

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 1184 (Cortese)
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Fiscal: No
Urgency: No
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SUBJECT

Confidentiality of Medical Information Act: school-linked services coordinators

DIGEST

This bill authorizes a provider of health care or a health care service plan to disclose medical information to a school-linked services coordinator to the extent pursuant to a written authorization.

EXECUTIVE SUMMARY

Existing California and federal law strictly govern the use of a patient's medical information. These statutory frameworks favor the privacy of the patient, with caveats for the sharing of medical information when necessary for treatment. The California Medical Information Act (CMIA) allows adult patients in California to keep personal health information confidential and decide whether and when to share that information. CMIA protects "medical information," and restricts its disclosure by "providers of health care" and "health care service plans," as defined and specified.

This bill authorizes a provider of health care or a health care service plan to disclose medical information to a school-linked services coordinator pursuant to a written authorization between the health provider and the patient or client that complies with the Health Insurance Portability and Accountability Act (HIPAA). This includes an individual that holds a services credential with a specialization in pupil personnel services, as described in Section 44266 of the Education Code, located on a school campus or under contract by a county behavioral health provider agency for the treatment and health care operations and referrals of students and their families.

This bill is author-sponsored and supported by the National Alliance on Mental Illness - Santa Clara County Board of Directors. It is opposed by the Electronic Frontier Foundation and Protection of the Educational Rights of Kids.

PROPOSED CHANGES TO THE LAW

Existing federal law:

- 1) Establishes the Health Insurance Portability and Accountability Act (HIPAA), which provides privacy protections for patients' protected health information and generally prohibits a covered entity, as defined (health plan, health care provider, and health care clearing house), from using or disclosing protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. § 164.500 et seq.)
- 2) Provides that if HIPAA's provisions conflict with a provision of state law, the provision that is the most protective of patient privacy prevails. (45 C.F.R. § 164.500 et seq.)
- 3) Establishes the Family Educational Rights and Privacy Act (FERPA), which protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education. (20 U.S.C. § 1232g; 34 C.F.R. Part 99.)

Existing state law:

- 1) Provides, pursuant to the California Constitution, that all people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy. (Cal. Const., art. I, § 1.)
- 2) Establishes the CMIA, which establishes protections for the use of medical information. (Civ. Code § 56 et seq.)
- 3) Defines "medical information," for purposes of CMIA, 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. "Individually identifiable" means 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 § 56.05(j).)
- 4) Prohibits 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 § 56.10.)

- 5) Defines “patient,” for purposes of CMIA, to mean any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains. (Civ. Code § 56.05(k).)
- 6) Defines “health care service plan” to mean any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975. (Civ. Code § 56.05(g).)
- 7) Defines a “licensed health care professional,” for purposes of CMIA, to mean any person licensed or certified pursuant to the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or the Health and Safety Code, as specified. (Civ. Code § 56.05(h).)
- 8) Defines “provider of health care,” for purposes of CMIA, to mean any person licensed or certified pursuant to the Business and Professions Code, as specified; the Osteopathic Initiative Act or the Chiropractic Initiative Act; the Health and Safety Code, as specified; or any licensed clinic, health dispensary, or health facility, as specified. The term does not include insurance institutions, as defined. (Civ. Code § 56.05(m).)
- 9) Provides that any provider of health care, a health care service plan, pharmaceutical company, or contractor who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of written or electronic medical records shall be subject to damages in a civil action or an administrative fine, as specified. (Civ. Code § 56.36.)
- 10) Provides that any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor, or by the pupil’s parent or guardian is confidential. The information shall not become part of the pupil record. Such information can only be revealed, released, discussed, or referred to as follows:
 - a) discussion with psychotherapists, other health care providers, or the school nurse for the sole purpose of referring the pupil for treatment;
 - b) reporting of child abuse or neglect;
 - c) when the school counselor has reasonable cause to believe that disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil or others;
 - d) when the information relates to the commission or future commission of a crime; or
 - e) to law enforcement agencies when ordered to do so by order of a court of law, to aid in the investigation of a crime, or when ordered to testify in any administrative or judicial proceeding. (Educ. Code § 49602.)

