California

General Notification Statute (Full Text)

Cal. Civ. Code § 1798.80
Definitions

The following definitions apply to this title:

(a) “Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit, including a financial institution organized, chartered, or holding a license or authorization certificate under the law of this state, any other state, the United States, or of any other country, or the parent or the subsidiary of a financial institution. The term includes an entity that disposes of records.

(b) “Records” means any material, regardless of the physical form, on which information is recorded or preserved by any means, including in written or spoken words, graphically depicted, printed, or electromagnetically transmitted. “Records” does not include publicly available directories containing information an individual has voluntarily consented to have publicly disseminated or listed, such as name, address, or telephone number.

(c) “Customer” means an individual who provides personal information to a business for the purpose of purchasing or leasing a product or obtaining a service from the business.

(d) “Individual” means a natural person.

(e) “Personal information” means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including, but not limited to, his or her name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

Cal. Civ. Code § 1798.81.5
Security procedures and practices with respect to personal information about California residents

(a)(1) It is the intent of the Legislature to ensure that personal information about California residents is protected. To that end, the purpose of this section is to encourage businesses that own, license, or maintain personal information about Californians to provide reasonable security for that information.

(2) For the purpose of this section, the terms “own” and “license” include personal information that a business retains as part of the business’ internal customer account or for the purpose of using that information in transactions with the person to whom the information relates. The term “maintain” includes personal information that a business maintains but does not own or license.

(b) A business that owns, licenses, or maintains personal information about a California resident shall implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(c) A business that discloses personal information about a California resident pursuant to a contract with a nonaffiliated third party that is not subject to subdivision (b) shall require by contract that the third party implement and maintain reasonable security procedures and practices appropriate to the nature of the information, to protect the personal information from unauthorized access, destruction, use, modification, or disclosure.

(d) For purposes of this section, the following terms have the following meanings:

(1) “Personal information” means either of the following:

(A) An individual’s first name or first initial and the individual’s last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted or redacted:

(i) Social security number.

(ii) Driver’s license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual.

(iii) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual’s financial account.

(iv) Medical information.

(v) Health insurance information.

(vi) Unique biometric data generated from measurements or technical analysis of human body characteristics, such as a fingerprint, retina, or iris image, used to authenticate a specific individual. Unique biometric data does not include a physical or digital photograph, unless used or stored for facial recognition purposes.

(vii) Genetic data.

(B) A username or email address in combination with a password or security question and answer that would permit access to an online account.

(2) “Medical information” means any individually identifiable information, in electronic or physical form, regarding the individual’s medical history or medical treatment or diagnosis by a health care professional.

(3) “Health insurance information” means an individual’s insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual’s application and claims history, including any appeals records.

(4) “Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(5) “Genetic data” means any data, regardless of its format, that results from the analysis of a biological sample of an individual, or from another source enabling equivalent information to be obtained, and concerns genetic material. Genetic material includes, but is not limited to, deoxyribonucleic acids (DNA), ribonucleic acids (RNA), genes, chromosomes, alleles, genomes, alterations or modifications to DNA or RNA, single nucleotide polymorphisms (SNPs), uninterpreted data that results from analysis of the biological sample or other

source, and any information extrapolated, derived, or inferred therefrom.

(e) The provisions of this section do not apply to any of the following:

(1) A provider of health care, health care service plan, or contractor regulated by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1).A financial institution as defined in Section 4052 of the Financial Code and subject to the California Financial Information Privacy Act (Division 1.2 (commencing with Section 4050) of the Financial Code).

(2) A covered entity governed by the medical privacy and security rules issued by the federal Department of Health and Human Services, Parts 160 and 164 of Title 45 of the Code of Federal Regulations, established pursuant to the Health Insurance Portability and Availability Act of 1996 (HIPAA).

