

AMENDED IN ASSEMBLY JULY 7, 1999

AMENDED IN ASSEMBLY JULY 2, 1999

AMENDED IN SENATE APRIL 20, 1999

SENATE BILL

No. 19

Introduced by Senator Figueroa

December 7, 1998

An act to amend Sections 56.05, 56.10, 56.12, and 56.36 of, and to add ~~Section 56.38~~ Sections 56.07, 56.08, and 56.125 to, the Civil Code, and to amend Section 791.02 of the Insurance Code, relating to medical records.

LEGISLATIVE COUNSEL'S DIGEST

SB 19, as amended, Figueroa. Medical records: confidentiality.

Existing law prohibits the disclosure of medical information, as defined, by providers of health care, as defined, *including certain health care service plans*, except in specified circumstances. Unauthorized disclosure that results in economic loss or personal injury to a patient is a misdemeanor.

This bill would *revise the definition of providers of health care, and* make the prohibitions on disclosure of medical information applicable also to *all health care service plans, contractors of health care service plans, and contractors of providers of health care*, including medical groups, medical service organizations, and pharmaceutical benefit managers; and would expressly prohibit the intentional sharing, sale, or use of medical information for commercial purposes, except

as specified. The bill would make the knowing and willful violation of any of these prohibitions a misdemeanor, without regard to whether the patient suffered any loss or injury, and would additionally provide for specified administrative and civil penalties. The bill would also prohibit *a provider of health care or a health care service plan and its contractors from requesting an authorization from an enrollee to disclose medical information for any purpose not directly related to provision of health services to the enrollee or requesting requiring an enrollee, as a condition to securing health care services, to sign an authorization, waiver release, or consent waiving any medical information confidentiality protections authorized provided by law.*

The bill would require every provider of health care and health care service plan to have policies and procedures in place to protect the security of medical information, as specified. The bill would additionally require every provider of health care and health care service plan, on and after July 1, 2000, to provide all patients with a written statement describing how the provider or plan maintains the confidentiality of medical information, as specified.

The bill would also authorize patients to request a correction, amendment, or deletion to their medical information, as specified; require the provider or plan to respond to the request within 30 business days; and, if the provider or plan refuses to correct, amend, or delete information, authorize the patient to file with the provider or plan a statement setting forth what the patient believes is the correct information and the reasons the patient disagrees, and require the provider or plan to file the patient's statement with the patient's medical information, as specified.

Existing provisions of the Insurance Information and Privacy Protection Act regulate certain practices by insurers and, for that purpose, include health care service plans, within the definition of insurance.

This bill would delete this provision, and would make related changes.

By changing the definition of a crime, the bill would 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. Section 56.05 of the Civil Code is
2 amended to read:

3 56.05. For purposes of this part:

4 (a) "Authorization" means permission granted in
5 accordance with Section 56.11 or 56.21 for the disclosure
6 of medical information.

7 (b) "Commercial purpose" means any purpose that
8 has financial gain as a major objective.

9 (c) "*Health care service plan*" means any entity
10 regulated pursuant to the Knox-Keene Health Care
11 Service Plan Act of 1975, Chapter 2.2 (commencing with
12 Section 1340) of Division 2 of the Health and Safety Code.

13 (d) "Medical information" means any individually
14 identifiable information, *in electronic or physical form*, in
15 possession of or derived from a provider of health care *or*
16 *health care service plan* regarding a patient's medical
17 history, mental or physical condition, or treatment.
18 *Medical information does not include information in*
19 *which individual identifiers are encoded or encrypted*
20 *and the identity of the patient is not disclosed.*

21 ~~(d)~~

22 (e) "Patient" means any natural person, whether or
23 not still living, who received health care services from a
24 provider of health care and to whom medical information
25 pertains.

26 ~~(e)~~

27 (f) "Provider of health care" means any person
28 licensed or certified pursuant to Division 2 (commencing
29 with Section 500) of the Business and Professions Code;



1 any person licensed pursuant to the Osteopathic
2 Initiative Act or the Chiropractic Initiative Act; any
3 person certified pursuant to Division 2.5 (commencing
4 with Section 1797) of the Health and Safety Code; any
5 clinic, health dispensary, or health facility licensed
6 pursuant to Division 2 (commencing with Section 1200)
7 of the Health and Safety Code; ~~any health care service~~
8 ~~plan regulated pursuant to the Knox-Keene Health Care~~
9 ~~Service Plan Act of 1975, Chapter 2.2 (commencing with~~
10 ~~Section 1340) of Division 2 of the Health and Safety Code;~~
11 and any entity that contracts with a provider of health
12 care, including, but not limited to, medical groups,
13 medical service organizations, and pharmaceutical
14 benefit managers. “Provider of health care” or
15 “contractor” shall not include insurance institutions as
16 defined in subdivision (k) of Section 791.02 of the
17 Insurance Code.

