

## ASSEMBLY THIRD READING

AB 1184 (Chiu)

As Amended March 25, 2021

Majority vote

**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.

**COMMENTS**

The Health Insurance Portability and Accountability Act of 1996 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.

- 1) *Existing law.* SB 138 (Hernandez), Chapter 444, Statutes of 2013, 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).
- 2) *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.

- 3) *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.

### **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. 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.

### **Arguments in 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.

### **Arguments in Opposition 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.

### **FISCAL COMMENTS**

According to the Assembly Appropriations Committee, negligible cost to California Department of Insurance and Department of Managed Health Care.

### **VOTES**

#### **ASM HEALTH: 11-3-1**

**YES:** Wood, Aguiar-Curry, Bonta, Burke, Carrillo, Maienschein, McCarty, Nazarian, Chiu, Rodriguez, Santiago

**NO:** Bigelow, Flora, Waldron

**ABS, ABST OR NV:** Mayes

#### **ASM PRIVACY AND CONSUMER PROTECTION: 9-1-1**

**YES:** Chau, Bauer-Kahan, Bennett, Carrillo, Cunningham, Gabriel, Irwin, Lee, Wicks

**NO:** Gallagher

**ABS, ABST OR NV:** Kiley

#### **ASM APPROPRIATIONS: 13-3-0**

**YES:** Lorena Gonzalez, Calderon, Carrillo, Chau, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Holden, Akilah Weber, Berman

**NO:** Bigelow, Megan Dahle, Davies

### **UPDATED**

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