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SB-1419 Health information. (2021-2022)

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Senate Bill No. 1419

CHAPTER 888

An act to amend Sections 123115 and 123148 of, and to add Section 1374.196 to, the Health and Safety Code, and to add Section 10133.12 to the Insurance Code, relating to health care.

[Approved by Governor September 30, 2022. Filed with Secretary of State September 30, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1419, Becker. Health information.

(1) Existing law generally requires a health care professional at whose request a test is performed to provide or arrange for the provision of the results of a clinical laboratory test to the patient who is the subject of the test if so requested by the patient, in oral or written form. Existing law requires those results to be disclosed in plain language and in oral or written form, except the results may be disclosed in electronic form if requested by the patient and if deemed most appropriate by the health care professional who requested the test. Existing law requires a patient's consent to receive their laboratory results by internet posting or other electronic means and requires those results to be disclosed to the patient in a reasonable time period, but only after the results have been reviewed by a health care professional and if access to the results is restricted by use of a secure personal identification number when the results are disclosed to the patient.

This bill would define "test" for these purposes to apply to both clinical laboratory tests and imaging scans, such as x-rays, magnetic resonance imaging, ultrasound, or other similar technologies and would also make conforming changes. The bill would remove the requirement that a health care professional review the results before the results are disclosed to the patient by internet posting or other electronic means.

(2) Existing law establishes procedures for providing access to health care records or summaries of those records by patients and those persons having responsibility for decisions respecting the health care of others. Under existing law, 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 is entitled to inspect patient records upon presenting to the health care provider a request for those records and upon payment of reasonable costs, except as specified. A patient who is a minor is entitled to inspect patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. Existing law also prohibits the representative of a minor from inspecting the minor's patient records under certain circumstances, including with respect to which the minor has a right of inspection.

This bill would additionally prohibit the representative of a minor from inspecting the minor's patient records when the records relate to certain services, including medical care related to the prevention or treatment of pregnancy, as specified.

(3) Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care and makes a willful violation of the act a crime. Existing law provides

for the regulation of health insurers by the Department of Insurance. Existing federal regulations require the implementation of specified application programming interfaces (API) for the access to and exchange of health data and plan information.

This bill would require, commencing January 1, 2024, health care service plans and health insurers to establish and maintain API, as described by the federal regulations, for the benefit of enrollees, insureds, and contracted providers. Because a willful violation of these provisions by a health care service plan would be a crime, the bill would impose a state-mandated local program.

(4)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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1374.196 is added to the Health and Safety Code, to read:

1374.196. (a) Commencing January 1, 2024, to facilitate patient and provider access to health information, a health care service plan shall establish and maintain the following application programming interfaces (API) for the benefit of enrollees and contracted providers, as applicable:

(1) Patient access API, as described in Section 422.119 (a) to (e), inclusive, of Title 42 of the Code of Federal Regulations.

(2) Provider directory API, as described in Section 422.120 of Title 42 of the Code of Federal Regulations.

(3) Payer-to-payer exchange API, as described in Section 422.119(f) of Title 42 of the Code of Federal Regulations.

(b) In addition to the API described in subdivision (a), the department may require a health care service plan to establish and maintain the following API if and when final rules are published by the federal government:

(1) Provider access API.

(2) Prior authorization support API.

(c) API described in subdivision (b) shall be in accordance with standards published in a final rule issued by the federal Centers for Medicare and Medicaid Services and published in the Federal Register, and shall align with federal effective dates, including enforcement delays and suspensions, issued by the federal Centers for Medicare and Medicaid Services.

(d) This section does not limit existing requirements under this chapter, including, but not limited to, Section 1367.27.

SEC. 2. Section 123115 of the Health and Safety Code is amended to read:

123115. (a) The representative of a minor shall not be entitled to inspect or obtain copies of the minor's patient records, including clinical notes, in any of the following circumstances:

(1) With respect to which the minor has a right of inspection under Section 123110.

