

AMENDED IN SENATE JUNE 22, 2015

AMENDED IN ASSEMBLY APRIL 21, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1337**

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**Introduced by Assembly Member Linder**

February 27, 2015

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An act to amend Section 1158 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 1337, as amended, Linder. Medical records: electronic delivery.

Existing law requires certain enumerated medical providers and medical employers to make a patient's records available for inspection and copying by an attorney, or his or her representative, who presents a written authorization therefor, as specified.

This bill would require a medical ~~provider or employer, or an agent thereof, provider or attorney, as defined,~~ to provide an electronic copy of a medical record, ~~when an electronic a copy is requested, if the medical record exists in digital or electronic format and the medical record can be delivered that is maintained~~ electronically, upon request. The bill would also require a medical provider ~~or employer~~ to accept a prescribed authorization form once completed and signed by the patient, as specified, ~~and would prohibit a medical provider or employer from conditioning treatment, payment, enrollment, or eligibility for benefits on the submission of an authorization for the release of records if the medical provider determines that the form is valid.~~

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

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

1 SECTION 1. Section 1158 of the Evidence Code is amended  
2 to read:

3 1158. (a) *For purposes of this section, “medical provider and*  
4 *or employer” means physician and surgeon, dentist, registered*  
5 *nurse, dispensing optician, registered physical therapist, podiatrist,*  
6 *licensed psychologist, osteopathic physician and surgeon,*  
7 *chiropractor, clinical laboratory bioanalyst, clinical laboratory*  
8 *technologist, or pharmacist or pharmacy, duly licensed as such*  
9 *under the laws of the state, or a licensed hospital.*

10 (b) Before the filing of any action or the appearance of a  
11 defendant in an action, if an attorney at law or his or her  
12 representative presents a written authorization therefor signed by  
13 an adult patient, by the guardian or conservator of his or her person  
14 or estate, or, in the case of a minor, by a parent or guardian of the  
15 minor, or by the personal representative or an heir of a deceased  
16 patient, or a copy thereof, ~~to a physician and surgeon, dentist,~~  
17 ~~registered nurse, dispensing optician, registered physical therapist,~~  
18 ~~podiatrist, licensed psychologist, osteopathic physician and~~  
19 ~~surgeon, chiropractor, clinical laboratory bioanalyst, clinical~~  
20 ~~laboratory technologist, or pharmacist or pharmacy, duly licensed~~  
21 ~~as such under the laws of the state, or a licensed hospital shall,~~  
22 ~~upon presentation of the written authorization, medical provider~~  
23 ~~or employer; the medical provider or employer promptly make all~~  
24 ~~of the patient’s records under that person or entity’s the medical~~  
25 ~~provider or employer’s custody or control available for inspection~~  
26 ~~and copying by the attorney at law or his or her representative.~~

27 (b)

28 (c) Copying of medical records shall not be performed by ~~any~~  
29 ~~a medical provider or employer described in subdivision (a);~~  
30 ~~employer; or by an agent thereof, when the requesting attorney has~~  
31 ~~employed a professional photocopier or anyone identified in~~  
32 ~~Section 22451 of the Business and Professions Code as his or her~~  
33 ~~representative to obtain or review the records on his or her behalf.~~  
34 ~~The presentation of the authorization by the agent on behalf of the~~  
35 ~~attorney shall be sufficient proof that the agent is the attorney’s~~  
36 ~~representative.~~

37 (e)

1 (d) Failure to make the records available during business hours,  
2 within five days after the presentation of the written authorization,  
3 may subject the ~~person or entity~~ *medical provider or employer*  
4 having custody or control of the records to liability for all  
5 reasonable expenses, including attorney's fees, incurred in any  
6 proceeding to enforce this section.

7 ~~(d)~~

8 (e) (1) All reasonable costs incurred by ~~any person or entity~~  
9 ~~described in subdivision (a)~~ *a medical provider or employer* in  
10 making patient records available pursuant to this section may be  
11 charged against the ~~person whose written authorization required~~  
12 ~~the availability of attorney who requested~~ the records.

13 (2) "Reasonable cost," as used in this section, shall include, but  
14 not be limited to, the following specific costs: ten cents (\$0.10)  
15 per page for standard reproduction of documents of a size 8½ by  
16 14 inches or less; twenty cents (\$0.20) per page for copying of  
17 documents from microfilm; actual costs for the reproduction of  
18 oversize documents or the reproduction of documents requiring  
19 special processing which are made in response to an authorization;  
20 reasonable clerical costs incurred in locating and making the  
21 records available to be billed at the maximum rate of sixteen dollars  
22 (\$16) per hour per person, computed on the basis of four dollars  
23 (\$4) per quarter hour or fraction thereof; actual postage charges;  
24 and actual costs, if any, charged to the witness by a third person  
25 for the retrieval and return of records held by that third person.

