

AMENDED IN ASSEMBLY JUNE 26, 2013

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 8, 2013

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 138

**Introduced by Senator Hernandez
(Coauthors: Senators DeSaulnier and Leno)**

January 28, 2013

An act to amend Sections 56.05, 56.104, and 56.16 of, and to add Section 56.107 to, the Civil Code, to amend Sections 1280.15, 1627, 117928, 120985, 121010, and 130201 of, and to add Section 1348.5 to, the Health and Safety Code, to add Section 791.29 to the Insurance Code, and to amend Section 3208.05 of the Labor Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

SB 138, as amended, Hernandez. Confidentiality of medical information.

Existing federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes certain requirements relating to the provision of health insurance, and the protection of privacy of individually identifiable health information.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of its provisions a crime. Existing law also provides for the regulation of health insurers by the Department of Insurance.

Existing law, the Confidentiality of Medical Information Act, provides that medical information, as defined, may not be disclosed by providers of health care, health care service plans, or contractors, as defined, without the patient's written authorization, subject to certain exceptions, including disclosure to a probate court investigator, as specified. A violation of the act resulting in economic loss or personal injury to a patient is a misdemeanor and subjects the violating party to liability for specified damages and administrative fines and penalties. The act defines various terms relevant to its implementation.

This bill would declare the intent of the Legislature to incorporate HIPAA standards into state law and to clarify standards for protecting the confidentiality of medical information in insurance transactions. The bill would define additional terms in connection with maintaining the confidentiality of this information, including ~~an "authorization for insurance communications,"~~ a "*confidential communications request*" which an insured individual may submit for the purpose of specifying ~~disclosable medical information and insurance transactions, and permissible recipients~~ *the method for transmitting insurance communications.*

This bill would specify the manner in which a health care service plan or health insurer would be required to maintain confidentiality of *medical information regarding the treatment of insured individuals less than 26 years of age that involves sensitive services, as defined, including such treatment of those individuals who are insured or covered as dependents on another person's policy, the treatment of an insured individual involving sensitive services, as defined, or health care service plan or health insurance policy.* The bill would require a health care service plan or health insurer to comply with a *nondisclosure request or a confidential communications request from an insured individual, as defined, in situations in which disclosure would endanger the insured individual, as defined individual.*

This bill would specifically authorize a provider of health care to communicate information regarding benefit cost-sharing arrangements to the health care service plan or health insurer, as specified.

This bill would also prohibit the health care service plan or health insurer from conditioning enrollment in the plan or eligibility for benefits on the provision of an authorization for insurance communications. The bill also would make conforming technical changes. By expanding the scope of a crime, the bill would create a state-mandated local program.

Existing law, the Insurance Information and Privacy Protection Act, generally regulates how insurers collect, use, and disclose information gathered in connection with insurance transactions.

This bill would require a health care services plan or a health insurer, as defined, to comply with the requirements of the Confidentiality of Medical Information Act, if that act conflicts with the Insurance Information and Privacy Protection Act, as specified. Because a willful violation of these provisions by a health care service plan would be a crime, this bill would thus 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. The Legislature finds and declares all of the
2 following:

3 (a) Privacy is a fundamental right of all Californians, protected
4 by the California Constitution, the federal Health Insurance
5 Portability and Accountability Act (HIPAA; Public Law 104-191),
6 and the Confidentiality of Medical Information Act, Part 2.6
7 (commencing with Section 56) of Division 1 of the Civil Code.

8 (b) Implementation of the recently enacted federal Patient
9 Protection and Affordable Care Act (Public Law 111-148) will
10 expand the number of individuals insured as dependents on a health
11 insurance policy held in another person's name, including adult
12 children under 26 years of age insured on a parent's insurance
13 policy.

14 (c) HIPAA explicitly protects the confidentiality of medical
15 care obtained by dependents insured under a health insurance
16 policy held by another person.

17 (d) Therefore, it is the intent of the Legislature in enacting this
18 act to incorporate HIPAA standards into state law and to clarify
19 the standards for protecting the confidentiality of medical
20 information in insurance transactions.

21 SEC. 2. Section 56.05 of the Civil Code is amended to read:

1 56.05. For purposes of this part:

2 (a) “Authorization” means permission granted in accordance
3 with Section 56.11 or 56.21 for the disclosure of medical
4 information.

5 ~~(b) “Authorization for insurance communications” means~~
6 ~~permission from the individual, that meets the requirements of~~
7 ~~subdivisions (a) to (e), inclusive, of Section 56.11, specifying the~~
8 ~~medical information and insurance transactions that may be~~
9 ~~disclosed and the identity of the people to whom disclosures are~~
10 ~~permitted as part of an insurance communication.~~

11 ~~(e)~~

12 (b) “Authorized recipient” means any person who is authorized
13 to receive medical information pursuant to Section 56.10 or 56.20.

