SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair
2015 - 2016 Regular

Bill No:	SB 1443	**Hearing Date:**	April 12, 2016
Author:	Galgiani		
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Urgency:	No	**Fiscal:**	Yes
Consultant:	JRD		

Subject: ***Incarcerated Persons: Health Records***

HISTORY

Source: California Correctional Healthcare Services

Prior Legislation: None known

Support: Unknown

Opposition: None known

PURPOSE

The purpose of this legislation is to permit the sharing of medical, mental health and dental information between correctional facilities, as specified.

Under existing law a provider of health care, health care service plan, or contractor is prohibited from disclosing medical information regarding a patient of the provider of health care or an enrollee or subscriber of a health care service plan without first obtaining an authorization, except:

- A provider of health care, a health care service plan, or a contractor must disclose medical information if the disclosure is compelled by any of the following:

  - By a court order.
  - By a board, commission, or administrative agency for purposes of adjudication pursuant to its lawful authority.
  - By a party to a proceeding before a court or administrative agency pursuant to a subpoena, subpoena duces tecum, notice to appear served pursuant to Section 1987 of the Code of Civil Procedure, or any provision authorizing discovery in a proceeding before a court or administrative agency.
  - By a board, commission, or administrative agency pursuant to an investigative subpoena issued under Article 2 (commencing with Section 11180) of Chapter 2 of Part 1 of Division 3 of Title 2 of the Government Code.
  - By an arbitrator or arbitration panel, when arbitration is lawfully requested by either party, pursuant to a subpoena duces tecum issued under Section 1282.6 of the Code of Civil Procedure, or another provision authorizing discovery in a proceeding before an arbitrator or arbitration panel.

  - By a search warrant lawfully issued to a governmental law enforcement agency.
  - By the patient or the patient's representative pursuant to Chapter 1 (commencing with Section 123100) of Part 1 of Division 106 of the Health and Safety Code.
  - By a coroner, as specified.
  - When otherwise specifically required by law.

- A provider of health care or a health care service plan may disclose medical information as follows:

  - The information may be disclosed to providers of health care, health care service plans, contractors, or other health care professionals or facilities for purposes of diagnosis or treatment of the patient, as specified.
  - The information may be disclosed to an insurer, employer, health care service plan, hospital service plan, employee benefit plan, governmental authority, contractor, or other person or entity responsible for paying for health care services rendered to the patient, to the extent necessary to allow responsibility for payment to be determined and payment to be made, as specified.
  - The information may be disclosed to a person or entity that provides billing, claims management, medical data processing, or other administrative services for providers of health care or health care service plans or for any of the persons or entities, as specified.
  - The information may be disclosed to organized committees and agents of professional societies or of medical staffs of licensed hospitals, licensed health care service plans, professional standards review organizations, independent medical review organizations and their selected reviewers, utilization and quality control peer review organizations as established by Congress in Public Law 97-248 in 1982, contractors, or persons or organizations insuring, responsible for, or defending professional liability that a provider may incur, if the committees, agents, health care service plans, organizations, reviewers, contractors, or persons are engaged in reviewing the competence or qualifications of health care professionals or in reviewing health care services with respect to medical necessity, level of care, quality of care, or justification of charges.
  - The information in the possession of a provider of health care or health care service plan may be reviewed by a private or public body responsible for licensing or accrediting the provider of health care or health care service plan, as specified.
  - The information may be disclosed to the county coroner in the course of an investigation by the coroner's, as specified.
  - The information may be disclosed to public agencies, clinical investigators, including investigators conducting epidemiologic studies, health care research organizations, and accredited public or private nonprofit educational or health care institutions for bona fide research purposes, as specified.
  - A provider of health care or health care service plan that has created medical information as a result of employment-related health care services to an employee conducted at the specific prior written request and expense of the employer may disclose to the employee's employer that part of the information that:

    - Is relevant in a lawsuit, arbitration, grievance, or other claim or challenge to which the employer and the employee are parties and in which the patient has placed in issue his or her medical history, mental or physical condition, or treatment, provided that information may only be used or disclosed in connection with that proceeding.

    - Describes functional limitations of the patient that may entitle the patient to leave from work for medical reasons or limit the patient's fitness to perform his or her present employment, provided that no statement of medical cause is included in the information disclosed.

