

AMENDED IN SENATE MARCH 13, 2013

SENATE BILL

No. 138

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

January 28, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would declare the intent of the Legislature to incorporate HIPAA standards into state law and to clarify standards for protecting

the confidentiality of medical information in insurance transactions. The bill would define additional terms in connection with maintaining the confidentiality of this information, including an “authorization for insurance communications,” which an insured individual may submit for the purpose of specifying disclosable medical information and insurance transactions, and permissible recipients.

This bill would specify the manner in which a health care service plan or health insurer would be required to maintain confidentiality of information regarding the treatment of insured individuals less than 26 years of age who are insured as dependents on another person’s policy, the treatment of an insured individual involving sensitive services, as defined, or situations in which disclosure would endanger the insured individual, as defined.

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

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

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) Privacy is a fundamental right of all Californians, protected
- 4 by the California Constitution, the federal Health Insurance
- 5 Portability and Accountability Act (HIPAA; Public Law 104-191),
- 6 and the Confidentiality of Medical Information Act, Part 2.6
- 7 (commencing with Section 56) of Division 1 of the Civil Code.
- 8 (b) Implementation of the recently enacted federal Patient
- 9 Protection and Affordable Care Act (Public Law 111-148) will

1 expand the number of individuals insured as dependents on a health
2 insurance policy held in another person’s name, including adult
3 children under 26 years of age insured on a parent’s insurance
4 policy.

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

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

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

13 56.05. For purposes of this part:

14 (a) “Authorization” means permission granted in accordance
15 with Section 56.11 or 56.21 for the disclosure of medical
16 information.

17 (b) “Authorization for insurance communications” means
18 permission from the individual, that meets the requirements of
19 subdivisions (a) to (c), inclusive, of Section 56.11, specifying the
20 medical information and insurance transactions that may be
21 disclosed and the identity of the people to whom disclosures are
22 permitted as part of an insurance communication.

23 (c) “Authorized recipient” means any person who is authorized
24 to receive medical information pursuant to Section 56.10 or 56.20.

25 (d) “Confidential communications request” means a request by
26 an insured individual that insurance communications be
27 communicated by a specific method, such as by telephone, e-mail,
28 or in a covered envelope rather than postcard, or to a specific mail
29 or e-mail address or specific telephone number, as designated by
30 the insured individual.

31 (e) “Contractor” means any person or entity that is a medical
32 group, independent practice association, pharmaceutical benefits
33 manager, or a medical service organization and is not a health care
34 service plan or provider of health care. “Contractor” does not
35 include insurance institutions as defined in subdivision (k) of
36 Section 791.02 of the Insurance Code or pharmaceutical benefits
37 managers licensed pursuant to the Knox-Keene Health Care Service
38 Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340)
39 of Division 2 of the Health and Safety Code).

1 (f) “Endanger” means that the insured individual fears
2 harassment or abuse resulting from an insurance communication
3 sufficient to deter the patient from obtaining health care absent
4 confidentiality.

5 (g) “Health care service plan” means any entity regulated
6 pursuant to the Knox-Keene Health Care Service Plan Act of 1975
7 (Chapter 2.2 (commencing with Section 1340) of Division 2 of
8 the Health and Safety Code).

9 (h) “Health insurer” means an entity defined in Section 106 of
10 the Insurance Code.

11 (i) “Insured individual” means a person entitled to coverage
12 under a health care service plan or ~~other health plan carrier~~ *health*
13 *insurer*, including the policyholder and dependents.

14 (j) “Insurance communication” means any communication from
15 the health care service plan or ~~other health plan carrier~~ *health*
16 *insurer* to policyholders or insured individuals that discloses
17 individually identifiable medical information. Insurance
18 communication includes, but is not limited to, explanation of
19 benefits forms, scheduling information, notices of denial, and
20 notices of contested claims.

21 (k) “Licensed health care professional” means any person
22 licensed or certified pursuant to Division 2 (commencing with
23 Section 500) of the Business and Professions Code, the Osteopathic
24 Initiative Act or the Chiropractic Initiative Act, or Division 2.5
25 (commencing with Section 1797) of the Health and Safety Code.

26 (l) “Marketing” means to make a communication about a product
27 or service that encourages recipients of the communication to
28 purchase or use the product or service.