14 ~~(d)~~

15 (c) “Confidential communications request” means a request by
16 an insured individual that insurance communications be
17 communicated by a specific method, such as by telephone, email,
18 or in a covered envelope rather than postcard, or to a specific mail
19 or email address or specific telephone number, as designated by
20 the insured individual.

21 ~~(e)~~

22 (d) “Contractor” means any person or entity that is a medical
23 group, independent practice association, pharmaceutical benefits
24 manager, or a medical service organization and is not a health care
25 service plan or provider of health care. “Contractor” does not
26 include insurance institutions as defined in subdivision (k) of
27 Section 791.02 of the Insurance Code or pharmaceutical benefits
28 managers licensed pursuant to the Knox-Keene Health Care Service
29 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
30 of Division 2 of the Health and Safety Code).

31 ~~(f)~~

32 (e) “Endanger” means that the insured individual fears
33 harassment or abuse resulting from an insurance communication
34 sufficient to deter the patient from obtaining health care absent
35 confidentiality.

36 ~~(g)~~

37 (f) “Health care service plan” means any entity regulated
38 pursuant to the Knox-Keene Health Care Service Plan Act of 1975
39 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
40 the Health and Safety Code).

1 ~~(h)~~

2 (g) “Health insurer” means an entity that issues health insurance,
3 as defined in subdivision (b) of Section 106 of the Insurance Code.

4 ~~(i)~~

5 (h) “Insured individual” means a person entitled to coverage
6 under a health care service plan or health insurer, including the
7 policyholder, *enrollee*, and dependents.

8 ~~(j)~~

9 (i) “Insurance communication” means any communication from
10 the health care service plan or health insurer to ~~policyholders or~~
11 insured individuals that discloses individually identifiable medical
12 information. Insurance communication includes, but is not limited
13 to, explanation of benefits forms, scheduling information, notices
14 of denial, and notices of contested claims.

15 ~~(k)~~

16 (j) “Licensed health care professional” means any person
17 licensed or certified pursuant to Division 2 (commencing with
18 Section 500) of the Business and Professions Code, the Osteopathic
19 Initiative Act or the Chiropractic Initiative Act, or Division 2.5
20 (commencing with Section 1797) of the Health and Safety Code.

21 ~~(l)~~

22 (k) “Marketing” means to make a communication about a
23 product or service that encourages recipients of the communication
24 to purchase or use the product or service.

25 “Marketing” does not include any of the following:

26 (1) Communications made orally or in writing for which the
27 communicator does not receive direct or indirect remuneration,
28 including, but not limited to, gifts, fees, payments, subsidies, or
29 other economic benefits, from a third party for making the
30 communication.

31 (2) Communications made to current enrollees solely for the
32 purpose of describing a provider’s participation in an existing
33 health care provider network or health plan network of a
34 Knox-Keene licensed health plan to which the enrollees already
35 subscribe; communications made to current enrollees solely for
36 the purpose of describing if, and the extent to which, a product or
37 service, or payment for a product or service, is provided by a
38 provider, contractor, or plan or included in a plan of benefits of a
39 Knox-Keene licensed health plan to which the enrollees already

1 subscribe; or communications made to plan enrollees describing
2 the availability of more cost-effective pharmaceuticals.

3 (3) Communications that are tailored to the circumstances of a
4 particular individual to educate or advise the individual about
5 treatment options, and otherwise maintain the individual's
6 adherence to a prescribed course of medical treatment, as provided
7 in Section 1399.901 of the Health and Safety Code, for a chronic
8 and seriously debilitating or life-threatening condition as defined
9 in subdivisions (d) and (e) of Section 1367.21 of the Health and
10 Safety Code, if the health care provider, contractor, or health plan
11 receives direct or indirect remuneration, including, but not limited
12 to, gifts, fees, payments, subsidies, or other economic benefits,
13 from a third party for making the communication, if all of the
14 following apply:

15 (A) The individual receiving the communication is notified in
16 the communication in typeface no smaller than 14-point type of
17 the fact that the provider, contractor, or health plan has been
18 remunerated and the source of the remuneration.

19 (B) The individual is provided the opportunity to opt out of
20 receiving future remunerated communications.

21 (C) The communication contains instructions in typeface no
22 smaller than 14-point type describing how the individual can opt
23 out of receiving further communications by calling a toll-free
24 number of the health care provider, contractor, or health plan
25 making the remunerated communications. No further
26 communication may be made to an individual who has opted out
27 after 30 calendar days from the date the individual makes the opt
28 out request.

29 (m)

30 (l) "Medical information" means any individually identifiable
31 information, in electronic or physical form, in possession of or
32 derived from a provider of health care, health care service plan,
33 pharmaceutical company, or contractor regarding a patient's
34 medical history, mental or physical condition, or treatment.
35 "Individually identifiable" means that the medical information
36 includes or contains any element of personal identifying
37 information sufficient to allow identification of the individual,
38 such as the patient's name, address, electronic mail address,
39 telephone number, or social security number, or other information

1 that, alone or in combination with other publicly available
2 information, reveals the individual's identity.

