AMENDED IN SENATE MARCH 28, 2016

SENATE BILL No. 1159

Introduced by Senator Hernandez

February 18, 2016

~~An act to amend Section 136000 of the Health and Safety Code, relating to health care.~~ *An act to add Chapter 8 (commencing with Section 127670) to Part 2 of Division 107 of, and to repeal the heading of Chapter 8 (formerly commencing with Section 127670) of Part 2 of Division 107 of, the Health and Safety Code, relating to health care.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Hernandez. ~~Health Care: Office of Patient Advocate.~~ *California Health Care Cost and Quality Database.*

Existing law establishes health care coverage programs to provide health care to segments of the population meeting specified criteria who are otherwise unable to afford health care coverage and provides for the licensure and regulation of health insurers and health care service plans.

This bill would require certain health care entities, including health care service plans, to provide specified information to the Secretary of California Health and Human Services. The bill would authorize the secretary to report a health care entity that fails to comply with that requirement to the health care entity's regulating agency and would authorize the regulating agency to enforce that requirement using its existing enforcement procedures.

The bill would require all data disclosures made pursuant to these provisions to comply with all applicable state and federal laws for the protection of the privacy and security of data and would prohibit the public disclosure of any unaggregated, individually identifiable health

information. The bill would require that certain confidentially negotiated contract terms be protected in data disclosures made pursuant to these provisions and would prohibit certain individually identifiable proprietary contract information from being disclosed in an unaggregated format.

This bill would also require the secretary to convene an advisory committee composed of a broad spectrum of health care stakeholders and experts, as specified, to, among other things, develop the parameters for establishing, implementing, and administering a health care cost and quality database. The bill would require the secretary to arrange for the preparation of an annual report to the Legislature and the Governor that examines and addresses specified issues, including, among others, containing the cost of health care services and coverage. The bill would provide that members of the committee not receive a per diem or travel expense reimbursement, or any other expense reimbursement.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

~~Existing law establishes the Office of Patient Advocate within the California Health and Human Services Agency, to provide assistance to, and advocate on behalf of, health care consumers. The duties of the office, include, among other things, compiling an annual publication, to be made available on the office's Internet Web site, of specified information relating to certain publicly operated consumer assistance centers.~~

~~This bill would require the office to log, and include in the annual publication, a call center's record of answering calls within 30 seconds, the number of abandoned calls, and the number of busy messages sent to consumers.~~

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

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

SECTION 1. The heading of Chapter 8 (formerly commencing with Section 127670) of Part 2 of Division 107 of the Health and

Safety Code, as amended by Section 230 of Chapter 183 of the Statutes of 2004, is repealed.

~~CHAPTER 8.~~
~~CALIFORNIA HEALTH CARE QUALITY IMPROVEMENT AND COST CONTAINMENT COMMISSION~~

SEC. 2. Chapter 8 (commencing with Section 127670) is added to Part 2 of Division 107 of the Health and Safety Code, to read:

CHAPTER 8. CALIFORNIA HEALTH CARE COST AND QUALITY DATABASE

127670. (a) It is the intent of the Legislature to establish a system to provide valid, timely, and comprehensive health care performance information that is publicly available and can be used to improve the safety, appropriateness, and medical effectiveness of health care, and to provide care that is patient-centered, timely, affordable, and equitable. It is also the intent of the Legislature to grant access to provider performance information to consumers and purchasers in order for them to understand the potential financial consequences and liabilities and obtain maximum quality and value and to minimize health disparities in health care services.

(b) It is the intent of the Legislature, by making cost and quality data available, to encourage health care service plans, health insurers, and providers to develop innovative approaches, services, and programs that may have the potential to deliver health care that is both cost effective and responsive to the needs of enrollees, including recognizing the diversity of California and the impact of social determinants of health.

127671. (a) (1) Solely for the purpose of developing information for inclusion in a health care cost and quality database, a health care service plan, including a specialized health care service plan, an insurer licensed to provide health insurance, as defined in Section 106 of the Insurance Code, a supplier, as defined in paragraph (3) of subdivision (b) of Section 1367.50, or a provider, as defined in paragraph (2) of subdivision (b) of Section 1367.50, shall, and a self-insured employer, a multiemployer self-insured plan that is responsible for paying for health care services provided to beneficiaries, and the trust administrator for

a multiemployer self-insured plan may, provide all of the following to the Secretary of California Health and Human Services:

(A) Utilization data from the health care service plans' and insurers' medical, dental, and pharmacy claims or, in the case of entities that do not use claims data, including, but not limited to, integrated delivery systems, encounter data consistent with the core set of data elements for data submission proposed by the APCD Council, the University of New Hampshire, and the National Association of Health Data Organizations.

(B) Pricing information for health care items, services, and medical and surgical episodes of care gathered from allowed charges for covered health care items and services or, in the case of entities that do not use or produce individual claims, price information that is the best possible proxy to pricing information for health care items, services, and medical and surgical episodes of care available in lieu of actual cost data to allow for meaningful comparisons of provider prices and treatment costs.

