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SB-398 Protection and advocacy agency. (2019-2020)

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Senate Bill No. 398

CHAPTER 548

An act to amend Sections 4900, 4902, and 4903 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor October 07, 2019. Filed with Secretary of State October 07, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

SB 398, Durazo. Protection and advocacy agency.

Existing law prescribes, in accordance with federal law, the powers of the protection and advocacy agency, which is a private, nonprofit corporation, charged with protecting and advocating for the rights of persons with developmental disabilities and mental disorders.

Under existing law, a protection and advocacy agency's powers include the authority to pursue legal, administrative, and other appropriate remedies to ensure the protection of the rights of persons with developmental disabilities and persons with mental illness, to provide information and referral to programs and services addressing the needs of persons with developmental disabilities and persons with mental illness, and to investigate any incident of abuse or neglect of persons with developmental disabilities or persons with mental illness if the complaints are reported to the protection and advocacy agency or if probable cause exists to believe that abuse or neglect has occurred.

This bill would make various changes to the protection and advocacy agency's access to facilities, programs, and records by, among other things, authorizing the protection and advocacy agency to exercise the authority to take certain actions if the agency receives a complaint or report of alleged abuse or neglect or makes a related determination, as described. The authority would include monitoring a facility's, program's, or service provider's compliance with respect to the rights and safety of individuals with disabilities, requiring a facility, program, or service provider to provide immediate access to interview any individual with a disability unless providing immediate access would interfere with treatment or therapy to be provided to the individual, and providing the protection and advocacy agency with additional access to the records of persons with a disability. The bill would also require the protection and advocacy agency to obtain written consent from specified individuals before releasing information concerning them to a person not otherwise authorized to receive it. The bill would permit the sharing of health information and records with a protection and advocacy agency to the extent the sharing is required by law and complies with the requirements of that law.

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

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

SECTION 1. Section 4900 of the Welfare and Institutions Code is amended to read:

4900. (a) The definitions contained in this section govern the construction of this division, unless the context requires otherwise. These definitions do not alter or impact the definitions or other provisions of the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600)), or Chapter 13 (commencing with Section 15750), of Part 3 of Division 9.

(b) "Abuse" means any of the following:

(1) An act, or failure to act, that would constitute abuse as that term is defined in federal regulations pertaining to the authority of protection and advocacy agencies, including Section 51.2 of Title 42 of the Code of Federal Regulations or Section 1326.19 of Title 45 of the Code of Federal Regulations.

(2) An act, or failure to act, that would constitute abuse as that term is defined in Section 15610.07 of this code or Section 11165.6 of the Penal Code.

(3) An act, or failure to act, that was performed, or not performed, knowingly, recklessly, or intentionally, and that caused, or may have caused, injury or death to an individual with disabilities, which includes, but is not limited to, verbal, nonverbal, mental, and emotional harassment; rape or sexual assault; striking; the use of excessive force when placing the individual in bodily restraints; the use of bodily or chemical restraints that is not in compliance with federal and state laws and regulations, or any other practice that is likely to cause immediate physical or psychological harm or result in long-term harm if the practice continues.

(4) Any other violation of an individual's legal rights determined, in its discretion, by the protection and advocacy agency to be abuse, including, but not limited to, subjecting an individual to significant financial exploitation.

(c) "Complaint" has the same meaning as "complaint" as defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(1) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1386.19 of Title 45 of the Code of Federal Regulations. A "complaint" includes, but is not limited to, any report or communication, whether formal or informal, or written or oral, received by the protection and advocacy agency, including, but not limited to, media accounts, newspaper articles, electronic communications, and telephone calls, including anonymous telephone calls, from any source alleging abuse or neglect of an individual with a disability.

(d) "Disability" means a developmental disability, as defined in Section 15002(8) of Title 42 of the United States Code, a mental illness, as defined in Section 10802(4) of Title 42 of the United States Code, a disability within the meaning of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), as defined in Section 12102(2) of Title 42 of the United States Code, or a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (j) or (l) of Section 12926 of the Government Code.

(e) "Facility" or "program" means a public or private facility, program, or service provider providing services, support, care, or treatment to persons with disabilities, even if only on an as-needed basis or under contractual arrangement. "Facility," "program," or "service provider" includes, but is not limited to, a hospital, a long-term health care facility, a community living arrangement for people with disabilities, including a group home, a board and care home, an individual residence or apartment of a person with a disability where services are provided, a day program, a juvenile detention facility, a homeless shelter, a facility used to house or detain persons for the purpose of civil immigration proceedings, a jail, or a prison, including all general areas, as well as special, mental health, or forensic units. The term includes any facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code and any facility that is unlicensed but is not exempt from licensure as provided in subdivision (a) of Section 1503.5 of the Health and Safety Code. The term also includes, but is not limited to, a public or private school or other institution or program providing education, training, habilitation, recreation, therapeutic, or residential services to persons with disabilities.

