

AMENDED IN ASSEMBLY APRIL 27, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2119

Introduced by Assembly Member Chu

February 17, 2016

An act to amend Section 56.10 of the Civil Code, relating to medical information.

LEGISLATIVE COUNSEL'S DIGEST

AB 2119, as amended, Chu. Medical information: disclosure: medical examiners and forensic pathologists.

~~Existing~~

(1) *Existing* law, the Confidentiality of Medical Information Act, generally prohibits a provider of health care, a health care service plan, or a contractor from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization. The act, as exceptions to this prohibition, requires disclosure of medical information by a provider of health care, a health care service plan, or a contractor to a coroner when requested by the coroner in the course of investigation for specified purposes, and authorizes disclosure when requested by the coroner in the course of investigation for any other purpose. Under existing law, medical information obtained in the course of providing certain services to specified persons is confidential and not subject to disclosure under these exceptions.

This bill would subject medical information obtained in the course of providing those services to disclosure under the above-described exceptions, would expand those exceptions to include medical information requested by a medical examiner or forensic pathologist,

as specified, and would provide that a medical examiner, forensic pathologist, or ~~coroner~~ coroner, as described, is prohibited from disclosing medical information obtained pursuant to those exceptions to a 3rd party without a court order.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Section 56.10 of the Civil Code is amended to
 2 read:
 3 56.10. (a) A provider of health care, health care service plan,
 4 or contractor shall not disclose medical information regarding a
 5 patient of the provider of health care or an enrollee or subscriber
 6 of a health care service plan without first obtaining an
 7 authorization, 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,

1 or another provision authorizing discovery in a proceeding before
2 an arbitrator or arbitration panel.

3 (6) By a search warrant lawfully issued to a governmental law
4 enforcement agency.

5 (7) By the patient or the patient's representative pursuant to
6 Chapter 1 (commencing with Section 123100) of Part 1 of Division
7 106 of the Health and Safety Code.

8 (8) By a medical examiner, forensic pathologist, or coroner,
9 when requested in the course of an investigation by the medical
10 examiner, forensic pathologist, or coroner's office for the purpose
11 of identifying the decedent or locating next of kin, or when
12 investigating deaths that may involve public health concerns, organ
13 or tissue donation, child abuse, elder abuse, suicides, poisonings,
14 accidents, sudden infant deaths, suspicious deaths, unknown deaths,
15 or criminal deaths, or upon notification of, or investigation of,
16 imminent deaths that may involve organ or tissue donation pursuant
17 to Section 7151.15 of the Health and Safety Code, or when
18 otherwise authorized by the decedent's representative. Medical
19 information requested by the medical examiner, forensic
20 pathologist, or coroner under this paragraph shall be limited to
21 information regarding the patient who is the decedent and who is
22 the subject of the investigation or who is the prospective donor
23 and shall be disclosed to the medical examiner, forensic
24 pathologist, or coroner without delay upon request. A medical
25 examiner, forensic pathologist, or coroner shall not disclose
26 medical information obtained pursuant to this paragraph to a third
27 party without a court order. Notwithstanding any other law,
28 Sections 4514 and 5328 of the Welfare and Institutions Code shall
29 not apply to information requested pursuant to this paragraph.

30 (9) When otherwise specifically required by law.

31 (c) A provider of health care or a health care service plan may
32 disclose medical information as follows:

33 (1) The information may be disclosed to providers of health
34 care, health care service plans, contractors, or other health care
35 professionals or facilities for purposes of diagnosis or treatment
36 of the patient. This includes, in an emergency situation, the
37 communication of patient information by radio transmission or
38 other means between emergency medical personnel at the scene
39 of an emergency, or in an emergency medical transport vehicle,
40 and emergency medical personnel at a health facility licensed

1 pursuant to Chapter 2 (commencing with Section 1250) of Division
2 2 of the Health and Safety Code.

