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AB-2520 Access to medical records. (2019-2020)

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Assembly Bill No. 2520

CHAPTER 101

An act to amend Sections 123105 and 123110 of, and to add Section 123114 to, the Health and Safety Code, relating to medical records.

[Approved by Governor September 18, 2020. Filed with Secretary of State September 18, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2520, Chiu. Access to medical records.

Existing law governs a patient's access to their health records. Existing law requires a health care provider, as defined, to provide a patient or the patient's representative with all or any part of the patient's medical records that the patient has a right to inspect, subject to the payment of clerical costs incurred in locating and making the records available, following a written request from the patient. Existing law requires the health care provider to provide one copy of the relevant portion of the patient's record at no charge if the patient or patient's representative presents proof to the provider that the records are needed to support an appeal regarding eligibility for a public benefit program, as defined. Existing law makes a willful violation of these provisions by specified health care providers an infraction.

This bill would require a health care provider to provide an employee of a nonprofit legal services entity representing the patient a copy of the medical records at no charge under those conditions, and would include speech-language pathologists, audiologists, physician assistants, and nurse practitioners within the definition of a health care provider. The bill would expand the definition of a public benefit program for these purposes to include the Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, and a government-funded housing subsidy or tenant-based housing assistance program. The bill additionally would require a health care provider to provide the records at no charge upon proof that the records are needed for a petition for U nonimmigrant status under the Victims of Trafficking and Violence Protection Act or a self-petition for lawful permanent residency under the Violence Against Women Act. By expanding the requirements on health care providers and thereby expanding a crime, this bill would create a state-mandated local program.

This bill also would prohibit a health care provider from charging a fee to a patient for filling out forms or providing information responsive to forms that support a claim or appeal regarding eligibility for a public benefit program. The bill would require the health care provider to provide information responsive to those portions of the form for which the health care provider has the information necessary to provide a medical opinion, as specified. The bill would authorize a health care provider to honor a request to disclose a patient record or complete a public benefit form that contains the written or electronic signature of the patient or the patient's personal representative.

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 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) "Health care provider" means any of the following:

- (1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.
- (2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.
- (3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.
- (4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.
- (5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.
- (6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.
- (7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.
- (8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.
- (9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.
- (10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.
- (11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.
- (12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.
- (13) An occupational therapist licensed pursuant to Chapter 5.6 (commencing with Section 2570).
- (14) A professional clinical counselor licensed pursuant to Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code.
- (15) A speech-language pathologist or audiologist licensed pursuant to Chapter 5.3 (commencing with Section 2530) of Division 2 of the Business and Professions Code.
- (16) A physician assistant licensed pursuant to Chapter 7.7 (commencing with Section 3500) of Division 2 of the Business and Professions Code.
- (17) A nurse practitioner licensed pursuant to Article 8 (commencing with Section 2834) of Chapter 6 of Division 2 of the Business and Professions Code.

(b) "Mental health records" means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. "Mental health records" includes, but is not limited to, all alcohol and drug abuse records.

(c) "Patient" means a patient or former patient of a health care provider.

(d) "Patient records" means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. "Patient records" includes only records pertaining to the patient requesting the records or whose representative requests the records. "Patient records" does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or

copying under Section 123110 or 123115. "Patient records" does not include information contained in aggregate form, such as indices, registers, or logs.

(e) "Patient's representative," "patient's personal representative," or "representative" means any of the following:

(1) A parent or guardian of a minor who is a patient.

(2) The guardian or conservator of the person of an adult patient.

(3) An agent as defined in Section 4607 of the Probate Code, to the extent necessary for the agent to fulfill the duties set forth in Division 4.7 (commencing with Section 4600) of the Probate Code.

(4) The beneficiary as defined in Section 24 of the Probate Code or personal representative as defined in Section 58 of the Probate Code, of a deceased patient.

(f) "Alcohol and drug abuse records" means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 2. Section 123110 of the Health and Safety Code is amended to read:

123110. (a) Notwithstanding Section 5328 of the Welfare and Institutions Code, and except as provided in Sections 123115 and 123120, any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient's personal representative shall be entitled to inspect patient records upon presenting to the health care provider a request for those records and upon payment of reasonable costs, as specified in subdivision (k). However, a patient who is a minor shall be entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. A health care provider shall permit this inspection during business hours within five working days after receipt of the request. The inspection shall be conducted by the patient or patient's personal representative requesting the inspection, who may be accompanied by one other person of their choosing.

(b) (1) Additionally, any patient or patient's personal representative shall be entitled to a paper or electronic copy of all or any portion of the patient records that they have a right to inspect, upon presenting a request to the health care provider specifying the records to be copied, together with a fee to defray the costs of producing the copy or summary, as specified in subdivision (k). The health care provider shall ensure that the copies are transmitted within 15 days after receiving the request.

(2) The health care provider shall provide the patient or patient's personal representative with a copy of the record in the form and format requested if it is readily producible in the requested form and format, or, if not, in a readable paper copy form or other form and format as agreed to by the health care provider and the patient or patient's personal representative. If the requested patient records are maintained electronically and if the patient or patient's personal representative requests an electronic copy of those records, the health care provider shall provide them in the electronic form and format requested if they are readily producible in that form and format, or, if not, in a readable electronic form and format as agreed to by the health care provider and the patient or patient's personal representative.

(c) Copies of X-rays or tracings derived from electrocardiography, electroencephalography, or electromyography need not be provided to the patient or patient's personal representative under this section, if the original X-rays or tracings are transmitted to another health care provider upon written request of the patient or patient's personal representative and within 15 days after receipt of the request. The request shall specify the name and address of the health care provider to whom the records are to be delivered. All reasonable costs, not exceeding actual costs, incurred by a health care provider in providing copies pursuant to this subdivision may be charged to the patient or representative requesting the copies.

