STATE OF CALIFORNIA—HEALTH AND WELFARE AGENCY

DEPARTMENT OF SOCIAL SERVICES

744 P Street Sacramento, CA 95814

December 26, 1986

ALL-COUNTY LETTER NO. 86-136

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: ELDER AND DEPENDENT ADULT ABUSE REPORTING

AB 3988

Assembly Bill (AB) 3988 (Chapter 769, Statutes of 1986) was signed into law by the Governor on September 14, 1986. This legislation consolidates and clarifies the elder and dependent adult abuse reporting laws, requirements, and definitions. The bill repeals the provisions of Senate Bill (SB) 1210 (Chapter 1273, Statutes of 1983) on Elder Abuse Reporting, and amends sections of AB 238 (Chapter 1164, Statutes of 1985) on Dependent Adult Abuse Reporting. The bill contains an urgency clause and was therefore effective immediately except that a 60 day "grace" period was allowed in meeting its requirements.

Under this bill, the mandated reporting of physical abuse of elders and dependent adults continues to be required for care custodians, health practitioners, and employees of county adult protective services (APS) agencies or local law enforcement agencies, except that the bill specifically exempts from mandated reporting, persons who do not work directly with elders or dependent adults as part of their official duties (including support and maintenance staff). Reporting of other types of abuse continues to be permissive for both mandated and non-mandated reporters.

A significant change in the bill is the required reporting of elder and dependent adult abuse to the local long-term care (LTC) ombudsman coordinator or a local law enforcement agency when the abuse occurs in an LTC facility. County APS agencies are to accept all reports of abuse which occur outside of an LTC facility. The LTC ombudsman or local law enforcement agency is responsible for investigations of suspected elder and dependent

adult abuse which occurs in LTC facilities; county APS agencies remain responsible for the investigation when the abuse occurs anywhere else. Nothing precludes the LTC ombudsman from reporting an instance of abuse to the county APS agency or from making a request for assistance in the investigation if the victim consents (Welfare and Institutions Code (W&IC) Sections 15630(a)(g) and 15635(a)).

LTC ombudsman coordinators will submit information on reports of abuse in LTC facilities to county APS agencies on a monthly basis. The data will be reported on a form (SOC 340 A) developed by the State Department of Social Services (SDSS). Local ombudsman coordinators will also be submitting their reports to the California Department of Aging (CDA). CDA will prepare and submit quarterly summaries of these reports to SDSS.

The provisions of AB 3988 necessitate revisions to the current abuse reporting forms SOC 341 (Report of Suspected Dependent Adult/Elder Abuse) and SOC 340 (Elder Abuse/Dependent Adult Abuse, Monthly Statistical Report). The Department, with input from the Policy Sub-Committee of the Adult Services Committee of the County Welfare Directors' Association, has completed a draft revision of these reporting forms. The Department will send a draft of the revised form SOC 341 to CDA and other state departments, various medical associations and law enforcement agencies for review and comment. Existing forms are to be used pending completion and issuance of the new forms.

In addition to the earlier mentioned changes, other major changes under the bill include:

1. Circumstances under which a mandated reporter is required to report suspected physical abuse have been revised (see W&IC 15630(a) for specific language).

2. "Physical abuse" as defined under the former dependent adult abuse reporting law is the definition now used for both elders and dependent adults (W&IC 15610(c)).

3. "Dependent adult" now also includes any person (18-64) who is admitted as an inpatient to a 24-hour health facility (W & IC 15610 (b)(2)).

4. Cross-reporting to law enforcement: only a written report is now required to be sent within 36 hours in cases of abuse other than physical abuse, while an immediate telephone report is required as well for physical abuse (W&IC 15630(e)).

5. Confidentiality: licensing agencies (for community care facilities and health facilities) have been added to those agencies entitled to receive abuse report information (W&IC 15633(d), 15633.5(b)(1)).

6. Employee-signed statement of compliance with the reporting law: only specified persons entering employment after January 1, 1986 need sign a statement; persons employed prior to the above date are to be informed of their reporting responsibility and given a copy of a statement as specified (W&IC all of 15632).

