

AMENDED IN ASSEMBLY JUNE 22, 2016  
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**

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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, 1404, 1404.5, 1405, 1407, 1408, 1409.3, and 1410 of, and to add Sections 1402, 1409.4, *1409.5*, 1409.6, 1409.7, ~~and 1409.8~~ *1409.8*, and *1409.9* to, the Health and Safety Code, *and to amend Section 15630 of the Welfare and Institutions 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 and elderly~~. *The bill* 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,~~ *disclose specified information* to each person receiving its services, and to retain, for 3 years, ~~the an~~ 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.~~ *disclosures had been made*. The bill would also require referral agencies to maintain liability insurance in specified amounts.

*Existing law makes specified persons mandated reporters of elder or dependent adult abuse, including administrators, supervisors, and licensed staff of a facility that provide care or services for elder or dependent adults. Under existing law, failure to report physical abuse, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult is a misdemeanor.*

*The bill would include on the list of mandated reporters owners, operators, and employees of a referral agency. By expanding the crime of failure to report elder or dependent adult abuse, this bill would impose a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*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 State Public Health Officer or from an inspection  
11 service approved by the State Public Health Officer pursuant to  
12 Section 1257, from the State Department of Social Services, or  
13 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  
19 does not employ a qualified professional person to furnish a  
20 specific service, including, but not limited to, laboratory,  
21 diagnostic, or therapy services, unless the long-term health care  
22 facility complies with current federal and state laws regarding the  
23 provision of these services and all of the following conditions are  
24 met:

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

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

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

33 (c) It is unlawful for any person, association, or corporation to  
34 establish, conduct, or maintain a referral agency or to refer any  
35 person for remuneration to any residential care facility for the  
36 elderly for professional services if that facility does not meet the  
37 licensing standards established in Chapter 3.2 (commencing with  
38 Section 1560). The referral agency may satisfy this requirement

1 by obtaining and relying on the licensing status information for a  
2 residential care facility for the elderly that is published on the  
3 Internet Web site of the State Department of Social Services.

4 (d) It is unlawful for any extended care facility, skilled nursing  
5 home, intermediate care facility, or residential care facility for the  
6 elderly, or a distinct part of a facility providing extended care,  
7 skilled nursing home care, or intermediate care to pay a  
8 commission or fee to a referral agency that does not have a written  
9 license as provided in this chapter from the State Public Health  
10 Officer or from an inspection service approved by the State Public  
11 Health Officer pursuant to Section 1257, from the State Department  
12 of Social Services, or from both, as appropriate.

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

15 1401. As used in this chapter, “referral agency” means a private,  
16 profit or nonprofit agency that is engaged in the business of  
17 referring persons for remuneration to any extended care facility,  
18 skilled nursing home, intermediate care facility, or residential care  
19 facility for the elderly, or a distinct part of a facility providing  
20 extended care, skilled nursing home care, or intermediate care.  
21 “Referral agency” does not include any of the following:

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

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

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

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

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

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

34 1402. “Residential care facility for the elderly” has the same  
35 meaning as set forth in Section 1569.2.

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

38 1404. No licensee under this chapter shall have a direct or  
39 indirect financial interest in any facility doing business with the  
40 licensee.

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

3 1404.5. A license application shall be submitted to either or  
4 both licensing departments, as appropriate, whenever any of the  
5 following circumstances occur:

- 6 (a) Change of ownership of the referral agency.
- 7 (b) Change of name of the referral agency.
- 8 (c) Change of location of the referral agency.

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

11 1405. ~~(a)~~ Any person, partnership, firm, corporation, or  
12 association desiring to obtain a license to refer persons to extended  
13 care facilities, skilled nursing homes, or intermediate care facilities,  
14 or a distinct part of a facility providing extended care, skilled  
15 nursing home care, or intermediate care, shall file with the State  
16 Department of Public Health an application on forms furnished  
17 by the State Department of Public Health. Any person, partnership,  
18 firm, corporation, or association desiring to obtain a license to  
19 refer persons to residential care facilities for the elderly shall file  
20 with the State Department of Social Services an application on  
21 forms furnished by the State Department of Social Services. The  
22 applications shall contain all of the following:

