

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JULY 2, 2015

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 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 incidental
 25 medical services, as defined in subdivision (a) of Section
 26 11834.026, at a facility licensed by the department, the facility
 27 shall obtain from an applicant for services a signed certification
 28 described in 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

1 (commencing with Section 500) of the Business and Professions
2 Code, who is acting within the scope of practice of his or her
3 license or certificate.

4 (b) The department shall develop a standard certification form
5 for use by a health care practitioner. The form shall include, but
6 not be limited to, a description of the alcoholism and drug abuse
7 recovery or treatment services that an applicant needs.

8 (c) (1) The department shall adopt regulations, on or before
9 July 1, 2017, to implement this section. The regulations shall be
10 adopted 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 (2) 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 only until the department adopts
18 regulations.

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

21 11834.026. (a) As used in this section, “incidental medical
22 services” means services, as specified by the department in
23 regulations, to address physical and mental health issues associated
24 with either detoxification from alcohol or drugs or the provision
25 of alcoholism or drug abuse recovery or treatment services, that
26 in the opinion of a physician are not required to be performed in
27 a licensed clinic or a general acute care hospital, as defined in
28 Section 1200 or 1250, respectively, or a medically managed
29 inpatient treatment program.

30 (b) Notwithstanding any other law, a licensed alcoholism or
31 drug abuse recovery or treatment facility may permit incidental
32 medical services to be provided to a resident at the facility premises
33 by one or more independent physicians and surgeons licensed by
34 the Medical Board of California or the Osteopathic Medical Board
35 who are knowledgeable about addiction medicine, or one or more
36 other health care practitioners acting within the scope of practice
37 of his or her license and under the direction of a physician and
38 surgeon, and who are also knowledgeable about addiction
39 medicine, when all of the following conditions are met:

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

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

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

38 (4) The facility in its admissions agreement with a client shall
39 clearly identify the individual financially responsible for incidental

1 medical services provided and the manner in which those services
2 shall be billed.

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

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

23 (7) The facility does not interfere with the physician and surgeon
24 or other health care practitioner providing incidental medical
25 services.

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

34 (9) Before a facility resident receives incidental medical
35 services, the resident has signed an acknowledgment and consent
36 to receive those services on a form provided by the department.
37 The form, at a minimum, shall describe the incidental medical
38 services that the facility may permit to be provided and shall state
39 that the permitted incidental medical services will be provided by
40 a physician and surgeon or other health care practitioner working

1 under the direction of the physician and surgeon. The department
2 shall specify in regulations, at a minimum, the content and manner
3 of providing the form, and any other information that the
4 department deems appropriate. The facility shall maintain a copy
5 of the signed acknowledgment and consent in the resident's file.

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

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

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

29 (c) The facility shall report to the department in a timely manner
30 any violation of the regulations relating to providing incidental
31 medical services or the signed protocol described in paragraph (3)
32 of subdivision (b). The department shall specify in regulations, at
33 a minimum, the steps required to be taken when the department
34 substantiates that information provided by the licensee.

35 (d) Nothing in this section requires a facility to provide
36 incidental medical services or any services beyond those otherwise
37 permitted by this chapter.

38 (e) The department shall not evaluate or have any responsibility
39 or liability with respect to evaluating incidental medical services
40 provided. This section does not limit the department's ability to

1 report suspected misconduct by a physician and surgeon or other
2 health care practitioner to the appropriate licensing entity or to law
3 enforcement.

4 (f) A facility licensed and approved by the department to allow
5 provision of incidental medical services shall not by offering
6 approved incidental medical services be considered a clinic or
7 health facility within the meaning of Section 1200 or 1250,
8 respectively.

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

18 (h) (1) On or before July 1, 2017, the department shall adopt
19 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 (2) Notwithstanding the rulemaking provisions of the
24 Administrative Procedure Act, the department may, if it deems
25 appropriate, implement, interpret, or make specific this section by
26 means of provider bulletins, written guidelines, or similar
27 instructions from the department until regulations are adopted.

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

30 11834.03. (a) A person or entity applying for licensure shall
31 file with the department, on forms provided by the department, all
32 of the following:

33 (1) A completed written application for licensure.

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

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

38 (b) (1) If an applicant intends to permit services pursuant to
39 Section 11834.026, the applicant shall submit a copy of the written
40 protocol, evidence of a valid license of the physician and surgeon

1 who will provide those services, and any other information the
2 department deems appropriate, including, but not limited to, a copy
3 of the alcoholism or drug abuse recovery or treatment facility's
4 accreditation by a nationally recognized accrediting ~~organization.~~
5 *organization that evaluates the level of services provided, if the*
6 *facility is accredited.*

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

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

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

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

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

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

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

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

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

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

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

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

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