18 SEC. 2. Section 56.07 is added to the Civil Code, to
19 read:

20 56.07. No provider of health care nor any health care
21 service plan or any of its contractors may require an
22 enrollee, as a condition to securing health care services,
23 to sign an authorization, release, or consent that waives
24 any medical information confidentiality protections
25 provided by law.

26 SEC. 3. Section 56.08 is added to the Civil Code, to
27 read:

28 56.08. (a) Every provider of health care and every
29 health care service plan shall have policies and
30 procedures in place to protect the security of patient
31 medical information in the possession of the provider or
32 plan. These policies and procedures shall include
33 reasonable and appropriate administrative, technical,
34 and physical safeguards designed to protect against any
35 unauthorized uses or disclosures of the information.

36 (b) On after July 1, 2000, every provider of health care
37 and every health care service plan shall, on an annual
38 basis, provide to all patients a written statement that
39 describes how the provider or plan maintains the
40 confidentiality of medical information obtained by and in



1 *the possession of the provider or plan. The provider may*
2 *provide this statement at the time of a patient visit or by*
3 *posting the statement in his or her place of business. In*
4 *the case of a health care service plan, the statement may*
5 *be provided in the plan evidence of coverage.*

6 *(c) The statement required by this section shall be in*
7 *at least 12-point type and meet the following*
8 *requirements:*

9 *(1) The statement shall describe how the provider or*
10 *plan protects the confidentiality of medical information*
11 *pursuant to this article and inform patients that any*
12 *disclosure of medical information beyond the provisions*
13 *of the law is prohibited.*

14 *(2) The statement shall describe the types of personal*
15 *information that may be collected and the type of sources*
16 *that may be used to collect the information, the purposes*
17 *for which the provider or plan will obtain medical*
18 *information from other health care providers or health*
19 *care service plans, the functions of the persons who will*
20 *receive the medical information, and the limitations on*
21 *the use of the medical information by persons affiliated*
22 *with or employed by the provider or plan who may be*
23 *authorized to receive it.*

24 *(3) The statement shall describe the circumstances*
25 *under which medical information may be disclosed*
26 *without prior authorization, pursuant to Section 56.10,*
27 *except that only those circumstances that occur with*
28 *sufficient frequency as to indicate a general business*
29 *practice need to be described.*

30 *(4) The statement shall describe how patients may*
31 *obtain access to original medical information created by*
32 *and in the possession of the provider or plan, including*
33 *copies of medical information, and how patients may*
34 *request corrections to any original information created*
35 *by the provider or plan that the patient believes is*
36 *erroneous.*

37 *SEC. 4. Section 56.10 of the Civil Code is amended to*
38 *read:*

39 *56.10. (a) No provider of health care, nor any health*
40 *care service plan or any of its contractors, shall disclose*



1 medical information regarding a patient of the provider
2 *or plan* without first obtaining an authorization, except as
3 provided in subdivision (b) or (c).

4 (b) A provider of health care *or a health care service*
5 *plan* and its contractors shall disclose medical information
6 if the disclosure is compelled by any of the following:

7 (1) By a court pursuant to an order of that court.

8 (2) By a board, commission, or administrative agency
9 for purposes of adjudication pursuant to its lawful
10 authority.

11 (3) By a party to a proceeding before a court or
12 administrative agency pursuant to a subpoena, subpoena
13 duces tecum, notice to appear served pursuant to Section
14 1987 of the Code of Civil Procedure, or any provision
15 authorizing discovery in a proceeding before a court or
16 administrative agency.

17 (4) By a board, commission, or administrative agency
18 pursuant to an investigative subpoena issued under
19 Article 2 (commencing with Section 11180) of Chapter 2
20 of Part 1 of Division 3 of Title 2 of the Government Code.

21 (5) By an arbitrator or arbitration panel, when
22 arbitration is lawfully requested by either party, pursuant
23 to a subpoena duces tecum issued under Section 1282.6 of
24 the Code of Civil Procedure, or any other provision
25 authorizing discovery in a proceeding before an
26 arbitrator or arbitration panel.