(C) Information sufficient to determine the impacts of social determinants of health, including age, gender, race, ethnicity, limited English proficiency, sexual orientation and gender identity, ZIP Code, and any other factors for which there is peer-reviewed evidence.

(2) (A) The secretary may report an entity's failure to comply with paragraph (1) to the entity's regulating agency.

(B) The regulating agency of an entity described in paragraph (1) may enforce paragraph (1) using its existing enforcement procedures. Notwithstanding any other law, moneys collected pursuant to this authorization shall be subject to appropriation by the Legislature, and the failure to comply with paragraph (1) is not a crime.

(b) (1) All uses and disclosures of data made pursuant to this section shall comply with all applicable state and federal laws for the protection of the privacy and security of data, including, but not limited to, the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), Title 1.81 (commencing with Section 1798.80) of Part 4 of Division 3 of the Civil Code, and the federal Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191)

and the federal Health Information Technology for Economic and Clinical Health Act, Title XIII of the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and implementing regulations.

(2) (A) All policies and protocols developed pursuant to this section shall ensure that the privacy, security, and confidentiality of individually identifiable health information is protected. The secretary shall not publicly disclose any unaggregated, individually identifiable health information and shall develop a protocol for assessing the risk of reidentification stemming from public disclosure of any health information that is aggregated, individually identifiable health information.

(B) For the purposes of this paragraph, "individually identifiable health information" has the same meaning as in Section 160.103 of Title 45 of the Code of Federal Regulations.

(3) Confidentially negotiated contract terms contained in a contract between a health care service plan or insurer and a provider or supplier shall be protected in any public disclosure of data made pursuant to this section. Individually identifiable proprietary contract information included in a contract between a health care service plan or insurer and a provider or supplier shall not be disclosed in an unaggregated format.

127672. (a) The Secretary of California Health and Human Services shall convene an advisory committee, composed of a broad spectrum of health care stakeholders and experts, including, but not limited to, representatives of the entities that are required to provide information pursuant to subdivision (a) of Section 127671 and representatives of purchasers, including, but not limited to, businesses, organized labor, and consumers, to develop the parameters for the establishment, implementation, and ongoing administration of a health care cost and quality database, including a business plan for sustainability without using moneys appropriated from the General Fund, and to identify the type of data, purpose of use, and entities and individuals that are required to report to, or that may have access to, a health care cost and quality database. The advisory committee shall hold public meetings with stakeholders, solicit input, and set its own meeting agendas. Meetings of the advisory committee are subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with

Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The secretary shall arrange for the preparation of an annual report to the Legislature and the Governor, to be submitted in compliance with Section 9795 of the Government Code, based on the findings of the advisory committee, including input from the public meetings, that shall, at a minimum, examine and address the following issues:

(1) Assessing California health care needs and available resources.

(2) Containing the cost of health care services and coverage.

(3) Improving the quality and medical appropriateness of health care.

(4) Reducing health disparities and addressing the social determinants of health.

(5) Increasing the transparency of health care costs and the relative efficiency with which care is delivered.

(6) Use of disease management, wellness, prevention, and other innovative programs to keep people healthy, reduce disparities and costs, and improve health outcomes for all populations.

(7) Efficient utilization of prescription drugs and technology.

(8) Reducing unnecessary, inappropriate, and wasteful health care.

(9) Educating consumers in the use of health care information.

(10) Using existing data sources to build a health care cost and quality database.

(c) Notwithstanding any other law, the members of the advisory committee shall not receive per diem or travel expense reimbursement, or any other expense reimbursement.

SEC. 3. The Legislature finds and declares that Section 2 of this act, which adds Section 127671 to the Health and Safety Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect confidential and proprietary information submitted to the Secretary of California Health and Human Services, it is necessary for that information to remain confidential.

~~SECTION 1. Section 136000 of the Health and Safety Code is amended to read:~~

~~136000. (a) (1) The Office of Patient Advocate is hereby established within the California Health and Human Services Agency, to provide assistance to, and advocate on behalf of, health care consumers. The goal of the office shall be to coordinate amongst, provide assistance to, and collect data from, all of the state agency consumer assistance or patient assistance programs and call centers, to better enable health care consumers to access the health care services to which they are eligible under the law, including, but not limited to, commercial and Exchange coverage, Medi-Cal, Medicare, and federal veterans health benefits. Notwithstanding any provision of this division, each regulator and health coverage program shall retain its respective authority, including its authority to resolve complaints, grievances, and appeals.~~

~~(2) The office shall be headed by a patient advocate appointed by the Governor. The patient advocate shall serve at the pleasure of the Governor.~~

~~(b) (1) The duties of the office shall include, but not be limited to, all of the following:~~

~~(A) Coordinate and work in consultation with state agency and local, nongovernment health care consumer or patient assistance programs and health care ombudsperson programs.~~

~~(B) Produce a baseline review and annual report to be made publically available on the office's Internet Web site by July 1, 2015, and annually thereafter, of health care consumer or patient assistance help centers, call centers, ombudsperson, or other assistance centers operated by the Department of Managed Health Care, the Department of Health Care Services, the Department of Insurance, and the Exchange, that includes, at a minimum, all of the following:~~

