 *C.F.R. Parts 160 and 164), the Confidentiality of Medical*  
10 *Information Act (Part 2.6 (commencing with Section 56) of Division*  
11 *1 of the Civil Code), and the Insurance Information and Privacy*  
12 *Protection Act (Article 6.6 (commencing with Section 791) of Part*  
13 *2 of Division 1 of the Insurance Code).*

O