27 (6) By a search warrant lawfully issued to a
28 governmental law enforcement agency.

29 (7) *By the patient or the patient's representative*
30 *pursuant to Chapter 1 (commencing with Section*
31 *123100) of Part 1 of Division 106 of the Health and Safety*
32 *Code.*

33 (8) When otherwise specifically required by law.

34 (c) A provider of health care, *a health care service*
35 *plan*, or its contractors may disclose medical information
36 as follows:

37 (1) The information may be disclosed to providers of
38 health care, *health care service plans*, or other health care
39 professionals or facilities for purposes of diagnosis or
40 treatment of the patient. This includes, in an emergency



1 situation, the communication of patient information by
2 radio transmission between emergency medical
3 personnel at the scene of an emergency, or in an
4 emergency medical transport vehicle, and emergency
5 medical personnel at a health facility licensed pursuant to
6 Chapter 2 (commencing with Section 1200) of Division
7 2 of the Health and Safety Code.

8 (2) The information may be disclosed to an insurer,
9 employer, health care service plan, hospital service plan,
10 employee benefit plan, governmental authority, or any
11 other person or entity responsible for paying for health
12 care services rendered to the patient, to the extent
13 necessary to allow responsibility for payment to be
14 determined and payment to be made. If (A) the patient
15 is, by reason of a comatose or other disabling medical
16 condition, unable to consent to the disclosure of medical
17 information and (B) no other arrangements have been
18 made to pay for the health care services being rendered
19 to the patient, the information may be disclosed to a
20 governmental authority to the extent necessary to
21 determine the patient's eligibility for, and to obtain,
22 payment under a governmental program for health care
23 services provided to the patient. The information may
24 also be disclosed to another provider *or plan* as necessary
25 to assist the other provider *or plan* in obtaining payment
26 for health care services rendered by that provider *or plan*
27 to the patient.

28 (3) The information may be disclosed to any person or
29 entity that provides billing, claims management, medical
30 data processing, or other administrative services for
31 providers *or plans* or for any of the persons or entities
32 specified in paragraph (2). However, no information so
33 disclosed shall be further disclosed by the recipient in any
34 way that would be violative of this part.

35 (4) The information may be disclosed to organized
36 committees and agents of professional societies or of
37 medical staffs of licensed hospitals, licensed health care
38 service plans, professional standards review
39 organizations, utilization and quality control peer review
40 organizations as established by Congress in Public Law



1 97-248 in 1982, or persons or organizations insuring,
2 responsible for, or defending professional liability that a
3 provider may incur, if the committees, agents, plans,
4 organizations, or persons are engaged in reviewing the
5 competence or qualifications of health care professionals
6 or in reviewing health care services with respect to
7 medical necessity, level of care, quality of care, or
8 justification of charges.

9 (5) The information in the possession of any provider
10 of health care *or health care service plan* may be
11 reviewed by any private or public body responsible for
12 licensing or accrediting the provider of health care *or*
13 *health care service plan*. However, no patient identifying
14 medical information may be removed from the premises
15 except as expressly permitted or required elsewhere by
16 law.

17 (6) The information may be disclosed to the county
18 coroner in the course of an investigation by the coroner's
19 office.

20 (7) The information may be disclosed to public
21 agencies, clinical investigators, health care research
22 organizations, and accredited public or private nonprofit
23 educational or health care institutions for bona fide
24 research purposes. However, no information so disclosed
25 shall be further disclosed by the recipient in any way that
26 would permit identification of the patient.

27 (8) A provider of health care *or health care service*
28 *plan* that has created medical information as a result of
29 employment-related health care services to an employee
30 conducted at the specific prior written request and
31 expense of the employer may disclose to the employee's
32 employer that part of the information that:

33 (A) Is relevant in a law suit, arbitration, grievance, or
34 other claim or challenge to which the employer and the
35 employee are parties and in which the patient has placed
36 in issue his or her medical history, mental or physical
37 condition, or treatment, provided that information may
38 only be used or disclosed in connection with that
39 proceeding.



1 (B) Describes functional limitations of the patient that
2 may entitle the patient to leave from work for medical
3 reasons or limit the patient's fitness to perform his or her
4 present employment, provided that no statement of
5 medical cause is included in the information disclosed.