3 ~~(n)~~

4 (m) "Nondisclosure request" means a written request to withhold
5 insurance communications that includes the insured individual's
6 name and address, description of the medical or other information
7 that should not be disclosed, identity of the persons from whom
8 information shall be withheld, and contact information for the
9 individual for additional information or clarification necessary to
10 satisfy the request.

11 ~~(o)~~

12 (n) "Patient" means any natural person, whether or not still
13 living, who received health care services from a provider of health
14 care and to whom medical information pertains.

15 ~~(p)~~

16 (o) "Pharmaceutical company" means any company or business,
17 or an agent or representative thereof, that manufactures, sells, or
18 distributes pharmaceuticals, medications, or prescription drugs.
19 "Pharmaceutical company" does not include a pharmaceutical
20 benefits manager, as included in subdivision (c), or a provider of
21 health care.

22 ~~(q)~~

23 (p) "Provider of health care" means any person licensed or
24 certified pursuant to Division 2 (commencing with Section 500)
25 of the Business and Professions Code; any person licensed pursuant
26 to the Osteopathic Initiative Act or the Chiropractic Initiative Act;
27 any person certified pursuant to Division 2.5 (commencing with
28 Section 1797) of the Health and Safety Code; any clinic, health
29 dispensary, or health facility licensed pursuant to Division 2
30 (commencing with Section 1200) of the Health and Safety Code.
31 "Provider of health care" does not include insurance institutions
32 as defined in subdivision (k) of Section 791.02 of the Insurance
33 Code.

34 ~~(r)~~

35 (q) "Sensitive services" means all health care services described
36 in Sections 6924, 6925, 6926, 6927, 6928, and 6929 of the Family
37 Code, and Sections 121020 and 124260 of the Health and Safety
38 Code, obtained by any patient who has reached the minimum age
39 specified for consenting to the service specified in the section,
40 including patients 18 years of age and older.

1 SEC. 3. Section 56.104 of the Civil Code is amended to read:

2 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
3 except as provided in subdivision (e), no provider of health care,
4 health care service plan, or contractor may release medical
5 information to persons or entities who have requested that
6 information and who are authorized by law to receive that
7 information pursuant to subdivision (c) of Section 56.10, if the
8 requested information specifically relates to the patient's
9 participation in outpatient treatment with a psychotherapist, unless
10 the person or entity requesting that information submits to the
11 patient pursuant to subdivision (b) and to the provider of health
12 care, health care service plan, or contractor a written request, signed
13 by the person requesting the information or an authorized agent
14 of the entity requesting the information, that includes all of the
15 following:

16 (1) The specific information relating to a patient's participation
17 in outpatient treatment with a psychotherapist being requested and
18 its specific intended use or uses.

19 (2) The length of time during which the information will be
20 kept before being destroyed or disposed of. A person or entity may
21 extend that timeframe, provided that the person or entity notifies
22 the provider, plan, or contractor of the extension. Any notification
23 of an extension shall include the specific reason for the extension,
24 the intended use or uses of the information during the extended
25 time, and the expected date of the destruction of the information.

26 (3) A statement that the information will not be used for any
27 purpose other than its intended use.

28 (4) A statement that the person or entity requesting the
29 information will destroy the information and all copies in the
30 person's or entity's possession or control, will cause it to be
31 destroyed, or will return the information and all copies of it before
32 or immediately after the length of time specified in paragraph (2)
33 has expired.

34 (b) The person or entity requesting the information shall submit
35 a copy of the written request required by this section to the patient
36 within 30 days of receipt of the information requested, unless the
37 patient has signed a written waiver in the form of a letter signed
38 and submitted by the patient to the provider of health care or health
39 care service plan waiving notification.

1 (c) For purposes of this section, “psychotherapist” means a
2 person who is both a “psychotherapist” as defined in Section 1010
3 of the Evidence Code and a “provider of health care” as defined
4 in Section 56.05.

5 (d) This section does not apply to the disclosure or use of
6 medical information by a law enforcement agency or a regulatory
7 agency when required for an investigation of unlawful activity or
8 for licensing, certification, or regulatory purposes, unless the
9 disclosure is otherwise prohibited by law.

10 (e) This section shall not apply to any of the following:

11 (1) Information authorized to be disclosed pursuant to paragraph
12 (1) of subdivision (c) of Section 56.10.

13 (2) Information requested from a psychotherapist by law
14 enforcement or by the target of the threat subsequent to a disclosure
15 by that psychotherapist authorized by paragraph (19) of subdivision
16 (c) of Section 56.10, in which the additional information is clearly
17 necessary to prevent the serious and imminent threat disclosed
18 under that paragraph.

