

AMENDED IN ASSEMBLY JUNE 1, 2015

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, 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 an adult alcoholism or drug abuse recovery or treatment* 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 establish and collect an additional fee from those facilities, in an amount sufficient to cover the*

department’s reasonable costs of regulating the provision of those services. The bill would also make related findings and declarations.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-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.

1 (b) The department shall develop a standard certification form
2 for use by a health care practitioner. The form shall include, but
3 not be limited to, a description of the alcoholism and drug abuse
4 recovery or treatment services that a licensed alcoholism or drug
5 abuse recovery or treatment facility may provide under state law,
6 and a certification by the health care practitioner that the health
7 condition or medical or psychiatric history of the applicant does
8 not require a level of care that is higher than the level of care that
9 may legally be provided by a licensed alcoholism or drug abuse
10 recovery or treatment facility.

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

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

30 ~~(B)~~

31 ~~(c) (1) The department shall adopt final regulations~~ *regulations,*
32 ~~on or before July 1, 2017. 2017, to implement this section. The~~
33 ~~final regulations shall be adopted in accordance with the~~
34 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
35 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
36 ~~Code).~~

37 (2) Notwithstanding the rulemaking provisions of the
38 Administrative Procedure Act, the department may, if it deems
39 appropriate, implement, interpret, or make specific this section by
40 means of provider bulletins, written guidelines, or similar

1 instructions from the department only until the department adopts
2 emergency regulations.

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

5 11834.026. (a) As used in this section, “incidental medical
6 services” means services, as specified by the department in
7 regulations, to address physical and mental health issues associated
8 with either detoxification from alcohol or drugs or the provision
9 of alcoholism or drug abuse recovery or treatment services, that
10 in the opinion of a physician are not required to be performed in
11 a licensed clinic or licensed health facility, as defined in Section
12 1200 or 1250, respectively.

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

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

33 (2) The physician and surgeon and any other health care
34 practitioner has signed an acknowledgment on a form provided
35 by the department that he or she has been advised of and
36 understands the statutory and regulatory limitations on the services
37 that may legally be provided by a licensed alcoholism or drug
38 abuse recovery or treatment facility, and the statutory and
39 regulatory requirements and limitations for the physician and
40 surgeon or other health care protection and for the facility, related

1 to providing incidental medical services. The licensee shall
2 maintain a copy of the signed form at the facility for a physician
3 and surgeon or other health care practitioner providing incidental
4 medical services at the facility premises.

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

16 (4) The facility in its admissions agreement with a client shall
17 clearly identify the individual financially responsible for incidental
18 medical services provided and the manner in which those services
19 shall be billed.

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

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

1 (7) The facility does not provide incidental medical services
2 and does not assist with or interfere with the physician and surgeon
3 or other health care practitioner providing incidental medical
4 services.

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

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

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

1 medical services, and any other requirements the department deems
2 appropriate.

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

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

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

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

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

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

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

36 ~~(h) The department shall promulgate regulations to implement~~
37 ~~this section.~~

38 ~~(1) The department shall adopt emergency regulations on or~~
39 ~~before January 1, 2017. Prior to adoption of emergency regulations,~~
40 ~~the department shall seek appropriate technical assistance from~~

1 stakeholders and shall allow interested stakeholders to provide
2 comments through any means the department deems appropriate.

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

17 ~~(B)~~

18 ~~(h) (1) On or before July 1, 2017, the department shall adopt~~
19 ~~final regulations to implement this section in accordance with the~~
20 ~~Administrative Procedure Act (Chapter 3.5 (commencing with~~
21 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
22 ~~Code).~~

23 ~~(3)~~

24 (2) Notwithstanding the rulemaking provisions of the
25 Administrative Procedure Act, the department may, if it deems
26 appropriate, implement, interpret, or make specific this section by
27 means of provider bulletins, written guidelines, or similar
28 instructions from the department until emergency regulations are
29 adopted.

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

32 11834.03. (a) A person or entity applying for licensure shall
33 file with the department, on forms provided by the department, all
34 of the following:

35 (1) A completed written application for licensure.

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

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

1 (b) (1) If an applicant intends to permit services pursuant to
2 Section 11834.026, the applicant shall submit a copy of the written
3 protocol, evidence of a valid license of the physician and surgeon
4 who will provide those services, and any other information the
5 department deems appropriate, including, but not limited to, a copy
6 of the alcoholism or drug abuse recovery or treatment facility's
7 accreditation by a nationally recognized accrediting organization.

8 (e)

9 (2) The department ~~may~~ *shall* establish *and collect* an additional
10 licensure fee for an application that includes a request to provide
11 detoxification services or services pursuant to Section 11834.026.
12 *The fee shall be set at an amount sufficient to cover the*
13 *department's reasonable costs of regulating the provision of those*
14 *services.*

15 SEC. 5. Section 11834.36 of the Health and Safety Code is
16 amended to read:

17 11834.36. (a) The director may suspend or revoke any license
18 issued under this chapter, or deny an application for licensure, for
19 extension of the licensing period, or to modify the terms and
20 conditions of a license, upon any of the following grounds and in
21 the manner provided in this chapter:

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

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

26 (3) Aiding, abetting, or permitting the violation of, or any
27 repeated violation of, any of the provisions described in paragraph
28 (1) or (2).

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

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

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

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