6 (9) Unless the provider *or plan* is notified in writing of
7 an agreement by the sponsor, insurer, or administrator to
8 the contrary, the information may be disclosed to a
9 sponsor, insurer, or administrator of a group or individual
10 insured or uninsured plan or policy that the patient seeks
11 coverage by or benefits from, if the information was
12 created by the provider of health care *or health care*
13 *service plan* as the result of services conducted at the
14 specific prior written request and expense of the sponsor,
15 insurer, or administrator for the purpose of evaluating the
16 application for coverage or benefits.

17 (10) The information may be disclosed to a health care
18 service plan by providers that contract with the plan and
19 may be transferred among providers that contract with
20 the plan, for the purpose of administering the plan.
21 Medical information may not otherwise be disclosed by a
22 health care service plan except in accordance with the
23 provisions of this part.

24 (11) Nothing in this part shall prevent the disclosure
25 by a provider of health care *or health care service plan*
26 to an insurance institution, agent, or support
27 organization, subject to Article 6.6 (commencing with
28 Section 791) of Part 2 of Division 1 of the Insurance Code,
29 of medical information if the insurance institution, agent,
30 or support organization has complied with all
31 requirements for obtaining the information pursuant to
32 Article 6.6 (commencing with Section 791) of Part 2 of
33 Division 1 of the Insurance Code.

34 (12) The information relevant to the patient's
35 condition and care and treatment provided may be
36 disclosed to a probate court investigator engaged in
37 determining the need for an initial conservatorship or
38 continuation of an existent conservatorship, if the patient
39 is unable to give informed consent, or to a probate court
40 investigator, probation officer, or domestic relations



1 investigator engaged in determining the need for an
2 initial guardianship or continuation of an existent
3 guardianship.

4 (13) The information may be disclosed to *an organ*
5 *procurement organization* or a tissue bank processing the
6 tissue of a decedent for transplantation into the body of
7 another person, but only with respect to the donating
8 decedent, for the purpose of aiding the transplant. For
9 the purpose of this paragraph, the terms “tissue bank”
10 and “tissue” have the same meaning as defined in Section
11 1635 of the Health and Safety Code.

12 (14) The information may be disclosed when
13 disclosure is otherwise specifically authorized by law.

14 (15) Basic information including the patient’s name,
15 city of residence, age, sex, and general condition may be
16 disclosed to a state or federally recognized disaster relief
17 organization for the purpose of responding to disaster
18 welfare inquiries.

19 *(16) The information may be disclosed to a third party*
20 *for purposes of encoding, encrypting, or otherwise*
21 *anonymizing data. However, no information so disclosed*
22 *shall be further disclosed by the recipient in any way that*
23 *would be violative of this part.*

24 (d) Except to the extent expressly authorized by
25 subdivisions (b) and (c), no provider of health care, nor
26 *any health care service plan* or any of its contractors, shall
27 intentionally share, sell, or otherwise use any medical
28 information for any commercial purpose not directly
29 related to the provision of health care services to the
30 patient.

31 ~~SEC. 3.~~

32 *SEC. 5. Section 56.12 of the Civil Code is amended to*
33 *read:*

34 56.12. Upon demand by the patient or the person who
35 signed an authorization, a provider of health care *or*
36 *health care service plan* possessing the authorization shall
37 furnish a true copy thereof.

38 *SEC. 6. Section 56.125 is added to the Civil Code, to*
39 *read:*



1 56.125. (a) A provider of health care or health care
2 service plan shall allow patients to request a correction,
3 amendment, or deletion to patient medical information
4 that is the provider's or plan's possession and is an original
5 document created by the provider or plan, pursuant to
6 the requirements of this section.

7 (b) Within 30 business days after the date the provider
8 or plan receives a written request from a patient to
9 correct, amend, or delete information about the patient
10 from any medical information in the provider's or plan's
11 possession and created by the provider or plan, the
12 provider or plan shall do either of the following:

13 (1) Correct, amend, or delete the information as
14 requested by the patient and inform the patient and
15 others in possession of the information, if known, of the
16 correction, amendment, or deletion.

17 (2) Notify the patient that the provider or plan will not
18 make the correction, amendment, or deletion, the
19 reasons for the refusal, and how the patient may file a
20 statement of protest, as described in subdivision (c).

