AMENDED IN SENATE MAY 3, 2010

AMENDED IN SENATE JULY 23, 2009

AMENDED IN SENATE JUNE 25, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

california legislature—2009–10 regular session

ASSEMBLY BILL No. 435

Introduced by ~~Assembly Member De La Torre~~ *Committee on Accountability and Administrative Review (De La Torre (Chair), Audra Strickland (Vice Chair), Arambula, Tom Berryhill, Block, Buchanan, Caballero, Emmerson, Fletcher, Huber, Jones, Bonnie Lowenthal, V. Manuel Perez, and Villines)*

February 24, 2009

~~An act to add and repeal Chapter 3 (commencing with Section 3260) of Part 4 of Division 1 of the Public Utilities Code, relating to public utilities.~~ *An act to amend Sections 4514, 4731, and 5328 of, to add Section 4626.1 to, and to add Division 4.8 (commencing with Section 4910) to, the Welfare and Institutions Code, relating to developmental services.*

legislative counsel's digest

AB 435, as amended, ~~De La Torre~~ *Committee on Accountability and Administrative Review*. ~~Public utilities: transmission facilities.~~ *Regional centers: whistleblower protection: related-party transactions.*

Existing law, the Lanterman Developmental Disabilities Services Act, requires the State Department of Developmental Services to allocate funds to private nonprofit regional centers for the provision of community services and support for persons with developmental *disabilities and their families. Existing law sets forth the duties of regional centers, including, but not limited to, development of individual program plans, the purchase of needed services to implement the plan, and the monitoring of services.*

Existing law authorizes the department to adopt and enforce conflict-of-interest regulations to ensure that members of the governing board, program policy committees, and employees of regional centers make decisions that are in the best interest of consumers and the families of consumers.

This bill would require a regional center to disclose on its Internet Web site specified information regarding related person transactions, as defined, on a quarterly basis, keep a log of that information for a period of 3 years after termination of the regional center contract, and provide that information to the public upon request.

Existing law, the California Whistleblower Protection Act, sets forth the circumstances and procedures under which a state employee, as defined, may report improper governmental activities, as defined, or make a protected disclosure, as defined, to the State Auditor, and prohibits retaliation or reprisal against a state employee for these acts.

This bill would enact the Regional Center Whistleblower Protection Act, providing similar protections for regional center employees who report improper regional center activities, as defined, or make a protected disclosure, as defined, to the department or the Legislature. It would require the department to investigate complaints under these provisions, and would require remedial actions to be taken by regional centers when appropriate. The bill would establish a private cause of action to enforce these provisions. It would require that if a copy of a complaint filed with the employee's supervisor, manager, or regional center director is also filed with the department, the copy shall include a sworn statement, signed under penalty of perjury, that the facts are true, or believed to be true. By changing the definition of a crime, the bill would create a state-mandated local program. The bill would make certain acts of reprisal a crime, thereby imposing a state-mandated local program.

Existing law requires that specified information and records obtained in the course of intake, assessment, and the provision of services for persons with developmental disabilities and the provision of voluntary or involuntary services to persons with a mental illnesses remain confidential, with certain specified exceptions.

This bill would allow the release of the above information to the department for purposes of conducting an investigation pursuant to the bill.

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

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

~~Under existing law, the Public Utilities Commission (CPUC) has regulatory authority over public utilities, including electrical corporations. The Public Utilities Act prohibits any electrical corporation from beginning the construction of, among other things, a line, plant, or system, or of any extension thereof, without having first obtained from the CPUC a certificate that the present or future public convenience and necessity require or will require that construction.~~

~~Existing law establishes the State Energy Resources Conservation and Development Commission (Energy Commission) in the Natural Resources Agency. Existing law requires the Energy Commission to conduct biennial assessments and forecasts of all aspects of energy industry supply, production, transportation, delivery and distribution, demand, and prices. The Energy Commission is required to adopt a biennial integrated energy policy by November 1 that contains an overview of major energy trends and issues facing the state. Existing law requires the Energy Commission to adopt a strategic plan for the state's electrical transmission grid using existing resources, to be included in the integrated energy policy report adopted on November 1, 2005, which identifies and recommends actions required to implement investments needed to ensure reliability, relieve congestion, and to meet future growth in electrical load and generation, including renewable resources, energy efficiency, and other demand reduction measures.~~

