

California

California statutorily grants a patient the right of access to his health care information. The state also has additional requirements for providers of health services utilizing electronic record keeping systems. The requirements ensure the maintenance of the existing regulatory requirements for the access, use, disclosure, confidentiality, retention of record contents, and maintenance of health information in patient records by health care providers.

PATIENT ACCESS

The Patient Access to Health Records Chapter of California's Health and Safety Code, except as otherwise provided by law, does not grant any person, firm association, organization, partnership, business trust, company, corporation, or municipal or other public corporation, or government officer or agency greater access to individual patient records than as required by their relevant laws. It does not relieve employers from the requirements of the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code; insurers subject to the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code) must meet the requirements of that act and government agencies must follow the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code). [Cal. Health & Safety Code ' 123135.]

Health Care Providers

Health care providers must allow patients to see and copy their medical records within five days of a written request and for a "reasonable fee." Providers may not withhold records because of unpaid bills for health services. [Cal. Health & Safety Code ' 123110.] However, a health care provider may choose instead to prepare a summary of the record for inspection and copying by a patient. [Cal. Health & Safety Code ' 123130.] The summary of the record must be available to the patient within ten working days of a request, unless the patient is notified. In no case will more than thirty days elapse from the date of the request. A health care provider may also confer with the patient in an attempt to clarify the patient's purpose and goal in obtaining his record and consequently only provide access to those portions. [Id.] Additionally, mental health records may be withheld if the provider determines there is a "substantial risk of significant adverse or detrimental consequences to the patient." [Cal. Health & Safety Code ' 123115.] If a provider refuses to allow inspection, he must inform the patient of the right to require the provider to permit inspection of the record by another licensed provider designated by the patient. [Id.] Moreover, California creates specific situations in which the representative of a minor is not entitled to inspect or obtain copies of the minor's patient records. [Cal. Health & Safety Code ' 123115.] This statute applies to clinics, home health agencies, physicians and surgeons, podiatrists, dentists, psychologists, chiropractors, optometrists, marriage and family counselors, clinical social workers, and others. (as defined as "health care providers" in Cal. Health &

Safety Code ' 123105.)

Remedies and Penalties: Providers that willfully violate the access provisions may be guilty of unprofessional conduct and may be fined up to \$100. [Cal. Health & Safety Code ' 123110(f).] Any patient or representative aggrieved by not being supplied record access may bring an action against the health care provider to enforce the right to access, and obtain costs and reasonable attorney's fees. [Cal. Health & Safety Code ' 123120.] However, California provides greater penalties for a licensee and a health care facility who fails to comply with a request for the medical records of a patient. A civil penalty of \$ 1000 per day for each day after the 15th day the documents have not been produced is applied provided the licensee is unable to show the delay was for good cause. [Cal. Bus. & Prof. Code ' 2225.5 (licensee; 15 day grace period and a daily \$ 1,000 penalty) (health care facility; 30 day period and up to a \$ 10,000 penalty) (multiple violations incur higher penalties).]

Insurers

Within 30 days of submitting a written request, an insurance institution, agent, or insurance-support organization must: inform the individual of the nature and substance of their recorded personal information in writing, by phone, or by other means; permit the individual to see and copy recorded personal information pertaining to him in person or receive such copies by mail; and disclose the identity of those persons or institutions who have received disclosure of such personal information within two years of the request. [Cal. Ins. Code ' 791.08.] If the information is stored in coded form, the individual must be given an accurate translation in plain language. [Id.]

RESTRICTIONS ON DISCLOSURE

Health Care Providers and Employers

As a general rule, the Confidentiality of Medical Information Act (CMIA) requires health care providers and employers to obtain written authorization from patients prior to disclosure of identifiable information. There are many exceptions to the authorization requirement. Authorization is not required for disclosures related to the diagnosis, treatment, billing, emergency situations, licensing and accreditation, utilization review, quality assurance activities, pursuant to court order or subpoena, as well as other specified cases. Finally, "upon specific inquiry, unless specific written request by the patient to the contrary, [health care providers] may release the patient's name, address, age, sex, general description of the reason for treatment, general nature of the condition, or other information not defined as 'medical information.'" [Cal. Civ. Code ' 56.10.]

Insurers

The law requires insurers to obtain written authorization from individuals prior to disclosure of personal information. There are many exceptions to this requirement. Authorization is not required to verify coverage/benefits, to inform an individual of a medical problem, to detect/prevent criminal activity or fraud, or for marketing purposes, as long as no medical record or personal information "re: an individual's character, personal habits, mode of living or general reputation is disclosed. An individual must have been given the opportunity to indicate s/he does not want

personal information disclosed for marketing purposes, and must not give any indication that s/he does not want it disclosed.” [Cal. Ins. Code ' 791.13.]

Law Enforcement Access

Medical records may be released without consent for fraud investigations and to law enforcement after a showing of good cause or after presenting a search warrant. [Cal. Penal Code ' 1543 Ch. 3.5.]

State and Local Government

The law limits the use and disclosure of personal information--including medical information--held by the state and local government. Generally, personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy, are exempt from disclosure requirements. [Cal. Gov't Code ' 6254.] The law also provides people with notice of the purposes for which their information is collected and maintained, and requires, as a general rule, that information may not be disclosed outside the original agency without the individual's prior written voluntary consent. A lengthy list of exceptions to the consent requirement includes disclosures for law enforcement access, adoption proceedings, and scientific research. [Cal. Civ. Code ' 1798.]

