AB 2028 (Hernandez)- Confidentiality of Medical Information: Disclosure

Introduced February 17, 2010; Read second time. To third reading August 3, 2010

This bill clarifies current law to explicitly authorize specified mandated reporters to release private health information during the course of a child abuse or child neglect investigation.

This bill is sponsored by the California Association of Marriage and Family Therapists to clarify that therapist's are authorized to release private medical information in the course of child abuse or neglect investigation.

This bill would amend the Confidentiality of Medical Information Act (CMIA) to expressly authorize mandated reporters of child abuse and neglect and elder and dependent adult abuse to subsequently disclose requested information to the agency investigating the report of abuse or neglect. This bill would exempt information disclosed by a psychotherapist who is required to make a report from existing law's requirement that the entity requesting the information meet certain request and notification requirements. This bill would also make a technical correction to last year's AB 681 (Hernandez, Ch. 464, Stats. 2009).

Under existing law, individuals in certain professions are required to report child abuse and neglect or elder and dependent adult abuse to the appropriate agencies. For example, the Child Abuse and Neglect Reporting Act defines "mandated reporters" to include, among others, teachers, social workers, probation officers, peace officers, firefighters, physicians, psychiatrists, psychologists, marriage and family counselors, and medical examiners. Those mandated reporters must report suspected child abuse or neglect to a police or sheriff's department whenever the reporter has knowledge of or observes a child whom the reporter knows or reasonably suspects has been the victim of child abuse or neglect. Under existing law, these mandated reporters may disclose relevant information to agencies that are investigating the reported child abuse or neglect.

Similarly, under the Elder Abuse and Dependent Adult Civil Protection Act, certain individuals who care for an elder or dependent adult, such as administrators, licensed staff, and supervisors of facilities that care for elder or dependent adults, health practitioners, and local law enforcement are mandated reporters. Mandated reporters who are physicians, nurses, or psychotherapists do not need to make a report in certain situations. And, mandated reporters are authorized to disclose relevant information to agencies investigating the reported abuse.

Under CMIA, health care providers, including psychotherapists, are prohibited from disclosing a patient's medical information unless a mandatory or permissive exception applies. This bill, sponsored by the California Association of Marriage and Family Therapists, would make clear that mandated reporters of child abuse and neglect and elder and dependent adult abuse could subsequently disclose requested information to the agency investigating the report of abuse or neglect without violating CMIA.

Information about health is highly sensitive and is protected by numerous provisions under state and federal law. Providers are generally prohibited from releasing medical information under California's Confidential Medical Information Act (CMIA). The federal

Health Insurance Portability and Accountability Act (HIPAA) sets a national standard for privacy of health information, but HIPAA only applies to medical records maintained by health care providers, health plans, and health clearinghouses and only if the facility maintains and transmits records in electronic form.

A good deal of health-related information exists outside of health facilities and the records of health insurers. The extent of privacy protection given to medical information often depends on where the records are located and the purpose for which the information was collected. This bill ensures that health information is available to support child abuse and neglect investigations.

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN SENATE JUNE 3, 2010

AMENDED IN ASSEMBLY APRIL 13, 2010

AMENDED IN ASSEMBLY MARCH 10, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 2028

Introduced by Assembly Member Hernandez

February 17, 2010

An act to amend Sections 56.10 and 56.104 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 2028, as amended, Hernandez. Confidentiality of medical information: disclosure.

Existing law specifies certain agencies to which mandated reports of suspected child abuse or neglect shall be made. Existing law authorizes information relevant to the incident of child abuse or neglect to be given to an investigator from an agency that is investigating the case, as provided. Existing law also authorizes information relevant to the incident of elder or dependent adult abuse to be given to an investigator from an agency investigating the case, as provided.

Existing law, the Confidentiality of Medical Information Act, prohibits a health care provider, a contractor, or a health care service plan from disclosing medical information, as defined, regarding a patient of the provider or an enrollee or subscriber of the health care service plan without first obtaining an authorization, except as specified. Existing

law makes a violation of the act that results in economic loss or personal injury to a patient a misdemeanor.

This bill would authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect, or to the incident of elder or dependent adult abuse, that may be given to an investigator from an agency investigating the case, including the investigation report and other pertinent materials that may be given to the licensing agency. By changing the definition of a crime, the bill would impose a state-mandated local program.

Existing law prohibits providers of health care, health care service plans, and contractors from releasing medical information to persons authorized by law to receive that information if the information specifically relates to a patient's participation in outpatient treatment with a psychotherapist, unless the requester of the information submits a specified written request for the information to the patient and to the provider of health care, health care service plan, or contractor. However, existing law excepts from those provisions specified disclosures that are made for the purpose of diagnosis or treatment of a patient or that are made to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims.