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

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

35 (2) Communications made to current enrollees solely for the
36 purpose of describing a provider’s participation in an existing
37 health care provider network or health plan network of a
38 Knox-Keene licensed health plan to which the enrollees already
39 subscribe; communications made to current enrollees solely for
40 the purpose of describing if, and the extent to which, a product or

1 service, or payment for a product or service, is provided by a
2 provider, contractor, or plan or included in a plan of benefits of a
3 Knox-Keene licensed health plan to which the enrollees already
4 subscribe; or communications made to plan enrollees describing
5 the availability of more cost-effective pharmaceuticals.

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

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

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

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

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

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

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

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

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

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

31 (r) "Sensitive services" means ~~prevention, counseling, diagnosis,~~
 32 ~~and treatment related to sexual and reproductive health, including~~
 33 ~~HIV/AIDS, substance use, and mental health~~ *all health care*
 34 *services described in Sections 6924, 6925, 6926, 6927, 6928, and*
 35 *6929 of the Family Code, and Sections 121020 and 124260 of the*
 36 *Health and Safety Code, obtained by any patient who has reached*
 37 *the minimum age specified for consenting to the service specified*
 38 *in the section, including patients 18 years of age and older.*

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

1 56.104. (a) Notwithstanding subdivision (c) of Section 56.10,
2 except as provided in subdivision (e), no provider of health care,
3 health care service plan, or contractor may release medical
4 information to persons or entities who have requested that
5 information and who are authorized by law to receive that
6 information pursuant to subdivision (c) of Section 56.10, if the
7 requested information specifically relates to the patient's
8 participation in outpatient treatment with a psychotherapist, unless
9 the person or entity requesting that information submits to the
10 patient pursuant to subdivision (b) and to the provider of health
11 care, health care service plan, or contractor a written request, signed
12 by the person requesting the information or an authorized agent
13 of the entity requesting the information, that includes all of the
14 following:

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

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

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

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

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

39 (c) For purposes of this section, "psychotherapist" means a
40 person who is both a "psychotherapist" as defined in Section 1010

1 of the Evidence Code and a “provider of health care” as defined
2 in Section 56.05.

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

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

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

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

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

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

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

26 56.107. (a) Notwithstanding any other law, and to the extent
27 permitted by federal law, a health care service plan or health insurer
28 shall take the following steps to protect the confidentiality of an
29 insured individual’s medical information as follows:

30 (1) A health care service plan or health insurer shall not send
31 insurance communications relating to sensitive services:

32 (A) Unless the *health care service* plan or *health* insurer has
33 received an authorization for insurance communications from an
34 insured individual who is under 26 years of age and insured as a
35 dependent on another person’s insurance policy.

36 (B) For an insured individual to whom subparagraph (A) does
37 not apply, if that insured individual has submitted a nondisclosure
38 request.

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

4 (3) A health care service plan or health insurer shall comply
5 with a nondisclosure request or a confidential communications
6 request from an insured individual who states that disclosure of
7 health information will endanger the individual, and shall not
8 require an explanation as to the basis for the insured individual's
9 statement that disclosure will endanger the individual.

10 (b) Notwithstanding subdivision (a), the provider of health care
11 may make arrangements with the insured individual for the
12 payment of benefit cost sharing and communicate that arrangement
13 with the health care service plan or health insurer.

14 (c) A health care service plan or health insurer shall not
15 condition enrollment or coverage in the health plan or health
16 insurance policy or eligibility for benefits on the provision of an
17 authorization for insurance communications.

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

19 56.16. For disclosures not addressed by Section 56.1007, unless
20 there is a specific written request by the patient to the contrary,
21 nothing in this part shall be construed to prevent a general acute
22 care hospital, as defined in subdivision (a) of Section 1250 of the
23 Health and Safety Code, upon an inquiry concerning a specific
24 patient, from releasing at its discretion any of the following
25 information: the patient's name, address, age, and sex; a general
26 description of the reason for treatment (whether an injury, a burn,
27 poisoning, or some unrelated condition); the general nature of the
28 injury, burn, poisoning, or other condition; the general condition
29 of the patient; and any information that is not medical information
30 as defined in Section 56.05.