7. After January 1, 1987, state licensing agencies for occupations mandated to report are required to provide a statement of reporting responsibilities as specified when a person is issued a license (W&IC 15632(e)).

8. Section 368 of the Penal Code is amended to provide penalties for persons who cause or permit suffering or inflict unjustifiable physical pain or mental suffering on an elder or dependent adult or who violate laws of theft and/or embezzlement against such persons. Persons having care or custody of any elder or dependent adult and who willfully cause or permit their health to be injured or endangered are also subject to penalties.

9. W&IC Section 15602 which extended the dependent adult abuse reporting law to January 1, 1990, is repealed.

SDSS will notify other affected State departments of the revisions in the reporting of elder and dependent adult abuse as a result of AB 3988.

Meanwhile, the Department recommends that County Welfare Departments advise local organizations which have a need to be notified of adult abuse reporting requirements of the major changes in the reporting law. We especially urge counties to establish working agreements with local law enforcement agencies.

SB 1819

Additional legislation, SB 1819 (Chapter 1374, Statutes of 1986) which is effective January 1, 1987, requires counties to immediately report elder or dependent adult physical abuse or

neglect to the appropriate licensing agency if such abuse is committed by a health practitioner licensed under certain sections of the Business and Professions Code (W&IC 15630(e)(2)). SDSS is preparing a list of specified health practitioners and names and addresses of appropriate licensing boards. This list will be sent to the counties as an attachment to the Minimum Guidelines for Adult Abuse Investigation.

We have attached copies of AB 3988 and SB 1819 and a revised list of mandated reporters for your information and reference. If you have any questions, please contact Ms. Lucille Toscano, Adult Services Bureau, at (916) 323-6340.

LOREN D. SUTER
Deputy Director
Adult and Family Services

Attachments

cc: CWDA

ATTACHMENT 1

MANDATED REPORTERS OF PHYSICAL ABUSE OF ELDERS AND DEPENDENT ADULTS

(AB 3988)

ANY ELDER OR DEPENDENT ADULT CARE CUSTODIAN, HEALTH PRACTITIONER, OR EMPLOYEE OF A COUNTY ADULT PROTECTIVE SERVICES AGENCY* OR A LOCAL LAW ENFORCEMENT AGENCY.

"Care Custodian" is defined as an administrator or an employee except persons who do not work directly with elders and dependent adults as part of their official duties including support and maintenance staff of any of the following public or private facilities when the facilities provide care for elders or dependent adults:

- 24-hour Health facilities (as defined in Health and Safety Code Sections 1250, 1250.2 and 1250.3)
- Clinics
- Home health agencies
- Adult day health care centers
- Sheltered workshops
- Camps
- Respite care facilities
- Residential care facilities for the elderly (Health and Safety Code Section 1569.2)
- Community care facilities including foster homes (Health and Safety Code Section 1502)
- Regional center for persons with developmental disabilities
- State Departments of Social Services and Health Services licensing divisions
- County welfare departments
- Patient's rights advocate offices
- Office of the long-term care ombudsman
- Offices of public conservators and public guardians
- Secondary schools serving 18 to 22 year old dependent adults and postsecondary educational institutions serving dependent adults or elders.
- Any other protective or public assistance agency which provides health or social services to elders or dependent adults.

(WIC Section 15610(h), AB 3988

*"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 support and maintenance staff. (WIC Section 15610(j), AB 3988)

"Health Practitioner" means:

Physician and surgeon
Psychologist
Intern
Resident
Chiropractor
Dental hygienist
Licensed clinical social worker
Psychiatrist
Dentist
Podiatrist
Licensed nurse
Paramedic

A marriage, family and child counselor trainee or unlicensed intern as defined in subdivision (c) of Section 4980.03 and Section 4980.44, respectively, of the Business and Professions Code.

Marriage, family, and child counselor or any other person licensed under Division 2 (commencing with Section 500) of the Business and Professions Code
Any emergency medical technician I or II
A person certified pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code
State or county public health or social service employee who treats an elder or dependent adult for any condition
Coroner
Religious practitioner who diagnoses, examines or treats elders or dependent adults.

