AMENDED IN ASSEMBLY MARCH 7, 2006

AMENDED IN ASSEMBLY JUNE 15, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 12, 2005

AMENDED IN SENATE APRIL 4, 2005

SENATE BILL No. 401

Introduced by ~~Senator Ortiz~~ *Senators Ortiz and Runner*

February 17, 2005

~~An act to amend Section 56.05 of the Civil Code, relating to medical information.~~*An act to amend Sections 125290.30 and 125290.50 of the Health and Safety Code, relating to stem cell research.*

LEGISLATIVE COUNSEL'S DIGEST

SB 401, as amended, Ortiz. ~~Medical information: pharmacies: marketing.~~ *Stem cell research: ICOC procedures.*

The California Stem Cell Research and Cures Act, an initiative measure, establishes the California Institute for Regenerative Medicine, the purpose of which is, among other things, to make grants and loans for stem cell research, for research facilities, and for other vital research opportunities to realize therapies, protocols, and medical procedures that will result in the cure for, or substantial mitigation of, diseases and injuries. Existing law establishes the Independent Citizen's Oversight Committee (ICOC), composed of appointed members, that is required to perform various functions and duties with regard to the operation of the institute.

Existing law sets forth public meeting and conflict–of–interest procedures for the ICOC and requires the ICOC to establish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements.

Existing law prohibits amendment of the initiative measure by the Legislature unless the amendment is approved by the voters, or the amendment is accomplished by a bill introduced after the first 2 full calendar years and approved by a vote of 70% of both houses.

This bill would modify the public hearing and conflict-of-interest procedures of members of the ICOC, the Citizen's Financial Accountability Oversight Committee, and the advisory and working groups established to assist these bodies, and would set forth minimum intellectual property licensing conditions applicable to ICOC standards for research and facilities grants and loans.

This bill would provide for submission of the measure to the voters at the next statewide election, and would condition the changes upon voter approval pursuant to prescribed provisions of law.

~~Existing law prohibits a provider of health care, a health care service plan, contractor, or corporation and its subsidiaries and affiliates from intentionally sharing, selling, 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. Violations of these provisions are subject to a civil action for compensatory and punitive damages, and, if a violation results in economic loss or personal injury to a patient, it is punishable as a misdemeanor. Existing law provides that this prohibition also applies to the marketing of medical information, as defined, excluding from that definition, for these purposes, communications for which the communicator does not receive remuneration from a 3rd party or for specified descriptive purposes, or that are tailored to the circumstances of a particular individual, as specified.~~

~~This bill would further provide that marketing includes a written communication that is provided by a pharmacy to a patient about a different drug or treatment than that being dispensed by the pharmacy and that is paid for, or sponsored by, a manufacturer, labeler, or~~

~~distributor of prescription drugs, except as specified. Because a violation thereof may be punishable as a misdemeanor, the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ *no*.

The people of the State of California do enact as follows:

SECTION 1. Section 125290.30 of the Health and Safety Code is amended to read:

125290.30. Public and Financial Accountability Standards

(a) Annual Public Report

The institute shall issue an annual report to the public which sets forth its activities, grants awarded, grants in progress, research accomplishments, and future program directions. Each annual report shall include, but not be limited to, the following: the number and dollar amounts of research and facilities grants; the grantees for the prior year; the institute's administrative expenses; an assessment of the availability of funding for stem cell research from sources other than the institute; a summary of research findings, including promising new research areas; an assessment of the relationship between the institute's grants and the overall strategy of its research program; and a report of the institute's strategic research and financial plans.

(b) Independent Financial Audit for Review by State Controller

The institute shall annually commission an independent financial audit of its activities from a certified public accounting firm, which shall be provided to the State Controller, who shall review the audit and annually issue a public report of that review.

