

AMENDED IN SENATE APRIL 13, 2000

**SENATE BILL**

**No. 1534**

**Introduced by Senator Perata**  
(Coauthor: Assembly Member Steinberg)

February 17, 2000

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An act to ~~add Article 7 (commencing with Section 5560) of Chapter 6.2 of Part 1 of Division 5 to amend Sections 5325, 5325.1, 5326.9, 5500, 5520, 5521, 5522, 5523, 5541, 5542, and 5550 of, and to add Sections 5500.1, 5500.2, 5500.3, 5544.1, 5545.1, 5545.2, and 5545.3 to, the Welfare and Institutions Code, relating to mental health.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1534, as amended, Perata. Mental health: patient advocacy: special programs.

Under existing law the State Department of Mental Health is required to contract with a single nonprofit agency for the provision of mental health patient advocacy services. The services include conducting investigations of abuse, neglect, and death of persons with mental disabilities residing in state hospitals.

~~This bill would establish the Patient Advocacy Program within the department. The program would provide patient advocate and oversight services for patients in special treatment programs, as described.~~

*Existing law provides that each person involuntarily detained for evaluation or treatment under provisions of this part, each person admitted as a voluntary patient for psychiatric evaluation or treatment to any health facility, as*

*defined, in which psychiatric evaluation or treatment is offered, and each mentally retarded person committed to a state hospital shall have certain rights.*

*This bill would revise that provision to eliminate the reference to mentally retarded persons committed to a state hospital, and would include each person with psychiatric disabilities receiving residential care at a community care facility, as defined, within the scope of that requirement.*

*This bill would require the Director of Mental Health to collect statistics on the provision of advocacy services by the counties.*

*This bill would require each county to provide for county patients' rights advocacy services and would require each county to provide those services at not less than a specified level.*

*The bill would also require the Director of Mental Health to provide patients' rights advocacy services in a county that does not meet those requirements and would require the county to pay that office for the provision of those services. By requiring counties to provide that level of services or to pay for the provision of those services, this bill would increase county responsibilities for the provision of those services, and would result in a state-mandated local program.*

*This bill would revise the scope of responsibilities of a county patients' rights advocate, and the scope of authority to refer complaints to government agencies. By increasing the scope of those responsibilities, this bill would increase county responsibilities in the administration of patients' rights advocacy, and would result in a state-mandated local program.*

*This bill would revise the scope of the right of a county patients' rights advocate for access to records and information for certain purposes, and to facilities for the purpose of hearing, investigating, and resolving complaints by or on behalf of individuals in psychiatric facilities.*

*Existing law authorizes the court to impose a civil penalty on any person or facility found in violation of a prohibition against discrimination or retaliatory activities against certain persons participating in filing a complaint or providing information regarding complaints by individuals in*



psychiatric facilities and for obstruction of a county patients' rights advocate in the performance of his or her duties.

This bill would increase the civil penalty and would authorize the county director of mental health to impose the penalty. The bill would authorize certain persons to bring an action in court to impose and collect the civil penalties if the local mental health director, the district attorney, or the Attorney General declines to enforce the penalties.

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, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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

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

1 ~~SECTION 1. Article 7 (commencing with Section~~  
2 ~~5560) is added to Chapter 6.2 of Part 1 of Division 5 of the~~  
3 ~~Welfare and Institutions Code, to read:~~

4  
5 ~~Article 7. The Patient Advocacy Program~~

6  
7 ~~5560. The Patient Advocacy Program is established in~~  
8 ~~the State Department of Mental Health.~~

9 ~~5561. The program shall provide advocate and~~  
10 ~~oversight services for patients in special treatment~~  
11 ~~programs described in Section 72443 of Title 22 of the~~  
12 ~~California Code of Regulations.~~

13 *SECTION 1. Section 5325 of the Welfare and*  
14 *Institutions Code is amended to read:*

15 5325. Each person involuntarily detained for  
16 evaluation or treatment under provisions of this part,



