

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 19, 2001

ALL-COUNTY INFORMATION NOTICE NO: I-87-01

TO: ALL-COUNTY WELFARE DIRECTORS:
ADULT PROTECTIVE SERVICES
PROGRAM MANAGERS**REASON FOR THIS TRANSMITTAL**

- State Law Change
- Federal Law or Regulation Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

This All-County Information Notice provides general information about confidentiality and elder death review teams. Chapter 301, Statutes of 2001 (Senate Bill [SB] 333, Escutia) added Article 2.7 (commencing with Section 11174.4) to Chapter 2, of Title 1 of Part 4 of the Penal Code, relating to seniors. This bill allows counties to establish elder death review teams (the bill does not include the dependent adult population), and makes suggestions for the composition of those teams. It also allows for a variety of normally confidential or privileged Adult Protective Services (APS) information and communications to be shared within and among members of the elder death review team. Formation of an elder death review team and all sharing of information permitted under this act are voluntary.

What follows is a summary of the requirements for the establishment of elder death review teams and of the procedures for the sharing and/or disclosure of information by those teams. The complete requirements may be found in Penal Code Sections 11174.4-11174.9 inclusive.

CONDITIONS FOR ESTABLISHMENT OF ELDER DEATH REVIEW TEAMS

Counties are permitted, but not required, to establish an interagency elder death review team to assist local agencies in identifying and reviewing suspicious elder deaths. Counties may, but are not required to, establish a protocol that may be used to assist persons performing autopsies on elder adults in the identification of abuse that may have caused or contributed to the individual's death.

COMPOSITION OF ELDER DEATH REVIEW TEAMS

County elder death review teams may be composed of, but not limited to, the following:

- Experts in the field of forensic pathology;
- Medical personnel with expertise in elder abuse and neglect;
- Coroners and medical examiners;
- District attorneys and city attorneys;
- APS staff;
- Public administrator, guardian, and conservator staff;
- County health department staff who deal with elder health issues;
- County counsel;
- County and state law enforcement personnel;
- Local long-term care ombudsman;
- Community care licensing staff and investigators;
- Geriatric mental health experts;
- Criminologists;
- Representatives of local agencies that are involved with oversight of APS and reporting elder abuse or neglect;
- Local professional associations of all the persons described above.

SHARING INFORMATION UNDER THE PROVISIONS OF SB 333

Under the provisions implemented in SB 333, any oral or written communication or any document shared within or produced by an elder death review team that is related to an elder death review is confidential, and not subject to disclosure to a third party. Any oral or written communication or any document provided by a third party to an elder death review team, or between a third party and an elder death review team, is confidential and is not subject to disclosure or discoverable by a third party. Notwithstanding these confidentiality provisions, recommendations of an elder death review team upon completion of the review may be disclosed at the discretion of the majority of members of that team.

Each organization represented on an elder death review team may share with other members of the team information in its possession concerning the decedent who is the subject of the review or any person who was in contact with the decedent, and any other information which the organization considers relevant to the review. Any information shared by an organization with other members of the team is confidential. The intent of this subdivision is to permit the disclosure to members of the team information deemed confidential, privileged, or prohibited from disclosure by any other provision of law.

Written and oral information may be disclosed to an elder death review team established pursuant to this law. The team may make a written request for information, and any person with that information may rely on the request when determining whether information may be disclosed to the team. Such disclosure of information is entirely voluntary. The intent of this portion of the law is to allow the voluntary disclosure of information by the individual or agency that has the information.

The law also provides that certain otherwise confidential or privileged communications may be voluntarily disclosed:

1. Notwithstanding Section 56.10 of the Civil Code, medical information.
2. Notwithstanding Section 53.28 of the Welfare and Institutions Code, mental health information.
3. Notwithstanding Section 15633.5 of the Welfare and Institutions Code, information from elder abuse reports and investigations, except the identity of persons who have made reports, which shall not be disclosed.
4. State summary criminal history information, criminal offender record information, and local summary criminal history information as defined in Sections 11075, 11105, and 13330 of the Penal Code.
5. Notwithstanding Section 11163.2 of the Penal Code, information pertaining to reports by health practitioners of persons suffering physical injury where the injury is a result of assaultive or abusive conduct.
6. Information provided to probation officers in the course of performance of their duties, including, but not limited to, the duty to prepare reports pursuant to Section 1203.10 of the Penal Code, as well as the information on which these reports are based.
7. Notwithstanding Section 10825 of the Welfare and Institutions Code, records relating to in-home supportive services, unless disclosure is prohibited by federal law.
8. Written and oral information may be disclosed notwithstanding Sections 2263, 2918, 4982, and 6068 of the Business and Professions Code, the lawyer client privilege protected by Article 3 (commencing with Section 950) of Chapter 4 of division 8 of the Evidence Code, the physician-patient privilege protected by Article 6 (commencing with Section 990) of Chapter 4 of Division 8 of the Evidence Code, and the psychotherapist-patient privilege protected by Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code.

Information gathered by the elder death review team and any recommendations made by the team shall be used by the county to develop education, prevention, and prosecution strategies that will lead to improved coordination of services for families and the elder population.

Any questions regarding the information in this ACIN, or about the Adult Protective Services program in general, should be directed to your assigned analyst at 916) 229-0323.

***Original Document Signed By
Donna L. Mandelstam on 10/19/01***

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Disability and Adult Programs Division