(c) Citizen's Financial Accountability Oversight Committee

There shall be a Citizen's Financial Accountability Oversight Committee chaired by the State Controller. This committee shall review the annual financial audit, the State Controller's report

and evaluation of that audit, and the financial practices of the institute. The State Controller, the State Treasurer, the President pro Tempore of the Senate, the Speaker of the Assembly, and the Chairperson of the ICOC shall each appoint a public member of the committee. Committee members shall have medical backgrounds and knowledge of relevant financial matters. The committee shall provide recommendations on the institute's financial practices and performance. The State Controller shall provide staff support. The committee shall hold a public meeting, with appropriate notice, and with a formal public comment period. The committee shall evaluate public comments and include appropriate summaries in its annual report. The ICOC shall provide funds for the per diem expenses of the committee members and for publication of the annual report.

(d) Public Meeting Laws

(1) The ICOC shall hold at least two public meetings per year, one of which will be designated as the institute's annual meeting. The ICOC may hold additional meetings as it determines are necessary or appropriate.

(2) The Bagley-Keene Open Meeting Act, Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, shall apply to all meetings of the ICOC, *the Citizen's Financial Accountability Oversight Committee, and any working or advisory group established to assist these bodies* except as otherwise provided in this section. The ICOC shall award all grants, loans, and contracts in public meetings and shall adopt all governance, scientific, medical, and regulatory standards in public meetings.

(3) The ICOC*, the Citizen's Financial Accountability Oversight Committee, and any working or advisory group established to assist these bodies,* may conduct closed sessions as permitted by the Bagley-Keene Open Meeting Act, under Section 11126 of the Government Code. In addition, ~~the ICOC~~ *these bodies* may conduct closed sessions when ~~it meets~~ *any of them meet* to consider or discuss:

(A) ~~Matters involving information relating to patients or medical subjects, the disclosure of which would constitute an unwarranted invasion of personal privacy~~ *Individually identifiable information regarding the medical history of, mental or physical condition of, or treatment of, a patient or medical*

subject, except to the extent that the person has waived his or her right to confidentiality regarding that information.

(B) ~~Matters involving confidential~~ *Confidential* intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) ~~Matters involving prepublication, confidential~~ *Prepublication* scientific ~~research~~ *working papers,* or *research* data.

(D) ~~Matters concerning the~~ *The* appointment, employment, performance, compensation, or dismissal of *individual* institute officers and employees. Action on compensation of the institute's officers and employees shall only be taken in open session.

(E) (i) The scientific evaluation of any application for research, training, or facility grants or loans submitted for funding. However, any working or advisory group that is charged with reviewing and recommending applications for research, training, or facility grants or loans shall produce a written summary that shall be a public record of the reasons for recommending or not recommending any application for funding.

(ii) The written summaries specified in clause (i) shall be posted on the ICOC's Web site at least 10 days prior to the ICOC's consideration for any recommendations for funding and shall include all of the following:

(I) In the case of any application that is recommended for funding: the name of the applicant, the title and subject of the application, a description of how the project proposed in the application could benefit the state, a brief summary of the scientific evaluation of the project, the consolidated scientific score for the project, and the final recommendation of the full working or advisory group on the application.

(II) In the case of any application that is not recommended for funding: a short description of the project proposed in the application, the disease category addressed by the proposed

project, the geographic region represented by that project, and the general reasons for the decision not to recommend the application for funding.

(4) The meeting required by paragraph (2) of subdivision (b) of Section 125290.20 shall be deemed to be a special meeting for the purposes of Section 11125.4 of the Government Code.

(e) Public Records

(1) The California Public Records Act, Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code, shall apply to all records of the institute, except as otherwise provided in this section.

(2) ~~Nothing~~ *This section does not require disclosure of any record exempt from disclosure under the California Public Records Act. Moreover, nothing* in this section shall be construed to require disclosure of any records that are any of the following:

(A) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(B) Records containing or reflecting confidential intellectual property or work product, whether patentable or not, including, but not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information, which is not patented, which is known only to certain individuals who are using it to fabricate, produce, or compound an article of trade or a service having commercial value and which gives its user an opportunity to obtain a business advantage over competitors who do not know it or use it.