19 (3) Information disclosed by a psychotherapist pursuant to
20 paragraphs (14) and (22) of subdivision (c) of Section 56.10 and
21 requested by an agency investigating the abuse reported pursuant
22 to those paragraphs.

23 (f) Nothing in this section shall be construed to grant any
24 additional authority to a provider of health care, health care service
25 plan, or contractor to disclose information to a person or entity
26 without the patient’s consent.

27 SEC. 4. Section 56.107 is added to the Civil Code, to read:

28 56.107. (a) Notwithstanding any other law, and to the extent
29 permitted by federal law, a health care service plan or health insurer
30 shall take the following steps to protect the confidentiality of an
31 insured individual’s medical information as follows:

32 (1) ~~For an insured individual who is insured or covered as~~
33 ~~a dependent on another person’s health care service plan or health~~
34 ~~insurance policy, a health care service plan or health insurer shall~~
35 ~~not send insurance communications relating to sensitive services:~~

36 ~~(A) Unless the health care service plan or health insurer has~~
37 ~~received an authorization for insurance communications from an~~
38 ~~insured individual who is under 26 years of age and insured as a~~
39 ~~dependent on another person’s insurance policy: services, unless~~
40 ~~the insurance communication is required by federal law. If required~~

1 *by federal law, the insurance communication shall comply with*
2 *either of the following:*

3 *(A) The health care service plan or health insurer shall send*
4 *the required insurance communication to the insured individual*
5 *in compliance with a confidential communications request received*
6 *from the insured individual.*

7 *(B) If the health care service plan or health insurer has not*
8 *received a confidential communications request, it shall send the*
9 *required insurance communication to the insured individual, and*
10 *may do so at the address furnished by the policyholder.*

11 ~~(B)~~

12 ~~(2) For an insured individual to whom subparagraph (A)~~
13 ~~paragraph (1) does not apply, a health care service plan or health~~
14 ~~insurer shall not send the insurance communication related to~~
15 ~~sensitive services if that insured individual has submitted a~~
16 ~~nondisclosure request.~~

17 ~~(2) A health care service plan or health insurer shall comply~~
18 ~~with a confidential communications request regarding sensitive~~
19 ~~services from an insured individual.~~

20 (3) A health care service plan or health insurer shall comply
21 with a nondisclosure request or a confidential communications
22 request from an insured individual who states that disclosure of
23 medical information will endanger the individual, and shall not
24 require an explanation as to the basis for the insured individual's
25 statement that disclosure will endanger the individual.

26 *(b) For the purposes of this section, a confidential*
27 *communications request or a nondisclosure request is deemed*
28 *received by the health care service plan or the health insurer within*
29 *24 hours of electronic transmission or within 72 hours of posting*
30 *by first class mail.*

31 ~~(b)~~

32 (c) Notwithstanding subdivision (a), the provider of health care
33 may make arrangements with the insured individual for the
34 payment of benefit cost sharing and communicate that arrangement
35 with the health care service plan or health insurer.

36 ~~(e)~~

37 (d) A health care service plan or health insurer shall not
38 condition enrollment or coverage in the health plan or health
39 insurance policy or eligibility for benefits on the provision of an
40 authorization for insurance communications.

1 SEC. 5. Section 56.16 of the Civil Code is amended to read:

2 56.16. For disclosures not addressed by Section 56.1007, unless
3 there is a specific written request by the patient to the contrary,
4 nothing in this part shall be construed to prevent a general acute
5 care hospital, as defined in subdivision (a) of Section 1250 of the
6 Health and Safety Code, upon an inquiry concerning a specific
7 patient, from releasing at its discretion any of the following
8 information: the patient's name, address, age, and sex; a general
9 description of the reason for treatment (whether an injury, a burn,
10 poisoning, or some unrelated condition); the general nature of the
11 injury, burn, poisoning, or other condition; the general condition
12 of the patient; and any information that is not medical information
13 as defined in Section 56.05.

14 SEC. 6. Section 1280.15 of the Health and Safety Code is
15 amended to read:

16 1280.15. (a) A clinic, health facility, home health agency, or
17 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
18 shall prevent unlawful or unauthorized access to, and use or
19 disclosure of, patients' medical information, as defined in Section
20 56.05 of the Civil Code and consistent with Section 130203. For
21 purposes of this section, internal paper records, electronic mail,
22 or facsimile transmissions inadvertently misdirected within the
23 same facility or health care system within the course of
24 coordinating care or delivering services shall not constitute
25 unauthorized access to, or use or disclosure of, a patient's medical
26 information. The department, after investigation, may assess an
27 administrative penalty for a violation of this section of up to
28 twenty-five thousand dollars (\$25,000) per patient whose medical
29 information was unlawfully or without authorization accessed,
30 used, or disclosed, and up to seventeen thousand five hundred
31 dollars (\$17,500) per subsequent occurrence of unlawful or
32 unauthorized access, use, or disclosure of that patient's medical
33 information. For purposes of the investigation, the department
34 shall consider the clinic's, health facility's, agency's, or hospice's
35 history of compliance with this section and other related state and
36 federal statutes and regulations, the extent to which the facility
37 detected violations and took preventative action to immediately
38 correct and prevent past violations from recurring, and factors
39 outside its control that restricted the facility's ability to comply
40 with this section. The department shall have full discretion to

1 consider all factors when determining the amount of an
2 administrative penalty pursuant to this section.