1 each person admitted as a voluntary patient for  
2 psychiatric evaluation or treatment to any health facility,  
3 as defined in Section 1250 of the Health and Safety Code,  
4 in which psychiatric evaluation or treatment is offered,  
5 ~~and each mentally retarded person committed to a state~~  
6 ~~hospital pursuant to Article 5 (commencing with Section~~  
7 ~~6500) of Chapter 2 of Part 2 of Division 6 and each person~~  
8 *with psychiatric disabilities receiving residential care at*  
9 *a community care facility, as defined in subdivision (a) of*  
10 *Section 1502 of the Health and Safety Code, shall have the*  
11 following rights, a list of which shall be prominently  
12 posted in the predominant languages of the community  
13 and explained in a language or modality accessible to the  
14 patient in all facilities providing such services and  
15 otherwise brought to his or her attention by such  
16 additional means as the Director of Mental Health may  
17 designate by regulation:

18 (a) To wear his or her own clothes; to keep and use his  
19 or her own personal possessions including his or her toilet  
20 articles; and to keep and be allowed to spend a reasonable  
21 sum of his or her own money for canteen expenses and  
22 small purchases.

23 (b) To have access to individual storage space for his  
24 or her private use.

25 (c) To see visitors each day.

26 (d) To have reasonable access to telephones, both to  
27 make and receive confidential calls or to have such calls  
28 made for them.

29 (e) To have ready access to letterwriting materials,  
30 including stamps, and to mail and receive unopened  
31 correspondence.

32 (f) To refuse convulsive treatment including, but not  
33 limited to, any electroconvulsive treatment, any  
34 treatment of the mental condition which depends on the  
35 induction of a convulsion by any means, and insulin coma  
36 treatment.

37 (g) To refuse psychosurgery. Psychosurgery is defined  
38 as those operations currently referred to as lobotomy,  
39 psychiatric surgery, and behavioral surgery and all other



1 forms of brain surgery if the surgery is performed for the  
2 purpose of any of the following:

3 (1) Modification or control of thoughts, feelings,  
4 actions, or behavior rather than the treatment of a known  
5 and diagnosed physical disease of the brain.

6 (2) Modification of normal brain function or normal  
7 brain tissue in order to control thoughts, feelings, actions,  
8 or behavior.

9 (3) Treatment of abnormal brain function or  
10 abnormal brain tissue in order to modify thoughts,  
11 feelings, actions or behavior when the abnormality is not  
12 an established cause for those thoughts, feelings, actions,  
13 or behavior.

14 Psychosurgery does not include prefrontal sonic  
15 treatment wherein there is no destruction of brain tissue.  
16 The Director of Mental Health shall promulgate  
17 appropriate regulations to assure adequate protection of  
18 patients' rights in such treatment.

19 (h) To see and receive the services of a patient  
20 advocate who has no direct or indirect clinical or  
21 administrative responsibility for the person receiving  
22 mental health services.

23 (i) Other rights, as specified by regulation.

24 Each patient shall also be given notification in a  
25 language or modality accessible to the patient of other  
26 constitutional and statutory rights which are found by the  
27 State Department of Mental Health to be frequently  
28 misunderstood, ignored, or denied.

29 Upon admission to a facility each patient shall  
30 immediately be given a copy of a State Department of  
31 Mental Health prepared patients' rights handbook.

32 The State Department of Mental Health shall prepare  
33 and provide the forms specified in this section and in  
34 Section 5157.

35 The rights specified in this section may not be waived  
36 by the person's parent, guardian, or conservator.

37 *SEC. 2. Section 5325.1 of the Welfare and Institutions*  
38 *Code is amended to read:*

39 5325.1. Persons with mental illness have the same  
40 legal rights and responsibilities guaranteed all other



1 persons by the Federal Constitution and laws and the  
2 Constitution and laws of the State of California, unless  
3 specifically limited by federal or state law or regulations.  
4 No otherwise qualified person by reason of having been  
5 involuntarily detained for evaluation or treatment under  
6 provisions of this part or having been admitted as a  
7 voluntary patient to any health facility, as defined in  
8 Section 1250 of the Health and Safety Code, in which  
9 psychiatric evaluation or treatment is offered, *or such a*  
10 *person with a psychiatric disability receiving residential*  
11 *care at a community care facility, as defined in*  
12 *subdivision (a) of Section 1502 of the Health and Safety*  
13 *Code, shall be excluded from participation in, be denied*  
14 *the benefits of, or be subjected to discrimination under*  
15 *any program or activity, which receives public funds.*

16 It is the intent of the legislature that persons with  
17 mental illness shall have rights including, but not limited  
18 to, the following:

19 (a) A right to treatment services which promote the  
20 potential of the person to function independently.  
21 Treatment should be provided in ways that are least  
22 restrictive of the personal liberty of the individual.

