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**AB-333 Whistleblower protection: county patients' rights advocates.** (2019-2020)

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**Assembly Bill No. 333**

**CHAPTER 423**

An act to amend Section 5550 of, and to add Section 5525 to, the Welfare and Institutions Code, relating to county patients' rights advocates.

[ Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 333, Eggman. Whistleblower protection: county patients' rights advocates.

Existing law relating to whistleblower protection prohibits an employer, as defined, or any person acting on behalf of the employer, as defined, from, among other things, preventing an employee from, or retaliating against an employee for, providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of a law, regardless of whether disclosing the information is part of the employee's job duties.

Existing law relating to mental health advocacy requires each local mental health director to appoint, or contract for the services of, one or more county patients' rights advocates to perform prescribed duties. Existing law prohibits the knowing obstruction of a county patients' rights advocate in the performance of the advocate's duties.

This bill would establish similar whistleblower protections specifically for county patients' rights advocates. The bill would apply prohibitions against retaliation by an employer to a local contracting agency under these provisions. The bill would establish a private right of action to enforce the rights and protections afforded to county patients' rights advocates.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 5525 is added to the Welfare and Institutions Code, to read:

**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.

**SEC. 2.** 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) A person shall not knowingly obstruct any county patients' rights advocate in 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 this chapter.

(c) A facility to which the provisions of Section 5325 are applicable shall not discriminate or retaliate in any manner against a patient or employee on the basis that the patient or employee has initiated or participated in any proceeding specified in this chapter. Any attempt by a facility to expel a patient, 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 the action was taken by the facility in retaliation for the filing of the complaint.

(d) A county patients' rights advocate shall not knowingly violate 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.

(f) A county patients' rights advocate who performs this role as an independent contractor or employee of a contracted organization shall have the protection provided pursuant to Section 5525.