

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

SB 1419 (Becker)

Version: April 18, 2022

Hearing Date: April 19, 2022

Fiscal: Yes

Urgency: No

AM

SUBJECT

Health information

DIGEST

This bill specifically includes clinical notes within the existing prohibition on the ability of a representative of a minor to inspect or obtain copies of the minor's patient records, and specifies that prohibition also applies to minor's patient records for medical services that can be consented to by minors. The bill expands the existing requirements related to health care professionals providing the results of clinical laboratory tests to also include imaging scans, and requires health plans and health insurers to establish and maintain certain application programming interfaces (APIS) to facilitate patient and provider access to health information, as provided.

EXECUTIVE SUMMARY

Most recently, the federal government issued final rules related to implementing the federal 21st Century Cures Act. This bill was introduced in response to the publication of the final rules and seeks to ensure that the privacy of Californians in regards to their medical records continues to be protected once the federal rules become adopted. Specifically, the bill seeks to address issues of interoperability and patient access by requiring health plans and health insurers to establish and maintain certain APIs that are consistent with specified federal regulations to facilitate patient and provider access to health information. Additionally, the bill addresses information blocking by clarifying existing law related to the inspection of a minor's patient records and applying existing requirements and protections related to the results of clinical laboratory tests to the results of imaging scans.

The bill is sponsored by the California Medical Association and supported by the California Orthopaedic Association. There is no known opposition. The bill passed out of the Senate Health Committee on a vote of 8 to 2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides, pursuant to the California Constitution, that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, § 1.)
- 2) Prohibits, under the Confidentiality of Medical Information Act (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 § 56 et seq.)
- 3) Provides that any adult patient of a health care provider, any minor patient authorized by law to consent to medical treatment, and any patient representative is entitled to inspect patient records upon presenting a health care provider with a written request and payment of a reasonable fee, and limits a patient who is a minor to inspecting patient records pertaining only to health care of a type for which the minor is lawfully authorized to consent. (Health & Safe. Code § 123110.)
 - a) Permits a minor to consent to certain specific health care services, as specified. (Fam. Code §§ 6922 & 6924-6929; Health & Safe. Code § 121020.)
 - b) Defines "patient records" as 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. (Health & Safe. Code § 123105.)
- 4) Prohibits a representative of a minor from being able to inspect or obtain copies of the minor's patient records with respect to records that the minor has a right of inspection under 3) above, or 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. (Health & Safe. Code § 123115.)
- 5) Requires a health care professional to provide or arrange for the provision of the results of a clinical laboratory test requested by them to the patient in oral or written form, if so requested by the patient.
 - a) Requires any consent of a patient to receive test results by electronic means to be consistent with specified requirements of CMIA.
 - b) Requires, in the event that a health care professional arranges for the provision of test results by internet posting or other electronic manner, the results to be disclosed in a reasonable time period, but only after the results have been reviewed by the health care professional.
 - c) Requires the electronic disclosure of test results to be in accordance with any applicable federal and state law governing privacy and security of electronic health records, as specified. (Health & Safe. Code § 123148.)

This bill:

- 1) Specifies that the prohibition on the ability of a representative of a minor to inspect or obtain copies of the minor's patient records includes access to clinical notes and when records relate to those specified services a minor can consent to under existing law.
- 2) Includes imaging scans, such as x-rays, magnetic resonance imaging, ultrasound, or other similar technologies, under the provisions of existing law that require health care professionals to provide the results of clinical laboratory tests to patients.
- 3) Requires a health plan and health insurer, in order to facilitate patient and provider access to health information, to establish and maintain certain application programming interfaces (APIs) for the benefit of enrollees and contracted providers, as described in specified federal law. Authorizes the Department of Managed Health Care and the California Department of Insurance to require a health plan or health insurer, respectively, to establish and maintain certain APIs if and when final rules are published by the federal government.

COMMENTS

1. Stated need for the bill

The Author writes:

One of the most sacrosanct relationships in our society is between a patient and their physician. In such a relationship, patients can consult with their physician on intimate matters about their health and receive a free flow of information and high-quality care tailored to their needs. However, the sharing of patient health information without sufficient physician consultation and privacy protections can have a detrimental effect. This scenario can happen because federal information blocking rules require physicians and other providers to release patient data as soon as available. Thankfully, the federal rule defers to state law, allowing California the opportunity to balance the goal of providing patients access to information while protecting their privacy and adhering to their wishes.

SB 1419 adds new patient protections into California law that will ensure patients receive sometimes challenging health information in the time and manner that works best for them. It also adds new protections for the most sensitive data so that patient privacy is maintained at all times.