(WIC Section 15610(i), AB 3988)

Assembly Bill No. 3988

CHAPTER 769

An act to amend Section 972 of the Evidence Code, to amend Section 368 of the Penal Code, and to amend Sections 15600, 15601, 15610, 15620, 15630, 15631, 15632, 15633, 15633.5, 15634, 15635, 15640, and the heading of Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of, to add Section 15650 to, to repeal Sections 15602 and 15621 of, and to repeal Chapter 4.5 (commencing with Section 9380) of Division 8.5 of, the Welfare and Institutions Code, relating to the abuse of adults, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 1986. Filed with Secretary of State September 15, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3988, Papan. Elder and dependent adult abuse.

Existing law provides a married person a privilege not to testify against his or her spouse in any proceeding and a privilege not to disclose a confidential communication while the person and his or her spouse were married, with certain exceptions, including a criminal proceeding in which one spouse is charged with a crime against the person or property of the other spouse or of a child of either.

This bill would make the privilege inapplicable in criminal proceedings in which one spouse is charged with a crime against the person or property of the other spouse or of a child, parent, relative, or cohabitant of either.

Existing law specified that it is a crime to inflict unjustifiable physical pain or mental suffering on a dependent adult, as defined, or for a person having the custody and control of a dependent adult to thieve or to embezzle the property of that dependent adult.

This bill would impose a state-mandated local program by including elders within the scope of that crime, and by revising the definition of dependent adult, thereby changing the applicability and definition of a crime.

Existing law contains provisions requiring certain care custodians, medical practitioners, and employees of elder protective agencies who have knowledge of abuse of elders to report suspected incidents of abuse to an elder protective agency, and contains, until January 1, 1990, similar provisions for reporting suspected incidents of abuse of dependent adults to county adult protective services agency or a local law enforcement agency.

This bill would repeal specified provisions relating to elder abuse reporting and revise the dependent adult program by deleting the language mandating its repeal on January 1, 1990, and by establishing

a combined program establishing reporting requirements for both elders, as defined, and dependent adults, and would make technical changes to conform to the combined program.

The bill would impose a state-mandated local program by imposing, on a permanent basis, misdemeanor penalties upon any person who fails to report an instance of dependent adult abuse and by deleting the repeal of dependent adult abuse provisions, by imposing those reporting requirements on the local public conservator and public guardian.

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 reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $500,000, shall be payable from the State Mandates Claims Fund.

This 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 972 of the Evidence Code is amended to read:

972. A married person does not have a privilege under this article in:

(a) A proceeding brought by or on behalf of one spouse against the other spouse.

(b) A proceeding to commit or otherwise place his or her spouse or his or her spouse's property, or both, under the control of another because of the spouse's alleged mental or physical condition.

(c) A proceeding brought by or on behalf of a spouse to establish his or her competence.

(d) A proceeding under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(e) A criminal proceeding in which one spouse is charged with:

(1) A crime against the person or property of the other spouse or of a child, parent, relative, or cohabitant of either, whether committed before or during marriage.

(2) A crime against the person or property of a third person committed in the course of committing a crime against the person or property of the other spouse, whether committed before or during marriage.

(3) Bigamy.

(4) A crime defined by Section 270 or 270a of the Penal Code.

(f) A proceeding resulting from a criminal act which occurred prior to legal marriage of the spouses to each other regarding knowledge acquired prior to such marriage if prior to the legal marriage the witness spouse was aware that his or her spouse had been arrested for or had been formally charged with the crime or crimes about which the spouse is called to testify.

SEC. 1.2. Section 368 of the Penal Code is amended to read:

368. (a) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(c) Any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft or embezzlement, with respect to the property of that elder or dependent adult, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years when the money, labor, or real or personal property taken is of a value exceeding four hundred dollars ($400), and by fine not exceeding one thousand dollars ($1,000) or by imprisonment in the county jail not exceeding one year, or both, when the money, labor, or real or personal property taken is of a value not exceeding four hundred dollars ($400).

(d) As used in this section, "elder" means any person who is 65 years of age or older.

(e) As used in this section, "dependent adult" means any person who is 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. "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.

