

AMENDED IN SENATE JANUARY 26, 2016

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

Introduced by Senator Mendoza
(Coauthor: Assembly Member Levine)

February 27, 2015

An act to amend Sections 1400, 1401, 1404, ~~and 1408~~ *1404.5, 1405, 1407, 1408, 1409.3, and 1410* 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 *from the State Department of Social Services* in order to refer a person to a residential care facility for the ~~elderly~~. *elderly and would*

prohibit an extended care facility, skilled nursing home, intermediate care facility, or residential care facility for the elderly from paying a commission or fee to a referral agency that is not licensed, as specified. 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 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~~ *the* acknowledgment from the person being referred, or his or her conservator, guardian, *authorized* 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~~ *State Public Health Officer* or from an
11 inspection service approved by the ~~director~~ *State Public Health*
12 *Officer* pursuant to Section ~~1257~~. *1257, from the State Department*
13 *of Social Services, or from both, as appropriate.*
14 (b) It is unlawful for any person, association, or corporation to
15 establish, conduct, or maintain a referral agency or to refer any
16 person for remuneration to any person or agency outside a
17 long-term health care facility, as defined in Section 1418, for
18 professional services for which the long-term health care facility

1 does not employ a qualified professional person to furnish a
2 specific service, including, but not limited to, laboratory,
3 diagnostic, or therapy services, unless the long-term health care
4 facility complies with current federal and state laws regarding the
5 provision of these services and all of the following conditions are
6 met:

7 (1) The services will be provided in accordance with
8 professional standards applicable to the provision of these services
9 in a long-term health care facility.

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

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

15 (c) It is unlawful for any person, association, or corporation to
16 establish, conduct, or maintain a referral agency or to refer any
17 person for remuneration to any residential care facility for the
18 elderly for professional services if that facility does not meet the
19 licensing standards established in Chapter 3.2 (commencing with
20 Section 1560). The referral agency may satisfy this requirement
21 by obtaining and relying on the licensing status information for a
22 residential care facility for the elderly that is published on the
23 Internet Web site of the State Department of Social Services.

24 (d) *It is unlawful for any extended care facility, skilled nursing*
25 *home, intermediate care facility, or residential care facility for*
26 *the elderly, or a distinct part of a facility providing extended care,*
27 *skilled nursing home care, or intermediate care to pay a*
28 *commission or fee to a referral agency that does not have a written*
29 *license as provided in this chapter from the State Public Health*
30 *Officer or from an inspection service approved by the State Public*
31 *Health Officer pursuant to Section 1257, from the State Department*
32 *of Social Services, or from both, as appropriate.*

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

35 1401. As used in this ~~chapter~~ *chapter*, “referral agency” means
36 a private, profit or nonprofit agency that is engaged in the business
37 of referring persons for remuneration to any extended care facility,
38 skilled nursing home, intermediate care facility, or residential care
39 facility for the elderly, or a distinct part of a facility providing

1 extended care, skilled nursing home care, or intermediate care.

2 “Referral agency” does not include any of the following:

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

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

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

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

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

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

15 1402. “Residential care facility for the elderly” has the same
16 meaning as set forth in Section 1569.2.

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

19 1404. No licensee under this chapter shall have a direct or
20 indirect financial interest in any facility doing business with the
21 licensee.

22 SEC. 5. Section 1404.5 of the Health and Safety Code is
23 amended to read:

24 1404.5. A license application shall be submitted to ~~the~~
25 ~~department~~ either or both licensing departments, as appropriate,
26 whenever any of the following circumstances occur:

27 (a) Change of ownership of the referral agency.

28 (b) Change of name of the referral agency.

29 (c) Change of location of the referral agency.