21 (3) Notify the patient that the medical information is
22 not in the provider's or plan's possession or is not an
23 original document created by the provider or plan, and
24 that the patient may request the correction, amendment,
25 or deletion of the medical information from the provider
26 of health care or health care service plan who created and
27 possesses the medical information.

28 (c) If the patient disagrees with the provider's or
29 plan's refusal to correct, amend, or delete information
30 from the patient's medical information, the patient may
31 file with the provider or plan a statement setting forth
32 what the patient believes is the correct information and
33 a statement of the reasons why the patient disagrees with
34 the provider's or plan's refusal to correct, amend, or
35 delete the requested information.

36 (d) If a patient files a statement pursuant to
37 subdivision (c), the provider or plan shall file the
38 statement with the patient's medical information so that
39 any person reviewing the information will be made aware
40 of the patient's statement and have access to it, and shall



1 *clearly identify the issues that are in dispute when the*
2 *medical information is disclosed. The provider or plan*
3 *may also file a statement explaining why the provider or*
4 *plan refused to correct, amend, or delete medical*
5 *information as requested by the patient.*

6 *(e) For purposes of this section, an original document*
7 *created by the provider or plan does not include any*
8 *medical record or medical information created,*
9 *recorded, or maintained by another provider of health*
10 *care or health care service plan.*

11 SEC. 7. Section 56.36 of the Civil Code is amended to
12 read:

13 56.36. (a) Any knowing and willful violation of the
14 provisions of this part is punishable as a misdemeanor.

15 (b) (1) In addition, any person who knowingly and
16 willfully violates any provision of subdivision (a) of
17 Section 56.10 shall be liable for an administrative fine or
18 civil penalty not to exceed twenty-five thousand dollars
19 (\$25,000) for each violation. Any person who knowingly
20 and willfully violates any provision of subdivision (d) of
21 Section 56.10 shall be liable for an administrative fine or
22 civil penalty not to exceed two hundred and fifty
23 thousand dollars (\$250,000) for each violation. The
24 administrative fine shall be assessed and collected by the
25 appropriate licensing agency or certifying board. The
26 civil penalty shall be assessed and recovered in a civil
27 action brought in the name of the people of the State of
28 California by the Attorney General, by any district
29 attorney, by any county counsel authorized by
30 agreement with the district attorney in actions involving
31 violation of a county ordinance, by any city attorney of a
32 city, or city and county, having a population in excess of
33 750,000 with the consent of the district attorney, by a city
34 prosecutor in any city having a full-time city prosecutor,
35 or, with the consent of the district attorney, by a city
36 attorney in any city and county, in any court of competent
37 jurisdiction.

38 (2) In assessing the amount of the administrative fine
39 or the civil penalty, the licensing agency or certifying
40 board or court shall consider any one or more of the



1 relevant circumstances presented by any of the parties to
2 the case, including, but not limited to, the following: the
3 nature and seriousness of the misconduct, the number of
4 violations, the persistence of the misconduct, the length
5 of time over which the misconduct occurred, the
6 willfulness of the defendant's misconduct, and the
7 defendant's assets, liabilities, and net worth.

8 (3) If the action is brought by the Attorney General,
9 one-half of the penalty collected shall be paid to the
10 treasurer of the county in which the judgment was
11 entered, and one-half to the General Fund. If the action
12 is brought by a district attorney or county counsel, the
13 penalty collected shall be paid to the treasurer of the
14 county in which the judgment was entered. Except as
15 provided in paragraph (5), if the action is brought by a
16 city attorney or city prosecutor, one-half of the penalty
17 collected shall be paid to the treasurer of the city in which
18 the judgment was entered and one-half to the treasurer
19 of the county in which the judgment was entered.

20 (4) In addition to the penalty, the defendant shall be
21 liable for reasonable attorney's fees if the action is
22 brought at the request of a licensing agency or certifying
23 board.

24 (5) If the action is brought by a city attorney of a city
25 and county, the entire amount of the penalty collected
26 shall be paid to the treasurer of the city and county in
27 which the judgement was entered.

