AMENDED IN ASSEMBLY AUGUST 18, 2000

AMENDED IN ASSEMBLY JULY 6, 2000

AMENDED IN ASSEMBLY JUNE 26, 2000

AMENDED IN SENATE MAY 30, 2000

AMENDED IN SENATE MAY 3, 2000

AMENDED IN SENATE APRIL 13, 2000

SENATE BILL No. 1534

Introduced by Senator Perata
(Coauthor: Assembly Member Steinberg)

February 17, 2000

An act to amend Sections 5325, 5325.1, 5326.9, 5328, 5500, *5512,* 5520, 5521, 5522, 5523, *5530,* 5541, 5542, and 5550 of, and to add Sections 5520.1, 5544.1, 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.

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 revise the *training and* 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. The bill would authorize certain persons to bring an action in court to impose civil penalties if 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: yes.

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

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

5325. 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 Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, and each person with psychiatric disabilities receiving residential care at a community care facility for adults, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, or each person who resides in a community care facility to which Section 1502.4 of the Health and Safety Code applies, shall have the following rights, a list of which shall be prominently posted in the predominant languages of the community and explained in a language or modality accessible to the patient in all facilities providing such services and otherwise brought to his or her attention by such additional means as the Director of Mental Health may designate by regulation:

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

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

(c) To see visitors each day.

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

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

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

(g) To refuse psychosurgery. Psychosurgery is defined as those operations currently referred to as lobotomy, psychiatric surgery, and behavioral surgery and all other forms of brain surgery if the surgery is performed for the purpose of any of the following:

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

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

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

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

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

(i) Other rights, as specified by regulation.

Each patient shall also be given notification in a language or modality accessible to the patient of other constitutional and statutory rights which are found by the

State Department of Mental Health to be frequently misunderstood, ignored, or denied.

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

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

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

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

5325.1. Persons with mental illness have the same legal rights and responsibilities guaranteed all other persons by the Federal Constitution and laws and the Constitution and laws of the State of California, unless specifically limited by federal or state law or regulations. No otherwise qualified person by reason of having been involuntarily detained for evaluation or treatment under provisions of this part or having been admitted as a voluntary patient to any health facility, as defined in Section 1250 of the Health and Safety Code, in which psychiatric evaluation or treatment is offered, or such a person with a psychiatric disability receiving residential care at a community care facility for adults, as defined in subdivision (a) of Section 1502 of the Health and Safety Code, or each person who resides in a community care facility, as defined in Section 1502.4 of the Health and Safety Code, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity, which receives public funds.

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

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

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

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

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

(e) A right to religious freedom and practice.

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any person or facility found to have knowingly violated the provisions of the first paragraph of Section 5325.1 or to have denied without good cause any of the rights specified in Section 5325 shall pay a civil penalty, as determined by the court, of fifty dollars ($50) per day during the time in which the violation is not corrected, commencing on the day on which a notice of violation was issued, not to exceed one thousand dollars ($1,000), for each and every violation, except that any liability under this provision shall be offset by an amount equal to a fine or penalty imposed for the same violation under the provisions of Sections 1423 to 1425, inclusive, or 1428 of the Health and Safety Code. These penalties shall be deposited in the mental health subaccount of the local health and welfare trust fund of the county, as described in Section 5701, in which the violation occurred.

(e) The local district attorney or the Attorney General shall enforce this section in any court with jurisdiction. Where the State Department of Health Services, under the provisions of Sections 1423 to 1425, inclusive, of the Health and Safety Code, determines that no violation has occurred, the provisions of paragraph (4) of subdivision (b) shall not apply.

(f) Notwithstanding the remedies provided in this section, the person whose right or rights were violated by the person or facility subject to the penalties under this subdivision may bring a private action in any court of jurisdiction. Nothing in this section shall be construed to require any person who privately enforces the right of

action authorized by this subdivision to prove any actual damages.

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

SEC. 4. 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, ~~or~~ social worker with a master's degree in social work, *or 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, psychologist, social worker, *marriage and family therapist,* nurse, attorney, or other professional person to reveal information which has been

given to him or her in confidence by members of a patient's family.

(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, psychologist, social worker, *marriage and family therapist*, nurse, attorney, or other professional person to reveal information which 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.