- 23 (a) Name of applicant, and if an individual, whether the applicant  
24 has attained the age of 18 years.
- 25 (b) Name of referral agency.
- 26 (c) The location of the referral agency.
- 27 (d) The business or occupation engaged in by each applicant,  
28 and by each partner, ~~officer~~ *officer*, and director, for at least two  
29 years immediately preceding the filing of the application. In  
30 addition, each such person shall submit a statement setting forth  
31 whether he or she has previously engaged in the operation of a  
32 referral agency, whether he or she has been involved in, or the  
33 subject of, a refusal or revocation of a referral agency license, and  
34 whether he or she has been convicted of a crime other than a minor  
35 traffic offense.
- 36 (e) If the applicant is a corporation, the name and principal  
37 business address of each officer and director of the corporation;  
38 and for nonpublic corporations, the name and business address of  
39 each stockholder owning 10 percent or more of the stock and the

1 name and business address of any corporation member who has  
2 responsibility in the operation of the facility.

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

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

7 (h) A copy of the partnership agreement or the Articles of  
8 Incorporation, if applicable.

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

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

13 (k) A declaration that the licensee will not have any financial  
14 interest in any health facility doing business with the referral  
15 agency.

16 (l) Evidence satisfactory to the licensing department that the  
17 applicant demonstrates reputable and responsible character and  
18 the capability to comply with this chapter.

19 SEC. 7. Section 1407 of the Health and Safety Code is amended  
20 to read:

21 1407. (a) Any licensee desiring to voluntarily surrender his  
22 or her license for cancellation or temporary suspension shall notify  
23 the licensing department in writing as soon as possible and, in all  
24 cases, at least 30 days prior to the effective date of cancellation or  
25 temporary suspension of the license.

26 (b) Any license placed in temporary suspension pursuant to this  
27 section may be reinstated by the licensing department within 12  
28 months of the date of the voluntary suspension on receipt of an  
29 application and evidence showing compliance with licensing  
30 requirements.

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

33 1408. (a) Upon verification of compliance with this chapter  
34 and with the approval of the licensing department, the licensing  
35 department shall issue the license to the applicant.

36 (b) When licensing referral agencies that provide referrals to  
37 residential care facilities for the elderly, the State Department of  
38 Social Services is not required to conduct an onsite licensing  
39 inspection as a condition of verifying compliance with this chapter.

1 (c) As a condition of verifying compliance with this chapter,  
2 the licensing department may require an applicant to submit a copy  
3 or example of the ~~disclosure statement~~ *disclosures* required by  
4 Section 1409.4.

5 (d) If the applicant is not in compliance with this chapter, the  
6 licensing department shall deny the applicant a license.  
7 Immediately upon the denial of any license, the licensing  
8 department shall notify the applicant in writing. Within 20 days  
9 of receipt of the notice, the applicant may present his or her written  
10 petition for a hearing to the licensing department. Proceedings  
11 conducted by the State Department of Public Health shall be  
12 conducted in accordance with Section 100171.

13 (e) *For purposes of compliance with this chapter, an applicant*  
14 *is not required to have a physical place of business within the*  
15 *state.*

16 SEC. 9. Section 1409.3 of the Health and Safety Code is  
17 amended to read:

18 1409.3. (a) The licensee shall notify either or both licensing  
19 departments, as appropriate, within 10 days in writing when a  
20 change of stockholder owning 10 percent or more of the nonpublic  
21 corporate stock occurs. The writing shall include the name and  
22 principal mailing addresses of the new stockholder.

23 (b) When a change of agency manager occurs, either or both  
24 licensing departments, as appropriate, shall be notified in writing  
25 within 10 days by the licensee. The notification shall include the  
26 name of the new agency manager.

27 (c) Each licensee shall notify either or both licensing  
28 departments, as appropriate, within 10 days in writing of any  
29 change of the mailing address of the licensee. The writing shall  
30 include the new mailing address of the licensee.

31 (d) When a change *occurs* in the principal officer of a corporate  
32 licensee, chairperson, president, or general manager, ~~occurs~~ either  
33 or both licensing departments, as appropriate, shall be notified  
34 within 10 days in writing by the licensee. The writing shall include  
35 the name and principal business address of the officer.