3 (b) (1) A clinic, health facility, home health agency, or hospice
4 to which subdivision (a) applies shall report any unlawful or
5 unauthorized access to, or use or disclosure of, a patient's medical
6 information to the department no later than five business days after
7 the unlawful or unauthorized access, use, or disclosure has been
8 detected by the clinic, health facility, home health agency, or
9 hospice.

10 (2) Subject to subdivision (c), a clinic, health facility, home
11 health agency, or hospice shall also report any unlawful or
12 unauthorized access to, or use or disclosure of, a patient's medical
13 information to the affected patient or the patient's representative
14 at the last known address, no later than five business days after
15 the unlawful or unauthorized access, use, or disclosure has been
16 detected by the clinic, health facility, home health agency, or
17 hospice.

18 (c) (1) A clinic, health facility, home health agency, or hospice
19 shall delay the reporting, as required pursuant to paragraph (2) of
20 subdivision (b), of any unlawful or unauthorized access to, or use
21 or disclosure of, a patient's medical information beyond five
22 business days if a law enforcement agency or official provides the
23 clinic, health facility, home health agency, or hospice with a written
24 or oral statement that compliance with the reporting requirements
25 of paragraph (2) of subdivision (b) would likely impede the law
26 enforcement agency's investigation that relates to the unlawful or
27 unauthorized access to, and use or disclosure of, a patient's medical
28 information and specifies a date upon which the delay shall end,
29 not to exceed 60 days after a written request is made, or 30 days
30 after an oral request is made. A law enforcement agency or official
31 may request an extension of a delay based upon a written
32 declaration that there exists a bona fide, ongoing, significant
33 criminal investigation of serious wrongdoing relating to the
34 unlawful or unauthorized access to, and use or disclosure of, a
35 patient's medical information, that notification of patients will
36 undermine the law enforcement agency's investigation, and that
37 specifies a date upon which the delay shall end, not to exceed 60
38 days after the end of the original delay period.

1 (2) If the statement of the law enforcement agency or official
2 is made orally, then the clinic, health facility, home health agency,
3 or hospice shall do both of the following:

4 (A) Document the oral statement, including, but not limited to,
5 the identity of the law enforcement agency or official making the
6 oral statement and the date upon which the oral statement was
7 made.

8 (B) Limit the delay in reporting the unlawful or unauthorized
9 access to, or use or disclosure of, the patient's medical information
10 to the date specified in the oral statement, not to exceed 30 calendar
11 days from the date that the oral statement is made, unless a written
12 statement that complies with the requirements of this subdivision
13 is received during that time.

14 (3) A clinic, health facility, home health agency, or hospice
15 shall submit a report that is delayed pursuant to this subdivision
16 not later than five business days after the date designated as the
17 end of the delay.

18 (d) If a clinic, health facility, home health agency, or hospice
19 to which subdivision (a) applies violates subdivision (b), the
20 department may assess the licensee a penalty in the amount of one
21 hundred dollars (\$100) for each day that the unlawful or
22 unauthorized access, use, or disclosure is not reported to the
23 department or the affected patient, following the initial five-day
24 period specified in subdivision (b). However, the total combined
25 penalty assessed by the department under subdivision (a) and this
26 subdivision shall not exceed two hundred fifty thousand dollars
27 (\$250,000) per reported event. For enforcement purposes, it shall
28 be presumed that the facility did not notify the affected patient if
29 the notification was not documented. This presumption may be
30 rebutted by a licensee only if the licensee demonstrates, by a
31 preponderance of the evidence, that the notification was made.

32 (e) In enforcing subdivisions (a) and (d), the department shall
33 take into consideration the special circumstances of small and rural
34 hospitals, as defined in Section 124840, and primary care clinics,
35 as defined in subdivision (a) of Section 1204, in order to protect
36 access to quality care in those hospitals and clinics. When assessing
37 a penalty on a skilled nursing facility or other facility subject to
38 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
39 only the higher of either a penalty for the violation of this section

1 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
2 not both.

3 (f) All penalties collected by the department pursuant to this
4 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
5 into the Internal Departmental Quality Improvement Account,
6 which is hereby created within the Special Deposit Fund under
7 Section 16370 of the Government Code. Upon appropriation by
8 the Legislature, moneys in the account shall be expended for
9 internal quality improvement activities in the Licensing and
10 Certification Program.

