

**ASSEMBLY BILL**

**No. 825**

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**Introduced by Assembly Member Silva**

February 22, 2007

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An act to amend Section 4514 of the Welfare and Institutions Code, relating to persons with developmental disabilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 825, as introduced, Silva. Persons with developmental disabilities: disclosure of information.

Existing law makes all information and records obtained in the course of providing intake assessment and services under statutes relating to services for persons with developmental disabilities confidential, and permits disclosure only under prescribed conditions, including, but not limited to, in communications between qualified professional persons, as specified, in the provision of intake, assessment, and services or appropriate referrals, subject to the consent of the person with developmental disabilities or his or her guardian, as specified.

This bill would require a regional center or state developmental center to disclose specified information and records to certain employees of a school district or county office of education, as provided, when disclosure is necessary for a regional center or state developmental center to perform its official duties under existing law, as specified.

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

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

1 SECTION 1. Section 4514 of the Welfare and Institutions Code  
 2 is amended to read:  
 3 4514. All information and records obtained in the course of  
 4 providing intake, assessment, and services under Division 4.1  
 5 (commencing with Section 4400), ~~Division 4.5 (commencing with~~  
 6 ~~Section 4500)~~ *this division*, Division 6 (commencing with Section  
 7 6000), or Division 7 (commencing with Section 7100) to persons  
 8 with developmental disabilities shall be confidential. Information  
 9 and records obtained in the course of providing similar services  
 10 to either voluntary or involuntary recipients prior to 1969 shall  
 11 also be confidential. Information and records shall be disclosed  
 12 only in any of the following cases:  
 13 (a) In communications between qualified professional persons,  
 14 whether employed by a regional center or state developmental  
 15 center, or not, in the provision of intake, assessment, and services  
 16 or appropriate referrals. The consent of the person with a  
 17 developmental disability, or his or her guardian or conservator,  
 18 shall be obtained before information or records may be disclosed  
 19 by regional center or state developmental center personnel to a  
 20 professional not employed by the regional center or state  
 21 developmental center, or a program not vendored by a regional  
 22 center or state developmental center.  
 23 (b) When the person with a developmental disability, who has  
 24 the capacity to give informed consent, designates individuals to  
 25 whom information or records may be released, except that nothing  
 26 in this chapter shall be construed to compel a physician,  
 27 psychologist, social worker, marriage and family therapist, nurse,  
 28 attorney, or other professional to reveal information that has been  
 29 given to him or her in confidence by a family member of the person  
 30 unless a valid release has been executed by that family member.  
 31 (c) To the extent necessary for a claim, or for a claim or  
 32 application to be made on behalf of a person with a developmental  
 33 disability for aid, insurance, government benefit, or medical  
 34 assistance to which he or she may be entitled.  
 35 (d) If the person with a developmental disability is a minor,  
 36 ward, or conservatee, and his or her parent, guardian, conservator,  
 37 or limited conservator with access to confidential records,  
 38 designates, in writing, persons to whom records or information

1 may be disclosed, except that nothing in this chapter shall be  
 2 construed to compel a physician, psychologist, social worker,  
 3 marriage and family therapist, nurse, attorney, or other professional  
 4 to reveal information that has been given to him or her in  
 5 confidence by a family member of the person unless a valid release  
 6 has been executed by that family member.

7 (e) For research, provided that the Director of Developmental  
 8 Services designates by regulation rules for the conduct of research  
 9 and requires the research to be first reviewed by the appropriate  
 10 institutional review board or boards. These rules shall include, but  
 11 need not be limited to, the requirement that all researchers shall  
 12 sign an oath of confidentiality as follows:

13  
 14 “ \_\_\_\_\_  
 15 Date  
 16

17 As a condition of doing research concerning persons with  
 18 developmental disabilities who have received services from \_\_\_\_  
 19 (fill in the facility, agency or person), I, \_\_\_\_, agree to obtain the  
 20 prior informed consent of persons who have received services to  
 21 the maximum degree possible as determined by the appropriate  
 22 institutional review board or boards for protection of human  
 23 subjects reviewing my research, or the person’s parent, guardian,  
 24 or conservator, and I further agree not to divulge any information  
 25 obtained in the course of the research to unauthorized persons, and  
 26 not to publish or otherwise make public any information regarding  
 27 persons who have received services so those persons who received  
 28 services are identifiable.

29 I recognize that the unauthorized release of confidential  
 30 information may make me subject to a civil action under provisions  
 31 of the Welfare and Institutions Code.