(f) As used in this section, "caretaker" means any person who has the care, custody, or control of, or who stands in a position of trust with, an elder or a dependent adult.

SEC. 1.3. Chapter 4.5 (commencing with Section 9380) of Division 8.5 of the Welfare and Institutions Code is repealed.

SEC. 2. The heading of Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code is amended to read:

CHAPTER 11. ABUSE OF THE ELDERLY AND DEPENDENT ADULTS

SEC. 3. Section 15600 of the Welfare and Institutions Code is amended to read:

15600. (a) The Legislature recognizes that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect such persons.

(b) The Legislature further recognizes that a significant number of these persons are elderly. The Legislature desires to direct special attention to the needs and problems of the elderly, recognizing that these persons constitute a significant and identifiable segment of the population and that they are more subject to risks of abuse, neglect, and abandonment.

(c) The Legislature further recognizes that a significant number of these persons have developmental disabilities and that mental and verbal limitations often leave them vulnerable to abuse and incapable of asking for help and protection.

(d) The Legislature recognizes that most elders and dependent adults who are at the greatest risk of abuse, neglect, or abandonment by their family or caretakers suffer physical impairments and other poor health that place them in a dependent and vulnerable position.

(e) The Legislature further recognizes that factors which contribute to abuse, neglect, or abandonment of elders and dependent adults are economic instability of the family, resentment of caretaker responsibilities, stress on the caretaker, and abuse by the caretaker of drugs or alcohol.

(f) The Legislature declares that this state shall foster and promote community services for the economic, social, and personal well-being of its citizens in order to protect those persons described in this section.

(g) The Legislature further declares that uniform state guidelines which specify when county adult protective service agencies are to investigate allegations of abuse to elders and dependent adults and the appropriate role of local law enforcement do not currently exist and the implementation of these guidelines is necessary in order to

ensure that a minimum level of protection is provided to elders and dependent adults in each county.

(h) Therefore, it is the intent of the Legislature in enacting this chapter to provide that adult protective services agencies, long-term care ombudsman coordinators, and local law enforcement agencies shall receive referrals or complaints from public or private agencies, from any mandated reporter submitting reports pursuant to Section 15630, or from any other source having reasonable cause to know that the welfare of an elder or dependent adult is endangered, and shall take such actions as are considered necessary to protect the elder or dependent adult and correct the situation and ensure the individual's safety.

SEC. 4. Section 15601 of the Welfare and Institutions Code is amended to read:

15601. The purposes of this act are to:

(a) Encourage health care providers, social service workers, and community members in general to report suspected cases of abuse of elders and dependent adults.

(b) Collect information on the numbers of abuse victims, circumstances surrounding the act of abuse, and other data which will aid the state in establishing adequate services to aid all victims of abuse in a timely, compassionate manner.

(c) Provide for protection under the law for all those persons who report suspected cases of abuse, provided that the report is not made with malicious intent.

SEC. 5. Section 15602 of the Welfare and Institutions Code is repealed.

SEC. 6. 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.

(d) (1) "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 foresaking 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. 7. Section 15620 of the Welfare and Institutions Code, as amended by Chapter 25 of the Statutes of 1986, is amended to read:

15620. The State Department of Social Services, in consultation with the State Department of Developmental Services, the Department of Aging, the Department of Justice, and county adult protective services agencies shall design the report form for elder and dependent adult abuse. The county adult protective services

agencies shall submit reports to the department on elder and dependent adult abuse monthly.

SEC. 8. Section 15621 of the Welfare and Institutions Code is repealed.

SEC. 9. 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 36 hours.

(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 such known or suspected instance of abuse either to a 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.

(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 may 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 the provisions of this chapter.

(e) 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 36 hours 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 36 hours, 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.

(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 36 hours 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.

(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 such 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).

SEC. 10. 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 either to a 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.

(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. 11. 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 statements 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 36 hours. 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 dependment 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 36 hours.

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 either to a 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.

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 offical 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. 12. 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, 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 or a local law enforcement agency 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, or local law enforcement agencies, or to counsel representing an adult protective services agency, long-term care ombudsman coordinator, licensing agency, or a local law enforcement agency, 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. 13. Section 15633.5 of the Welfare and Institutions Code is amended to read:

15633.5. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of the identity of the reporting party is permitted under Section 15633.