2. Background

In December of 2016, the federal 21st Century Cures Act was signed into law and in 2020 final rules to implement the Act were published. According to the Senate Health Committee analysis:

The Office of the National Coordinator for Health Information Technology (ONC) Cures Act Final Rule implemented key provisions of the Cures Act, including addressing occurrences of “information blocking.” Information blocking is a practice by a health care provider, developer of health information technology (IT), a health information network, or a health information exchange that, except as required by law or specified as a reasonable and necessary activity, is likely to interfere with access, exchange, or use of electronic health information.[...] The rule identifies eight categories of reasonable and necessary activities that do not constitute information blocking, provided certain conditions are met. [...] Additionally, if a health care provider’s information blocking practice is required by state or federal law, then it also is not considered a violation of the rule. The Interoperability and Patient Access Final Rule [...] required CMS-regulated payers to implement and maintain a secure, standards-based API that allows patients to easily access their claims and encounter information, including cost, as well as a defined subset of their clinical information through third-party applications of their choice. The rule also required CMS-regulated payers to make provider directory information publicly available via a standards-based API, and implement a process for a payer-to-payer clinical data exchange to allow patients to take their information with them as they move from payer to payer over time to help create a cumulative health record.¹

In response to these published federal rules, the bill requires a health plan and health insurer, in order to facilitate patient and provider access to health information, to establish and maintain APIs for the benefit of enrollees and contracted providers, as described in the federal regulations. The bill also authorizes the Department of Managed Health Care and the California Department of Insurance to require a health plan or health insurer, respectively, to establish and maintain certain APIs if and when final rules are published by the federal government relating to provider access and prior authorization support. The bill also includes the same requirements and protections for imaging scans, such as x-rays, magnetic resonance imaging, ultrasound, or other similar technologies, that apply to clinical laboratory test results under existing law.

The federal rule related to information blocking only allows information to be withheld if it meets one of the eight specified exceptions or if it is required to comply with a state or federal law. The sponsor and author of the bill state that the rule specifically provides

¹ Senate Health Com., Analysis of Sen. Bill No. 1419 (2021-22 Reg. Session) as amended Mar. 17, 2022 at pg. 4.

patients and representatives with the right to see clinical notes. In order to ensure that a minor's clinical notes are protected from disclosure to their representative in the same manner as their patient record under existing state law, the bill clarifies that a minor's patient record includes clinical notes.

The bill also specifically includes records related to medical services, for which a minor can consent to under existing law, as those records for which a representative of a minor is not entitled to inspect or obtain, even though these records are already protected from disclosure. (*See para. (1), subd. (a), Health & Saf. Code § 123115.*) That provision states that a record "with which the minor has a right to inspection under Section 123110" of the Health and Safety Code is such a record for which the representative of that minor is not entitled to inspect or obtain. Section 123110 of the Health and Safety Code provides that 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."

The author may wish to consider removing this provision from the bill as existing law already provides that records of a minor for services for which they are lawfully authorized to consent are the type of record that the minor's representative is not entitled to inspect or obtain. Additionally, since the language in the bill specifically cross-references the sections of law for those services to which a minor can consent there is a chance that if new services are added in the future the cross-references may not get updated. For instance, currently pending in the Legislature is Senate Bill 866, which would authorize a minor 12 years of age or older to consent to vaccines that meet specified federal agency criteria. If the bill were enacted and the new code section not included in the specific cross-references it could lead to confusion whether the record related to that medical service falls within the protections for minor patient records.

3. Statements in support

The California Medical Association, sponsor of the bill, writes:

In the spring of 2021, the federal 21st Century Cures Act Final Rule took effect. This rule defined "information blocking," which is "any action...that is likely to interfere with access, exchange, or use of electronic health information (EHI)." This rule is intended to provide physicians and patients with seamless access to all data needed to provide high-quality patient care. Providing patients increased access to health care data is an important goal. In practice, however, the information blocking rules are causing unintended consequences that can be damaging to patients and cause unnecessary emotional distress.

Thankfully, the federal rule defers to state law, stipulating that a provider is not "information blocking" if they are complying with state law. This provides the State of California with an opportunity to address these unintended

consequences by changing state statute. SB 1419 will enact important clarifications to California Law (Health and Safety Code 123148), which governs patient access to health information. This bill will provide patients the right to receive results of an imaging scan in written or oral form, the same protection currently provided to lab results.[...]

Additionally, this bill will provide a framework for application programming interfaces (APIs) by incorporating the requirements of the Patient Access and Interoperability Rule to state-regulated health plans and insurers. Specifically, the proposed legislation would require health plans and insurers to develop and maintain the following APIs: patient access, provider access, payer-to-payer, provider directory, documentation services lookup, and prior authorization support.

These essential changes in state law will improve quality of care by guaranteeing that physicians and patients have all information needed for integrated health care.

SUPPORT

California Medical Association (sponsor)
American College of Obstetricians and Gynecologists
California Orthopedic Association
California Podiatric Medical Association

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 866 (Wiener, 2022) would authorize a minor 12 years of age or older to consent to vaccines that meet specified federal agency criteria, as provided. This bill is currently pending in the Senate Judiciary Committee.

Prior Legislation:

SB 241 (Monning, Ch. 513, Stats. 2017) revised and recast provisions of law governing the right of patients to access and copy their medical records by conforming these requirements to HIPAA requirements and by making other technical, clarifying, and conforming changes.

SB 575 (Leyva, Ch. 626, Stats. 2017) expanded a provision of law that entitles a patient to a copy, at no charge, of the relevant portion of the patient's records that are needed to support an appeal regarding eligibility for certain public benefit programs, and included In-Home Supportive Services, the California Work Opportunity and Responsibility to Kids program, CalFresh, and certain veterans related benefits within the list of public benefit programs.

AB 2088 (Santiago, Ch. 275, Stats. 2018) permitted minor patients to provide a written addendum to their medical records if the patient believes the records to be incomplete or incorrect.

PRIOR VOTES:

Senate Health Committee (Ayes 8, Noes 2)
