

AMENDED IN SENATE JANUARY 5, 2016

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 20, 2015

AMENDED IN SENATE APRIL 7, 2015

**SENATE BILL**

**No. 648**

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**Introduced by Senator Mendoza**  
(Coauthor: Assembly Member Levine)

February 27, 2015

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An act to amend Sections 1400, 1401, ~~and 1404~~, *and 1408* of, and to add Sections 1402, 1409.4, 1409.6, 1409.7, and 1409.8 to, the Health and Safety Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 648, as amended, Mendoza. Health and care facilities: referral agencies.

Existing law requires a referral agency to obtain a license from the State Department of Public Health in order to refer a person to any extended care facility, skilled nursing home, or intermediate care facility. Existing law exempts a local public agency performing referral services without cost from these provisions. Under existing law, a violation of these provisions is subject to a civil penalty and suspension or revocation of the license.

This bill would additionally require a referral agency to obtain a license in order to refer a person to a residential care facility for the elderly. The bill would prohibit a referral agency from holding any power of attorney or any other property of a person receiving referral services, or from disclosing any personal information of a person receiving services, unless expressly authorized to do so. The bill would

require a referral agency to provide a disclosure statement, as specified, to each person receiving its services, and to retain, for 3 years, a signed acknowledgment from the person being referred, or his or her conservator, guardian, family member, or agent under a power of attorney, stating that the disclosure statement was received. The bill would state that failure to provide the disclosure statement or retain the acknowledgment, with the intent to mislead the public on the nature of the services provided, constitutes unfair competition and is subject to a civil penalty of up to \$2,500. The bill would also require referral agencies to maintain liability insurance in specified amounts.

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. Section 1400 of the Health and Safety Code is  
 2 amended to read:  
 3 1400. (a) It is unlawful for any person, association, or  
 4 corporation to establish, conduct, or maintain a referral agency or  
 5 to refer any person for remuneration to any extended care facility,  
 6 skilled nursing home, intermediate care facility, or residential care  
 7 facility for the elderly, or a distinct part of a facility providing  
 8 extended care, skilled nursing home care, or intermediate care,  
 9 without first having obtained a written license as provided in this  
 10 chapter from the director or from an inspection service approved  
 11 by the director pursuant to Section 1257.  
 12 (b) It is unlawful for any person, association, or corporation to  
 13 establish, conduct, or maintain a referral agency or to refer any  
 14 person for remuneration to any person or agency outside a  
 15 long-term health care facility, as defined in Section 1418, for  
 16 professional services for which the long-term health care facility  
 17 does not employ a qualified professional person to furnish a  
 18 specific service, including, but not limited to, laboratory,  
 19 diagnostic, or therapy services, unless the long-term health care  
 20 facility complies with current federal and state laws regarding the  
 21 provision of these services and all of the following conditions are  
 22 met:  
 23 (1) The services will be provided in accordance with  
 24 professional standards applicable to the provision of these services  
 25 in a long-term health care facility.

1 (2) The long-term health care facility assumes responsibility  
2 for timeliness of the services.

3 (3) Services are provided or obtained only when ordered by the  
4 attending physician and a notation is made in the resident’s medical  
5 chart reflecting that the service has been provided to the resident.

6 (c) It is unlawful for any person, association, or corporation to  
7 establish, conduct, or maintain a referral agency or to refer any  
8 person for remuneration to any residential care facility for the  
9 elderly for professional services if that facility does not meet the  
10 licensing standards established in Chapter 3.2 (commencing with  
11 Section 1560). *The referral agency may satisfy this requirement*  
12 *by obtaining and relying on the licensing status information for a*  
13 *residential care facility for the elderly that is published on the*  
14 *Internet Web site of the State Department of Social Services.*

15 SEC. 2. Section 1401 of the Health and Safety Code is amended  
16 to read:

17 1401. As used in this chapter “referral agency” means a private,  
18 profit or nonprofit agency that is engaged in the business of  
19 referring persons for remuneration to any extended care facility,  
20 skilled nursing home, intermediate care facility, or residential care  
21 facility for the elderly, or a distinct part of a facility providing  
22 extended care, skilled nursing home care, or intermediate care. ~~A~~  
23 ~~residential care facility for the elderly is not a referral agency if it~~  
24 ~~does either of the following:~~ “Referral agency” does not include  
25 any of the following:

26 (a) A licensed residential care facility for the elderly that does  
27 either of the following:

28 ~~(a)~~

29 (1) Provides discounts or other remuneration to residents or  
30 their families for referring new or prospective clients.

31 ~~(b)~~

32 (2) Provides remuneration to staff for marketing or sales offers.

33 (b) A resident who refers a new or prospective resident and  
34 receives a discount or other remuneration from a licensed  
35 residential care facility for the elderly.

36 (c) A licensed residential care facility staff member who receives  
37 remuneration from the facility for sales or marketing efforts.

38 SEC. 3. Section 1402 is added to the Health and Safety Code,  
39 to read:

1 1402. “Residential care facility for the elderly” has the same  
2 meaning as set forth in Section 1569.2.