(f) (1) (A) "Guardian," "conservator," "limited conservator," or "legal representative" means a person, including the parent of a disabled minor who has legal custody of the minor, appointed by a state court or an authorized agency, as appropriate, or otherwise authorized by law, and regularly reviewed by the appointing court or agency, if required by law, to represent and advocate for the legal rights and interests of a person with a disability.

(B) These terms do not include a person acting solely as a representative payee, a person acting solely to handle financial matters, an executor or administrator of an estate, an attorney or other person acting on behalf of an individual with a disability solely in individual legal matters, or an official or the official's designee who is responsible for the provision of treatment, services, supports, or other assistance to an individual with a disability.

(2) With respect to an individual described under paragraph (2) of subdivision (i), the guardian, conservator, limited conservator, or legal representative is the person with the legal authority to consent to health or mental health care or treatment on behalf of the individual.

(3) With respect to an individual described under paragraph (1) or (3) of subdivision (i), the guardian, conservator, limited conservator, or legal representative is the person with the legal authority to make all decisions on behalf of the individual.

(g) "Neglect" means any of the following:

(1) A negligent act, or omission to act, that would constitute neglect as that term is defined in federal statutes and regulations pertaining to the authority of protection and advocacy agencies, including Section 10802(5) of Title 42 of the United States Code, Section 51.2 of Title 42 of the Code of Federal Regulations, or Section 1326.19 of Title 45 of the Code of Federal Regulations.

(2) A negligent act, or omission to act, that would constitute neglect as that term is defined in subdivision (b) of Section 15610.07 of this code or Section 11165.2 of the Penal Code.

(3) A negligent act, or omission to act, by an individual responsible for providing services, supports, or other assistance that caused, or may have caused, injury or death to an individual with a disability or that placed an individual with a disability at risk of injury or death, and includes, but is not limited to, the failure to establish or carry out an appropriate individual program plan or treatment plan, which includes a discharge plan; provide adequate nutrition, clothing, or health care to an individual with a disability; or provide a safe environment, which may include failing to maintain an adequate number of trained staff or failing to take appropriate steps to prevent self-abuse, harassment, or assault by a peer.

(h) "Probable cause" to believe that an individual has been or may be subject to abuse or neglect or that the health or safety of the individual is in serious and immediate jeopardy, exists when the protection and advocacy agency determines that it is objectively reasonable for a person to entertain that belief. The individual making a probable cause determination may base the decision on reasonable inferences drawn from their experience or training regarding similar incidents, conditions, or problems that are usually associated with abuse or neglect. Information supporting a probable cause determination may result from monitoring or other activities, including, but not limited to, media reports and newspaper articles.

(i) "Protection and advocacy agency" means the private nonprofit corporation designated by the Governor in this state pursuant to federal law for the protection and advocacy of the rights of persons with disabilities, including the following:

(1) People with developmental disabilities, as authorized under the federal Developmental Disabilities Assistance and Bill of Rights Act of 2000, contained in Chapter 144 (commencing with Section 15001) of Title 42 of the United States Code.

(2) People with mental illness, as authorized under the federal Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991, contained in Chapter 114 (commencing with Section 10801) of Title 42 of the United States Code.

(3) People with disabilities within the meaning of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) as defined in Section 12102(2) of Title 42 of the United States Code, who do not have a developmental disability as defined in Section 15002(8) of Title 42 of the United States Code, people with a mental illness as defined in Section 10802(4) of Title 42 of the United States Code, and who are receiving services under the federal Protection and Advocacy of Individual Rights Act as defined in Section 794e of Title 29 of the United States Code, or people with a disability within the meaning of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), as defined in subdivision (j) or (l) of Section 12926 of the Government Code.