~~The bill, until January 1, 2012, would require an electrical corporation or a local publicly owned electric utility that owns electrical transmission facilities to investigate and evaluate, the cost and feasibility of using high-technology conductors and other advanced transmission technology in new and upgraded transmission projects. The bill would require an electrical corporation to additionally evaluate the cost and feasibility of retrofitting existing transmission facilities with high-technology conductors and other advanced transmission technology, whether using high-technology conductors or other advanced transmission technology~~

~~will expedite the delivery of electricity generated by eligible renewable energy resources, and enable the utility to increase transmission capacity without building new transmission towers. The bill would require electrical corporations to report the results of the investigation and evaluation to the CPUC by July 1, 2011. The bill would require local publicly owned electric utilities to report the results of the investigation and evaluation to the Energy Commission by July 1, 2011.~~

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

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

SECTION 1. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

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

“ ________________________________

Date

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

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

__________________________"
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

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

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

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

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

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

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

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity

except upon the issuance of an order of a court of competent jurisdiction.

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

(u) To the department, for the purpose of conducting an investigation authorized by Division 4.8 (commencing with Section 4910).

SEC. 2. Section 4626.1 is added to the Welfare and Institutions Code, to read:

4626.1. (a) For purposes of this section, the following terms shall have the following meanings:

(1) "Financial interest" means that it is reasonably foreseeable that a decision will have a material financial effect, distinguishable from its effect on the public generally, on a regional center executive director or a member of the board of directors, or his or her family, including any of the following situations:

(A) The issue involves a business entity in which the regional center executive director or a member of the board of directors has a direct or indirect investment worth two thousand dollars ($2,000) or more.

(B) The issue involves real property in which the regional center executive director or a member of the board of directors has a direct or indirect interest worth two thousand dollars ($2,000) or more.

(C) The issue involves a source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars ($500) or more in value provided to, promised to, or received by, a regional center executive director or a member of the board of directors within 12 months prior to the time when the decision is made.

(D) The issues involves a business entity in which the regional center executive director or a member of the board of directors is a director, officer, partner, trustee, employee, or holds a position of management.

For purposes of this paragraph, "indirect investment or interest" means an investment or interest owned by the spouse or dependent child of a regional center executive director or a member of the board of directors, by an agent on behalf of a regional center executive director or a member of the board of directors, or by a business entity or trust in which the regional center executive director or a member of the board of directors, his or her agents, spouse, and dependent children own, directly, indirectly, or beneficially, a 10-percent or greater interest.

(2) "Related person" means a person who was in any of the following categories at a time during the specified period for which disclosure is required pursuant to subdivision (b):

(A) A director or officer of the regional center.

(B) A nominee for director.

(C) A family member of a director or officer of the regional center or any nominee for director, which means a child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the director, officer, or director nominee.

(D) A person, other than a tenant or employee, sharing the household of the director, officer, or director nominee.

(3) "Related-person transaction" means a transaction in which the regional center was or is to be a participant and in which a related person had or will have a direct or indirect financial interest.

(4) "Transaction" includes, but is not limited to, a financial transaction, arrangement or relationship, including an indebtedness or guarantee of indebtedness, or a series of similar transactions, arrangements, or relationships.

(b) Within 30 days following the last day of each of its fiscal quarters, a regional center shall disclose on its Internet Web site the following information, regarding each related-person transaction that occurred during that quarter:

(1) The name of the related person and the basis on which the person is a related person.

(2) The related person's interest in the transaction with the regional center, including the related person's position or relationship with, or ownership in, a firm, corporation, or other entity that is a party to, or has an interest in, the transaction.

(3) The approximate dollar value of the amount involved in the transaction.

(4) The approximate dollar value of the related person's interest in the transaction, which shall be computed without regard to the amount of profit or loss.

(5) In the case of indebtedness, disclosure of the amount involved in the transaction shall include the largest aggregate amount of principal outstanding during the period for which disclosure is provided, the amount outstanding as of the latest practicable date, the amount of principal paid during the quarter, the amount of interest paid during the quarter, and the rate or amount of interest payable on the indebtedness.

(6) Any other information regarding the transaction or the related person in the context of the transaction that is material to the public in light of the circumstances of the particular transaction.

(c) The department shall post a link to each regional center's disclosure information pursuant to subdivision (b) on the department's Internet Web Site.