(3) An entity that obtains information under an agreement pursuant to Article 3 (commencing with Section 1800) of Chapter 1 of Division 2 of the Vehicle Code and is subject to the confidentiality requirements of the Vehicle Code.

(4) A business that is regulated by state or federal law providing greater protection to personal information than that provided by this section in regard to the subjects addressed by this section. Compliance with that state or federal law shall be deemed compliance with this section with regard to those subjects. This paragraph does not relieve a business from a duty to comply with any other requirements of other state and federal law regarding the protection and privacy of personal information.

Cal. Civ. Code § 1798.82.
Person or business who owns or licenses computerized data including personal information; breach of security of the system; disclosure requirements

(a) A person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose a breach of the security of the system following discovery or notification of the breach in the security of the data to a resident of California (1) whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person, or, (2) whose encrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person and the encryption key or security credential was, or is reasonably believed to have been, acquired by an unauthorized person and the person or business that owns or licenses the encrypted information has a reasonable belief that the encryption key or security credential could render that personal information readable or usable. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) A person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of the breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made promptly after the law enforcement agency determines that it will not compromise the investigation.

(d) A person or business that is required to issue a security breach notification pursuant to this section shall meet all of the following requirements:

(1) The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described in paragraph (2) under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.

(A) The format of the notice shall be designed to call attention to the nature and significance of the information it contains.

(B) The title and headings in the notice shall be clearly and conspicuously displayed.

(C) The text of the notice and any other notice provided pursuant to this section shall be no smaller than 10-point type.

(D) For a written notice described in paragraph (1) of subdivision (j), use of the model security breach notification form prescribed below or use of the headings described in this paragraph with the information described in paragraph (2), written in plain language, shall be deemed to be in compliance with this subdivision.

[NAME OF INSTITUTION / LOGO]	Date: [insert date]

NOTICE OF DATA BREACH

What Happened?	
What Information Was Involved?	
What We Are Doing.	
What You Can Do.	

Other Important Information.

[insert other important information]

Call [telephone number] or go to [Internet website]

For More
Information.

(E) For an electronic notice described in paragraph (2) of subdivision (j), use of the headings described in this paragraph with the information described in paragraph (2), written in plain language, shall be deemed to be in compliance with this subdivision.

(2) The security breach notification described in paragraph (1) shall include, at a minimum, the following information:

(A) The name and contact information of the reporting person or business subject to this section.

(B) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

(C) If the information is possible to determine at the time the notice is provided, then any of the following: (i) the date of the breach, (ii) the estimated date of the breach, or (iii) the date range within which the breach occurred. The notification shall also include the date of the notice.

(D) Whether notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

(E) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

(F) The toll-free telephone numbers and addresses of the major credit reporting agencies if the breach exposed a social security number or a driver's license or California identification card number.

(G) If the person or business providing the notification was the source of the breach, an offer to provide appropriate identity theft prevention and mitigation services, if any, shall be provided at no cost to the affected person for not less than 12 months along with all information necessary to take advantage of the offer to any person whose information was or may have been breached if the breach exposed or may have exposed personal information defined in subparagraphs (A) and (B) of paragraph (1) of subdivision (h).

(3) At the discretion of the person or business, the security breach notification may also include any of the following:

(A) Information about what the person or business has done to protect individuals whose information has been breached.

(B) Advice on steps that people whose information has been breached may take to protect themselves.

(c) In breaches involving biometric data, instructions on how to notify other entities that used the same type of biometric data as an authenticator to no longer rely on data for authentication purposes.

(e) A covered entity under the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 1320d et seq.) will be deemed to have complied with the notice requirements in subdivision (d) if it has complied completely with Section 13402(f) of the federal Health Information Technology for Economic and Clinical Health Act (Public Law 111-5).1 However, nothing in this subdivision shall be construed to exempt a covered entity from any other provision of this section.

(f) A person or business that is required to issue a security breach notification pursuant to this section to more than 500 California residents as a result of a single breach of the security system shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General. A single sample copy of a security breach notification shall not be deemed to be within subdivision (f) of Section 6254 of the Government Code.

