

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814
February 4, 1988



ALL COUNTY LETTER NO. 88-18

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: LEGISLATIVE REVISIONS TO THE ELDER AND
DEPENDENT ADULT ABUSE REPORTING LAW

SB 526

Senate Bill (SB) 526 (Chapter 637, Statutes of 1987) was signed into law by the Governor on September 12, 1987 and became effective January 1, 1988. This legislation revises the adult abuse reporting law to include the Bureau of Medi-Cal Fraud of the Office of the Attorney General in certain investigations of reported abuse, limits the types of abuse reports local law enforcement agencies are required to accept, and has some impact on County Welfare Department (CWD) Adult Protective Services (APS) agencies. Specifically, the legislation accomplishes the following:

Cross-reporting

1. A long-term care (LTC) ombudsman and Department of Health Services Licensing and Certification are to report by telephone immediately and in writing to the Bureau of Medi-Cal Fraud (hereinafter referred to as the Bureau) "any instance of neglect occurring in a health care facility, which has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility" (Welfare and Institutions Code (W&IC) Section 15630 (g)).
2. Under the current abuse reporting law APS is responsible for accepting and investigating reports of abuse occurring in the community including acute care hospitals (acute care hospitals are not included in the definition of LTC facility within which the ombudsman and law enforcement agencies have responsibility to investigate reports of abuse). Therefore, the State Department of Social Services (SDSS) recommends that County APS staff immediately report by telephone and in writing within 2 days to the Bureau any instance of abuse which has seriously harmed or presents a serious threat to a patient in an acute care hospital or any health care clinic certified for Medi-Cal payments, regardless of whether the suspected victim is a private paying patient or a Medi-Cal patient. The Bureau is authorized to investigate and prosecute in cases of abuse in health care facilities which are certified for Medi-Cal.

Reporting of Abuse

1. Local law enforcement agencies will no longer be required to receive reports of non-physical abuse (permissive reports) by either mandated or non-mandated reporters. However, mandated reporters may report to a law enforcement agency if the suspected abuse or conduct involves criminal activity not already covered under physical abuse (W&IC Section 15630 (b)). Mandated reporters are to continue to report known or suspected physical abuse to a local ombudsman program or local law enforcement agency if the abuse occurs in a LTC facility or to APS or a local law enforcement agency if the abuse occurs anywhere else. Non-mandated reporters now may report any type of abuse to only a local LTC ombudsman if the abuse occurs in a LTC facility or APS if the abuse occurs anywhere else (W&IC Section 15631 (a)).

2. County APS agencies continue to be required to report to local law enforcement agencies immediately by telephone any known or suspected instance of physical abuse and to follow it with a written report. Only written reports of all other types of abuse continue to be required from APS to local law enforcement agencies.

3. All written reports of abuse are now required to be submitted within 2 working days rather than 36 hours.

Confidentiality

1. Information relevant to an incident of elder or dependent adult abuse or the identity of a person who reports an incident of abuse may now be disclosed to the Bureau as well as authorized government agencies or their counsel entitled to receive this information (W&IC Section 15633 (c) and (d)).

Training

1. The Bureau will offer training programs to County APS staff in evaluating and documenting criminal abuse against elders and dependent adults. (According to the Bureau, training programs are expected to become available in fiscal year 1988-89.)

SB 1162

SB 1162 (Chapter 1396, Statutes of 1987) was signed by the Governor on September 29, 1987. It was also effective January 1, 1988. This legislation amends the definition of "Physical Abuse" under the elder and dependent adult abuse reporting law by adding the following:

"(6) Use of a physical or chemical restraint, medication, or isolation without authorization, or for a purpose other than for which it was ordered, including, but not limited to, for staff convenience, for punishment, or for a period beyond that for which it was ordered." (W&IC 15610 (c).)

Attached to this letter for your information are the following:

1. A list of the Regional Offices of the Bureau of Medi-Cal Fraud. The Bureau staff person to contact in certain instances of abuse as explained above under "Cross-reporting," number 2, is located in the Sacramento office of the Department of Justice and is as noted.
2. Several pages of revisions to SDSS Minimum Guidelines for abuse investigations. These revisions were developed due to changes in the abuse reporting law as discussed above. Please correct your copies of the guidelines as indicated in the attachment to reflect current statute and State policy. (Reference All County Letter Number 86-133.)
3. A revised list of Directory of Designated Substate Ombudsman Programs to replace current attachment 2 of the Minimum Guidelines.
4. A copy of chaptered bill SB 526.
5. A copy of chaptered bill SB 1162.

The form, Report of Suspected Dependent Adult/Elder Abuse (Soc 341), will be revised to reflect statutory changes. It is anticipated that revisions of Soc 341 will be accomplished this Spring with County consultation.

If you have any questions regarding the implementation of the legislation, please contact your Adult and Family Services Operations Consultant.


LOREN D. SUTER
Deputy Director
Adult and Family Services

Attachments

cc: CWDA

*CONTACT PERSON AND TELEPHONE NUMBER BELOW.

BUREAU OF MEDI-CAL FRAUD
Regional Offices

Department of Justice
Office of the Attorney General
Bureau of Medi-Cal Fraud
1515 K Street, Suite 329
Sacramento, CA 95814

| | | |
|-------------------------------------|------------|----------------|
| Regional Supervising Investigator | Don Mace | (916) 324-5188 |
| Supervising Deputy Attorney General | Tom Yanger | (916) 324-5190 |

Department of Justice
Office of the Attorney General
Bureau of Medi-Cal Fraud
2720 Taylor Street, Suite 300
San Francisco, CA 94133

| | | |
|-------------------------------------|------------|----------------|
| Regional Supervising Investigator | San Martin | (415) 557-2159 |
| Supervising Deputy Attorney General | Tom Yanger | (916) 324-5190 |

Department of Justice
Office of the Attorney General
Bureau of Medi-Cal Fraud
3580 Wilshire Boulevard, 9th Floor
Los Angeles, CA 90010

| | | |
|-------------------------------------|--------------|----------------|
| Regional Supervising Investigator | Dennis Cowan | (213) 736-3037 |
| Supervising Deputy Attorney General | John Dratz | (213) 736-2243 |

Department of Justice
Office of the Attorney General
Bureau of Medi-Cal Fraud
110 West A Street, 3rd Floor
San Diego, CA 92101

| | | |
|-------------------------------------|-----------------|----------------|
| Regional Supervising Investigator | Chris Rodriguez | (619) 237-7724 |
| Supervising Deputy Attorney General | John Dratz | (213) 736-2243 |

Department of Justice
Office of the Attorney General
Bureau of Medi-Cal Fraud, Headquarters
1515 K Street, Suite 368
Sacramento, CA 95814

| | | |
|--------------------|------------------|----------------|
| Chief | Jack Scheidegger | (916) 324-5186 |
| Chief Investigator | Randy Rossi | (916) 324-5187 |
| Chief Prosecutor | Ron Prager | (916) 324-5192 |
| | | (619) 237-7686 |