36 SEC. 10. Section 1409.4 is added to the Health and Safety  
37 Code, to read:

38 1409.4. (a) Before referring a person to any facility, a licensee  
39 shall ~~provide the person with a disclosure statement containing all~~  
40 ~~of the following:~~ *disclose all of the following to the person:*

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

3 (2) ~~That Whether~~ a commission or fee will be received by the  
4 licensee from the facility as a result of the referral, if applicable.  
5 *referral.*

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

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

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

17 ~~(6) The date of the licensee's most recent tour or visit to the~~  
18 ~~facility and, as appropriate, a hyperlink to, or copy of, the most~~  
19 ~~recent evaluation report for a residential care facility for the elderly~~  
20 ~~to which the person is being referred, prepared pursuant to Section~~  
21 ~~1569.33 and published by the State Department of Social Services.~~

22 ~~(7) Information regarding the type of facility and the services~~  
23 ~~offered by the facility.~~

24 ~~(8)~~

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

33 *(b) Contemporaneous with a referral, the licensee shall provide*  
34 *the person with the following information about the facility:*

35 *(1) The date of the licensee's most recent tour or visit to the*  
36 *facility and verification that the facility is licensed and in good*  
37 *standing, and a hyperlink to, or copy of, the most recent evaluation*  
38 *report for a residential care facility for the elderly to which the*  
39 *person is being referred, prepared pursuant to Section 1569.33*



1 *and published by the State Department of Social Services, if an*  
2 *evaluation report has been prepared in the previous 24 months.*

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

5 (b)

6 (c) (1) ~~The disclosure statement~~ *disclosures* shall be dated and  
7 shall contain, in addition to the requirements of ~~subdivision (a);~~  
8 *subdivisions (a) and (b)*, the name of the person being referred.

9 (2) ~~If the disclosure is~~ *disclosures are* provided in written form,  
10 ~~it~~ *they* shall be printed in 16-point bold type.

11 (3) ~~If the disclosure statement is~~ *disclosures are* provided  
12 electronically, ~~it~~ *they* shall be *provided in a manner that is*  
13 consistent with provisions set forth in Title 2.5 (commencing with  
14 Section 1633.1) of Part 2 of Division 3 of the Civil Code, and shall  
15 be displayed on a secured Web page in a larger type than the  
16 surrounding text.

17 (e)

18 (d) The licensee shall ~~provide the disclosure statement~~ *make*  
19 *the disclosures* pursuant to ~~subdivision (a)~~ *subdivisions (a) and*  
20 *(b)* in the same language in which the licensee negotiates any  
21 referral services with the person receiving services.

22 (d)

23 (e) ~~The disclosure statement~~ *disclosures* shall be signed or  
24 otherwise acknowledged by the person being referred, or his or  
25 her conservator, guardian, authorized family member, or agent  
26 under a power of attorney, stating that the ~~disclosure statement~~  
27 *disclosures* required by this section ~~was were~~ received. The  
28 acknowledgment shall be ~~executed with one of the following:~~  
29 *evidenced in one of the following ways:*

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

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

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

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

10 ~~(e) The acknowledgment required by this section~~

11 ~~(f) Evidence of the dated disclosure acknowledgment shall be~~  
 12 ~~retained for a period of no less than three years.~~

13 ~~(f)~~

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

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

24 ~~(g) Any violation of this section with the intent to directly or~~  
 25 ~~indirectly mislead the public on the nature of services provided by~~  
 26 ~~the referral agency will constitute unfair competition which~~  
 27 ~~includes unlawful, unfair, or fraudulent business acts or practices~~  
 28 ~~and unfair, deceptive, untrue, or misleading advertising. Any person~~  
 29 ~~or entity that engages in unfair competition shall be liable for a~~  
 30 ~~civil penalty not to exceed two thousand five hundred dollars~~  
 31 ~~(\$2,500) for each violation.~~

32 *SEC. 11. Section 1409.5 is added to the Health and Safety*  
 33 *Code, to read:*

34 *1409.5. Owners, operators, and employees of a licensee are*  
 35 *mandated reporters of elder or dependent adult abuse pursuant*  
 36 *to Section 15630 of the Welfare and Institutions Code.*

37 ~~SEC. 11.~~

38 *SEC. 12. Section 1409.6 is added to the Health and Safety*  
 39 *Code, to read:*

1 1409.6. (a) It is unlawful for a licensee to share any personal  
2 information, including, but not limited to, the name, address, age,  
3 gender, or medical information of the person receiving services  
4 from the licensee, with any unauthorized person or third-party  
5 affiliate of the licensee, unless authorized pursuant to subdivision  
6 (b).

