
THIRD READING

Bill No: AB 1184
Author: Chiu (D), et al.
Amended: 8/31/21 in Senate
Vote: 21

SENATE HEALTH COMMITTEE: 8-1, 7/7/21
AYES: Pan, Eggman, Gonzalez, Hurtado, Leyva, Limón, Roth, Rubio
NOES: Melendez
NO VOTE RECORDED: Grove, Wiener

SENATE JUDICIARY COMMITTEE: 9-2, 7/13/21
AYES: Umberg, Caballero, Durazo, Gonzalez, Hertzberg, Laird, Skinner, Stern,
Wieckowski
NOES: Borgeas, Jones

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 59-13, 5/13/21 - See last page for vote

SUBJECT: Medical information: confidentiality

SOURCE: Planned Parenthood Affiliates of California

DIGEST: This bill revises and recasts, 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. This bill also requires health plans/insurers to direct all communications regarding a protected individual, as defined, 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. This bill further requires health plans/insurers to notify subscribers/enrollees that they may submit a CCR and how they may submit a CCR, and requires information about CCRs to be

provided upon initial enrollment and on the plan/insurer's website, and in other specified instances.

Senate Floor Amendments of 8/31/21 make technical changes and delete a provision that required information about CCRs to be provided by a health plan/insurer in specific instances.

ANALYSIS:

Existing law:

- 1) Establishes the Department of Managed Health Care (DMHC) to regulate health plans under the Knox-Keene Health Care Service Plan Act of 1975 (Knox-Keene Act); California Department of Insurance (CDI) to regulate health and other insurance. [HSC §1340, et seq. and INS §106, et seq.]
- 2) Requires health plans and insurers to permit enrollees/insureds to request, and to 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/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 the enrollee/insured. These requests are referred to as “confidential communication requests” (CCRs). [CIV §56.107(a) and INS §791.29(b)]
- 3) Permits health plans and insurers to require that a CCR 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/insured. Prohibits health plans and insurers from requiring an explanation as to the basis for a statement that disclosure could endanger an enrollee/insured. [CIV §56.107 and INS §791.29(b)(3)]
- 4) Requires a CCR to be valid until the enrollee/insured submits a revocation of the request or a new request is submitted. Requires CCRs to be implemented within seven calendar days of receipt of an electronic transmission or telephonic request or within 14 calendar days of receipt by first-class mail. Requires health plans and insurers to acknowledge receipt of the CCR and advise the enrollee/insured of the status of implementation of the request if an enrollee/insured contacts the health plan or insurer. [CIV §56.107(a) and INS §791.29(b)(4)]

- 5) Defines “sensitive services” as health care services that minors can consent to, including: mental health treatment or counseling services; residential shelter services; medical care related to the prevention or treatment of pregnancy; diagnosis or treatment related to infectious, contagious, or communicable disease; prevention of sexually transmitted diseases; and HIV services, obtained by a patient at or above the minimum age specified for consenting to the service. [CIV §56.05(n) and INS §791.02(ac)]

This bill:

- 1) Deletes the condition that a enrollee/insured CCR clearly state either that a communication discloses medical information or provider name/address relating to receipt of sensitive services or that disclosure of all or part of the medical information or provider name/address could endanger the subscriber or enrollee in order for the health/plan insurer to accommodate the request under 2) of “existing law” above. Deletes existing law that permits health plans/insurers to require a statement accompany a CCR described under 3) of “existing law” above.
- 2) Prohibits health plans/insurers from requiring a “protected individual” to obtain the policyholder, primary subscriber, or other enrollee/insured’s authorization to receive sensitive services or to submit a claim for sensitive services if the protected individual has the right to consent to care.
- 3) Defines “protected individual” as a covered adult or, a minor who can consent to a health care service without the consent of a parent or legal guardian. Specifies that “protected individual” does not include an individual that lacks the capacity to give informed consent for health care pursuant to existing law.
- 4) Requires health plans/insurers to recognize the right of a protected individual to exclusively exercise rights granted under this bill regarding medical information related to “sensitive services” that the protected individual has received.
- 5) Updates the definition of “sensitive services” to further clarify that mental or behavioral health, sexual and reproductive health, sexually transmitted infections, substance use disorder, gender affirming care, and intimate partner violence are included.