23 (b) A right to dignity, privacy, and humane care.

24 (c) A right to be free from harm, including  
25 unnecessary or excessive physical restraint, isolation,  
26 medication, abuse, or neglect. Medication shall not be  
27 used as punishment, for the convenience of staff, as a  
28 substitute for program, or in quantities that interfere with  
29 the treatment program.

30 (d) A right to prompt medical care and treatment.

31 (e) A right to religious freedom and practice.

32 (f) A right to participate in appropriate programs of  
33 publicly supported education.

34 (g) A right to social interaction and participation in  
35 community activities.

36 (h) A right to physical exercise and recreational  
37 opportunities.

38 (i) A right to be free from hazardous procedures.

39 *SEC. 3. Section 5326.9 of the Welfare and Institutions*  
40 *Code is amended to read:*



1 5326.9. (a) Any alleged or suspected violation of the  
2 rights described in Chapter 2 (commencing with Section  
3 5150) shall be investigated by the local director of mental  
4 health, or his or her designee. Violations of Sections 5326.2  
5 to 5326.8, inclusive, shall also be investigated by the  
6 Director of Mental Health, or his or her designee. If it is  
7 determined by the local director of mental health or  
8 Director of Mental Health that a right has been violated,  
9 a formal notice of violation shall be issued.

10 (b) Either the local director of mental health or the  
11 Director of Mental Health upon issuing a notice of  
12 violation may take any or all of the following action:

13 (1) Assign a specified time period during which the  
14 violation shall be corrected.

15 (2) Referral to the Medical Board of California or  
16 other professional licensing agency. Such board shall  
17 investigate further, if warranted, and shall subject the  
18 individual practitioner to any penalty the board finds  
19 necessary and is authorized to impose.

20 (3) Revoke a facility's designation and authorization  
21 under Section 5404 to evaluate and treat persons detained  
22 involuntarily.

23 (4) Refer any violation of law to a local district  
24 attorney or the Attorney General for prosecution in any  
25 court with jurisdiction.

26 (5) *Collect a civil penalty from any person or facility*  
27 *in accordance with subdivision (d).*

28 (c) Any physician who intentionally violates Sections  
29 5326.2 to 5326.8, inclusive, shall be subject to a civil  
30 penalty of not more than five thousand dollars (\$5,000)  
31 for each violation. Such penalty may be assessed and  
32 collected in a civil action brought by the Attorney  
33 General in a superior court. Such intentional violation  
34 shall be grounds for revocation of license.

35 (d) Any person or facility found to have knowingly  
36 violated the provisions of the first paragraph of Section  
37 5325.1 or to have denied without good cause any of the  
38 rights specified in Section 5325 shall pay a civil penalty,~~as~~  
39 ~~determined by the court, of fifty dollars (\$50) of one~~  
40 *hundred dollars (\$100) per day during the time in which*



1 the violation is not corrected, commencing on the day on  
2 which a notice of violation was issued, ~~not to exceed one~~  
3 ~~thousand dollars (\$1,000)~~, for each and every violation  
4 *that the county mental health director has determined to*  
5 *have occurred*, except that any liability under this  
6 provision shall be offset by an amount equal to a fine or  
7 penalty imposed for the same violation under the  
8 provisions of Sections 1423 to 1425, inclusive, or 1428 of the  
9 Health and Safety Code. These penalties shall be  
10 deposited in the ~~general fund~~ *mental health subaccount*  
11 *of the local health and welfare trust fund* of the county,  
12 *as described in Section 5701*, in which the violation  
13 occurred. ~~The~~ *Any person or facility who is sanctioned or*  
14 *fined by the local mental health director pursuant to this*  
15 *paragraph may file an appeal of the sanction or fine*  
16 *within 15 days of receiving formal notice of the sanction.*  
17 *If the local mental health director fails to enforce the civil*  
18 *penalties under this paragraph, the local district attorney*  
19 *or the Attorney General shall enforce this section in any*  
20 *court with jurisdiction. Where the State Department of*  
21 *Health Services, under the provisions of Sections 1423 to*  
22 *1425, inclusive, of the Health and Safety Code,*  
23 *determines that no violation has occurred, the provisions*  
24 *of paragraph (4) of subdivision (b) shall not apply. If the*  
25 *local mental health director, district attorney, or the*  
26 *Attorney General declines to enforce the civil penalties*  
27 *provided for in this paragraph, the person whose right or*  
28 *rights were violated by the person or facility subject to the*  
29 *penalties under this subdivision may bring a private*  
30 *action in any court of jurisdiction and may collect the civil*  
31 *penalties. Any person who privately enforces the right of*  
32 *action authorized by this subdivision shall not be required*  
33 *to prove any actual damages.*

34 (e) The remedies provided by this subdivision shall be  
35 in addition to and not in substitution for any other  
36 remedies which an individual may have under law.