(d) The information set forth in subdivision (b) shall remain on the regional center's Internet Web site for a 12-month period. The regional center shall keep a log of the quarterly disclosures required pursuant to subdivision (b) for a period of three years after the regional center contract has terminated and shall make the information available upon request to a member of the public.

(e) Regional centers shall implement this section through existing resources.

SEC. 3. Section 4731 of the Welfare and Institutions Code is amended to read:

4731. (a) Each consumer or any representative acting on behalf of any consumer or consumers, who believes that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the director of the regional center from which the consumer receives case management services. If the consumer resides in a state developmental center, the complaint shall be made to the director of that state developmental center. The director shall, within 20 working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant and, if applicable, to the service provider. The written proposed resolution shall include a telephone number and mailing address for referring the proposed resolution in accordance with subdivision (c).

(c) If the complainant is not satisfied with the proposed resolution, the complainant may refer the complaint, in writing, to the Director of Developmental Services within 15 working days of receipt of the proposed resolution. The director shall, within 45 days of receiving a complaint, issue a written administrative decision and send a copy of the decision to the complainant, the director of the regional center or state developmental center, and the service provider, if applicable. If there is no referral to the department, the proposed resolution shall become effective on the 20th working day following receipt by the complainant.

(d) The department shall annually compile the number of complaints filed, by each regional center and state developmental center catchment area, the subject matter of each complaint, and a summary of each decision. Copies shall be made available to any person upon request.

(e) This section shall not be used to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division, or disputes regarding rates or audit appeals for which there is an appeal procedure established in regulations. Those disputes shall be resolved through the appeals procedure established by this division or in regulations.

(f) All consumers or, where appropriate, their parents, legal guardian, conservator, or authorized representative, shall be notified in writing in a language which they comprehend, of the right to file a complaint pursuant to this section when they apply for services from a regional center or are admitted to a developmental center, and at each regularly scheduled planning meeting.

(g) No individual employed by, holding office in, or serving as a governing board member of, a regional center shall be subject to reprisal or harassment for, or directly or indirectly be threatened with any action that would prevent him or her from, assisting a consumer or consumer representative from pursuing a complaint under this section.

SEC. 4. Division 4.8 (commencing with Section 4910) is added to the Welfare and Institutions Code, to read:

DIVISION 4.8. REGIONAL CENTER WHISTLEBLOWER PROTECTION ACT

4910. This division shall be known, and may be cited, as the "Regional Center Whistleblower Protection Act."

4911. For purposes of this division:

(a) "Illegal order" means a directive to violate or assist in violating a federal, state, or local law, rule, or regulation or an order to work or cause others to work in conditions outside of their line of duty that would unreasonably threaten the health or safety of employees or the public.

(b) (1) "Improper regional center activity" means an activity by a regional center or by an employee, officer, or board member of a regional center that is undertaken in the performance of his or her official duties, whether or not that action is within the scope of his or her employment, and that (A) is in violation of a state or federal law or regulation, including, but not limited to, corruption, malfeasance, bribery, theft of government property, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of government property, or willful omission to perform duty, or (B) involves gross misconduct or incompetency. "Improper regional center activity" also includes an intentional failure of an employee, officer, or board member of a regional center to comply with any provision of this division.

(2) Notwithstanding paragraph (1), "improper regional center activity" does not include a decision or action by a regional center that is subject to the fair hearing procedure specified in Article 3 (commencing with Section 4710) of Chapter 7 of Division 4.5 related to the nature, scope, or amount of services included in an individual consumer's individual program plan.

(c) "Person" means an individual, corporation, partnership, limited liability company, trust, association, state or local government, or an agency or instrumentality of any of the foregoing.

(d) "Protected disclosure" means a good faith communication that discloses or demonstrates an intention to disclose to the

department or the Legislature information that may evidence either of the following:

(1) An improper regional center activity.

(2) A condition that may significantly threaten the health or safety of employees or the public if the disclosure or intention to disclose was made for the purpose of remedying that condition.

4912. (a) An employee, officer, or board member of a regional center shall not directly or indirectly use or attempt to use his or her official authority or influence for the purpose of intimidating, threatening, coercing, commanding, or attempting to intimidate, threaten, coerce, or command any person for the purpose of interfering with the rights conferred pursuant to this division.

(b) For the purpose of subdivision (a), "use the official authority or influence" shall include any of the following:

(1) Promising to confer, or conferring, a benefit.