- 6) Requires health plans/insurers to direct all communications regarding a protected individual's receipt of sensitive services directly to the protected individual as follows:
 - a) If the protected individual has designated an alternative mailing address, email address, or telephone number, health plans/insurers are required to send or make all communications related to the protected individual's receipt of sensitive services to the alternative mailing address, email address, or telephone number designated; and,
 - b) If the protected individual has not designated an alternative mailing address, email address, or telephone number, health plans and insurers are required to send or make all communications related to the protected individual's receipt of sensitive services in the name of the protected individual at the address or telephone number on file.
- 7) Specifies that communications subject to these notifications include the following written, verbal, or electronic communications related to the receipt of sensitive services: bills and attempts to collect payment; notices of adverse benefits determinations; explanation of benefits (EOB) notice; requests for additional information regarding a claim; notices of contested claims; the name and address of a provider, description of services provided, and other information related to a visit; and, any written, oral, or electronic communication that contains protected health information.
- 8) Prohibits health plans/insurers from disclosing medical information related to sensitive services provided to a protected individual to the policyholder, primary subscriber, or any plan enrollees other than the protected individual receiving care, absent an express written authorization of the protected individual receiving care.
- 9) Requires health plans/insurers to notify subscribers and enrollees that they may submit a CCR and how they may submit a CCR. Requires information about CCRs to be provided upon initial enrollment and annually thereafter upon renewal:
 - a) In a conspicuously visible location in the evidence of coverage; and,
 - b) On the health plan/insurer website, accessible through a hyperlink on its home page and in a manner that allows enrollees/insureds, prospective enrollees/insureds, and members of the public to easily locate the information.

- 10) Makes the changes in 1) through 9) above effective on July 1, 2022, and makes other technical, conforming changes.

Comments

- 1) *Author's statement.* 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 insurance plan, such as children or people on their spouse's insurance plan, may not feel safe or comfortable having their health information shared with the policyholder 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. Modeled off 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.* According to a June 2021 Guttmacher Institute report, billing and claims processing procedures widely used in private health insurance routinely, albeit inadvertently, prevent anyone insured as a dependent on someone else's policy from obtaining sensitive services confidentially. One of the most frequent ways in which disclosure occurs is through EOBs sent by insurers to policyholders after anyone covered under their policy obtains care. EOBs—which typically identify the individual who received care, the health care provider and the type of care obtained—essentially make it impossible for dependents, often minors and young adults, to obtain the confidential access to sexual and reproductive health care they need. Several states have developed creative approaches to address these and broader confidentiality concerns: 14 states have provisions that serve to protect the confidentiality of individuals insured as dependents; six states allow individuals insured as dependents to request confidential communications from their insurance provider via a written request; four states have confidentiality protections specific to EOBs; six states explicitly protect the confidentiality of minors insured as dependents; four states have specific protections for minors seeking STI treatment; and, three states have protections for minors seeking any medical service.

3) *Challenges since the enactment of SB 138.* According to Essential Access Health (EAH), the sponsor of SB 138, between 2016 and 2019, an average of 50 people per year requested assistance through www.myhealthmyinfo.org in submitting a CCR to their health plan or to resolve issues after a CCR was submitted. Most cases involve administrative barriers that patients had to wade through in order to protect their health information. According to EAH, most cases were resolved with assistance from consumer advocates and attorneys. EAH provided several anecdotes where timeliness of honoring a CCR was a problem and where information was disclosed even though a CCR had been submitted. For example, EAH received 25 requests since 2016 from women covered under their parents' health plans, who had obtained birth control, but and did not want their parents to know. In each of these cases, attorneys from the ACLU and the National Center for Youth Law contacted the health plans to ensure the CCR was implemented quickly to prevent disclosure of information related to medical care that was already obtained. In some instances, patients delayed care to ensure that the CCR was honored prior to an appointment for fear that parents would find out. There have also been cases where information related to the provision of birth control or HIV prevention services were disclosed to parents even though a CCR had been submitted prior to the provision of care.

Related/Prior Legislation

SB 368 (Limon, 2021) requires a health plan/insurer to provide an enrollee/insured with their accrual balance toward their annual deductible and annual out-of-pocket maximum during any month in which benefits were used; permits an enrollee or insured to request their most up-to-date accrual balance toward their annual deductible and their annual out-of-pocket maximum from their health plan or insurer at any time; and requires accrual updates to be mailed unless the enrollee or insured opts out.