32  
 33 \_\_\_\_\_”  
 34 Signed  
 35

- 36 (f) To the courts, as necessary to the administration of justice.
- 37 (g) To governmental law enforcement agencies as needed for
- 38 the protection of federal and state elective constitutional officers
- 39 and their families.

1 (h) To the Senate Committee on Rules or the Assembly  
2 Committee on Rules for the purposes of legislative investigation  
3 authorized by the committee.

4 (i) To the courts and designated parties as part of a regional  
5 center report or assessment in compliance with a statutory or  
6 regulatory requirement, including, but not limited to, Section  
7 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the  
8 Penal Code, Section 6502 of the Welfare and Institutions Code,  
9 and Section 56557 of Title 17 of the California Code of  
10 Regulations.

11 (j) To the attorney for the person with a developmental disability  
12 in any and all proceedings upon presentation of a release of  
13 information signed by the person, except that when the person  
14 lacks the capacity to give informed consent, the regional center or  
15 state developmental center director or designee, upon satisfying  
16 himself or herself of the identity of the attorney, and of the fact  
17 that the attorney represents the person, shall release all information  
18 and records relating to the person except that nothing in this article  
19 shall be construed to compel a physician, psychologist, social  
20 worker, marriage and family therapist, nurse, attorney, or other  
21 professional to reveal information that has been given to him or  
22 her in confidence by a family member of the person unless a valid  
23 release has been executed by that family member.

24 (k) Upon written consent by a person with a developmental  
25 disability previously or presently receiving services from a regional  
26 center or state developmental center, the director of the regional  
27 center or state developmental center, or his or her designee, may  
28 release any information, except information that has been given  
29 in confidence by members of the family of the person with  
30 developmental disabilities, requested by a probation officer charged  
31 with the evaluation of the person after his or her conviction of a  
32 crime if the regional center or state developmental center director  
33 or designee determines that the information is relevant to the  
34 evaluation. The consent shall only be operative until sentence is  
35 passed on the crime of which the person was convicted. The  
36 confidential information released pursuant to this subdivision shall  
37 be transmitted to the court separately from the probation report  
38 and shall not be placed in the probation report. The confidential  
39 information shall remain confidential except for purposes of

1 sentencing. After sentencing, the confidential information shall be  
2 sealed.

3 (l) Between persons who are trained and qualified to serve on  
4 “multidisciplinary personnel” teams pursuant to subdivision (d)  
5 of Section 18951. The information and records sought to be  
6 disclosed shall be relevant to the prevention, identification,  
7 management, or treatment of an abused child and his or her parents  
8 pursuant to Chapter 11 (commencing with Section 18950) of Part  
9 6 of Division 9.

10 (m) When a person with a developmental disability dies from  
11 any cause, natural or otherwise, while hospitalized in a state  
12 developmental center, the State Department of Developmental  
13 Services, the physician in charge of the client, or the professional  
14 in charge of the facility or his or her designee, shall release  
15 information and records to the coroner. The State Department of  
16 Developmental Services, the physician in charge of the client, or  
17 the professional in charge of the facility or his or her designee,  
18 shall not release any notes, summaries, transcripts, tapes, or records  
19 of conversations between the resident and health professional  
20 personnel of the hospital relating to the personal life of the resident  
21 that is not related to the diagnosis and treatment of the resident’s  
22 physical condition. Any information released to the coroner  
23 pursuant to this section shall remain confidential and shall be sealed  
24 and shall not be made part of the public record.

25 (n) To authorized licensing personnel who are employed by, or  
26 who are authorized representatives of, the State Department of  
27 Health Services, and who are licensed or registered health  
28 professionals, and to authorized legal staff or special investigators  
29 who are peace officers who are employed by, or who are authorized  
30 representatives of, the State Department of Social Services, as  
31 necessary to the performance of their duties to inspect, license,  
32 and investigate health facilities and community care facilities, and  
33 to ensure that the standards of care and services provided in these  
34 facilities are adequate and appropriate and to ascertain compliance  
35 with the rules and regulations to which the facility is subject. The  
36 confidential information shall remain confidential except for  
37 purposes of inspection, licensing, or investigation pursuant to  
38 Chapter 2 (commencing with Section 1250) and Chapter 3  
39 (commencing with Section 1500) of Division 2 of the Health and  
40 Safety Code, or a criminal, civil, or administrative proceeding in