*KATINA KYPRIDAKES
1-800-722-0432 or
(916) 324-5197

REVISIONS TO MINIMUM GUIDELINES
FOR COUNTY WELFARE DEPARTMENTS

DEPENDENT ADULT AND ELDER
ABUSE INVESTIGATIONS

STATE DEPARTMENT OF
SOCIAL SERVICES

ADULT SERVICES AND
OPERATIONS BRANCH

JANUARY 1988

PLEASE REVISE YOUR COPY OF THE MINIMUM GUIDELINES AS FOLLOWS:
(Additions and/or changes are underlined)

Page 2, paragraph 1, line 3, change to read as follows:

"Reports by mandated reporters of physical abuse or of conduct involving criminal activity occurring in long-term care facilities are to be referred to the local long-term care ombudsman coordinator or a local law enforcement agency. Reports of other types of abuse whether by mandated or non-mandated reporters are to be referred only to the long-term care ombudsman. If a county receives a report of abuse which is alleged to have occurred in a long-term care facility, the county is to immediately inform the reporter to make the report to the long-term care ombudsman coordinator, or to a local law enforcement agency if appropriate; counties shall not accept these initial reports." (Revised as per Senate Bill (SB 526) Chapter 637, Statutes of 1987.)

Page 4, number "6. Physical Abuse," add the following:

f. Use of a physical or chemical restraint, medication, or isolation without authorization, or for a purpose other than for which it was ordered, including, but not limited to, for staff convenience, for punishment, or for a period beyond that for which it was ordered (W&IC 15610 (c) (6)).

Page 6. Add the following definition:

6. Bureau

Bureau of Medi-Cal Fraud in the Office of the Attorney General (W&IC 15610.1)

Page 7, paragraph A, line 2.

Change "36 hours" to 2 working days.

Change paragraph D. to read as follows:

"D. Mandated reports of physical abuse must be made to the County adult protective services agency or to the appropriate local law enforcement agency when the abuse occurs anywhere outside a long-term care facility and to the long-term care ombudsman coordinator or to a local law enforcement agency when the abuse occurs in a long-term care facility."

Add paragraphs E. and F. as follows:

E. Mandated reporters may immediately report to the appropriate law enforcement agency if the suspected abuse or conduct involves criminal activity not already covered under the definition of "physical abuse."

F. All reports of non-physical abuse, except as noted under "E" above, by mandated or non-mandated reporters may be reported to the local long-term care ombudsman when the abuse occurs in a long-term care facility or to the County adult protective services agency when the abuse is alleged to have occurred anywhere else. (Law enforcement agencies are no longer obligated to accept these "permissive reports" of suspected abuse except as stated above under "E".)

Page 8. Add the following under A. 1., line 3, as follows:

" licensing agencies, the Bureau of Medi-Cal Fraud or to counsel ."

Page 9. Add the following to A., line 3, as follows:

" the long-term care ombudsman coordinator or if appropriate (see above under III, D, E and F) to a local law enforcement agency; do not accept the report. "

Page 10. Under "NOTE", line 4:

Change "36 hours" to 2 working days.

Page 11. Under B. 1. a. (1) line 3 and 1. b. line 2:

Change "36 hours" to 2 working days.

Page 12. Add and insert after number 3. the following and change the current "4." to 5.

4. A Regional Office of the Bureau of Medi-Cal Fraud if suspected abuse occurs in an acute care hospital or clinic if the facility is certified for Medi-Cal. (The reader is reminded that the definition of "dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility).

a. The long-term care ombudsman coordinator and the Department of Health Services Licensing and Certification are responsible for reporting suspected abuse occurring in a long-term care facility to the Bureau of Medi-Cal Fraud.

Page 14. Add and insert after A. 2. c. (1) (bottom of page) the following:

Is victim physically restrained without sufficient justification, or provided controlled medication without prescription or if prescribed, is the medication incorrectly administered, or is the victim kept in isolation for punishment or convenience of the caretaker?

F. All reports of non-physical abuse, except as noted under "E" above, by mandated or non-mandated reporters may be reported to the local long-term care ombudsman when the abuse occurs in a long-term care facility or to the County adult protective services agency when the abuse is alleged to have occurred anywhere else. (Law enforcement agencies are no longer obligated to accept these "permissive reports" of suspected abuse except as stated above under "E.".)

Page 8. Add the following under A. 1., line 3, as follows:

"_ _ _ _ _ licensing agencies, the Bureau of Medi-Cal Fraud or to counsel _ _ _ _ _."

Page 9. Add the following to A., line 3, as follows:

"_ _ the long-term care ombudsman coordinator or if appropriate (see above under III, D, E and F) to a local law enforcement agency; do not accept the report. _ _ _ _ _"

Page 10. Under "NOTE", line 4:

Change "36 hours" to 2 working days.

Page 11. Under B. 1. a. (1) line 3 and 1. b. line 2:

Change "36 hours" to 2 working days.

Page 12. Add and insert after number 3. the following and change the current "4." to 5.

4. The Sacramento Office of the Bureau of Medi-Cal Fraud if suspected abuse occurs in an acute care hospital or clinic if the facility is certified for Medi-Cal. (The reader is reminded that the definition of "dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility.)

a. The long-term care ombudsman coordinator and the Department of Health Services Licensing and Certification are responsible for reporting suspected abuse occurring in a long-term care facility to the Bureau of Medi-Cal Fraud.

Page 14. Add and insert after A. 2. c. (1) (bottom of page) the following:

Is victim physically restrained without sufficient justification, or provided controlled medication without prescription or if prescribed, is the medication incorrectly administered, or is the victim kept in isolation for punishment or convenience of the caretaker?

ALICE GONZALES, DIRECTOR
BENTON CLARK, INTERIM STATE LONG-TERM
CARE OMBUDSMAN

DECEMBER 1987
Page 1 of 6

CALIFORNIA DEPARTMENT OF AGING
OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN
1600 - K STREET
SACRAMENTO, CALIFORNIA 95814
(916) 323-6681
Toll Free 1 (800) 231-4024

DIRECTORY OF DESIGNATED SUBSTATE OMBUDSMAN PROGRAMS

PSA 1 - HUMBOLDT, DEL NORTE COUNTIES

ROBERT TALMADGE, COORDINATOR
Redwoods Ombudsman
1910 California Street
Eureka, CA 95501
(707) 443-9747

PSA 2 - LASSEN, MODOC, SHASTA,
SISKIYOU AND TRINITY COUNTIES

BOB BERNELLE, COORDINATOR
Northern California Ombudsman Program
P. O. Box 506
Downtown Mall
Redding, CA 96099
(916) 243-3209

PSA 3 - BUTTE, COLUSA, GLENN, PLUMAS
TEHAMA COUNTIES

SUSAN HARRINGTON, COORDINATOR
Ombudsman Program
c/o Family Services Agency
677 East 7th Avenue
Chico, CA 95926
(916) 891-1731