37 SEC. 4. Section 5500 of the Welfare and Institutions  
38 Code is amended to read:

39 5500. As used in this chapter:



1 (a) “Advocacy” means those activities undertaken on  
2 behalf of persons who are receiving or have received  
3 mental health services to protect their rights or to secure  
4 or upgrade treatment or other services to which they are  
5 entitled *and includes, but is not limited to, representation*  
6 *of patients receiving mental health treatment at*  
7 *administrative hearings.*

8 (b) “Mental health client” or “client” means any  
9 person who is receiving or has received services from a  
10 mental health facility, service or program and who has  
11 personally or through a guardian ad litem, entered into  
12 an agreement with a county patients’ rights advocate for  
13 the provision of advocacy services.

14 (c) “Mental health facilities, services, or programs”  
15 means any publicly operated or supported mental health  
16 facility or program; any private facility or program  
17 licensed or operated for health purposes providing  
18 services to mentally disordered persons; and publicly  
19 supported agencies providing other than mental health  
20 services to mentally disordered clients.

21 (d) “Independent of providers of service” means that  
22 the advocate has no direct or indirect clinical or  
23 administrative responsibility for any recipient of mental  
24 health services in any mental health facility, program, or  
25 service for which he or she performs advocacy activities.

26 (e) “County patients’ rights advocate” means any  
27 advocate appointed, or whose services are contracted for,  
28 by a local mental health director.

29 *SEC. 5. Section 5500.1 is added to the Welfare and*  
30 *Institutions Code, to read:*

31 *5500.1. Each county shall provide advocacy services*  
32 *as defined in subdivision (a) of Section 5500 at a level that*  
33 *is at least minimally adequate. Each county shall provide*  
34 *at least one full-time equivalent advocate, and in no case*  
35 *shall a county provide advocacy services at a ratio of less*  
36 *than one full time equivalent advocate for each 250,000*  
37 *county population. In determining the minimum*  
38 *number of advocates for a county, the Director of Mental*  
39 *Health shall consider factors including, but not limited to,*  
40 *the average annual number of involuntary*



1 hospitalizations in the county, the number of facilities  
2 designated to provide involuntary mental health services,  
3 the number of institutes for mental disease, skilled  
4 nursing facilities, community-based mental health clinics,  
5 and other community care facilities in the county.

6 SEC. 6. Section 5500.2 is added to the Welfare and  
7 Institutions Code, to read:

8 5500.2. (a) The Director of Mental Health shall  
9 collect and review relevant statistics relating to the  
10 advocacy services being provided by each county, on a  
11 quarterly basis, to determine the adequacy of advocacy  
12 services in each county, including, but not limited to,  
13 staffing and the functions of the advocates.

14 (b) The Director of Mental Health shall annually  
15 collect, publish, and make available to the Legislature  
16 aggregate data regarding patients' rights complaints,  
17 which shall include at least the number of complaints, the  
18 type or nature of the complaints, the source of the  
19 complaints, and the resolution of the complaints,  
20 including the timeframe for the resolution of the  
21 complaints.

22 SEC. 7. Section 5500.3 is added to the Welfare and  
23 Institutions Code, to read:

24 5500.3. If the director determines that a county has no  
25 appointed county patients' rights advocate or the  
26 appointed county patients' rights advocate does not meet  
27 the requirements set forth in subdivision (a) of Section  
28 5500, the Director of Mental Health shall require the  
29 entity contracted with pursuant to Section 5370.2, to  
30 provide advocacy services until the county mental health  
31 director appoints a county patients' rights advocate who  
32 meets those requirements. The county shall reimburse  
33 that entity for the provision of those advocacy services  
34 provided pursuant to this section.