1 relation thereto. The confidential information may be used by the  
2 State Department of Health Services or the State Department of  
3 Social Services in a criminal, civil, or administrative proceeding.  
4 The confidential information shall be available only to the judge  
5 or hearing officer and to the parties to the case. Names which are  
6 confidential shall be listed in attachments separate to the general  
7 pleadings. The confidential information shall be sealed after the  
8 conclusion of the criminal, civil, or administrative hearings, and  
9 shall not subsequently be released except in accordance with this  
10 subdivision. If the confidential information does not result in a  
11 criminal, civil, or administrative proceeding, it shall be sealed after  
12 the State Department of Health Services or the State Department  
13 of Social Services decides that no further action will be taken in  
14 the matter of suspected licensing violations. Except as otherwise  
15 provided in this subdivision, confidential information in the  
16 possession of the State Department of Health Services or the State  
17 Department of Social Services shall not contain the name of the  
18 person with a developmental disability.

19 (o) To any board which licenses and certifies professionals in  
20 the fields of mental health and developmental disabilities pursuant  
21 to state law, when the Director of Developmental Services has  
22 reasonable cause to believe that there has occurred a violation of  
23 any provision of law subject to the jurisdiction of a board and the  
24 records are relevant to the violation. The information shall be  
25 sealed after a decision is reached in the matter of the suspected  
26 violation, and shall not subsequently be released except in  
27 accordance with this subdivision. Confidential information in the  
28 possession of the board shall not contain the name of the person  
29 with a developmental disability.

30 (p) To governmental law enforcement agencies by the director  
31 of a regional center or state developmental center, or his or her  
32 designee, when (1) the person with a developmental disability has  
33 been reported lost or missing or (2) there is probable cause to  
34 believe that a person with a developmental disability has  
35 committed, or has been the victim of, murder, manslaughter,  
36 mayhem, aggravated mayhem, kidnapping, robbery, carjacking,  
37 assault with the intent to commit a felony, arson, extortion, rape,  
38 forcible sodomy, forcible oral copulation, assault or battery, or  
39 unlawful possession of a weapon, as provided in Section 12020  
40 of the Penal Code.

1 This subdivision shall be limited solely to information directly  
2 relating to the factual circumstances of the commission of the  
3 enumerated offenses and shall not include any information relating  
4 to the mental state of the patient or the circumstances of his or her  
5 treatment unless relevant to the crime involved.

6 This subdivision shall not be construed as an exception to, or in  
7 any other way affecting, the provisions of Article 7 (commencing  
8 with Section 1010) of Chapter 4 of Division 8 of the Evidence  
9 Code, or Chapter 11 (commencing with Section 15600) and  
10 Chapter 13 (commencing with Section 15750) of Part 3 of Division  
11 9.

12 (q) To the Youth Authority and Adult Correctional Agency or  
13 any component thereof, as necessary to the administration of  
14 justice.

15 (r) To an agency mandated to investigate a report of abuse filed  
16 pursuant to either Section 11164 of the Penal Code or Section  
17 15630 of the Welfare and Institutions Code for the purposes of  
18 either a mandated or voluntary report or when those agencies  
19 request information in the course of conducting their investigation.

20 (s) When a person with developmental disabilities, or the parent,  
21 guardian, or conservator of a person with developmental disabilities  
22 who lacks capacity to consent, fails to grant or deny a request by  
23 a regional center or state developmental center to release  
24 information or records relating to the person with developmental  
25 disabilities within a reasonable period of time, the director of the  
26 regional or developmental center, or his or her designee, may  
27 release information or records on behalf of that person provided  
28 both of the following conditions are met:

29 (1) Release of the information or records is deemed necessary  
30 to protect the person's health, safety, or welfare.

31 (2) The person, or the person's parent, guardian, or conservator,  
32 has been advised annually in writing of the policy of the regional  
33 center or state developmental center for release of confidential  
34 client information or records when the person with developmental  
35 disabilities, or the person's parent, guardian, or conservator, fails  
36 to respond to a request for release of the information or records  
37 within a reasonable period of time. A statement of policy contained  
38 in the client's individual program plan shall be deemed to comply  
39 with the notice requirement of this paragraph.

1 (t) (1) When an employee is served with a notice of adverse  
2 action, as defined in Section 19570 of the Government Code, the  
3 following information and records may be released:

4 (A) All information and records that the appointing authority  
5 relied upon in issuing the notice of adverse action.

6 (B) All other information and records that are relevant to the  
7 adverse action, or that would constitute relevant evidence as  
8 defined in Section 210 of the Evidence Code.