3 (2) The information may be disclosed to an insurer, employer,
4 health care service plan, hospital service plan, employee benefit
5 plan, governmental authority, contractor, or other person or entity
6 responsible for paying for health care services rendered to the
7 patient, to the extent necessary to allow responsibility for payment
8 to be determined and payment to be made. If (A) the patient is, by
9 reason of a comatose or other disabling medical condition, unable
10 to consent to the disclosure of medical information and (B) no
11 other arrangements have been made to pay for the health care
12 services being rendered to the patient, the information may be
13 disclosed to a governmental authority to the extent necessary to
14 determine the patient's eligibility for, and to obtain, payment under
15 a governmental program for health care services provided to the
16 patient. The information may also be disclosed to another provider
17 of health care or health care service plan as necessary to assist the
18 other provider or health care service plan in obtaining payment
19 for health care services rendered by that provider of health care or
20 health care service plan to the patient.

21 (3) The information may be disclosed to a person or entity that
22 provides billing, claims management, medical data processing, or
23 other administrative services for providers of health care or health
24 care service plans or for any of the persons or entities specified in
25 paragraph (2). However, information so disclosed shall not be
26 further disclosed by the recipient in a way that would violate this
27 part.

28 (4) The information may be disclosed to organized committees
29 and agents of professional societies or of medical staffs of licensed
30 hospitals, licensed health care service plans, professional standards
31 review organizations, independent medical review organizations
32 and their selected reviewers, utilization and quality control peer
33 review organizations as established by Congress in Public Law
34 97-248 in 1982, contractors, or persons or organizations insuring,
35 responsible for, or defending professional liability that a provider
36 may incur, if the committees, agents, health care service plans,
37 organizations, reviewers, contractors, or persons are engaged in
38 reviewing the competence or qualifications of health care
39 professionals or in reviewing health care services with respect to

1 medical necessity, level of care, quality of care, or justification of
2 charges.

3 (5) The information in the possession of a provider of health
4 care or a health care service plan may be reviewed by a private or
5 public body responsible for licensing or accrediting the provider
6 of health care or a health care service plan. However, no
7 patient-identifying medical information may be removed from the
8 premises except as expressly permitted or required elsewhere by
9 law, nor shall that information be further disclosed by the recipient
10 in a way that would violate this part.

11 (6) The information may be disclosed to a medical examiner,
12 forensic pathologist, or county coroner in the course of an
13 investigation by the medical examiner, forensic pathologist, or
14 coroner's office when requested for all purposes not included in
15 paragraph (8) of subdivision (b). A medical examiner, forensic
16 pathologist, or coroner shall not disclose medical information
17 obtained pursuant to this paragraph to a third party without a court
18 order. Notwithstanding any other law, Sections 4514 and 5328 of
19 the Welfare and Institutions Code shall not apply to information
20 requested pursuant to this paragraph.

21 (7) The information may be disclosed to public agencies, clinical
22 investigators, including investigators conducting epidemiologic
23 studies, health care research organizations, and accredited public
24 or private nonprofit educational or health care institutions for bona
25 fide research purposes. However, no information so disclosed shall
26 be further disclosed by the recipient in a way that would disclose
27 the identity of a patient or violate this part.

28 (8) A provider of health care or health care service plan that has
29 created medical information as a result of employment-related
30 health care services to an employee conducted at the specific prior
31 written request and expense of the employer may disclose to the
32 employee's employer that part of the information that:

33 (A) Is relevant in a lawsuit, arbitration, grievance, or other claim
34 or challenge to which the employer and the employee are parties
35 and in which the patient has placed in issue his or her medical
36 history, mental or physical condition, or treatment, provided that
37 information may only be used or disclosed in connection with that
38 proceeding.

39 (B) Describes functional limitations of the patient that may
40 entitle the patient to leave from work for medical reasons or limit

1 the patient's fitness to perform his or her present employment,
2 provided that no statement of medical cause is included in the
3 information disclosed.