30 SEC. 6. Section 1405 of the Health and Safety Code is amended
31 to read:

32 1405. (a) Any person, partnership, firm, ~~corporation~~
33 ~~corporation~~, or association desiring to obtain a license to refer
34 persons to extended care facilities, skilled nursing homes, or
35 intermediate care facilities, or a distinct part of a facility providing
36 extended care, skilled nursing home care, or intermediate care,
37 shall file with the ~~department~~ State Department of Public Health
38 an application on forms furnished by the ~~department~~. ~~The~~
39 ~~application~~ State Department of Public Health. Any person,
40 partnership, firm, corporation, or association desiring to obtain

1 a license to refer persons to residential care facilities for the
2 elderly shall file with the State Department of Social Services an
3 application on forms furnished by the State Department of Social
4 Services. The applications shall contain all of the following:

5 (a) Name of applicant, and if an individual, whether the applicant
6 has attained the age of 18 years.

7 (b) Name of referral agency.

8 (c) The location of the referral agency.

9 (d) The business or occupation engaged in by each applicant,
10 and by each partner, officer and director, for at least two years
11 immediately preceding the filing of the application. In addition,
12 each such person shall submit a statement setting forth whether
13 he or she has previously engaged in the operation of a referral
14 agency, whether he or she has been involved in, or the subject of,
15 a refusal or revocation of a referral agency license, and whether
16 he or she has been convicted of a crime other than a minor traffic
17 offense.

18 (e) If the applicant is a corporation, the name and principal
19 business address of each officer and director of the corporation;
20 and for nonpublic corporations, the name and business address of
21 each stockholder owning 10 percent or more of the stock and the
22 name and business address of any corporation member who has
23 responsibility in the operation of the facility.

24 (f) If the applicant is a partnership, the name and principal
25 business address of each partner.

26 (g) Evidence of the right to occupy the premises where the
27 referral agency is to be located.

28 (h) A copy of the partnership agreement ~~of~~ or the Articles of
29 Incorporation, if applicable.

30 (i) A copy of the current organization chart.

31 (j) A schedule of fees to be charged and collected by the referral
32 agency, and a statement of the method by which each fee is to be
33 computed or determined.

34 (k) A declaration that the licensee will not have any financial
35 interest in any health facility doing business with the referral
36 agency.

37 (l) Evidence satisfactory to the *licensing* department that the
38 applicant demonstrates reputable and responsible character and
39 the capability to comply with this chapter.

1 *SEC. 7. Section 1407 of the Health and Safety Code is amended*
2 *to read:*

3 1407. (a) Any licensee desiring to voluntarily surrender his
4 or her license for cancellation or temporary suspension shall notify
5 the *licensing* department in writing as soon as possible and, in all
6 cases, at least 30 days prior to the effective date of cancellation or
7 temporary suspension of the license.

8 (b) Any license placed in temporary suspension pursuant to this
9 section may be reinstated by the *licensing* department within 12
10 months of the date of the voluntary suspension on receipt of an
11 application and evidence showing compliance with licensing
12 requirements.

13 ~~SEC. 5.~~

14 *SEC. 8. Section 1408 of the Health and Safety Code is amended*
15 *to read:*

16 1408. (a) Upon verification of compliance with this chapter
17 and with the approval of the *licensing* department, the *licensing*
18 department shall issue the license to the applicant.

19 (b) ~~For applicants who solely~~ *When licensing referral agencies*
20 *that provide referrals to residential care facilities for the elderly,*
21 ~~the department~~ *State Department of Social Services* is not required
22 to conduct an onsite licensing inspection as a condition of verifying
23 compliance with this chapter.

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

27 (d) If the applicant is not in compliance with this chapter, the
28 *licensing* department shall deny the applicant a license.
29 Immediately upon the denial of any license, the *licensing*
30 department shall notify the applicant in writing. Within 20 days
31 of receipt of the ~~department's~~ notice, the applicant may present
32 his or her written petition for a hearing to the *licensing* department.
33 ~~The proceedings~~ *Proceedings conducted by the State Department*
34 *of Public Health* shall be conducted in accordance with Section
35 100171.

