December 21, 2018

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY INFORMATION NOTICE NO. I-91-18

The purpose of this All-County Information Notice is to provide clarification to the counties regarding Disability Rights California’s right to access the records of disabled Adult Protective Services clients. Because they are the designated Protection and Advocacy agency for the State, they are empowered by federal mandate to investigate any incident of abuse or neglect. This authority comes with access to all relevant records.
ALL COUNTY INFORMATION NOTICE (ACIN) NO. I-91-18

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: DISABILITY RIGHTS CALIFORNIA

REFERENCE: WELFARE & INSTITUTIONS CODE (WIC) §4903 PROVIDES AUTHORITY FOR COUNTY APS TO RELEASE INDIVIDUAL CLIENT RECORDS TO DISABILITY RIGHTS CALIFORNIA

The purpose of this All-County Information Notice (ACIN) No. I-91-18, for Adult Protective Services (APS), is to provide clarification regarding Disability Rights California’s right to access the records of disabled APS clients.

Protection and Advocacy’s Role in Dependent Adult Abuse Investigations

The Protection and Advocacy program was established after severe legal and human rights violations in institutions were exposed in the 1970s. Under Public Law 94-103, each state is now required to have an agency designated to provide protection and advocacy services to persons with disabilities. In California, Disability Rights California is the Protection and Advocacy agency. It is independent of any state agency. It provides legal and general advocacy to: (1) protect persons with disabilities from abuse and neglect; and (2) advocate for them when they have been denied disability rights. United States Code (USC) 42 USC 15043, speaks to the authority of the Protection and Advocacy agency regarding individuals with developmental disabilities (see 42 CFR 1385.); 42 USC 10801 speaks to their authority (see 42 CFR 51).

Under its federal mandate, Disability Rights California may “investigate any incident of abuse or neglect of any person with a disability if the incident is reported to the protection and advocacy agency, or if the protection and advocacy agency determines there is probable cause to believe the abuse or neglect occurred. This authority shall include reasonable access to a facility or program and authority to examine all relevant records and interview any facility or program service recipient, employee, or other
person who might have knowledge of the alleged abuse or neglect" (Welfare and Institution Code (WIC) § 4902).

Disability Rights California is the only agency that is entitled to access APS client records. Other advocacy agencies fall under the traditional laws regarding confidentiality.

**When Should Adult Protective Services Provide Access to Client Records?**

Welfare and Institution Code (WIC) § 4903 provides authority for county APS agencies to release individual client records to Disability Rights California (DRC) under the following conditions:

1. The client must be a person with a disability. Age is not a disability; therefore, APS may not release information regarding an elder unless they also meet the definition of a person with a disability. And,

2. A release of information is provided by the client or his/her legal representative. Or,

3. The client lacks capacity and has no legal representative and DRC is unable to locate the client. Or,

4. The client is deceased. Or,

5. The client’s legal representative knows about the abuse or neglect and has failed or refused to act to protect the client.

**What Information Can Disability Rights California Access?**

Under WIC § 4903, the client records that shall be available to DRC include, but are not limited to all of the following:

1. Information and records related to the investigation, whether draft or final, including, but not limited to:
   a. Initial report, including the name of the reporting party;
   b. Assessment;
   c. Evaluation* (e.g. findings).

2. Supportive services, including, but not limited to:
   a. Medical records*;
   b. Financial records;
   c. Monitoring reports.
3. Reports prepared by APS that describe any, or all, of the following:
   a. Abuse, neglect, injury, or death;
   b. Steps taken to investigate the incidents.

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

5. Supporting information that was relied upon in creating a report including such things as interview notes, physical and documentary evidence, and case management system statistics.

6. Discharge planning records (e.g. case closures).

*The WIC § 4903 (d) states “the authority of the protection and advocacy agency to have access to records does not supersede any prohibition on discovery specified in sections 1157 and 1157.6 of the Evidence Code, nor does it supersede any prohibition on disclosure subject to the physician-patient privilege or the psychotherapist-patient privilege.”

As with any other release of information, the information released must match the information authorized for release on the form.

Requests from Disability Rights California by their investigative unit should specifically cite the access authority.

**Deadlines for Providing Access to Client Information**

County APS agencies must provide Disability Rights California access to client records within three business days of the request or within 24 hours if there is probable cause to believe the APS client is in serious or immediate jeopardy, or in the case of death of an individual with a disability.

**Disability Rights California’s Requirement to Maintain Confidentiality**

Confidential information obtained by Disability Rights California shall remain confidential and may not be subject to disclosure (WIC 4903[f] and 42 USC 10806[a]). However, Disability Rights California may:
1. Share the information with the client or his/her representative (subject to subsection [b] of section 10806 of Title 42 of the United States Code, e.g. the Mental Health Act).

2. Issue a public report of the results of an investigation that maintains the confidentiality of individual service recipients.

3. Pursue alternative remedies, including the initiation of legal action.

4. Report suspected elder or dependent adult abuse to APS or the Long-Term Care Ombudsman.

**APS Confidentiality**

The APS confidentiality requirements under the WIC are listed in §§ 15633 and 15633.5. When reviewing requests for records, please note that WIC § 4901(f)(1) states that nothing in § 4900 et seq. “shall be construed to alter or impact the Elder and Dependent Adult Civil Protection Act Chapter 11 (commencing with section 15600), or Chapter 13 (commencing with section 15750), of Part 3 of Division 9, including the confidentiality requirements of section 15633 and the legal responsibility of the protection and advocacy agency to report elder or dependent adult abuse or neglect as required by paragraph (1) of subdivision (b) of section 15630.” Additionally, section 4901(d) states that nothing in §4900 et seq. “shall be construed to supplant the jurisdiction or responsibilities of adult protective services programs…”

**Talk to Your County Counsel**

The APS staff should consult with the county counsel before releasing any client information.

Sincerely,

*Original Document Signed by*

DEBBI THOMSON  
Deputy Director  
Adult Programs Division

c: County Welfare Directors Association