- Unless the provider of health care or a health care service plan is notified in writing of an agreement by the sponsor, insurer, or administrator to the contrary, the information may be disclosed to a sponsor, insurer, or administrator of a group or individual insured or uninsured plan or policy that the patient seeks coverage by or benefits from, if the information was created by the provider of health care or health care service plan as the result of services conducted at the specific prior written request and expense of the sponsor, insurer, or administrator for the purpose of evaluating the application for coverage or benefits.
- The information may be disclosed to a health care service plan by providers of health care that contract with the health care service plan and may be transferred among providers of health care that contract with the health care service plan, for the purpose of administering the health care service plan, as specified.
- This part does not prevent the disclosure by a provider of health care or a health care service plan to an insurance institution, agent, or support organization, subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, of medical information if the insurance institution, agent, or support organization has complied with all of the specified requirements for obtaining the information.
- The information relevant to the patient's condition, care, and treatment provided may be disclosed to a probate court investigator in the course of an investigation required or authorized in a conservatorship proceeding under the Guardianship-Conservatorship Law as defined in Section 1400 of the Probate Code, or to a probate court investigator, probation officer, or domestic relations investigator engaged in determining the need for an initial guardianship or continuation of an existing guardianship.
- The information may be disclosed to an organ procurement organization or a tissue bank processing the tissue of a decedent for transplantation into the body of another person, but only with respect to the donating decedent, for the purpose of aiding the transplant. For the purpose of this paragraph, "tissue bank" and "tissue" have the same meanings as defined in Section 1635 of the Health and Safety Code.
- The information may be disclosed when the disclosure is otherwise specifically authorized by law, including, but not limited to, the voluntary reporting, either directly or indirectly, to the federal Food and Drug Administration of adverse events related to drug products or medical device problems, or to disclosures made pursuant to subdivisions (b) and (c) of Section 11167 of the Penal Code by a person making a report pursuant to Sections 11165.9 and 11166 of the Penal Code, provided that those disclosures concern a report made by that person.
- Basic information, including the patient's name, city of residence, age, sex, and general condition, may be disclosed to a state-recognized or federally recognized disaster relief organization for the purpose of responding to disaster welfare inquiries.
- The information may be disclosed to a third party for purposes of encoding, encrypting, or otherwise anonymizing data, as specified.
- For purposes of disease management programs and services as defined in Section 1399.901 of the Health and Safety Code, information may be disclosed, as specified.
- The information may be disclosed, as permitted by state and federal law or regulation, to a local health department for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events,

including, but not limited to, birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions, as authorized or required by state or federal law or regulation.

- The information may be disclosed, consistent with applicable law and standards of ethical conduct, by a psychotherapist, as defined in Section 1010 of the Evidence Code, if the psychotherapist, in good faith, believes the disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a reasonably foreseeable victim or victims, and the disclosure is made to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
- The information may be disclosed as described in Section 56.103.
- The information may be disclosed to an employee welfare benefit plan, to the extent that the employee welfare benefit plan provides medical care, and may also be disclosed to an entity contracting with the employee welfare benefit plan for billing, claims management, medical data processing, or other administrative services related to the provision of medical care to persons enrolled in the employee welfare benefit plan for health care coverage, if all of the following conditions are met:

  - The disclosure is for the purpose of determining eligibility, coordinating benefits, or allowing the employee welfare benefit plan or the contracting entity to advocate on the behalf of a patient or enrollee with a provider, a health care service plan, or a state or federal regulatory agency.
  - The request for the information is accompanied by a written authorization for the release of the information submitted in a manner consistent with subdivision (a) and Section 56.11.
  - The disclosure is authorized by and made in a manner consistent with the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191).
  - Any information disclosed is not further used or disclosed by the recipient in any way that would directly or indirectly violate this part or other specified restrictions.

- Information may be disclosed pursuant to subdivision (a) of Section 15633.5 of the Welfare and Institutions Code by a person required to make a report pursuant to Section 15630 of the Welfare and Institutions Code, provided that the disclosure under subdivision (a) of Section 15633.5 concerns a report made by that person, as specified.

(Civil Code § 56.10.)

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 it 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 would authorize the disclosure of information 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 among those facilities. The bill would also authorize the disclosure and exchange of information by a county correctional facility, a county medical facility, a state correctional facility, or a state hospital to a contracted licensed mental health provider performing a forensic evaluation of an offender or a mentally disordered offender (MDO) or a sexually violent predator (SVP) screening of an offender.

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 would require, when jurisdiction of an inmate is transferred from or among CDCR, the State Department of State Hospitals, and county agencies caring for inmates, those agencies to disclose, by electronic transmission when possible, medical, dental, and mental health information regarding each transferred or released inmate, as provided by the bill's provisions.

This bill would authorize the sharing of an inmate's health information, as necessary for continuity of care, when an inmate is transferred between or among a state prison, a fire camp

operated by CDCR, a state hospital, a county correctional facility, or a county medical facility providing medical or mental health services to offenders, as specified.

This bill would require, when an inmate is being released by CDCR to postrelease community supervision, or is being retained in custody at a county or local jail, or county officials will otherwise have responsibility for the inmate's ongoing health care needs, the department to disclose the inmate's health information, as necessary for continuity of care, to the applicable county agency, as specified.

This bill would provide that the medical, dental, and mental health information to be disclosed among CDCR, the State Department of State Hospitals, and county agencies is limited to the type and amount of information that is determined by licensed medical providers, as a matter of general policy or on a case-by-case basis, to be necessary for continuity of care or to perform a mandatory offender screening, such as an MDO screening or an SVP screening. The bill would authorize that information to be disclosed either as already maintained in existing medical records or as compiled for the purpose of the disclosure, and would authorize that information to include, among other things, medical history, physical information, and public health information.

This bill would require all transmissions made pursuant to these provisions to comply with specified provisions of state and federal law, including, among others, the Confidentiality of Medical Information Act.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014

Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Legislation

According to the author:

> Currently, both state and county correctional facilities receive medically and mentally unstable patients where the patient's medical and/or mental health history at the time of transfer is not provided. Not only does this 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.
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> This bill would address the current lack of statutory authority that would provide for the transfer of medical and mental health 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 be transferred from the sending practitioner to the receiving practitioner within 24 hours whenever the offender transitions between state/county correctional facilities. The bill would allow for the disclosure of medical or mental health information when an offender is being transferred between state/county correctional facilities, whether it be on a temporary or permanent basis.

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:

> 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. Although current law offers a variety of statutory schemes discussing the transfer of patient records for the public, none apply in a correctional setting.
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3. Effect of this Legislation

This legislation is a double referral to the Judiciary Committee, which will presumably examine 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.
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> (*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.)

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