11 (g) If the licensee disputes a determination by the department
12 regarding a failure to prevent or failure to timely report unlawful
13 or unauthorized access to, or use or disclosure of, patients' medical
14 information, or the imposition of a penalty under this section, the
15 licensee may, within 10 days of receipt of the penalty assessment,
16 request a hearing pursuant to Section 131071. Penalties shall be
17 paid when appeals have been exhausted and the penalty has been
18 upheld.

19 (h) In lieu of disputing the determination of the department
20 regarding a failure to prevent or failure to timely report unlawful
21 or unauthorized access to, or use or disclosure of, patients' medical
22 information, transmit to the department 75 percent of the total
23 amount of the administrative penalty, for each violation, within
24 30 business days of receipt of the administrative penalty.

25 (i) Notwithstanding any other law, the department may refer
26 violations of this section to the Office of Health Information
27 Integrity for enforcement pursuant to Section 130303.

28 (j) For purposes of this section, the following definitions shall
29 apply:

30 (1) "Reported event" means all breaches included in any single
31 report that is made pursuant to subdivision (b), regardless of the
32 number of breach events contained in the report.

33 (2) "Unauthorized" means the inappropriate access, review, or
34 viewing of patient medical information without a direct need for
35 medical diagnosis, treatment, or other lawful use as permitted by
36 the Confidentiality of Medical Information Act (Part 2.6
37 (commencing with Section 56) of Division 1 of the Civil Code)
38 or any other statute or regulation governing the lawful access, use,
39 or disclosure of medical information.

1 SEC. 7. Section 1348.5 is added to the Health and Safety Code,
2 to read:

3 1348.5. (a) A health care service plan shall comply with the
4 provisions of Section 56.107 of the Civil Code to the extent
5 required by that section. To the extent this chapter conflicts with
6 Section 56.107 of the Civil Code, the provisions of Section 56.107
7 of the Civil Code shall control.

8 (b) The department shall review health care service plan
9 contracts and privacy policies for compliance with this section
10 only during the normal application approval or modification
11 process conducted pursuant to Sections 1351 and 1352.

12 SEC. 8. Section 1627 of the Health and Safety Code is amended
13 to read:

14 1627. (a) (1) On or before July 1, 2011, the University of
15 California is requested to develop a plan to establish and administer
16 the Umbilical Cord Blood Collection Program for the purpose of
17 collecting units of umbilical cord blood for public use in
18 transplantation and providing nonclinical units for research
19 pertaining to biology and new clinical utilization of stem cells
20 derived from the blood and tissue of the placenta and umbilical
21 cord. The program shall conclude no later than January 1, 2018.

22 (2) For purposes of this article, “public use” means both of the
23 following:

24 (A) The collection of umbilical cord blood units from genetically
25 diverse donors that will be owned by the University of California.
26 This inventory shall be accessible by the National Registry and by
27 qualified California-based and other United States and international
28 registries and transplant centers to increase the likelihood of
29 providing suitably matched donor cord blood units to patients or
30 research participants who are in need of a transplant.

31 (B) Cord blood units with a lower number of cells than deemed
32 necessary for clinical transplantation and units that meet clinical
33 requirements, but for other reasons are unsuitable, unlikely to be
34 transplanted, or otherwise unnecessary for clinical use, may be
35 made available for research.

36 (b) (1) In order to implement the collection goals of this
37 program, the University of California may, commensurate with
38 available funds appropriated to the University of California for
39 this program, contract with one or more selected applicant entities

1 that have demonstrated the competence to collect and ship cord
2 blood units in compliance with federal guidelines and regulations.

3 (2) It is the intent of the Legislature that, if the University of
4 California contracts with another entity pursuant to this subdivision,
5 the following shall apply:

6 (A) The University of California may use a competitive process
7 to identify the best proposals submitted by applicant entities to
8 administer the collection and research objectives of the program,
9 to the extent that the University of California chooses not to
10 undertake these activities itself.

11 (B) In order to qualify for selection under this section to receive,
12 process, cryopreserve, or bank cord blood units, the entity shall,
13 at a minimum, have obtained an investigational new drug (IND)
14 exemption from the FDA or a biologic license from the FDA, as
15 appropriate, to manufacture clinical grade cord blood stem cell
16 units for clinical indications.

17 (C) In order to qualify to receive appropriate cord blood units
18 and placental tissue to advance the research goals of this program,
19 an entity shall, at a minimum, be a laboratory recognized as having
20 performed peer-reviewed research on stem and progenitor cells,
21 including those derived from placental or umbilical cord blood
22 and postnatal tissue.

