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Health and Welfare

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Health and Welfare

Health and Welfare; confidentiality of medical information

Civil Code §§56, 56.05, 56.10, 56.15, 56.24, 56.25, 56.30, 56.31, 56.32 (repealed); §§3, 56, 56.05, 56.10, 56.11, 56.12, 56.13, 56.14, 56.15, 56.16, 56.20, 56.21, 56.22, 56.23, 56.24, 56.245, 56.25, 56.26, 56.27, 56.28, 56.29, 56.30, 56.35, 56.36, 56.37 (new).

SB 889 (Boatwright); STATS. 1981, Ch 782

Support: Department of Developmental Services; Department of Finance

SB 1098 (Garcia); STATS. 1981, Ch 143 (delaying effect of Civil Code Part 2.6 as enacted by CAL. STATS. 1979, c. 773 until January 1, 1982)

Support: California Hospital Association

The Confidentiality of Medical Information Act of 1979 established specific requirements, exemptions, and sanctions regarding the dissemination of an individual's medical records to outside sources.¹ Chapter 782 repeals the Confidentiality of Medical Information Act (hereinafter referred to as the Act) and replaces it with new provisions.² Although many of the provisions of the former act have been retained, Chapter 782 clarifies the procedure used in obtaining written authorizations for the release of medical information by health care providers and employers,³ specifies additional instances when disclosure of medical information is permitted without an authorization,⁴ extends provisions of the Act to third party administrators,⁵ and sets forth sanctions imposed for violations.⁶ These revisions were intended to ensure the confidentiality of individually identifiable medical information while permitting certain limited and reasonable uses of that information.⁷ Chapter 782 also declares that persons receiving health care services have a right to expect confidentiality of individually identifiable medical information.⁸

1. See CAL. CIV. CODE §§56-56.32. See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 381 (1980).

2. See CAL. CIV. CODE §§56.11-56.16, 56.21-56.24.

3. See *id.* §§56.10, 56.20, 56.26.

4. See *id.* §56.26. See also *id.* §§56.28, 56.29, 56.30 (limitations and qualifications on the scope of Chapter 782).

5. See *id.* §§56.35-56.37.

6. CAL. STATS. 1981, c. 782, §1, at —.

7. *Id.*

8. See CAL. CIV. CODE §56.05(d) (a health care provider is any licensed doctor, osteopath,

Authorizations

A provider of health care,⁹ employer, or third party administrator¹⁰ may not disclose personal medical information¹¹ unless a written authorization¹² has been obtained from the patient¹³ or the patient's legal representative.¹⁴ The written authorization must be in a form that is clearly separate from the rest of the language on the paper containing the authorization¹⁵ and must be either handwritten by the person signing the authorization or printed in no smaller than eight-point type.¹⁶ In addition, the form must specify the uses and types of medical information to be disclosed¹⁷ and any limitations on the use of the information by the persons or entities authorized to receive the medical information.¹⁸ The form must be signed by (1) the patient or the legal representative of a patient who is a minor or incompetent,¹⁹ (2) the spouse or person financially responsible for the patient if the information is sought solely for application or enrollment in a health care service plan, hospital insurance, or employee benefit plan,²⁰ or (3) the beneficiary or personal representative of a deceased patient.²¹ The authorization must state that the patient has a right to receive a copy of the authorization.²² Accordingly, the provider of health care or the employer is required to furnish a copy to the patient upon demand.²³ Fur-

chiropractor, nurse, dentist, psychologist, psychiatric technician, clinic, dispensary, health care facility, or any group practice prepayment health care service plan).

9. *See id.* §56.05(b). *Compare id. with* CAL. STATS. 1979, c. 773, §1, at 2646 (medical information includes any individually identifiable information regarding a patient's medical history, mental or physical condition, or treatment that is in the possession of or derived from a health care provider).

10. *See* CAL. CIV. CODE §56.05(a) (an "authorization" is defined as permission granted a provider of health care or an employer to disclose medical information in accordance with section 56.11 which authorizes the release of medical information by a health care provider and section 56.21 which authorizes an employer to release medical information).

11. *Id.* §56.05(c) (a "patient" is defined as a natural person, whether or not still living, who has received health care services from a provider of health care and to whom medical information pertains).