This bill:

- 1) Authorizes a provider of health care or a health care service plan to disclose medical information to a school-linked services coordinator to the extent not preempted by federal law.
- 2) Defines “school-linked services coordinator” includes licensed educational psychologists, school nurses, and school clinical social workers who are located on a school campus or under contract by a county behavioral health provider agency for the treatment and health care operations and referrals of students and their families.

COMMENTS

1. Protecting medical information

HIPAA, enacted in 1996, guarantees privacy protection for individuals with regards to specific health information. (Pub.L. 104-191, 110 Stat. 1936.) Generally, protected health information is any information held by a covered entity which concerns health status, provision of healthcare, or payment for healthcare that can be connected to an individual. HIPAA privacy regulations require healthcare providers and organizations to develop and follow procedures that ensure the confidentiality and security of personal health information when it is transferred, received, handled, or shared. HIPAA further requires reasonable efforts when using, disclosing, or requesting protected health information to limit disclosure of that information to the minimum amount necessary to accomplish the intended purpose.

CMIA (Civ. Code § 56 et seq.) allows adult patients in California to keep personal health information confidential and decide whether and when to share that information. These provisions are guided to protect Californians’ fundamental right to privacy. (Cal. Const., art. I, § 1.) CMIA protects “medical information,” and generally regulates what providers of health care, and health care service plans, can do with such information.

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. (20 U.S.C. § 1232g; 34 C.F.R. Part 99.) The law applies to all schools that receive certain federal funding. Generally, schools must have written permission from the parent or eligible student in order to release information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to certain parties or under certain conditions. This includes disclosure to school officials with legitimate educational interests.

2. Facilitating the sharing of medical information with school services providers

CMIA prohibits a provider of health care, health care service plan, or contractor from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization from the patient. There are various exceptions in the law. Disclosure is required when compelled by a series of enumerated requests, such as by court order, search warrant, or administrative subpoena. In addition, there are a series of enumerated bases by which health care providers and plans are authorized, but not required to disclose medical information. For instance, the information may be disclosed in order to determine responsibility for payment, for administrative purposes, or to certain organizations and institutions for bona fide research purposes. More relevant here, disclosure is also permitted when it is shared with providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient.

This bill adds in certain services providers that are located on school campuses or are under contract by a county behavioral health provider agency for the treatment and health care operations and referrals of students and their families. This includes individuals that hold a services credential with a specialization in pupil personnel services, as described in Section 44266 of the Education Code. In order to ensure there are no violations of HIPAA or similar privacy laws at the federal level, such sharing is only authorized when done pursuant to a written authorization between the health provider and the patient or client that complies with HIPAA.

This bill grows out of the School Linked Services Initiative, a program in Santa Clara County:

School Linked Services (SLS) provides students and families with school based coordinated services to improve health and wellbeing of families through a community participatory approach. School Linked Services (SLS) Coordinators, located at the school district or a school site, develop partnership with schools, public agencies and community based organization in Santa Clara County to improve protective factors, e.g., family relationship, decrease risk-factors, e.g., behavioral and emotional problems, enhance service accessibility and resource linkage, and to support children's success in school and in life.¹

Research by the Santa Clara County Office of Education indicates that students are 10 to 21 times more likely to receive behavioral health services when they are provided on a

¹ *School Linked Services Initiative*, County of Santa Clara Behavioral Health Services, <https://bhsc.sccgov.org/information-resources/children-youth-and-family/school-linked-services-initiative>. All internet references are current as of March 12, 2022.

school campus.² This is particularly critical given the evidence that the COVID-19 pandemic has exacerbated youth mental health issues. In fact, the findings suggest that in the first year of the pandemic, intentional self-harm among 13- to 18-year-olds increased by 91 percent, overdoses increased by 95 percent, and diagnoses of major depressive disorder increased by 84 percent.