This bill would also except from these provisions disclosures that are specifically authorized by law, including, but not limited to disclosures made to the federal Food and Drug Administration of adverse events related to drug products or medical devices or disclosures that authorize a health care provider or a health care service plan to disclose information relevant to the incident of child abuse or neglect, or to the incident of elder or dependent adult abuse, in the report that may be given to an investigator from an agency investigating the case or by a mandated reporter, as provided.

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 56.10 of the Civil Code is amended to
2 read:
3 56.10. (a) No provider of health care, health care service plan,
4 or contractor shall disclose medical information regarding a patient
5 of the provider of health care or an enrollee or subscriber of a
6 health care service plan without first obtaining an authorization,
7 except as provided in subdivision (b) or (c).
8 (b) A provider of health care, a health care service plan, or a
9 contractor shall disclose medical information if the disclosure is
10 compelled by any of the following:
11 (1) By a court pursuant to an order of that court.
12 (2) By a board, commission, or administrative agency for
13 purposes of adjudication pursuant to its lawful authority.
14 (3) By a party to a proceeding before a court or administrative
15 agency pursuant to a subpoena, subpoena duces tecum, notice to
16 appear served pursuant to Section 1987 of the Code of Civil
17 Procedure, or any provision authorizing discovery in a proceeding
18 before a court or administrative agency.
19 (4) By a board, commission, or administrative agency pursuant
20 to an investigative subpoena issued under Article 2 (commencing
21 with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title
22 2 of the Government Code.
23 (5) By an arbitrator or arbitration panel, when arbitration is
24 lawfully requested by either party, pursuant to a subpoena duces
25 tecum issued under Section 1282.6 of the Code of Civil Procedure,
26 or another provision authorizing discovery in a proceeding before
27 an arbitrator or arbitration panel.
28 (6) By a search warrant lawfully issued to a governmental law
29 enforcement agency.
30 (7) By the patient or the patient's representative pursuant to
31 Chapter 1 (commencing with Section 123100) of Part 1 of Division
32 106 of the Health and Safety Code.
33 (8) By a coroner, when requested in the course of an
34 investigation by the coroner's office for the purpose of identifying
35 the decedent or locating next of kin, or when investigating deaths
36 that may involve public health concerns, organ or tissue donation,
37 child abuse, elder abuse, suicides, poisonings, accidents, sudden
38 infant deaths, suspicious deaths, unknown deaths, or criminal

1 deaths, or when otherwise authorized by the decedent's
2 representative. Medical information requested by the coroner under
3 this paragraph shall be limited to information regarding the patient
4 who is the decedent and who is the subject of the investigation and
5 shall be disclosed to the coroner without delay upon request.
6 (9) When otherwise specifically required by law.
7 (c) A provider of health care or a health care service plan may
8 disclose medical information as follows:
9 (1) The information may be disclosed to providers of health
10 care, health care service plans, contractors, or other health care
11 professionals or facilities for purposes of diagnosis or treatment
12 of the patient. This includes, in an emergency situation, the
13 communication of patient information by radio transmission or
14 other means between emergency medical personnel at the scene
15 of an emergency, or in an emergency medical transport vehicle,
16 and emergency medical personnel at a health facility licensed
17 pursuant to Chapter 2 (commencing with Section 1250) of Division
18 2 of the Health and Safety Code.
19 (2) The information may be disclosed to an insurer, employer,
20 health care service plan, hospital service plan, employee benefit
21 plan, governmental authority, contractor, or any other person or
22 entity responsible for paying for health care services rendered to
23 the patient, to the extent necessary to allow responsibility for
24 payment to be determined and payment to be made. If (A) the
25 patient is, by reason of a comatose or other disabling medical
26 condition, unable to consent to the disclosure of medical
27 information and (B) no other arrangements have been made to pay
28 for the health care services being rendered to the patient, the
29 information may be disclosed to a governmental authority to the
30 extent necessary to determine the patient's eligibility for, and to
31 obtain, payment under a governmental program for health care
32 services provided to the patient. The information may also be
33 disclosed to another provider of health care or health care service
34 plan as necessary to assist the other provider or health care service
35 plan in obtaining payment for health care services rendered by that
36 provider of health care or health care service plan to the patient.
37 (3) The information may be disclosed to a person or entity that
38 provides billing, claims management, medical data processing, or
39 other administrative services for providers of health care or health
40 care service plans or for any of the persons or entities specified in