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

33 1280.15. (a) A clinic, health facility, home health agency, or
34 hospice licensed pursuant to Section 1204, 1250, 1725, or 1745
35 shall prevent unlawful or unauthorized access to, and use or
36 disclosure of, patients' medical information, as defined in Section
37 56.05 of the Civil Code and consistent with Section 130203. For
38 purposes of this section, internal paper records, electronic mail,
39 or facsimile transmissions inadvertently misdirected within the
40 same facility or health care system within the course of

1 coordinating care or delivering services shall not constitute
2 unauthorized access to, or use or disclosure of, a patient's medical
3 information. The department, after investigation, may assess an
4 administrative penalty for a violation of this section of up to
5 twenty-five thousand dollars (\$25,000) per patient whose medical
6 information was unlawfully or without authorization accessed,
7 used, or disclosed, and up to seventeen thousand five hundred
8 dollars (\$17,500) per subsequent occurrence of unlawful or
9 unauthorized access, use, or disclosure of that patients' medical
10 information. For purposes of the investigation, the department
11 shall consider the clinic's, health facility's, agency's, or hospice's
12 history of compliance with this section and other related state and
13 federal statutes and regulations, the extent to which the facility
14 detected violations and took preventative action to immediately
15 correct and prevent past violations from recurring, and factors
16 outside its control that restricted the facility's ability to comply
17 with this section. The department shall have full discretion to
18 consider all factors when determining the amount of an
19 administrative penalty pursuant to this section.

20 (b) (1) A clinic, health facility, home health agency, or hospice
21 to which subdivision (a) applies shall report any unlawful or
22 unauthorized access to, or use or disclosure of, a patient's medical
23 information to the department no later than five business days after
24 the unlawful or unauthorized access, use, or disclosure has been
25 detected by the clinic, health facility, home health agency, or
26 hospice.

27 (2) Subject to subdivision (c), a clinic, health facility, home
28 health agency, or hospice shall also report any unlawful or
29 unauthorized access to, or use or disclosure of, a patient's medical
30 information to the affected patient or the patient's representative
31 at the last known address, no later than five business days after
32 the unlawful or unauthorized access, use, or disclosure has been
33 detected by the clinic, health facility, home health agency, or
34 hospice.

35 (c) (1) A clinic, health facility, home health agency, or hospice
36 shall delay the reporting, as required pursuant to paragraph (2) of
37 subdivision (b), of any unlawful or unauthorized access to, or use
38 or disclosure of, a patient's medical information beyond five
39 business days if a law enforcement agency or official provides the
40 clinic, health facility, home health agency, or hospice with a written

1 or oral statement that compliance with the reporting requirements
2 of paragraph (2) of subdivision (b) would likely impede the law
3 enforcement agency's investigation that relates to the unlawful or
4 unauthorized access to, and use or disclosure of, a patient's medical
5 information and specifies a date upon which the delay shall end,
6 not to exceed 60 days after a written request is made, or 30 days
7 after an oral request is made. A law enforcement agency or official
8 may request an extension of a delay based upon a written
9 declaration that there exists a bona fide, ongoing, significant
10 criminal investigation of serious wrongdoing relating to the
11 unlawful or unauthorized access to, and use or disclosure of, a
12 patient's medical information, that notification of patients will
13 undermine the law enforcement agency's investigation, and that
14 specifies a date upon which the delay shall end, not to exceed 60
15 days after the end of the original delay period.

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

19 (A) Document the oral statement, including, but not limited to,
20 the identity of the law enforcement agency or official making the
21 oral statement and the date upon which the oral statement was
22 made.

23 (B) Limit the delay in reporting the unlawful or unauthorized
24 access to, or use or disclosure of, the patient's medical information
25 to the date specified in the oral statement, not to exceed 30 calendar
26 days from the date that the oral statement is made, unless a written
27 statement that complies with the requirements of this subdivision
28 is received during that time.

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

33 (d) If a clinic, health facility, home health agency, or hospice
34 to which subdivision (a) applies violates subdivision (b), the
35 department may assess the licensee a penalty in the amount of one
36 hundred dollars (\$100) for each day that the unlawful or
37 unauthorized access, use, or disclosure is not reported to the
38 department or the affected patient, following the initial five-day
39 period specified in subdivision (b). However, the total combined
40 penalty assessed by the department under subdivision (a) and this

1 subdivision shall not exceed two hundred fifty thousand dollars
2 (\$250,000) per reported event. For enforcement purposes, it shall
3 be presumed that the facility did not notify the affected patient if
4 the notification was not documented. This presumption may be
5 rebutted by a licensee only if the licensee demonstrates, by a
6 preponderance of the evidence, that the notification was made.

7 (e) In enforcing subdivisions (a) and (d), the department shall
8 take into consideration the special circumstances of small and rural
9 hospitals, as defined in Section 124840, and primary care clinics,
10 as defined in subdivision (a) of Section 1204, in order to protect
11 access to quality care in those hospitals and clinics. When assessing
12 a penalty on a skilled nursing facility or other facility subject to
13 Section 1423, 1424, 1424.1, or 1424.5, the department shall issue
14 only the higher of either a penalty for the violation of this section
15 or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5,
16 not both.