(2) When the health care provider determines that access to the patient records requested by the representative would have a detrimental effect on the provider's professional relationship with the minor patient or the minor's physical safety or psychological well-being. The decision of the health care provider as to whether or not a minor's records are available for inspection or copying under this section shall not attach any liability to the provider, unless the decision is found to be in bad faith.

(3) When records relate to services described in Section 6924, 6925, 6926, 6927, 6928, 6929, or 6930 of the Family Code, or Section 121020 or 124260 of this code, when obtained by a patient who has the mental capacity to provide consent and is at or above the minimum age for consenting to the service specified in the respective section.

(b) When a health care provider determines there is a substantial risk of significant adverse or detrimental consequences to a patient in seeing or receiving a copy of mental health records requested by the patient, the provider may decline to permit inspection or provide copies of the records to the patient, subject to the following conditions:

(1) The health care provider shall make a written record, to be included with the mental health records requested, noting the date of the request and explaining the health care provider's reason for refusing to permit inspection or provide copies of the

records, including a description of the specific adverse or detrimental consequences to the patient that the provider anticipates would occur if inspection or copying were permitted.

(2) (A) The health care provider shall permit inspection by, or provide copies of the mental health records to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor, designated by request of the patient.

(B) Any person registered as a marriage and family therapist intern, as defined in Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (g) of Section 4980.03 of the Business and Professions Code. Prior to providing copies of mental health records to a registered marriage and family therapist intern, a receipt for those records shall be signed by the supervising licensed professional.

(C) Any person registered as a clinical counselor intern, as defined in Chapter 16 (commencing with Section 4999.10) of Division 2 of the Business and Professions Code, may not inspect the patient's mental health records or obtain copies thereof, except pursuant to the direction or supervision of a licensed professional specified in subdivision (h) of Section 4999.12 of the Business and Professions Code. Prior to providing copies of mental health records to a person registered as a clinical counselor intern, a receipt for those records shall be signed by the supervising licensed professional.

(D) A licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, licensed professional clinical counselor, registered marriage and family therapist intern, or person registered as a clinical counselor intern to whom the records are provided for inspection or copying shall not permit inspection or copying by the patient.

(3) The health care provider shall inform the patient of the provider's refusal to permit them to inspect or obtain copies of the requested records, and inform the patient of the right to require the provider to permit inspection by, or provide copies to, a licensed physician and surgeon, licensed psychologist, licensed marriage and family therapist, licensed clinical social worker, or licensed professional clinical counselor designated by written authorization of the patient.

(4) The health care provider shall indicate in the mental health records of the patient whether the request was made under paragraph (2).

SEC. 3. Section 123148 of the Health and Safety Code is amended to read:

123148. (a) Notwithstanding any other law, a health care professional at whose request a test is performed shall provide or arrange for the provision of the results of a test to the patient who is the subject of the test if so requested by the patient, in oral or written form. The results shall be disclosed in plain language and in oral or written form, except the results may be disclosed in electronic form if requested by the patient unless deemed inappropriate by the health care professional who requested the test. The telephone shall not be considered an electronic form of disclosing test results subject to the limits on electronic disclosure of test results for the purpose of this section.

(b) (1) Consent of the patient to receive their test results by internet posting or other electronic means shall be obtained in a manner consistent with the requirements of Section 56.10 or 56.11 of the Civil Code. In the event that a health care professional arranges for the provision of test results by internet posting or other electronic manner, the results shall be disclosed to a patient in a reasonable time period. Access to test results shall be restricted by the use of a secure personal identification number when the results are disclosed to a patient by internet posting or other electronic manner.

(2) Paragraph (1) shall not prohibit direct communication by internet posting or the use of other electronic means to disclose test results by a treating health care professional who ordered the test for their patient or by a health care professional acting on behalf of, or with the authorization of, the treating health care professional who ordered the test.

