

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 848

Introduced by Assembly Member Mark Stone

February 26, 2015

An act to amend Sections 11834.03 and 11834.36 of, to add Sections 11834.025 and 11834.026 to, and to add and repeal Section 11834.05 of, the Health and Safety Code, relating to alcohol and drug treatment programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as amended, Mark Stone. Alcoholism and drug abuse treatment facilities.

Existing law requires the State Department of Health Care Services to license adult alcoholism ~~and~~ *or* drug abuse recovery or treatment facilities, as defined. Existing law provides for the licensure and regulation of health care practitioners by various boards and other entities within the Department of Consumer Affairs, and prescribes the scope of practice of those health care practitioners.

This bill would authorize a facility *that is licensed under those provisions* to allow a licensed physician and surgeon or other health care practitioner, as defined, to provide incidental medical services to a resident of the facility at the facility premises under specified limited circumstances. The bill would require the department to conduct an evaluation of that program, and, on or before January 1, 2019, to report that evaluation to the appropriate fiscal and policy committees of the Legislature. The bill would also make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Substance abuse is a medical condition requiring
4 interdisciplinary treatment including, when medically necessary,
5 treatment by a licensed physician and surgeon.

6 (b) Subsequent to the enactment of state law licensing and
7 regulating residential facilities providing alcohol and other drug
8 detoxification treatment, public knowledge of addiction and
9 treatment has advanced significantly.

10 (c) Lack of scientific understanding at the time of enactment of
11 those state laws prevents the State Department of Health Care
12 Services from licensing a residential treatment facility that uses a
13 California-licensed physician and surgeon to provide necessary
14 evaluation and treatment at the facility premises.

15 (d) This prohibition has been found to endanger persons in
16 treatment, can result in treatment below the recognized standard
17 of care, jeopardizes patient health, and delays patient recovery.

18 (e) To resolve this problem, it is the intent of the Legislature to
19 enact this act in order to modernize and update state law and allow
20 those in treatment *to* be protected and to receive modern medical
21 treatment for a medical condition.

22 SEC. 2. Section 11834.025 is added to the Health and Safety
23 Code, to read:

24 11834.025. (a) (1) As a condition of providing alcoholism or
25 drug abuse recovery or treatment services under this chapter at a
26 facility licensed by the department, the facility shall obtain from
27 an applicant for services a signed certification described in
28 subdivision (b) from a health care practitioner.

29 (2) For purposes of this chapter, “health care practitioner” means
30 a person duly licensed and regulated under Division 2
31 (commencing with Section 500) of the Business and Professions
32 Code, who is acting within the scope of practice *of* his or her
33 license or certificate.

34 (b) The department shall develop a standard certification form
35 for use by a health care practitioner. The form shall include, but
36 not be limited to, a description of the alcoholism and drug abuse
37 recovery or treatment services that a licensed alcoholism or drug
38 abuse recovery or treatment facility may provide under state law,

1 and a certification by the health care practitioner that the health
2 condition or medical or psychiatric history of the applicant does
3 not require a level of care that is higher than the level of care that
4 may legally be provided by a licensed alcoholism or drug abuse
5 recovery or treatment facility.

6 (c) On or before January 1, 2017, the department shall adopt
7 emergency regulations to implement this section. The regulations
8 shall prescribe, among other things, the timeframe within which
9 the certification described in subdivision (b) shall be provided to
10 a facility.

11 (1) (A) The initial adoption of emergency regulations pursuant
12 to this section and each readoption of emergency regulations shall
13 be deemed an emergency and necessary for the immediate
14 preservation of the public peace, health, safety, or general welfare.
15 Initial emergency regulations and any readoption of emergency
16 regulations authorized by this section shall be exempt from review
17 by the Office of Administrative Law. The initial emergency
18 regulations and each readoption of emergency regulations
19 authorized by this section shall be submitted to the Office of
20 Administrative Law for filing with the Secretary of State and
21 publication in the California Code of Regulations and each shall
22 remain in effect only until the earlier of 180 days following the
23 effective date of the emergency regulations or the effective date
24 of final regulations adopted by the department.

25 (B) The department shall adopt final regulations on or before
26 July 1, ~~2016~~ 2017. The final regulations shall be adopted in
27 accordance with the Administrative Procedure Act (Chapter 3.5
28 (commencing with Section 11340) of Part 1 of Division 3 of Title
29 2 of the Government Code).