3 SEC. 4. Section 1404 of the Health and Safety Code is amended  
4 to read:

5 1404. No licensee under this chapter shall have a direct or  
6 indirect financial interest in any facility doing business with the  
7 licensee.

8 SEC. 5. Section 1408 of the Health and Safety Code is amended  
9 to read:

10 1408. (a) Upon verification of compliance with this chapter  
11 and with the approval of the department, the department shall issue  
12 the license to the applicant.

13 (b) *For applicants who solely provide referrals to residential*  
14 *care facilities for the elderly, the department is not required to*  
15 *conduct an on-site licensing inspection as a condition of verifying*  
16 *compliance with this chapter.*

17 (c) *As a condition of verifying compliance with this chapter, the*  
18 *department may require an applicant to submit a copy or example*  
19 *of the disclosure statement required by Section 1409.4.*

20 ~~(b)~~

21 (d) If the applicant is not in compliance with this chapter, the  
22 department shall deny the applicant a license. Immediately upon  
23 the denial of any license, the department shall notify the applicant  
24 in writing. Within 20 days of receipt of the department’s notice,  
25 the applicant may present his or her written petition for a hearing  
26 to the department. The proceedings shall be conducted in  
27 accordance with Section 100171.

28 ~~SEC. 5.~~

29 SEC. 6. Section 1409.4 is added to the Health and Safety Code,  
30 to read:

31 1409.4. (a) ~~Prior to any referral, Before referring a person to~~  
32 ~~any facility, a licensee shall provide each person receiving services~~  
33 ~~from the licensee the person with a disclosure statement containing~~  
34 all of the following:

35 (1) Whether the licensee has an agreement or contract with the  
36 facility to which the person is being referred.

37 (2) That a commission or fee will be received by the licensee  
38 from the facility as a result of the referral, if applicable.

1 (3) Any gift or exchange of monetary value between the facility  
2 and the licensee that is in addition to, or in lieu of, a commission  
3 or fee.

4 (4) Any fee charged to the person or persons by the licensee.  
5 The notice shall include a description of the services being rendered  
6 for that fee and the licensee's refund policy.

7 (5) The licensee's contact information, including address and  
8 telephone number, and the licensee's privacy policy. The privacy  
9 policy may be provided as an Internet Web site link consistent  
10 with provisions set forth in Section 22575 of the Business and  
11 Professions Code.

12 (6) The date of the licensee's most recent tour or visit to the  
13 facility and, as appropriate, ~~a report of any violations as identified~~  
14 ~~by a hyperlink to, or copy of,~~ the most recent evaluation report for  
15 a residential care facility for the elderly *to which the person is*  
16 *being referred*, prepared pursuant to Section 1569.33 and *published*  
17 *by the State Department of Social Services.*

18 (7) Information regarding the *type of facility and the services*  
19 ~~the referred facility offers, including, but not limited to, intermittent~~  
20 ~~skilled nursing care, memory care, assistance with and distribution~~  
21 ~~of medication, and other services, if applicable.~~ *offered by the*  
22 *facility.*

23 (8) The contact information, including address and phone  
24 number, of the State Department of Social Services or State  
25 Department of Public Health, as appropriate, and the contact  
26 information for filing consumer complaints, including contact  
27 information for the local long-term care ombudsman. *If the*  
28 *disclosure statement is provided electronically, the contact*  
29 *information for each department and the local long-term care*  
30 *ombudsman may be provided as a hyperlink.*

31 (b) (1) The disclosure statement shall be dated and shall contain,  
32 in addition to the requirements of subdivision (a), the name of the  
33 person being referred.

34 (2) If the disclosure is provided in written form, it shall be  
35 printed in 16-point bold type.

36 (3) If the disclosure statement is provided electronically, it shall  
37 be consistent with provisions ~~regarding electronic records set forth~~  
38 ~~in Section 7001 of Title 15 of the United States Code, set forth in~~  
39 *Title 2.5 (commencing with Section 1633.1) of Part 2 of Division*  
40 *3 of the Civil Code*, and shall be displayed on ~~the licensee's Internet~~

1 ~~Web site~~ *a secured Web page* in a larger type than the surrounding  
2 text.

3 (c) The licensee shall provide the disclosure statement pursuant  
4 to subdivision (a) in the same language in which the licensee  
5 negotiates any referral services with the person receiving services.

6 ~~(d) Prior to any referral, the licensee shall retain a signed~~  
7 ~~acknowledgment from~~ *The disclosure statement shall be signed*  
8 *or otherwise acknowledged* by the person being referred, or his or  
9 her conservator, guardian, family member, or agent under a power  
10 of attorney, stating that the disclosure statement required by this  
11 section was received. ~~The signed~~ acknowledgment shall be  
12 executed with one of the following:

13 (1) The signature of the person being referred, or his or her  
14 conservator, guardian, family member, or agent under a power of  
15 attorney on the exact disclosure statement.