(g) For purposes of this section, “breach of the security of the system” means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(h) For purposes of this section, “personal information” means either of the following:

(1) An individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) Social security number.

(B) Driver's license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual.

(C) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(D) Medical information.

(E) Health insurance information.

(F) Unique biometric data generated from measurements or technical analysis of human body characteristics, such as a fingerprint, retina, or iris image, used to authenticate a specific individual. Unique biometric data does not include a physical or digital photograph, unless used or stored for facial recognition purposes.

(G) Information or data collected through the use or operation of an automated license plate recognition system, as defined in Section 1798.90.5.

(H) Genetic data.

(2) A username or email address, in combination with a password or security question and answer that would permit access to an online account.

(i)(1) For purposes of this section, “personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, “medical information” means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, “health insurance information” means an individual's health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual's application and claims history, including any appeals records.

(4) For purposes of this section, “encrypted” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

(5) “Genetic data” means any data, regardless of its format, that results from the analysis of a biological sample of an individual, or from another source enabling equivalent information to be obtained, and concerns genetic material. Genetic material includes, but is not limited to, deoxyribonucleic acids (DNA), ribonucleic acids (RNA), genes, chromosomes, alleles, genomes, alterations or modifications to DNA or RNA, single nucleotide polymorphisms (SNPs), uninterpreted data that results from analysis of the biological sample or other source, and any information extrapolated, derived, or inferred therefrom.

(j) For purposes of this section, “notice” may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) Email notice when the person or business has an email address for the subject persons.

(B) Conspicuous posting, for a minimum of 30 days, of the notice on the Internet website page of the person or business, if the person or business maintains one. For purposes of this subparagraph, conspicuous posting on the person's or business's Internet website means providing a link to the notice on the home page or first significant page after entering the Internet website that is in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.

(C) Notification to major statewide media.

(4) In the case of a breach of the security of the system involving personal information defined in paragraph (2) of subdivision (h) for an online account, and no other personal information defined in paragraph (1) of subdivision (h), the person or business may comply with this section by providing the security breach notification in electronic or other form that directs the person whose personal information has been breached promptly to change the person’s password and security question or answer, as applicable, or to take other steps appropriate to protect the online account with the person or business and all other online accounts for which the person whose personal information has been breached uses the same username or email address and password or security question or answer.

(5) In the case of a breach of the security of the system involving personal information defined in paragraph (2) of subdivision (h) for login credentials of an email account furnished by the person or business, the person or business shall not comply with this section by providing the security breach notification to that email address, but may, instead, comply with this section by providing

notice by another method described in this subdivision or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an Internet Protocol address or online location from which the person or business knows the resident customarily accesses the account.

(k) For purposes of this section, “encryption key” and “security credential” mean the confidential key or process designed to render data usable, readable, and decipherable.

(l) Notwithstanding subdivision (j), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

Cal. Civ. Code § 1798.84
Waiver and violations of provisions of this title; civil actions and penalties; disposal of abandoned records containing personal information; attorney's fees and costs

(a) Any waiver of a provision of this title is contrary to public policy and is void and unenforceable.

(b) Any customer injured by a violation of this title may institute a civil action to recover damages.

(c) In addition, for a willful, intentional, or reckless violation of Section 1798.83, a customer may recover a civil penalty not to exceed three thousand dollars ($3,000) per violation; otherwise, the customer may recover a civil penalty of up to five hundred dollars ($500) per violation for a violation of Section 1798.83.

(d) Unless the violation is willful, intentional, or reckless, a business that is alleged to have not provided all the information required by subdivision (a) of Section 1798.83, to have provided inaccurate information, failed to provide any of the information required by subdivision (a) of Section 1798.83, or failed to provide information in the time period required by subdivision (b) of Section 1798.83, may assert as a complete defense in any action in law or equity that it thereafter provided regarding the information that was alleged to be untimely, all the information, or accurate information, to all customers who were provided incomplete or inaccurate information, respectively, within 90 days of the date the business knew that it had failed to provide the information, timely information, all the information, or the accurate information, respectively.