35 SEC. 8. Section 5520 of the Welfare and Institutions  
36 Code is amended to read:

37 5520. Each local mental health director shall appoint,  
38 or contract for the services of, one or more county  
39 patients' rights advocates. The duties of these advocates  
40 shall include, but not be limited to, the following:



1 (a) To receive and investigate complaints from or  
2 concerning recipients of mental health services residing  
3 in licensed health or community care facilities regarding  
4 abuse, unreasonable denial or punitive withholding of  
5 rights guaranteed under the provisions of Division 5  
6 (commencing with Section 5000).

7 (b) To monitor mental health facilities, services and  
8 programs for compliance with statutory and regulatory  
9 patients' rights provisions.

10 (c) To provide training and education about mental  
11 health law and patients' rights to mental health providers.

12 (d) To ensure that recipients of mental health services  
13 in all licensed health and community care facilities are  
14 notified of their rights.

15 (e) To exchange information and cooperate with the  
16 Patients' Rights Office.

17 (f) *To represent patients at certification review*  
18 *hearings pursuant to Section 5256.4.*

19 (g) *To represent patients at capacity hearings*  
20 *pursuant to Section 5333.*

21 (h) *To provide assistance to minors who are eligible*  
22 *for, and request, an independent clinical review,*  
23 *pursuant to Section 6002.20.*

24 (i) *To provide assistance to recipients of public mental*  
25 *health services concerning complaints or grievances*  
26 *regarding those services.*

27 (j) *To advise and represent minors who are eligible*  
28 *for, and request, a hearing pursuant to In re Roger S.*  
29 *((1977) 19 Cal.3d 921), at the hearing.*

30 (k) *To maintain records regarding numbers of*  
31 *administrative hearings in which the patients' rights*  
32 *advocate provides representation, and to maintain*  
33 *records of patients' rights complaints alleged against*  
34 *licensed and unlicensed health and community care*  
35 *facilities, in accordance with subdivision (b) of Section*  
36 *5500.2.*

37 This section does not constitute a change in, but is  
38 declarative of the existing law.

39 SEC. 9. Section 5521 of the Welfare and Institutions  
40 Code is amended to read:



1 5521. It is the intent of the Legislature that legal  
2 representation regarding changes in client legal status or  
3 conditions and other areas covered by statute providing  
4 for local public defender or court-appointed attorney  
5 representation, shall remain the responsibility of local  
6 agencies, in particular the county public defender.  
7 County patients' rights advocates, *in the execution of*  
8 *their duties and responsibilities defined in Section 5520,*  
9 shall not duplicate, replace, or conflict with these existing  
10 or mandated local legal representations. This section shall  
11 not be construed to prevent maximum cooperation  
12 between legal representatives and providers of advocacy  
13 services.

14 *SEC. 10. Section 5522 of the Welfare and Institutions*  
15 *Code is amended to read:*

16 5522. County patients' rights advocates may conduct  
17 investigations if *the advocate finds that* there is probable  
18 cause to believe that the rights of a past or present  
19 recipient of mental health services have been, may have  
20 been, or may be violated.

21 *SEC. 11. Section 5523 of the Welfare and Institutions*  
22 *Code is amended to read:*

23 5523. (a) Notwithstanding any other provision of  
24 law, and without regard to the existence of a guardianship  
25 or conservatorship, a recipient of mental health services  
26 is presumed competent for the purpose of entering into  
27 an agreement with county patients' rights advocates for  
28 the provision of advocacy services unless found by the  
29 superior court to be incompetent to enter into an  
30 agreement with an advocate and a guardian ad litem is  
31 appointed for such purposes.

32 (b) In conducting investigations in cases in which an  
33 advocate has not received a request for advocacy services  
34 from a recipient of mental health services or from  
35 another person on behalf of a recipient of mental health  
36 services, the advocate shall notify the treating  
37 professional responsible for the care of any recipient of  
38 services whom the advocate wishes to interview, and the  
39 facility, service, or program administrator, of his or her  
40 intention to conduct such an interview. Whenever the



1 treating professional is reasonably available for  
2 consultation, the advocate shall consult with the  
3 professional concerning the appropriate time to conduct  
4 the interview.

5 (c) Any agreement with any county patients' rights  
6 advocate entered into by a mental health client shall be  
7 made knowingly and voluntarily or by a guardian ad  
8 litem. It shall be in a language or modality which the  
9 client understands. Any such agreement may, at any  
10 time, be revoked by the client or by the guardian ad litem,  
11 whoever has entered into the agreement, either in  
12 writing or by oral declaration to the advocate.

13 (d) Nothing in this chapter shall be construed to  
14 prohibit a recipient of mental health services from being  
15 represented by public or private legal counsel of his or  
16 her choice.