36 *SEC. 9. Section 1409.3 of the Health and Safety Code is*
37 *amended to read:*

38 1409.3. (a) The licensee shall notify ~~the department~~ *either or*
39 *both licensing departments, as appropriate,* within 10 days in
40 writing when a change of stockholder owning 10 percent or more

1 of the nonpublic corporate stock occurs. The writing shall include
2 the name and principal mailing addresses of the new stockholder.

3 (b) When a change of agency manager occurs, ~~the department~~
4 *either or both licensing departments, as appropriate*, shall be
5 notified in writing within 10 days by the licensee. The notification
6 shall include the name of the new agency manager.

7 (c) Each licensee shall notify ~~the department~~ *either or both*
8 *licensing departments, as appropriate*, within 10 days in writing
9 of any change of the mailing address of the licensee. The writing
10 shall include the new mailing address of the licensee.

11 (d) When a change in the principal officer of a corporate
12 licensee, chairperson, president, or general manager, occurs ~~the~~
13 ~~department~~ *either or both licensing departments, as appropriate*,
14 shall be notified within 10 days in writing by the licensee. The
15 writing shall include the name and principal business address of
16 the officer.

17 ~~SEC. 6.~~

18 *SEC. 10.* Section 1409.4 is added to the Health and Safety
19 Code, to read:

20 1409.4. (a) Before referring a person to any facility, a licensee
21 shall provide the person with a disclosure statement containing all
22 of the following:

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

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

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

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

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

38 (6) The date of the licensee's most recent tour or visit to the
39 facility and, as appropriate, a hyperlink to, or copy of, the most
40 recent evaluation report for a residential care facility for the elderly

1 to which the person is being referred, prepared pursuant to Section
2 1569.33 and published by the State Department of Social Services.

3 (7) Information regarding the type of facility and the services
4 offered by the facility.

5 (8) The contact information, including address and ~~phone~~
6 *telephone* number, of the State Department of Social Services or
7 State Department of Public Health, as appropriate, and the contact
8 information for filing consumer complaints, including contact
9 information for the local long-term care ombudsman. If the
10 disclosure statement is provided electronically, the contact
11 information for each department and the local long-term care
12 ombudsman may be provided as a hyperlink.

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

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

18 (3) If the disclosure statement is provided electronically, it shall
19 be consistent with provisions set forth in Title 2.5 (commencing
20 with Section 1633.1) of Part 2 of Division 3 of the Civil Code, and
21 shall be displayed on a secured Web page in a larger type than the
22 surrounding text.

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

26 (d) The disclosure statement shall be signed or otherwise
27 acknowledged by the person being referred, or his or her
28 conservator, guardian, *authorized* family member, or agent under
29 a power of attorney, stating that the disclosure statement required
30 by this section was received. The acknowledgment shall be
31 executed with one of the following:

32 (1) The signature of the person being referred, or his or her
33 conservator, guardian, *authorized* family member, or agent under
34 a power of attorney on the exact disclosure statement.

35 (2) An electronic signature that is consistent with standards set
36 forth in Title 2.5 (commencing with Section 1633.1) of Part 2 of
37 Division 3 of the Civil Code and includes the date, time, and
38 Internet provider address and displays the exact disclosure
39 statement document.

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

3 (4) *A telephonic, oral acknowledgment of the person being*
4 *referred, or his or her conservator, guardian, authorized family*
5 *member, or agent under power of attorney, which shall be*
6 *recorded, with that person's consent, consistent with Sections 632*
7 *and 632.7 of the Penal Code. This paragraph does not authorize*
8 *an in-person, oral acknowledgment.*

9 (e) The acknowledgment required by this section shall be
10 retained for a period of no less than three years.