7 (b) ~~Before making a referral~~ *A referral agency shall not refer*  
8 *a person to any facility or facilities, facilities unless the person*  
9 *being referred, or his or her conservator, guardian, family member,*  
10 *or agent under power of attorney, may authorize authorizes the*  
11 *licensee to share his or her the referred person's personal*  
12 *information, as well as the name and a description of the care or*  
13 *services needed by the individual being referred, with a facility or*  
14 *facilities for purposes of the referral. The personal information, or*  
15 *other information shared, shall be limited to only that information*  
16 *which is necessary to complete the referral process. The*  
17 *authorization shall be obtained in either of the following ways:*

18 (1) ~~As a separate authorization form that clearly discloses that,~~  
19 ~~by executing an acknowledgment in the manner described in~~  
20 ~~subdivision (d) of Section 1409.4, that the individual is consenting~~  
21 ~~to the disclosure of his or her personal information to a facility or~~  
22 ~~facilities for which they are being referred. This acknowledgment~~  
23 ~~authorization form shall include the name and location of the~~  
24 ~~facility or facilities that will receive the personal information and~~  
25 ~~the format in which the personal information will be shared.~~  
26 ~~information, and shall be executed in the manner described in~~  
27 ~~subdivision (e) of Section 1409.4.~~

28 (2) ~~As part of the disclosure statement required by Section~~  
29 ~~1409.4 if it clearly indicates that the individual disclosures required~~  
30 ~~by Section 1409.4, if the acknowledgment required by subdivision~~  
31 ~~(e) of Section 1409.4 clearly indicates that the individual being~~  
32 ~~referred, or his or her conservator, guardian, authorized family~~  
33 ~~member, or agent under power of attorney, is consenting to the~~  
34 ~~referral agency's disclosure of his or her personal information to~~  
35 ~~a facility or facilities for which her he or she is being referred. The~~  
36 ~~authorization shall include licensee shall provide to the individual~~  
37 ~~being referred the name and location information of the facility~~  
38 ~~or facilities that will receive the personal information and the~~  
39 ~~format in which the personal information will be shared.~~  
40 ~~information, as applicable.~~

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

4 ~~SEC. 12.~~

5 *SEC. 13.* Section 1409.7 is added to the Health and Safety  
6 Code, to read:

7 1409.7. It is unlawful for a licensee to hold any power of  
8 attorney for a person receiving placement referral services from  
9 that licensee, or to receive or hold a client's property in any  
10 capacity.

11 ~~SEC. 13.~~

12 *SEC. 14.* Section 1409.8 is added to the Health and Safety  
13 Code, to read:

14 1409.8. On and after July 1, ~~2016~~, 2017, all persons,  
15 associations, or corporations licensed pursuant to this chapter shall  
16 maintain liability insurance coverage in an amount of at least one  
17 million dollars (\$1,000,000) per person occurrence and three  
18 million dollars (\$3,000,000) in the total annual aggregate, for  
19 negligent acts or omissions by the licensee.

20 *SEC. 15.* Section 1409.9 is added to the Health and Safety  
21 Code, to read:

22 1409.9. A licensee shall display the licensee's name and license  
23 number on all advertising, promotional or marketing material,  
24 and Internet Web sites paid for or operated by the licensee.

25 ~~SEC. 14.~~

26 *SEC. 16.* Section 1410 of the Health and Safety Code is  
27 amended to read:

28 1410. The licensing department may suspend or revoke a  
29 license issued under this chapter for violation of any provisions  
30 of this chapter or rules and regulations promulgated hereunder. In  
31 addition, the licensing department shall assess a civil penalty in  
32 the amount of fees received by a licensee as a result of a violation  
33 of any provisions of this chapter or rules and regulations  
34 promulgated hereunder. Proceedings to suspend or revoke a license  
35 conducted by the State Department of Public Health shall be  
36 conducted pursuant to Section 100171.

37 *SEC. 17.* Section 15630 of the Welfare and Institutions Code  
38 is amended to read:

39 ~~15630. (a) Any person who has assumed full or intermittent~~  
40 ~~responsibility for the care or custody of an elder or dependent~~

1 ~~adult, whether or not he or she receives compensation, including~~  
2 ~~administrators, supervisors, and any licensed staff of a public or~~  
3 ~~private facility that provides care or services for elder or dependent~~  
4 ~~adults, or any elder or dependent adult care custodian, health~~  
5 ~~practitioner, clergy member, or employee of a county adult~~  
6 ~~protective services agency or a local law enforcement agency, is~~  
7 ~~a mandated reporter.~~

8 *15630. (a) All of the following persons are mandated*  
9 *reporters:*

10 *(1) A person who has assumed full or intermittent responsibility*  
11 *for the care or custody of an elder or dependent adult, whether or*  
12 *not he or she receives compensation, including administrators,*  
13 *supervisors, and any licensed staff of a public or private facility*  
14 *that provides care or services for elder or dependent adults.*

