



on  
**California Senate Bill 850:  
Confidentiality of Medical Information Act**

**October 14, 2011**

**BACKGROUND**

On October 9, 2011, California Governor Jerry Brown [signed](#) SB 850, the [Confidentiality of Medical Information Act](#), into state law effective January 1, 2012. Introduced by Senator Mark Leno (D-San Francisco), this bill will require electronic health or medical record systems (EHR) to automatically record and preserve any additions, edits or deletion of electronically stored medical information. This bill will also require the record to include the identity of the person who accessed and/or changed a patient's medical information, as well as the actual change that was made.

The bill language states that an EHR shall show that “the record of any change or deletion shall include the identity of the person who accessed and changed the medical information, the date and time the medical information was accessed, and the change that was made to the medical information.” Patient rights for access to his or her electronic records will remain consistent with current applicable state and federal laws governing patient access to their own medical information.

Substantially amended after concern and opposition from California health care providers, as well as the California Medical Association and the California Hospital Association, among others, the California Assembly struck a provision that these changes and deletions will be made accessible to patients as part of their electronic record when requested by the patient. However, providers are still required to log each of these actions and lawyers can access these changes if requested.

**Potential Impact for HIMSS Members**

While SB 850 does not require patients be provided with all changes, edits and deletions as part of their electronic record request, it must be remembered that:

- All health care providers in California will still be required to have an EHR system that will automatically record and preserve any changes and deletions in a patient record.

- Upon request, lawyers may be able to access these change/deletion logs, even though patients will not receive them.<sup>i</sup> Additional discovery request costs may be incurred to the provider in these instances.
- Changes and Deletions to Patient records shall include:
  - The identity of the person who accessed and changed the medical information
  - The date and time the medical information was accessed
  - The change, if any, that was made to the medical information.

The law, as passed (after substantial amendments), generally reflects existing federal requirements. Federal requirements for EHR Standards and Certification also require that EHRs record the user, the date and time, and what action occurred, when electronic health information is created, modified, deleted or printed.<sup>ii</sup>

We note that the format of these logs could vary between vendors and therefore not standardized for readability or content; this law might serve as an entry point for the state to move in that direction, further complicating the 50 states, 50 rules scenario which is also a factor in the pharmaceutical labeling and packaging domains.

Although the signed legislation essentially mirrored federal requirements, Senator Leno was quoted after the bills' passage as saying that its passage adds additional authority for California regulators to enforce these provisions for patients.

## **CONCLUSION**

Federal standards for the exchange of health information, as well as other standards for health IT, are still evolving. The concern that California (or any state or region) may potentially require a different electronic health record for use in their state than what may be used in other states is a significant concern for HIMSS members.

Although this legislation closely mirrors existing federal requirements, HIMSS will continue to closely track the implementation of this legislation and its impact on legislation that may develop in other states. HIMSS will also monitor this regulation's impact on the EHR industry for potential concerns for HIMSS members.

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<sup>i</sup> California Watch; June 28, 2011: <http://californiawatch.org/dailyreport/bill-softens-stance-changes-electronic-patient-records-11132>

<sup>ii</sup> Federal Register; January 13, 2010: <http://edocket.access.gpo.gov/2010/E9-31216.htm>