1 paragraph (2). However, information so disclosed shall not be
2 further disclosed by the recipient in a way that would violate this
3 part.
4 (4) The information may be disclosed to organized committees
5 and agents of professional societies or of medical staffs of licensed
6 hospitals, licensed health care service plans, professional standards
7 review organizations, independent medical review organizations
8 and their selected reviewers, utilization and quality control peer
9 review organizations as established by Congress in Public Law
10 97-248 in 1982, contractors, or persons or organizations insuring,
11 responsible for, or defending professional liability that a provider
12 may incur, if the committees, agents, health care service plans,
13 organizations, reviewers, contractors, or persons are engaged in
14 reviewing the competence or qualifications of health care
15 professionals or in reviewing health care services with respect to
16 medical necessity, level of care, quality of care, or justification of
17 charges.
18 (5) The information in the possession of a provider of health
19 care or health care service plan may be reviewed by a private or
20 public body responsible for licensing or accrediting the provider
21 of health care or health care service plan. However, no
22 patient-identifying medical information may be removed from the
23 premises except as expressly permitted or required elsewhere by
24 law, nor shall that information be further disclosed by the recipient
25 in a way that would violate this part.
26 (6) The information may be disclosed to the county coroner in
27 the course of an investigation by the coroner's office when
28 requested for all purposes not included in paragraph (8) of
29 subdivision (b).
30 (7) The information may be disclosed to public agencies, clinical
31 investigators, including investigators conducting epidemiologic
32 studies, health care research organizations, and accredited public
33 or private nonprofit educational or health care institutions for bona
34 fide research purposes. However, no information so disclosed shall
35 be further disclosed by the recipient in a way that would disclose
36 the identity of a patient or violate this part.
37 (8) A provider of health care or health care service plan that has
38 created medical information as a result of employment-related
39 health care services to an employee conducted at the specific prior

1 written request and expense of the employer may disclose to the
2 employee's employer that part of the information that:
3 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
4 or challenge to which the employer and the employee are parties
5 and in which the patient has placed in issue his or her medical
6 history, mental or physical condition, or treatment, provided that
7 information may only be used or disclosed in connection with that
8 proceeding.
9 (B) Describes functional limitations of the patient that may
10 entitle the patient to leave from work for medical reasons or limit
11 the patient's fitness to perform his or her present employment,
12 provided that no statement of medical cause is included in the
13 information disclosed.
14 (9) Unless the provider of health care or a health care service
15 plan is notified in writing of an agreement by the sponsor, insurer,
16 or administrator to the contrary, the information may be disclosed
17 to a sponsor, insurer, or administrator of a group or individual
18 insured or uninsured plan or policy that the patient seeks coverage
19 by or benefits from, if the information was created by the provider
20 of health care or health care service plan as the result of services
21 conducted at the specific prior written request and expense of the
22 sponsor, insurer, or administrator for the purpose of evaluating the
23 application for coverage or benefits.
24 (10) The information may be disclosed to a health care service
25 plan by providers of health care that contract with the health care
26 service plan and may be transferred among providers of health
27 care that contract with the health care service plan, for the purpose
28 of administering the health care service plan. Medical information
29 shall not otherwise be disclosed by a health care service plan except
30 in accordance with this part.
31 (11) This part does not prevent the disclosure by a provider of
32 health care or a health care service plan to an insurance institution,
33 agent, or support organization, subject to Article 6.6 (commencing
34 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
35 Insurance Code, of medical information if the insurance institution,
36 agent, or support organization has complied with all of the
37 requirements for obtaining the information pursuant to Article 6.6
38 (commencing with Section 791) of Chapter 1 of Part 2 of Division
39 1 of the Insurance Code.

(12) The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.

(13) The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.

(14) The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code by a person required to make a report pursuant to Sections 11165.9 and 11166 of the Penal Code, *provided that those disclosures concern a report made by that person.*

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

(16) The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data. However, no information so disclosed shall be further disclosed by the recipient in a way that would violate this part, including the unauthorized manipulation of coded or encrypted medical information that reveals individually identifiable medical information.