(C) Prepublication scientific working papers or research data.

(f) Competitive Bidding

(1) The institute shall, except as otherwise provided in this section, be governed by the competitive bidding requirements applicable to the University of California, as set forth in Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code.

(2) For all institute contracts, the ICOC shall follow the procedures required of the Regents by Article 1 (commencing with Section 10500) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code with respect to contracts let by the University of California.

(3) The requirements of this section shall not be applicable to grants or loans approved by the ICOC.

(4) Except as provided in this section, the Public Contract Code shall not apply to contracts let by the institute.

(g) Conflicts of Interest

(1) The Political Reform Act, Title 9 (commencing with Section 81000) of the Government Code, shall apply to the institute and to the ICOC, except as provided in this section and in subdivision (e) of Section 125290.50.

(A) No member of the ICOC shall make, participate in making, or in any way attempt to use his or her official position to influence a decision to approve or award a grant, loan, or contract to his or her employer, but a member may participate in a decision to approve or award a grant, loan, or contract to a nonprofit entity in the same field as his or her employer.

(B) A member of the ICOC may participate in a decision to approve or award a grant, loan, or contract to an entity for the purpose of research involving a disease from which a member or his or her immediate family suffers or in which the member has an interest as a representative of a disease advocacy organization.

(C) The adoption of standards is not a decision subject to this section.

(2) Service as a member of the ICOC by a member of the faculty or administration of any system of the University of California shall not, by itself, be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a member of the faculty or administration of any system of the University of California and shall not result in the automatic vacation of either such office. Service as a member of the ICOC by a representative or employee of a disease advocacy organization, a nonprofit academic and research institution, or a life science commercial entity shall not be deemed to be inconsistent, incompatible, in conflict with, or inimical to the duties of the ICOC member as a representative or employee of that organization, institution, or entity.

(3) Section 1090 of the Government Code shall not apply to any grant, loan, or contract made by the ICOC except where both of the following conditions are met:

(A) The grant, loan, or contract directly relates to services to be provided by any member of the ICOC or the entity the

member represents or financially benefits the member or the entity he or she represents.

(B) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant loan or contract.

(4) The chair and vice chair and any appointed member of the ICOC, and the president of the ICOC shall divest themselves of, or place into a blind trust, any financial or real property interest of two thousand dollars ($2,000) or more held by that person in any organization that applies for funding from, or contracts with, the ICOC or in any organization with a substantial interest in stem cell therapy. An organization with a substantial interest in stem cell therapy is one for which, based upon publicly available information, more that 5 percent of the organization's current annual research budget is allocated to stem cell therapy.

(h) Patent Royalties and License Revenues Paid to the State of California

~~The~~

(1) The ICOC shall establish standards that require that all grants and loan awards be subject to intellectual property agreements that balance the opportunity of the State of California to benefit from the patents, royalties, and licenses that result from basic research, therapy development, and clinical trials with the need to assure that essential medical research is not unreasonably hindered by the intellectual property agreements. *The ICOC shall establish and apply minimum licensing conditions to its grants and loans for research and facilities consisting of the following:*

(A) A requirement that every recipient of grant or loan awards for research or facilities that is a research institution provide to the state a portion of net licensing revenues from any invention, research finding or tool, or technology that it develops using funds from the grant or loan award, as follows:

(i) The grant or loan recipient shall provide 50 percent of net licensing revenues if the state shares in the expenses of developing and protecting any patent on the invention, research finding or tool, or technology.

(ii) The grant or loan recipient shall provide 25 percent of the net licencing revenues if the state does not share in the expenses

of developing and protecting any patent on the invention, research finding or tool, or technology.

(B) For any grant or loan for research or facilities that is to be financed with taxable bonds, the ICOC shall require a higher level of royalties than set forth in subparagraph (A), if a higher level is necessary to offset the additional cost of using taxable bonds.