(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 Committee on Senate Rules or the Committee on Assembly 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, psychologist, social worker, 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 county patients' rights advocates, in the course of investigating complaints, pursuant to Section 5522, made by, or regarding, a client who is a current or past recipient of mental health services, if the client is deceased or is absent and due efforts have been made to locate him or her, or he or she is unable to give authorization pursuant to subdivision (m) due to his or her physical or mental condition. In no case shall a patients' rights advocate have access to a client's confidential records over that person's objections.

(o) To county patients' rights advocates in accordance with their routine monitoring duties pursuant to subdivision (b) of Section 5520. In no case shall a patients' rights advocate have access to a client's confidential records over that person's objection.

(p) To a committee established in compliance with Sections 4070 and 5624.

(q) 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.

(r) 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.

(s) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 341.5 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 309 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.

(t) 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.

(u) To persons serving on an interagency case management council established in compliance with Section 5606.6 to the extent necessary to perform its duties. This council shall attempt to obtain the consent of the client. If this consent is not given by the client, the council shall justify in the client's chart why these records are necessary for the work of the council.

(v) (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.

(w) (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.

(x) 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.

SEC. 5. Section 5500 of the Welfare and Institutions Code is amended to read:

5500. As used in this chapter:

(a) ''Advocacy'' means those activities undertaken on behalf of persons who are receiving or have received mental health services to protect their rights or to secure or upgrade treatment or other services to which they are entitled and includes, but is not limited to, representation of patients receiving mental health treatment at administrative hearings as described in subdivision (f) of Section 5520.

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

(c) ''Mental health facilities, services, or programs'' means any publicly operated or supported mental health or community care facility or program; any private

facility or program licensed or operated for health purposes providing services to mentally disordered persons; and publicly supported agencies providing other than mental health services to mentally disordered clients.

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

(e) ''County patients' rights advocate'' means any advocate appointed, or whose services are contracted for, by a local mental health director pursuant to Section 5520.

SEC. 6. *Section 5512 of the Welfare and Institutions Code is amended to read:*

5512. Training of county patients' rights advocates shall be provided by the contractor specified in Section 5510 responsible for the provision of protection and advocacy services to persons with mental disabilities. Training shall be directed at ensuring that all county patients' rights advocates possess:

(a) Knowledge of the service system, *mental health needs,* financial entitlements, and service rights of persons*, including children and older adults,* receiving mental health services. This knowledge shall include, but need not be limited to, knowledge of available treatment and service resources in order to ensure timely access to treatment and services.

(b) Knowledge of patients' rights in institutional and community facilities.

(c) Knowledge of civil commitment statutes and procedures.

(d) Knowledge of state and federal laws and regulations affecting recipients of mental health services.

(e) Ability to work effectively and respectfully with service recipients and providers, public administrators, community groups, and the judicial system.

(f) Skill in interviewing and counseling service recipients, including giving information and appropriate referrals.

(g) Ability to investigate and assess complaints and screen for legal problems.

(h) Knowledge of administrative and judicial due process proceedings *for persons receiving mental health services, including children and older adults*, in order to provide representation at administrative hearings and to assist in judicial hearings when necessary to carry out the intent of Section 5522 regarding cooperation between advocates and legal representatives.

(i) Knowledge of, and commitment to, advocacy ethics and principles.

~~(j) This section shall become operative on January 1, 1996.~~

SEC. 6.5. Section 5520 of the Welfare and Institutions Code is amended to read:

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

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

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

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

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

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

(f) To provide representation in the following administrative hearings, unless the representation is already provided by the local public defender's office:

(1) Certification review hearings pursuant to Section 5256.4.

(2) Capacity hearings pursuant to Section 5333.

(3) Hearings held pursuant to In re Roger S. ((1977) 19 Cal. 3d 921).

(g) To provide assistance to minors who are eligible for, and request, an independent clinical review, pursuant to Section 6002.20.

(h) To provide assistance to recipients of public mental health services concerning complaints or grievances regarding those services.

(i) To provide outreach to recipients of mental health services to ensure that they are aware of their rights and of the complaint process, in a manner that is respectful of the client's privacy, preferences and cultural and linguistic needs, and to engage mental health clients in this outreach effort whenever appropriate and feasible.

(j) To maintain records regarding numbers of administrative hearings in which the patients' rights advocate provides representation, and to maintain records of patients' rights complaints alleged against licensed and unlicensed health and community care facilities, in accordance with subdivision (b) of Section 5500.2.

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

SEC. 7. Section 5520.1 is added to the Welfare and Institutions Code, to read:

5520.1. The local mental health director shall oversee the patients' rights advocates and shall be responsible for responding to the complainer about any complaint received about a patients' rights advocate.

