

AMENDED IN ASSEMBLY SEPTEMBER 3, 2013

AMENDED IN ASSEMBLY JUNE 27, 2013

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE APRIL 16, 2013

AMENDED IN SENATE APRIL 9, 2013

**SENATE BILL**

**No. 249**

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**Introduced by Senator Leno**

(Principal coauthor: Assembly Member Stone)

February 12, 2013

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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. *Existing law, commencing July 1, 2009, or within one year of the establishment of a state electronic laboratory reporting system, whichever is later, requires a report generated pursuant to that provision by a laboratory to be submitted electronically in a manner specified by the department.*

~~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.~~

*This bill would authorize both the local health officer and the department to access reports of HIV infection that are electronically submitted by laboratories pursuant to the above-described provision.*

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 that person's HIV care, for the purpose of proactively offering and coordinating care and treatment services to that person.

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 that person's 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 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, 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 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.

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

14 121010. Notwithstanding Section 120975 or 120980, the results  
15 of an HIV test, as defined in subdivision (c) of Section 120775, to  
16 detect antibodies to the probable causative agent of AIDS may be  
17 disclosed to any of the following persons without written  
18 authorization of the subject of the test:

19 (a) To the subject of the test or the subject's legal representative,  
20 conservator, or to any person authorized to consent to the test  
21 pursuant to Section 120990 of this code and Section 6926 of the  
22 Family Code.

23 (b) To a test subject's provider of health care, as defined in  
24 subdivision (j) of Section 56.05 of the Civil Code, except that for  
25 purposes of this section, "provider of health care" does not include  
26 a health care service plan regulated pursuant to Chapter 2.2  
27 (commencing with Section 1340) of Division 2.

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

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

34 (e) (1) To the designated officer of an emergency response  
35 employee, and from that designated officer to an emergency  
36 response employee regarding possible exposure to HIV or AIDS,  
37 but only to the extent necessary to comply with provisions of the

1 federal Ryan White Comprehensive AIDS Resources Emergency  
2 Act of 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

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

8 (3) The designated officer shall be subject to the confidentiality  
9 requirements specified in Section 120980, and may be personally  
10 liable for unauthorized release of any identifying information about  
11 the HIV results. Further, the designated officer shall inform the  
12 exposed emergency response employee that the employee is also  
13 subject to the confidentiality requirements specified in Section  
14 120980, and may be personally liable for unauthorized release of  
15 any identifying information about the HIV test results.

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

18 121022. (a) To ensure knowledge of current trends in the HIV  
19 epidemic and to ensure that California remains competitive for  
20 federal HIV and AIDS funding, health care providers and  
21 laboratories shall report cases of HIV infection to the local health  
22 officer using patient names on a form developed by the department.  
23 ~~Upon request by the department, laboratories shall report cases of~~  
24 ~~HIV infection by name directly to the department in a manner~~  
25 ~~consistent with subdivision (g) of Section 120130, in addition to~~  
26 ~~reports to the local health officer. Both the local health officer and~~  
27 ~~the department shall be authorized to access reports of HIV~~  
28 ~~infection that are electronically submitted by laboratories pursuant~~  
29 ~~to subdivision (g) of Section 120130. Local health officers shall~~  
30 ~~report unduplicated HIV cases by name to the department on a~~  
31 ~~form developed by the department.~~

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

38 (2) This subdivision shall be implemented using the existing  
39 resources of the department.

1 (c) The department and local health officers shall ensure  
2 continued reasonable access to anonymous HIV testing through  
3 alternative testing sites, as established by Section 120890, and in  
4 consultation with HIV planning groups and affected stakeholders,  
5 including representatives of persons living with HIV and health  
6 officers.