(C) For any grant or loan for research or facilities that is financed with nontaxable bonds, the ICOC may require that the royalties required by this subdivision be paid directly to a nonprofit organization that is dedicated to enhancing access to clinical trials and therapies for low-income populations, rather than being paid to the state, if the institute determines for tax reasons that receipt of the royalties by the state would preclude the use of nontaxable bonds.

(D) A requirement that every recipient of a grant or loan award for research or facilities that is a research institution require every licensee who develops a product, drug, or therapy using any invention, research finding or tool, or technology developed with funds from the grant or loan award to agree to sell the product, drug, or therapy to state and county health programs at the best price the licensee sells it to any purchaser.

(E) A requirement that every recipient of a grant or loan award for research or facilities that is a commercial entity agree, as a condition of accepting the funds, to sell any product, drug, or therapy that it develops using grant or loan funds to state and county health programs at the best price the recipient sells it to any purchaser.

(F) A requirement that any recipient of a grant or loan award for research or facilities that is a commercial entity provide royalty payments to the state at a rate that is consistent with the rates historically received by the University of California for research agreements with biotechnology and pharmaceutical commercial entities for that type of research.

(2) The ICOC shall seek licensing conditions that would provide greater financial benefits to the state than those required by paragraph (1) where it is possible to do so without hindering research and development of promising stem cell therapies and treatments.

(3) The ICOC shall impose any licensing conditions in its grants and loans for research that are necessary to ensure the free and open dissemination of basic research tools and findings, including research exemptions, open source and nonexclusive licensing, compulsory licensing, development of patent pools, and other provisions the ICOC finds are necessary to ensure open dissemination.

(4) The ICOC shall require a grantee or licensee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicant if the ICOC determines that the grantee or licensee is violating the terms of licensing conditions, or if the grantee or licensee is not making efforts in a reasonable period of time to achieve practical application of an invention developed with grant or loan funds, or if it is necessary to alleviate health and safety needs. With the exception of actions to address health and safety needs, prior to exercising this authority, the institute shall give the grantee or licensee an opportunity to bring its actions into compliance with the licensing conditions.

(5) For the purposes of this subdivision, "net licensing revenue" shall include all forms of financial consideration from licensing, including cash and corporate equity, and shall be defined as gross licensing revenues, less a reasonable administrative and licensing allowance, patent expenses, and reasonable payments to inventors.

(6) Any proposed intellectual property agreement between the ICOC and a grantee or loan recipient shall be reviewed by the Attorney General prior to its approval by the ICOC, and the ICOC shall consider any comments by the Attorney General prior to approving the agreement.

(i) Preference for California Suppliers

The ICOC shall establish standards to ensure that grantees purchase goods and services from California suppliers to the extent reasonably possible, in a good faith effort to achieve a goal of more than 50 percent of such purchases from California suppliers.

SEC. 2. Section 125290.50 of the Health and Safety Code is amended to read:

125290.50. Scientific and Medical Working Groups—General

(a) The institute shall have, and there is hereby established, three separate scientific and medical working groups as follows:

(1) Scientific and Medical Research Funding Working Group.

(2) Scientific and Medical Accountability Standards Working Group.

(3) Scientific and Medical Research Facilities Working Group.

(b) Working Group Members

Appointments of scientific and medical working group members shall be made by a majority vote of a quorum of the ICOC, within 30 days of the election and appointment of the initial ICOC members. The working group members' terms shall be six years except that, after the first six-year terms, the members' terms will be staggered so that one-third of the members shall be elected for a term that expires two years later, one-third of the members shall be elected for a term that expires four years later, and one-third of the members shall be elected for a term that expires six years later. Subsequent terms are for six years. Working group members may serve a maximum of two consecutive terms.

(c) Working Group Meetings

Each scientific and medical working group shall hold at least four meetings per year, one of which shall be designated as its annual meeting.