28 (6) *Nothing in this section shall be construed as*
29 *authorizing both an administrative fine and civil penalty*
30 *for the same violation.*

31 (7) *Imposition of a fine provided for in this section*
32 *shall not preclude imposition of any other sanctions or*
33 *remedies authorized by law.*

34 (c) *No person who discloses protected information in*
35 *accordance with the provisions of this part shall be subject*
36 *to the penalty provisions of this part.*

37 ~~SEC. 4. Section 56.38 is added to the Civil Code to~~
38 ~~read:~~

39 ~~56.38. Every health care service plan and its~~
40 ~~contractors shall protect the confidentiality of enrollee~~



1 ~~medical information. A health care service plan may~~
2 ~~request an enrollee to sign a written authorization, as~~
3 ~~provided in Section 56.11, to disclose and use medical~~
4 ~~information of the enrollee only for purposes directly~~
5 ~~related to the provision of health care services to the~~
6 ~~enrollee by the plan and its contractors. No health care~~
7 ~~service plan or any of its contractors may require an~~
8 ~~enrollee, as a condition to securing health care services,~~
9 ~~to sign an authorization, release, or consent that waives~~
10 ~~any medical information confidentiality protections~~
11 ~~provided by law.~~

12 ~~(b) Except to the extent expressly authorized by~~
13 ~~subdivisions (b) and (c) of Section 56.10, a health care~~
14 ~~service plan and its contractors shall not intentionally~~
15 ~~share, sell, or otherwise use any medical information for~~
16 ~~any commercial purposes not directly related to the~~
17 ~~provision of health care services to the enrollee.~~

18 ~~(e) As used in this section, “medical information”~~
19 ~~means any individually identifiable information in~~
20 ~~possession of or derived from a health care service plan~~
21 ~~regarding an enrollee’s medical history, mental or~~
22 ~~physical condition, or treatment.~~

23 ~~SEC. 5.~~

24 ~~SEC. 8. Section 791.02 of the Insurance Code is~~
25 ~~amended to read:~~

26 ~~791.02. As used in this act:~~

27 ~~(a) (1) “Adverse underwriting decision” means any~~
28 ~~of the following actions with respect to insurance~~
29 ~~transactions involving insurance coverage—~~which that~~ is~~
30 ~~individually underwritten:~~

31 ~~(A) A declination of insurance coverage.~~

32 ~~(B) A termination of insurance coverage.~~

33 ~~(C) Failure of an agent to apply for insurance~~
34 ~~coverage with a specific insurance institution ~~which that~~~~
35 ~~the agent represents and ~~which that~~ is requested by an~~
36 ~~applicant.~~

37 ~~(D) In the case of a property or casualty insurance~~
38 ~~coverage:~~

39 ~~(i) Placement by an insurance institution or agent of~~
40 ~~a risk with a residual market mechanism, with an~~



1 unauthorized insurer, or with an insurance institution
2 ~~which that~~ provides insurance to other than preferred or
3 standard risks, if in fact the placement is at other than a
4 preferred or standard rate. An adverse underwriting
5 decision, in case of placement with an insurance
6 institution ~~which that~~ provides insurance to other than
7 preferred or standard risks, shall not include ~~such that~~
8 placement where the applicant or insured did not specify
9 or apply for placement as a preferred or standard risk or
10 placement with a particular company insuring preferred
11 or standard risks, or

12 (ii) The charging of a higher rate on the basis of
13 information ~~which that~~ differs from that which the
14 applicant or policyholder furnished.

15 (E) In the case of a life, health, or disability insurance
16 coverage, an offer to insure at higher than standard rates.

17 (2) Notwithstanding paragraph (1), any of the
18 following actions shall not be considered adverse
19 underwriting decisions but the insurance institution or
20 agent responsible for their occurrence shall nevertheless
21 provide the applicant or policyholder with the specific
22 reason or reasons for their occurrence:

23 (A) The termination of an individual policy form on a
24 class or statewide basis.

25 (B) A declination of insurance coverage solely because
26 ~~such the~~ coverage is not available on a class or statewide
27 basis.

28 (C) The rescission of a policy.

29 (b) “Affiliate” or “affiliated” means a person ~~that~~ *who*
30 directly, or indirectly through one or more
31 intermediaries, controls, is controlled by or is under
32 common control with another person.

33 (c) “Agent” means any person licensed pursuant to
34 Chapter 5 (commencing with Section 1621), Chapter 5A
35 (commencing with Section 1759), Chapter 6
36 (commencing with Section 1760), Chapter 7
37 (commencing with Section 1800), or Chapter 8
38 (commencing with Section 1831).

39 (d) “Applicant” means any person who seeks to
40 contract for insurance coverage other than a person



1 seeking group insurance that is not individually
2 underwritten.