12. *See id.* §56.10(a). *See generally* White v. Davis, 13 Cal. 3d 757, 533 P.2d 222, 120 Cal. Rptr. 94 (1975) (California Constitution protects individuals against invasions of privacy caused by unreasonably private information practices).

13. *See* CAL. CIV. CODE §56.26(a) (a third party administrator is a person or entity in the business of furnishing administrative services to programs which provide payment for health care services).

14. *See id.* §§56.21, 56.26.

15. *Compare id.* §§56.11(b), 56.21(b) with CAL. STATS. 1979, c. 773, §1, at 2646.

16. *Compare* CAL. CIV. CODE §§56.11(a), 56.21(a) with CAL. STATS. 1979, c. 773, §1, at 2646.

17. CAL. CIV. CODE §§56.11(d), 56.21(d).

18. *Id.* §§56.11(g), 56.21(g).

19. *See id.* §§56.11(c)(1), 56.21(c)(2) (a minor who lawfully can consent to medical services must sign the document).

20. *See id.* §56.11(c)(3).

21. *See id.* §§56.11(c)(4), 56.21(c)(3).

22. *Id.* §§56.1(i), 56.21(i).

23. *Id.* §§56.12, 56.22.

thermore, a person who can sign the authorization may cancel or modify it, but the cancellation or modification will be effective only after a provider of health care or the employer actually receives written notice of the cancellation or modification.²⁴

Disclosure of Medical Information by Health Care Providers

The Act provides that any disclosure of medical information by providers of health care without a prior authorization is prohibited²⁵ except in specified circumstances. Medical information *must* be disclosed when compelled by (1) court order,²⁶ (2) an administrative agency, board, or commission acting within its authority for purposes of adjudication or pursuant to an investigative subpoena,²⁷ (3) a party to a court or administrative proceeding pursuant to a subpoena, subpoena duces tecum, notice to appear or otherwise authorized discovery,²⁸ or (4) an arbitration panel pursuant to a lawful subpoena duces tecum.²⁹ Disclosure of medical information pursuant to authorized discovery during an arbitration proceeding³⁰ or a valid search warrant is also required.³¹

The Act *permits* disclosure by a provider of health care services in specified circumstances.³² A provider, upon inquiry and absent a specific written request by the patient to the contrary, may release a patient's name, address, age, sex, and a general description of the patient's injury, condition, reason for treatment, or any information that is not medical information.³³ In addition, medical information may be disclosed to (1) health care providers or facilities for diagnosis or treatment of the patient,³⁴ (2) those responsible for professional peer review or review of health care services in general,³⁵ (3) specified entities or persons for medical research if no individually identifiable information is disclosed,³⁶ and (4) those persons or organizations responsible for

24. *Id.* §§56.15, 56.24.

25. *Compare id.* §§56.10(a), (b) and 56.20(a), (b) with CAL. STATS. 1979, c. 773, §1, at 2641. See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 381 (1980).

26. *Compare* CAL. CIV. CODE §§56.10(b)(1) with CAL. STATS. 1979, c. 773, §1, at 2647.

27. *Compare* CAL. CIV. CODE §§56.10(b)(2), (4) and CAL. GOV'T CODE §§11186-11189 with CAL. STATS. 1979, c. 773, §1, at 2647 and 5 U.S.C. §552a(b)(11) (1976).

28. *Compare* CAL. CIV. CODE §56.10(b)(3) and CAL. CIV. PROC. CODE §1987 with CAL. STATS. 1979, c. 773, §1, at 2647.

29. *Compare* CAL. CIV. CODE §56.10(b)(5) and CAL. CIV. PROC. CODE §1282.6 with CAL. STATS. 1979, c. 773, §1, at 2647.

30. CAL. CIV. CODE §56.10(b)(5). *Compare id.* with CAL. STATS. 1979, c. 773, §1, at 2647.

31. CAL. CIV. CODE §56.10(b)(6).

32. *Compare id.* §56.10(c) with CAL. STATS. 1979, c. 773, §1, at 2648.

33. *Compare* CAL. CIV. CODE §56.16 with CAL. STATS. 1979, c. 773, §1, at 2649.