7 (d) The department shall promulgate emergency regulations to  
8 conform the relevant provisions of Article 3.5 (commencing with  
9 Section 2641.5) of Chapter 4 of Division 1 of Title 17 of the  
10 California Code of Regulations, consistent with this chapter, by  
11 April 17, 2007. Notwithstanding the Administrative Procedure  
12 Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
13 Division 3 of Title 2 of the Government Code), if the department  
14 revises the form used for reporting pursuant to subdivision (a) after  
15 consideration of the reporting guidelines published by the federal  
16 Centers for Disease Control and Prevention, the revised form shall  
17 be implemented without being adopted as a regulation, and shall  
18 be filed with the Secretary of State and printed in Title 17 of the  
19 California Code of Regulations.

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

23 (f) State and local health department employees and contractors  
24 shall be required to sign confidentiality agreements developed by  
25 the department that include information related to the penalties for  
26 a breach of confidentiality and the procedures for reporting a breach  
27 of confidentiality, prior to accessing confidential HIV-related  
28 public health records. Those agreements shall be reviewed annually  
29 by either the department or the appropriate local health department.

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

35 (h) (1) Any potential or actual breach of confidentiality of  
36 HIV-related public health records shall be investigated by the local  
37 health officer, in coordination with the department, when  
38 appropriate. The local health officer shall immediately report any  
39 evidence of an actual breach of confidentiality of HIV-related

1 public health records at a city or county level to the department  
2 and the appropriate law enforcement agency.

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

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

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

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

14 121025. (a) Public health records relating to human  
15 immunodeficiency virus (HIV) or acquired immunodeficiency  
16 syndrome (AIDS), containing personally identifying information,  
17 that were developed or acquired by a state or local public health  
18 agency, or an agent of that agency, shall be confidential and shall  
19 not be disclosed, except as otherwise provided by law for public  
20 health purposes or pursuant to a written authorization by the person  
21 who is the subject of the record or by his or her guardian or  
22 conservator.

23 (b) In accordance with subdivision (g) of Section 121022, a  
24 state or local public health agency, or an agent of that agency, may  
25 disclose personally identifying information in public health records,  
26 as described in subdivision (a), to other local, state, or federal  
27 public health agencies or to corroborating medical researchers,  
28 when the confidential information is necessary to carry out the  
29 duties of the agency or researcher in the investigation, control, or  
30 surveillance of disease, as determined by the state or local public  
31 health agency.

32 (c) Except as provided in paragraphs (1) to (3), inclusive, any  
33 disclosure authorized by subdivision (a) or (b) shall include only  
34 the information necessary for the purpose of that disclosure and  
35 shall be made only upon agreement that the information will be  
36 kept confidential and will not be further disclosed without written  
37 authorization, as described in subdivision (a).

38 (1) Notwithstanding any other provision of law, the following  
39 disclosures shall be authorized for the purpose of enhancing  
40 completeness of HIV/AIDS, tuberculosis, and sexually transmitted

1 disease coinfection reporting to the federal Centers for Disease  
2 Control and Prevention (CDC):

3 (A) The local public health agency HIV surveillance staff may  
4 further disclose the information to the health care provider who  
5 provides HIV care to the HIV-positive person who is the subject  
6 of the record for the purpose of assisting in compliance with  
7 subdivision (a) of Section 121022.

8 (B) Local public health agency tuberculosis control staff may  
9 further disclose the information to state public health agency  
10 tuberculosis control staff, who may further disclose the information,  
11 without disclosing patient identifying information, to the CDC, to  
12 the extent the information is requested by the CDC and permitted  
13 by subdivision (b), for purposes of the investigation, control, or  
14 surveillance of HIV and tuberculosis coinfections.

15 (C) Local public health agency sexually transmitted disease  
16 control staff may further disclose the information to state public  
17 health agency sexually transmitted disease control staff, who may  
18 further disclose the information, without disclosing patient  
19 identifying information, to the CDC, to the extent it is requested  
20 by the CDC, and permitted by subdivision (b), for the purposes of  
21 the investigation, control, or surveillance of HIV and syphilis,  
22 gonorrhea, or chlamydia coinfection.