3 (e) “Consumer report” means any written, oral, or
4 other communication of information bearing on a natural
5 person’s creditworthiness, credit standing, credit
6 capacity, character, general reputation, personal
7 characteristics, or mode of living ~~which~~ *that* is used or
8 expected to be used in connection with an insurance
9 transaction.

10 (f) “Consumer reporting agency” means any person
11 who:

12 (1) Regularly engages, in whole or in part, in the
13 practice of assembling or preparing consumer reports for
14 a monetary fee.

15 (2) Obtains information primarily from sources other
16 than insurance institutions.

17 (3) Furnishes consumer reports to other persons.

18 (g) “Control,” including the terms “controlled by” or
19 “under common control with,” means the possession,
20 direct or indirect, of the power to direct or cause the
21 direction of the management and policies of a person,
22 whether through the ownership of voting securities, by
23 contract other than a commercial contract for goods or
24 nonmanagement services, or otherwise, unless the power
25 is the result of an official position with or corporate office
26 held by the person.

27 (h) “Declination of insurance coverage” means a
28 denial, in whole or in part, by an insurance institution or
29 agent of requested insurance coverage.

30 (i) “Individual” means any natural person who:

31 (1) In the case of property or casualty insurance, is a
32 past, present or proposed named insured or certificate
33 holder;

34 (2) In the case of life or disability insurance, is a past,
35 present or proposed principal insured or certificate
36 holder;

37 (3) Is a past, present or proposed policyowner;

38 (4) Is a past or present applicant; ~~or~~

39 (5) Is a past or present claimant; or



1 (6) Derived, derives, or is proposed to derive
2 insurance coverage under an insurance policy or
3 certificate subject to this act.

4 (j) “Institutional source” means any person or
5 governmental entity that provides information about an
6 individual to an agent, insurance institution, or
7 insurance-support organization, other than:

8 (1) An agent,

9 (2) The individual who is the subject of the
10 information, or

11 (3) A natural person acting in a personal capacity
12 rather than in a business or professional capacity.

13 (k) “Insurance institution” means any corporation,
14 association, partnership, reciprocal exchange,
15 interinsurer, Lloyd’s insurer, fraternal benefit society, or
16 other person engaged in the business of insurance,
17 including medical service plans and hospital service
18 plans. “Insurance institution” shall not include agents,
19 insurance-support organizations, or ~~group practice~~
20 ~~prepayment~~ health care service plans regulated pursuant
21 to the Knox-Keene Health Care Service Plan Act,
22 Chapter 2.2 (commencing with Section 1340) of Division
23 2 of the Health and Safety Code.

24 (l) “Insurance-support organization” means:

25 (1) Any person who regularly engages, in whole or in
26 part, in the business of assembling or collecting
27 information about natural persons for the primary
28 purpose of providing the information to an insurance
29 institution or agent for insurance transactions, including:

30 (A) The furnishing of consumer reports or
31 investigative consumer reports to an insurance
32 institution or agent for use in connection with an
33 insurance transaction, or

34 (B) The collection of personal information from
35 insurance institutions, agents, or other insurance-support
36 organizations for the purpose of detecting or preventing
37 fraud, material misrepresentation or material
38 nondisclosure in connection with insurance underwriting
39 or insurance claim activity.



1 (2) Notwithstanding paragraph (1), the following
2 persons shall not be considered “insurance-support
3 organizations”: agents, governmental institutions,
4 insurance institutions, medical care institutions, medical
5 professionals, and peer review committees.

6 (m) “Insurance transaction” means any transaction
7 involving insurance primarily for personal, family, or
8 household needs rather than business or professional
9 needs ~~which~~ *that* entails:

10 (1) The determination of an individual’s eligibility for
11 an insurance coverage, benefit, or payment, or

12 (2) The servicing of an insurance application, policy,
13 contract, or certificate.

14 (n) “Investigative consumer report” means a
15 consumer report or portion thereof in which information
16 about a natural person’s character, general reputation,
17 personal characteristics, or mode of living is obtained
18 through personal interviews with the person’s neighbors,
19 friends, associates, acquaintances, or others who may
20 have knowledge concerning ~~such~~ *those* items of
21 information.

22 (o) “Medical care institution” means any facility or
23 institution that is licensed to provide health care services
24 to natural persons, including but not limited to, hospitals,
25 skilled nursing facilities, home health agencies, medical
26 clinics, rehabilitation agencies, and public health
27 agencies.