(c) When a patient requests access to their test results by internet posting, the health care professional shall advise the patient of any charges that may be assessed directly to the patient or insurer for the service and that the patient may call the health care professional for a more detailed explanation of the laboratory test results when delivered.

(d) The electronic disclosure of test results under this section shall be in accordance with any applicable federal law governing privacy and security of electronic personal health records. However, any state statute that governs privacy and security of electronic personal health records, shall apply to test results under this section and shall prevail over federal law if federal law permits.

(e) The test results to be reported to the patient pursuant to this section shall be recorded in the patient's medical record, and shall be reported to the patient within a reasonable time period after the test results are received by the health care professional who requested the test.

(f) Notwithstanding subdivision (a), unless the patient requests the disclosure, the health care professional deems this disclosure as an appropriate means, and a health care professional has first discussed in person, by telephone, or by any other means of oral communication, the test results with the patient, in compliance with any other applicable laws, none of the following test results and any other related results shall be disclosed to a patient by internet posting or other electronic means:

(1) (A) A positive HIV test, unless an HIV test subject is anonymously tested and the test result is posted on a secure internet website and can only be viewed with the use of a secure code that can access only a single set of test results and that is provided to the patient at the time of testing. The test result shall be posted only if there is no link to any information that identifies or refers to the subject of the test and the information required pursuant to subdivision (h) of Section 120990 is provided.

(B) Subparagraph (A) does not prevent the disclosure of HIV test results, including viral load and CD4 count test results, to a patient living with HIV by secure internet website or other electronic means if the patient has previously been informed about the results of a positive HIV test pursuant to the requirements of this section.

(2) Presence of antigens indicating a hepatitis infection.

(3) Abusing the use of drugs.

(4) Test results related to routinely processed tissues and imaging scans that reveal a new or recurrent malignancy.

(g) Patient identifiable test results and health information that have been provided under this section shall not be used for any commercial purpose without the consent of the patient, obtained in a manner consistent with the requirements of Section 56.11 of the Civil Code. In no event shall patient identifiable HIV-related test results and health information disclosed in this section be used in violation of subdivision (f) of Section 120980.

(h) A third party to whom test results are disclosed pursuant to this section shall be deemed a provider of administrative services, as that term is used in paragraph (3) of subdivision (c) of Section 56.10 of the Civil Code, and shall be subject to all limitations and penalties applicable to that section.

(i) A patient may not be required to pay a cost, or be charged a fee, for electing to receive their test results in a manner other than by internet posting or other electronic form.

(j) A patient or their physician may revoke consent provided under this section at any time and without penalty, except to the extent that action has been taken in reliance on that consent.

(k) As used in this section, "test" applies to both clinical laboratory tests and imaging scans, such as x-rays, magnetic resonance imaging, ultrasound, or other similar technologies.

(l) As used in this section, "internet posting" includes posting to an online patient portal.

SEC. 4. Section 10133.12 is added to the Insurance Code, to read:

10133.12. (a) Commencing January 1, 2024, to facilitate patient and provider access to health information, a health insurer shall establish and maintain the following application programming interfaces (API) for the benefit of all insureds and contracted providers, as applicable:

(1) Patient access API, as described in Section 422.119 (a) to (e), inclusive, of Title 42 of the Code of Federal Regulations.

(2) Provider directory API, as described in Section 422.120 of the Code of Federal Regulations.

(3) Payer-to-payer exchange API, as described in Section 422.119(f) of the Code of Federal Regulations.

(b) In addition to the API described in subdivision (a), the department may require a health insurer to establish and maintain the following API if and when final rules are published by the federal government:

(1) Provider access API.

(2) Prior authorization support API.

(c) API described in subdivision (b) shall be in accordance with standards published in a final rule issued by the federal Centers for Medicare and Medicaid Services and published in the Federal Register, and shall align with federal effective dates, including enforcement delays and suspensions, issued by the federal Centers for Medicare and Medicaid Services.

(d) This section does not limit existing requirements under this chapter, including, but not limited to, Section 10133.15.

SEC. 5. 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.