17 (e) The remedies provided by this chapter shall be in  
18 addition to any other remedies which may be available to  
19 any person, and the failure to pursue or exhaust the  
20 remedies or engage in the procedures provided by this  
21 chapter shall not preclude the invocation of any other  
22 remedy.

23 (f) Investigations concerning violations of a past  
24 recipients' rights shall be limited to cases involving  
25 discrimination, cases indicating the need for education or  
26 training, or cases having a direct bearing on violations of  
27 the right of a current recipient. This subdivision is not  
28 intended to constrain the routine monitoring for  
29 compliance with patients' rights provisions described in  
30 subdivision (b) of Section 5520. *County patients' rights*  
31 *advocates shall have access to any and all records*  
32 *maintained by a mental health facility or provider for*  
33 *investigative and routine monitoring purposes.*

34 *SEC. 12. Section 5541 of the Welfare and Institutions*  
35 *Code is amended to read:*

36 5541. (a) A specific authorization by the client or by  
37 the guardian ad litem is necessary for a county patients'  
38 rights advocate to have access to, copy or otherwise use  
39 confidential records or information pertaining to the  
40 client. Such an authorization shall be given knowingly



1 and voluntarily by a client or guardian ad litem and shall  
2 be in writing or be reduced to writing. The client or the  
3 guardian ad litem, whoever has entered into the  
4 agreement, may revoke such authorization at any time,  
5 either in writing or by oral declaration to the advocate.

6 (b) When specifically authorized by the client or the  
7 guardian ad litem, the county patients' rights advocate  
8 may inspect ~~and copy confidential client information and~~  
9 ~~records~~ any and all records and information necessary to  
10 carry out his or her responsibilities under this chapter.

11 *SEC. 13. Section 5542 of the Welfare and Institutions*  
12 *Code is amended to read:*

13 5542. County patients' rights advocates shall have the  
14 right to inspect or copy, or both, any records or other  
15 materials ~~not subject to confidentiality under Section~~  
16 ~~5328 or other provisions of law~~ in the possession of any  
17 mental health program, services, or facilities, or city,  
18 county or state agencies relating to an investigation on  
19 behalf of a client or which indicate compliance or lack of  
20 compliance with laws and regulations governing patients'  
21 rights, including, but not limited to, reports on the use of  
22 restraints or seclusion, and autopsy reports.

23 *SEC. 14. Section 5544.1 is added to the Welfare and*  
24 *Institutions Code, to read:*

25 5544.1. Notwithstanding any other provision of law,  
26 all records and files of the patients' rights advocate  
27 relating to any complaint or investigation made pursuant  
28 to this chapter and the identities of complainants,  
29 witnesses, patients, or residents shall remain confidential,  
30 unless the disclosure is authorized by the patient resident  
31 or his or her legal representative, the disclosure is  
32 required by court order, or the release of the information  
33 is to a law enforcement agency, public protective services  
34 agency, or a licensing or certification agency in a manner  
35 that is consistent with state and federal laws and  
36 regulations.

37 *SEC. 15. Section 5545.1 is added to the Welfare and*  
38 *Institutions Code, to read:*

39 5545.1. (a) County patients' rights advocates shall  
40 have the right of entry to all facilities, programs, or



1 services for the purpose of hearing, investigating, and  
2 resolving complaints by, or to render advice to,  
3 individuals who have psychiatric disabilities who are, or  
4 have been, patients or residents of the facilities, at any  
5 time deemed necessary and reasonable to the advocate to  
6 effectively carry out his or her duties under this chapter.

7 (b) Nothing in this chapter shall be construed to  
8 restrict, limit, or increase any existing right of any  
9 organization or individual not described in subdivision  
10 (a) to enter, or provide assistance to patients or residents  
11 of, mental health or community care facilities.

12 (c) Nothing in this chapter shall restrict any right or  
13 privilege of any patient or resident of any facility to  
14 receive visitors of his or her choice.

15 SEC. 16. Section 5545.2 is added to the Welfare and  
16 Institutions Code, to read:

17 5545.2. (a) A county patient's rights advocate may  
18 refer any complaint to any appropriate state or local  
19 government agency.

20 (b) The following state licensing authorities shall give  
21 priority to any complaint referred to them by the  
22 patients' rights advocate, except that any complaint  
23 alleging an immediate threat to one or more residents'  
24 health or safety may be given first priority over that  
25 complaint:

26 (1) The Licensing and Certification Division of the  
27 State Department of Health Services.