17 (f) All penalties collected by the department pursuant to this
18 section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited
19 into the Internal Departmental Quality Improvement Account,
20 which is hereby created within the Special Deposit Fund under
21 Section 16370 of the Government Code. Upon appropriation by
22 the Legislature, moneys in the account shall be expended for
23 internal quality improvement activities in the Licensing and
24 Certification Program.

25 (g) If the licensee disputes a determination by the department
26 regarding a failure to prevent or failure to timely report unlawful
27 or unauthorized access to, or use or disclosure of, patients' medical
28 information, or the imposition of a penalty under this section, the
29 licensee may, within 10 days of receipt of the penalty assessment,
30 request a hearing pursuant to Section 131071. Penalties shall be
31 paid when appeals have been exhausted and the penalty has been
32 upheld.

33 (h) In lieu of disputing the determination of the department
34 regarding a failure to prevent or failure to timely report unlawful
35 or unauthorized access to, or use or disclosure of, patients' medical
36 information, transmit to the department 75 percent of the total
37 amount of the administrative penalty, for each violation, within
38 30 business days of receipt of the administrative penalty.

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

4 (j) For purposes of this section, the following definitions shall
5 apply:

6 (1) “Reported event” means all breaches included in any single
7 report that is made pursuant to subdivision (b), regardless of the
8 number of breach events contained in the report.

9 (2) “Unauthorized” means the inappropriate access, review, or
10 viewing of patient medical information without a direct need for
11 medical diagnosis, treatment, or other lawful use as permitted by
12 the Confidentiality of Medical Information Act (Part 2.6
13 (commencing with Section 56) of Division 1 of the Civil Code)
14 or any other statute or regulation governing the lawful access, use,
15 or disclosure of medical information.

16 SEC. 7. Section 1627 of the Health and Safety Code is amended
17 to read:

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

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

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

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

1 (b) (1) In order to implement the collection goals of this
2 program, the University of California may, commensurate with
3 available funds appropriated to the University of California for
4 this program, contract with one or more selected applicant entities
5 that have demonstrated the competence to collect and ship cord
6 blood units in compliance with federal guidelines and regulations.

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

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

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

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

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

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

36 (d) (1) All information collected pursuant to the program shall
37 be confidential, and shall be used solely for the purposes of the
38 program, including research. Access to confidential information
39 shall be limited to authorized persons who are bound by appropriate

1 institutional policies or who otherwise agree, in writing, to maintain
2 the confidentiality of that information.

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

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

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

20 (1) Limit fees for access to cord blood units to the reasonable
21 and actual costs of storage, handling, and providing units, as well
22 as for related services such as donor matching and testing of cord
23 blood and other programs and services typically provided by cord
24 blood banks and public use programs.

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

27 (f) It is additionally the intent of the Legislature that the plan
28 and implementation of the program attempt to provide for all of
29 the following:

30 (1) Development of a strategy to increase voluntary participation
31 by hospitals in the collection and storage of umbilical cord blood
32 and identify funding sources to offset the financial impact on
33 hospitals.

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

38 (3) Exploration of the feasibility of operating the program as a
39 self-funding program, including the potential for charging users a
40 reimbursement fee.

1 SEC. 8. Section 117928 of the Health and Safety Code is
2 amended to read:

3 117928. (a) Any common storage facility for the collection
4 of medical waste produced by small quantity generators operating
5 independently, but sharing common storage facilities, shall have
6 a permit issued by the enforcement agency.

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

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

11 (2) The registered hazardous waste transporter.

12 (3) The property owner.

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

15 SEC. 9. Section 120985 of the Health and Safety Code is
16 amended to read:

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

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

32 SEC. 10. Section 121010 of the Health and Safety Code is
33 amended to read:

34 121010. Notwithstanding Section 120975 or 120980, the results
35 of a blood test to detect antibodies to the probable causative agent
36 of AIDS may be disclosed to any of the following persons without
37 written authorization of the subject of the test:

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

1 (b) To a test subject’s provider of health care, as defined in
2 Section 56.05 of the Civil Code, except that for purposes of this
3 section, “provider of health care” does not include a health care
4 service plan regulated pursuant to Chapter 2.2 (commencing with
5 Section 1340) of Division 2.

