

***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

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Introduced by Assembly Member Hernandez

February 17, 2010

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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.



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

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

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

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

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

37 (17) For purposes of disease management programs and services  
38 as defined in Section 1399.901 of the Health and Safety Code,  
39 information may be disclosed as follows: (A) to an entity  
40 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

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

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

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

14 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,  
15 except as provided in subdivision (e), no provider of health care,  
16 health care service plan, or contractor may release medical  
17 information to persons or entities who have requested that  
18 information and who are authorized by law to receive that  
19 information pursuant to subdivision (c) of Section 56.10, if the  
20 requested information specifically relates to the patient's  
21 participation in outpatient treatment with a psychotherapist, unless  
22 the person or entity requesting that information submits to the  
23 patient pursuant to subdivision (b) and to the provider of health  
24 care, health care service plan, or contractor a written request, signed  
25 by the person requesting the information or an authorized agent  
26 of the entity requesting the information, that includes all of the  
27 following:

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

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

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

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

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

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

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

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

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

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

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

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

39 SEC. 3. No reimbursement is required by this act pursuant to  
40 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.