(j) "Reasonable unaccompanied access" means access that permits the protection and advocacy agency, without undue interference, to monitor, inspect, and observe conditions in facilities and programs, to meet and communicate with residents and service recipients privately and confidentially on a regular basis, formally or informally, including, but not limited to, by telephone, mail, electronic mail, and in person, and to review records privately and confidentially, in a manner that minimizes interference with the activities of the facility, program, or service provider that respects privacy interests and honors requests to terminate an interview, and that does not jeopardize the physical health or safety of facility, program, or service provider staff, individuals with disabilities, service recipients, or protection and advocacy agency staff. Except as otherwise required by law, the protection and advocacy agency shall not be required to provide the name or other identifying information regarding the individual with a disability or staff with whom it plans to meet or justify or explain its interactions with those persons. Upon request of facility staff, the protection and advocacy agency shall provide the specific location or locations at a facility where it intends to monitor, inspect, or observe conditions and meet and communicate with residents or staff.

SEC. 2. Section 4902 of the Welfare and Institutions Code is amended to read:

4902. (a) The protection and advocacy agency, in protecting and advocating for the rights of people with disabilities, pursuant to the federal mandate, may exercise any authority specified in this section when one or more of the following occurs:

(1) The agency receives a complaint or report of alleged abuse or neglect, or of an incident in which an individual is in serious and immediate jeopardy.

(2) The agency determines that probable cause exists that an individual has been or may be subject to abuse or neglect.

(3) The agency determines that the health or safety of an individual is in serious and immediate jeopardy.

(b) If subdivision (a) applies, the protections and advocacy agency may exercise the authority granted pursuant to subdivision (a) to do all of the following:

(1) Investigate any incident of alleged abuse or neglect of any person with a disability. This authority includes reasonable unaccompanied access to a facility, program, or service provider, and authority to examine all relevant records and interview any facility, program, or service provider recipient, employee, or other person who may have knowledge of the alleged abuse or neglect.

(2) Pursue administrative, legal, and other appropriate remedies or approaches to ensure the protection of the rights of people with disabilities.

(3) Provide information and training on, and referral to, programs and services addressing the needs of people with disabilities, including information and training regarding individual rights and the services available from the protection and advocacy agency.

(4) Monitor a facility's, program's, or service provider's compliance with respect to the rights and safety of individuals with disabilities.

(c) The protection and advocacy agency and its authorized agents shall, in addition, have reasonable unaccompanied access to public or private facilities, programs, and service providers, including all areas of the facility, program, or service providers' premises that are used by, or accessible to, individuals with disabilities and reasonable unaccompanied access to those persons.

(1) (A) The protection and advocacy agency shall have reasonable unaccompanied access to all public or private facilities, programs, or service providers, including to users of those facilities, programs, and services, at all times as are necessary, and without advance notice, to investigate incidents of alleged abuse and neglect in accord with paragraph (1) of subdivision (b).

(B) Access pursuant to this paragraph includes the opportunity to interview any individual with a disability, employee, or other person, including a person alleged to be the victim of abuse, who might be reasonably believed by the protection and advocacy agency to have knowledge of an incident under investigation. Except as otherwise required by law, the protection and advocacy agency shall not be required to provide the name or other identifying information regarding any individual with a disability or staff with whom it plans to meet or to justify or explain its interactions with those persons.

(C) Access to an individual pursuant to this paragraph shall be afforded immediately, except as otherwise provided in paragraph (3), upon request.

(2) The protection and advocacy agency shall have reasonable unaccompanied access during reasonable times, which, at a minimum, includes normal working hours and visiting hours, for other advocacy services. Protection and advocacy agency activities shall be conducted so as to minimize interference with service provider programs, respect individuals with disabilities' privacy interests, and honor a recipient's request to terminate an interview. This access includes, but is not limited to, all of the following:

(A) Providing information and training on, and referral to programs addressing the needs of, individuals with disabilities, and information and training on individual rights and the protection and advocacy services available from the agency, including, but not limited to, the name, address, and telephone number of the protection and advocacy agency. The protection and advocacy agency shall be permitted to post, in an area in which individuals with disabilities receive services, a poster that identifies the services available from the protection and advocacy agency and the name, address, and telephone number of the protection and advocacy agency.

(B) Monitoring compliance with respect to the rights and safety of residents or service recipients.

(C) Inspecting, viewing, and photographing all areas of the facility, program, or service provider's premises that are used by individuals with disabilities, or that are accessible to them, but does not include photographing or video recording individuals with disabilities without their consent.

(3) (A) If the protection and advocacy agency's access to facilities, programs, service providers, service recipients, or individual with a disability is delayed or denied by a facility, program, or service provider, the facility, program, or service provider shall promptly provide the agency with a written statement of reasons. In the case of denial of access for alleged lack of authorization, the facility, program, or service provider shall promptly provide to the agency the name, address, and telephone number of the guardian, conservator, limited conservator, or other legal representative of the individual with a disability for

whom authorization is required. Access to a facility, program, service provider, service recipient, or individual with a disability shall not be delayed or denied without the prompt provision of a written statement of the reasons for the denial.