(d) Working Group Recommendations to the ICOC

Recommendations of each of the working groups may be forwarded to the ICOC only by a vote of a majority of a quorum of the members of each working group. If 35 percent of the members of any working group join together in a minority position, a minority report may be submitted to the ICOC. The ICOC shall consider the recommendations of the working groups in making its decisions on applications for research and facility grants and loan awards and in adopting regulatory standards. Each working group shall recommend to ICOC rules, procedures, and practices for that working group.

(e) Conflict of Interest

(1) The ICOC shall adopt conflict of interest rules, based on standards applicable to members of scientific review committees of the National Institutes of Health, to govern the participation of non-ICOC working group members.

(2) *(A) Upon his or her appointment, and each year thereafter at a time specified by the ICOC, each member of a working or advisory group appointed to assist the institute or its governing body shall disclose to the ICOC any income, real property, and investments they or a close family member has in all of the following:*

(i) A California-based academic or nonprofit research institutions.

(ii) A biotechnology or pharmaceutical company.

(iii) Real property interests in California.

(B) In addition to the disclosures in subparagraph (A), a member who is appointed to the facilities working group shall disclose all construction, real estate, and development firms from which they or a family member receives or has received economic benefits.

(C) The ICOC shall provide the disclosures to the State Auditor. The State Auditor, or his or her successor, shall review at least annually the disclosures, in addition to the voting record of each working or advisory group member regarding recommendations for applications for research and facility grants and loan awards and regulatory standards, and submit an annual report to the Legislature containing findings on whether any of the votes made by these members may constitute, or has constituted, a conflict of interest that requires or required the member to recuse himself or herself from consideration of an application or standard if the member is otherwise required under existing law to recuse himself or herself.

(D) A working group member shall not vote or participate in the consideration of any grant, loan, or project submitted for funding if he or she has a financial conflict of interest.

(3) For purposes of this subdivision, "financial conflict of interest" means that the working or advisory group member, or a close relative or professional associate of the member, has a financial or other monetary interest in an application or standard that is known to the member, including a direct benefit of any amount deriving from an application or standard, or a financial benefit of any type from an applicant institution of over five thousand dollars ($5,000) per year, including honoraria, fees, stock, or other benefits. For purposes of this paragraph, "close relative" and "professional associate" shall have the

same meaning as those terms are defined under the National Institutes of Health Conflict of Interest, Confidentiality and Non-Disclosure Rules.

(4) The ICOC shall appoint an ethics officer from among the staff of the institute.

~~(3)~~

(5) Because the working groups are purely advisory and have no final decisionmaking authority, members of the working groups shall not be considered public officials, employees, or consultants for purposes of the Political Reform Act (Title 9 (commencing with Section 81000) of the Government Code), Sections 1090 and 19990 of the Government Code, and Sections 10516 and 10517 of the Public Contract Code.

(f) Working Group Records

All records of the working groups submitted as part of the working groups' recommendations to the ICOC for approval shall be subject to the Public Records Act. Except as provided in this subdivision, the working groups shall not be subject to the provisions of Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, or Article 1 (commencing with Section 6250) of Chapter 3.5 of Division 7 of Title 1 of the Government Code.

SEC. 3. As an amendment of an initiative, Sections 1 and 2 of this act shall become effective only upon approval by the voters at a statewide election. The Secretary of State shall submit Sections 1 and 2 of this act to the voters at the next statewide election pursuant to Section 9040 of the Elections Code.

~~SECTION 1. Section 56.05 of the Civil Code is amended to read:~~

~~56.05. For purposes of this part:~~

~~(a) "Authorization" means permission granted in accordance with Section 56.11 or 56.21 for the disclosure of medical information.~~

~~(b) "Authorized recipient" means any person who is authorized to receive medical information pursuant to Section 56.10 or 56.20.~~

~~(c) "Contractor" means any person or entity that is a medical group, independent practice association, pharmaceutical benefits manager, or a medical service organization and is not a health care service plan or provider of health care. "Contractor" does~~

not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code or pharmaceutical benefits managers licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) "Health care service plan" means any entity regulated pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) "Licensed health care professional" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, the Osteopathic Initiative Act or the Chiropractic Initiative Act, or Division 2.5 (commencing with Section 1797) of the Health and Safety Code.