PSA 4 - NEVADA, PLACER, SACRAMENTO,
SIERRA, SUTTER, YOLO, YUBA,
COUNTIES

MICHAEL COONAN, COORDINATOR
Senior Ombudsman Advocacy Project
1819 - 16th Street
Sacramento, CA 95814
(916) 447-1075

CARMEL NEWELL
Placer, Nevada Counties Ombudsman
Branch Office
11566 "D" Street
Auburn, CA 95603
1-(916) 885-7706 Placer
1-(916) 272-1710 Nevada

IRENE CADAMY
Sutter, Yuba Counties Ombudsman
Branch Office
1494 Bridge Street, Suite A
Yuba City, CA 95991-3544
(916) 671-2911

Yolo Branch Office
c/o Senior Ombudsman Advocacy
Project
1819 - 16th Street
Sacramento, CA 95814
(916) 447-1075

PSA 5 - MARIN COUNTY

SHEILA MCGORTY, COORDINATOR
County of Marin Ombudsman Program
Citizens Service Office
Administration Building
Civic Center, Room 423
San Rafael, CA 94903
(415) 499-6190

PSA 6 - SAN FRANCISCO COUNTY

MARGARET DOHERTY, COORDINATOR
Ombudsman Program
c/o Family Service Agency
916 Eddy Street
MAILING ADDRESS: 1010 Gough
San Francisco, CA 94109
(415) 474-8757

PSA 7 - CONTRA COSTA COUNTY

LOIS MCKNIGHT, COORDINATOR
Ombudsman Program
c/o RSNC
2190 Meridian Park Blvd., Ste. M
Concord, CA 94520
(415) 682-6343

PSA 8 - SAN MATEO COUNTY

BEA LOPEZ, COORDINATOR
Long-Term Care Ombudsman Program
c/o Catholic Social Services
600 Columbia Drive
San Mateo, CA 94402
(415) 579-0277

PSA 9 - ALAMEDA COUNTY

JANE ROBINSON, COORDINATOR
Ombudsman, Inc.
477 - 15th Street, Room 309
Oakland, CA 94612
(415) 465-1065 - 465-1153
(415) 276-9381 South County

PSA 10 - SANTA CLARA COUNTY

DONNA DONAHUE, COORDINATOR
Long-Term Care Ombudsman Program
100 No. Winchester Blvd., Suite 300
Santa Clara, CA 95050
(408) 249-3950

PSA 11 - SAN JOAQUIN COUNTY

SANDY SANDERS, Coordinator
Ombudsman Program
c/o Catholic Charities
634 E. Main Street, Room 16
Stockton, CA 95202

(209) 462-2655

PSA 12 - ALPINE, AMADOR, CALAVARAS,
MARIPOSA, AND TUOLUMNE COUNTIES

MAUREEN MURATORE, COORDINATOR
Ombudsman Program
c/o Catholic Charities
#6 South Washington, Room 8
Sonoma, CA 95370
(209) 533-3364

PSA 13 - SANTA CRUZ, SAN BENITO COUNTIES

MARY HINCHLIFF, COORDINATOR
CARMEN TOPETE, SAN BENITO COORDINATOR
LUCILLE DesJARDINS, SENIOR OMBUDSMAN
Ombudsman/Advocate, Inc.
265 Water Street
Santa Cruz, CA 95060
(408) 429-1913

PSA 14 - FRESNO, MADERA COUNTIES

PAULA ACOSTA, COORDINATOR
Ombudsman Program
1028 N. Fulton
Fresno, CA 93728
(209) 233-7393

PSA 15 - KINGS, TULARE COUNTIES

PEGGY OWEN, COORDINATOR
Long-Term Care Ombudsman Program
c/o Kings County Comm. on Aging Council
1197 South Drive
Hanford, CA 93230
(209) 582-3211 Ext. 2824, 2825, 2826

PSA 16 - INYO, MONO COUNTIES

MARK WEBB, EXECUTIVE DIRECTOR
LYNN JACKSON, PROGRAM COORDINATOR
Inyo Mono Ombudsman Program
Inyo Mono Advocates for Community
Action (IMACA)
180 East Clarke Street
Bishop, CA 93514
(619) 873-8557

PSA 17 - SAN LUIS OBISPO COUNTY

SHIRLEY McINTYRE BIRD, COORDINATOR
(As of November 1, 1987)
Long-Term Care Ombudsman Services
of San Luis Obispo County
520 Piney Way
Morro Bay, CA 93442
(805) 772-3059

PSA 17A - SANTA BARBARA COUNTY

KATHY BADRAK, DIRECTOR
Long-Term Care Ombudsman Program
Santa Barbara County
423 West Victoria
Santa Barbara, CA 93101
(805) 965-4446
(805) 928-4808 Santa Maria Branch
Office

PSA 18 - VENTURA COUNTY

SHIRLEY RADDING, COORDINATOR
Long-Term Care Ombudsman Program
c/o National Council of Jewish
Women
2754 Sherwin Avenue, Unit 1
Ventura, CA 93003
(805) 656-1986

PSA 19 - LOS ANGELES COUNTY

NINA FRAZIER, COORDINATOR
Long-Term Care Ombudsman Program
of Los Angeles County
c/o Westside Independent Services
to the Elderly
1320 Santa Monica Mall
Santa Monica, CA 90401
(213) 393-3618
Toll Free 1-800-334-9473

PSA 19 - LOS ANGELES COUNTY (BRANCH OFFICES)

ANTELOPE VALLEY

HOLLY FARLEY, ASST. COORD.
c/o W.I.S.E.
1320 Santa Monica Mall
Santa Monica, CA 90401
(213) 393-3618 (Mon. - Fri.)

EAST LOS ANGELES

AMELIA TOVAR, ASST. COORD.
San Gabriel Valley Service Center
3017 Tyler Avenue
El Monte, CA 91731
(818) 575-5401
(Mon. Tues. Wed. Fri.)

AMELIA TOVAR, ASST. COORD.
East Los Angeles Centro Maravilla
4719 E. Brooklyn Avenue
Los Angeles, CA 91711
(213) 265-1832 (Thurs.)

LONG BEACH

LEE AGNELLO, ASST. COORD.
Long Beach Ombudsman Program
c/o Long Beach Senior Center
1150 East 4th Street,
Long Beach, CA 90802
(213) 435-0234 (Mon. Wed. Thurs. Fri.)

LEE AGNELLO, ASST. COORD.
South Bay Senior Center
1520 Greenwood Avenue
Torrance, CA 90503
(213) 212-3400 (Tues.)

PSA 20 - SAN BERNARDINO COUNTY

HAL COUCHOT, COORDINATOR
Ombudsman Program
c/o Senior Programs Corporation
686 East Mill Street
San Bernardino, CA 92415
(714) 387-2400
(714) 387-2426 - Hal Couchot

PASADENA

FRED HILL, ASST. COORD.
Pasadena Senior Center
85 E. Holly
Pasadena, CA 91103
(818) 795-5892 (Mon. - Fri.)