SEC. 8. Section 5521 of the Welfare and Institutions Code is amended to read:

5521. It is the intent of the Legislature that legal representation regarding changes in client legal status or conditions and other areas covered by statute providing for local public defender or court-appointed attorney representation, shall remain the responsibility of local agencies, in particular the county public defender. County patients' rights advocates, in the execution of their duties and responsibilities defined in Section 5520,

shall not duplicate, replace, or conflict with these existing or mandated local legal representations. This section shall not be construed to prevent maximum cooperation between legal representatives and providers of advocacy services.

SEC. 9. Section 5522 of the Welfare and Institutions Code is amended to read:

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

SEC. 10. Section 5523 of the Welfare and Institutions Code is amended to read:

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

(b) When patients' rights advocates are conducting advocacy activities that are not investigations of specific complaints or representations in administrative hearings pursuant to subdivision (f) of Section 5520, the advocate shall notify the treating professional responsible for the care of any recipient of services whom the advocate wishes to interview, and the facility, service, or program administrator, of his or her intention to conduct such an interview. Whenever the treating professional or representative of the facility is reasonably available for consultation, the advocate shall consult with the professional or representative of the facility concerning the appropriate time to conduct the interview.

(c) Any agreement with any county patients' rights advocate entered into by a mental health client shall be made knowingly and voluntarily or by a guardian ad litem. It shall be in a language or modality which the client understands. Any such agreement may, at any

time, be revoked by the client or by the guardian ad litem, whoever has entered into the agreement, either in writing or by oral declaration to the advocate.

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

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

(f) Investigations concerning violations of a past recipients' rights shall be limited to cases involving discrimination, cases indicating the need for education or training, or cases having a direct bearing on violations of the right of a current recipient. This subdivision is not intended to constrain the routine monitoring for compliance with patients' rights provisions described in subdivision (b) of Section 5520.

SEC. 11. Section 5530 of the Welfare and Institutions Code is amended to read:

5530. (a) County patients' rights advocates shall have access to all clients and other recipients of mental health or community care services in any mental health ~~care~~ facility, program, or service at all times as are necessary and reasonable, and, if feasible, during normal hours of operation, to investigate or resolve specific complaints, to provide advice, answer questions, or represent individuals in accordance with subdivision (f) of Section 5520, or in the course of routine monitoring and in ~~accord~~ *accordance* with subdivision (b) of Section 5523, when applicable. County patients' rights advocates shall endeavor not to disturb the day-to-day operations of the facilities.

(b) County patients' rights advocates shall have access to mental health and community care facilities, programs, and services, and recipients of services therein during normal working hours and visiting hours for other

advocacy purposes and in accordance with subdivision (b) of Section 5523. Advocates may appeal any denial of access directly to the head of any facility, the director of a county mental health program or the State Department of Mental Health or may seek appropriate relief in the courts. If a petition to a court sets forth prima facie evidence for relief, a hearing on the merits of the petition shall be held within two judicial days of the filing of the petition. The superior court for the county in which the facility is located shall have jurisdiction to review petitions filed pursuant to this chapter.

(c) County patients' rights advocates shall have the right to interview all persons providing the client with diagnostic or treatment services.

(d) Upon request, all mental health facilities shall, when available, provide reasonable space for county patients' rights advocates to interview clients in privacy and shall make appropriate staff persons available for interview with the advocates in connection with pending matters.

(e) Individual patients shall have a right to privacy which shall include the right to terminate any visit by persons who have access pursuant to this chapter and the right to refuse to see any patient advocate.

(f) Notice of the availability of advocacy services and information about patients' rights may be provided by county patients' rights advocates by means of distribution of educational materials and discussions in groups and with individual patients.

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

5541. (a) Except in those circumstances set out in subdivisions (c) and (d), a specific authorization by the client or by the guardian ad litem is necessary for a county patients' rights advocate to have access to, copy or otherwise use confidential records or information pertaining to the client. Such an authorization shall be given knowingly and voluntarily by a client or guardian ad litem and shall be in writing or be reduced to writing. The client or the guardian ad litem, whoever has entered

into the agreement, may revoke such authorization at any time, either in writing or by oral declaration to the advocate.

(b) When specifically authorized by the client or the guardian ad litem or as provided in subdivision (c), the county patients' rights advocate may inspect and obtain a copy of confidential client information and records.