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

26 (A) State public health agency HIV surveillance staff, AIDS  
27 Drug Assistance Program staff, and care services staff may further  
28 disclose the information to local public health agency staff, who  
29 may further disclose the information to the HIV-positive person  
30 who is the subject of the record, or the health care provider who  
31 provides his or her HIV care, for the purpose of proactively offering  
32 and coordinating care and treatment services to him or her.

33 (B) AIDS Drug Assistance Program staff and care services staff  
34 in the State Department of Public Health may further disclose the  
35 information directly to the HIV-positive person who is the subject  
36 of the record or the health care provider who provides his or her  
37 HIV care, for the purpose of proactively offering and coordinating  
38 care and treatment services to him or her.

39 (C) Local public health agency staff may further disclose  
40 acquired or developed information to the HIV-positive person who

1 is the subject of the record or the health care provider who provides  
2 his or her HIV care for the purpose of proactively offering and  
3 coordinating care and treatment services to him or her.

4 (3) Notwithstanding any other provision of law, for the purpose  
5 of facilitating appropriate medical care and treatment of persons  
6 coinfectd with HIV, tuberculosis, and syphilis, gonorrhea, or  
7 chlamydia, local public health agency sexually transmitted disease  
8 control and tuberculosis control staff may further disclose the  
9 information to state or local public health agency sexually  
10 transmitted disease control and tuberculosis control staff, the  
11 HIV-positive person who is the subject of the record, or the health  
12 care provider who provides his or her HIV, tuberculosis, and  
13 sexually transmitted disease care.

14 (4) For the purposes of paragraphs (2) and (3), “staff” shall not  
15 include nongovernmental entities, but shall include state and local  
16 contracted employees who work within state and local public health  
17 departments.

18 (d) No confidential public health record, as defined in  
19 subdivision (c) of Section 121035, shall be disclosed, discoverable,  
20 or compelled to be produced in any civil, criminal, administrative,  
21 or other proceeding.

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

30 (2) Any person who willfully or maliciously discloses the  
31 content of any confidential public health record, as defined in  
32 subdivision (c) of Section 121035, to any third party, except  
33 pursuant to a written authorization, or as otherwise authorized by  
34 law, shall be subject to a civil penalty in an amount not less than  
35 five thousand dollars (\$5,000) and not more than twenty-five  
36 thousand dollars (\$25,000), plus court costs, as determined by the  
37 court, which penalty and costs shall be paid to the person whose  
38 confidential public health record was disclosed.

39 (3) Any person who willfully, maliciously, or negligently  
40 discloses the content of any confidential public health record, as

1 defined in subdivision (c) of Section 121035, to any third party,  
2 except pursuant to a written authorization, or as otherwise  
3 authorized by law, that results in economic, bodily, or  
4 psychological harm to the person whose confidential public health  
5 record was disclosed, is guilty of a misdemeanor, punishable by  
6 imprisonment in a county jail for a period not to exceed one year,  
7 or a fine of not to exceed twenty-five thousand dollars (\$25,000),  
8 or both, plus court costs, as determined by the court, which penalty  
9 and costs shall be paid to the person whose confidential public  
10 health record was disclosed.

11 (4) Any person who commits any act described in paragraph  
12 (1), (2), or (3), shall be liable to the person whose confidential  
13 public health record was disclosed for all actual damages for  
14 economic, bodily, or psychological harm that is a proximate result  
15 of the act.

16 (5) Each violation of this section is a separate and actionable  
17 offense.

