
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 350 **Hearing Date:** April 18, 2017
Author: Galgiani
Version: April 4, 2017
Urgency: No **Fiscal:** Yes
Consultant: JRD

Subject: *Incarcerated Persons: Health Records*

HISTORY

Source: California Correctional Health Care Services

Prior Legislation: SB 1443 (Galgiani) died in the Senate Appropriations Committee, 2016

Support: National Association of Social Workers, California Chapter

Opposition: None known

PURPOSE

The purpose of this bill is to require the disclosure of medical, dental, and mental health information, by electronic transmission when possible, between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider when an inmate is transferred from or between state and county facilities, as specified.

Existing law, the California Constitution, provides that all people have inalienable rights, including the right to pursue and obtain privacy. (Cal. Const., art. I, Sec. 1.)

Existing federal law, the Health Insurance Portability and Accountability Act (HIPAA), specifies privacy protections for patients' protected health information and generally provides that a covered entity, as defined (health plan, health care provider, and health care clearing house), may not use or disclose protected health information except as specified or as authorized by the patient in writing. (45 C.F.R. Sec. 164.500 et seq.)

Existing law prohibits, under the State Confidentiality of Medical Information Act (CMIA), providers of health care, health care service plans, or contractors, as defined, from sharing medical information without the patient's written authorization, subject to certain exceptions. (Civil Code § 56 et seq.)

Existing law defines "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. Existing law defines "individually identifiable" 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, or social security number, or other information that, alone or in combination with other publicly available information, reveals the individual's identity. (Civil Code § 56.05(g).)

Existing law defines "provider of health care" to include: any person licensed or certified pursuant to the Business & Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any clinic, health dispensary, or health facility licensed pursuant to the Health & Safety Code, as specified. (Civil Code § 56.05(m).)

Existing law defines a "licensed health care professional" to mean any person licensed or certified pursuant to the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or the Health and Safety Code, as specified. (Civil Code § 56.05(h).)

Existing law defines "health care service plan" to mean any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975. (Civil Code § 56.05(g).)

Existing law provides that any provider of health care, a health care service plan, pharmaceutical company, or contractor who negligently creates, maintains, preserves, stores, abandons, destroys, or disposes of written or electronic medical records shall be subject to damages in a civil action or an administrative fine, as specified. (Civil Code § 56.36.)

Existing law states that person sentenced to imprisonment in a state prison or to imprisonment pursuant to subdivision (h) of Section 1170 may during that period of confinement be deprived of such rights, and only such rights, as is reasonably related to legitimate penological interests, as specified. (Penal Code § 2600.)

Existing law states that a person described in section 2600 must have the following civil rights:

- Except as provided in Section 2225 of the Civil Code, to inherit, own, sell, or convey real or personal property, including all written and artistic material produced or created by the person during the period of imprisonment, as specified.
- To correspond, confidentially, with any member of the State Bar or holder of public office, provided that the prison authorities may open and inspect incoming mail to search for contraband.
- To purchase, receive, and read any and all newspapers, periodicals, and books accepted for distribution by the United States Post Office.
 - Pursuant to this section, prison authorities may exclude any of the following matter:
 - Obscene publications or writings, and mail containing information concerning where, how, or from whom this matter may be obtained.
 - Any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence.
 - Any matter concerning gambling or a lottery.

- Nothing in this section is to be construed as limiting the right of prison authorities to:
 - Open and inspect any and all packages received by an inmate.
 - Establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his or her cell or elsewhere in the prison at one time.
- To initiate civil actions, subject to a three dollar (\$3) filing fee to be collected by the Department of Corrections and Rehabilitation (CDCR), in addition to any other filing fee authorized by law, and subject to Title 3a (commencing with Section 391) of the Code of Civil Procedure.
- To marry.
- To create a power of appointment.
- To make a will.
- To receive all benefits provided for in Sections 3370 and 3371 of the Labor Code and in Section 5069.

(Penal Code § 2601.)

Under existing law, except as otherwise provided, an inmate who is released on parole or postrelease supervision must be returned to the county that was the last legal residence of the inmate prior to his or her incarceration, as specified. Existing law provides that, notwithstanding this provision, an inmate may be returned to another county if that would be in the best interests of the public (Penal Code § 3003(a)-(c).)

Existing law states in making its decision about an inmate who participated in a joint venture program, the paroling authority is required to give serious consideration to releasing him or her to the county where the joint venture program employer is located if that employer states to the paroling authority that he or she intends to employ the inmate upon release. (Penal Code § 3003(d).)

