SB 1407 (Leno) – Medical Information: Disclosure

Introduced February 24, 2012, Enrolled and presented to the Governor 8/31/12

This bill prohibits a psychotherapist from disclosing mental health records or information based solely on an authorization signed by a parent or guardian of that minor if the minor has been removed from the physical custody of that parent or guardian in dependency proceedings for severe abuse or neglect or risk of abuse, unless the court has issued an order authorizing the parent or guardian to be the minor's representative for the release of such information, upon finding that it would not be detrimental to the minor patient. This bill creates an exception for written mental health records maintained in electronic or physical form by hospitals, as specified, or for an oral disclosure of information.

Senate Bill No. 1407

CHAPTER 657

An act to add Section 56.106 to the Civil Code, to add Section 123116 to the Health and Safety Code, and to add Section 5328.03 to the Welfare and Institutions Code, relating to medical information.

[Approved by Governor September 27, 2012. Filed with Secretary of State September 27, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1407, Leno. Medical information: disclosure.

Existing law governs the release of a patient's medical records and medical information by a health care provider, health care service plan, pharmaceutical company, or provider. A violation of these provisions that causes economic loss or personal injury to a patient is punishable as a misdemeanor. Under existing law, a patient may inspect his or her medical records if the patient or his or her representative, as defined, presents a written request to the health care provider. Existing law also authorizes a health care provider, health care service plan, pharmaceutical company, or contractor to release a patient's medical information after receiving a valid signed authorization from the patient, the patient's legal representative, as defined, if the patient is a minor or incompetent, and other specified individuals. Existing law provides that a minor may be removed from the physical custody of his or her parents in dependency proceedings if there is a substantial danger to the physical health of the child or the child is suffering severe emotional damage and there are no reasonable means to protect the child without removing him or her.

This bill would prohibit a psychotherapist, as defined, who knows that a minor has been removed from the physical custody of his or her parent or guardian in dependency proceedings, from releasing or disclosing the information in the mental health records of that minor patient to the patient's parent or guardian based solely on an authorization to release those records signed by the parent or guardian, and from allowing the parent or guardian to inspect or obtain those records, unless the juvenile court has authorized the parent or guardian to sign an authorization for the release of those records after finding that the authorization order would not be detrimental to the minor. Under the bill, when the juvenile court issues such an order, the parent or guardian would be required to present a copy of the order to the psychotherapist before the release of the records or any information about the minor. When presented with the order, the psychotherapist would have no duty to inquire into whether a minor has been removed from the physical custody of his or her parent or guardian in dependency proceedings. Because a violation of these provisions that causes economic loss or personal injury

to a patient would be punishable as a misdemeanor, this bill would impose a state-mandated local program. The bill would not affect a psychotherapist's ability to deny a parent's or guardian's request to inspect or obtain a minor's records in specified circumstances, and would not affect the psychotherapist's immunity from liability for that decision.

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.

The people of the State of California do enact as follows:

SECTION 1. Section 56.106 is added to the Civil Code, to read:

56.106. (a) Notwithstanding Section 3025 of the Family Code, paragraph (2) of subdivision (c) of Section 56.11, or any other provision of law, a psychotherapist who knows that a minor has been removed from the custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall not release the mental health records of the minor patient and shall not disclose mental health information about that minor patient based upon an authorization to release those records signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or the information about the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) When the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient under the circumstances described in subdivision (a), the parent or guardian seeking the release of the minor's records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release

of the mental health records or information about that minor patient. Liability for a psychotherapist's decision not to release the mental health records of the minor patient or not to disclose information about the minor patient pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code when a parent or guardian presents the minor's psychotherapist with an authorization to release information or the mental health records regarding the minor patient.

SEC. 2. Section 123116 is added to the Health and Safety Code, to read:

123116. (a) Notwithstanding Section 3025 of the Family Code, paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, or any other provision of law, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) When the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of a minor patient under the circumstances described in subdivision (a), the parent or guardian requesting to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions (a) and (b) of Section 123110 before the records may be accessed by the parent or guardian.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the minor patient's mental health records. Liability for a psychotherapist's decision not to allow the parent or guardian to inspect or obtain copies of records pursuant to the authority of subdivision (a) of Section 123115 shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code when a parent or guardian presents the minor's psychotherapist with a written request to inspect or obtain copies of the minor's mental health records.

SEC. 3. Section 5328.03 is added to the Welfare and Institutions Code, to read:

5328.03. (a) (1) Notwithstanding Section 5328 of this code, Section 3025 of the Family Code, or paragraph (2) of subdivision (c) of Section 56.11 of the Civil Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not release mental health records of the minor patient and shall not disclose mental health information about that minor patient based upon an authorization to release those records or the information signed by the minor's parent or guardian. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the records or information after finding that such an order would not be detrimental to the minor patient.

(2) Notwithstanding Section 5328 of this code or Section 3025 of the Family Code, a psychotherapist who knows that a minor has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 shall not allow the parent or guardian to inspect or obtain copies of mental health records of the minor patient. This restriction shall not apply if the juvenile court has issued an order authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient after finding that such an order would not be detrimental to the minor patient.

(b) For purposes of this section, the following definitions apply:

(1) "Mental health records" means mental health records as defined by subdivision (b) of Section 123105 of the Health and Safety Code.

(2) "Psychotherapist" means a provider of health care as defined in Section 1010 of the Evidence Code.

(c) (1) When the juvenile court has issued an order described in paragraph (1) of subdivision (a), the parent or guardian seeking the release of the minor's mental health records or information about the minor shall present a copy of the court order to the psychotherapist before any records or information may be released pursuant to the signed authorization.

(2) When the juvenile court has issued an order described in paragraph (2) of subdivision (a) the parent or guardian seeking to inspect or obtain copies of the mental health records of the minor patient shall present a copy of the court order to the psychotherapist and shall comply with subdivisions

(a) and (b) of Section 123110 of the Health and Safety Code before the parent or guardian is allowed to inspect or obtain copies of the mental health records of the minor patient.

(d) Nothing in this section shall be construed to prevent or limit a psychotherapist's authority under subdivision (a) of Section 123115 of the Health and Safety Code to deny a parent's or guardian's written request to inspect or obtain copies of the minor patient's mental health records, notwithstanding the fact that the juvenile court has issued an order authorizing the parent or guardian to sign an authorization for the release of the mental health records or information about that minor patient, or to inspect or obtain copies of the minor patient's health records. Liability for a psychotherapist's decision not to release records, not to disclose information about the minor patient, or not to allow the parent or guardian to inspect or obtain copies of the mental health records pursuant to the authority of subdivision (a) of Section 123115 of the Health and Safety Code shall be governed by that section.

(e) Nothing in this section shall be construed to impose upon a psychotherapist a duty to inquire or investigate whether a child has been removed from the physical custody of his or her parent or guardian pursuant to Article 6 (commencing with Section 300) to Article 10 (commencing with Section 360), inclusive, of Chapter 2 of Part 1 of Division 2 when a parent or guardian presents the minor's psychotherapist with an order authorizing the parent or guardian to sign an authorization for the release of information or the mental health records regarding the minor patient or authorizing the parent or guardian to inspect or obtain copies of the mental health records of the minor patient.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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