

Date of Hearing: April 22, 2021

ASSEMBLY COMMITTEE ON PRIVACY AND CONSUMER PROTECTION

Ed Chau, Chair

AB 1184 (Chiu) – As Amended March 25, 2021

SUBJECT: Medical information: confidentiality

SUMMARY: This bill would revise and recast certain provisions in the Confidentiality of Medical Information Act (CMIA) to require a health care service plan or health insurer to accommodate requests for confidential communications of medical information regardless of whether there is a situation involving sensitive services or a situation in which disclosure would endanger the individual. Specifically, **this bill would:**

1) Provide that a health care service plan and an insurer shall:

- Recognize the right of a subscriber or protected individual to exclusively exercise specified rights regarding medical information related to care that the protected individual has received.
- Direct all communications regarding a protected individual's receipt of sensitive health care services directly to the protected individual receiving care, or to a specific mail or email address or a specific telephone number, as designated by the protected individual.

2) Provide that a health care service plan or insurer shall not do any of the following:

- Require a protected individual to obtain the policyholder, primary subscriber, or other enrollee's authorization to receive health care services or to submit a claim if the protected individual has the right to consent to care.
- Disclose medical information related to sensitive health care services provided to a protected individual to the policyholder, primary subscriber, or any plan enrollees other than the protected individual receiving care, absent an express written authorization of the protected individual receiving care. Communications subject to this paragraph shall include the following written, verbal, or electronic communications:
 - Bills and attempts to collect payment.
 - A notice of adverse benefits determinations.
 - An explanation of benefits notice.
 - A health care service plan's request for additional information regarding a claim.
 - A notice of a contested claim.

- The name and address of a provider, description of services provided, and other information related to a visit.
- Any written, oral, or electronic communication from a health care service plan that contains protected health information.

3) Define the following terms:

- “Protected individual” to mean any adult covered by the subscriber’s health care service plan or a minor who can consent to a health care service without the consent of a parent or legal guardian, pursuant to state or federal law. “Protected individual” does not include an individual that lacks the capacity to give informed consent for health care pursuant to Section 813 of the Probate Code.
- “Sensitive services” to mean all health care services related to mental health, reproductive health, sexually transmitted infections, substance use disorder, transgender health, including gender affirming care, and intimate partner violence, and includes services, as defined obtained by a patient at or above the minimum age specified for consenting to the service specified in the section.

EXISTING LAW:

- 1) Specifies, under the federal Health Insurance Portability and Accountability Act (HIPAA), privacy protections for patients’ protected health information and generally provides that a covered entity, as defined (health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. Sec. 164.500 et seq.)
- 2) Provides, under the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const. art. I, sec. 1.)
- 3) Prohibits, under CMIA, providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient’s written authorization, subject to certain exceptions. (Civ. Code Sec. 56 et seq.)
- 4) Authorizes minors, 12 years of age and older, to consent to specified health care and determine whether to keep it private, including sexual and reproductive health services, drug treatment, and mental health treatment or counseling services if, in the opinion of the attending professional person, the minor is mature enough to participate intelligently in the mental health treatment or counseling services. (Health & Saf. Code Secs. 123115, 124260; Civ. Code Sec. 56.11(c)(1); Fam. Code Secs. 6924-6929.
- 5) Provides that a health care service plan shall permit subscribers and enrollees to request, and shall accommodate requests for, communication in the form and format requested by the individual, if it is readily producible in the requested form and format, or at alternative locations, if the subscriber or enrollee clearly states either that the communication discloses medical information or provider name and address relating to receipt of sensitive services or

that disclosure of all or part of the medical information or provider name and address could endanger the subscriber or enrollee. (Civ. Code Sec. 56.107(a)(1).)

- 6) Permits a health care service plan to require that a confidential communications request contain a statement that the request pertains to either medical information related to the receipt of sensitive services or that disclosure of all or part of the medical information could endanger the subscriber or enrollee, as specified. (Civ. Code Sec. 56.107(a)(3).)
- 7) Defines “medical information” to mean any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient’s medical history, mental or physical condition, or treatment. CMIA defines “individually identifiable” to mean that the medical information includes or contains any element of personal identifying information sufficient to allow identification of the individual, such as the patient’s name, address, electronic mail address, telephone number, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual’s identity. (Civ. Code Sec. 56.05(g).)
- 8) Defines “sensitive services” to generally mean reproductive health services, including services related to sexually transmitted diseases, or mental health services, obtained by a patient at or above the minimum age specified for consenting to the service. (Civ. Code Sec. 56.06(e).)
- 9) Defines “endanger” to mean that the subscriber or enrollee fears that disclosure of their medical information could subject the subscriber or enrollee to harassment or abuse. (Civ. Code Sec. 56.06(n).)

FISCAL EFFECT: Unknown

COMMENTS:

- 1) **Purpose of the bill:** This bill seeks to ensure that insurance companies automatically communicate with a patient confidentially for the provision of “sensitive services,” as defined. This bill is sponsored by Planned Parenthood Affiliates of California.
- 2) **Author’s statement:** According to the author:

Currently a patient can request confidentiality for sensitive services, as established by SB 138 (Hernandez, 2013), however the onus is on the patient and [includes multiple] steps. A *confidential communications request* is defined as a request by a subscriber/enrollee or insured that health plan/health insurance communications containing medical information be communicated at specific mail or email address or specific telephone number, as designated by the subscriber/enrollee or insured. There is no standardized form or process for submitting a CCR.