34. *Compare* CAL. CIV. CODE §56.10(c)(1) with CAL. STATS. 1979, c. 773, §1, at 2646.

35. *Compare* CAL. CIV. CODE §56.10(c)(4) with CAL. STATS. 1979, c. 773, §1, at 2648.

36. *Compare* CAL. CIV. CODE §56.10(c)(7) with CAL. STATS. 1979, c. 773, §1, at 2648.

insuring or defending professional liability.³⁷ The Act also permits disclosure for the purpose of (1) aiding an investigation conducted by the county coroner's office,³⁸ (2) determining the responsibility of persons or entities for the cost of a patient's health care services, or for billing, claims management, or medical data processing services,³⁹ and (3) review by a public or private entity responsible for licensing or accrediting health providers.⁴⁰

The Act states that medical information may be acquired and transferred among contracting providers for the sole purpose of administering a group practice prepayment health care service plan.⁴¹ Similarly a provider of health care services may disclose information to a sponsor, insurer, or administrator of a group or individual benefit plan if the information is created by the provider as the result of services conducted at the specific prior written request and expense of one of these parties for the purpose of evaluating the application for coverage or benefits.⁴² Further, if a provider of health care produces medical information concerning employment related health care services at the specific written request and expense of the patient's employer, the provider may disclose to the employer the medical information when (1) the part of the information disclosed is relevant to a claim to which the employer and employee are parties and the patient's medical history, condition, or treatment has been placed in controversy by the patient,⁴³ or (2) the information describes the functional limitations that the patient might have in his or her employment, provided that no statement of medical cause is included in the disclosure.⁴⁴ Medical information may also be disclosed to an insurer upon proper written authorization under the Insurance Information and Privacy Protection Act.⁴⁵ A health care provider or employer that discloses medical information pursuant to an authorization must communicate to the person or entity receiving the medical information of any limitations in the authorization regarding the use of the information.⁴⁶ A provider of health care or employer that has attempted in good faith to comply with this re-

37. See CAL. CIV. CODE §56.10(c)(4).

38. Compare CAL. CIV. CODE §56.10(c)(6) with 5 U.S.C. §552a(b)(5) (1976).

39. CAL. CIV. CODE §56.10(c)(2), (3) (this information shall not be further disclosed by the recipient). Compare *id.* with CAL. STATS. 1979, c. 773, §1, at 2649.

40. See CAL. CIV. CODE §56.10(c)(5) (no patient identifying medical information may be removed from the premises unless authorized by law).

41. Compare *id.* §56.10(c)(10) with CAL. STATS. 1979, c. 773, §1, at 2649.

42. See CAL. CIV. CODE §56.10(c)(9).

43. See *id.* §56.10(c)(8)(A) (the medical information may only be disclosed in that proceeding).

44. See *id.* §56.10(c)(8)(B).

45. See *id.* §56.10(c)(11).

46. *Id.* §§56.14, 56.23.

quirement will not be liable for any unauthorized use of the information by the recipient.⁴⁷

Disclosure of Medical Information by Employers and Third Party Administrators

The Act also provides for the use and disclosure of medical information by employers in particular circumstances⁴⁸ and specifies that an employer who receives medical information should establish appropriate procedures to ensure the confidentiality of the information and protect against unauthorized use of disclosure of medical information.⁴⁹ The information may be disclosed by the employer without the patient's prior authorization⁵⁰ if the disclosure is compelled by judicial or administrative process or is required in any other legal proceeding in which the employer and employee are parties and the patient's medical history, condition, or treatment is placed in controversy by the patient.⁵¹ Additionally, information may be disclosed for administering employee benefit plans or for determining eligibility for paid or unpaid leave from work for medical reasons.⁵² The information also may be disclosed to a health care provider, professional or facility to aid in the diagnosis or treatment of the patient if the patient or the patient's legal representative is unable to authorize disclosure.⁵³

The Act also imposes limitations on disclosure of medical information by persons or entities engaged in the business of furnishing administrative services to programs that provide payment for health care services.⁵⁴ A disclosure of medical information may be made by these

47. *Id.* Cf. CAL. STATS. 1979, c. 773, §1, at 2646. See also CAL. CIV. CODE §§56.13, 56.245 (a recipient of medical information from a health care provider or an employer pursuant to a valid authorization may not make a further disclosure unless a new written authorization has been obtained or the disclosure is required or permitted by law).