(2) Persons or agencies to whom disclosure of information is permitted under subdivision (b) of Section 15635.

(3) Persons or agencies with whom investigations of abuse of elder and dependent adults are coordinated under regulations promulgated under Section 15640.

(c) This section shall not be interpreted to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.

SEC. 14. Section 15634 of the Welfare and Institutions Code is amended to read:

15634. (a) No care custodian, health practitioner or employee of an adult protective service agency or a local law enforcement agency who reports a known or suspected instance of elder or dependent adult abuse shall be civilly or criminally liable for any report required or authorized by this article. Any other person reporting a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of any report authorized by this article, unless it can be proven that a false report was made and the person knew that the report was false. No person required to make a report pursuant to this article, or any person taking photographs at his or her discretion, shall incur any civil or criminal liability for taking photographs of a suspected victim of elder or dependent adult abuse or causing photographs to be taken of such a suspected victim or for disseminating the photographs with the reports required by this article. However, the provisions of this section shall not be construed to grant immunity from this liability with respect to any other use of the photographs.

(b) Any care custodian, health practitioner, or employee of an adult protective services agency or a local law enforcement agency who, pursuant to a request from an adult protective services agency or a local law enforcement agency, provides the requesting agency with access to the victim of a known or suspected instance of elder or dependent adult abuse shall not incur civil or criminal liability as a result of providing that access.

(c) The Legislature finds that, even though it has provided immunity from liability to persons required to report elder or dependent adult abuse, that immunity does not eliminate the possibility that actions may be brought against those persons based upon required reports of abuse. In order to further limit the financial hardship that those persons may incur as a result of fulfilling their legal responsibilities, it is necessary that they not be unfairly burdened by legal fees incurred in defending those actions. Therefore, a care custodian, health practitioner, or an employee of an adult protective services agency or a local law enforcement agency may present a claim to the State Board of Control for reasonable attorneys' fees incurred in any action against that person on the basis of making a report required or authorized by this article if the court has dismissed the action upon a demurrer or motion for summary judgment made by that person, or if he or she prevails in the action. The State Board of Control shall allow that claim if the requirements of this subdivision are met, and the claim shall be paid from an appropriation to be made for that purpose. Attorneys' fees awarded pursuant to this section shall not exceed an hourly rate greater than the rate charged by the Attorney General at the time the award is made and shall not exceed an aggregate amount of fifty thousand dollars ($50,000). This subdivision shall not apply if a public

entity has provided for the defense of the action pursuant to Section 995 of the Government Code.

(d) Any person who fails to report an instance of elder or dependent adult abuse which he or she knows to exist or reasonably should know to exist, as required by this article, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, by a fine of not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.

SEC. 15. Section 15635 of the Welfare and Institutions Code is amended to read:

15635. (a) Investigation of reports of known or suspected instances of abuse are 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 the local law enforcement agency.

(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. 16. Section 15640 of the Welfare and Institutions Code is amended to read:

15640. (a) The department, in cooperation with representatives of county government, and in consultation with the State Department of Education, the State Department of Developmental Services, the Department of Aging, and the Department of Justice, shall establish minimum guidelines for determining when an investigation of an allegation of abuse of an elder or a dependent adult is warranted. The department shall report to the Joint Legislative Budget Committee by January 1, 1988, on the fiscal and programmatic impact of these guidelines on county adult protective service agencies.

(b) The Department of Justice, in consultation with the department, the Department of Aging, the State Department of Education, the State Department of Developmental Services, and representatives of local law enforcement and county adult protective service agencies shall develop uniform guidelines for local law enforcement assistance with investigations of allegations of abuse to elders and dependent adults conducted by county adult protective service agencies. Consistent with these guidelines, county adult protective service agencies may seek local law enforcement

assistance with investigations of allegations of abuse to elders and dependent adults. The Department of Justice shall report to the Joint Legislative Budget Committee by January 1, 1988, on the fiscal and programmatic impact of these guidelines on local law enforcement agencies.

