

AMENDED IN ASSEMBLY JUNE 30, 2016
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

Introduced by Senator Mendoza
(Coauthor: Assembly Member Levine)

February 27, 2015

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, 1409.8, ~~and 1409.9~~ *1409.9, and 1409.10* 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. 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 disclose specified information to each person receiving its services, and to retain, for 3 years, an acknowledgment from the person being referred, or his or her conservator, guardian, authorized family member, *member or other authorized representative, attorney in fact,* or agent under a power of attorney, stating that the disclosures had been made. The bill would also require referral agencies to maintain liability insurance in specified amounts. *The bill would also make it unlawful for a medical professional or employee of a governmental agency, hospital, or other healthcare institution to offer, provide, or accept a payment, rebate, refund, commission, preference, or discount as payment, compensation, or inducement for referring patients, clients, or customers to a facility.*

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: 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

1 elderly for professional services if that facility does not meet the
2 licensing standards established in Chapter 3.2 (commencing with
3 Section 1560). The referral agency may satisfy this requirement
4 by obtaining and relying on the licensing status information for a
5 residential care facility for the elderly that is published on the
6 Internet Web site of the State Department of Social Services.

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

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

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

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

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

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

30 (b) A resident who refers a new or prospective resident *to a*
31 *licensed residential care facility for the elderly* and receives a
32 discount or other remuneration from ~~a~~ *the* licensed residential care
33 facility for the elderly.

34 ~~(c) A licensed residential care facility staff member of the~~
35 *licensed residential care facility for the elderly* who receives
36 remuneration from the facility for ~~sales or marketing efforts.~~
37 *professional services, including, but not limited to, sales and*
38 *marketing efforts, on behalf of that facility.*

39 SEC. 3. Section 1402 is added to the Health and Safety Code,
40 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 1404.5 of the Health and Safety Code is
9 amended to read:

10 1404.5. A license application shall be submitted to either or
11 both licensing departments, as appropriate, whenever any of the
12 following circumstances occur:

- 13 (a) Change of ownership of the referral agency.
- 14 (b) Change of name of the referral agency.
- 15 (c) Change of location of the referral agency.

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

18 1405. Any person, partnership, firm, corporation, or association
19 desiring to obtain a license to refer persons to extended care
20 facilities, skilled nursing homes, or intermediate care facilities, or
21 a distinct part of a facility providing extended care, skilled nursing
22 home care, or intermediate care, shall file with the State
23 Department of Public Health an application on forms furnished
24 by the State Department of Public Health. Any person, partnership,
25 firm, corporation, or association desiring to obtain a license to
26 refer persons to residential care facilities for the elderly shall file
27 with the State Department of Social Services an application on
28 forms furnished by the State Department of Social Services. The
29 applications shall contain all of the following:

- 30 (a) Name of applicant, and if an individual, whether the applicant
31 has attained the age of 18 years.
- 32 (b) Name of referral agency.
- 33 (c) The location of the referral agency.
- 34 (d) The business or occupation engaged in by each applicant,
35 and by each partner, officer, and director, for at least two years
36 immediately preceding the filing of the application. In addition,
37 each such person shall submit a statement setting forth whether
38 he or she has previously engaged in the operation of a referral
39 agency, whether he or she has been involved in, or the subject of,
40 a refusal or revocation of a referral agency license, and whether

1 he or she has been convicted of a crime other than a minor traffic
2 offense.

3 (e) If the applicant is a corporation, the name and principal
4 business address of each officer and director of the corporation;
5 and for nonpublic corporations, the name and business address of
6 each stockholder owning 10 percent or more of the stock and the
7 name and business address of any corporation member who has
8 responsibility in the operation of the facility.

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

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

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

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

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

19 (k) A declaration that the licensee will not have any financial
20 interest in any health facility doing business with the referral
21 agency.

22 (l) Evidence satisfactory to the licensing department that the
23 applicant demonstrates reputable and responsible character and
24 the capability to comply with this chapter.

25 (m) *For a licensee to refer persons to residential care facilities*
26 *for the elderly, both of the following:*

27 (1) *A declaration that the licensee will either conduct a*
28 *suitability determination of each person who seeks a referral from*
29 *the licensee and who is referred to a facility or facilities, or will*
30 *comply with the requirements of paragraph (3) of subdivision (b)*
31 *of Section 1409.4. For purposes of this subdivision, “a suitability*
32 *determination” means a determination made by the licensee that*
33 *the facility offers services to meet the needs of the person seeking*
34 *a referral because of the following considerations:*

35 (A) *The level of care requested by the person seeking the*
36 *referral.*

37 (B) *The cost of the facility and the ability of the financial means*
38 *of the person seeking the referral.*

39 (C) *The social needs and preferences of the person seeking the*
40 *referral.*

1 (D) *The geographic location of the facility and the geographic*
2 *preference of the person seeking the referral.*

3 (2) *A declaration that the licensee trains all employees who*
4 *make referrals to residential care facilities for the elderly*
5 *regarding all of the following issues:*

6 (A) *All of the provisions of this chapter that apply to a referral*
7 *agency, including but not limited to, instruction on how to comply*
8 *with all of those provisions.*

9 (B) *State governance and administrative functions of agency*
10 *operations, including resident assessment and admission*
11 *procedures.*

12 (C) *The psychosocial and physical needs of the elderly.*

13 (D) *Community supports, cultural competency and sensitivity*
14 *to residents' needs.*

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

17 1407. (a) Any licensee desiring to voluntarily surrender his
18 or her license for cancellation or temporary suspension shall notify
19 the licensing department in writing as soon as possible and, in all
20 cases, at least 30 days prior to the effective date of cancellation or
21 temporary suspension of the license.