(c) A county patients' rights advocate may inspect and copy confidential client information and records, without specific authorization by the client or guardian ad litem, in the course of investigating a complaint made by or regarding a client who is a current or past recipient of mental health services, if the client is deceased, is absent and due efforts have been made to locate him or her, or he or she is unable to give authorization for the release of confidential mental health information due to his or her physical or mental condition. A patients' advocate shall only be permitted to copy medical information if the patient's individually identifiable information, as defined in the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code), is redacted from the medical record, or if the patient consents to have those records copied. In no case shall a patients' rights advocate have access to a client's confidential records over that person's objection.

(d) A county patients' rights advocate may inspect and obtain a copy of confidential client information and records without specific authorization by a client or guardian ad litem, in accordance with their routine monitoring duties pursuant to subdivision (b) of Section 5520 and Section 5522. In no case shall a patients' rights advocate have access to a client's confidential records over that person's objection.

(e) The facility may charge a reasonable fee for the cost of record duplication pursuant to subdivisions (c) and (d) and Section 5542, not to exceed twenty-five cents ($.25) per page.

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

5542. County patients' rights advocates shall have the right to inspect or obtain a copy of, or both, any records or other materials, except proprietary contracts, records prepared solely for personnel management, and attorney-client privileged information, not subject to confidentiality under Section 5328 or any other provision of law, in the possession of any mental health or community care program, services, or facilities, or city, county or state agencies relating to an investigation on behalf of a client or which indicate compliance or lack of compliance with laws and regulations governing patients' rights, including, but not limited to, reports on the use of restraints or seclusion, and autopsy reports.

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

5544.1. All records and information in the possession of the patients' rights advocate relating to any complaint or investigation made pursuant to this chapter and the identities of complainants, witnesses, patients, or residents shall remain confidential, unless the disclosure is authorized by the patient resident or his or her legal representative or the disclosure is to a court, pursuant to a court order. The patients' rights advocate may release information to the local mental health director, the State Department of Mental Health, a law enforcement agency, public protective services agency, or a licensing or certification agency in a manner that is consistent with state and federal laws and regulations.

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

5545.2. (a) A county ~~patient's~~ *patients'* rights advocate may refer any complaint to any appropriate state or local government agency including, but not limited to, the following agencies:

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

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

(3) The State Department of Mental Health.

(4) The State Nursing Home Administrator Program.

(5) The Board of Registered Nursing.
(6) The Medical Board of California.
(7) The California State Board of Pharmacy.
(8) The Board of Vocational Nurse and Psychiatric Technician Examiners.
(9) The American Occupational Therapy Certification Board.
(b) Any licensing authority that responds to a complaint against a health facility or community care facility that was referred to the authority by the county patients' rights advocate shall forward to the county patients' rights advocate, and the county director of mental health, and any state department responsible for certifying the facility or program, copies of related inspection reports and plans of correction and notify the county patients' rights advocate, and the county director of mental health, and any state department responsible for certifying the facility or program of any citations and civil penalties imposed on the facility.
SEC. 16. Section 5545.3 is added to the Welfare and Institutions Code, to read:
5545.3. Any licensing authority that receives a complaint pursuant to Section 5545.2 shall annually collect and publish and make available to the Legislature aggregate data regarding patients' rights complaints, which shall include at least the number of complaints, the type or nature of the complaints, the source of the complaints, and the resolution of the complaints, including the timeframe for the resolution.
SEC. 17. Section 5550 of the Welfare and Institutions Code is amended to read:
5550. (a) Any person participating in filing a complaint or providing information pursuant to this chapter or participating in a judicial proceeding resulting therefrom shall be presumed to be acting in good faith and unless the presumption is rebutted shall be immune from any liability, civil or criminal, and shall be immune from any penalty, sanction, or restriction that otherwise might be incurred or imposed.

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

(c) No facility to which the provisions of Section 5325 are applicable shall discriminate or retaliate in any manner against a patient or employee on the basis that the patient, resident, or employee has initiated or participated in any proceeding specified in this chapter. Any attempt by a facility to expel a patient or resident, or any discriminatory treatment of a patient, who, or upon whose behalf, a complaint has been submitted to a county patients' rights advocate within 120 days of the filing of the complaint shall raise a rebuttable presumption that such action was taken by the facility in retaliation for the filing of the complaint.

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

(e) Any person or facility found in violation of subdivision (b) or (d) shall pay a civil penalty, as determined by a court of not less than one hundred dollars ($100) or more than one thousand dollars ($1,000), which shall be deposited in the county general ~~funds~~ *fund*.

SEC. 18. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million

dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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