15 *(2) An elder or dependent adult care custodian.*

16 *(3) A health practitioner.*

17 *(4) A clergy member.*

18 *(5) An employee of a county adult protective services agency.*

19 *(6) An employee of a local law enforcement agency.*

20 *(7) An owner, operator, or employee of a referral agency*  
21 *licensed under Article 1 (commencing with Section 1400) of*  
22 *Chapter 2.3 of Division 2 of the Health and Safety Code.*

23 *(b) (1) Any mandated reporter who, in his or her professional*  
24 *capacity, or within the scope of his or her employment, has*  
25 *observed or has knowledge of an incident that reasonably appears*  
26 *to be physical abuse, as defined in Section 15610.63, abandonment,*  
27 *abduction, isolation, financial abuse, or neglect, or is told by an*  
28 *elder or dependent adult that he or she has experienced behavior,*  
29 *including an act or omission, constituting physical abuse, as defined*  
30 *in Section 15610.63, abandonment, abduction, isolation, financial*  
31 *abuse, or neglect, or reasonably suspects that abuse, shall report*  
32 *the known or suspected instance of abuse by telephone or through*  
33 *a confidential Internet reporting tool, as authorized by Section*  
34 *15658, immediately or as soon as practicably possible. If reported*  
35 *by telephone, a written report shall be sent, or an Internet report*  
36 *shall be made through the confidential Internet reporting tool*  
37 *established in Section 15658, within two working days.*

38 *(A) If the suspected or alleged abuse is physical abuse, as*  
39 *defined in Section 15610.63, and the abuse occurred in a long-term*

1 care facility, except a state mental health hospital or a state  
2 developmental center, the following shall occur:

3 (i) If the suspected abuse results in serious bodily injury, a  
4 telephone report shall be made to the local law enforcement agency  
5 immediately, but also no later than within two hours of the  
6 mandated reporter observing, obtaining knowledge of, or  
7 suspecting the physical abuse, and a written report shall be made  
8 to the local ombudsman, the corresponding licensing agency, and  
9 the local law enforcement agency within two hours of the mandated  
10 reporter observing, obtaining knowledge of, or suspecting the  
11 physical abuse.

12 (ii) If the suspected abuse does not result in serious bodily injury,  
13 a telephone report shall be made to the local law enforcement  
14 agency within 24 hours of the mandated reporter observing,  
15 obtaining knowledge of, or suspecting the physical abuse, and a  
16 written report shall be made to the local ombudsman, the  
17 corresponding licensing agency, and the local law enforcement  
18 agency within 24 hours of the mandated reporter observing,  
19 obtaining knowledge of, or suspecting the physical abuse.

20 (iii) When the suspected abuse is allegedly caused by a resident  
21 with a physician’s diagnosis of dementia, and there is no serious  
22 bodily injury, as reasonably determined by the mandated reporter,  
23 drawing upon his or her training or experience, the reporter shall  
24 report to the local ombudsman or law enforcement agency by  
25 telephone, immediately or as soon as practicably possible, and by  
26 written report, within 24 hours.

27 (iv) When applicable, reports made pursuant to clauses (i) and  
28 (ii) shall be deemed to satisfy the reporting requirements of the  
29 federal Elder Justice Act of 2009, as set out in Subtitle H of the  
30 federal Patient Protection and Affordable Care Act (Public Law  
31 111-148), Section 1418.91 of the Health and Safety Code, and  
32 Section 72541 of Title 22 of California Code of Regulations. When  
33 a local law enforcement agency receives an initial report of  
34 suspected abuse in a long-term care facility pursuant to this  
35 subparagraph, the local law enforcement agency may coordinate  
36 efforts with the local ombudsman to provide the most immediate  
37 and appropriate response warranted to investigate the mandated  
38 report. The local ombudsman and local law enforcement agencies  
39 may collaborate to develop protocols to implement this  
40 subparagraph.

1 (B) Notwithstanding the rulemaking provisions of Chapter 3.5  
2 (commencing with Section 11340) of Part 1 of Division 3 of Title  
3 2 of the Government Code, or any other law, the department may  
4 implement subparagraph (A), in whole or in part, by means of  
5 all-county letters, provider bulletins, or other similar instructions  
6 without taking regulatory action.