30 (2) Notwithstanding the rulemaking provisions of the
31 Administrative Procedure Act, the department may, if it deems
32 appropriate, implement, interpret, or make specific this section by
33 means of provider bulletins, written guidelines, or similar
34 instructions from the department only until the department adopts
35 emergency regulations.

36 SEC. 3. Section 11834.026 is added to the Health and Safety
37 Code, to read:

38 11834.026. (a) As used in this section, “incidental medical
39 services” means services, as specified by the department in
40 regulations, to address physical and mental health issues associated

1 with either detoxification from alcohol or drugs or the provision
2 of alcoholism or drug abuse recovery or treatment services, that
3 in the opinion of a physician are not required to be performed in
4 a licensed clinic or licensed health facility, as defined in Section
5 1200 or 1250, respectively.

6 (b) Notwithstanding any other law, a licensed alcoholism or
7 drug abuse recovery or treatment facility may permit incidental
8 medical services to be provided to a resident at the facility premises
9 by one or more independent physicians and surgeons licensed by
10 the Medical Board of California or the Osteopathic Medical Board
11 who are knowledgeable about addiction medicine, or one or more
12 other health care ~~practitioner~~ *practitioners* acting within the scope
13 of practice of his or her license and under the direction of a
14 physician and surgeon, and *who are* also knowledgeable about
15 addiction medicine, when all of the following conditions are met:

16 (1) The facility, in the judgment of the department, has the
17 ability to comply with the requirements of this chapter and all other
18 applicable laws and regulations to meet the needs of a resident
19 receiving incidental medical services from a physician pursuant
20 to this chapter. The department shall specify in regulations the
21 minimum requirements that a facility shall meet in order to be
22 approved to permit the provision of incidental medical services
23 on its premises. The license of a facility approved to provide
24 incidental medical services shall reflect that those services are
25 permitted to be provided at the facility premises.

26 (2) The physician and surgeon and any other health care
27 practitioner has signed an acknowledgment on a form provided
28 by the department that he or she has been advised of and
29 understands the statutory and regulatory limitations on the services
30 that may legally be provided by *a* licensed alcoholism or drug
31 abuse recovery or treatment facility, and the statutory and
32 regulatory requirements and limitations for the physician and
33 surgeon or other health care protection and for the facility, related
34 to providing incidental medical services. The licensee shall
35 maintain a copy of the signed form at the facility for a physician
36 and surgeon or other health care practitioner providing incidental
37 medical services at the facility premises.

38 (3) There is an agreed-upon written protocol between the
39 physician and surgeon and the alcoholism or drug abuse recovery
40 or treatment facility signed by the physician and surgeon and the

1 licensee. The protocol shall address, at a minimum, the respective
2 areas of responsibility of the physician and surgeon and the facility
3 and the need for ~~communication~~ *communicating* and sharing
4 resident information related to the physician and surgeon providing
5 incidental medical services. The department shall specify by
6 regulations the issues that shall be addressed and the information
7 that shall be included in the protocol. The facility shall maintain
8 a copy of the signed protocol at the facility.

9 (4) The facility in its admissions agreement with a client shall
10 clearly identify the individual financially responsible for incidental
11 medical services provided and the manner in which those services
12 shall be billed.

13 (5) There is ongoing communication between the physician and
14 the alcoholism or drug abuse recovery or treatment facility about
15 the services provided to the resident by the physician and surgeon
16 and the frequency and duration of incidental medical services to
17 be provided. Resident information shall be shared between the
18 physician and surgeon and the alcoholism or drug abuse recovery
19 or treatment facility regarding the resident's need for incidental
20 medical services and the services to be provided to the resident by
21 the physician and surgeon, including, but not limited to, medical
22 information, as defined by the Confidentiality of Medical
23 Information Act (Part 2.6 (commencing with Section 56) of
24 Division 1 of the Civil Code). The department shall specify by
25 regulations any other requirements or limitations on these
26 communications.

27 (6) There is initial and ongoing communication between the
28 physician and surgeon or other health care practitioner and the
29 resident's health plan or health insurer prior to the provision of
30 incidental medical services, to the extent allowable by state and
31 federal privacy and confidentiality laws, to ensure coordination of
32 care.

33 (7) The facility does not provide incidental medical services
34 and does not assist with or interfere with the physician and surgeon
35 or other health care practitioner providing incidental medical
36 services.