4 (9) Unless the provider of health care or a health care service
5 plan is notified in writing of an agreement by the sponsor, insurer,
6 or administrator to the contrary, the information may be disclosed
7 to a sponsor, insurer, or administrator of a group or individual
8 insured or uninsured plan or policy that the patient seeks coverage
9 by or benefits from, if the information was created by the provider
10 of health care or health care service plan as the result of services
11 conducted at the specific prior written request and expense of the
12 sponsor, insurer, or administrator for the purpose of evaluating the
13 application for coverage or benefits.

14 (10) The information may be disclosed to a health care service
15 plan by providers of health care that contract with the health care
16 service plan and may be transferred among providers of health
17 care that contract with the health care service plan, for the purpose
18 of administering the health care service plan. Medical information
19 shall not otherwise be disclosed by a health care service plan except
20 in accordance with this part.

21 (11) This part does not prevent the disclosure by a provider of
22 health care or a health care service plan to an insurance institution,
23 agent, or support organization, subject to Article 6.6 (commencing
24 with Section 791) of Chapter 1 of Part 2 of Division 1 of the
25 Insurance Code, of medical information if the insurance institution,
26 agent, or support organization has complied with all of the
27 requirements for obtaining the information pursuant to Article 6.6
28 (commencing with Section 791) of Chapter 1 of Part 2 of Division
29 1 of the Insurance Code.

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

39 (13) The information may be disclosed to an organ procurement
40 organization or a tissue bank processing the tissue of a decedent

1 for transplantation into the body of another person, but only with
2 respect to the donating decedent, for the purpose of aiding the
3 transplant. For the purpose of this paragraph, “tissue bank” and
4 “tissue” have the same meanings as defined in Section 1635 of the
5 Health and Safety Code.

6 (14) The information may be disclosed when the disclosure is
7 otherwise specifically authorized by law, including, but not limited
8 to, the voluntary reporting, either directly or indirectly, to the
9 federal Food and Drug Administration of adverse events related
10 to drug products or medical device problems, or to disclosures
11 made pursuant to subdivisions (b) and (c) of Section 11167 of the
12 Penal Code by a person making a report pursuant to Sections
13 11165.9 and 11166 of the Penal Code, provided that those
14 disclosures concern a report made by that person.

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

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

26 (17) For purposes of disease management programs and services
27 as defined in Section 1399.901 of the Health and Safety Code,
28 information may be disclosed as follows: (A) to an entity
29 contracting with a health care service plan or the health care service
30 plan’s contractors to monitor or administer care of enrollees for a
31 covered benefit, if the disease management services and care are
32 authorized by a treating physician, or (B) to a disease management
33 organization, as defined in Section 1399.900 of the Health and
34 Safety Code, that complies fully with the physician authorization
35 requirements of Section 1399.902 of the Health and Safety Code,
36 if the health care service plan or its contractor provides or has
37 provided a description of the disease management services to a
38 treating physician or to the health care service plan’s or contractor’s
39 network of physicians. This paragraph does not require physician
40 authorization for the care or treatment of the adherents of a

1 well-recognized church or religious denomination who depend
2 solely upon prayer or spiritual means for healing in the practice
3 of the religion of that church or denomination.

4 (18) The information may be disclosed, as permitted by state
5 and federal law or regulation, to a local health department for the
6 purpose of preventing or controlling disease, injury, or disability,
7 including, but not limited to, the reporting of disease, injury, vital
8 events, including, but not limited to, birth or death, and the conduct
9 of public health surveillance, public health investigations, and
10 public health interventions, as authorized or required by state or
11 federal law or regulation.

12 (19) The information may be disclosed, consistent with
13 applicable law and standards of ethical conduct, by a
14 psychotherapist, as defined in Section 1010 of the Evidence Code,
15 if the psychotherapist, in good faith, believes the disclosure is
16 necessary to prevent or lessen a serious and imminent threat to the
17 health or safety of a reasonably foreseeable victim or victims, and
18 the disclosure is made to a person or persons reasonably able to
19 prevent or lessen the threat, including the target of the threat.

