

Introduced by Senator AlquistFebruary 23, 2012

An act to amend Section 56.36 of the Civil Code, relating to medical records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1250, as introduced, Alquist. Medical records: confidentiality.

The Confidentiality of Medical Information Act requires that every provider of health care, health care service plan, pharmaceutical company, and contractor who creates, maintains, preserves, stores, abandons, destroys, or disposes of medical records do so in a manner that preserves the confidentiality of the information contained in the records, and provides that negligence in conducting these activities may result in damages or an administrative fine or civil penalty, as specified.

This bill would provide that negligence in conducting these activities may result in the defendant being required to provide each person who is the subject of the medical records with access to a credit monitoring and reporting service for one year.

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 56.36 of the Civil Code is amended to
- 2 read:
- 3 56.36. (a) Any violation of ~~the provisions of~~ this part that
- 4 results in economic loss or personal injury to a patient is punishable
- 5 as a misdemeanor.

(b) In addition to any other remedies available at law, any individual may bring an action against any person or entity ~~who~~ *that* has negligently released confidential information or records concerning him or her in violation of this part, for *access, at the defendant's expense, to a nationally recognized credit monitoring and reporting service for one year from the date of release of any medical information* and either or both of the following:

(1) Nominal damages of one thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the patient.

(c) (1) In addition, any person or entity that negligently discloses medical information in violation of the provisions of this part shall also be liable, irrespective of the amount of damages suffered by the patient as a result of that violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation.

(2) (A) Any person or entity, other than a licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable for an administrative fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation.

(B) Any licensed health care professional, who knowingly and willfully obtains, discloses, or uses medical information in violation of this part shall be liable on a first violation, for an administrative fine or civil penalty not to exceed two thousand five hundred dollars (\$2,500) per violation, or on a second violation for an administrative fine or civil penalty not to exceed ten thousand dollars (\$10,000) per violation, or on a third and subsequent violation for an administrative fine or civil penalty not to exceed twenty-five thousand dollars (\$25,000) per violation. Nothing in this subdivision shall be construed to limit the liability of a health care service plan, a contractor, or a provider of health care that is not a licensed health care professional for any violation of this part.

(3) (A) Any person or entity, other than a licensed health care professional, who knowingly or willfully obtains or uses medical information in violation of this part for the purpose of financial gain shall be liable for an administrative fine or civil penalty not

1 to exceed two hundred fifty thousand dollars (\$250,000) per
2 violation and shall also be subject to disgorgement of any proceeds
3 or other consideration obtained as a result of the violation.

4 (B) Any licensed health care professional, who knowingly and
5 willfully obtains, discloses, or uses medical information in violation
6 of this part for financial gain shall be liable on a first violation, for
7 an administrative fine or civil penalty not to exceed five thousand
8 dollars (\$5,000) per violation, or on a second violation for an
9 administrative fine or civil penalty not to exceed twenty-five
10 thousand dollars (\$25,000) per violation, or on a third and
11 subsequent violation for an administrative fine or civil penalty not
12 to exceed two hundred fifty thousand dollars (\$250,000) per
13 violation and shall also be subject to disgorgement of any proceeds
14 or other consideration obtained as a result of the violation. Nothing
15 in this subdivision shall be construed to limit the liability of a
16 health care service plan, a contractor, or a provider of health care
17 that is not a licensed health care professional for any violation of
18 this part.

19 (4) Nothing in this subdivision shall be construed as authorizing
20 an administrative fine or civil penalty under both paragraphs (2)
21 and (3) for the same violation.

22 (5) Any person or entity ~~who~~ *that* is not permitted to receive
23 medical information pursuant to this part and who knowingly and
24 willfully obtains, discloses, or uses medical information without
25 written authorization from the patient shall be liable for a civil
26 penalty not to exceed two hundred fifty thousand dollars (\$250,000)
27 per violation.

28 (d) In assessing the amount of an administrative fine or civil
29 penalty pursuant to subdivision (c), the Office of Health
30 Information Integrity, licensing agency, or certifying board or
31 court shall consider any one or more of the relevant circumstances
32 presented by any of the parties to the case including, but not limited
33 to, the following:

34 (1) Whether the defendant has made a reasonable, good faith
35 attempt to comply with this part.

36 (2) The nature and seriousness of the misconduct.

37 (3) The harm to the patient, enrollee, or subscriber.

38 (4) The number of violations.

39 (5) The persistence of the misconduct.

40 (6) The length of time over which the misconduct occurred.

1 (7) The willfulness of the defendant's misconduct.

2 (8) The defendant's assets, liabilities, and net worth.

3 (e) (1) The civil penalty pursuant to subdivision (c) shall be
4 assessed and recovered in a civil action brought in the name of the
5 people of the State of California in any court of competent
6 jurisdiction by any of the following:

7 (A) The Attorney General.

8 (B) Any district attorney.

9 (C) Any county counsel authorized by agreement with the
10 district attorney in actions involving violation of a county
11 ordinance.

12 (D) Any city attorney of a city.

13 (E) Any city attorney of a city and county having a population
14 in excess of 750,000, with the consent of the district attorney.

15 (F) A city prosecutor in any city having a full-time city
16 prosecutor or, with the consent of the district attorney, by a city
17 attorney in any city and county.

18 (G) The Director of the Office of Health Information Integrity
19 may recommend that any person described in subparagraphs (A)
20 to (F), inclusive, bring a civil action under this section.

21 (2) If the action is brought by the Attorney General, one-half
22 of the penalty collected shall be paid to the treasurer of the county
23 in which the judgment was entered, and one-half to the General
24 Fund. If the action is brought by a district attorney or county
25 counsel, the penalty collected shall be paid to the treasurer of the
26 county in which the judgment was entered. Except as provided in
27 paragraph (3), if the action is brought by a city attorney or city
28 prosecutor, one-half of the penalty collected shall be paid to the
29 treasurer of the city in which the judgment was entered and one-half
30 to the treasurer of the county in which the judgment was entered.

31 (3) If the action is brought by a city attorney of a city and
32 county, the entire amount of the penalty collected shall be paid to
33 the treasurer of the city and county in which the judgment was
34 entered.

35 (4) Nothing in this section shall be construed as authorizing
36 both an administrative fine and civil penalty for the same violation.

37 (5) Imposition of a fine or penalty provided for in this section
38 shall not preclude imposition of any other sanctions or remedies
39 authorized by law.

1 (6) Administrative fines or penalties issued pursuant to Section
2 1280.15 of the Health and Safety Code shall offset any other
3 administrative fine or civil penalty imposed under this section for
4 the same violation.

5 (f) For purposes of this section, “knowing” and “willful” shall
6 have the same meanings as in Section 7 of the Penal Code.

7 (g) No person who discloses protected medical information in
8 accordance with the provisions of this part shall be subject to the
9 penalty provisions of this part.

10 (h) Paragraph (6) of subdivision (e) shall only become operative
11 if Senate Bill 541 of the 2007–08 Regular Session is enacted and
12 becomes effective on or before January 1, 2009.