(B) A facility, program, or service provider shall not be required to afford immediate access if complying with the request would interfere with treatment or therapy to be provided to an individual with a disability. If access to an individual must be delayed beyond 24 hours to allow for the provision of treatment or therapy, the protection and advocacy agency shall receive access as soon as possible thereafter.

(C) If a facility, program, or service provider denies the protection and advocacy agency's access to an individual with a disability on the grounds specified in subparagraph (B), the facility, program, or service provider shall, within 24 hours of the request, provide the protection and advocacy agency with a written statement from a physician, or, in the case of a state-operated mental health facility, a member of the treatment team, stating that access to the individual will interfere with the individual's treatment or therapy, and the time and circumstances under which the protection and advocacy agency can interview the individual. If the physician, or, in the case of a state-operated mental health facility, a member of the treatment team, states that the individual cannot be interviewed within 24 hours of the protection and advocacy agency being provided the written statement, the protection and advocacy agency and the facility, program, or service provider shall engage in a good faith interactive process to determine when, and under what circumstances, the individual may be interviewed. If the protection and advocacy agency and the facility, program, or service provider are unable to agree upon the time and circumstance, they shall select a mutually agreeable independent physician, or, in the case of a state-operated mental health facility, a mutually agreeable physician employed by a state-operated mental health facility who does not have a history of treating the patient, who will determine when, and under what circumstances, the individual may be interviewed. The expense of the independent physician's services shall be paid for by the facility, program, or service provider. Individuals with disabilities subject to the requirements in this paragraph include adults and minors who have guardians, limited conservators, conservators, or other legal representatives.

(d) The protection and advocacy agency shall be permitted to attend treatment planning meetings concerning individuals with disabilities, with the consent of the individual or the individual's guardian, conservator, limited conservator, or other legal representative, except that consent is not required if the individual, due to their mental or physical condition, is unable to authorize the protection and advocacy agency to have access to a treatment planning meeting and either the individual does not have a guardian, conservator, limited conservator, or other legal representative, or the individual's guardian, conservator, limited conservator, or other legal representative is the state or one of its political subdivisions. The protection and advocacy agency shall not attend treatment planning meetings if the individual objects on the individual's own behalf to the protection and advocacy agency's attendance at the treatment planning meetings.

(e) The protection and advocacy agency shall not enter an individual residence or apartment of a client or the client's family without the consent of an adult occupant. In the absence of this consent, the protection and advocacy agency may enter only if it has obtained the legal authority to enforce its access authority pursuant to legal remedies available under this division or applicable federal law.

SEC. 3. Section 4903 of the Welfare and Institutions Code is amended to read:

4903. (a) The protection and advocacy agency shall have access to the records of any of the following people with disabilities:

(1) Any person who is a client of the agency, or any person who has requested assistance from the agency, if that person or the agent designated by that person, or the guardian, conservator, limited conservator, or other legal representative of that person, has authorized the protection and advocacy agency to have access to the records and information. If a person with a disability who is able to authorize the protection and advocacy agency to access their records expressly denies this access after being informed by the protection and advocacy agency of their right to authorize or deny access, the protection and advocacy agency shall not have access to that person's records.

(2) Any person, including any individual who cannot be located, to whom all of the following conditions apply:

(A) The individual, due to their mental or physical condition, is unable to authorize the protection and advocacy agency to have access to their records.

(B) The individual does not have a guardian, conservator, limited conservator, or other legal representative, or the individual's representative is a public entity, including the state or one of its political subdivisions.

(C) The protection and advocacy agency is authorized pursuant to subdivision (a) of Section 4902 to exercise the authority specified in that section.

(3) Any person who is deceased. Probable cause to believe that the death of an individual with a disability resulted from abuse or neglect or any other specific cause is not required for the protection and advocacy agency to obtain access to the records.

For the purposes of access pursuant to this paragraph, "person with a disability" includes a person who died in a situation in which services, supports, or other assistance is, or has, customarily been provided to people with disabilities.

(4) Any person who has a guardian, conservator, limited conservator, or other legal representative with respect to whom a complaint has been received by the protection and advocacy agency, or with respect to whom the protection and advocacy agency has determined that probable cause exists to believe that the person has been or may be subjected to abuse or neglect, whenever all of the following conditions exist:

(A) The protection and advocacy agency made a good faith effort to contact the guardian, conservator, limited conservator, or other legal representative upon prompt receipt of the representative's contact information, which shall include, but not be limited to, the representative's name, address, telephone number, and email address.