16 (2) An electronic signature that *is consistent with standards set*  
17 *forth in Title 2.5 (commencing with Section 1633.1) of Part 2 of*  
18 *Division 3 of the Civil Code* and includes the date, time, and  
19 Internet provider address and displays the exact disclosure  
20 statement document.

21 (3) A faxed confirmation that includes the date, time, and fax  
22 number and displays the exact disclosure statement document.

23 (e) The acknowledgment required by this section shall be  
24 retained for a period of no less than ~~four~~ *three* years.

25 (f) If the disclosure statement, or any other referral-related  
26 document, is provided electronically, the licensee shall provide a  
27 written copy, in a 16-point bold type, to the person being referred,  
28 or his or her conservator, guardian, family member, or agent under  
29 power of attorney following any referral. This written copy may  
30 be provided by fax, *email, or other means of electronic*  
31 *communication, if applicable, appropriate.*

32 (g) Any violation of this section with the intent to directly or  
33 indirectly mislead the public on the nature of services provided by  
34 the referral agency will constitute unfair competition which  
35 includes unlawful, unfair, or fraudulent business acts or practices  
36 and unfair, deceptive, untrue, or misleading advertising. Any person  
37 or entity that engages in unfair competition shall be liable for a  
38 civil penalty not to exceed two thousand five hundred dollars  
39 (\$2,500) for each violation.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 1409.6 is added to the Health and Safety Code,  
3 to read:

4 1409.6. (a) It is unlawful for a licensee to share any personal  
5 information, including, but not limited to, the name, address, age,  
6 gender, or medical information of the person receiving services  
7 from the licensee, with any unauthorized person or third-party  
8 affiliate of the licensee, unless expressly authorized pursuant to  
9 subdivisions (b) and (c). *subdivision (b).*

10 ~~(b) The person being referred, or his or her conservator,~~  
11 ~~guardian, family member, or agent under power of attorney may~~  
12 ~~expressly authorize the licensee to share his or her name and~~  
13 ~~telephone number, or email address, with the facility, or facilities,~~  
14 ~~being referred. The express authorization shall be separate from~~  
15 ~~the disclosure statement required by this article and shall include~~  
16 ~~both of the following:~~

17 ~~(1) Disclosure, in a form consistent with the requirements of~~  
18 ~~Section 1409.4, which clearly and conspicuously states the name,~~  
19 ~~location, and contact information of the facility, or facilities, that~~  
20 ~~will receive the contact information, and the format in which the~~  
21 ~~facility will receive the contact information.~~

22 ~~(2) The signature of the person giving authorization, consistent~~  
23 ~~with the requirements of subdivision (d) of Section 1409.4.~~

24 ~~(c) The licensee shall only share the name and contact~~  
25 ~~information of the individual who has provided express~~  
26 ~~authorization, pursuant to subdivision (b).~~

27 *(b) Before making a referral to any facility or facilities, the*  
28 *person being referred, or his or her conservator, guardian, family*  
29 *member, or agent under power of attorney, may authorize the*  
30 *licensee to share his or her personal information, as well as the*  
31 *name and a description of the care or services needed by the*  
32 *individual being referred, with a facility or facilities for purposes*  
33 *of the referral. The personal information, or other information*  
34 *shared, shall be limited to only that information which is necessary*  
35 *to complete the referral process. The authorization shall be*  
36 *obtained in either of the following ways:*

37 *(1) As a separate authorization form that clearly discloses that,*  
38 *by executing an acknowledgment in the manner described in*  
39 *subdivision (d) of Section 1409.4, the individual is consenting to*  
40 *the disclosure of his or her personal information to a facility or*

1 facilities for which they are being referred. This acknowledgment  
2 shall include the name and location of the facility or facilities that  
3 will receive the personal information and the format in which the  
4 personal information will be shared.

5 (2) As part of the disclosure statement required by Section  
6 1409.4 if it clearly indicates that the individual is consenting to  
7 the referral agency’s disclosure of his or her personal information  
8 to a facility or facilities for which her or she is being referred. The  
9 authorization shall include the name and location information of  
10 the facility or facilities that will receive the personal information  
11 and the format in which the personal information will be shared.

12 (c) The licensee shall not share the contact information of an  
13 individual who has not provided his or her authorization pursuant  
14 to subdivision (b).

15 ~~SEC. 7.~~

16 SEC. 8. Section 1409.7 is added to the Health and Safety Code,  
17 to read:

18 1409.7. It is unlawful for a licensee to hold any power of  
19 attorney for a person receiving placement referral services from  
20 that licensee, or to receive or hold a client’s property in any  
21 capacity.

22 ~~SEC. 8.~~

23 SEC. 9. Section 1409.8 is added to the Health and Safety Code,  
24 to read:

25 1409.8. On and after July 1, 2016, all persons, associations, or  
26 corporations licensed pursuant to this chapter shall maintain  
27 liability insurance coverage in an amount of at least one million  
28 dollars (\$1,000,000) per ~~referred person occurrence-person~~ and  
29 three million dollars (\$3,000,000) in the total annual aggregate,  
30 for negligent acts or omissions by the licensee.