SEC. 17. Section 15650 is added to the Welfare and Institutions Code, to read:

15650. (a) An elder or dependent adult abuse victim may refuse or withdraw consent at any time to an investigation or the provision of protective services by an adult protective services agency or long-term care ombudsman coordinator. The adult protective services agency shall act only with the consent of the victim unless a violation of the Penal Code has been alleged. The long-term ombudsman shall act only with the consent of the victim and disclose confidential information only after consent to disclose is given by the victim or pursuant to court order.

(b) If the elder or dependent adult abuse victim is so incapacitated that he or she cannot legally give or deny consent to protective services, a petition for temporary conservatorship or guardianship may be initiated in accordance with Section 2250 of the Probate Code.

SEC. 18. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

SEC. 19. Notwithstanding any other provision of law, no person or entity shall incur any civil or criminal liability for any act or omission in connection with the requirements of this chapter prior to 60 days after the effective date of this act.

SEC. 20. 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:

In order to reduce unnecessary duplication of effort on the part of agencies in the implementation of provisions affected by this act, it is necessary that this act go into effect immediately.

O

Senate Bill No. 1819

CHAPTER 1374

An act to amend Section 15630 of the Welfare and Institutions Code, relating to elder abuse.

[Approved by Governor September 29, 1986. Filed with Secretary of State September 30, 1986.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1819, McCorquodale. Elder abuse reporting.

Existing law requires an adult protective services agency to report by telephone, to the appropriate law enforcement agency, and the appropriate public agency, known or suspected instances of dependent adult abuse.

This bill would impose a state-mandated local program by requiring a local law enforcement agency, as well as an adult protective services agency, if it determines pursuant to its investigation that elder or dependent adult abuse is being committed by a licensed health care practitioner, to report this information to the appropriate licensing agency. It would provide that the reported information shall remain confidential and shall not be disclosed.

This bill would also require the State Department of Social Services to develop a statewide report form for the transmittal of this information from local welfare departments to the appropriate licensing agency.

This bill would incorporate additional changes in Section 15630 of the Welfare and Institutions Code, proposed by AB 3988, to be operative only if AB 3988 and this bill are both chaptered and become effective on or before January 1, 1987, and this bill is chaptered last.

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 reimbursement for costs mandated by the bill shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $500,000, shall be payable from the State Mandates Claims Fund.

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

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any 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 actual knowledge that a dependent adult has been the victim of physical abuse, or observes a physical injury to a dependent adult under circumstances that are consistent with physical abuse, where the dependent adult's statements, or in the case of persons who have developmental disabilities, their statements or other corroborating evidence, indicate that abuse has occurred, shall report the known or suspected instance of physical abuse to the county adult protective services agency, or a local law enforcement agency immediately or as soon as possible by telephone, and shall prepare and send a written report thereof within 36 hours.

(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 dependent abuse have been inflicted upon a 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 an adult protective services agency or local 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 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 may 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 and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with the provisions of 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 dependent adult abuse, every known or suspected instance of dependent adult abuse. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to each agency to which it is required to make a telephone report under this subdivision.

(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 care 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. The State Department of Social Services shall develop a statewide report form for the transmittal of this information from local welfare departments to the appropriate licensing agency.

(3) A law enforcement agency shall immediately or as soon as practically possible report by telephone to the county welfare department and the agency given responsibility for the investigation of cases of dependent adult abuse every known or suspected instance of abuse of a dependent adult. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

SEC. 1.5. 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 36 hours.

(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 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 either to a 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.

(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 may 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 the provisions of 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 36 hours 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 36 hours, 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 36 hours 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.

(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 such 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).

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 15630 of the Welfare and Institutions Code proposed by both this bill and AB 3988. It shall become operative only if (1) both bills are enacted and become effective on or before January 1, 1987, (2) each bill amends Section 15630 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 3988, in which case Section 15630 of the Welfare and Institutions Code, as amended by AB 3988, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative.

SEC. 3. Reimbursement to local agencies and school districts for costs mandated by the state pursuant to this act shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code and, if the statewide cost of the claim for reimbursement does not exceed five hundred thousand dollars ($500,000), shall be made from the State Mandates Claims Fund.

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