

AMENDED IN ASSEMBLY MAY 6, 2015

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, *and* 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 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~~-no.
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

1 not be limited to, a description of the alcoholism and drug abuse
2 recovery or treatment services that a licensed alcoholism or drug
3 abuse recovery or treatment facility may provide under state law,
4 and a certification by the health care practitioner that the health
5 condition or medical or psychiatric history of the applicant does
6 not require a level of care that is higher than the level of care that
7 may legally be provided by a licensed alcoholism or drug abuse
8 recovery or treatment facility.

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

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

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

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

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

1 11834.026. (a) As used in this section, “incidental medical
2 services” means services, as specified by the department in
3 regulations, to address physical and mental health issues associated
4 with either detoxification from alcohol or drugs or the provision
5 of alcoholism or drug abuse recovery or treatment services, that
6 in the opinion of a physician are not required to be performed in
7 a licensed clinic or licensed health facility, as defined in Section
8 1200 or 1250, respectively.

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

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

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

1 (3) There is an agreed-upon written protocol between the
2 physician and surgeon and the alcoholism or drug abuse recovery
3 or treatment facility signed by the physician and surgeon and the
4 licensee. The protocol shall address, at a minimum, the respective
5 areas of responsibility of the physician and surgeon and the facility
6 and the need for communicating and sharing resident information
7 related to the physician and surgeon providing incidental medical
8 services. The department shall specify by regulations the issues
9 that shall be addressed and the information that shall be included
10 in the protocol. The facility shall maintain a copy of the signed
11 protocol at the facility.

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

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

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

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

1 (8) In addition to any other medical authorization that may be
2 required before a facility resident receives incidental medical
3 services, the resident is authorized by the physician and surgeon
4 as medically appropriate to receive the incidental medical services
5 at the premises of the licensed facility. A copy of the authorization,
6 on a form provided by the department, shall be signed by the
7 physician and surgeon and maintained in the resident's file at the
8 facility.

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

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

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

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

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

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

17 (e) The department shall not evaluate or have any responsibility
18 or liability with respect to evaluating incidental medical services
19 provided. This section does not limit the department's ability to
20 report suspected misconduct by a physician and surgeon or other
21 health care practitioner to the appropriate licensing entity or to law
22 enforcement.

23 (f) A facility licensed and approved by the department to allow
24 provision of incidental medical services shall not by offering
25 approved incidental medical services be considered a clinic or
26 health facility within the meaning of Section 1200 or 1250,
27 respectively.

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

34 (h) The department shall promulgate regulations to implement
35 this section.

36 (1) The department shall adopt emergency regulations on or
37 before January 1, 2017. Prior to adoption of emergency regulations,
38 the department shall seek appropriate technical assistance from
39 stakeholders and shall allow interested stakeholders to provide
40 comments through any means the department deems appropriate.

1 (2) (A) The initial adoption of emergency regulations pursuant
2 to this section and each readoption of emergency regulations shall
3 be deemed an emergency and necessary for the immediate
4 preservation of the public peace, health, safety, or general welfare.
5 Initial emergency regulations and each readoption of emergency
6 regulations authorized by this section shall be exempt from review
7 by the Office of Administrative Law. The initial emergency
8 regulations and each readoption of emergency regulations
9 authorized by this section shall be submitted to the Office of
10 Administrative Law for filing with the Secretary of State and
11 publication in the California Code of Regulations and each shall
12 remain in effect only until the earlier of 180 days following the
13 effective date of the emergency regulations or the effective date
14 of final regulations adopted by the department.

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

19 (3) Notwithstanding the rulemaking provisions of the
20 Administrative Procedure Act, the department may, if it deems
21 appropriate, implement, interpret, or make specific this section by
22 means of provider bulletins, written guidelines, or similar
23 instructions from the department until emergency regulations are
24 adopted.

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

27 11834.03. (a) A person or entity applying for licensure shall
28 file with the department, on forms provided by the department, all
29 of the following:

30 (1) A completed written application for licensure.

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

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

35 (b) If an applicant intends to permit services pursuant to Section
36 11834.026, the applicant shall submit a copy of the written
37 protocol, evidence of a valid license of the physician and surgeon
38 who will provide those services, and any other information the
39 department deems appropriate, including, but not limited to, a copy

1 of the alcoholism or drug abuse recovery or treatment facility's
2 accreditation by a nationally recognized accrediting organization.

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

6 ~~SEC. 5. Section 11834.05 is added to the Health and Safety
7 Code, to read:~~

8 ~~11834.05. (a) The department shall conduct an evaluation of
9 the program licensing those alcoholism or drug abuse recovery or
10 treatment facilities identified in Section 11834.026. On or before
11 January 1, 2019, the department shall submit a report on that
12 evaluation to the appropriate policy and fiscal committees of the
13 Legislature.~~

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

17 ~~SEC. 6.~~

18 ~~SEC. 5. Section 11834.36 of the Health and Safety Code is
19 amended to read:~~

20 ~~11834.36. (a) The director may suspend or revoke any license
21 issued under this chapter, or deny an application for licensure, for
22 extension of the licensing period, or to modify the terms and
23 conditions of a license, upon any of the following grounds and in
24 the manner provided in this chapter:~~

25 ~~(1) Violation by the licensee of any provision of this chapter or
26 regulations adopted pursuant to this chapter.~~

27 ~~(2) Repeated violation by the licensee of any of the provisions
28 of this chapter or regulations adopted pursuant to this chapter.~~

29 ~~(3) Aiding, abetting, or permitting the violation of, or any
30 repeated violation of, any of the provisions described in paragraph
31 (1) or (2).~~

32 ~~(4) Conduct in the operation of an alcoholism or drug abuse
33 recovery or treatment facility that is inimical to the health, morals,
34 welfare, or safety of either an individual in, or receiving services
35 from, the facility or to the people of the State of California.~~

36 ~~(5) Misrepresentation of any material fact in obtaining the
37 alcoholism or drug abuse recovery or treatment facility license,
38 including, but not limited to, providing false information or
39 documentation to the department.~~

- 1 (6) The licensee’s refusal to allow the department entry into the
- 2 facility to determine compliance with the requirements of this
- 3 chapter or regulations adopted pursuant to this chapter.
- 4 (7) Violation by the licensee of Section 11834.026 or the
- 5 regulations adopted pursuant to that section.
- 6 (8) Failure to pay any civil penalties assessed by the department.
- 7 (b) The director may temporarily suspend any license prior to
- 8 any hearing when, in the opinion of the director, the action is
- 9 necessary to protect residents of the alcoholism or drug abuse
- 10 recovery or treatment facility from physical or mental abuse,
- 11 abandonment, or any other substantial threat to health or safety.
- 12 The director shall notify the licensee of the temporary suspension
- 13 and the effective date of the temporary suspension and at the same
- 14 time shall serve the provider with an accusation. Upon receipt of
- 15 a notice of defense to the accusation by the licensee, the director
- 16 shall, within 15 days, set the matter for hearing, and the hearing
- 17 shall be held as soon as possible. The temporary suspension shall
- 18 remain in effect until the time the hearing is completed and the
- 19 director has made a final determination on the merits. However,
- 20 the temporary suspension shall be deemed vacated if the director
- 21 fails to make a final determination on the merits within 30 days
- 22 after the department receives the proposed decision from the Office
- 23 of Administrative Hearings.