Despite these steps, not all health plans actually follow through with providing confidentiality and if a patients request is not fulfilled it is on the patient to file a complaint with the health insurer or DMHC. These steps can be onerous and complicated, especially for younger patients and those seeking urgent confidentiality because they don’t feel safe having their parents or spouse see their medical services.

AB 1184 updates language related to confidentiality of medical information to require insurance companies to automatically establish confidentiality for a patient seeking sensitive services (as defined) and update the definition of sensitive services to include transgender care and behavioral health care (Civil Code 56.107).

- 3) **Insurance companies are required to communicate directly with a patient who has requested confidential communications related to the provision of “sensitive services”:** Since 2014, California has allowed patients to request that insurance companies communicate with patients at an alternative address related to the provision of sensitive services. SB 138 (Hernandez, Ch. 444, Stats. 2013) Sensitive services are defined as prevention, counseling, diagnosis, and treatment related to sexual and reproductive health, including HIV/AIDS, substance use, and mental health. (Citation). This enables patients, for example a spouse or child, to ensure that sensitive services are kept confidential from the policyholder. As described by the Planned Parenthood Advocates of California, sponsor of this bill:

Confidentiality is of utmost importance when a patient is accessing health care, especially sensitive services. To help protect patient confidentiality, California passed SB 138 (Hernandez, 2013). SB 138 created a process for patients to submit a Confidential Communications Request (CCR) to the health plan. A CCR allows a patient to request confidential communications in writing and requires a patient to provide an alternate address and/or preferred form of communication up to one to two weeks before accessing the sensitive service. While SB 138 aimed to ensure patient confidentiality, patients have experienced challenges following its implementation. Because health plans have 7 days to implement a CCR submitted via phone and 14 days for CCRs submitted via mail, when a patient needs to access a timely service, like abortion or birth control, their confidentiality is not guaranteed. In addition, when a plan does not abide by the CCR, the only recourse for the patient is for them to file a complaint with the Department of Managed Health Care – once the harmful disclosure has already occurred.

AB 1184 will improve confidentiality for patients by ensuring automatic confidentiality within a health insurance plan when a patient is accessing a sensitive service. By eliminating the confidential communications request process, AB 1844 will remove burden of ensuring confidentiality from the patient, who have continued to face challenges ensuring confidentiality when accessing sensitive services. AB 1184 will also expand the definition of sensitive services to ensure patients’ information is protected when accessing mental and behavioral health care, sexual and reproductive health care, gender affirming care, substance abuse care, and intimate partner violence and sexual assault services. For many of these patients, the disclosure that a person received these services to a parent or non-supportive partner could be harmful and even life threatening.

By revising and recasting the original provisions of SB 138, along with updating the definitions, this bill should help ensure that patients can keep sensitive services confidential and will help realize the goals of the Legislature in passing SB 138.

- 4) **Continued conversations with opposition to address technical concerns:** The California Association of Health Plans (CAHP) and Association of California Life & Health Insurance

(CLHI) companies write that, while they appreciate the intent of the bill, they have practical concerns about its implementation. They request that language be added to clarify that:

[I]f a plan or insurer **has not** received a confidential communication request that they can continue to direct information to the current address on file, as long as the communication is addressed directly to the individual enrollee or insured who received the service. This clarification is vital as it would allow plans and insurers to continue to meet their statutory and legal obligation to provide critical health information to their members while also ensuring that the privacy of the individual enrollee or insured is protected.

Additionally, we would request the bill include a delayed implementation date so that plans and insurers can update their internal systems and appropriately train their staff to identify and process the new requests. This is especially important as internal plan staff as well as customer services units will need to be fully briefed and trained on the changes so that we can limit any potential confusion and/or delays in processing requests. (Emphasis in original.)

The author, sponsor, and opposition have committed to continue working on the technical issues raised by CAHP and CLHI. Given the sensitivity of the information communicated in these transactions and the complexity of health insurance systems, it is important that all stakeholders take the time to draft language that will achieve the goals of this bill.

In support, the American College of Obstetricians and Gynecologists District IX writes:

Communications are not always confidential when a patient accesses care for a sensitive service, including sexual and reproductive health care. For example, an individual who is on someone's insurance plan may not feel safe or comfortable having their health information shared with the policy holder.

Currently, patients with confidentiality concerns can protect their medical communications by requesting confidentiality that there has been no standard process for requesting confidentiality and there has been inconsistencies and follow through for patient protection. AB 1184 would guarantee that patients can successfully and safely use their insurance to access needed care without confusion or fear that their privacy will be violated.

- 5) **Prior legislation:** SB 138 (Hernandez, Ch. 444, Stats. 2013) *See* Comment 3.
- 6) **Double referral:** This bill was double-referred to the Assembly Committee on Health where it was heard on April 13, 2021 and passed out 11-3.

REGISTERED SUPPORT / OPPOSITION:

Support

Planned Parenthood Affiliates of California (sponsor)
American College of Obstetricians and Gynecologists District IX
California Partnership to End Domestic Violence

Equality California
Naral Pro-choice California
Women's Foundation of California

Opposition

Association of California Life & Health Insurance Companies (unless amended)
California Association of Health Plans (unless amended)

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