37 (8) In addition to any other medical authorization that may be
38 required before a facility resident receives incidental medical
39 services, the resident is authorized by the physician and surgeon
40 as medically appropriate to receive the incidental medical services

1 at the premises of the licensed facility. A copy of the authorization,
2 on a form provided by the department, shall be signed by the
3 physician *and surgeon* and maintained in the resident's file at the
4 facility.

5 (9) Before a facility resident receives incidental medical
6 services, the resident has signed an acknowledgment and consent
7 to receive those services on a form provided by the department.
8 The form, at a minimum, shall describe the incidental medical
9 services that the facility may permit to be provided and shall state
10 that the permitted incidental medical services will be provided by
11 a physician and surgeon or other health care practitioner working
12 under the direction of the physician and surgeon and not by the
13 facility staff. The department shall specify in regulations, at a
14 minimum, the content and manner of providing the form, and any
15 other information that the department deems appropriate. The
16 facility shall maintain a copy of the signed acknowledgment and
17 consent in the resident's file.

18 (10) Once incidental medical services are initiated for a resident,
19 the physician and surgeon and facility shall continuously monitor
20 the resident to ensure that the resident remains appropriate to
21 receive those services. If the physician and surgeon determines
22 that a change in the resident's medical or psychiatric condition
23 requires other medical or psychiatric services or that a higher level
24 of care is required than the facility may legally provide, the
25 physician and surgeon shall immediately notify the licensee and
26 shall assist the licensee to initiate emergency care, urgent care, or
27 other higher level of care, as appropriate. If the licensee believes
28 that a resident requires a higher level of care than the facility can
29 legally provide, the licensee shall immediately notify the physician
30 and surgeon and the department. The department shall specify by
31 regulations any other requirements or limitations pertaining to
32 changes in condition of a resident who is receiving incidental
33 medical services, and any other requirements the department deems
34 appropriate.

35 (11) The facility maintains in its files a copy of the physician
36 and surgeon's license or other written evidence of licensure to
37 practice medicine in the state.

38 (12) The physician and surgeon and the facility both maintain
39 compliance with the department's regulations relating to providing
40 incidental medical services.

1 (c) The facility shall ~~timely~~ report to the department *in a timely*
2 *manner* any violation or suspected violation by the physician and
3 surgeon of the regulations relating to providing incidental medical
4 services or the signed protocol described in paragraph (3) of
5 subdivision (b). The department shall specify in regulations, at a
6 minimum, the steps required to be taken when the department
7 substantiates that information provided by the licensee.

8 (d) This section does not require a facility to provide incidental
9 medical services or any services beyond those permitted by this
10 chapter.

11 (e) The department shall not evaluate or have any responsibility
12 or liability with respect to evaluating incidental medical services
13 provided. This section does not limit the department's ability to
14 report suspected misconduct by a physician and surgeon or other
15 health care practitioner to the appropriate licensing entity or to law
16 enforcement.

17 (f) A facility licensed and approved by the department to allow
18 provision of incidental medical services shall not by offering
19 approved incidental medical services be considered a clinic or
20 health facility within the meaning of Section 1200 or 1250,
21 respectively.

22 (g) Other than incidental medical services provided, minor first
23 aid, or in the case of a life threatening emergency, this section does
24 not authorize the provision at the premises of the facility of any
25 medical or health care services or any other services that require
26 a higher level of care than the care that may be provided within a
27 licensed alcoholism or drug abuse recovery or treatment facility.

28 (h) The department shall promulgate regulations to implement
29 this section.

30 (1) The department shall adopt emergency regulations on or
31 before January 1, 2017. Prior to adoption of emergency regulations,
32 the department shall seek appropriate technical assistance from
33 stakeholders and shall allow interested stakeholders to provide
34 comments through any means the department deems appropriate.

35 (2) (A) The initial adoption of emergency regulations pursuant
36 to this section and each readoption of emergency regulations shall
37 be deemed an emergency and necessary for the immediate
38 preservation of the public peace, health, safety, or general welfare.
39 Initial emergency regulations and each readoption of emergency
40 regulations authorized by this section shall be exempt from review

1 by the Office of Administrative Law. The initial emergency
2 regulations and each readoption of emergency regulations
3 authorized by this section shall be submitted to the Office of
4 Administrative Law for filing with the Secretary of State and
5 publication in the California Code of Regulations and each shall
6 remain in effect only until the earlier of 180 days following the
7 effective date of the emergency regulations or the effective date
8 of final regulations adopted by the department.