(d) (1) Notwithstanding any provision of this section, and except as provided in Sections 123115 and 123120, a patient, employee of a nonprofit legal services entity representing the patient, or the personal representative of a patient, is entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider a written request, and proof that the records or supporting forms are needed to support a claim or appeal regarding eligibility for a public benefit program, a petition for U nonimmigrant status under the Victims of Trafficking and Violence Protection Act, or a self-petition for lawful permanent residency under the Violence Against Women Act. A public benefit program includes the Medi-Cal program, the In-Home Supportive Services Program, the California Work Opportunity and Responsibility to Kids (CalWORKs) program, Social Security Disability Insurance benefits, Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits, federal veterans service-connected compensation and nonservice connected pension disability benefits, CalFresh, the Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, and a government-funded housing subsidy or tenant-based housing assistance program.

(2) Although a patient shall not be limited to a single request, the patient, employee of a nonprofit legal services entity representing the patient, or patient's personal representative shall be entitled to no more than one copy of any relevant portion of their record free of charge.

(3) This subdivision shall not apply to any patient who is represented by a private attorney who is paying for the costs related to the patient's claim or appeal, pending the outcome of that claim or appeal. For purposes of this subdivision, "private attorney" means any attorney not employed by a nonprofit legal services entity.

(e) If a patient, employee of a nonprofit legal services entity representing the patient, or the patient's personal representative requests a record pursuant to subdivision (d), the health care provider shall ensure that the copies are transmitted within 30 days after receiving the written request.

(f) This section shall not be construed to preclude a health care provider from requiring reasonable verification of identity prior to permitting inspection or copying of patient records, provided this requirement is not used oppressively or discriminatorily to frustrate or delay compliance with this section. This section does not supersede any rights that a patient or personal representative might otherwise have or exercise under Section 1158 of the Evidence Code or any other provision of law. This chapter does not require a health care provider to retain records longer than required by applicable statutes or administrative regulations.

(g) (1) This chapter shall not be construed to render a health care provider liable for the quality of their records or the copies provided in excess of existing law and regulations with respect to the quality of medical records. A health care provider shall not be liable to the patient or any other person for any consequences that result from disclosure of patient records as required by this chapter. A health care provider shall not discriminate against classes or categories of providers in the transmittal of X-rays or other patient records, or copies of these X-rays or records, to other providers as authorized by this section.

(2) Every health care provider shall adopt policies and establish procedures for the uniform transmittal of X-rays and other patient records that effectively prevent the discrimination described in this subdivision. A health care provider may establish reasonable conditions, including a reasonable deposit fee, to ensure the return of original X-rays transmitted to another health care provider, provided the conditions do not discriminate on the basis of, or in a manner related to, the license of the provider to which the X-rays are transmitted.

(h) Any health care provider described in paragraphs (4) to (10), inclusive, of subdivision (a) of Section 123105 who willfully violates this chapter is guilty of unprofessional conduct. Any health care provider described in paragraphs (1) to (3), inclusive, of subdivision (a) of Section 123105 that willfully violates this chapter is guilty of an infraction punishable by a fine of not more than one hundred dollars (\$100). The state agency, board, or commission that issued the health care provider's professional or institutional license shall consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license or certificate.

(i) This section prohibits a health care provider from withholding patient records or summaries of patient records because of an unpaid bill for health care services. Any health care provider who willfully withholds patient records or summaries of patient records because of an unpaid bill for health care services is subject to the sanctions specified in subdivision (h).

(j) (1) Except as provided in subdivision (d), a health care provider may impose a reasonable, cost-based fee for providing a paper or electronic copy or summary of patient records, provided the fee includes only the cost of the following:

(A) Labor for copying the patient records requested by the patient or patient's personal representative, whether in paper or electronic form.

(B) Supplies for creating the paper copy or electronic media if the patient or patient's personal representative requests that the electronic copy be provided on portable media.

(C) Postage, if the patient or patient's personal representative has requested the copy, or the summary or explanation, be mailed.

(D) Preparing an explanation or summary of the patient record, if agreed to by the patient or patient's personal representative.

(2) The fee from a health care provider shall not exceed twenty-five cents (\$0.25) per page for paper copies or fifty cents (\$0.50) per page for records that are copied from microfilm.

SEC. 3. Section 123114 is added to the Health and Safety Code, to read:

123114. (a) A health care provider shall not charge a fee to a patient for filling out forms or providing information responsive to forms that support a claim or appeal regarding eligibility for a public benefit program.

(b) A health care provider shall provide information responsive to those portions of the form for which the health care provider has the information necessary to provide a medical opinion. If the health care provider does not have the information necessary to

provide a medical opinion, the health care provider may inform the patient if an examination is necessary to obtain the information.

(c) If a health care provider conducts an examination pursuant to subdivision (b), the health care provider shall provide information responsive to those portions of the form for which the health care provider has a medical opinion.

(d) For the purposes of this section, a public benefit program includes the Medi-Cal program, the In-Home Supportive Services Program, the California Work Opportunity and Responsibility to Kids (CalWORKs) program, Social Security Disability Insurance benefits, Supplemental Security Income/State Supplementary Program for the Aged, Blind and Disabled (SSI/SSP) benefits, federal veterans service-connected compensation and nonservice connected pension disability benefits, discharge of a federal student loan based on total and permanent disability, CalFresh, the Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants, and a government-funded housing subsidy or tenant-based housing assistance program.

(e) Notwithstanding any other law, a health care provider may honor a request to disclose a patient record or complete a public benefit form that contains the written or electronic signature of the patient or the patient's personal representative.

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.