SAN GABRIEL VALLEY

MARILEE GRIBBON, ASST. COORD.
Pomona City Hall
505 S. Garey
Pomona, CA 91769
(714) 622-0472 (Mon. Tues.)

MARILEE GRIBBON, ASST. COORD.
Joslyn Senior Center
660 N. Mountain
Claremont, CA 91711
(714) 626-6966 (Wed. Thurs. Fri.)

SANTA MONICA/INGLEWOOD

SIKIZI ALLEN, ASST. COORD.
c/o W.I.S.E.
1320 Santa Monica Mall
Santa Monica, CA 90401
(213) 393-3618 (Mon. - Thurs.)

SIKIZI ALLEN, ASST. COORD.
Inglewood Senior Center
111 N. Locust Avenue
Inglewood, CA 90301
(213) 412-4342 (Fri.)

PSA 21 - RIVERSIDE COUNTY

ANN KASPER, COORDINATOR
Long-Term Care Ombudsman
Program
c/o Volunteer Center of Riverside
2060 University Avenue
Riverside, CA 92507
(714) 686-4402

PSA 22 - ORANGE COUNTY

PAMALA McGOVERN, EXECUTIVE DIRECTOR
Orange County Council on Aging, Inc.
Long-Term Care Ombudsman Service
1440 E. First Street, Suite 420
Santa Ana, CA 92701
(714) 972-2676

PSA 23 - SAN DIEGO COUNTY

ANNE DeMEULES, COORDINATOR
Long-Term Care Ombudsman Program
4090 El Cajon Blvd., Suite D
San Diego, CA 92105
(619) 560-2507 560-2501
(619) 560-2509 560-4509

PSA 24 - IMPERIAL COUNTY

MARLENE DOTSON, COORDINATOR
Ombudsman Program
c/o Catholic
Community Services
654 Main Street
El Centro, CA 92243
(619) 353-1335

PSA 27 - SONOMA COUNTY

SUSAN ZIBLATT, COORDINATOR
Ombudsman Program
2400 Coddington Center
Santa Rosa, CA 95401
(707) 526-4108

PSA 25 - LOS ANGELES CITY

NINA FRAZIER, COORDINATOR
JACQUIE MILLER, PROJECT DIRECTOR
L. A. City Omb. Program
City of Los Angeles
1102 Crenshaw
Los Angeles, CA 90019-3198
(818) 780-8867
(213) 930-2013

PSA 28 - SOLANO COUNTY

BETH RHEA, COORDINATOR
Solano Ombudsman Services
1814 Capitol Street
Vallejo, CA 94590
(707) 644-4194

PSA 28A - NAPA COUNTY

SUSAN DULY, COORDINATOR
Ombudsman Program
c/o Vol. Center of Napa County Inc.
1700 Second Street, Suite 308
Napa, CA 94559
(707) 252-6222

PSA 26 - LAKE, MENDOCINO COUNTIES

JOHN WILSON, COORDINATOR
Nursing Home Ombudsman Program
c/o People for People, Inc.
546 North State Street, Suite 4
Ukiah, CA 95482
(707) 468-5882
Lakeport Office: (707) 274-8882

PSA 29 - EL DORADO COUNTY

KATHRYNE MEYERS, COORDINATOR
Ombudsman Program
c/o El Dorado AAA
937 Spring Street
Placerville, CA 95667
(916) 626-2148

DIRECTOR OF DESIGNATED SUBSTATE OMBUDSMAN PROGRAMS

DECEMBER 1987

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PSA 30 - STANISLAUS COUNTY

MAUREEN MURATORE, COORDINATOR
Ombudsman Program
c/o Catholic Charities
914 - 13th Street
Modesto, CA 95354
(209) 529-3784

PSA 31 - MERCED COUNTY

JAMES PEEL, COORDINATOR
Ombudsman Program
c/o Merced-Mariposa Catholic
Social Services
P.O. Box 2087
Merced, CA 95344
(209) 383-5755

PSA 32 - MONTEREY COUNTY

DONNA JOHNSTON, COORDINATOR
Monterey County Ombudsman, Inc.
1281 Broadway
Seaside, CA 93955
(408) 899-4066
(408) 758-4011 (Salinas)

PSA 33 - KERN COUNTY

ESTELA CASAS, COORDINATOR
Ombudsman Program
c/o Greater Bakersfield
Legal Assistance
615 California Street
Bakersfield, CA 93304
(805) 325-5943

Senate Bill No. 526

CHAPTER 637

An act to add Section 12528 to the Government Code, and to amend Sections 15630, 15631, 15632, 15633, and 15635 of, and to add Section 15610.1 to, the Welfare and Institutions Code, relating to Public Social Services, and making an appropriation therefor.

[Approved by Governor September 12, 1987. Filed with Secretary of State September 14, 1987.]

I am deleting the \$115,800 appropriation contained in Section 8 of Senate Bill No. 526.

This bill would establish a Medi-Cal patient abuse and neglect program in the Attorney General's Office to supplement enforcement activities by the State Department of Health Services and local law enforcement. It would also appropriate \$115,800 from the General Fund for the program.

This is a very complex program proposal that involves the State Departments of Justice and Health Services, the federal government and at the local level, law enforcement agencies, the district attorneys office and the courts in each impacted county. It is important that we develop a carefully coordinated program that is subjected to the normal budget process at each impacted governmental level.

With this deletion, Governor George Deukmejian, Governor

LEGISLATIVE COUNSEL'S DIGEST

SB 526, Mello. Seniors: abuse.

Existing law establishes the office of the Attorney General, and specifies certain responsibilities of that office, including the investigation and prosecution of crimes.

This bill would specify that there is in the office of the Attorney General the Bureau of Medi-Cal Fraud and would authorize that bureau to review, investigate, and prosecute complaints of abuse, neglect, and discriminatory treatment of patients in health-care facilities which receive Medi-Cal payments. Additionally, the Bureau of Medi-Cal Fraud would be authorized to collect data about crimes against certain patients in health-care facilities and to coordinate with local law enforcement agencies to ensure that such crimes are appropriately investigated and prosecuted.

Existing law does not provide for the collection, analysis, and dissemination of information on a statewide basis about crimes committed against elders and dependent adults or about the investigation and prosecution of those crimes.

This bill would require the Bureau of Medi-Cal Fraud to collect information for the primary purpose of analyzing that information on crimes against patients in health facilities and on investigations and prosecutions of those crimes and disseminating that information to local law enforcement agencies and regulatory and licensing authorities. This bill would also require the state Ombudsman for Long-Term Care, the Licensing and Certification Division in the State Department of Health Services, and the Statistical Services Branch of the State Department of Social

Services to report to the Bureau of Medi-Cal Fraud instances of abuse and neglect of elders and dependent adults which come to the notice of those agencies.

Existing law contains no specific provisions for the training of local law enforcement personnel in the investigation and prosecution of crimes against elders and dependent adults.

This bill would require the Bureau of Medi-Cal Fraud to prepare and offer to local law enforcement personnel materials and training programs on investigating and prosecuting crimes against elders and dependent adults.