7 (C) If the suspected or alleged abuse is abuse other than physical  
8 abuse, and the abuse occurred in a long-term care facility, except  
9 a state mental health hospital or a state developmental center, a  
10 telephone report and a written report shall be made to the local  
11 ombudsman or the local law enforcement agency.

12 (D) With regard to abuse reported pursuant to subparagraph  
13 (C), the local ombudsman and the local law enforcement agency  
14 shall, as soon as practicable, except in the case of an emergency  
15 or pursuant to a report required to be made pursuant to clause (v),  
16 in which case these actions shall be taken immediately, do all of  
17 the following:

18 (i) Report to the State Department of Public Health any case of  
19 known or suspected abuse occurring in a long-term health care  
20 facility, as defined in subdivision (a) of Section 1418 of the Health  
21 and Safety Code.

22 (ii) Report to the State Department of Social Services any case  
23 of known or suspected abuse occurring in a residential care facility  
24 for the elderly, as defined in Section 1569.2 of the Health and  
25 Safety Code, or in an adult day program, as defined in paragraph  
26 (2) of subdivision (a) of Section 1502 of the Health and Safety  
27 Code.

28 (iii) Report to the State Department of Public Health and the  
29 California Department of Aging any case of known or suspected  
30 abuse occurring in an adult day health care center, as defined in  
31 subdivision (b) of Section 1570.7 of the Health and Safety Code.

32 (iv) Report to the Bureau of Medi-Cal Fraud and Elder Abuse  
33 any case of known or suspected criminal activity.

34 (v) Report all cases of known or suspected physical abuse and  
35 financial abuse to the local district attorney's office in the county  
36 where the abuse occurred.

37 (E) (i) If the suspected or alleged abuse or neglect occurred in  
38 a state mental hospital or a state developmental center, and the  
39 suspected or alleged abuse or neglect resulted in any of the  
40 following incidents, a report shall be made immediately, but no

1 later than within two hours of the mandated reporter observing,  
2 obtaining knowledge of, or suspecting abuse, to designated  
3 investigators of the State Department of State Hospitals or the  
4 State Department of Developmental Services, and also to the local  
5 law enforcement agency:

6 (I) A death.

7 (II) A sexual assault, as defined in Section 15610.63.

8 (III) An assault with a deadly weapon, as described in Section  
9 245 of the Penal Code, by a nonresident of the state mental hospital  
10 or state developmental center.

11 (IV) An assault with force likely to produce great bodily injury,  
12 as described in Section 245 of the Penal Code.

13 (V) An injury to the genitals when the cause of the injury is  
14 undetermined.

15 (VI) A broken bone when the cause of the break is  
16 undetermined.

17 (ii) All other reports of suspected or alleged abuse or neglect  
18 that occurred in a state mental hospital or a state developmental  
19 center shall be made immediately, but no later than within two  
20 hours of the mandated reporter observing, obtaining knowledge  
21 of, or suspecting abuse, to designated investigators of the State  
22 Department of State Hospitals or the State Department of  
23 Developmental Services, or to the local law enforcement agency.

24 (iii) When a local law enforcement agency receives an initial  
25 report of suspected or alleged abuse or neglect in a state mental  
26 hospital or a state developmental center pursuant to clause (i), the  
27 local law enforcement agency shall coordinate efforts with the  
28 designated investigators of the State Department of State Hospitals  
29 or the State Department of Developmental Services to provide the  
30 most immediate and appropriate response warranted to investigate  
31 the mandated report. The designated investigators of the State  
32 Department of State Hospitals or the State Department of  
33 Developmental Services and local law enforcement agencies may  
34 collaborate to develop protocols to implement this clause.

35 (iv) Except in an emergency, the local law enforcement agency  
36 shall, as soon as practicable, report any case of known or suspected  
37 criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.

38 (v) Notwithstanding any other law, a mandated reporter who is  
39 required to report pursuant to Section 4427.5 shall not be required  
40 to report under clause (i).



1 (F) If the abuse has occurred in any place other than a long-term  
2 care facility, a state mental hospital, or a state developmental  
3 center, the report shall be made to the adult protective services  
4 agency or the local law enforcement agency.

5 (2) (A) A mandated reporter who is a clergy member who  
6 acquires knowledge or reasonable suspicion of elder or dependent  
7 adult abuse during a penitential communication is not subject to  
8 paragraph (1). For purposes of this subdivision, “penitential  
9 communication” means a communication that is intended to be in  
10 confidence, including, but not limited to, a sacramental confession  
11 made to a clergy member who, in the course of the discipline or  
12 practice of his or her church, denomination, or organization is  
13 authorized or accustomed to hear those communications and under  
14 the discipline tenets, customs, or practices of his or her church,  
15 denomination, or organization, has a duty to keep those  
16 communications secret.