26 ~~(e)~~

27 (f) If the records are delivered to the attorney or the attorney's  
28 representative for inspection or photocopying at the record  
29 custodian's place of business, the only fee for complying with the  
30 authorization shall not exceed fifteen dollars (\$15), plus actual  
31 costs, if any, charged to the record custodian by a third person for  
32 retrieval and return of records held offsite by the third person.

33 ~~(f)~~

34 (g) ~~If an electronic copy of a medical record is requested, the~~  
35 ~~requested pursuant to subdivision (b) is maintained electronically,~~  
36 ~~a medical provider or employer described in subdivision (a), or~~  
37 ~~an agent thereof, shall, upon request, provide an electronic copy~~  
38 ~~of the requested medical record if the medical record exists in a~~  
39 ~~digital or electronic format that can be delivered electronically. in~~

1 *the format requested by the requesting party, or, if that format is*  
2 *unavailable, in another agreed-upon format.*

3 ~~(g) (1) A medical provider or employer described in subdivision~~  
4 ~~(a) shall not condition treatment, payment, enrollment, or eligibility~~  
5 ~~for benefits on the submission of an authorization form pursuant~~  
6 ~~to subdivision (a).~~

7 ~~(2)~~

8 ~~(h) A medical provider or employer described in subdivision~~  
9 ~~(a) shall accept a signed and completed authorization form for the~~  
10 ~~disclosure of health information that is if both of the following~~  
11 ~~conditions are satisfied:~~

12 ~~(1) The medical provider determines that the form is valid.~~

13 ~~(2) The form is in substantially the following form:~~

14  
15 AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION  
16 PURSUANT TO EVIDENCE CODE SECTION 1158

17 The undersigned authorizes the medical provider or employer designated  
18 below to disclose specified medical records to a designated recipient. The  
19 medical provider or employer shall not condition treatment, payment,  
20 enrollment, or eligibility for benefits on the submission of this authorization.

21  
22 Medical provider or employer: \_\_\_\_\_

23  
24 Patient name: \_\_\_\_\_

25 Medical record number: \_\_\_\_\_

26 Date of birth: \_\_\_\_\_

27 Address: \_\_\_\_\_

28 Telephone number: \_\_\_\_\_

29 Email: \_\_\_\_\_

30  
31 Recipient name: \_\_\_\_\_

32 Recipient address: \_\_\_\_\_

33 Recipient telephone number: \_\_\_\_\_

34 Recipient email: \_\_\_\_\_

35  
36 Health information requested (check all that apply):

37  Records dated from \_\_\_\_\_ to \_\_\_\_\_.

38  Radiology records: \_\_\_\_\_ images or films \_\_\_\_\_  
39 reports \_\_\_\_\_ digital/CD, if available.

40  Laboratory results dated from \_\_\_\_\_ to \_\_\_\_\_.

- 1  *Laboratory results regarding specific test(s) only (specify)* \_\_\_\_\_.
- 2  All records.
- 3  Records related to a specific injury, treatment, or other purpose (specify):
- 4 \_\_\_\_\_.

5

6 Note: records may include information related to mental health, alcohol or

7 drug use, and HIV or AIDS. However, treatment records from mental health

8 and alcohol or drug departments and results of HIV tests will not be disclosed

9 unless specifically requested (check all that apply):

- 10
- 11  Mental health records ~~dated from~~ \_\_\_\_\_ to \_\_\_\_\_.
- 12  Alcohol or drug records ~~dated from~~ \_\_\_\_\_ to \_\_\_\_\_.
- 13  HIV test results ~~dated from~~ \_\_\_\_\_ to \_\_\_\_\_.

14

15 Method of delivery of requested records:

16  Mail

17  Pick up

18  Electronic delivery, *recipient email*: \_\_\_\_\_

19

20 This authorization is effective for one year from the date of the signature

21 unless a different date is specified here: \_\_\_\_\_.

22

23 This authorization may be revoked upon written request, but any revocation

24 will not apply to information disclosed before receipt of the written request.

25

26 A copy of this authorization is as valid as the original. The undersigned has

27 the right to receive a copy of this authorization.

28

29 Notice: Once the requested health information is disclosed, any disclosure of

30 the information by the recipient may no longer be protected under the federal

31 Health Insurance Portability and Accountability Act of 1996 (HIPAA).

32

33 Patient signature\*: \_\_\_\_\_

34 Date: \_\_\_\_\_

35 Print name: \_\_\_\_\_

36

37 \*If not signed by the patient, please indicate relationship to the patient (check

38 one, if applicable):

39

- 1 \_\_\_Parent or guardian of minor patient who could not have consented to health
- 2 care.
- 3 \_\_\_Guardian or conservator of an incompetent patient.
- 4 \_\_\_Beneficiary or personal representative of deceased patient.
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