23 (3) A medical provider or research facility shall comply with,
24 and shall be subject to, existing penalties for violations of all
25 applicable state and federal laws with respect to the protection of
26 any medical information, as defined in Section 56.05 of the Civil
27 Code, and any personally identifiable information contained in the
28 umbilical cord blood inventory.

29 (c) The University of California is encouraged to make every
30 effort to avoid duplication or conflicts with existing and ongoing
31 programs and to leverage existing resources.

32 (d) (1) All information collected pursuant to the program shall
33 be confidential, and shall be used solely for the purposes of the
34 program, including research. Access to confidential information
35 shall be limited to authorized persons who are bound by appropriate
36 institutional policies or who otherwise agree, in writing, to maintain
37 the confidentiality of that information.

38 (2) Any person who, in violation of applicable institutional
39 policies or a written agreement to maintain confidentiality,
40 discloses any information provided pursuant to this section, or

1 who uses information provided pursuant to this section in a manner
2 other than as approved pursuant to this section, may be denied
3 further access to any confidential information maintained by the
4 University of California, and shall be subject to a civil penalty not
5 exceeding one thousand dollars (\$1,000). The penalty provided
6 for in this section shall not be construed to limit or otherwise
7 restrict any remedy, provisional or otherwise, provided by law for
8 the benefit of the University of California or any other person
9 covered by this section.

10 (3) Notwithstanding the restrictions of this section, an individual
11 to whom the confidential information pertains shall have access
12 to his or her own personal information.

13 (e) It is the intent of the Legislature that the plan and
14 implementation of the program provide for both of the following:

15 (1) Limit fees for access to cord blood units to the reasonable
16 and actual costs of storage, handling, and providing units, as well
17 as for related services such as donor matching and testing of cord
18 blood and other programs and services typically provided by cord
19 blood banks and public use programs.

20 (2) The submittal of the plan developed pursuant to subdivision
21 (a) to the health and fiscal committees of the Legislature.

22 (f) It is additionally the intent of the Legislature that the plan
23 and implementation of the program attempt to provide for all of
24 the following:

25 (1) Development of a strategy to increase voluntary participation
26 by hospitals in the collection and storage of umbilical cord blood
27 and identify funding sources to offset the financial impact on
28 hospitals.

29 (2) Consideration of a medical contingency response program
30 to prepare for and respond effectively to biological, chemical, or
31 radiological attacks, accidents, and other public health emergencies
32 where victims potentially benefit from treatment.

33 (3) Exploration of the feasibility of operating the program as a
34 self-funding program, including the potential for charging users a
35 reimbursement fee.

36 SEC. 9. Section 117928 of the Health and Safety Code is
37 amended to read:

38 117928. (a) Any common storage facility for the collection
39 of medical waste produced by small quantity generators operating

1 independently, but sharing common storage facilities, shall have
2 a permit issued by the enforcement agency.

3 (b) A permit for any common storage facility specified in
4 subdivision (a) may be obtained by any one of the following:

5 (1) A provider of health care as defined in Section 56.05 of the
6 Civil Code.

7 (2) The registered hazardous waste transporter.

8 (3) The property owner.

9 (4) The property management firm responsible for providing
10 tenant services to the medical waste generators.

11 SEC. 10. Section 120985 of the Health and Safety Code is
12 amended to read:

13 120985. (a) Notwithstanding Section 120980, the results of
14 an HIV test that identifies or provides identifying characteristics
15 of the person to whom the test results apply may be recorded by
16 the physician who ordered the test in the test subject's medical
17 record or otherwise disclosed without written authorization of the
18 subject of the test, or the subject's representative as set forth in
19 Section 121020, to the test subject's providers of health care, as
20 defined in Section 56.05 of the Civil Code, for purposes of
21 diagnosis, care, or treatment of the patient, except that for purposes
22 of this section, "providers of health care" does not include a health
23 care service plan regulated pursuant to Chapter 2.2 (commencing
24 with Section 1340) of Division 2.

25 (b) Recording or disclosure of HIV test results pursuant to
26 subdivision (a) does not authorize further disclosure unless
27 otherwise permitted by law.

28 SEC. 11. Section 121010 of the Health and Safety Code is
29 amended to read:

30 121010. Notwithstanding Section 120975 or 120980, the results
31 of a blood test to detect antibodies to the probable causative agent
32 of AIDS may be disclosed to any of the following persons without
33 written authorization of the subject of the test:

34 (a) To the subject of the test or the subject's legal representative,
35 conservator, or to any person authorized to consent to the test
36 pursuant to subdivision (b) of Section 120990.

37 (b) To a test subject's provider of health care, as defined in
38 Section 56.05 of the Civil Code, except that for purposes of this
39 section, "provider of health care" does not include a health care

1 service plan regulated pursuant to Chapter 2.2 (commencing with
2 Section 1340) of Division 2.

3 (c) To an agent or employee of the test subject’s provider of
4 health care who provides direct patient care and treatment.