17 (B) This subdivision shall not be construed to modify or limit  
18 a clergy member’s duty to report known or suspected elder and  
19 dependent adult abuse if he or she is acting in the capacity of a  
20 care custodian, health practitioner, or employee of an adult  
21 protective services agency.

22 (C) Notwithstanding any other provision in this section, a clergy  
23 member who is not regularly employed on either a full-time or  
24 part-time basis in a long-term care facility or does not have care  
25 or custody of an elder or dependent adult shall not be responsible  
26 for reporting abuse or neglect that is not reasonably observable or  
27 discernible to a reasonably prudent person having no specialized  
28 training or experience in elder or dependent care.

29 (3) (A) A mandated reporter who is a physician and surgeon,  
30 a registered nurse, or a psychotherapist, as defined in Section 1010  
31 of the Evidence Code, shall not be required to report, pursuant to  
32 paragraph (1), an incident if all of the following conditions exist:

33 (i) The mandated reporter has been told by an elder or dependent  
34 adult that he or she has experienced behavior constituting physical  
35 abuse, as defined in Section 15610.63, abandonment, abduction,  
36 isolation, financial abuse, or neglect.

37 (ii) The mandated reporter is not aware of any independent  
38 evidence that corroborates the statement that the abuse has  
39 occurred.

1 (iii) The elder or dependent adult has been diagnosed with a  
2 mental illness or dementia, or is the subject of a court-ordered  
3 conservatorship because of a mental illness or dementia.

4 (iv) In the exercise of clinical judgment, the physician and  
5 surgeon, the registered nurse, or the psychotherapist, as defined  
6 in Section 1010 of the Evidence Code, reasonably believes that  
7 the abuse did not occur.

8 (B) This paragraph shall not be construed to impose upon  
9 mandated reporters a duty to investigate a known or suspected  
10 incident of abuse and shall not be construed to lessen or restrict  
11 any existing duty of mandated reporters.

12 (4) (A) In a long-term care facility, a mandated reporter shall  
13 not be required to report as a suspected incident of abuse, as defined  
14 in Section 15610.07, an incident if all of the following conditions  
15 exist:

16 (i) The mandated reporter is aware that there is a proper plan  
17 of care.

18 (ii) The mandated reporter is aware that the plan of care was  
19 properly provided or executed.

20 (iii) A physical, mental, or medical injury occurred as a result  
21 of care provided pursuant to clause (i) or (ii).

22 (iv) The mandated reporter reasonably believes that the injury  
23 was not the result of abuse.

24 (B) This paragraph shall not be construed to require a mandated  
25 reporter to seek, nor to preclude a mandated reporter from seeking,  
26 information regarding a known or suspected incident of abuse prior  
27 to reporting. This paragraph shall apply only to those categories  
28 of mandated reporters that the State Department of Public Health  
29 determines, upon approval by the Bureau of Medi-Cal Fraud and  
30 Elder Abuse and the state long-term care ombudsman, have access  
31 to plans of care and have the training and experience necessary to  
32 determine whether the conditions specified in this section have  
33 been met.

34 (c) (1) Any mandated reporter who has knowledge, or  
35 reasonably suspects, that types of elder or dependent adult abuse  
36 for which reports are not mandated have been inflicted upon an  
37 elder or dependent adult, or that his or her emotional well-being  
38 is endangered in any other way, may report the known or suspected  
39 instance of abuse.

1 (2) If the suspected or alleged abuse occurred in a long-term  
2 care facility other than a state mental health hospital or a state  
3 developmental center, the report may be made to the long-term  
4 care ombudsman program. Except in an emergency, the local  
5 ombudsman shall report any case of known or suspected abuse to  
6 the State Department of Public Health and any case of known or  
7 suspected criminal activity to the Bureau of Medi-Cal Fraud and  
8 Elder Abuse, as soon as is practicable.

9 (3) If the suspected or alleged abuse occurred in a state mental  
10 health hospital or a state developmental center, the report may be  
11 made to the designated investigator of the State Department of  
12 State Hospitals or the State Department of Developmental Services  
13 or to a local law enforcement agency. Except in an emergency,  
14 the local law enforcement agency shall report any case of known  
15 or suspected criminal activity to the Bureau of Medi-Cal Fraud  
16 and Elder Abuse, as soon as is practicable.