~~(i) The types of calls received and the number of calls.~~

~~(ii) The call center's role with regard to each type of call, question, complaint, or grievance.~~

~~(iii) The call center's protocol for responding to requests for assistance from health care consumers, including any performance standards.~~

~~(iv) The protocol for referring or transferring calls outside the jurisdiction of the call center.~~

~~(v) The call center's methodology of tracking calls, complaints, grievances, or inquiries.~~

~~(vi) The call center's record of answering calls within 30 seconds, the number of abandoned calls, and the number of busy messages sent to consumers.~~

~~(C) (i) Collect, track, and analyze data on problems and complaints by, and questions from, consumers about health care coverage for the purpose of providing public information about problems faced and information needed by consumers in obtaining coverage and care. The data collected shall include demographic data, source of coverage, regulator, type of problem or issue or comparable types of problems or issues, and resolution of complaints, including timeliness of resolution. Notwithstanding Section 10231.5 of the Government Code, the office shall submit a report by July 1, 2015, and annually thereafter to the Legislature. The report shall be submitted in compliance with Section 9795 of the Government Code. The format may be modified annually as needed based upon comments from the Legislature and stakeholders.~~

~~(ii) For the purpose of publically reporting information as required in subparagraph (B) and this subparagraph about the problems faced by consumers in obtaining care and coverage, the office shall analyze data on consumer complaints and grievances resolved by the agencies listed in subdivision (c), including demographic data, source of coverage, insurer or plan, resolution of complaints, and other information intended to improve health care and coverage for consumers.~~

~~(D) Make recommendations, in consultation with stakeholders, for improvement or standardization of the health consumer assistance functions, referral process, and data collection and analysis.~~

~~(E) Develop model protocols, in consultation with consumer assistance call centers and stakeholders, that may be used by call centers for responding to and referring calls that are outside the jurisdiction of the call center, program, or regulator.~~

~~(F) Compile an annual publication, to be made publically available on the office's Internet Web site, of a quality of care report card, including, but not limited, to health care service plans, preferred provider organizations, and medical groups.~~

~~(G) Make referrals to the appropriate state agency, whether further or additional actions may be appropriate, to protect the interests of consumers or patients.~~

~~(H) Assist in the development of educational and informational guides for consumers and patients describing their rights and responsibilities and informing them on effective ways to exercise their rights to secure and access health care coverage, produced by the Department of Managed Health Care, the Department of Health Care Services, the Exchange, and the California Department of Insurance, and to endeavor to make those materials easy to read and understand and available in all threshold languages, using an appropriate literacy level and in a culturally competent manner.~~

~~(I) Coordinate with other state and federal agencies engaged in outreach and education regarding the implementation of federal health care reform, and to assist in these duties, may provide or assist in the provision of grants to community-based consumer assistance organizations for these purposes.~~

~~(J) If appropriate, refer consumers to the appropriate regulator of their health coverage programs for filing complaints or grievances.~~

~~(2) The office shall employ necessary staff. The office may employ or contract with experts when necessary to carry out the functions of the office. The patient advocate shall make an annual budget request for the office that shall be identified in the annual Budget Act.~~

~~(3) The patient advocate shall annually issue a public report on the activities of the office, and shall appear before the appropriate policy and fiscal committees of the Senate and Assembly, if requested, to report and make recommendations on the activities of the office.~~

~~(4) The office shall adopt standards for the organizations with which it contracts pursuant to this section to ensure compliance with the privacy and confidentiality laws of this state, including, but not limited to, the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The office shall conduct privacy~~

~~trainings as necessary, and regularly verify that the organizations have measures in place to ensure compliance with this provision.~~

~~(c) The Department of Managed Health Care, the Department of Health Care Services, the Department of Insurance, the Exchange, and any other public health coverage programs shall provide to the office data concerning call centers to meet the reporting requirements in subparagraph (B) of paragraph (1) of subdivision (b) and consumer complaints and grievances to meet the reporting requirements in clause (i) of subparagraph (C) of paragraph (1) of subdivision (b).~~

~~(d) For purposes of this section, the following definitions apply:~~

~~(1) "Consumer" or "individual" includes the individual or his or her parent, guardian, conservator, or authorized representative.~~

~~(2) "Exchange" means the California Health Benefit Exchange established pursuant to Title 22 (commencing with Section 100500) of the Government Code.~~

~~(3) "Health care" includes services provided by any of the health care coverage programs.~~

~~(4) "Health care service plan" has the same meaning as that set forth in subdivision (f) of Section 1345. Health care service plan includes "specialized health care service plans," including behavioral health plans.~~

~~(5) "Health coverage program" includes the Medi-Cal program, Healthy Families Program, tax subsidies and premium credits under the Exchange, the Basic Health Program, if enacted, county health coverage programs, and the Access for Infants and Mothers Program.~~

~~(6) "Health insurance" has the same meaning as set forth in Section 106 of the Insurance Code.~~

~~(7) "Health insurer" means an insurer that issues policies of health insurance.~~

~~(8) "Office" means the Office of Patient Advocate.~~

~~(9) "Threshold languages" has the same meaning as for Medi-Cal managed care.~~

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