9 (C) The information described in subparagraphs (A) and (B)  
10 may be released only if both of the following conditions are met:

11 (i) The appointing authority has provided written notice to the  
12 consumer and the consumer's legal representative or, if the  
13 consumer has no legal representative or if the legal representative  
14 is a state agency, to the clients' rights advocate, and the consumer,  
15 the consumer's legal representative, or the clients' rights advocate  
16 has not objected in writing to the appointing authority within five  
17 business days of receipt of the notice, or the appointing authority,  
18 upon review of the objection has determined that the circumstances  
19 on which the adverse action is based are egregious or threaten the  
20 health, safety, or life of the consumer or other consumers and  
21 without the information the adverse action could not be taken.

22 (ii) The appointing authority, the person against whom the  
23 adverse action has been taken, and the person's representative, if  
24 any, have entered into a stipulation that does all of the following:

25 (I) Prohibits the parties from disclosing or using the information  
26 or records for any purpose other than the proceedings for which  
27 the information or records were requested or provided.

28 (II) Requires the employee and the employee's legal  
29 representative to return to the appointing authority all records  
30 provided to them under this subdivision, including, but not limited  
31 to, all records and documents or copies thereof that are no longer  
32 in the possession of the employee or the employee's legal  
33 representative because they were from any source containing  
34 confidential information protected by this section, and all copies  
35 of those records and documents, within 10 days of the date that  
36 the adverse action becomes final except for the actual records and  
37 documents submitted to the administrative tribunal as a component  
38 of an appeal from the adverse action.

1 (III) Requires the parties to submit the stipulation to the  
2 administrative tribunal with jurisdiction over the adverse action  
3 at the earliest possible opportunity.

4 (2) For the purposes of this subdivision, the State Personnel  
5 Board may, prior to any appeal from adverse action being filed  
6 with it, issue a protective order, upon application by the appointing  
7 authority, for the limited purpose of prohibiting the parties from  
8 disclosing or using information or records for any purpose other  
9 than the proceeding for which the information or records were  
10 requested or provided, and to require the employee or the  
11 employee's legal representative to return to the appointing authority  
12 all records provided to them under this subdivision, including, but  
13 not limited to, all records and documents from any source  
14 containing confidential information protected by this section, and  
15 all copies of those records and documents, within 10 days of the  
16 date that the adverse action becomes final, except for the actual  
17 records and documents that are no longer in the possession of the  
18 employee or the employee's legal representatives because they  
19 were submitted to the administrative tribunal as a component of  
20 an appeal from the adverse action.

21 (3) Individual identifiers, including, but not limited to, names,  
22 social security numbers, and hospital numbers, that are not  
23 necessary for the prosecution or defense of the adverse action,  
24 shall not be disclosed.

25 (4) All records, documents, or other materials containing  
26 confidential information protected by this section that have been  
27 submitted or otherwise disclosed to the administrative agency or  
28 other person as a component of an appeal from an adverse action  
29 shall, upon proper motion by the appointing authority to the  
30 administrative tribunal, be placed under administrative seal and  
31 shall not, thereafter, be subject to disclosure to any person or entity  
32 except upon the issuance of an order of a court of competent  
33 jurisdiction.

34 (5) For purposes of this subdivision, an adverse action becomes  
35 final when the employee fails to answer within the time specified  
36 in Section 19575 of the Government Code, or, after filing an  
37 answer, withdraws the appeal, or, upon exhaustion of the  
38 administrative appeal or of the judicial review remedies as  
39 otherwise provided by law.

1     (u) *Notwithstanding subdivision (a), a regional center or state*  
2 *developmental center shall disclose information and records to*  
3 *qualified professional persons employed by a school district or*  
4 *county office of education who are providing intake, assessment,*  
5 *and services to a person with developmental disabilities pursuant*  
6 *to Part 30 (commencing with Section 56000) of the Education*  
7 *Code, or under the following circumstances:*  
8     (1) *When disclosure is necessary for a regional center or state*  
9 *developmental center to perform its official duties under Division*  
10 *4.1 (commencing with Section 4400), this division, Division 6*  
11 *(commencing with Section 6000), or Division 7 (commencing with*  
12 *Section 7100).*  
13     (2) *When an action pursuant to Chapter 7 (commencing with*  
14 *Section 4700), or Chapter 5 (commencing with Section 56500) of*  
15 *Part 30 of the Education Code, has been commenced by a person*  
16 *with developmental disabilities or their parent or legal guardian.*