17 (4) If the suspected or alleged abuse occurred in a place other  
18 than a place described in paragraph (2) or (3), the report may be  
19 made to the county adult protective services agency.

20 (5) If the conduct involves criminal activity not covered in  
21 subdivision (b), it may be immediately reported to the appropriate  
22 law enforcement agency.

23 (d) If two or more mandated reporters are present and jointly  
24 have knowledge or reasonably suspect that types of abuse of an  
25 elder or a dependent adult for which a report is or is not mandated  
26 have occurred, and there is agreement among them, the telephone  
27 report or Internet report, as authorized by Section 15658, may be  
28 made by a member of the team selected by mutual agreement, and  
29 a single report may be made and signed by the selected member  
30 of the reporting team. Any member who has knowledge that the  
31 member designated to report has failed to do so shall thereafter  
32 make the report.

33 (e) A telephone report or Internet report, as authorized by  
34 Section 15658, of a known or suspected instance of elder or  
35 dependent adult abuse shall include, if known, the name of the  
36 person making the report, the name and age of the elder or  
37 dependent adult, the present location of the elder or dependent  
38 adult, the names and addresses of family members or any other  
39 adult responsible for the elder's or dependent adult's care, the  
40 nature and extent of the elder's or dependent adult's condition, the

1 date of the incident, and any other information, including  
2 information that led that person to suspect elder or dependent adult  
3 abuse, as requested by the agency receiving the report.

4 (f) The reporting duties under this section are individual, and  
5 no supervisor or administrator shall impede or inhibit the reporting  
6 duties, and no person making the report shall be subject to any  
7 sanction for making the report. However, internal procedures to  
8 facilitate reporting, ensure confidentiality, and apprise supervisors  
9 and administrators of reports may be established, provided they  
10 are not inconsistent with this chapter.

11 (g) (1) Whenever this section requires a county adult protective  
12 services agency to report to a law enforcement agency, the law  
13 enforcement agency shall, immediately upon request, provide a  
14 copy of its investigative report concerning the reported matter to  
15 that county adult protective services agency.

16 (2) Whenever this section requires a law enforcement agency  
17 to report to a county adult protective services agency, the county  
18 adult protective services agency shall, immediately upon request,  
19 provide to that law enforcement agency a copy of its investigative  
20 report concerning the reported matter.

21 (3) The requirement to disclose investigative reports pursuant  
22 to this subdivision shall not include the disclosure of social services  
23 records or case files that are confidential, nor shall this subdivision  
24 be construed to allow disclosure of any reports or records if the  
25 disclosure would be prohibited by any other provision of state or  
26 federal law.

27 (h) Failure to report, or impeding or inhibiting a report of,  
28 physical abuse, as defined in Section 15610.63, abandonment,  
29 abduction, isolation, financial abuse, or neglect of an elder or  
30 dependent adult, in violation of this section, is a misdemeanor,  
31 punishable by not more than six months in the county jail, by a  
32 fine of not more than one thousand dollars (\$1,000), or by both  
33 that fine and imprisonment. Any mandated reporter who willfully  
34 fails to report, or impedes or inhibits a report of, physical abuse,  
35 as defined in Section 15610.63, abandonment, abduction, isolation,  
36 financial abuse, or neglect of an elder or dependent adult, in  
37 violation of this section, if that abuse results in death or great bodily  
38 injury, shall be punished by not more than one year in a county  
39 jail, by a fine of not more than five thousand dollars (\$5,000), or  
40 by both that fine and imprisonment. If a mandated reporter

1 intentionally conceals his or her failure to report an incident known  
2 by the mandated reporter to be abuse or severe neglect under this  
3 section, the failure to report is a continuing offense until a law  
4 enforcement agency specified in paragraph (1) of subdivision (b)  
5 of Section 15630 discovers the offense.

6 (i) For purposes of this section, “dependent adult” shall have  
7 the same meaning as in Section 15610.23.

8 *SEC. 18. No reimbursement is required by this act pursuant*  
9 *to Section 6 of Article XIII B of the California Constitution because*  
10 *the only costs that may be incurred by a local agency or school*  
11 *district will be incurred because this act creates a new crime or*  
12 *infraction, eliminates a crime or infraction, or changes the penalty*  
13 *for a crime or infraction, within the meaning of Section 17556 of*  
14 *the Government Code, or changes the definition of a crime within*  
15 *the meaning of Section 6 of Article XIII B of the California*  
16 *Constitution.*