(e) Any business that violates, proposes to violate, or has violated this title may be enjoined.

(f)(1) A cause of action shall not lie against a business for disposing of abandoned records containing personal information by shredding, erasing, or otherwise modifying the personal information in the records to make it unreadable or undecipherable through any means.

(2) The Legislature finds and declares that when records containing personal information are abandoned by a business, they often end up in the possession of a storage company or commercial landlord. It is the intent of the Legislature in paragraph (1) to create a safe harbor for such a record custodian who properly disposes of the records in accordance with paragraph (1).

(g) A prevailing plaintiff in any action commenced under Section 1798.83 shall also be entitled to recover his or her reasonable attorney's fees and costs.

(h) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

Cal. Civ. Code § 1798.29
Agencies owning, licensing, or maintaining computerized data including personal information; disclosure of security breach; notice requirements

(a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California (1) whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person, or, (2) whose encrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person and the encryption key or security credential was, or is reasonably believed to have been, acquired by an unauthorized person and the agency that owns or licenses the encrypted information has a reasonable belief that the encryption key or security credential could render that personal information readable or usable. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) Any agency that is required to issue a security breach notification pursuant to this section shall meet all of the following requirements:

> (1) The security breach notification shall be written in plain language, shall be titled “Notice of Data Breach,” and shall present the information described in paragraph (2) under the following headings: “What Happened,” “What Information Was Involved,” “What We Are Doing,” “What You Can Do,” and “For More Information.” Additional information may be provided as a supplement to the notice.
>
> > (A) The format of the notice shall be designed to call attention to the nature and significance of the information it contains.
> >
> > (B) The title and headings in the notice shall be clearly and conspicuously displayed.
> >
> > (C) The text of the notice and any other notice provided pursuant to this section shall be no smaller than 10-point type.
> >
> > (D) For a written notice described in paragraph (1) of subdivision (i), use of the model security breach notification form prescribed below or use of the headings described in this paragraph with the information described in paragraph (2), written in plain language, shall be deemed to be in compliance with this subdivision.

[NAME OF INSTITUTION / LOGO]	Date: [insert date]

NOTICE OF DATA BREACH

What Happened? What Information Was Involved? What We Are Doing. What You Can Do.	

Other Important Information. [insert other important information]

Call [telephone number] or go to [Internet website] For More Information.

(E) For an electronic notice described in paragraph (2) of subdivision (i), use of the headings described in this paragraph with the information described in paragraph (2), written in plain language, shall be deemed to be in compliance with this subdivision.

(2) The security breach notification described in paragraph (1) shall include, at a minimum, the following information:

(A) The name and contact information of the reporting agency subject to this section.

(B) A list of the types of personal information that were or are reasonably believed to have been the subject of a breach.

(C) If the information is possible to determine at the time the notice is provided, then any of the following: (i) the date of the breach, (ii) the estimated date of the breach, or (iii) the date range within which the breach occurred. The notification shall also include the date of the notice.

(D) Whether the notification was delayed as a result of a law enforcement investigation, if that information is possible to determine at the time the notice is provided.

(E) A general description of the breach incident, if that information is possible to determine at the time the notice is provided.

(F) The toll-free telephone numbers and addresses of the major credit reporting agencies, if the breach exposed a social security number or a driver's license or California identification card number.

(3) At the discretion of the agency, the security breach notification may also include any of the following:

(A) Information about what the agency has done to protect individuals whose information has been breached.

(B) Advice on steps that people whose information has been breached may take to protect themselves.