Under existing law the following information, if available, must be released by CDCR to local law enforcement agencies regarding a paroled inmate or inmate placed on postrelease community supervision, who is released in their jurisdictions:

- Last, first, and middle names.
- Birth date.
- Sex, race, height, weight, and hair and eye color.
- Date of parole or placement on postrelease community supervision and discharge.
- Registration status, if the inmate is required to register as a result of a controlled substance, sex, or arson offense.
- California Criminal Information Number, FBI number, social security number, and driver's license number.
- County of commitment.
- A description of scars, marks, and tattoos on the inmate.
- Offense or offenses for which the inmate was convicted that resulted in parole or postrelease community supervision in this instance.
- Address, including all of the following information:

- Street name and number. Post office box numbers are not acceptable for purposes of this subparagraph.
- City and ZIP Code.
- Date that the address provided pursuant to this subparagraph was proposed to be effective.
- Contact officer and unit, including all of the following information:
 - Name and telephone number of each contact officer.
 - Contact unit type of each contact officer such as units responsible for parole, registration, or county probation.
 - A digitized image of the photograph and at least a single digit fingerprint of the parolee.
 - A geographic coordinate for the inmate's residence location for use with a Geographical Information System (GIS) or comparable computer program.

(Penal Code § 3003(e)(1).)

Existing law states that unless the information is unavailable, CDCR is required to electronically transmit to a county agency, the inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto postrelease community supervision, for the purpose of identifying the medical and mental health needs of the individual, as specified (Penal Code § 3003(e)(2)-(5).)

Existing law states that notwithstanding any other law, an inmate who is released on parole cannot be returned to a location within 35 miles of the actual residence of a victim of, or a witness to, a violent felony as defined in paragraphs (1) to (7), inclusive, and paragraph (16) of subdivision (c) of Section 667.5 or a felony in which the defendant inflicts great bodily injury on a person other than an accomplice that has been charged and proved as provided for in Section 12022.53, 12022.7, or 12022.9, if the victim or witness has requested additional distance in the placement of the inmate on parole, and if the Board of Parole Hearings or CDCR finds that there is a need to protect the life, safety, or well-being of a victim or witness. (Penal Code § 3003(f).)

Existing law provides that notwithstanding any other law, an inmate who is released on parole for a violation of Section 288 or 288.5 whom the CDCR determines poses a high risk to the public shall not be placed or reside, for the duration of his or her parole, within one-half mile of a public or private school including any or all of kindergarten and grades 1 to 12, inclusive. (Penal Code § 3003(g).)

Existing law provides that notwithstanding any other law, an inmate who is released on parole or postrelease community supervision for a stalking offense shall not be returned to a location within 35 miles of the victim's actual residence or place of employment if the victim or witness has requested additional distance in the placement of the inmate on parole or postrelease community supervision, and if the Board of Parole Hearings or the CDCR, or the supervising county agency, as applicable, finds that there is a need to protect the life, safety, or well-being of the victim. If an inmate who is released on postrelease community supervision cannot be placed in his or her county of last legal residence in compliance with this subdivision, the supervising county agency may transfer the inmate to another county upon approval of the receiving county. (Penal Code § 3003(h).)

Existing law provides that an inmate may be paroled to another state pursuant to any other law, as specified. (Penal Code § 3003(j).)

Under existing law CDCR is the agency primarily responsible for, and shall have control over, the program, resources, and staff implementing the Law Enforcement Automated Data System (LEADS) in conformance with subdivision (e). County agencies supervising inmates released to postrelease community supervision pursuant to Title 2.05 (commencing with Section 3450) shall provide any information requested by the department to ensure the availability of accurate information regarding inmates released from state prison. This information may include the issuance of warrants, revocations, or the termination of postrelease community supervision. On or before August 1, 2011, county agencies designated to supervise inmates released to postrelease community supervision shall notify the department that the county agencies have been designated as the local entity responsible for providing that supervision. The Department of Justice (DOJ) is the agency primarily responsible for the proper release of information under LEADS that relates to fingerprint cards. CDCR has to submit to the DOJ data to be included in the supervised release file of the California Law Enforcement Telecommunications System (CLETS) so that law enforcement can be advised through CLETS of all persons on postrelease community supervision and the county agency designated to provide supervision. The data required by this subdivision shall be provided via electronic transfer. (Penal Code § 3003(k).)

This bill expressly states that an inmate's civil rights include, subject to the bill's provisions relating to the disclosure of medical information described above, all privacy rights legally applicable to inmates.