(2) Effecting, or threatening to effect, a reprisal.

(3) Taking, or directing others to take, or recommending, processing, or approving, a personnel action, including, but not limited to, appointment, promotion, transfer, assignment, performance evaluation, suspension, or other disciplinary action.

(c) An employee, officer, or board member of a regional center who violates subdivision (a) may be liable in an action for civil damages brought against him or her by the offended party.

(d) Nothing in this section shall be construed to authorize an individual to disclose information otherwise prohibited by or under law.

(e) Nothing in this division shall be construed to prohibit any type of financial transaction by an employee, an officer, or a board member of a regional center.

4913. (a) Except as expressly set forth in this division, the department shall administer this division and shall investigate and report, as set forth in this section, regarding improper regional center activities.

(b) Upon receiving specific information that an improper regional center activity has occurred, the department shall investigate and may, if necessary, conduct a full investigative audit of the matter. The identity of the person providing the information that initiated the investigation shall not be disclosed without the written permission of the person providing the information unless

the disclosure is to a law enforcement agency that is conducting a criminal investigation.

(c) If the department determines that there is reasonable cause to believe that an improper regional center activity has occurred, the department shall report the nature and details of the activity to the regional center director.

(d) If, after investigating, the department finds that an improper regional center activity has occurred, the department shall send a copy of the investigative report to the regional center. Within 30 days after receiving a copy of the department's investigative report, the regional center shall either serve a notice of personnel action upon the employee or employees who are the subject of the investigative report or set forth in writing its reasons for not taking personnel action. The regional center shall submit a copy of the notice of personnel action to the department. If the focus of the investigative report is a policy or procedure, instead of an employee, the regional center shall, within 30 days after receiving a copy of the department's investigative report, submit a plan of corrective action to the department.

(e) The department shall report the outcome of the investigation to the policy committees of the Senate and Assembly having jurisdiction over regional centers, to the Assembly Committee on Accountability and Administrative Review, and to any other committee or authority that the department determines appropriate. If the department reasonably believes that the investigative report may involve criminal actions, the department shall also report this information to the Attorney General.

4914. The department may request the assistance of a state department, agency, or employee in conducting an investigative audit required by this division. No information obtained from the department, agency, or employee as a result of the department's request for assistance, nor any information obtained thereafter as a result of further investigation, shall be divulged or made known to a person without the prior approval of the department.

4915. (a) In a case in which the department submits a report of alleged improper regional center activity to the regional center director, the regional center director shall report to the department with respect to the action taken by the individual regarding the activity, the first report being transmitted within 30 days after the *date of the department's report and monthly thereafter until final action has been taken.*

(b) Every investigation shall be kept confidential, except that, notwithstanding Sections 4514 and 5328, the department shall issue a report of an investigation that has been substantiated, keeping confidential the identity of the individual or individuals who provided information that initiated the investigation and maintaining the confidentiality of the consumer or consumers of regional center services that may have been involved. The department shall only release findings resulting from an investigation conducted pursuant to this division that are deemed necessary to serve the interests of the state.

(c) Notwithstanding any other law, including, but not limited to, Section 4914, this division shall not limit the authority conferred upon the Attorney General or any state or local entity to investigate any matter.

4916. (a) An employee who files a written complaint with his or her supervisor, manager, or the regional center alleging actual or attempted acts of reprisal, retaliation, threats, coercion, or similar improper acts prohibited by this division, may also file a copy of the written complaint with the department. A copy of the complaint filed with the department shall also include a sworn statement that the contents of the written complaint are true, or are believed by the affiant to be true, signed under penalty of perjury. The complaint filed with the department shall be filed within 12 months of the most recent act of reprisal complained of.

(b) A person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a regional center employee for having made a protected disclosure, is subject to a fine not to exceed ten thousand dollars ($10,000) and imprisonment in the county jail for a period not to exceed one year.

(c) In addition to all other penalties provided by law, a person who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against a regional center employee for having made a protected disclosure shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court where the acts of the offending party are proven to be malicious. However, an action for damages shall not be available to the injured party unless the

injured party has first filed a complaint with the department pursuant to subdivision (a), and the department has issued, or failed to issue, findings. Where liability has been established, the injured party shall also be entitled to reasonable attorney's fees as provided by law.

