

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
AB 1184 (Chiu) – As Amended March 25, 2021

**SUBJECT:** Medical information: confidentiality.

**SUMMARY:** Revises and recasts provisions to require a health care service plan (health plan) or health insurer to accommodate requests for confidential communication of medical information regardless of whether there is a situation involving sensitive services or a situation in which disclosure would endanger the individual. Prohibits a health plan or health insurer from requiring a protected individual, as defined, to obtain the policyholder, primary subscriber, or other enrollee or insured's authorization to receive health care services or to submit a claim, if the protected individual has the right to consent to care. Requires the health plan or health insurer 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, primary subscriber, or any plan enrollees or insureds without the authorization of the protected individual, as provided. Expands the definition of sensitive services to identify 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 specified. Specifically, **this bill:**

- 1) Revises and recasts provisions that permits a health plan or health insurer to accommodate requests for confidential communication, as follows:
  - a) Deletes the requirement that a health plan or insurer accommodate requests for confidential communication of medical information in situations involving sensitive services or in which disclosure would endanger the individual; and, 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 or insured;
  - b) Defines protected individual as any adult covered by the subscriber's health plan or insurer 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, and does not include an individual that lacks the capacity to give informed consent for health care, as specified; and,
  - c) Defines sensitive services as 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 described in specified Family and Health and Safety Code sections, obtained by a patient at or above the minimum age specified for consenting to the service.
- 2) Requires a health plan or insurer, on or after January 1, 2022, to take the following steps to protect the confidentiality of a subscriber's or enrollee's or insured's medical information:
  - a) Prohibits a health plan or insurer from requiring a protected individual to obtain the policyholder, primary subscriber, or other enrollee or insured's authorization to receive health care services or to submit a claim if the protected individual has the right to consent to care;

- b) Requires a health plan or insurer to recognize the right of a subscriber or protected individual to exclusively exercise rights granted under this bill regarding medical information related to care that the protected individual has received;
  - c) Requires a health plan or insurer to 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; and,
  - d) Prohibits a health plan or insurer from disclosing medical information related to sensitive health care services provided to a protected individual to the policyholder, primary subscriber, or any plan enrollees or insureds other than the protected individual receiving care, absent an express written authorization of the protected individual receiving care. Requires communications subject to this bill to include the following written, verbal, or electronic communications:
    - i) Bills and attempts to collect payment;
    - ii) A notice of adverse benefits determination;
    - iii) An explanation of benefits notice;
    - iv) A health plan or insurer's request for additional information regarding a claim;
    - v) A notice of a contested claim;
    - vi) The name and address of a provider, description of services provided, and other information related to a visit; and,
    - vii) Any written, oral, or electronic communication from a health plan or insurer that contains protected health information.
- 3) Authorizes a patient whose medical information has been used or disclosed in violation of 2) above and who has sustained economic loss or personal injury to recover compensatory damages, punitive damages not to exceed three thousand dollars (\$3,000), attorneys' fees not to exceed one thousand dollars (\$1,000), and the costs of litigation, as specified.
- 4) Makes technical and conforming changes.

**EXISTING LAW:**

- 1) Establishes under federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) which sets standards for privacy of individually identifiable health information and security standards for the protection of electronic protected health information, including, through regulations, that a HIPAA covered entity may not condition the provision of treatment, payment, enrollment in the health plan, or eligibility for benefits on the provision of an authorization, except under specified circumstances. Allows patients to ask their insurers and providers to send communications of personal and sensitive health information by alternate means or to an alternate location. Provides that if HIPAA's provisions conflict with state law, the provision that is most protective of patient privacy prevails.
- 2) Prohibits, under the California Confidentiality of Medical Information Act (CMIA), a provider of health care, a health plan, a contractor, a corporation and its subsidiaries and affiliates, or any business that offers software or hardware to consumers, including a mobile application or other related device, as defined, from intentionally sharing, selling, using for marketing, or otherwise using any medical information, as defined, for any purpose not necessary to provide health care services to a patient, except as expressly authorized by the

patient, enrollee, or subscriber, as specified, or as otherwise required or authorized by law. States that a violation of these provisions that results in economic loss or personal injury to a patient is a crime.

- 3) Defines, for purposes of the CMIA, 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. Defines individually identifiable information 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, social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. Defines sensitive services to mean all health care services described in specified sections of the Family and Health and Safety Code, obtained by a patient of any age at or above the minimum age specified for consenting to the service, as specified.
- 4) Requires a health plan or insurer to accommodate request 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. Authorizes a health plan or insurer to require the subscriber or enrollee or insured to make a request for a confidential communication in writing or by electronic transmission.
- 5) Authorizes a health plan or insurer 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.
- 6) Requires, notwithstanding any other law, and to the extent permitted by federal law, a health plan or insurer to take the following steps to protect the confidentiality of an enrollee or insured's medical information on and after January 1, 2015:
  - a) Permit an enrollee or insured to request, and 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 enrollee or insured 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 him or her locations;
  - b) Authorize a health plan or insurer to require the insured to make a request for a confidential communication in writing or by electronic transmission; and,
  - c) Authorize a health plan or insurer 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 enrollee or insured. Prohibits the health plan or insurer from requiring an explanation as to the basis for an enrollee or insured's statement that disclosure could endanger the enrollee or insured.