(e) Any agency that is required to issue a security breach notification pursuant to this section to more than 500 California residents as a result of a single breach of the security system shall electronically submit a single sample copy of that security breach notification, excluding any personally identifiable information, to the Attorney General. A single sample copy of a security breach notification shall not be deemed to be within subdivision (f) of Section 6254 of the Government Code.

(f) For purposes of this section, "breach of the security of the system" means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(g) For purposes of this section, "personal information" means either of the following:

(1) An individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(A) Social security number.

(B) Driver's license number, California identification card number, tax identification number, passport number, military identification number, or other unique identification number issued on a government document commonly used to verify the identity of a specific individual.

(C) Account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(D) Medical information.

(E) Health insurance information.

(F) Unique biometric data generated from measurements or technical analysis of human body characteristics, such as a fingerprint, retina, or iris image, used to authenticate a specific individual. Unique biometric data does not include a physical or digital photograph, unless used or stored for facial recognition purposes.

(2) A username or email address, in combination with a password or security question and answer that would permit access to an online account.

(h)(1) For purposes of this section, "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(2) For purposes of this section, "medical information" means any information regarding an individual's medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional.

(3) For purposes of this section, “health insurance information” means an individual’s health insurance policy number or subscriber identification number, any unique identifier used by a health insurer to identify the individual, or any information in an individual’s application and claims history, including any appeals records

(4) For purposes of this section, “encrypted” means rendered unusable, unreadable, or indecipherable to an unauthorized person through a security technology or methodology generally accepted in the field of information security.

(i) For purposes of this section, “notice” may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) Email notice when the agency has an email address for the subject persons.

(B) Conspicuous posting, for a minimum of 30 days, of the notice on the agency’s internet website page, if the agency maintains one. For purposes of this subparagraph, conspicuous posting on the agency’s internet website means providing a link to the notice on the home page or first significant page after entering the internet website that is in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks that call attention to the link.

(C) Notification to major statewide media and the Office of Information Security within the Department of Technology.

(4) In the case of a breach of the security of the system involving personal information defined in paragraph (2) of subdivision (g) for an online account, and no other personal information defined in paragraph (1) of subdivision (g), the agency may comply with this section by providing the security breach notification in electronic or other form that directs the person whose personal information has been breached to promptly change the person’s password and security question or answer, as applicable, or to take other steps appropriate to protect the online account with the agency and all other online accounts for which the person uses the same username or email address and password or security question or answer.

(5) In the case of a breach of the security of the system involving personal information defined in paragraph (2) of subdivision (g) for login credentials of an email account furnished by the agency, the agency shall not comply with this section by providing the security breach notification to that email address, but may, instead, comply with this section by providing notice by another method described in this subdivision or by clear and conspicuous notice delivered to the resident online when the resident is connected to the online account from an Internet Protocol address or online location from which the agency knows the resident customarily accesses the account.

(j) Notwithstanding subdivision (i), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the

timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

(k) Notwithstanding the exception specified in paragraph (4) of subdivision (b) of Section 1798.3, for purposes of this section, “agency” includes a local agency, as defined in subdivision (a) of Section 6252 of the Government Code.

(l) For purposes of this section, “encryption key” and “security credential” mean the confidential key or process designed to render the data usable, readable, and decipherable.

Cal. Civ. Code § 1798.150
Civil actions for violations of duty to implement and maintain reasonable security procedures and practices; remedies; requirements

(a)(1) Any consumer whose nonencrypted and nonredacted personal information, as defined in subparagraph (A) of paragraph (1) of subdivision (d) of Section 1798.81.5, is subject to an unauthorized access and exfiltration, theft, or disclosure as a result of the business’s violation of the duty to implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information may institute a civil action for any of the following:

> (A) To recover damages in an amount not less than one hundred dollars ($100) and not greater than seven hundred and fifty ($750) per consumer per incident or actual damages, whichever is greater.
>
> (B) Injunctive or declaratory relief.
>
> (C) Any other relief the court deems proper.
>
> (2) In assessing the amount of statutory damages, the court shall consider any one or more of the relevant circumstances presented by any of the parties to the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant’s misconduct, and the defendant’s assets, liabilities, and net worth.