(d) This section is not intended to prevent a regional center, manager, or supervisor from taking, directing others to take, recommending, or approving a personnel action or from taking or failing to take a personnel action with respect to an employee if the regional center, manager, or supervisor reasonably believes the action or inaction is justified on the basis of evidence separate and apart from the fact that the person has made a protected disclosure.

(e) In a civil action or administrative proceeding, once it has been demonstrated by a preponderance of evidence that an activity protected by this division was a contributing factor in the alleged retaliation against a former or current employee, the burden of proof shall be on the supervisor, manager, or regional center to demonstrate by clear and convincing evidence that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in protected disclosures or refused an illegal order. If the supervisor, manager, or regional center fails to meet this burden of proof in a personnel action against the employee in an administrative review, challenge, or adjudication in which retaliation has been demonstrated to be a contributing factor, the employee shall have a complete affirmative defense in the personnel action.

(f) Nothing in this division shall be deemed to diminish the rights, privileges, or remedies of an employee under any other federal or state law or under any employment contract or collective bargaining agreement.

4917. By April 1, 2011, the department shall prepare for employees a written explanation of this division. The explanation shall include, but need not be limited to, all of the following information:

(a) Instructions on how to contact the department by mail, telephone, e-mail, and fax.

(b) A general overview of improper regional center activities and examples of three of the most common types of improper regional center activities that may be reported to the department.

(c) An explanation of whistleblower protection available to employees who report an improper regional center activity to the department.

(d) The requirement that the department protect the anonymity of a person who reports an improper regional center activity to the department.

(e) The department's authority in connection with violations of law discovered during an investigation of an improper regional center activity.

(f) A description of the penalties imposed under Section 4916.

4918. (a) The department shall prepare for distribution to each regional center in an electronic format a notice containing the information in the written explanation prepared pursuant to Section 4917.

(b) By July 1, 2011, each regional center shall print and post the notice distributed pursuant to subdivision (a) at its office or offices in a location or locations where employee notices are maintained. A regional center shall not edit the written text of the notice, but may include its own introductory language in the notice, if the language and the format selected do not alter the meaning of the notice.

(c) In addition to the posted notice, on July 1, 2011, and annually thereafter, every regional center shall send the information contained in the notice by e-mail to its employees who have authorized access to e-mail from the regional center.

(d) The department shall post the information described in Section 4917 on its Internet Web site.

4919. (a) Nothing in this division shall limit or otherwise modify the right of a regional center employee to pursue any other civil remedy.

(b) Nothing in this division shall be construed to afford civil service employment rights on a regional center employee.

(c) Nothing in this division shall affect or impede a consumer's rights under the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

SEC. 5. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division

4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

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

"______________________________
Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

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

______________________________"
Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

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

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

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

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 4070.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, "qualified professional persons" means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, "psychotherapist" means anyone so defined within Section 1010 of the Evidence Code.

(s) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, “designated officer” and “emergency response employee” have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

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

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

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

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

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

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

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

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

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

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

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

(4) All records, documents, or other materials containing confidential information protected by this section that has been

submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

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

(y) To the State Department of Developmental Services for the purpose of conducting an investigation authorized pursuant to Division 4.8 (commencing with Section 4910).

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

~~SECTION 1. Chapter 3 (commencing with Section 3260) is added to Part 4 of Division 1 of the Public Utilities Code, to read:~~

~~CHAPTER 3. TRANSMISSION OF ELECTRICITY~~

~~3260. (a) Each electrical corporation or local publicly owned electric utility that owns electrical transmission facilities shall investigate and evaluate the cost and feasibility of using high-technology conductors, including, but not limited to, ceramic conductors, and other advanced transmission technology in new and upgraded transmission projects. An electrical corporation shall also evaluate the cost and feasibility of retrofitting existing transmission facilities with high-technology conductors and other advanced transmission technology, and whether using high-technology conductors or other advanced transmission~~

~~technology will expedite the delivery of electricity generated by eligible renewable energy resources and enable the utility to increase transmission capacity without building new transmission towers.~~

~~(b) An electrical corporation shall report the results of the investigation and evaluation made pursuant to subdivision (a) to the commission by July 1, 2011.~~

~~(c) A local publicly owned electric utility shall report the results of the investigation and evaluation made pursuant to subdivision (a) to the Energy Commission by July 1, 2011.~~

~~(d) This chapter shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.~~

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