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## SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

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**BILL NO:** AB 2520  
**AUTHOR:** Chiu  
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**CONSULTANT:** Vincent D. Marchand

Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee.

**SUBJECT:** Access to medical records

**SUMMARY:** Expands the ability of a patient or a patient's representative to obtain a copy, at no charge, of the relevant portion of the patient's medical records that are needed to support a claim or appeal regarding eligibility for certain benefit programs by permitting an employee of a nonprofit legal services entity representing the patient to have access to the patient's records, adding additional benefit programs, and prohibiting 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 for a public benefit program.

**Existing law:**

- 1) Requires, under the Patient Access to Health Records (PAHR) 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, to be entitled to inspect patient records upon presenting a health care provider with a written request for those records and upon payment of reasonable clerical costs incurred in locating and making the records available. [HSC §123110(a)]
- 2) Requires, under PAHR, any patient or patient's representative to be entitled to a paper or electronic copy of all or any portion of the patient records that he or she has a right to inspect, upon presenting a written request of the health care provider specifying the records to be copied, together with a fee to defray the cost of copying, that does not exceed \$.25 per page of \$.50 per page for records that are copied from microfilm and any additional reasonable clerical costs incurred in making the records available. [HSC §123110(b)]
- 3) Requires, under PAHR, a patient or the representative of a patient to be entitled to a copy, at no charge, of the relevant portion of the patient's records, upon presenting to the provider proof that the records are needed to support an appeal regarding eligibility for a public benefit program, which is defined to include the Medi-Cal program, the In-Home Supportive Services Program, the California Work Opportunity and Responsibility to Kids 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, and CalFresh. For purposes of this provision, existing law also:

- a) Excludes from this provision any patient who is represented by a private attorney, who is not employed by a nonprofit legal services entity, who is paying for the costs related to the patient's appeal, pending the outcome of that appeal; and,
  - b) Permits a health care provider to bill the patient, at the rates specified in 2) above, for the copies of the medical records previously provided free of charge if the patient's appeal regarding eligibility for a public benefit program is successful. [HSC §123110(d)]
- 4) Defines "health care provider," for purposes of PAHR, as a licensed health facility, clinic, or home health agency, or certain specified licensed health care professionals, as specified. [HSC §123105(a)]
- 5) Defines "patient's representative," "patient's personal representative," or "representative," for purposes of PAHR, as one of the following:
- a) a parent or guardian of a minor patient;
  - b) the guardian or conservator of an adult patient;
  - c) an agent granted power of attorney, as specified, to the extent necessary for the agent to fulfill their duties, as specified; or,
  - d) the beneficiary or personal representative, as specified, of a deceased patient. [HSC §123105(e)]
- 6) Makes any licensed health care professional that willfully violates PAHR guilty of unprofessional conduct. Makes any health facility, clinic, or home health agency that willfully violates PAHR guilty of an infraction punishable by a fine of not more than \$100. Requires the state agency, board, or commission that issued the provider's professional or institutional license to consider a violation as grounds for disciplinary action with respect to the licensure, including suspension or revocation of the license. [HSC §123110(i)]

**This bill:**

- 1) Adds the following professionals to the definition of "health care provider" for purposes of PAHR:
- a) A licensed speech-language pathologist or audiologist;
  - b) A licensed physician assistant; and,
  - c) A licensed nurse practitioner.
- 2) Expands a provision of PAHR that entitles a patient or a patient's personal representative to a copy, at no charge, of the relevant portion of the patient's records that are needed to support a claim or an appeal regarding eligibility for certain benefit programs, by doing the following:
- a) Specifying that an employee of a nonprofit legal services entity representing the patient is entitled to obtain the patient's records at no charge, in addition to the patient or the patient's personal representative;
  - b) Adding to the list of programs for which a patient or their representative is entitled to free records to support a claim or appeal, a petition for U nonimmigrant status under the Victims of Trafficking and Violence Protection Act, and a self-petition for lawful permanent residency under the Violence Against Women Act; and,
  - c) Expanding the definition of public benefit programs, for which a patient or their representative is entitled to free records to support a claim or appeal, 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.

- 3) Eliminates the ability for a health care provider to bill a patient for copies of medical records previously provided free of charge if the appeal for a public benefit program is successful.
- 4) Prohibits 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, as defined.
- 5) Requires a 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. Permits the health care provider, if the health care provider does not have the information necessary to provide a medical opinion, to inform the patient if an examination is necessary to obtain the information.
- 6) Requires a health care provider, if they conduct an examination pursuant to 5) above, to provide information responsive to those portions of the form for which the health care provider has a medical opinion.
- 7) Permits 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.