20 (20) The information may be disclosed as described in Section
21 56.103.

22 (21) (A) The information may be disclosed to an employee
23 welfare benefit plan, as defined under Section 3(1) of the Employee
24 Retirement Income Security Act of 1974 (29 U.S.C. Sec. 1002(1)),
25 which is formed under Section 302(c)(5) of the Taft-Hartley Act
26 (29 U.S.C. Sec. 186(c)(5)), to the extent that the employee welfare
27 benefit plan provides medical care, and may also be disclosed to
28 an entity contracting with the employee welfare benefit plan for
29 billing, claims management, medical data processing, or other
30 administrative services related to the provision of medical care to
31 persons enrolled in the employee welfare benefit plan for health
32 care coverage, if all of the following conditions are met:

33 (i) The disclosure is for the purpose of determining eligibility,
34 coordinating benefits, or allowing the employee welfare benefit
35 plan or the contracting entity to advocate on the behalf of a patient
36 or enrollee with a provider, a health care service plan, or a state
37 or federal regulatory agency.

38 (ii) The request for the information is accompanied by a written
39 authorization for the release of the information submitted in a
40 manner consistent with subdivision (a) and Section 56.11.

1 (iii) The disclosure is authorized by and made in a manner
2 consistent with the Health Insurance Portability and Accountability
3 Act of 1996 (Public Law 104-191).

4 (iv) Any information disclosed is not further used or disclosed
5 by the recipient in any way that would directly or indirectly violate
6 this part or the restrictions imposed by Part 164 of Title 45 of the
7 Code of Federal Regulations, including the manipulation of the
8 information in any way that might reveal individually identifiable
9 medical information.

10 (B) For purposes of this paragraph, Section 1374.8 of the Health
11 and Safety Code shall not apply.

12 (22) Information may be disclosed pursuant to subdivision (a)
13 of Section 15633.5 of the Welfare and Institutions Code by a person
14 required to make a report pursuant to Section 15630 of the Welfare
15 and Institutions Code, provided that the disclosure under
16 subdivision (a) of Section 15633.5 concerns a report made by that
17 person. Covered entities, as they are defined in Section 160.103
18 of Title 45 of the Code of Federal Regulations, shall comply with
19 the requirements of the Health Insurance Portability and
20 Accountability Act (HIPAA) privacy rule pursuant to subsection
21 (c) of Section 164.512 of Title 45 of the Code of Federal
22 Regulations if the disclosure is not for the purpose of public health
23 surveillance, investigation, intervention, or reporting an injury or
24 death.

25 (d) Except to the extent expressly authorized by a patient,
26 enrollee, or subscriber, or as provided by subdivisions (b) and (c),
27 a provider of health care, health care service plan, contractor, or
28 corporation and its subsidiaries and affiliates shall not intentionally
29 share, sell, use for marketing, or otherwise use medical information
30 for a purpose not necessary to provide health care services to the
31 patient.

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

1 health care or health care service plan or insurer or self-insured
2 employer.

3 *(f) For purposes of this section, a reference to a “medical*
4 *examiner, forensic pathologist, or coroner” is limited to a licensed*
5 *physician who currently performs official autopsies on behalf of*
6 *a county coroner’s office or the medical examiner’s office, whether*
7 *as a government employee or under contract to that office.*

8 *SEC. 2. The Legislature finds and declares that this act imposes*
9 *a limitation on the public’s right of access to the meetings of public*
10 *bodies or the writings of public officials and agencies within the*
11 *meaning of Section 3 of Article I of the California Constitution.*
12 *Pursuant to that constitutional provision, the Legislature makes*
13 *the following findings to demonstrate the interest protected by this*
14 *limitation and the need for protecting that interest:*

15 *The privacy rights of the decedent would be impaired if the*
16 *information released to a medical examiner, forensic pathologist,*
17 *or coroner regarding the decedent were released to the public.*