28 (2) The Community Care Licensing Division of the  
29 State Department of Social Services.

30 (3) The State Department of Mental Health.

31 (4) The State Board of Nursing Home Administrators.

32 (5) The Board of Registered Nursing.

33 (6) The Medical Board of California.

34 (7) The California State Board of Pharmacy.

35 (8) The Board of Vocational Nurse and Psychiatric  
36 Technician Examiners.

37 (9) The American Occupational Therapy  
38 Certification Board.

39 (c) Any licensing authority that responds to a  
40 complaint against a health facility or community care



1 center facility that was referred to the authority by the  
2 county patients' rights advocate shall forward to the  
3 county patients' rights advocate, the county director of  
4 mental health, and any state department responsible for  
5 certifying the facility or program, copies of related  
6 inspection reports and plans of correction and notify the  
7 county patients' rights advocate, the county director of  
8 mental health, and any state department responsible for  
9 certifying the facility or program of any citations and civil  
10 penalties imposed on the facility.

11 SEC. 17. Section 5545.3 is added to the Welfare and  
12 Institutions Code, to read:

13 5545.3. Any licensing authority that receives a  
14 complaint pursuant to Section 5545.2 shall annually  
15 collect and publish and make available to the Legislature  
16 aggregate data regarding patients' rights complaints,  
17 which shall include at least the number of complaints, the  
18 type or nature of the complaints, the source of the  
19 complaints, and the resolution of the complaints,  
20 including the timeframe for the resolution.

21 SEC. 18. Section 5550 of the Welfare and Institutions  
22 Code is amended to read:

23 5550. (a) Any person participating in filing a  
24 complaint or providing information pursuant to this  
25 chapter or participating in a judicial proceeding resulting  
26 therefrom shall be presumed to be acting in good faith  
27 and unless the presumption is rebutted shall be immune  
28 from any liability, civil or criminal, and shall be immune  
29 from any penalty, sanction, or restriction that otherwise  
30 might be incurred or imposed.

31 (b) No person shall knowingly obstruct any county  
32 patients' rights advocate in, *or retaliate against any*  
33 *county patients' rights advocate for*; the performance of  
34 duties as described in this chapter, including, but not  
35 limited to, access to clients or potential clients, or to their  
36 records, whether financial, medical, or otherwise, or to  
37 other information, materials, or records, or otherwise  
38 violate the provisions of this chapter.

39 (c) No facility to which the provisions of Section 5325  
40 are applicable shall discriminate or retaliate in any



1 manner against a patient or employee on the basis that  
2 ~~such~~ *the* patient, *resident*, or employee has initiated or  
3 participated in any proceeding specified in this chapter.  
4 Any attempt by a facility to expel a patient *or resident*, or  
5 any discriminatory treatment of a patient, who, or upon  
6 whose behalf, a complaint has been submitted to a county  
7 patients' rights advocate within 120 days of the filing of  
8 the complaint shall raise a rebuttable presumption that  
9 such action was taken by the facility in retaliation for the  
10 filing of the complaint.

11 (d) No county patients' rights advocate shall  
12 knowingly violate any provision of this chapter  
13 concerning client privacy and the confidentiality of  
14 personally identifiable information.

15 (e) Any person or facility found in violation of  
16 subdivision (b) or (d) shall pay a civil penalty, as  
17 determined by a court *or the local director of mental*  
18 *health*, of not less than ~~one hundred dollars (\$100)~~ *one*  
19 *thousand dollars (\$1,000)*, or more than ~~one thousand~~  
20 ~~dollars (\$1,000)~~ *one hundred thousand dollars (\$100,000)*,  
21 which shall be deposited in the county general funds.

22 *SEC. 19. Notwithstanding Section 17610 of the*  
23 *Government Code, if the Commission on State Mandates*  
24 *determines that this act contains costs mandated by the*  
25 *state, reimbursement to local agencies and school*  
26 *districts for those costs shall be made pursuant to Part 7*  
27 *(commencing with Section 17500) of Division 4 of Title*  
28 *2 of the Government Code. If the statewide cost of the*  
29 *claim for reimbursement does not exceed one million*  
30 *dollars (\$1,000,000), reimbursement shall be made from*  
31 *the State Mandates Claims Fund.*