48. See CAL. CIV. CODE §56.20(c)(1), (2), (3), (4). See also *id.* §56.25(a), (b), (c) (An employer who is also a provider of health care will not be considered to have violated the provisions allowing specific disclosures by employers by disclosing information in compliance with the provisions allowing specific disclosures by providers of health care. Also, an employer will not be deemed to have violated this Act when an employee or agent who is also a provider of health care uses or discloses medical information possessed by the provider in connection with providing health care services to the provider's patients. Similarly, a health care provider that is an employer shall not be deemed to have violated the provisions relating to disclosures by health care providers by disclosing information in connection with employing the provider's employees.).

49. *Id.* §56.20(a) (these procedures may include, but are not limited to instruction of employees regarding confidentiality of files containing medical information and security systems restricting access to files).

50. See *id.* §56.20(d) (if there is a written agreement between an employer and employee that particular types of medical information shall not be used in a particular way, however, the employer must obtain a written authorization prior to disclosure).

51. See *id.* §56.20(c)(1), (2).

52. See *id.* §56.20(3).

53. See *id.* §§56.20(c)(4), 56.21(c)(1), (2).

54. See *id.* §56.26(a), (b).

third party administrators without prior patient authorization when the disclosure is reasonably necessary for the administration or maintenance of the program or as required by law.⁵⁵ All other disclosures of medical information are prohibited without a written authorization of the type required for disclosures by employers.⁵⁶ The limitations governing disclosure by third party administrators, however, are not applicable to persons or entities that are subject to the Insurance Information Privacy Protection Act,⁵⁷ nor to disclosures by providers of health care or disclosures by employers.⁵⁸ An employer that is an insurance institution, insurance agent, or insurance support organization subject to the Insurance Information Privacy Act shall not be deemed to have violated the Act by disclosing medical information in connection with an insurance transaction governed by the Insurance Information Privacy Act.⁵⁹

Sanctions

The Act provides that any waiver by the patient of the provisions of the Confidentiality of Medical Information Act, except for a valid prior authorization,⁶⁰ is contrary to public policy and unenforceable.⁶¹ A patient sustaining economic loss or personal injury from a disclosure violation may maintain a civil action to recover the full amount of compensatory damages, up to \$3,000 in punitive damages, up to \$1,000 in attorney's fees, and the costs of the litigation.⁶² Under prior law, a violation of the provisions of this Act was punishable as a misdemeanor.⁶³ The Act requires that some economic loss or personal injury be sustained by the patient before a violation is considered a misdemeanor.⁶⁴

55. *See id.* §56.26(a).

56. *Id.* §56.26(b).

57. *See generally* CAL. INS. CODE §§791-791.26.

58. *See* CAL. CIV. CODE §56.26(c).

59. *Id.* §56.27. *See generally* CAL. INS. CODE §§791-791.26.

60. *See* CAL. CIV. CODE §§56.11, 56.21, 56.26(b).

61. *Compare id.* §56.37 with CAL. STATS. 1979, c. 773, §1, at 2652.

62. *See* CAL. CIV. CODE §56.35.

63. *See* CAL. STATS. 1979, c. 773, §1, at 2652.

64. *See* CAL. CIV. CODE §56.36.

Health and Welfare; child abuse—reporting statutes

Penal Code §§11165, 11166, 11167, 11169, 11170, 11172, 11174 (amended).

AB 518 (Kapiloff); STATS. 1981, Ch 435
(Effective September 12, 1981)*
Support: Department of Finance

Existing law provides comprehensive procedures governing the reporting of suspected cases of child abuse¹ reported by any child care custodian,² medical practitioner,³ nonmedical practitioner,⁴ or employee of a child protective agency⁵ who, in a professional capacity or within the scope of employment,⁶ observes a child and reasonably suspects⁷ that the child has been the victim of child abuse.⁸ Chapter 435 redefines the types of conduct that constitute child abuse and changes requirements governing the reporting of child abuse cases.⁹