This militates in favor of fostering expanded behavioral health services in school-based settings in California. However, there may be some privacy concerns with authorizing the sharing of sensitive medical information with a larger range of school personnel. To enhance student and parent control and privacy, the bill only authorizes this sharing after the client or patient signs a written authorization with their health provider. However, some concerns still remain. Writing in opposition, the Electronic Frontier Foundation states:

The Confidential Medical Information Act rightly limits access to medical information except in particular cases for particular people. We have concerns about expanding access to such sensitive information, and would like to have more information on what types of pupil personnel this covers and what issue they are trying to remedy with these suggested amendments. The definition of a “school-linked services coordinator” is quite broad, and it is unclear to EFF why adding an exemption to the authorization of sharing medical records would be helpful.

We would also like more information on how this law interacts with the federal Family Education Rights and Privacy Act, which already provides for sharing of information with “appropriate” officials in the case of health and safety emergencies.

3. Support for the bill

According to the author:

We must expand our statewide strategy to provide school-based mental health services to students and ensure that services provided among various entities are sustainable, equitable, and better coordinated to fill gaps in services that exist for students and support the overall health and well-being of all children.

To “close the loop” on community-clinical referrals in school settings and provide improved care coordination for students accessing behavioral

² Amanda Dickey & Carolyn Gray, *The Efficacy of Implementing a School-Based Approach to Student Wellness* (January 2022) Santa Clara County Office of Education, <https://drive.google.com/file/d/1BV1WZUoqHhimaMPCyQhMlkyQy-g5ao9/view>.

health services, SB 1184 would define, under California Civil Code, a “School-Linked Services” coordinator as those individuals or entities, including licensed educational psychologists, located on a school campus or under contract by a county behavioral health provider for treatment and health care operations and ensure that these “School-Linked Services” coordinators can better refer both students and families to mental health treatment and care.

Writing in support, the National Alliance on Mental Illness – Santa Clara County Board of Directors asserts:

Mental health has been a growing concern in our school communities even before distance learning affected our classrooms. Between 2007 and 2014, the suicide rate for children between the ages of 10 to 14 increased drastically. Suicide is now the second leading cause of death for individuals between the ages of 10 and 24.

COVID-19 has only exacerbated these existing issues.

We must work to improve the way we deliver behavioral health support to our student community, whether it is through partnerships between counties and local school systems or school-site wellness centers so that we can meet the mental health needs of our students.

Through the School-Linked Services Program, students and families will be connected to mental health counseling, case management, and public health services on district and school site campuses. We believe that SB 1184 would improve the way we serve our children and student community.

SUPPORT

National Alliance on Mental Illness – Santa Clara County Board of Directors.

OPPOSITION

Electronic Frontier Foundation
Protection of the Educational Rights of Kids
One individual

RELATED LEGISLATION

Prior Legislation:

SB 41 (Umberg, Ch. 596, Stats. 2021) established the Genetic Information Privacy Act, providing additional protections for genetic data by regulating the collection, use, maintenance, and disclosure of such data.

AB 1184 (Chiu, Ch. 190, Stats. 2021) revised and recast, effective July 1, 2022, provisions of existing law that require health plans and insurers to accommodate requests for confidential communication of medical information (CCRs) to instead require health plans and insurers to accommodate CCRs regardless of whether it involves sensitive services or a situation in which disclosure would endanger the individual. It requires health plans/insurers to direct all communications regarding a protected individual's receipt of sensitive health care services directly to the protected individual, and prohibits the disclosure of that information to the policyholder without the authorization of the protected individual.

AB 998 (Lackey, 2021) would have amended CMIA to allow for disclosure of mental health records by a county correctional facility, county medical facility, state correctional facility, or state hospital, as provided. This bill died in the Senate Appropriations Committee.

AB 1436 (Chau, 2021) would have made a business a provider of health care, and therefore subject to CMIA, when it offers to a consumer personal health record system software or hardware that is designed to maintain and make available personal health record system information for purposes of allowing the individual to manage their information, or for the diagnosis, treatment, or management of a medical condition of the individual. This bill died in the Senate Appropriations Committee.