Remedies and Penalties: Minimal remedies are available for violation of the CMIA. Civil penalties may apply for violation of the Insurance Act, but individual remedies are extremely limited. However, a recent law amends the California Penal Code to establish fines for the willful misuse of personal health information. [1998 Cal. Adv. Legis. Serv. 1374.]

PRIVILEGES

California recognizes a privilege with respect to patients and their physicians, psychotherapists, psychologists, social workers, nurses, sexual assault counselors, or domestic abuse counselors. This privilege allows a patient, in a legal proceeding to refuse to disclose and to prevent others from disclosing, a confidential communication (as defined in Cal. Evid. Code ' 992.). [Cal. Evid. Code ' 990 through 1037.7.]

CONDITION-SPECIFIC REQUIREMENTS

Birth Defects

California maintains a Birth Defects Monitoring Program. All identifying information is confidential and shall be used only specified purposes. Access to the information is limited to authorized program staff, and to persons who meet the qualifications for a valid scientific interest and who agree, in writing, to maintain confidentiality. [Cal. Health & Safety Code ' 103850.]

Remedies and Penalties: Any person who, in violation of a written agreement to maintain confidentiality, discloses or uses information provided pursuant the Program may be denied further access to any confidential information maintained by the department. Additionally, a civil penalty of \$500 shall be imposed and this penalty shall not restrict any other penalty provided by law for the benefit of the department or any person. [*Id.*]

Cancer

California maintains a Tumor Registry. All cancers diagnosed or treated in the reporting area shall be reported to the representative of the department authorized to compile the cancer data, or any individual, agency, or organization designated to cooperate with that representative. Any hospital or other facility providing therapy to cancer patients is the primary reporter of the information. A physician or other health care practitioner must report each cancer case that was not directly reported to or previously admitted to a treatment facility. [Cal. Health & Safety Code ' 103885.] All information reported pursuant to the law is confidential except to the department and any designated regional cancer registry. [*Id.*]

Remedies and Penalties: All required reporters who fail to report shall grant access to all records that would identify cases of cancer to the department and reimburse the department for costs incurred to obtain access. Willful failure to grant access to the records is punishable by a fine of up to \$500 each day access is refused. [*Id.*]

Developmentally Disabled

Generally, a state hospital, community care facility, or health facility may not disclose information about a resident. [Cal. Welf. & Inst. Code ' ' 4514 and 4514.5.] However, upon the request of a family member and notice followed by the authorization of the resident; the presence in the facility, the diagnosis, prognosis and medications prescribed to a resident, and other information may be released to the family member or authorized person. [Cal. Welf. & Inst. Code ' 4514.5.] Nonetheless, nothing in this section is to be construed to require photocopying of the resident's medical records. [*Id.*]

Drug Abuse

Generally, the identity and records of the diagnosis, prognosis, or treatment of any patient which are maintained in connection with the performance of any drug abuse treatment or prevention effort directly or indirectly assisted by the State Department of Alcohol and Drug Programs are confidential and may not be disclosed without the written consent of the individual. [Cal. Health & Safety Code ' 11977.] Exceptions to this general rule include disclosure to qualified medical persons in a bona fide medical emergency, by court order and to qualified personnel for the purpose of conducting scientific research as long as the individual client can not be identified, among others. [*Id.*]

Genetic Discrimination

The law prohibits insurers from discriminating on the basis of a person's genetic characteristics that may, under some circumstances, be associated with a disability in that person or that person's offspring. In most instances, the law bars insurers from seeking and disclosing a person's genetic information without that person's written authorization. [Cal. Civ. Code ' 56.17.]

HIV/AIDS

California has enacted a number of HIV/AIDS specific confidentiality laws, covering testing, reporting, partner notification, and discovery in court proceedings. The results of an HIV/AIDS test may not be disclosed in a form which identifies an individual without obtaining patient consent for each disclosure,

except in limited circumstances. For instance, a physician or local health officer may disclose HIV test results to the sex or needle-sharing partner of a patient without consent, but only after the patient refused or was unable to make the notification. Specifically, an individual's health care provider may not disclose to another provider or health plan without written authorization, unless to a provider for the direct purposes of diagnosis, care, or treatment of the individual. [Cal. Health & Safety Code ' ' 120975 to 21020.]

Remedies and Penalties: Any person who negligently discloses the results of an HIV test shall be fined up to \$1000 which must be paid to the subject of the HIV test. [Cal. Health & Safety Code ' 120980.]

Mental Health

Generally, all information and records of recipients of mental health services are confidential. [Cal. Welf. & Inst. Code ' ' 5328 and 5540.] There are specific restrictions on the release of mental health information. The law, however, applies to institutions, not private physicians. The law provides greater protection for mental health information than does the more general law covering provider disclosure of health information. California has specific provisions for the protection of rights of mental health patients. These protections include access to a county patient's advocate who with the patient's written authorization may access confidential records or information pertaining to the client. [Cal. Welf. & Inst. Code ' 5541.]