Existing law specifies various types of conduct that constitute child abuse.¹⁰ Prior to the enactment of Chapter 435, this listing included unlawful sexual intercourse.¹¹ Chapter 435 deletes unlawful sexual intercourse from the definition¹² and thus removes these cases from the reporting requirements. This provision apparently was amended to relieve persons required to report child abuse from the duty to report the sexual activities of consenting females.¹³

Neglect of a child, however, still constitutes child abuse.¹⁴ Prior law defined neglect as the negligent failure of a person having the care or custody of any child to protect the child from malnutrition or medically diagnosed nonorganic failure to thrive.¹⁵ Chapter 435 redefines neglect to mean the negligent treatment or maltreatment, including both acts and omission by a person responsible for the child's welfare under cir-

* CAL. PENAL CODE §§11165(a) (eliminating unlawful sexual intercourse from the definition of child abuse), 11172(a) (exempting from civil and criminal liability employees of a child protective agency reporting instances of suspected cases of abuse) became effective as urgency statutes on May 8, 1981 (SB 322) and July 1, 1981 (AB 499) respectively. The language employed in those bills was identical to the language in this chapter.

1. See generally CAL. PENAL CODE §§11165-11174.

2. See *id.* §11165(h) (definition of child care custodian). Chapter 435 expands this definition to include licensing workers and licensing evaluators.

3. See *id.* §11165(i) (definition of medical practitioner).

4. See *id.* §11165(j) (definition of nonmedical practitioner).

5. See *id.* §11165(k) (definition of child protective agency).

6. See *id.* §11166(a).

7. See *id.* (definition of reasonable suspicion).

8. See *id.* §11166(a), (b).

9. See generally *id.* §§11165, 11166, 11167, 11169, 11170, 11172, 11174; CAL. STATS. 1980, c. 1071, §4, at —.

10. See CAL. PENAL CODE §11165(g) (definition of child abuse).

11. See CAL. STATS. 1980, c. 1071, §4, at — (enacting CAL. PENAL CODE §11165(b), (g)). See also CAL. PENAL CODE §261.5 (definition of unlawful sexual intercourse).

12. Compare CAL. PENAL CODE §11165(b), (g) with CAL. STATS 1980, c. 1071, §4, at —.

13. See Assemblyman Larry Kapiloff, Press Release, Feb. 17, 1981 (copy on file at the *Pacific Law Journal*).

14. See CAL. PENAL CODE §11165(g).

15. CAL. STATS. 1980, c. 1071, §4, at —.

cumstances indicating harm or threatened harm to the child's welfare.¹⁶

Chapter 435 distinguishes between severe neglect and general neglect.¹⁷ Severe neglect encompasses both the negligent failure to protect the child from severe malnutrition or medically diagnosed nonorganic failure to thrive *and* situations when the person willfully causes or permits the life or health of a child to be placed in danger,¹⁸ including the intentional failure to provide adequate food, shelter, or clothing.¹⁹ General neglect means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, or supervision when no physical injury has occurred.²⁰ A child who is not receiving medical care for religious reasons or who is provided treatment by spiritual means²¹ is not considered neglected for that reason alone.²²

Persons required to report instances of child abuse formerly had to report only suspected abuses.²³ Chapter 435, however, specifies that both *known* and suspected instances of abuse be reported to a child protective agency.²⁴ As soon as possible after receiving a report of *severe* neglect, the agency must make a telephone report, followed within thirty-six hours by a written report, to the law enforcement agency having jurisdiction over the case and the agency responsible for the investigation of the case.²⁵ The law enforcement agency receiving the report of the child protective agency must then make a telephone report, followed by a written report to the county welfare department and the agency given responsibility for investigation of the specified abuse.²⁶ In cases of *general* neglect, the child protective agency reports only to the county welfare department.²⁷

Prior law declared that the identity of persons reporting abuses would remain confidential and be disclosed only by court order or between child protective agencies or the Probation Department.²⁸ Chap-

16. CAL. PENAL CODE §11165(c).

17. *See id.* §11165(c)(1), (2).

18. *Id.* §11165(c)(1), (d).

19. *Id.*

20. *Id.* §11165(c)(2).

21. *See generally* CAL. WELF. & INST. CODE §16508 (treatment of children by spiritual means).

22. *See* CAL. PENAL CODE §11165(c)(2).