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

9 (e) (1) To the designated officer of an emergency response
10 employee, and from that designated officer to an emergency
11 response employee regarding possible exposure to HIV or AIDS,
12 but only to the extent necessary to comply with provisions of the
13 Ryan White Comprehensive AIDS Resources Emergency Act of
14 1990 (Public Law 101-381; 42 U.S.C. Sec. 201).

15 (2) For purposes of this subdivision, “designated officer” and
16 “emergency response employee” have the same meaning as these
17 terms are used in the Ryan White Comprehensive AIDS Resources
18 Emergency Act of 1990 (Public Law 101-381; 42 U.S.C. Sec.
19 201).

20 (3) The designated officer shall be subject to the confidentiality
21 requirements specified in Section 120980, and may be personally
22 liable for unauthorized release of any identifying information about
23 the HIV results. Further, the designated officer shall inform the
24 exposed emergency response employee that the employee is also
25 subject to the confidentiality requirements specified in Section
26 120980, and may be personally liable for unauthorized release of
27 any identifying information about the HIV test results.

28 SEC. 12. Section 130201 of the Health and Safety Code is
29 amended to read:

30 130201. For purposes of this division, the following definitions
31 apply:

32 (a) “Director” means the Director of the Office of Health
33 Information Integrity.

34 (b) “Medical information” means the term as defined in Section
35 56.05 of the Civil Code.

36 (c) “Office” means the Office of Health Information Integrity.

37 (d) “Provider of health care” means the term as defined in
38 Sections 56.05 and 56.06 of the Civil Code.

39 (e) “Unauthorized access” means the inappropriate review or
40 viewing of patient medical information without a direct need for

1 diagnosis, treatment, or other lawful use as permitted by the
2 Confidentiality of Medical Information Act (Part 2.6 (commencing
3 with Section 56) of Division 1 of the Civil Code) or by other
4 statutes or regulations governing the lawful access, use, or
5 disclosure of medical information.

6 SEC. 13. Section 791.29 is added to the Insurance Code, to
7 read:

8 791.29. (a) A health insurer, as defined in subdivision (h) of
9 Section 56.05 of the Civil Code, shall comply with the provisions
10 of Section 56.107 of the Civil Code to the extent required by that
11 section. To the extent this article conflicts with Section 56.107 of
12 the Civil Code, the provisions of Section 56.107 of the Civil Code
13 shall control.

14 (b) The department shall review insurance products and privacy
15 policies for compliance with this section only during the normal
16 policy issuance process conducted pursuant to Sections 10290 and
17 10291.

18 SEC. 14. Section 3208.05 of the Labor Code is amended to
19 read:

20 3208.05. (a) "Injury" includes a reaction to or a side effect
21 arising from health care provided by an employer to a health care
22 worker, which health care is intended to prevent the development
23 or manifestation of any bloodborne disease, illness, syndrome, or
24 condition recognized as occupationally incurred by Cal-OSHA,
25 the federal Centers for Disease Control and Prevention, or other
26 appropriate governmental entities. This section shall apply only
27 to preventive health care that the employer provided to a health
28 care worker under the following circumstances: (1) prior to an
29 exposure because of risk of occupational exposure to such a
30 disease, illness, syndrome, or condition, or (2) where the preventive
31 care is provided as a consequence of a documented exposure to
32 blood or bodily fluid containing blood that arose out of and in the
33 course of employment. Such a disease, illness, syndrome, or
34 condition includes, but is not limited to, hepatitis, and the human
35 immunodeficiency virus. Such preventive health care, and any
36 disability indemnity or other benefits required as a result of the
37 preventive health care provided by the employer, shall be
38 compensable under the workers' compensation system. The
39 employer may require the health care worker to document that the
40 employer provided the preventive health care and that the reaction

1 or side effects arising from the preventive health care resulted in
2 lost work time, health care costs, or other costs normally
3 compensable under workers' compensation.

4 (b) The benefits of this section shall not be provided to a health
5 care worker for a reaction to or side effect from health care
6 intended to prevent the development of the human
7 immunodeficiency virus if the worker claims a work-related
8 exposure and if the worker tests positive within 48 hours of that
9 exposure to a test to determine the presence of the human
10 immunodeficiency virus.

11 (c) For purposes of this section, "health care worker" includes
12 any person who is an employee of a provider of health care as
13 defined in Section 56.05 of the Civil Code, and who is exposed to
14 human blood or other bodily fluids contaminated with blood in
15 the course of employment, including, but not limited to, a registered
16 nurse, a licensed vocational nurse, a certified nurse aide, clinical
17 laboratory technologist, dental hygienist, physician, janitor, and
18 housekeeping worker. "Health care worker" does not include an
19 employee who provides employee health services for an employer
20 primarily engaged in a business other than providing health care.

21 SEC. 15. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.