

ASSEMBLY THIRD READING

AB 1011 (Weber)

As Amended April 27, 2023

Majority vote

SUMMARY

Defines a closed-loop referral system (CLRS). Prohibits the sale of information about an individual that a participating entity obtains from a CLRS. Requires that such information be used only for the purposes for which it was collected and generated.

Major Provisions

- 1) Defines the following terms:
 - a) "Closed-loop referral system" or "CLRS" means a technology platform or network that does all of the following: i) stores the social care information of one or more individuals; ii) enables the sharing of social care information with and between participating entities for the purpose of referring individuals for social care; and iii) provides information to participating entities regarding the progress and outcomes of referrals for social care.
 - b) "Social care" means care, services, goods, or supplies related to an individual's social needs. The term includes, but is not limited to, support and assistance for an individual's food stability and nutritional needs, housing, transportation, economic stability, employment, education access and quality, childcare and family relationship needs, and environmental and physical safety.
 - c) "Social care information" means both of the following regarding an individual: i) any information, in any form, that relates to the need for, payment for, or provision of, social care; and ii) an individual's personal information, as that term is defined under the California Consumer Privacy Act.
 - d) "Participating organization" means an entity that meets all of the following requirements: i) provides social care or refers individuals for social care, including, but not limited to, a public agency, nonprofit organization, charitable organization, provider of health care, health care service plan, or CLRS technology vendor; and ii) has the ability to create, receive, or update social care information and referrals for social care in a CLRS.
- 2) Prohibits a participating entity from selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, social care information stored in or transmitted through a CLRS in exchange for monetary or other valuable consideration.
- 3) Prohibits a participating organization from using social care information stored in or transmitted through a CLRS for any purpose or purposes other than the purpose or purposes for which that social care information was collected or generated, except as required by federal law, or as authorized or required by state law.

COMMENTS

Background. This bill would codify the concept of a "closed-loop referral system" (CLRS) and put into place baseline privacy protections for individuals' data that is shared on a CLRS.

A closed-loop referral system generally works as follows. Say, for example, that a domestic violence survivor, having escaped their abuser, goes to a nonprofit housing provider for help in finding a place to live. During the initial intake interview, the housing provider determines that the survivor is also in need of mental health services, legal aid, and food assistance. All of these needs—housing, mental health services, legal aid, and food assistance—fall under the bill's definition of "social care."

If the housing provider participates in a closed-loop referral system, it can then share information on the CLRS about the survivor, including a description of the survivor's social care needs and the survivor's contact information, among a network of other providers. Under the bill, the information being shared falls under the definition of "social care information"; the housing provider, the CLRS operator, and other participants on the CLRS fall under the definition of "participating entity."

Other participating entities on the CLRS will receive the survivor's social care information. If one of these entities determines it is able to help the survivor with one of the survivor's social care needs, it can contact the survivor using the information provided on the CLRS. If the survivor accepts the offer of assistance, the participating entity can make this fact known on the CLRS. Doing so "closes the loop" on that portion of the referral and ensures that (i) the referring organization knows one of the survivor's needs is being addressed, and (ii) the referral for addressing that need does not remain open on the network, allowing providers to focus on others' needs.

As explained by the bill's sponsor, Findhelp, a public benefit corporation: "A closed-loop referral system is a technology platform that is used by [individuals in need], and a network of healthcare entities, public agencies, and community based organizations to streamline the coordination of care between health care and social care, and to send and receive referrals through a coordinated network."

What the bill does. This bill provides a definition of "closed-loop referral system" and puts into place basic, essential privacy standards for data shared on a CLRS.

The bill would prohibit a participating organization from selling or otherwise sharing an individual's social care information for money if the information was stored or transmitted through a CLRS.

The bill would also impose a "data minimization" requirement: an individual's social care information stored or transmitted through a CLRS can only be used for the purpose of meeting the individual's social care needs, except as otherwise authorized or required by law.

Analysis. Barring sale of social care information and requiring data minimization with respect to social care information appear to be reasonable baseline standards for data shared through a CLRS. Putting these standards into law alleviates any fear a vulnerable individual might have that highly-sensitive information about their needs might fall into others' hands. Such protections are necessary because there is no way of knowing, before an individual's social care information

is shared, what privacy laws might apply to a participating entity in a CLRS that receives the information.

It is critical to understand that closed-loop referral systems are operating in California right now. Absent this bill, participating organizations not subject to other privacy laws (such as the Confidentiality of Medical Information Act (CMIA) or the CCPA) are free to do as they wish with social care information they receive on closed-loop referral systems. This is particularly true of smaller and/or nonprofit technology vendors that may not fall under the CCPA definition of “business.” The selling of sensitive information about Californians' vulnerabilities obtained on a CLRS might be occurring right now, and it all may be perfectly legal.

Opposition argument. One opposition argument calls for a response. Unite Us, which describes itself as "the nation's leading software company bringing sectors together to improve the health and well-being of communities, "criticizes this measure as" a platform-specific bill that rejects the individual rights-based approach taken by the CCPA and CPRA[.]" i.e., the California Consumer Privacy Act.

Declining to adopt a CCPA-style consent model for sale of data is a deliberate policy choice in this bill. A person seeking social care from a participating organization in a CLRS should be able to expect that the information they are sharing will not be sold and will only be used to refer them for, and provide them with, social care. A person seeking social care is not in the position of, say, a person who opens a Google account in order to use Gmail and Google Docs. The former is likely in a highly vulnerable state. They do not expect, nor should they, that the information they are providing about themselves and their needs could be sold or used for purposes other than providing them with necessary care. They are exceedingly unlikely to know that in order to safeguard the privacy of the information they have shared, they may have to contact various entities to request that their data not be sold, that it be deleted, and so forth. By contrast, the new Google user is almost certainly aware that Google is going to collect, use, and sell the data it collects from their use of Gmail and Google Docs; if they are a Californian, there is a good chance they will also know that they have CCPA privacy rights they can exercise to restrict Google's use of their data. The two situations are not comparable.

According to the Author

By defining and creating protections for social care privacy specifically, this bill fills in the existing gap in California's privacy laws. The guardrails and regulations created in this AB 1011 provide individuals legal protections over their sensitive social care privacy [information].

Arguments in Support

Findhelp, the bill's sponsor, writes:

Strong privacy protections already exist that guide appropriate sharing of medical information under HIPAA and California's Confidentiality of Medical Information Act (CMIA). Additional consumer protections are covered by the California Consumer Privacy Act (CCPA). Unfortunately, there are no state or federal privacy protections that apply to social care information housed in closed-loop referral systems, leaving a growing number of consumers vulnerable.

Arguments in Opposition

Unite Us, a software company that operates in the social care space, writes:

AB 1011 runs counter to California's existing legal frameworks. It is a platform-specific bill that rejects the individual rights-based approach taken by the CCPA and [the California Privacy Rights Act].

FISCAL COMMENTS

No state costs.

VOTES**ASM PRIVACY AND CONSUMER PROTECTION: 11-0-0**

YES: Gabriel, Joe Patterson, Bauer-Kahan, Bennett, Essayli, Vince Fong, Irwin, Lowenthal, Papan, Wicks, Wilson

ASM APPROPRIATIONS: 15-0-1

YES: Holden, Megan Dahle, Bryan, Calderon, Wendy Carrillo, Mike Fong, Hart, Lowenthal, Mathis, Papan, Pellerin, Robert Rivas, Sanchez, Weber, Ortega

ABS, ABST OR NV: Dixon

UPDATED

VERSION: April 27, 2023

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