23. *See* CAL. STATS. 1980, c. 1071, §4, at —.

24. *See* CAL. PENAL CODE §11166(a).

25. *See id.* §11166(f). *See also id.* §11169 (a child protective agency must also forward preliminary reports of known or suspected cases of abuse constituting severe neglect that it investigates to the Department of Justice. All reports must be kept on file except those that prove to be unfounded.).

26. *See id.* CODE §11166(f); CAL. WELF. & INST. CODE §300.

27. *See* CAL. PENAL CODE §11166(f).

28. CAL. STATS. 1980, c. 1071, §4, at —.

ter 435 instead specifies that a reporter's identity will be disclosed only (1) when needed for court action instituted to have a child under eighteen years of age declared free from the control and custody of parents,²⁹ or actions to place a child under eighteen years of age within the jurisdiction of the juvenile court,³⁰ (2) when needed in a criminal prosecution resulting from an alleged child abuse,³¹ (3) by court order,³² or (4) between child protective agencies.³³

Prior law declared that child care custodians, medical practitioners, or nonmedical practitioners who reported *suspected* instances of child abuse were exempt from civil and criminal liability arising from making the report.³⁴ Furthermore, any other person making a report would not be held liable unless it could be proved that the person making the report knew or should have known that the information was false.³⁵ Chapter 435 expands the exemption from civil or criminal liability to protect any employee of a child protective agency making required reports of known or suspected abuse and to include reports made by child care custodians and practitioners of *known* abuse.³⁶ Chapter 435 also precludes liability of other persons for reporting both known *or* suspected abuse unless it can be proved that the person knew the report was false.³⁷

29. *See generally* CAL. CIV. CODE §232.

30. *See generally* CAL. WELF. & INST. CODE §300.

31. CAL. PENAL CODE §11167(c).

32. *Id.*

33. *Id.*

34. *See* CAL. STATS. 1980, c. 1071, §4, at —.

35. *See id.*

36. *See* CAL. PENAL CODE §11172(a).

37. *See id.*

Health and Welfare; emergency fire procedures in high-rise structures

Government Code §11342.3 (new); Health and Safety Code §§12630, 12638, 13220, 13221, 13222, 13223, 13230, 13231, 13232, 13233, 13234, 13240, 13241, 13242, 13243, 13244, 13245, 13246 (new); §§12361, 13215, 17920.7, 17921, 18930 (amended).

AB 275 (Kapiloff); STATS. 1981, Ch 617

Support: Department of Finance; State Fire Marshal

Opposition: City of Los Angeles

AB 915 (Wray); STATS. 1981, Ch 442

Support: California Fire Chiefs Association; Department of Finance; Federated Firefighters; State Fire Marshal

AB 919 (Tanner); STATS. 1981, Ch 443

Support: California Hotel and Motel Association; Department of Finance; Federated Firefighters; State Fire Marshal

AB 921 (Vicencia); STATS. 1981, Ch 1177

Support: Department of Housing and Community Development; Department of Industrial Relations

Opposition: CALBO Legislative Committee; California Building Officials; City of Novato; City of San Leandro; Department of Finance

SB 700 (Dills); STATS. 1981, Ch 557

Support: California Hotel and Motel Association; Department of Finance; State Fire Marshal

Under existing law, the State Fire Marshal is authorized to foster, promote, and develop means for protecting life and property against fire and panic.¹ With the advice of the State Board of Fire Services, the State Fire Marshal may adopt regulations requiring owners of new² or existing³ high-rise structures⁴ to conform to fire safety regulations.⁵ Recent hotel fire disasters have focused attention on the vulnerability of hotel guests to panic in the event of a fire.⁶ In apparent response to these disasters, Chapter 557 authorizes the State Fire Marshal to adopt regulations for furnishing specific emergency fire procedures.⁷ These regulations must require owners or operators of any privately owned high-rise structure, hotel, or motel to provide entering persons emergency procedure information.⁸ At a minimum, the owners or operators

1. CAL. HEALTH & SAFETY CODE §13100.1.

2. *See id.* §§13210(c) (definition of new high-rise structure), 13212.

3. *See id.* §§13210(a) (definition of existing high-rise structure), 13213.

4. *See id.* §13210(b) (definition of high-rise structure).