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

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

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

27 121026. (a) Notwithstanding subdivision (f) of Section 120980,  
28 Section 121010, subdivision (g) of Section 121022, subdivision  
29 (f) of Section 121025, Section 121115, and Section 121280, the  
30 State Department of Public Health and qualified entities may share  
31 with each other health records involving the diagnosis, care, and  
32 treatment of human immunodeficiency virus (HIV) or acquired  
33 immunodeficiency syndrome (AIDS) related to a beneficiary  
34 enrolled in federal Ryan White Act funded programs who may be  
35 eligible for services under the federal Patient Protection and  
36 Affordable Care Act (Public Law 111-148), as amended by the  
37 Health Care and Education Reconciliation Act of 2010 (Public  
38 Law 111-152). The qualified entities, who shall be covered entities  
39 under the Health Insurance Portability and Accountability Act (42  
40 U.S.C. Sec. 300gg) and the final regulations issued pursuant to the

1 act by the United States Department of Health and Human Services  
2 (45 C.F.R. Parts 160 and 164), may share records only for the  
3 purpose of enrolling the beneficiary in Medi-Cal, the bridge  
4 programs, Medicaid expansion programs, and any insurance plan  
5 certified by the California Health Benefit Exchange established  
6 pursuant to Title 22 (commencing with Section 100500) of the  
7 Government Code, or any other programs authorized under the  
8 federal Patient Protection and Affordable Care Act (Public Law  
9 111-148), and for the purpose of continuing his or her access to  
10 those programs and plans without disruption.

11 (b) The information provided by the State Department of Public  
12 Health pursuant to this section shall be limited to only the  
13 information necessary for the purposes of this section and shall  
14 not include HIV or AIDS surveillance data. This information shall  
15 not be further disclosed by a qualified entity, except to any or all  
16 of the following as necessary for the purposes of this section:

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

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

21 (3) The Office of AIDS within the State Department of Public  
22 Health.

23 (c) For purposes of this section, the following definitions shall  
24 apply:

25 (1) “Contractor” means any person or entity that is a medical  
26 group, independent practice association, pharmaceutical benefits  
27 manager, or a medical service organization and is not a health care  
28 service plan or provider of health care.

29 (2) “Provider of health care” means any person licensed or  
30 certified pursuant to Division 2 (commencing with Section 500)  
31 of the Business and Professions Code; any person licensed pursuant  
32 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;  
33 any person certified pursuant to Division 2.5 (commencing with  
34 Section 1797) of the Health and Safety Code; any clinic, health  
35 dispensary, or health facility licensed pursuant to Division 2  
36 (commencing with Section 1200) of the Health and Safety Code.

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

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

1 (B) The California Health Benefit Exchange established pursuant  
2 to Title 22 (commencing with Section 100500) of the Government  
3 Code.

4 (C) Medi-Cal managed care plans.

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

6 (E) Health plans offered through the Exchange.

7 (F) County health departments delivering HIV or AIDS health  
8 care services.

9 (d) Notwithstanding any other law, information shared pursuant  
10 to this section shall not be disclosed, discoverable, or compelled  
11 to be produced in any civil, criminal, administrative, or other  
12 proceeding.

13 ~~(e) All employees and contractors of a qualified entity who have~~  
14 ~~legal access to confidential HIV-related medical records shall be~~  
15 ~~required to sign confidentiality agreements pursuant to subdivision~~  
16 ~~(f) of Section 121022.~~

17 ~~(f)~~

18 (e) This section shall be implemented only to the extent  
19 permitted by federal law.—~~Information~~ *All employees and*  
20 *contractors of a qualified entity who have access to confidential*  
21 *HIV-related medical records pursuant to this section shall be*  
22 *subject to, and all information* shared pursuant to this section shall  
23 be protected in accordance with, the federal Health Insurance  
24 Portability and Accountability Act (42 U.S.C. Sec. 300gg) and the  
25 final regulations issued pursuant to that act by the United States  
26 Department of Health and Human Services (45 C.F.R. Parts 160  
27 and 164), the Confidentiality of Medical Information Act (Part 2.6  
28 (commencing with Section 56) of Division 1 of the Civil Code),  
29 and the Insurance Information and Privacy Protection Act (Article  
30 6.6 (commencing with Section 791) of Part 2 of Division 1 of the  
31 Insurance Code).