28 (p) “Medical professional” means any person licensed
29 or certified to provide health care services to natural
30 persons, including but not limited to, a physician, dentist,
31 nurse, optometrist, physical or occupational therapist,
32 psychiatric social worker, clinical dietitian, clinical
33 psychologist, chiropractor, pharmacist, or speech
34 therapist.

35 (q) “Medical record information” means personal
36 information ~~which~~ *that*:

37 (1) Relates to an individual’s physical or mental
38 condition, medical history or medical treatment, and



1 (2) Is obtained from a medical professional or medical
2 care institution, from the individual, or from the
3 individual's spouse, parent, or legal guardian.

4 (r) "Person" means any natural person, corporation,
5 association, partnership, limited liability company, or
6 other legal entity.

7 (s) "Personal information" means any individually
8 identifiable information gathered in connection with an
9 insurance transaction from which judgments can be
10 made about an individual's character, habits, avocations,
11 finances, occupation, general reputation, credit, health,
12 or any other personal characteristics. "Personal
13 information" includes an individual's name and address
14 and "medical record information" but does not include
15 "privileged information."

16 (t) "Policyholder" means any person who:

17 (1) In the case of individual property or casualty
18 insurance, is a present named insured;

19 (2) In the case of individual life or disability insurance,
20 is a present policyowner; or

21 (3) In the case of group insurance ~~which~~ *that* is
22 individually underwritten, is a present group certificate
23 holder.

24 (u) "Pretext interview" means an interview whereby
25 a person, in an attempt to obtain information about a
26 natural person, performs one or more of the following
27 acts:

28 (1) Pretends to be someone he or she is not,

29 (2) Pretends to represent a person he or she is not in
30 fact representing,

31 (3) Misrepresents the true purpose of the interview, or

32 (4) Refuses to identify himself or herself upon request.

33 (v) "Privileged information" means any individually
34 identifiable information that both:

35 (1) Relates to a claim for insurance benefits or a civil
36 or criminal proceeding involving an individual.

37 (2) Is collected in connection with or in reasonable
38 anticipation of a claim for insurance benefits or civil or
39 criminal proceeding involving an individual. However,
40 information otherwise meeting the requirements of this



1 division shall nevertheless be considered “personal
2 information” under this act if it is disclosed in violation of
3 Section 791.13.

4 (w) “Residual market mechanism” means the
5 California FAIR Plan Association, Chapter 10
6 (commencing with Section 10101) of Part 1 of Division 2,
7 and the assigned risk plan, Chapter 1 (commencing with
8 Section 11550) of Part 3 of Division 2.

9 (x) “Termination of insurance coverage” or
10 “termination of an insurance policy” means either a
11 cancellation or nonrenewal of an insurance policy, in
12 whole or in part, for any reason other than the failure to
13 pay a premium as required by the policy.

14 (y) “Unauthorized insurer” means an insurance
15 institution that has not been granted a certificate of
16 authority by the commissioner to transact the business of
17 insurance in this state.

18 (z) “Commissioner” means the Insurance
19 Commissioner; ~~except in the case of a person or entity~~
20 ~~subject to the provisions of the Knox Keene Health Care~~
21 ~~Service Plan Act of 1975 (Chapter 2.2 (commencing with~~
22 ~~Section 1340) of Division 2 of the Health and Safety~~
23 ~~Code), and except as to any person defined in subdivision~~
24 ~~(k) when engaged in providing information or evaluation~~
25 ~~to a person or entity subject to the provisions of the~~
26 ~~Knox Keene Health Care Service Plan Act of 1975, and in~~
27 ~~such instances only, the term “commissioner” shall mean~~
28 ~~the Commissioner of Corporations.~~

29 (aa) “Insurance” ~~includes a medical service or hospital~~
30 ~~service agreement or contract issued by a person or entity~~
31 ~~subject to the Knox Keene Health Care Service Plan Act~~
32 ~~of 1975 (Chapter 2.2 (commencing with Section 1340) of~~
33 ~~Division 2 of the Health and Safety Code).~~

34 *SEC. 9.* No reimbursement is required by this act
35 pursuant to Section 6 of Article XIII B of the California
36 Constitution because the only costs that may be incurred
37 by a local agency or school district will be incurred
38 because this act creates a new crime or infraction,
39 eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section



1 17556 of the Government Code, or changes the definition
2 of a crime within the meaning of Section 6 of Article
3 XIII B of the California Constitution.

O