(17) For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed as follows: (A) to an entity contracting with a health care service plan or the health care service

1 plan's contractors to monitor or administer care of enrollees for a
2 covered benefit, if the disease management services and care are
3 authorized by a treating physician, or (B) to a disease management
4 organization, as defined in Section 1399.900 of the Health and
5 Safety Code, that complies fully with the physician authorization
6 requirements of Section 1399.902 of the Health and Safety Code,
7 if the health care service plan or its contractor provides or has
8 provided a description of the disease management services to a
9 treating physician or to the health care service plan's or contractor's
10 network of physicians. This paragraph does not require physician
11 authorization for the care or treatment of the adherents of a
12 well-recognized church or religious denomination who depend
13 solely upon prayer or spiritual means for healing in the practice
14 of the religion of that church or denomination.
15 (18) The information may be disclosed, as permitted by state
16 and federal law or regulation, to a local health department for the
17 purpose of preventing or controlling disease, injury, or disability,
18 including, but not limited to, the reporting of disease, injury, vital
19 events, including, but not limited to, birth or death, and the conduct
20 of public health surveillance, public health investigations, and
21 public health interventions, as authorized or required by state or
22 federal law or regulation.
23 (19) The information may be disclosed, consistent with
24 applicable law and standards of ethical conduct, by a
25 psychotherapist, as defined in Section 1010 of the Evidence Code,
26 if the psychotherapist, in good faith, believes the disclosure is
27 necessary to prevent or lessen a serious and imminent threat to the
28 health or safety of a reasonably foreseeable victim or victims, and
29 the disclosure is made to a person or persons reasonably able to
30 prevent or lessen the threat, including the target of the threat.
31 (20) The information may be disclosed as described in Section
32 56.103.
33 (21) (A) The information may be disclosed to an employee
34 welfare benefit plan, as defined under Section 3(1) of the Employee
35 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
36 which is formed under Section 302(c)(5) of the Taft-Hartley Act
37 (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
38 benefit plan provides medical care, and may also be disclosed to
39 an entity contracting with the employee welfare benefit plan for
40 billing, claims management, medical data processing, or other

1 administrative services related to the provision of medical care to
2 persons enrolled in the employee welfare benefit plan for health
3 care coverage, if all of the following conditions are met:
4 (i) The disclosure is for the purpose of determining eligibility,
5 coordinating benefits, or allowing the employee welfare benefit
6 plan, or the contracting entity, to advocate on the behalf of a patient
7 or enrollee with a provider, a health care service plan, or a state
8 or federal regulatory agency.
9 (ii) The request for the information is accompanied by a written
10 authorization for the release of the information submitted in a
11 manner consistent with subdivision (a) and Section 56.11.
12 (iii) The disclosure is authorized by and made in a manner
13 consistent with the Health Insurance Portability and Accountability
14 Act of 1996 (Public Law 104-191).
15 (iv) Any information disclosed is not further used or disclosed
16 by the recipient in any way that would directly or indirectly violate
17 this part or the restrictions imposed by Part 164 of Title 45 of the
18 Code of Federal Regulations, including the manipulation of the
19 information in any way that might reveal individually identifiable
20 medical information.
21 (B) For purposes of this paragraph, Section 1374.8 of the Health
22 and Safety Code shall not apply.
23 (22) Information may be disclosed pursuant to subdivision (a)
24 of Section 15633.5 of the Welfare and Institutions Code by a person
25 required to make a report pursuant to Section 15630 of the Welfare
26 and Institutions Code, *provided that the disclosure under*
27 *subdivision (a) of Section 15633.5 concerns a report made by that*
28 *person.* Covered entities, as they are defined in Section 160.103
29 of Title 45 of the Code of Federal Regulations, shall comply with
30 the requirements of the Health Insurance Portability and
31 Accountability Act (HIPAA) privacy rule pursuant to subsection
32 (c) of Section 164.512 of Title 45 of the Code of Federal
33 Regulations if the disclosure is not for the purpose of public health
34 surveillance, investigation, intervention, or reporting an injury or
35 death.
36 (d) Except to the extent expressly authorized by a patient or
37 enrollee or subscriber or as provided by subdivisions (b) and (c),
38 a provider of health care, health care service plan, contractor, or
39 corporation and its subsidiaries and affiliates shall not intentionally
40 share, sell, use for marketing, or otherwise use medical information

for a purpose not necessary to provide health care services to the patient.

(e) Except to the extent expressly authorized by a patient or enrollee or subscriber or as provided by subdivisions (b) and (c), a contractor or corporation and its subsidiaries and affiliates shall not further disclose medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan or insurer or self-insured employer received under this section to a person or entity that is not engaged in providing direct health care services to the patient or his or her provider of health care or health care service plan or insurer or self-insured employer.

SEC. 2. Section 56.104 of the Civil Code is amended to read:

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

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

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

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

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

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

(c) For purposes of this section, "psychotherapist" means a person who is both a "psychotherapist" as defined in Section 1010 of the Evidence Code and a "provider of health care" as defined in subdivision (i) of Section 56.05.

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

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

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

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

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

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

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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