

Date of Hearing: June 28, 2022

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 1184 (Cortese) – As Amended May 5, 2022

SENATE VOTE: 27-9

SUBJECT: Confidentiality of Medical Information Act: school-linked services coordinators.

SUMMARY: Authorizes a health care provider or a health care service plan (health plan) to disclose medical information to a school-linked services (SLS) coordinator, as specified. Defines SLS coordinator as an individual located on a school campus or under contract by a county behavioral health provider agency for the treatment and health care operations and referrals of students and their families that holds specified credentials. Specifically, **this bill:**

- 1) Authorizes a health care provider or health plan to disclose medical information to a SLS coordinator pursuant to a written authorization between the health provider and the patient or client that complies with the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 2) Defines SLS coordinator as an individual located on a school campus or under contract by a county behavioral health provider agency for the treatment and health care operations and referrals of students and their families that holds any of the following:
 - a) A services credential with a specialization in pupil personnel services, as specified;
 - b) A services credential with a specialization in health authorizing service as a school nurse, as specified;
 - c) A license to engage in the practice of marriage and family therapy, as specified;
 - d) A license to engage in the practice of educational psychology, as specified;
 - e) A license to engage in the practice of professional clinical counseling issued, as specified.

EXISTING LAW:

- 1) Establishes under federal law, 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 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.
- 4) Provides that, in the school setting, any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor as specified, is confidential. Prohibits information from being revealed, released, discussed, or referred to, except in discussion with psychotherapists as defined, other health care providers, or the school nurse, for the sole purpose of referring the pupil for treatment.

FISCAL EFFECT: None.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, we must expand our statewide strategy to provide school-based mental health services to students and ensure that services provided among various entities are sustainable, equitable, and better coordinated to fill gaps in services that exist for students and support the overall health and well-being of all children. To "close the loop" on community-clinical referrals in school settings and provide improved care coordination for students accessing behavioral health services, this bill would define, under California Civil Code, a "SLS" coordinator as those individuals or entities, including licensed educational psychologists, located on a school campus or under contract by a county behavioral health provider for treatment and health care operations and ensure that these "SLS" coordinators can better refer both students and families to mental health treatment and care.
- 2) **BACKGROUND.**
 - a) 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. According to the author, California's Education Code protects health information shared during discussion with educational psychotherapists,

other health care providers, or the school nurse, and may be disclosed for the sole purpose of referring the pupil for treatment. The Civil Code needs clarification on what information can be shared to school-based health providers. CMIA authorizes a health care provider or a health plan to disclose medical information in certain circumstances, including by authorizing disclosure to providers of health care, health plans, contractors, or other health care professionals, or facilities for purposes of diagnosis or treatment of the patient. This bill authorizes a health care provider to disclose medical information to a school-linked services coordinator, upon written authorization of the patient.

- b) **SLS Initiative.** In 2011, the Santa Clara County Board of Supervisor’s President called for County Department heads to develop a plan to implement the SLS Initiative. The goal of SLS is to offer a well-designed model for the delivery of coordinated and effective health and social services on school campuses and in the community. This coordinated effort seeks to meet the needs of students and their families in order for children to achieve success in school and in life. SLS provides students and families with school based coordinated services to improve health and wellbeing of families through a community participatory approach. SLS Coordinators, located at the school district or a school site, develop partnership with schools, public agencies and community based organization in Santa Clara County to improve protective factors, *e.g.*, family relationship, decrease risk-factors, *e.g.*, behavioral and emotional problems, enhance service accessibility and resource linkage, and to support children’s success in school and in life.

The author provided information regarding successful outcomes of the SLS program that can be found in the FY 20 end-of the year survey report:

- i) Most of the 321 families that completed an end-of-year Family Survey reported that the SLS services they received helped them learn more about the services and supports available in their community (75.4%), as well as their health and wellbeing (73.2%);
 - ii) Most families that completed the Family Survey reported that the SLS services they received improved their ability to find resources for their child (67.0%), helped them advocate for their child (65.4%), and increased their child’s academic success (76.3%); and,
 - iii) The majority (83.3%) of the 12 staff responding to the SLS Superintendent and Supervisor Survey “agree” or “strongly agree” that the SLS model has improved school-family-community partnership. SLS Administrators feel the program’s most significant benefits involve connecting diverse community partners in lasting relationships. They also report value in the program’s ability to streamline referral processes, which in turn saves families and staff time and resources.
- 3) **SUPPORT.** National Alliance of Mental Illness, Santa Clara County writes that this mental health has been a growing concern in our school communities even before distance learning affected our classrooms. Between 2007 and 2014, the suicide rate for children between the ages of 10 to 14 increased drastically. Suicide is now the second leading cause of death for individuals between the ages of 10 and 24. COVID-19 has only exacerbated these existing

issues. We must work to improve the way we deliver behavioral health support to our student community, whether it is through partnerships between counties and local school systems or school-site wellness centers so that we can meet the mental health needs of our students.

Through the SLS Program, students and families will be connected to mental health counseling, case management, and public health services on district and school site campuses.

- 4) **OPPOSITION.** Electronic Frontier Foundation (EFF) states that the CMIA rightly limits access to medical information except in particular cases for particular people. EFF would also like more information on how this law interacts with the federal Family Education Rights and Privacy Act, which already provides for sharing of information with “appropriate” officials in the case of health and safety emergencies, as well as more details on how compliance with HIPAA will be operationalized in this context.

5) **RELATED LEGISLATION.**

- a) AB 2089 (Bauer Kahan) revises the definition of medical information to include mental health application information. Defines mental health application information to mean information related to a consumer’s inferred or diagnosed mental health or substance use disorder, as specified, collected by a mental health application, as defined. Deems any business that offers a mental health application to a consumer for the purpose of allowing the individual to manage their information, or for the diagnosis, treatment, or management of a medical condition of the individual, to be a provider of health care subject to the requirements of CMIA. Requires a business that offers a mental health application, when partnering with a provider of health care, to notify the provider of all reportable data breaches and known violations of CMIA in the past three years. AB 2089 is pending in Senate Health Committee.

- b) SB 1419 (Becker) prohibits the representative of a minor from inspecting the minor’s patient records when the records relate to certain services, including medical care related to the prevention or treatment of pregnancy, as specified. SB 1419 is pending in Assembly Judiciary Committee.

- 6) **DOUBLE REFERRAL.** This bill is double referred, and passed from Assembly Privacy and Consumer Protection on June 21, 2022 with a vote of 9-1.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of School Counselors
California School Nurses Organization
GENup (generation Up)
National Alliance on Mental Illness, Santa Clara County

Opposition

Catholic Families 4 Freedom CA
Children's Health Defense California Chapter
Electronic Frontier Foundation

Nuremberg 2.0 Ltd.
Protection of the Educational Rights of Kids
Numerous individuals

Analysis Prepared by: Kristene Mapile / HEALTH / (916) 319-2097