(B) The protection and advocacy agency has offered assistance to the representatives to resolve the situation.

(C) The representative has failed or refused to consent on behalf of the person.

(5) Any other person with a disability under the circumstances described in subdivision (a) of Section 4902.

(b) Individual records that shall be available to the protection and advocacy agency under this division, whether written or in another medium, draft, preliminary, or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, or audiotapes, shall include, but not be limited to, all of the following:

(1) Information and records prepared or received in the course of providing intake, assessment, evaluation, education, training, or other services, supports, or assistance, including, but not limited to, medical records, financial records, monitoring reports, or other reports, prepared or received by a member of the staff of a facility, program, or service provider. This includes records stored or maintained at sites other than that of the facility, program, or service provider and records that were not prepared by the facility, program, or service provider, but received by the facility, program, or service provider.

(2) Reports prepared by a federal, state, or local governmental agency or a private organization charged with investigating reports of incidents of abuse, neglect, injury, or death. The organizations whose reports are subject to this requirement include, but are not limited to, agencies in the foster care system, disabilities systems, prison and jail systems, facilities used to house or detain persons for purposes of civil immigration proceedings, public and private educational systems, emergency shelters, criminal and civil law enforcement agencies such as police departments, agencies overseeing juvenile justice facilities, juvenile detention facilities, all preadjudication and postadjudication juvenile facilities, state and federal licensing and certification agencies, and private accreditation organizations such as the Joint Commission on the Accreditation of Healthcare Organizations or by medical care evaluation or peer review committees, regardless of whether they are protected by state law. The reports subject to this requirement describe any or all of the following:

(A) Abuse, neglect, injury, or death.

(B) The steps taken to investigate the incidents.

(C) Reports and records, including, but not limited to, personnel records prepared or maintained by the facility, program, or service provider in connection with reports of incidents, subject to the following:

(i) If a state statute specifies procedures with respect to personnel records, the protection and advocacy agency shall follow those procedures.

(ii) Personnel records shall be protected from disclosure in compliance with the fundamental right of privacy established pursuant to Section 1 of Article I of the California Constitution. The custodian of personnel records shall have a right and a duty to resist attempts to allow the unauthorized disclosure of personnel records, and may not waive the privacy rights that are guaranteed pursuant to Section 1 of Article I of the California Constitution.

(D) Supporting information that was relied upon in creating a report, including, but not limited to, all information and records that document interviews with persons who were interviewed, physical and documentary evidence that was reviewed, or related investigative findings.

(3) Discharge planning records.

(c) Information in the possession of a program, facility, or service provider that must be available to the agency investigating instances of abuse or neglect pursuant to subdivision (a) of Section 4902, whether written or in another medium, draft, preliminary, or final, including, but not limited to, handwritten notes, electronic files, photographs, videotapes, audiotapes, or records, shall include, but not be limited to, all of the following:

(1) Information in reports prepared by individuals and entities performing certification or licensure reviews, or by professional accreditation organizations, as well as related assessments prepared for a program, facility, or service provider by its staff, contractors, or related entities, including peer review committees.

(2) Information in professional, performance, building, or other safety standards, or demographic and statistical information, relating to the facility, program, or service provider.

(d) The authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in Sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.

(e) An educational agency, including, but not limited to, public, private, and charter schools and public and private residential and nonresidential schools, shall provide the protection and advocacy agency with the name and contact information for the parent or guardian of a student for whom the protection and advocacy agency has authority to access, inspect, and copy records.

(f) (1) The protection and advocacy agency shall have access to records of individuals described in subdivision (a) of Section 4902 and in subdivision (a), and other records that are relevant to conducting an investigation, under the circumstances described in those subdivisions, not later than three business days after the agency makes a written request for the records involved.

(2) The protection and advocacy agency shall have immediate access to the records, including the right to inspect and copy the records, as described in subdivision (g), not later than 24 hours after the agency makes a request, without consent from another party, in a situation in which treatment, services, supports, or other assistance is provided to an individual with a disability, if the agency determines that the health or safety of the individual is in serious and immediate jeopardy, or in a case of the death of an individual with a disability.