**FISCAL EFFECT:** According to the Assembly Appropriations Committee, to the extent this bill facilitates the enrollment in or the provision of public services to individuals attempting to access publicly funded state benefit programs, there could be indeterminate, minor costs across a range of state-funded programs.

**PRIOR VOTES:**

Assembly Floor:	76 - 0
Assembly Appropriations Committee:	18 - 0
Assembly Health Committee:	15 - 0

**COMMENTS:**

- 1) *Author's statement.* According to the author, the coronavirus pandemic has caused California's unemployment rate to skyrocket, which has increased the number of people eligible for public benefits. Even before the COVID-19 outbreak, applying for public benefit programs was a complicated process that required low-income Californians to jump through numerous bureaucratic hoops to prove a disability or medical condition. This bill will streamline access to public benefits by simplifying the application process. First, it will clarify that legal aid advocates may, on behalf of a client, receive medical records without cost when used to support eligibility for a public benefit program. Second, this bill will require health providers to complete forms that are needed to establish eligibility for public benefit programs. Moreover, it will expand access to free medical records for programs serving immigrants with disabilities, for petitions to obtain lawful status for immigrants who are survivors of crime or domestic violence, and for individuals applying for government-funded housing assistance programs. As the pandemic exacerbates income inequality, it is important that we protect vulnerable communities by expanding access to public benefits.

By addressing an urgent problem that threatens the security of Californians, this bill improves access to California's social safety net when millions must rely on it.

- 2) *Background.* According to information provided by the sponsor of this bill, applying for a public benefit program is often a complicated process that requires the submission of medical records to prove a disability or medical condition. Applicants turn to legal aid advocates for help when their applications are denied or need additional assistance. In assisting low-income clients, legal aid advocates have reported difficulty obtaining medical records without cost and are denied access because they do not have formal authority to receive the records. For example, some health facilities require a "power of attorney" to receive records on behalf of a client. "Power of attorney," however, allows an individual to make legal, financial, and health decisions on behalf of another person, so it is not an appropriate designation for legal aid advocates who are only representing clients on a public benefits issue. When applying for public benefit program, low-income people also face barriers in completing forms to certify their disability or medical condition. Some healthcare providers refuse to complete these forms or charge a minimum of \$40 to complete them. Without medical records and completed forms from their healthcare providers, applicants may not receive public benefits.
- 3) *Privacy and access to medical records.* In general, patient protections of medical records fall under two main bodies of law: the federal Health Insurance Portability and Accountability Act (HIPAA), and the Confidentiality of Medical Information Act (CMIA) in California. HIPAA and CMIA generally govern the use and protection of health information by health care providers, health plans and their business associates. Separately, two bodies of state law govern patient access to those records: PAHR in the Health and Safety Code, and provisions of law in the Evidence Code governing requests for medical information made by attorneys representing patients. HIPAA also provides for patient access to medical records, and sets minimum requirements on providers, although state law can be more restrictive.
- 4) *Public benefit programs added by this bill.* This bill expands the provision of free medical records to applicants of government-funded housing subsidies or tenant-based housing assistance programs, as well as the following benefit programs:
  - a) *U Nonimmigrant status.* According to the U.S. Citizenship and Immigration Services, the U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of aliens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.
  - b) *Self-petition for permanent residency under the Violence Against Women Act.* According to the U.S. Citizenship and Immigration Services, under the federal Violence Against Women Act, you may be eligible to become a lawful permanent resident (get a Green Card) if you are the victim of battery or extreme cruelty committed by a U.S. citizen spouse or former spouse, a U.S. citizen parent, a U.S. citizen son or daughter, a lawful

permanent resident (LPR) spouse or former spouse, or an LPR parent. You may self-petition by filing a petition, as specified, without your abusive family member's knowledge or consent. If your self-petition is approved and you meet other eligibility requirements, you may be eligible to apply to become a lawful permanent resident.