This bill requires that medical information be disclosed between a county correctional facility, a county medical facility, a state correctional facility, or a state hospital to ensure the continuity of health care of an inmate being transferred between those facilities.

This bill requires that medical information to be disclosed between a county correctional facility, a county medical facility, a state correctional facility, a state hospital, or a state-assigned mental health provider to ensure the continuity of health care of an inmate being transferred between those facilities, and would require that all transmissions made pursuant to its provisions comply with CMIA, the Information Practices Act, HIPAA, the federal Health Information Technology for Clinical Health Act (HITECH) (Public Law 111-005), and the corresponding implementing federal regulations relating to privacy and security, as specified.

This bill deletes an existing provision of law requiring the CDCR to electronically transmit to a county agency an inmate's tuberculosis status, specific medical, mental health, and outpatient clinic needs, and any medical concerns or disabilities for the county to consider as the offender transitions onto post-release community supervision, for the purpose of identifying the medical and mental health needs of the individual.

COMMENTS

1. Need for This Legislation

According to the author:

Currently, both state and county correctional facilities at times receive medically and mentally unstable patients where the patient's medical and/or mental health history at the time of transfer is not included. Not only does this impact offender safety, but it is costly as well since many times it may result in duplicate treatment/diagnostic testing by the receiving facility.

This bill would ensure the continuity of care for inmates sentenced to and released from state prison by requiring electronic medical records to follow them to a new facility where there is electronic communication. This bill would authorize and require the disclosure of information between a county correctional facility, county medical facility, state correctional facility, or state hospital to ensure continuity of health care.

2. CDCR Medical Care: Federal Receivership

The California Correctional Healthcare Services (CCHCS) (federal receivership) was established as a result of a class action lawsuit (*Plata v. Brown*) brought against the State of California over the quality of medical care in the state's 34 adult prisons. In its ruling, the federal court found that the care was in violation of the Eighth Amendment of the U.S. Constitution which prohibits cruel and unusual punishment. The state settled the lawsuit and entered into a stipulated settlement in 2002, agreeing to a range of remedies that would bring prison medical care in line with constitutional standards. The state failed to comply with the stipulated settlement and on February 14, 2006, the federal court appointed a receiver to manage medical care operations in the prison system. The current receiver was appointed in January of 2008. The receivership continues to be unprecedented in size and scope nationwide.

CCHCS is the sponsor of this legislation and states in support:

Current law does not sufficiently provide a statutory scheme for this important information to be shared between agencies. Not only does the lack of sharing of medical history impact offender safety, but it is costly as well, as many times treatment/diagnostic testing must be duplicated at the receiving facility. Although there are a variety of statutory schemes that discuss the transfer of patient records in the public, none apply in a correctional setting.

This bill would address the current lack of statutory authority by requiring the transfer of health care records for offenders who transition in and out of various state and local jurisdictions. This bill would amend current law to require that an offender's pertinent medical and mental health records and copies that are reasonably available to be transferred from the sending practitioner to the receiving practitioner whenever the offender transitions between state and county correctional facilities, and would also allow for the disclosure of health care information when an offender is being transferred between state and county correctional facilities, whether it be on a temporary or permanent basis.

3. Effect of This Legislation

This legislation is a double referral from the Judiciary Committee, who examined the issues related to the privacy of medical information. From a public safety perspective, improving the sharing of medial information will almost certainly help to provide the inmate population with much needed continuity of care.

Developing collaborative, intersectoral approaches to address the high burden of disease among people involved in the justice system is both a public health and public safety imperative. People with serious mental illness are significantly overrepresented in correctional systems. An estimated 14.5 percent of men and 31 percent of women in jails have a serious mental illness (SMI) such as schizophrenia, major depression, and bipolar disorder, compared to 5 percent of the general population. . . A lack of health background information on the people involved in the criminal justice system diminishes the likelihood that jails will deliver properly targeted, often urgently needed care.

(Bridging the Gap Improving the Health of Justice-Involved People through Information Technology, February 2015, VERA Institute of Justice, <http://www.vera.org/sites/default/files/resources/downloads/samhsa-justice-health-information-technology.pdf>.)

4. Author's Amendments

The author will offer the following amendments to Penal Code section 2601(c) in committee:

(c) Subject to paragraph (23) of subdivision (c) of Section 56.10 of the Civil Code, as that paragraph relates to *the disclosure of the minimum amount of medically necessary sharing of protected personal medical and mental health information to further the continuity of care necessary for the diagnosis and treatment purposes* for offenders, to all privacy rights legally applicable to inmates.

-- END -