SB 1004 (Jackson, 2020) was substantially similar to this bill. *Due to the shortened Legislative calendar brought on by the COVID-19 pandemic, SB 1004 was not set for a hearing.*

SB 138 (Hernandez, Chapter 444, Statutes of 2013) required health plans and insurers to take specified steps to protect the confidentiality of an insured individual's medical information for purposes of sensitive services, or if disclosure of that information will endanger an individual.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/18/21)

Planned Parenthood Affiliates of California (source)
American Civil Liberties Union California Action
American College of Obstetricians and Gynecologists District IX
California Department of Insurance
California Latinas for Reproductive Justice
California Partnership to End Domestic Violence
Depression and Bipolar Support Alliance California
Equality California
Essential Access Health
NARAL Pro-Choice California
Santa Barbara Women's Political Committee
Women's Foundation California
Women's Health Specialists

OPPOSITION: (Verified 8/18/21)

America's Health Insurance Plans
Association of California Life and Health Insurance Companies
California Association of Health Plans
California Family Council
Capitol Resource Institute
Pacific Institute – Center for Public Policy
Right to Life League of Southern California

ARGUMENTS IN SUPPORT: Planned Parenthood Affiliates of California, the sponsor of this bill, writes that while SB 138 aimed to ensure patient confidentiality, patients have experienced challenges following its implementation. Because health plans have seven days to implement a CCR submitted via phone and 14 days for CCRs submitted via mail, when a patient needs to access a timely service, like abortion or birth control, their confidentiality is not guaranteed. In addition, when a plan does not abide by the CCR, the only recourse for the patient is for them to file a complaint with DMHC – once the harmful disclosure has already occurred. 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 CCR process, this bill will remove burden of ensuring confidentiality from patients, who have continued to face challenges ensuring confidentiality when accessing sensitive services. Since SB 138 was passed, consumer advocates have worked with patients whose CCRs were not

implemented and, as a result, had personal confidential information about health care services they received shared against their wishes. One patient submitted a CCR to her health plan because she was going to start taking birth control, but the plan 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. Essential Access Health, the sponsor of SB 138, writes that while SB 138 aimed to ensure patient confidentiality, patients have experienced challenges following its implementation because the law places the onus on the patient to understand and navigate the complex world of health insurance. Since SB 138 took effect in 2015, Essential Access Health intervened in more than 200 cases where a patient needed help in submitting CCRs or to resolve a disclosure issue.

ARGUMENTS IN OPPOSITION: Pacific Institute – Center for Public Policy writes that this bill decreases transparency in an area where it is needed most—medical billing. This bill, in an effort to further hide information from parents and partners, would put policyholders in the impossible position of being financially responsible for bills they did not incur and cannot verify as being legitimate; and, it further limits parents’ abilities to protect their children and even prevents partners from finding out when they are being exposed to a sexually transmitted disease. California Family Council writes that this bill seeks to remove parents from the protective role they have over their children, and it is universally known that minors do better in life, are healthier, do better in school, and go on to become more productive members of society when they have involved parents.

America’s Health Insurance Plans, the Association of California Life and Health Insurance Companies, and California Association of Health Plans jointly write that they appreciated the purpose of SB 138 and worked to establish a thoughtful and efficient statutory framework for honoring these requests, but understand that as industries evolve there is often an interest in evaluating and updating current practices. However, they are concerned with how broadly the mandate under this bill is being applied. Specifically, the bill appears to expand the current obligation and require plans/insurers accommodate all CCRs, regardless of the reason for which the request is being made. While all enrollees and insureds have the right to request a CCR, the initial plan obligation set forth in SB 138 was limited to sensitive services and instances in which the enrollee or insured felt endangered. This was intended to bridge the gap between placing an unlimited administrative burden on plans and acknowledging that there are instances for which a heightened need for privacy, especially as it relates to sensitive services, is necessary.

ASSEMBLY FLOOR: 59-13, 5/13/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bloom, Boerner Horvath, Burke, Calderon, Carrillo, Chau, Chiu, Cooley, Cooper, Cunningham, Daly, Frazier, Friedman, Gabriel, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lee, Levine, Low, Maienschein, Mathis, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Stone, Ting, Valladares, Villapudua, Ward, Akilah Weber, Wicks, Wood, Rendon

NOES: Bigelow, Megan Dahle, Davies, Flora, Fong, Gallagher, Kiley, Lackey, Nguyen, Seyarto, Smith, Voepel, Waldron

NO VOTE RECORDED: Cervantes, Chen, Choi, Gray, Mayes, Patterson

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**** END ****