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WELFARE AND INSTITUTIONS CODE - WIC

DIVISION 5. COMMUNITY MENTAL HEALTH SERVICES [5000 - 5987] (*Division 5 repealed and added by Stats. 1967, Ch. 1667.*)

PART 1. THE LANTERMAN-PETRIS-SHORT ACT [5000 - 5550] (*Heading of Part 1 amended by Stats. 1968, Ch. 1374.*)

CHAPTER 6.2. Mental Health Advocacy [5500 - 5550] (*Heading of Chapter 6.2 renumbered from Chapter 6 (as added by Stats. 1981, Ch. 841) by Stats. 1986, Ch. 248, Sec. 251.*)

ARTICLE 3. County Advocates [5520 - 5525] (*Article 3 added by Stats. 1981, Ch. 841, Sec. 7.*)

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 program.

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

(Amended by Stats. 2012, Ch. 34, Sec. 109. (SB 1009) Effective June 27, 2012.)

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 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.

(Added by Stats. 1981, Ch. 841, Sec. 7.)

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.

(Added by Stats. 1981, Ch. 841, Sec. 7.)

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) In conducting investigations in cases in which an advocate has not received a request for advocacy services from a recipient of mental health services or from another person on behalf of a recipient of mental health services, 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 is reasonably available for consultation, the advocate shall consult with the professional 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.

(Amended by Stats. 1984, Ch. 193, Sec. 151.)

5524. (a) Subject to subdivision (b), a county shall verify that county patients' rights advocates review the patients' rights advocacy training materials provided online as described in paragraph (5) of subdivision (a) of Section 5370.2 within 90 days of employment. The county shall keep a record of this verification and send a copy electronically to the Patients' Rights Committee of the California Behavioral Health Planning Council established pursuant to Section 5514.

(b) A county patients' rights advocate who has been employed for at least one year on or after January 1, 2019, shall not be required to review the materials described in paragraph (5) of subdivision (a) of Section 5370.2.

(c) The requirements of this section do not replace the ongoing training required to be provided by the contractor to county patients' rights advocates as described in Section 5512.

(Added by Stats. 2018, Ch. 237, Sec. 3. (AB 2316) Effective January 1, 2019.)

5525. (a) An employer, or any person acting on behalf of the employer, shall not make, adopt, or enforce any rule, regulation, or policy preventing a county patients' rights advocate from disclosing information to a government or law enforcement agency, to a person with authority over the county patients' rights advocate, or to an employee who has authority to investigate, discover, or correct the violation or noncompliance, or from providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the county patients' rights advocate has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of, or noncompliance with, a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the county patients' rights advocate's job duties.

(b) An employer, or any person acting on behalf of the employer, shall not retaliate against a county patients' rights advocate for disclosing information, or because the employer believes that the county patients' rights advocate disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the county patients' rights advocate, or to an employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the county patients' rights advocate has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of, or noncompliance with, a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the county patients' rights advocate's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against a county patients' rights advocate for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against a county patients' rights advocate for having exercised the county patients' rights advocate's rights under subdivision (a), (b), or (c) in any former employment.

(e) This section does not apply to rules, regulations, or policies that implement, or to actions by employers against county patients' rights advocates who violate, the confidentiality of the lawyer-client privilege of Article 3 (commencing with Section 950) of, or the physician-patient privilege of Article 6 (commencing with Section 990) of, Chapter 4 of Division 8 of the Evidence Code, or trade secret information.

(f) An employer, or a person acting on behalf of the employer, shall not retaliate against a county patients' rights advocate because the county patients' rights advocate is a family member of a person who has, or is perceived to have, engaged in any acts protected by this section.

(g) The rights and protections afforded under this section shall be enforceable by a private right of action and a violation of this section shall not result in an administrative investigation by the Department of Industrial Relations or result in administrative proceedings by that department.

(h) Nothing in this section shall be construed to interfere with protections already granted to a county patients' rights advocate who is a government employee under Section 1102.5 of the Labor Code.

(i) As used in this section, "employer" includes the local contracting agency.

(Added by Stats. 2019, Ch. 423, Sec. 1. (AB 333) Effective January 1, 2020.)