

CALIFORNIA DEPARTMENT OF
Mental Health
1600 9th Street, Sacramento, CA 95814
(916) 654-3551

March 12, 1999

DMH LETTER NO.: 99-02

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, MENTAL HEALTH ADVISORY BOARDS

SUBJECT: CONFIDENTIALITY OF CLIENT INFORMATION

REFERENCE: Senate Bill 2098, Chapter 738, Statutes of 1998

This letter is to advise you of the passage of Senate Bill 2098 and to remind you of the additional confidentiality requirements and penalties this law imposes. The changes allow counties to report personal identifiers to the Department of Mental Health (DMH) and allow DMH to share information across counties. To offset the risks involved in the collection and sharing of this confidential information, the bill also increased the security requirements and the penalties for willful and negligent disclosure of confidential information. A copy of the bill is enclosed for your information. Following are the highlights of the changes to the Welfare and Institutions Code (WIC):

WIC Section 5330 relates to the protection of confidential information. This section has three significant changes.

- Subsection (a) increases the penalty for willful disclosure of confidential information from \$500 to \$10,000 or three times the amount of damages. The latter portion of this is unchanged from the prior law.
- Subsection (b) adds a new penalty for negligent disclosure of confidential information in the amount for \$1000 or actual damages.
- Subsection (c) adds a new clause to allow the plaintiff to recover court costs and attorney fees.

WIC Section 5610 relates to the collection and sharing of data between county mental health programs and DMH. This section has three significant changes within subsection (d).

- Subsection (d)(3) allows counties to report personal identifiers to DMH.
- Subsection (d)(4) requires personal identifiers reported to DMH to be encrypted during transmission and storage.
- Subsection (d)(5) allows DMH to share client data across counties when the person is being seen in both counties.

These changes, which were initiated to allow for consolidation of several DMH data systems, also allow for increased sharing of information for improved treatment planning and services. However, the increased penalties, which were added to protect the confidentiality of information in large data systems at the state level, also apply to confidential data at the county level. Please ensure that all of your staff are aware of these changes and their potential liability.

State DMH staff in Information Technology and county staff has been using encryption and other technologies for several years to transmit data between the counties and state. Staff will continue to work together to ensure the implementation of similar methods for all confidential data that is transmitted.

Please contact Kathy Styc, Chief of Statistics and Data Analysis, at (916) 327-9320 if you have any questions about the legislation. Please contact Gary Renslo, Manager of County Services in Information Technology, at (916) 653-3882 on any questions regarding the transmission of the data.

Sincerely,

JIM HIGGINS

For

GARY M. PETTIGREW

Deputy Director

Systems of Care

Senate Bill No. 2098

CHAPTER 738

An act to amend Sections 5330 and 5610 of the Welfare and Institutions Code, relating to mental health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed
with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2098, C. Wright. Mental health: Lanterman-Petris-Short Act: reporting requirements.

Existing law permits a person to bring an action for damages for violation of various provisions of the Lanterman-Petris-Short Act regarding the willful and knowing release of confidential information for the greater of \$500 or triple the actual damages sustained.

This bill would increase that limit to the greater of \$10,000 or triple the actual damages sustained. The bill would also authorize an action for the negligent release of confidential information for both \$1,000, in which case actual damages are not a prerequisite, and the actual damages sustained.

Under the Lanterman-Petris-Short Act, each county mental health system is required to comply with specified reporting requirements developed by the State Department of Mental Health.

This bill would impose a state-mandated local program by permitting the State Department of Mental Health to require the county to report the names and other personal identifiers of clients, which would be required to be treated as confidential information.

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.

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

The bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 5330 of the Welfare and Institutions Code is amended to read:

(a) Any person may bring an action against an individual who has willfully and knowingly released confidential information or records concerning him or her in violation of this chapter, or of

Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety Code, for the greater of the following amounts:

(1) Ten thousand dollars (\$10,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff.

(b) Any person may bring an action against an individual who has negligently released confidential information or records concerning him or her in violation of this chapter, or of Chapter 1 (commencing with Section 11860) of Part 3 of Division 10.5 of the Health and Safety

Code, for both of the following:

(1) One thousand dollars (\$1,000). In order to recover under this paragraph, it shall not be a prerequisite that the plaintiff suffer or be threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the plaintiff.

(c) Any person may, in accordance with Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin the release of confidential information or records in violation of this chapter, and may in the same action seek damages as provided in this section.

(d) In addition to the amounts specified in subdivisions (a) and (b), the plaintiff shall recover court costs and reasonable attorney's fees as determined by the court. SEC. 2. Section 5610 of the Welfare and Institutions Code is amended to read:

5610. (a) Each county mental health system shall comply with reporting requirements developed by the State Department of Mental Health which shall be uniform and simplified. The department shall review existing data requirements to eliminate unnecessary requirements and consolidate requirements which are necessary. These requirements shall provide comparability between counties in reports.

(b) The department shall develop, in consultation with the Performance Outcome Committee pursuant to Section 5611, and with the Health and Welfare Agency, uniform definitions and formats for a statewide, nonduplicative client-based information system that includes all information necessary to meet federal mental health grant requirements and state and federal medicaid reporting requirements, as well as any other state requirements established by law. The data system, including performance outcome measures

reported pursuant to Section 5613, shall be developed by July 1, 1992.

(c) Unless determined necessary by the department to comply with federal law and regulations, the data system developed pursuant to subdivision (b) shall not be more costly than that in place during the 1990-91 fiscal year.

(d) (1) The department shall develop unique client identifiers that permit development of client-specific cost and outcome measures and related research and analysis.

(2) The department's collection and use of client information, and the development and use of client identifiers, shall be consistent with clients' constitutional and statutory rights to privacy and confidentiality.

(3) Data reported to the department may include name and other personal identifiers. That information is confidential and subject to Section 5328 and any other state and federal laws regarding confidential client information.

(4) Personal client identifiers reported to the department shall be protected to ensure confidentiality during transmission and storage through encryption and other appropriate means.

(5) Information reported to the department may be shared with local public mental health agencies submitting records for the same person and that information is subject to Section 5328.

(e) All client information reported to the department pursuant to Chapter 2 (commencing with Section 4030) of Part 1 of Division 4 and Sections 5328 to 5780, inclusive, and any other state and federal laws regarding reporting requirements, consistent with Section 5328, shall not be used for purposes other than those purposes expressly stated in the reporting requirements referred to in this subdivision.

(f) The department may adopt emergency regulations to implement this section in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this section that are filed with the Office of Administrative Law within one year of the date on which the act that added this subdivision took effect shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare and shall remain in effect for no more than 180 days.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act provides for offsetting savings to local agencies or school districts that result in no net costs to the local agencies or school districts, within the meaning of Section 17556 of the Government Code.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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In order to timely implement the provisions of this act with regard to the new data collection system that is to be in place by July 1, 1998, and also to avoid dual data collection systems and unnecessary costs, it is necessary that this act take effect immediately.