(f) (1) "Marketing" means to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service.

(2) "Marketing" does not include any of the following:

(A) Communications made orally or in writing for which the communicator does not receive direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication.

(B) Communications made to current enrollees solely for the purpose of describing a provider's participation in an existing health care provider network or health plan network of a Knox-Keene licensed health plan to which the enrollees already subscribe; communications made to current enrollees solely for the purpose of describing if, and the extent to which, a product or service, or payment for a product or service, is provided by a provider, contractor, or plan or included in a plan of benefits of a Knox-Keene licensed health plan to which the enrollees already subscribe; or communications made to plan enrollees describing the availability of more cost-effective pharmaceuticals.

(C) Communications that are tailored to the circumstances of a particular individual to educate or advise the individual about treatment options, and otherwise maintain the individual's adherence to a prescribed course of medical treatment, as provided in Section 1399.901 of the Health and Safety Code, for

~~a chronic and seriously debilitating or life-threatening condition as defined in subdivisions (d) and (e) of Section 1367.21 of the Health and Safety Code, if the health care provider, contractor, or health plan receives direct or indirect remuneration, including, but not limited to, gifts, fees, payments, subsidies, or other economic benefits, from a third party for making the communication, if all of the following apply:~~

~~(i) The individual receiving the communication is notified in the communication in typeface no smaller than 14-point type of the fact that the provider, contractor, or health plan has been remunerated and the source of the remuneration.~~

~~(ii) The individual is provided the opportunity to opt out of receiving future remunerated communications.~~

~~(iii) The communication contains instructions in typeface no smaller than 14-point type describing how the individual can opt out of receiving further communications by calling a toll-free telephone number of the health care provider, contractor, or health plan making the remunerated communications. No further communication may be made to an individual who has opted out after 30 calendar days from the date the individual makes the opt out request.~~

~~(3) Notwithstanding any other provision of law, "marketing" includes a written communication that is provided to a pharmacy patient by a pharmacist or by pharmacy personnel, in conjunction with the dispensing of a prescription drug or prescribed treatment therapy, that includes the trade name or commercial slogan for any prescription drug, prescribed treatment therapy, or over-the-counter medication other than the prescription drug or prescribed treatment therapy being dispensed, if the communication is paid for or sponsored, directly or indirectly, by a manufacturer, labeler, or distributor of prescription drugs. This paragraph shall not apply when a trade name or commercial slogan for a prescription drug, prescribed treatment therapy, or over-the-counter medication is included in a written communication for the sole purpose of providing information about drug interactions, reported or potential adverse events, or any other information necessary to ensure the health and safety of the patient, or is part of a package insert that has been approved by the federal Food and Drug Administration to be distributed together with a prescription drug.~~

~~(g) "Medical information" means 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. "Individually identifiable" means 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.~~

~~(h) "Patient" means any natural person, whether or not still living, who received health care services from a provider of health care and to whom medical information pertains.~~

~~(i) "Pharmaceutical company" means any company or business, or an agent or representative thereof, that manufactures, sells, or distributes pharmaceuticals, medications, or prescription drugs. "Pharmaceutical company" does not include a pharmaceutical benefits manager, as included in subdivision (c), or a provider of health care.~~

~~(j) "Provider of health care" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code; any person licensed pursuant to the Osteopathic Initiative Act or the Chiropractic Initiative Act; any person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code; any clinic, health dispensary, or health facility licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Provider of health care" does not include insurance institutions as defined in subdivision (k) of Section 791.02 of the Insurance Code.~~

~~SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a~~

~~crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

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