(3) If the protection and advocacy agency's access to records is denied or delayed beyond the deadlines specified in paragraphs (1) and (2), the protection and advocacy agency shall, within two business days after the expiration of the deadline, be provided with a written statement of reasons for the denial or delay. In the case of a denial for alleged lack of authorization, the name, address, and telephone number of the guardian, conservator, limited conservator, or other legal representative of the individual with a disability shall be included in the statement.

(g) A protection and advocacy agency shall be permitted to inspect and copy information and records, subject to a reasonable charge to offset duplicating costs. If the facility, program, or service provider or its agents copy the records for the protection and advocacy agency, it shall not charge the protection and advocacy agency an amount that would exceed the amount authorized by the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) for reproducing documents. The protection and advocacy agency may make written notes when inspecting information and records, and may use its own photocopying equipment to obtain copies. For state-operated mental health facilities, the protection and advocacy agency may not use equipment or devices otherwise restricted in the facilities when copying records in a portion of the facility where the restriction applies. If a party other than the protection and advocacy agency performs the photocopying or other reproduction of records, it shall provide the photocopies or reproductions to the protection and advocacy agency within the timeframes specified in subdivision (f). In addition, if records are kept or maintained electronically, they shall be provided to the protection and advocacy agency electronically.

(h) (1) Confidential information kept or obtained by the protection and advocacy agency shall remain confidential and is not subject to disclosure.

(2) The protection and advocacy agency shall obtain written consent from the following individuals, as applicable, before releasing information concerning them to a person not otherwise authorized to receive it:

(A) An individual with a disability, a client, or the individual's or client's guardian, conservator, limited conservator, or other legal representative.

(B) An individual who has been provided general information or technical assistance on a particular matter.

(C) An individual who furnishes reports or information that form the basis for a determination of probable cause that an individual has been or may be subject to abuse or neglect, or is in serious and immediate jeopardy.

(3) This subdivision shall not, however, prevent the protection and advocacy agency from doing any of the following:

(A) Sharing the information with the individual client who is the subject of the record or report or other document, or with the client's legally authorized representative, subject to any limitation on disclosure to recipients of mental health services as provided in subsection (b) of Section 10806 of Title 42 of the United States Code.

(B) Issuing a public report of the results of an investigation that maintains the confidentiality of individual service recipients.

(C) Reporting the results of an investigation to responsible investigative or enforcement agencies in a manner that maintains the confidentiality of the individuals should an investigation reveal information concerning the facility, program, or service provider, or their staff or employees warranting possible sanctions or corrective action. The information may be reported to agencies that are responsible for facility, program, or service provider licensing or accreditation, employee discipline, employee licensing or certification suspension or revocation, or criminal investigation or prosecution.

(D) Pursuing alternative remedies, including the initiation of legal action.

(E) Reporting suspected elder or dependent adult abuse pursuant to the Elder Abuse and Dependent Adult Civil Protection Act (Chapter 11 (commencing with Section 15600) of Part 3 of Division 9).

(4) Notwithstanding the confidentiality requirements of this section, the protection and advocacy agency may make a report to investigative or enforcement agencies that reveals the identity of an individual with a disability, and information relating to their status or treatment in any of the following situations:

(A) When the agency has received a complaint that the individual has been or may be subject to abuse and neglect, or has probable cause to believe that the individual has been or may be subject to abuse or neglect.

(B) When the protection and advocacy agency determines that the health or safety of the individual is in serious and immediate jeopardy.

(C) In the case of the death of an individual whom the protection and advocacy agency believes may have had a disability.

(i) The protection and advocacy agency shall inform and train employees as appropriate regarding the confidentiality of client records.

(j) The authority provided pursuant to subdivision (b) shall include access to all of the following:

(1) An unredacted facility evaluation report form or an unredacted complaint investigation report form of the State Department of Social Services. This information shall remain confidential and subject to the confidentiality requirements of subdivision (h).

(2) An unredacted citation report, unredacted licensing report, unredacted survey report, unredacted plan of correction, or unredacted statement of deficiency of the State Department of Public Health, prepared by authorized licensing personnel or authorized representatives as described in subdivision (a) of Section 5328.15. The information shall remain confidential and subject to the confidentiality requirements of subdivision (h).

(k) Notwithstanding any other state law governing patient privacy, the sharing of health information and records with a protection and advocacy agency is permitted to the extent that the sharing is required by law and complies with the requirements of that law. The Legislature finds and declares that the federal Health Insurance Portability and Accountability Act of 1996 privacy rule permits the disclosure of protected health information to a protection and advocacy agency, without the authorization of the individual who is the subject of the protected health information, to the extent that the disclosure is required by law and the disclosure complies with the requirements of that law.