Existing law permits the reporting to specified entities, including local law enforcement agencies, of instances of nonphysical abuse of an elder or a dependent adult, and requires the reporting of physical abuse of an elder or a dependent adult.

This bill would delete provisions permitting reports of other-than-physical abuse of elders or dependent adults to local law enforcement agencies, but would retain existing provisions permitting those reports to be made to the Long-Term Care Ombudsman and to county adult protective services agencies.

Existing law requires the immediate reporting by telephone, of instances of physical abuse of a dependent adult and requires, in all cases of dependent abuse for which a report is required, that a written report to the appropriate agency be made within 36 hours of notice of the abuse.

This bill would change that limitation from 36 hours to 2 working days.

The bill would specify that the Bureau of Medi-Cal Fraud is responsible for carrying out the provisions of the bill only to the extent that funds are available.

The bill would appropriate \$115,800 from the General Fund to the Controller for allocation to the Bureau of Medi-Cal Fraud in the Attorney General's office, subject to federal financial participation.

Appropriation: yes.

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

SECTION 1. Section 12528 is added to the Government Code, to read:

12528. (a) There is in the Office of the Attorney General the Bureau of Medi-Cal Fraud, which shall implement Sections 1903(a)(6), 1903(b)(3), and 1903(g) of the federal Social Security Act, as amended by the federal Medicare-Medicaid Anti-Fraud and Abuse Amendments (Public Law 95-124), and is authorized to conduct a statewide program for investigating and prosecuting, and referring for prosecution, violations of all applicable laws pertaining to fraud in the administration of the Medi-Cal program, the provision of medical assistance or medical supplies, or the

activities of providers of medical assistance or medical suppliers under the Medi-Cal plan. The investigation of fraud by beneficiaries of the Medi-Cal program is the responsibility of the Audits and Investigations Branch of the State Department of Health Services.

(b) The bureau shall also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the Medi-Cal plan and may review complaints of the misappropriation of patient's private funds in such facilities and complaints of discriminatory treatment of Medi-Cal beneficiaries by such facilities.

(1) If the initial review indicates substantial potential for criminal prosecution, the bureau shall investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(2) If the initial review does not indicate a substantial potential for criminal prosecution, the bureau shall inform the referring agency of its determination and may, if appropriate, refer the complaint to the State Department of Health Services.

(c) Local law enforcement and prosecution agencies shall have concurrent jurisdiction with the bureau to investigate and prosecute violations of law referred to in this section.

(d) If the bureau, in carrying out its duties and responsibilities under subdivisions (a) and (b), discovers that overpayments have been made to a health care facility or other provider of medical assistance or medical supplies under the Medi-Cal plan, the bureau shall either attempt to collect the overpayment or refer the matter to the State Department of Health Services for collection.

(e) Where a prosecuting authority other than the bureau elects to prosecute a case reported to the bureau, the bureau shall, upon request of that prosecuting authority, ensure that those responsible for the prosecutive decision and the preparation of the case for trial have the opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(f) The bureau shall make available to federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the Medi-Cal plan and shall cooperate with such officials in coordinating any federal and state investigations or prosecutions involving the same suspects or allegations.

(g) The bureau shall safeguard the privacy rights of all individuals and shall provide safeguards to prevent the misuse of information under its control, and all agencies which are required to report complaints alleging abuse or neglect of patients shall maintain the confidentiality of those reports until such time as the report becomes a matter of public record.

(h) The bureau shall offer training programs to local law enforcement and prosecutorial personnel in investigating and prosecuting crimes against elders and dependent adults, and to the State Department of Health Services, the State Department of Social Services, the county adult protective services agencies and to the Long-Term Care Ombudsman in evaluating and documenting criminal abuse against elders and dependent adults.

(i) The state Long-Term Care Ombudsman, the Licensing and Certification Division in the Department of Health Services, and the Statistical Services Bureau in the State Department of Social Services shall report to the bureau all instances of abuse and neglect of elders and dependent adults, as defined in Section 15610 of the Welfare and Institutions Code, which come to their attention.

(j) The bureau shall annually submit to the Legislature a report on the nature and extent of crimes in this state against patients in health facilities receiving payments from the Medi-Cal program and the response of the criminal justice system to those crimes.

(k) The bureau shall collect information on a statewide basis regarding cases of abuse and neglect of patients in health facilities receiving payments from the Medi-Cal program for the primary purpose of analyzing the information it collects and disseminating its conclusions to local law enforcement agencies and to regulatory and licensing authorities.

(l) For purposes of this section, "bureau" means the Bureau of Medi-Cal Fraud in the Office of the Attorney General.

SEC. 2. Section 15610.1 is added to the Welfare and Institutions Code, to read:

15610.1. For purposes of this chapter, "bureau" means the Bureau of Medi-Cal Fraud in the Office of the Attorney General.

SEC. 3. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury; clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else,

immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

(b) Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of elder or dependent adult abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse either to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else. If the conduct involves criminal activity not already covered by subdivision (a), it may be immediately reported to the appropriate law enforcement agency.

(c) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of abuse of an elder or a dependent adult, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(d) The reporting duties under this section are individual, and, no supervisor or administrator shall impede or inhibit the reporting duties and no person making such a report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(e) (1) An adult protective services agency shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case and to any public agency given responsibility for investigation in that jurisdiction of cases of elder and dependent adult abuse, every known or suspected instance of physical abuse of an elder or dependent adult. A county adult protective services agency shall also send a written report thereof within two working days of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

Only a written report, sent within two working days, shall be required in the case of types of elder and dependent adult abuse other than physical abuse.

If an adult protective services agency receives a report of abuse alleged to have occurred in a long-term care facility, that adult protective services agency shall immediately inform the person

making the report that he or she must make it to the long-term care ombudsman coordinator or to a local law enforcement agency. The adult protective services agency shall not accept the reports.

(2) If an adult protective services agency or local law enforcement agency or ombudsman program receiving a report of known or suspected elder or dependent adult abuse involving physical abuse or neglect determines, pursuant to its investigation, that such abuse is being committed by a health practitioner licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, or any related initiative act, or by a person purporting to be such a licensee, the adult protective services agency or local law enforcement agency or ombudsman program shall immediately report this information to the appropriate licensing agency. The licensing agency shall investigate the report in light of the potential for physical harm. The transmittal of information to the appropriate licensing agency shall not relieve the adult protective services agency or local law enforcement agency or ombudsman program of the responsibility to continue its own investigation as required under applicable provisions of law. The information reported pursuant to this paragraph shall remain confidential and shall not be disclosed.

(f) A law enforcement agency shall immediately or as soon as practically possible report by telephone to the long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility or to the county adult protective services agency when it is alleged to have occurred anywhere else, and to the agency given responsibility for the investigation of cases of elder and dependent adult abuse every known or suspected instance of abuse of an elder or a dependent adult. A law enforcement agency shall also send a written report thereof within two working days of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(g) A long-term care ombudsman coordinator may report the instance of abuse to the county adult protective services agency or to the local law enforcement agency for assistance in the investigation of the abuse if the victim gives his or her consent.