- 7) Requires a confidential communications request to be implemented by the health plan insurer within seven calendar days of the receipt of an electronic transmission or telephonic request or within 14 calendar days of receipt by first-class mail.
- 8) Establishes the Department of Managed Health Care (DMHC) to regulate health plans and the California Department of Insurance (CDI) to regulate health insurers.

**FISCAL EFFECT:** Unknown. This bill has not yet been analyzed by a fiscal committee.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the author, when a patient accesses care for a sensitive service, including sexual and reproductive health care, confidentiality is of the utmost importance. Enrollees on a health plan, such as children or people on their spouse's plan, may not feel safe or comfortable having their health information shared with the policy holder (their guardian or partner) through communication related to their insurance. Currently, patients with confidentiality concerns can protect their medical communications by requesting confidentiality, as established by SB 138 (Hernandez), Chapter 444, Statutes of 2013. However, the process for requesting confidentiality has been confusing and inconsistent between insurers; and, has resulted in disclosure of sensitive information in some cases. By clearly and automatically establishing confidentiality, this bill guarantees that patients can safely access care without confusion or fear. The author concludes that modeled after a successful legislation in Washington State, this bill will also expand the definition of sensitive services to include transgender health care and behavioral health care, to ensure more individuals are able to have their privacy protected.
- 2) **BACKGROUND.** The HIPAA Privacy Rule provides consumers with important privacy rights and protections with respect to their health information, including important controls over how their health information is used and disclosed by health plans and health care providers. Ensuring strong privacy protections is critical to maintaining individuals' trust in their health care providers and willingness to obtain needed health care services, and these protections are especially important where very sensitive information is concerned, such as mental health information.
  - a) **Existing law.** SB 138 specifies the manner in which a health plan or health insurer, is required to maintain confidentiality of medical information regarding the treatment of an insured, subscriber, or enrollee, including requiring a health plan or health insurer to accommodate requests by insureds, subscribers, and enrollees to receive requests for confidential communication of medical information in situations involving sensitive services or situations in which disclosure would endanger the individual. According to the author, an average of 50 people per year from 2016 to 2019 contacted Essential Access Health, the sponsors of SB 138, requesting help in submitting confidential communications requests to their health plans or to resolve issues through the website [www.myhealthmyinfo.org](http://www.myhealthmyinfo.org) .
  - b) **Other states.** In 2019, Washington passed legislation that provides automatic extra privacy protection for sensitive services. It defines sensitive services as those related to reproductive health (including abortion), sexually transmitted diseases, substance use disorder, gender dysphoria, gender affirming care, domestic violence, and mental health. It also creates a mechanism for people to request the same protection for other health

services. The Washington law requires all state-regulated health insurance plans to automatically direct all communications for sensitive services to the email or physical address specified by the client receiving the service. Such health plans may not disclose information, even to the policyholder, without the express consent of the client. Additionally, if individuals would like this same privacy protection extended to other health services, they must submit a Non-Disclosure Directive to their health insurance plan.

- c) **Family and Health and Safety Code Sections.** This bill expands the definition of sensitive services to include 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 described in Sections 6924, 6925, 6926, 6927, 6928, 6929, and 6930 of the Family Code, and Sections 121020 and 124260 of the Health and Safety Code, obtained by a patient at or above the minimum age specified for consenting to the service, as specified. Family Code Section 6930 allows a minor who is 12 years of age or older and is injured as a result of intimate partner violence to consent to medical care related to the diagnosis or treatment of the injury and the collection of medical evidence with regard to the alleged intimate partner violence.
- 3) **SUPPORT.** Planned Parenthood Affiliates of California (PPAC), sponsors of this bill, writes that this bill 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, this bill will remove the burden of ensuring confidentiality from the patient, who have continued to face challenges ensuring confidentiality when accessing sensitive services. This bill 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. According to PPAC, 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. NARAL Pro-Choice California writes that once SB 138 was passed consumer advocates have worked with patients whose confidential communications requests were not implemented, and their personal confidential healthcare services were shared. One patient submitted a request to her health plan because she was going to start taking birth control, but her insurer disclosed her care to her parents. When she contacted the health plan, they told her that her request was denied because she was a dependent. It took her seeking out help from an attorney advocate to resolve her issues with the health plan, but the damage had already been done.
- 4) **OPPOSE UNLESS AMENDED.** The California Association of Health Plans (CAHP) and the Association of California Life and Health Insurance Companies (ACLHIC) requests amendments to clarify that if 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, CAHP and ACLHIC request that this 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.

**5) PREVIOUS LEGISLATION.**

- a) SB 1004 (Jackson) of 2020 was substantially similar to this bill. SB 1004 was never referred to a policy committee and died in the Senate Rules Committee.
- b) SB 138 requires health plans and health insurers to take specified steps to protect the confidentiality of an insured individual's medical information for purposes of sensitive services or if disclosure will endanger an individual.

**6) DOUBLE REFERRAL.** This bill has been double-referred; upon passage of this committee, it will be referred to the Assembly Privacy and Consumer Protection Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Planned Parenthood Affiliates of California (sponsor)  
NARAL Pro-Choice California

**Opposition**

None on file.

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