(b) Actions pursuant to this section may be brought by a consumer if, prior to initiating any action against a business for statutory damages on an individual or class-wide basis, a consumer provides a business 30 days’ written notice identifying the specific provisions of this title the consumer alleges have been or are being violated. In the event a cure is possible, if within the 30 days the business actually cures the noticed violation and provides the consumer an express written statement that the violations have been cured and that no further violations shall occur, no action for individual statutory damages or class-wide statutory damages may be initiated against the business. No notice shall be required prior to an individual consumer initiating an action solely for actual pecuniary damages suffered as a result of the alleged violations of this title. If a business continues to violate this title in breach of the express written statement provided to the consumer under this section, the consumer may initiate an action against the business to enforce the written statement and may pursue statutory damages for each breach of the express written statement, as well as any other violation of the title that postdates the written statement.

(c) The cause of action established by this section shall apply only to violations as defined in subdivision (a) and shall not be based on violations of any other section of this title. Nothing in this title shall be interpreted to serve as the basis for a private right of action under any other law. This shall not be construed to relieve any party from any duties or obligations imposed under other law or the United States or California Constitution.

California

Medical Information Specific Notification Statute (Full Text)

Cal. Health & Safety Code § 1280.15
Patient medical information; unlawful or unauthorized access or use; reporting period; administrative penalty

(a) A clinic, health facility, home health agency, or hospice licensed pursuant to Section 1204, 1250, 1725, or 1745 shall prevent unlawful or unauthorized access to, and use or disclosure of, patients' medical information, as defined in Section 56.05 of the Civil Code and consistent with Section 1280.18. For purposes of this section, internal paper records, electronic mail, or facsimile transmissions inadvertently misdirected within the same facility or health care system within the course of coordinating care or delivering services shall not constitute unauthorized access to, or use or disclosure of, a patient's medical information. The department, after investigation, may assess an administrative penalty for a violation of this section of up to twenty-five thousand dollars ($25,000) per patient whose medical information was unlawfully or without authorization accessed, used, or disclosed, and up to seventeen thousand five hundred dollars ($17,500) per subsequent occurrence of unlawful or unauthorized access, use, or disclosure of that patient's medical information. For purposes of the investigation, the department shall consider the clinic's, health facility's, agency's, or hospice's history of compliance with this section and other related state and federal statutes and regulations, the extent to which the facility detected violations and took preventative action to immediately correct and prevent past violations from recurring, and factors outside its control that restricted the facility's ability to comply with this section. The department shall have full discretion to consider all factors when determining whether to investigate and the amount of an administrative penalty, if any, pursuant to this section.

(b)(1) A clinic, health facility, home health agency, or hospice to which subdivision (a) applies shall report any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to the department no later than 15 business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice.

> (2) Subject to subdivision (c), a clinic, health facility, home health agency, or hospice shall also report any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information to the affected patient or the patient's representative at the last known address, or by an alternative means or at an alternative location as specified by the patient or the patient's representative in writing pursuant to Section 164.522(b) of Title 45 of the Code of Federal Regulations, no later than 15 business days after the unlawful or unauthorized access, use, or disclosure has been detected by the clinic, health facility, home health agency, or hospice. Notice may be provided by email only if the patient has previously agreed in writing to electronic notice by email.