A long-term care ombudsman coordinator and the Licensing and Certification Division of the State Department of Health Services shall immediately report by telephone and in writing within two working days to the bureau any instance of neglect occurring in a health care facility, which has seriously harmed any patient or reasonably appears to present a serious threat to the health or physical well-being of a patient in that facility. If a victim or potential victim of the neglect withholds consent to being identified in that report, the report shall contain circumstantial information about the neglect but shall not identify that victim or

potential victim and the bureau and the reporting agency shall maintain the confidentiality of the report until such time as the report becomes a matter of public record.

(h) When a county adult protective services agency, a long-term care ombudsman coordinator, or a local law enforcement agency receives a report of abuse, neglect, or abandonment of an elder or dependent adult alleged to have occurred in a long-term care facility, that county adult protective services agency, long-term care ombudsman coordinator, or local law enforcement agency shall report the incident to the licensing agency by telephone as soon as possible.

(i) Each long-term care ombudsman coordinator shall report to the county adult protective services agency monthly on the reports it receives pursuant to this chapter. The reports shall be on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

(j) Each county adult protective services agency shall report to the State Department of Social Services monthly on the reports received pursuant to this chapter. The reports shall be made on forms adopted by the department. The information reported shall include, but shall not be limited to, the number of incidents of abuse, the number of persons abused, the type of abuse sustained, and the actions taken on the reports. For purposes of these reports, sexual abuse shall be reported separately from physical abuse.

The county's report to the department shall include reports it receives from the long-term care ombudsman coordinator pursuant to subdivision (i).

The State Department of Social Services shall refer to the bureau monthly summaries of the reports of elder and dependent adult abuse, neglect, and abandonment which it receives from county adult protective services agencies.

SEC. 4. Section 15631 of the Welfare and Institutions Code is amended to read:

15631. (a) Any other person who knows, or reasonably suspects, that an elder or a dependent adult has been the victim of abuse may report that abuse to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else.

(b) For the purposes of this section, "reasonable suspicion" means that it is objectively reasonable for a person to entertain such a suspicion, based upon facts that could cause a reasonable person in a like position, drawing when appropriate upon his or her training and experience, to suspect abuse.

SEC. 5. Section 15632 of the Welfare and Institutions Code is

amended to read:

15632. (a) Any person who enters into employment on or after January 1, 1986, as a care custodian, health practitioner, or with an adult protective services agency or a local law enforcement agency, prior to commencing his or her employment and as a prerequisite to that employment shall sign a statement on a form, which shall be provided by the prospective employer, to the effect that he or she has knowledge of the provisions of Section 15630 and will comply with its provisions. The signed statement shall be retained by the employer.

(b) Agencies or facilities that employ persons required to make reports pursuant to Section 15630, who were employed prior to January 1, 1986, shall inform those persons of their responsibility to make reports by delivering to them a copy of the statement specified in subdivision (c).

(c) The statement shall be in the following form:

California state law **REQUIRES** care custodians, health practitioners, and employees of adult protective services agencies and local law enforcement agencies to report physical abuse of elders and dependent adults.

Those professionals must report physical abuse under the following circumstances:

(1) When the reporter has observed an incident that reasonably appears to be physical abuse.

(2) When the reporter has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury, clearly indicates that physical abuse has occurred.

(3) When the reporter is told by an elder or a dependent adult that he or she has experienced behavior constituting physical abuse.

The report must be made immediately, or as soon as possible, by telephone to either the long-term care ombudsman coordinator or to a local law enforcement agency when the abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the abuse is alleged to have occurred anywhere else, and must be followed by a written report within two working days. The report must include:

(1) The name of the person making the report.

(2) The name, age, and present location of the elder or dependent adult.

(3) The names and addresses of family members or other persons responsible for the elder or dependent adult's care, if known.

(4) The nature and extent of the person's condition.

(5) Any information that led the reporter to suspect that abuse has occurred.

(6) The date of the incident.

State law also PERMITS the reporting of other types of abuse of elders and dependent adults, such as neglect, intimidation, fiduciary abuse, abandonment, or other treatment that results in physical harm, pain, or mental suffering. These reports may be made when the reporter has actual knowledge or reasonably suspects that abuse has occurred.

The law provides that care custodians, health practitioners, or employees of adult protective services agencies or local law enforcement agencies shall not incur either civil or criminal liability for any report they are required or permitted to make under this law.

However, failure to report physical abuse of an elder or dependent adult is a misdemeanor, punishable by not more than six months in the county jail or by a fine of not more than one thousand dollars (\$1,000), or by both fine and imprisonment.

Reports made under this law are confidential and may be disclosed only to the agencies specified. Violation of the confidentiality provisions is also a misdemeanor, punishable by not more than six months in the county jail, by a fine of not more than five hundred dollars (\$500), or by both fine and imprisonment.

The following is the exact text of portions of the elder and dependent adult abuse reporting law which pertain to the responsibilities of professionals who are required to report abuse of elders and dependent adults:

CONDITIONS UNDER WHICH REPORTING OF PHYSICAL ABUSE IS REQUIRED:

Welfare and Institutions Code Section 15630 (a): Any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency, who in his or her professional capacity or within the scope of his or her employment, either has observed an incident that reasonably appears to be physical abuse, has observed a physical injury where the nature of the injury, its location on the body, or the repetition of the injury clearly indicates that physical abuse has occurred, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, shall report the known or suspected instance of physical abuse either to the long-term care ombudsman coordinator or to a local law enforcement agency when the physical abuse is alleged to have occurred in a long-term care facility, or to either the county adult protective services agency or to a local law enforcement agency when the physical abuse is alleged to have occurred anywhere else, immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within two working days.

CONDITIONS UNDER WHICH REPORTING OF ABUSE IS PERMITTED:

Welfare and Institutions Code Section 15630 (b): Any care custodian, health practitioner, or employee of an adult protective services agency or local law enforcement agency who has knowledge of or reasonably suspects that other types of abuse have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report such known or suspected instance of abuse to a long-term care ombudsman coordinator when the abuse is alleged to have occurred in a long-term care facility, or to the county adult protective services agency when the abuse is alleged to have occurred anywhere else.

PROFESSIONALS WHO ARE REQUIRED TO REPORT PHYSICAL ABUSE OF ELDERS AND DEPENDENT ADULTS:

(a) Care custodians, as defined by Welfare and Institutions Code Section 15610 (h):

"Care custodian" means an administrator or an employee, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff, of any of the following public or private facilities:

- (1) Twenty-four hour health facilities, as defined in Section 1250, 1250.2, or 1250.3 of the Health and Safety Code.
- (2) Clinics.
- (3) Home health agencies.
- (4) Adult day health care centers.
- (5) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions which serve dependent adults or elders.
- (6) Sheltered workshops.
- (7) Camps.
- (8) Community care facilities, as defined in Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined by Section 1569.2 of the Health and Safety Code.
- (9) Respite care facilities.
- (10) Foster homes.
- (11) Regional centers for persons with developmental disabilities.
- (12) State Department of Social Services and State Department of Health Services licensing divisions.
- (13) County welfare departments.
- (14) Offices of patients' rights advocates.
- (15) Office of the long-term care ombudsman.
- (16) Offices of public conservators and public guardians.