11 (f) (1) If the disclosure statement, or any other referral-related
12 document, is provided electronically, the licensee shall provide a
13 written copy, in 16-point bold type, to the person being referred,
14 or his or her conservator, guardian, *authorized* family member, or
15 agent under power of attorney following any referral. This written
16 copy may be provided by fax, email, or other means of electronic
17 communication, if appropriate.

18 (2) *Recorded telephonic acknowledgments shall, upon request,*
19 *be provided in an easily accessible format to the person being*
20 *referred or the licensing department within five days of the request.*

21 (g) Any violation of this section with the intent to directly or
22 indirectly mislead the public on the nature of services provided by
23 the referral agency will constitute unfair competition which
24 includes unlawful, unfair, or fraudulent business acts or practices
25 and unfair, deceptive, untrue, or misleading advertising. Any person
26 or entity that engages in unfair competition shall be liable for a
27 civil penalty not to exceed two thousand five hundred dollars
28 (\$2,500) for each violation.

29 ~~SEC. 7.~~

30 *SEC. 11.* Section 1409.6 is added to the Health and Safety
31 Code, to read:

32 1409.6. (a) It is unlawful for a licensee to share any personal
33 information, including, but not limited to, the name, address, age,
34 gender, or medical information of the person receiving services
35 from the licensee, with any unauthorized person or third-party
36 affiliate of the licensee, unless authorized pursuant to subdivision
37 (b).

38 (b) Before making a referral to any facility or facilities, the
39 person being referred, or his or her conservator, guardian, family
40 member, or agent under power of attorney, may authorize the

1 licensee to share his or her personal information, as well as the
2 name and a description of the care or services needed by the
3 individual being referred, with a facility or facilities for purposes
4 of the referral. The personal information, or other information
5 shared, shall be limited to only that information which is necessary
6 to complete the referral process. The authorization shall be obtained
7 in either of the following ways:

8 (1) As a separate authorization form that clearly discloses that,
9 by executing an acknowledgment in the manner described in
10 subdivision (d) of Section 1409.4, the individual is consenting to
11 the disclosure of his or her personal information to a facility or
12 facilities for which they are being referred. This acknowledgment
13 shall include the name and location of the facility or facilities that
14 will receive the personal information and the format in which the
15 personal information will be shared.

16 (2) As part of the disclosure statement required by Section
17 1409.4 if it clearly indicates that the individual is consenting to
18 the referral agency's disclosure of his or her personal information
19 to a facility or facilities for which her or she is being referred. The
20 authorization shall include the name and location information of
21 the facility or facilities that will receive the personal information
22 and the format in which the personal information will be shared.

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

26 ~~SEC. 8:~~

27 *SEC. 12.* Section 1409.7 is added to the Health and Safety
28 Code, to read:

29 1409.7. It is unlawful for a licensee to hold any power of
30 attorney for a person receiving placement referral services from
31 that licensee, or to receive or hold a client's property in any
32 capacity.

33 ~~SEC. 9:~~

34 *SEC. 13.* Section 1409.8 is added to the Health and Safety
35 Code, to read:

36 1409.8. On and after July 1, 2016, all persons, associations, or
37 corporations licensed pursuant to this chapter shall maintain
38 liability insurance coverage in an amount of at least one million
39 dollars (\$1,000,000) per person occurrence and three million dollars

1 (\$3,000,000) in the total annual aggregate, for negligent acts or
2 omissions by the licensee.

3 *SEC. 14. Section 1410 of the Health and Safety Code is*
4 *amended to read:*

5 1410. The *licensing* department may suspend or revoke ~~licenses~~
6 *a license* issued under this chapter for violation of any provisions
7 of this chapter or rules and regulations promulgated hereunder. In
8 addition, the *licensing* department shall assess a civil penalty in
9 the amount of fees received by a licensee as a result of a violation
10 of any provisions of this chapter or rules and regulations
11 promulgated hereunder. Proceedings to suspend or revoke a license
12 *conducted by the State Department of Public Health* shall be
13 conducted pursuant to Section 100171.