(c)(1) A clinic, health facility, home health agency, or hospice shall delay the reporting, as required pursuant to paragraph (2) of subdivision (b), of any unlawful or unauthorized access to, or use or disclosure of, a patient's medical information beyond 15 business days if a law enforcement agency or official provides the clinic, health facility, home health agency, or hospice with a written or oral statement that compliance with the reporting requirements of paragraph (2) of subdivision (b) would likely impede the law enforcement agency's investigation that relates to the unlawful or unauthorized access to, and

use or disclosure of, a patient's medical information and specifies a date upon which the delay shall end, not to exceed 60 days after a written request is made, or 30 days after an oral request is made. A law enforcement agency or official may request an extension of a delay based upon a written declaration that there exists a bona fide, ongoing, significant criminal investigation of serious wrongdoing relating to the unlawful or unauthorized access to, and use or disclosure of, a patient's medical information, that notification of patients will undermine the law enforcement agency's investigation, and that specifies a date upon which the delay shall end, not to exceed 60 days after the end of the original delay period.

(2) If the statement of the law enforcement agency or official is made orally, then the clinic, health facility, home health agency, or hospice shall do both of the following:

(A) Document the oral statement, including, but not limited to, the identity of the law enforcement agency or official making the oral statement and the date upon which the oral statement was made.

(B) Limit the delay in reporting the unlawful or unauthorized access to, or use or disclosure of, the patient's medical information to the date specified in the oral statement, not to exceed 30 calendar days from the date that the oral statement is made, unless a written statement that complies with the requirements of this subdivision is received during that time.

(3) A clinic, health facility, home health agency, or hospice shall submit a report that is delayed pursuant to this subdivision not later than 15 business days after the date designated as the end of the delay.

(d) If a clinic, health facility, home health agency, or hospice to which subdivision (a) applies violates subdivision (b), the department may assess the licensee a penalty in the amount of one hundred dollars ($100) for each day that the unlawful or unauthorized access, use, or disclosure is not reported to the department or the affected patient, following the initial 15-day period specified in subdivision (b). However, the total combined penalty assessed by the department under subdivision (a) and this subdivision shall not exceed two hundred fifty thousand dollars ($250,000) per reported event. For enforcement purposes, it shall be presumed that the facility did not notify the affected patient if the notification was not documented. This presumption may be rebutted by a licensee only if the licensee demonstrates, by a preponderance of the evidence, that the notification was made.

(e) In enforcing subdivisions (a) and (d), the department shall take into consideration the special circumstances of small and rural hospitals, as defined in Section 124840, and primary care clinics, as defined in subdivision (a) of Section 1204, in order to protect access to quality care in those hospitals and clinics. When assessing a penalty on a skilled nursing facility or other facility subject to Section 1423, 1424, 1424.1, or 1424.5, the department shall issue only the higher of either a penalty for the violation of this section or a penalty for violation of Section 1423, 1424, 1424.1, or 1424.5, not both.

(f) All penalties collected by the department pursuant to this section, Sections 1280.1, 1280.3, and 1280.4, shall be deposited into the Internal Departmental Quality Improvement Account, which is hereby created within the Special Deposit Fund under Section 16370 of the Government Code. Upon appropriation by the Legislature, moneys in the account shall be expended for internal quality improvement activities in the Licensing and Certification Program.

(g) If the licensee disputes a determination by the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients' medical information, or the imposition of a penalty under this section, the licensee may, within 10 days of receipt of the penalty assessment, request a hearing pursuant to Section 131071. Penalties shall be paid when appeals have been exhausted and the penalty has been upheld.

(h) In lieu of disputing the determination of the department regarding a failure to prevent or failure to timely report unlawful or unauthorized access to, or use or disclosure of, patients' medical information,

transmit to the department 75 percent of the total amount of the administrative penalty, for each violation, within 30 business days of receipt of the administrative penalty.

(i) For purposes of this section, the following definitions shall apply:

(1) “Reported event” means all breaches included in any single report that is made pursuant to subdivision (b), regardless of the number of breach events contained in the report.

(2) “Unauthorized” means the inappropriate access, review, or viewing of patient medical information without a direct need for medical diagnosis, treatment, or other lawful use as permitted by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code) or any other statute or regulation governing the lawful access, use, or disclosure of medical information.

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