(17) Any other protective or public assistance agency which provides medical services or social services to elders or dependent adults.

(b) Health practitioners, as defined by Welfare and Institutions Code Section 15610 (i):

"Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, marriage, family and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, a state or county public health employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines, or treats elder or dependent adults.

(c) Employees of adult protective services agencies, as defined by Welfare and Institutions Code Section 15610 (j):

"Adult protective services agency" means a county welfare department except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(d) Employees of local law enforcement agencies, as defined by Welfare and Institutions Code Section 15610 (q):

"Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

DEFINITION OF "ELDER":

Welfare and Institutions Code Section 15610 (a): "Elder" means any person residing in this state, 65 years of age or older.

DEFINITION OF "DEPENDENT ADULT":

Welfare and Institutions Code Section 15610 (b): "Dependent adult" means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or

her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

For purposes of this chapter, "dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility as defined by Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

DEFINITION OF "ABUSE OF AN ELDER OR A DEPENDENT ADULT":

Welfare and Institutions Code Section 15610 (g): "Abuse of an elder or a dependent adult" means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods and services which are necessary to avoid physical harm or mental suffering.

DEFINITION OF "PHYSICAL ABUSE":

Welfare and Institutions Code Section 15610 (c): "Physical abuse" means all of the following:

- (a) Assault, as defined in Section 240 of the Penal Code.
- (b) Battery, as defined in Section 242 of the Penal Code.
- (c) Assault with a deadly weapon or force likely to produce great bodily injury, as defined by Section 245 of the Penal Code.
- (d) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.
- (e) Sexual assault, which means any of the following:
 - (1) Sexual battery, as defined in Section 243.4 of the Penal Code.
 - (2) Rape, as defined in Section 261 of the Penal Code.
 - (3) Rape in concert, as described in Section 264.1 of the Penal Code.
 - (4) Incest, as defined in Section 285 of the Penal Code.
 - (5) Sodomy, as defined in Section 286 of the Penal Code.
 - (6) Oral copulation, as defined in Section 288a of the Penal Code.
 - (7) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.
- (d) The cost of printing, distribution, and filing of these statements shall be borne by the employer.
- (e) On and after January 1, 1987, when a person is issued a state license or certificate to engage in a profession or occupation the members of which are required to make a report pursuant to Section 15630, the state agency issuing the license or certificate shall send a statement substantially similar to the one contained in subdivision (c) to the person at the same time as it transmits the

document indicating licensure or certification to the person.

(f) As an alternative to the procedure required by subdivision (e), a state agency may cause the required statement to be printed on all application forms for a license or certificate printed on or after January 1, 1987.

(g) The retention of statements required by subdivision (a), and the delivery of statements required by subdivision (b) shall be the full extent of the employer's duty pursuant to this section. The failure of any employee or other person associated with the employer to report physical abuse of elders or dependent adults or otherwise meet the requirements of this chapter shall be the sole responsibility of that person. The employer or facility shall incur no civil or other liability for the failure of such persons to comply with the requirements of this chapter.

SEC. 6. Section 15633 of the Welfare and Institutions Code is amended to read:

15633. (a) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse requested by the adult protective services agency.

(b) The written reports required for the reporting procedures, as defined in this chapter, shall be submitted on forms adopted by the department after consultation with representatives of the various law enforcement agencies, professional medical and nursing agencies, hospital associations, the Department of Aging, the State Department of Developmental Services, the State Department of Education, the Bureau of Medi-Cal Fraud, and the county probation or welfare departments. These forms shall be distributed by the county adult protective services agencies and the long-term care ombudsman coordinators.

(c) Information relevant to the incident of elder or dependent adult abuse may also be given to an investigator from an adult protective services agency, a local law enforcement agency, or the Bureau of Medi-Cal Fraud who is investigating the known or suspected case of elder or dependent adult abuse.

(d) The identity of all persons who report under this chapter shall be confidential and disclosed only between adult protective services agencies, long-term care ombudsman coordinators, licensing agencies, local law enforcement agencies, or the Bureau of Medi-Cal Fraud or to counsel representing an adult protective services agency, long-term care ombudsman coordinator, licensing

agency, or a local law enforcement agency, or the Bureau of Medi-Cal Fraud to the district attorney in a criminal prosecution, or when persons reporting waive confidentiality, or by court order.

(e) Notwithstanding subdivision (a), persons who may report pursuant to Section 15631 are not required to include their names.

SEC. 7. Section 15635 of the Welfare and Institutions Code is amended to read:

15635. (a) Investigation of reports of known or suspected instances of abuse is the responsibility of the county adult protective services agency and the local law enforcement agency having jurisdiction over the case unless another public agency is given responsibility for investigation in that jurisdiction, except that the investigation of reports of abuse alleged to have occurred in a long-term care facility is the responsibility of the long-term care ombudsman coordinator and, for instances of physical and fiduciary abuse, the local law enforcement agency; but for instances of potential criminal neglect in a long-term health care facility, the long-term care ombudsman coordinator and the Bureau of Medi-Cal Fraud. The investigative responsibilities set forth in this section are in addition to, not in derogation of or in substitution for, the investigative and regulatory responsibilities of licensing agencies, such as the State Department of Social Services Community Care Licensing Division and the State Department of Health Services Licensing and Certification Division, and their authorized representatives.

(b) Each county adult protective services agency shall maintain an inventory of all public and private service agencies available to assist victims of abuse, as defined by Section 15610. This inventory shall be used to refer victims in the event that the county adult protective services agency cannot resolve the immediate needs of the victim, and to serve the victim on a long-term, followup basis. The intent of this section is to acknowledge that limited funds are available to resolve all suspected cases of abuse reported to a county adult protective services agency.

SEC. 8. The sum of one hundred fifteen thousand eight hundred dollars (\$115,800) is hereby appropriated from the General Fund to the Controller for allocation to the Bureau of Medi-Cal Fraud in the Attorney General's Office. Allocation of these funds to the Bureau of Medi-Cal Fraud shall be subject to federal financial participation and shall be allocated on a matching fund basis.

SEC. 9. The Attorney General's Office is responsible for carrying out the provisions of this act only to the extent that funds are appropriated or federal financial participation is available, or any combination thereof.

Senate Bill No. 1162

CHAPTER 1396

An act to amend Section 15610 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1162, Mello. Elder and dependent adult abuse.

Existing law requires certain care custodians, medical practitioners, employees of protective services agencies, and law enforcement agencies who have knowledge of physical abuse of elders or dependent adults to report suspected incidents of abuse to specified protective agencies.

