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AMENDED IN ASSEMBLY JUNE 1, 2015
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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 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: 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~~
26 *incidental medical services, as defined in subdivision (a) of Section*
27 *11834.026*, at a facility licensed by the department, the facility
28 shall obtain from an applicant for services a signed certification
29 described in subdivision (b) from a health care practitioner.

30 (2) For purposes of this chapter, “health care practitioner” means
31 a person duly licensed and regulated under Division 2
32 (commencing with Section 500) of the Business and Professions

1 Code, who is acting within the scope of practice of his or her
2 license or certificate.

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

13 (c) (1) The department shall adopt regulations, on or before
14 July 1, 2017, to implement this section. The regulations shall be
15 adopted in accordance with the Administrative Procedure Act
16 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
17 Division 3 of Title 2 of the Government Code).

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

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

26 11834.026. (a) As used in this section, “incidental medical
27 services” means services, as specified by the department in
28 regulations, to address physical and mental health issues associated
29 with either detoxification from alcohol or drugs or the provision
30 of alcoholism or drug abuse recovery or treatment services, that
31 in the opinion of a physician are not required to be performed in
32 a licensed clinic ~~or licensed health facility, or a general acute care~~
33 ~~hospital, as defined in Section 1200 or 1250, respectively.~~
34 ~~respectively, or a medically managed inpatient treatment program.~~

35 (b) Notwithstanding any other law, a licensed alcoholism or
36 drug abuse recovery or treatment facility may permit incidental
37 medical services to be provided to a resident at the facility premises
38 by one or more independent physicians and surgeons licensed by
39 the Medical Board of California or the Osteopathic Medical Board
40 who are knowledgeable about addiction medicine, or one or more

1 other health care practitioners acting within the scope of practice
2 of his or her license and under the direction of a physician and
3 surgeon, and who are also knowledgeable about addiction
4 medicine, when all of the following conditions are met:

5 (1) The facility, in the judgment of the department, has the
6 ability to comply with the requirements of this chapter, *to provide*
7 *any level of care between Level 3.1 and Level 3.7 of the ASAM*
8 *criteria, and to comply with all other applicable laws and*
9 *regulations to meet the needs of a resident receiving incidental*
10 *medical services from a physician pursuant to this chapter. The*
11 *department shall specify in regulations the minimum requirements*
12 *that a facility shall meet in order to be approved to permit the*
13 *provision of incidental medical services on its premises. The license*
14 *of a facility approved to provide incidental medical services shall*
15 *reflect that those services are permitted to be provided at the facility*
16 *premises.*

17 (2) The physician and surgeon and any other health care
18 practitioner has signed an acknowledgment on a form provided
19 by the department that he or she has been advised of and
20 understands the statutory and regulatory limitations on the services
21 that may legally be provided by a licensed alcoholism or drug
22 abuse recovery or treatment ~~facility~~, *facility that is providing any*
23 *level of care between Level 3.1 and Level 3.7 of the ASAM criteria,*
24 *and the statutory and regulatory requirements and limitations for*
25 *the physician and surgeon or other health care protection and for*
26 *the facility, related to providing incidental medical services. The*
27 *licensee shall maintain a copy of the signed form at the facility for*
28 *a physician and surgeon or other health care practitioner providing*
29 *incidental medical services at the facility premises.*

30 (3) There is an agreed-upon written protocol between the
31 physician and surgeon and the alcoholism or drug abuse recovery
32 or treatment facility signed by the physician and surgeon and the
33 licensee. The protocol shall address, at a minimum, the respective
34 areas of responsibility of the physician and surgeon and the facility
35 and the need for communicating and sharing resident information
36 related to the physician and surgeon providing incidental medical
37 services. The department shall specify by regulations the issues
38 that shall be addressed and the information that shall be included
39 in the protocol. The facility shall maintain a copy of the signed
40 protocol at the facility.

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

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

19 (6) There is initial and ongoing communication between the
20 physician and surgeon or other health care practitioner and the
21 resident's health plan or health insurer prior to the provision of
22 incidental medical services, to the extent allowable by state and
23 federal privacy and confidentiality laws, to ensure coordination of
24 care.

25 (7) The facility does not ~~provide incidental medical services~~
26 ~~and does not assist with or interfere with the physician and surgeon~~
27 or other health care practitioner providing incidental medical
28 services.

29 (8) In addition to any other medical authorization that may be
30 required before a facility resident receives incidental medical
31 services, the resident is authorized by the physician and surgeon
32 as medically appropriate to receive the incidental medical services
33 at the premises of the licensed facility. A copy of the authorization,
34 on a form provided by the department, shall be signed by the
35 physician and surgeon and maintained in the resident's file at the
36 facility.

37 (9) Before a facility resident receives incidental medical
38 services, the resident has signed an acknowledgment and consent
39 to receive those services on a form provided by the department.
40 The form, at a minimum, shall describe the incidental medical

1 services that the facility may permit to be provided and shall state
2 that the permitted incidental medical services will be provided by
3 a physician and surgeon or other health care practitioner working
4 under the direction of the physician and ~~surgeon and not by the~~
5 ~~facility staff.~~ *surgeon*. The department shall specify in regulations,
6 at a minimum, the content and manner of providing the form, and
7 any other information that the department deems appropriate. The
8 facility shall maintain a copy of the signed acknowledgment and
9 consent in the resident's file.

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

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

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

33 (c) The facility shall report to the department in a timely manner
34 any violation ~~or suspected violation by the physician and surgeon~~
35 of the regulations relating to providing incidental medical services
36 or the signed protocol described in paragraph (3) of subdivision
37 (b). The department shall specify in regulations, at a minimum,
38 the steps required to be taken when the department substantiates
39 that information provided by the licensee.

1 (d) ~~This~~ *Nothing in this section does not require* requires a
2 facility to provide incidental medical services or any services
3 beyond those *otherwise* permitted by this chapter.

4 (e) The department shall not evaluate or have any responsibility
5 or liability with respect to evaluating incidental medical services
6 provided. This section does not limit the department's ability to
7 report suspected misconduct by a physician and surgeon or other
8 health care practitioner to the appropriate licensing entity or to law
9 enforcement.

10 (f) A facility licensed and approved by the department to allow
11 provision of incidental medical services shall not by offering
12 approved incidental medical services be considered a clinic or
13 health facility within the meaning of Section 1200 or 1250,
14 respectively.

15 (g) Other than incidental medical ~~services provided,~~ *services,*
16 *including those provided at any level between Level 3.1 and Level*
17 *3.7 of the ASAM criteria,* minor first aid, or in the case of a life
18 threatening emergency, this section does not authorize the provision
19 at the premises of the facility of any medical or health care services
20 or any other services that require a higher level of care than the
21 care that may be provided within a licensed alcoholism or drug
22 abuse recovery or treatment facility.

23 (h) (1) On or before July 1, 2017, the department shall adopt
24 regulations to implement this section in accordance with the
25 Administrative Procedure Act (Chapter 3.5 (commencing with
26 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
27 Code).

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

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

35 11834.03. (a) A person or entity applying for licensure shall
36 file with the department, on forms provided by the department, all
37 of the following:

38 (1) A completed written application for licensure.

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

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

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

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

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

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

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

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

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

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

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

38 (6) The licensee's refusal to allow the department entry into the
39 facility to determine compliance with the requirements of this
40 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.

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