9 (B) On or before July 1, 2017, the department shall adopt final
10 regulations in accordance with the Administrative Procedure Act
11 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3 of Title 2 of the Government Code).

13 (3) Notwithstanding the rulemaking provisions of the
14 Administrative Procedure Act, the department may, if it deems
15 appropriate, implement, interpret, or make specific this section by
16 means of provider bulletins, written guidelines, or similar
17 instructions from the department until emergency regulations are
18 adopted.

19 SEC. 4. Section 11834.03 of the Health and Safety Code is
20 amended to read:

21 11834.03. (a) A person or entity applying for licensure shall
22 file with the department, on forms provided by the department, all
23 of the following:

24 (1) A completed written application for licensure.

25 (2) A fire clearance approved by the State Fire Marshal or local
26 fire enforcement officer.

27 (3) A licensure fee, established in accordance with Chapter 7.3
28 (commencing with Section 11833.01).

29 (b) If an applicant intends to permit services pursuant to Section
30 11834.026, the applicant shall submit a copy of the written
31 protocol, evidence of a valid license of the physician and surgeon
32 who will provide those services, and any other information the
33 department deems appropriate, including, but not limited to, a copy
34 of the alcoholism or drug abuse recovery or treatment facility's
35 accreditation by a nationally recognized accrediting organization.

36 (c) The department may establish an additional licensure fee
37 for an application that includes a request to provide detoxification
38 services or services pursuant to Section 11834.026.

39 SEC. 5. Section 11834.05 is added to the Health and Safety
40 Code, to read:

1 11834.05. (a) The department shall conduct an evaluation of
2 the program licensing those alcoholism or drug abuse recovery or
3 treatment facilities identified *in* Section 11834.026. On or before
4 January 1, 2019, the department shall submit a report on that
5 evaluation to the appropriate policy and fiscal committees of the
6 Legislature.

7 (b) This section shall remain in effect only until January 1, 2020,
8 and as of that date is repealed, unless a later enacted statute, that
9 is enacted before January 1, 2020, deletes or extends that date.

10 SEC. 6. Section 11834.36 of the Health and Safety Code is
11 amended to read:

12 11834.36. (a) The director may suspend or revoke any license
13 issued under this chapter, or deny an application for licensure, for
14 extension of the licensing period, or to modify the terms and
15 conditions of a license, upon any of the following grounds and in
16 the manner provided in this chapter:

17 (1) Violation by the licensee of any provision of this chapter or
18 regulations adopted pursuant to this chapter.

19 (2) Repeated violation by the licensee of any of the provisions
20 of this chapter or regulations adopted pursuant to this chapter.

21 (3) Aiding, abetting, or permitting the violation of, or any
22 repeated violation of, any of the provisions described in paragraph
23 (1) or (2).

24 (4) Conduct in the operation of an alcoholism or drug abuse
25 recovery or treatment facility that is inimical to the health, morals,
26 welfare, or safety of either an individual in, or receiving services
27 from, the facility or to the people of the State of California.

28 (5) Misrepresentation of any material fact in obtaining the
29 alcoholism or drug abuse recovery or treatment facility license,
30 including, but not limited to, providing false information or
31 documentation to the department.

32 (6) The licensee's refusal to allow the department entry into the
33 facility to determine compliance with the requirements of this
34 chapter or regulations adopted pursuant to this chapter.

35 (7) Violation by the licensee of Section 11834.026 or the
36 regulations adopted pursuant to that section.

37 (8) Failure to pay any civil penalties assessed by the department.

38 (b) The director may temporarily suspend any license prior to
39 any hearing when, in the opinion of the director, the action is
40 necessary to protect residents of the alcoholism or drug abuse

1 recovery or treatment facility from physical or mental abuse,
2 abandonment, or any other substantial threat to health or safety.
3 The director shall notify the licensee of the temporary suspension
4 and the effective date of the temporary suspension and at the same
5 time shall serve the provider with an accusation. Upon receipt of
6 a notice of defense to the accusation by the licensee, the director
7 shall, within 15 days, set the matter for hearing, and the hearing
8 shall be held as soon as possible. The temporary suspension shall
9 remain in effect until the time the hearing is completed and the
10 director has made a final determination on the merits. However,
11 the temporary suspension shall be deemed vacated if the director
12 fails to make a final determination on the merits within 30 days
13 after the department receives the proposed decision from the Office
14 of Administrative Hearings.

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