5. See 19 CAL. ADM. CODE §1.03(e); CAL. HEALTH & SAFETY CODE §13211. *See also* CAL. STATS. 1981, c. 617, §1, at — (adding CAL. HEALTH & SAFETY CODE §13241) (every local fire enforcing agency must compile annually a list of those hotels, motels, or high-rise structures that do not conform to adopted regulations and promptly notify the owners of the building violation. The legislature declares the purpose to be for requiring reporting of inspections made, not to mandate inspections.); CAL. STATS. 1981, c. 1177, §§1, 6, at — (adding CAL. GOVT. CODE §11342.3) (Chapter 1177 expressly restricts the authority of the Commission of Housing and Community Development to adopt regulations relating to fire and panic safety, and requires regulations to be adopted by the State Fire Marshall).

6. *See* State Senator Ralph C. Dills, Press Release, May 7, 1981; Assemblyman Dom Cortese, Press Release, June 30, 1981; Bill Fox, Editorial Comment on KCST-TV, Hotel/Motel Safety, San Diego, Cal., Feb. 13, 1981 (copy on file at the *Pacific Law Journal*).

7. *See* CAL. HEALTH & SAFETY CODE §13221. *See also id.* §13240.

8. *See id.* §§13210, 13220(a). *See generally id.* §§13241, 13245 (every local fire enforcing agency must compile annually a list of those hotels, motels, or high-rise structures that do not conform to adopted regulations and promptly notify the owners of the building violation. The legislature declares the purpose to be for requiring reporting of inspections made, not to mandate

must post exit plans and give a general explanation of the operation of the fire alarm system and other fire emergency procedures.⁹ In hotels and motels, the information must be posted in a conspicuous place in every room available for rent or be conveyed through the use of brochures, pamphlets, or videotapes.¹⁰ In high-rise structures, the same information must be made available in a place easily accessible to all entering persons.¹¹ Failure to comply with the adopted regulations constitutes a misdemeanor punishable by a fine not to exceed \$10,000, or up to six months imprisonment, or both.¹²

In a related change, Chapter 442 requires any licensed architect who submits final plans or designs for a privately owned high-rise structure to certify¹³ by letter to the local fire agency that the plans or designs conform to all applicable fire safety standards.¹⁴ In addition, any general contractor who constructs a privately owned high-rise structure must certify that the structure conforms to the certified architectural plans.¹⁵ Furthermore, private owners or operators must certify annually by letter to the State Fire Marshal that an inspection by the local fire enforcing agency has been requested to determine that the structure conforms to applicable fire safety standards.¹⁶

Under existing law, it is unlawful for any person to construct or maintain any high-rise structure in violation of the building standards and regulations for fire and panic safety.¹⁷ Chapter 443 makes these violations misdemeanors punishable by up to six months imprisonment, up to \$10,000 fine, or both.¹⁸ Moreover, a person is guilty of a separate offense for each day a violation is continued, or is permitted to continue by that person after notification of the violation by the appropriate enforcing agency.¹⁹ The violation is considered a public nuisance and may be summarily abated.²⁰

inspections.); CAL. GOV'T CODE §11342.3 (Chapter 1177 enumerates specific areas of regulation for the State Fire Marshall); CAL. HEALTH & SAFETY CODE §17920.7(c) (limits provisions of regulatory scheme to non high-rise structures).

9. See CAL. HEALTH & SAFETY CODE §13221(a), (b), (c) (these provisions become operative four months after the regulations adopted pursuant to Chapter 557 become effective).

10. See 19 CAL. ADM. CODE §3.09(b)(3); CAL. HEALTH & SAFETY CODE §13220(b).

11. See CAL. HEALTH & SAFETY CODE §13220(c). See also 19 CAL. ADM. CODE §3.09(b).

12. See CAL. HEALTH & SAFETY CODE §13223.

13. See *id.* §13231 (The licensed architect is certifying that, to the best of his or her information, knowledge, or belief, the plans consider all applicable high-rise fire safety regulations.).

14. See *id.* §13231.

15. See *id.* §§13231, 13232.

16. See *id.* §13233.

17. See *id.* §§13211, 18935-18944.5.

18. See *id.* §13215.

19. See *id.*

20. See *id.*