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

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

12 (e) (1) To the designated officer of an emergency response
13 employee, and from that designated officer to an emergency
14 response employee regarding possible exposure to HIV or AIDS,
15 but only to the extent necessary to comply with provisions of the
16 Ryan White Comprehensive AIDS Resources Emergency Act of
17 1990 (~~P.L.~~*Public Law* 101-381; 42 U.S.C. Sec. 201).

18 (2) For purposes of this subdivision, “designated officer” and
19 “emergency response employee” have the same meaning as these
20 terms are used in the Ryan White Comprehensive AIDS Resources
21 Emergency Act of 1990 (~~P.L.~~*Public Law* 101-381; 42 U.S.C. Sec.
22 201).

23 (3) The designated officer shall be subject to the confidentiality
24 requirements specified in Section 120980, and may be personally
25 liable for unauthorized release of any identifying information about
26 the HIV results. Further, the designated officer shall inform the
27 exposed emergency response employee that the employee is also
28 subject to the confidentiality requirements specified in Section
29 120980, and may be personally liable for unauthorized release of
30 any identifying information about the HIV test results.

31 SEC. 11. Section 130201 of the Health and Safety Code is
32 amended to read:

33 130201. For purposes of this division, the following definitions
34 apply:

35 (a) “Director” means the Director of the Office of Health
36 Information Integrity.

37 (b) “Medical information” means the term as defined in Section
38 56.05 of the Civil Code.

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

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

3 (e) “Unauthorized access” means the inappropriate review or
4 viewing of patient medical information without a direct need for
5 diagnosis, treatment, or other lawful use as permitted by the
6 Confidentiality of Medical Information Act (Part 2.6 (commencing
7 with Section 56) of Division 1 of the Civil Code) or by other
8 statutes or regulations governing the lawful access, use, or
9 disclosure of medical information.

10 SEC. 12. Section 3208.05 of the Labor Code is amended to
11 read:

12 3208.05. (a) “Injury” includes a reaction to or a side effect
13 arising from health care provided by an employer to a health care
14 worker, which health care is intended to prevent the development
15 or manifestation of any bloodborne disease, illness, syndrome, or
16 condition recognized as occupationally incurred by Cal-OSHA,
17 the ~~Federal~~ *federal* Centers for Disease Control *and Prevention*,
18 or other appropriate governmental entities. This section shall apply
19 only to preventive health care that the employer provided to a
20 health care worker under the following circumstances: (1) prior
21 to an exposure because of risk of occupational exposure to such a
22 disease, illness, syndrome, or condition, or (2) where the preventive
23 care is provided as a consequence of a documented exposure to
24 blood or bodily fluid containing blood that arose out of and in the
25 course of employment. Such a disease, illness, syndrome, or
26 condition includes, but is not limited to, hepatitis, and the human
27 immunodeficiency virus. Such preventive health care, and any
28 disability indemnity or other benefits required as a result of the
29 preventive health care provided by the employer, shall be
30 compensable under the workers’ compensation system. The
31 employer may require the health care worker to document that the
32 employer provided the preventive health care and that the reaction
33 or side effects arising from the preventive health care resulted in
34 lost work time, health care costs, or other costs normally
35 compensable under workers’ compensation.

36 (b) The benefits of this section shall not be provided to a health
37 care worker for a reaction to or side effect from health care
38 intended to prevent the development of the human
39 immunodeficiency virus if the worker claims a work-related
40 exposure and if the worker tests positive within 48 hours of that

1 exposure to a test to determine the presence of the human
2 immunodeficiency virus.

3 (c) For purposes of this section, “health care worker” includes
4 any person who is an employee of a provider of health care as
5 defined in Section 56.05 of the Civil Code, and who is exposed to
6 human blood or other bodily fluids contaminated with blood in
7 the course of employment, including, but not limited to, a registered
8 nurse, a licensed vocational nurse, a certified nurse aide, clinical
9 laboratory technologist, dental hygienist, physician, janitor, and
10 housekeeping worker. “Health care worker” does not include an
11 employee who provides employee health services for an employer
12 primarily engaged in a business other than providing health care.

13 SEC. 13. No reimbursement is required by this act pursuant to
14 Section 6 of Article XIII B of the California Constitution because
15 the only costs that may be incurred by a local agency or school
16 district will be incurred because this act creates a new crime or
17 infraction, eliminates a crime or infraction, or changes the penalty
18 for a crime or infraction, within the meaning of Section 17556 of
19 the Government Code, or changes the definition of a crime within
20 the meaning of Section 6 of Article XIII B of the California
21 Constitution.

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