- c) *Cash Assistance Program for Aged, Blind, and Disabled Legal Immigrants.* According to the Department of Social Services, the Cash Assistance Program for Immigrants (CAPI) is a 100% state-funded program designed to provide monthly cash benefits to aged, blind, and disabled non-citizens who are ineligible for Supplemental Security Income/State Supplementary Payment (SSI/SSP) solely due to their immigration status. The Welfare Reform Act of 1996 (P.L. 104-193) eliminated SSI/SSP eligibility for most non-citizens. As a result, most immigrants who were not receiving SSI/SSP in August 1996 are no longer eligible for SSI/SSP. The amount of CAPI benefits is equivalent to the amount of SSI/SSP benefits. CAPI recipients may be eligible for Medi-Cal, CalFresh and In-Home Supportive Services (IHSS), but they must file for each benefit separately. There is no automatic eligibility link between CAPI and these other programs.
- 5) *Senate Judiciary Committee comment.* This bill touches on various issues within the jurisdiction of the Senate Judiciary Committee, most prominently the issue of privacy. According to the author, this bill will streamline access to public health benefits by clarifying that legal advocates may, on behalf of a client, receive medical records without cost when used to support eligibility for a public benefit program, and expand access to free medical records for certain programs. According to bill supporter National Health Law Program, health care providers frequently impose inconsistent protocols for advocates to obtain necessary medical records. While the disclosure of medical records presents a potential privacy risk, any request for records would still need to be accompanied by a HIPAA release form signed by the patient (see 45 C.F.R., §164.508, see generally 45 C.F.R. §§164.500-534). By clarifying that legal advocates are entitled to medical records without a fee, under the ambit of the HIPAA privacy regime, this bill appears to strike a fair balance between protecting patient privacy and enabling advocates to assist legal aid clients.
- 6) *Prior legislation.* SB 575 (Leyva, Chapter 626, Statutes of 2017) expanded a provision of PAHR that entitles a patient to a copy, at no charge, of the relevant portion of the patient's records that are need to support an appeal regarding eligibility for certain public benefit programs, by including initial applications in addition to appeals, and by expanding the list of public benefit programs to include In-Home Supportive Services, the California Work Opportunity and Responsibility to Kids program, CalFresh, and certain veterans related benefits.

SB 241 (Monning, Chapter 513, Statutes of 2017) revises and recasts provisions of PAHR governing the right of patients to access and copy their medical records by conforming these requirements to federal Health Information Portability and Accountability Act of 1996 (HIPAA) requirements, including requiring health care providers to provide the records in an electronic format if they are maintained electronically and if the patient requests the records in an electronic format, more clearly specifying the reasonable clerical costs that can be charged by the providers, and by making other technical, clarifying and conforming changes.

AB 1311 (Goldberg, Chapter 325, Statutes of 2001) required a health care provider, within 30 days of a written request from a patient, former patient, or patient's representative, to

provide a free copy of that portion of the patient's medical records relevant to the patient's appeal from the denial of eligibility for a public benefit program, as specified.

- 7) *Support.* This bill is sponsored by the Western Center on Law and Poverty (WCLP), which states that when applying for public benefit programs, low-income people face barriers in completing forms to certify their disability or medical condition. According to WCLP, some health care providers refuse to complete these forms, or charge a minimum of \$40 to complete them. WCLP points out that many of these individuals may already be enrolled in the Medi-Cal program, which pays for the completion of forms as part of providers' overall administrative duties, but providers are not clearly prohibited from charging patients to complete forms or refusing to complete them altogether. WCLP states that this bill would expand access to free medical records for programs serving immigrants with disabilities, for petitions to obtain lawful status for immigrants who are survivors of crime or domestic violence, and for individuals applying for government-funded housing assistance. According to WCLP, new homeless housing programs, such as stays in motels, hotels, and trailers, require proof of underlying medical conditions.

Numerous organizations support this bill. Bet Tzedek Legal Services states that it represents low income seniors and disabled adults, and many of these clients receive only \$944 in monthly income. In order to receive In-Home Supportive Services, a physician must complete specific forms, and that some doctors charge patients to complete these required forms. Bet Tzedek asserts that Californians living on \$944 a month cannot afford additional expenses to qualify for and access home care services. California Low-Income Consumer Coalition (CLICC) states that in assisting low-income clients, legal aid advocates often experience difficulty obtaining medical records without cost and may be denied because they do not have formal authority to receive the records. CLICC states that having power of attorney is not an appropriate designation for advocates who are only representing clients on a public benefit issue.

**SUPPORT AND OPPOSITION:**

- Support:** Western Center on Law and Poverty (sponsor)  
 Bet Tzedek Legal Services  
 California Advocates for Nursing Home Reform  
 California Association for Nurse Practitioners  
 California Food Policy Advocates  
 California Immigrant Policy Center  
 California Low-Income Consumer Coalition  
 Children Now  
 Community Legal Aid SoCal  
 Dental Board of California  
 Disability Rights California  
 Justice in Aging  
 Legal Aid Foundation of Los Angeles  
 Legal Aid Society of San Mateo County  
 Maternal and Child Health Access  
 National Association of Social Workers, California Chapter  
 National Health Law Program

- Oppose:** None received