This bill would impose a state-mandated local program by revising the definition of physical abuse for purposes of the reporting requirements, resulting in the extended application of the reporting and investigation requirements.

Under existing law, the failure of a person required to report physical abuse to make the report when that person knew or reasonably knew of the abuse is a misdemeanor.

This bill would result in a state-mandated local program by revising the scope of the application of the misdemeanor.

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 which do not exceed \$500,000 statewide and other procedures for claims whose statewide costs exceed \$500,000.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

However, the bill would provide that, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$500,000, shall be made from the State Mandates Claims Fund.

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

SECTION 1. Section 15610 of the Welfare and Institutions Code is amended to read:

15610. As used in this chapter:

(a) "Elder" means any person residing in this state, 65 years of age or older.

(b) (1) "Dependent adult" means any person residing in this state, between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age.

(2) "Dependent adult" includes any person between the ages of 18 and 64 who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(c) "Physical abuse" means all of the following:

(1) Assault, as defined in Section 240 of the Penal Code.

(2) Battery, as defined in Section 242 of the Penal Code.

(3) Assault with a deadly weapon or force likely to produce great bodily injury, as defined by Section 245 of the Penal Code.

(4) Unreasonable physical constraint, or prolonged or continual deprivation of food or water.

(5) Sexual assault, which means any of the following:

(A) Sexual battery, as defined in Section 243.4 of the Penal Code.

(B) Rape, as defined in Section 261 of the Penal Code.

(C) Rape in concert, as described in Section 264.1 of the Penal Code.

(D) Incest, as defined in Section 285 of the Penal Code.

(E) Sodomy, as defined in Section 286 of the Penal Code.

(F) Oral copulation, as defined in Section 288a of the Penal Code.

(G) Penetration of a genital or anal opening by a foreign object, as defined in Section 289 of the Penal Code.

(6) Use of a physical or chemical restraint, medication, or isolation without authorization, or for a purpose other than for which it was ordered, including, but not limited to, for staff convenience, for punishment, or for a period beyond that for which it was ordered.

(d) "Neglect" means the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care which a reasonable person in a like position would exercise. Neglect includes, but is not limited to, all of the following:

(1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter.

(2) Failure to provide medical care for physical and mental health needs. No person shall be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment by spiritual means through prayer alone in lieu of medical treatment.

(3) Failure to protect from health and safety hazards.

(4) Failure to prevent malnutrition.

(e) "Abandonment" means the desertion or willful forsaking of an elder or a dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.

(f) "Fiduciary abuse" means a situation in which any person who

has the care or custody of, or who stands in a position of trust to, an elder or a dependent adult, takes, secretes, or appropriates their money or property, to any use or purpose not in the due and lawful execution of his or her trust.

(g) "Abuse of an elder or a dependent adult" means physical abuse, neglect, intimidation, cruel punishment, fiduciary abuse, abandonment, or other treatment with resulting physical harm or pain or mental suffering, or the deprivation by a care custodian of goods or services which are necessary to avoid physical harm or mental suffering.

(h) "Care custodian" means an administrator or an employee, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff, of any of the following public or private facilities when the facilities provide care for elders or dependent adults:

(1) Twenty-four-hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(2) Clinics.

(3) Home health agencies.

(4) Adult day health care centers.

(5) Secondary schools which serve 18- to 22-year-old dependent adults and postsecondary educational institutions which serve dependent adults or elders.

(6) Sheltered workshops.

(7) Camps.

(8) Community care facilities, as defined by Section 1502 of the Health and Safety Code and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(9) Respite care facilities.

(10) Foster homes.

(11) Regional centers for persons with developmental disabilities.

(12) State Department of Social Services and State Department of Health Services licensing divisions.

(13) County welfare departments.

(14) Offices of patients' rights advocates.

(15) Office of the long-term care ombudsman.

(16) Offices of public conservators and public guardians.

(17) Any other protective or public assistance agency which provides health services or social services to elders or dependent adults.

(i) "Health practitioner" means a physician and surgeon, psychiatrist, psychologist, dentist, resident, intern, podiatrist, chiropractor, licensed nurse, dental hygienist, licensed clinical social worker, marriage, family, and child counselor, or any other person who is currently licensed under Division 2 (commencing with Section 500) of the Business and Professions Code, any emergency medical technician I or II, paramedic, a person certified pursuant to

Division 2.5 (commencing with Section 1797) of the Health and Safety Code, a psychological assistant registered pursuant to Section 2913 of the Business and Professions Code, a marriage, family and child counselor trainee, as defined in subdivision (c) of Section 4980.03 of the Business and Professions Code, or an unlicensed marriage, family and child counselor intern registered under Section 4980.44 of the Business and Professions Code, state or county public health or social service employee who treats an elder or a dependent adult for any condition, a coroner, or a religious practitioner who diagnoses, examines or treats elders or dependent adults.

(j) "Adult protective services agency" means a county welfare department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

(k) "Adult protective services" means those preventive and remedial activities performed on behalf of elders and dependent adults who are unable to protect their own interests; harmed or threatened with harm; caused physical or mental injury due to the action or inaction of another person or their own action due to ignorance, illiteracy, incompetence, mental limitation or poor health; lacking in adequate food, shelter, or clothing; exploited of their income and resources; or deprived of entitlement due them.

(l) "Goods and services which are necessary to avoid physical harm or mental suffering" include, but are not limited to, all of the following:

(1) The provision of medical care for physical and mental health needs.

(2) Assistance in personal hygiene.

(3) Possessing adequate clothing.

(4) Adequately heated and ventilated shelter.

(5) Protection from health and safety hazards.

(6) Protection from malnutrition, under those circumstances where the results include, but are not limited to, malnutrition and deprivation of necessities or physical punishment.

(7) Transportation and assistance necessary to secure any of the needs set forth in paragraphs (1) to (6) above.

(m) "Investigation" means that activity necessary to determine the validity of a report of elder or dependent adult abuse, neglect, or abandonment.

(n) "Long-term care ombudsman" means the State Long-Term Care Ombudsman, long-term care ombudsmen of the Department of Aging, and persons acting in the capacity of ombudsman coordinators as described in Chapter 9 (commencing with Section 9700) of Division 8.5.

(o) "Developmentally disabled person" means a person with a developmental disability specified by or as described in subdivision (a) of Section 4512.

(p) "Mental suffering" means deliberately subjecting a person to

fear, agitation, confusion, severe depression, or other forms of serious emotional distress, through threats, harassment, or other forms of intimidating behavior.

(q) "Patient's rights advocate" means a person who has no direct or indirect clinical or administrative responsibility for the patient, and who shall be responsible for ensuring that laws, regulations, and policies on the rights of the patient are observed.

(r) "Local law enforcement agency" means a city police or county sheriff's department, or a county probation department, except persons who do not work directly with elders or dependent adults as part of their official duties, including members of support staff and maintenance staff.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for those costs which may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other 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 five hundred thousand dollars (\$500,000), reimbursement shall be made from the State Mandates Claims Fund.