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

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

29 1408. (a) Upon verification of compliance with this chapter
30 and with the approval of the licensing department, the licensing
31 department shall issue the license to the applicant.

32 (b) ~~When licensing referral agencies that provide~~ *issuing a*
33 *license to a referral agency that provides* referrals to residential
34 care facilities for the elderly, the State Department of Social
35 Services is not required to conduct an onsite licensing inspection
36 as a condition of verifying compliance with this chapter.

37 (c) As a condition of verifying compliance with this chapter,
38 the licensing department may require an applicant to submit a copy
39 or example of the disclosures required by Section 1409.4.

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

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

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

13 1409.3. (a) The licensee shall notify either or both licensing
 14 departments, as appropriate, within 10 days in writing when a
 15 change of stockholder owning 10 percent or more of the nonpublic
 16 corporate stock occurs. The writing shall include the name and
 17 principal mailing addresses of the new stockholder.

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

22 (c) Each licensee shall notify either or both licensing
 23 departments, as appropriate, within 10 days in writing of any
 24 change of the mailing address of the licensee. The writing shall
 25 include the new mailing address of the licensee.

26 (d) When a change occurs in the principal officer of a corporate
 27 licensee, chairperson, president, or general manager, either or both
 28 licensing departments, as appropriate, shall be notified within 10
 29 days in writing by the licensee. The writing shall include the name
 30 and principal business address of the officer.

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

33 1409.4. (a) Before referring a person to any facility, a licensee
 34 shall disclose all of the following to the person:

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

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

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 contact information, including address and telephone
13 number, of the State Department of Social Services or State
14 Department of Public Health, as appropriate, and the contact
15 information for filing consumer complaints, including contact
16 information for the local long-term care ombudsman. If the
17 disclosure statement is provided electronically, the contact
18 information for each department and the local long-term care
19 ombudsman may be provided as a hyperlink.

20 (b) Contemporaneous with a referral, the licensee shall provide
21 the person with the following information about the facility:

22 (1) The date of the licensee’s most recent tour or visit to the
23 ~~facility and facility, if any,~~ verification that the facility is licensed
24 and in good standing, and a hyperlink to, or copy of, the most
25 recent evaluation report for ~~a residential care facility for the elderly~~
26 ~~to the facility~~ which the person is being referred, prepared pursuant
27 to Section 1569.33 and published by the State Department of Social
28 Services, if an evaluation report has been prepared in the previous
29 24 months.

30 (2) Information regarding the ~~type of~~ facility and the services
31 offered by the facility.

32 (3) (A) *Subject to the provisions of subdivision (m) of Section*
33 *1405, a suitability advisory, to be written on the disclosure form,*
34 *or read aloud, as follows:*

35 *“State law does not require that we determine whether facilities*
36 *to which we refer you are suitable for you based upon your care*
37 *and social needs, financial means, and location. We cannot and*
38 *are not required to make this decision for you and your family.”*

1 *“We cannot be sure whether a facility has an opening or whether*
2 *it is still available when you need it. You should contact the facility*
3 *yourself to verify whether an opening is available.”*

4 *(B) Nothing shall require a licensee who declares, pursuant to*
5 *subdivision (m) of Section 1405, that the licensee will conduct a*
6 *suitability determination of each person who seeks a referral from*
7 *the licensee, to comply with the requirements of this paragraph.*

8 (c) (1) *The disclosures and the suitability advisory, if provided,*
9 *shall be dated and shall contain, in addition to the requirements of*
10 *subdivisions (a) and (b), the name of the person being referred.*
11 *referred and the name of the employee making the referral.*

12 (2) *If the disclosures are provided in written form, they shall be*
13 *printed in 16-point bold type.*

14 (3) *If the disclosures are provided electronically, they shall be*
15 *provided in a manner that is consistent with provisions set forth*
16 *in Title 2.5 (commencing with Section 1633.1) of Part 2 of Division*
17 *3 of the Civil Code, and shall be displayed on a secured Web page*
18 *in a larger type than the surrounding text.*

19 (4) *The licensing department may develop standard disclosure*
20 *forms and a suitability advisory that conform to the requirements*
21 *of this section. Nothing in this paragraph precludes licensees from*
22 *the ability to give disclosures orally, as set forth herein.*

23 (d) *The licensee shall make the disclosures pursuant to*
24 *subdivisions (a) and (b) in the same language in which the licensee*
25 *negotiates any referral services with the person receiving services.*

26 (e) *The disclosures shall be signed or otherwise acknowledged*
27 *by the person being referred, or his or her conservator, guardian,*
28 *authorized family—member, member or other authorized*
29 *representative, attorney in fact, or agent under a power of attorney,*
30 *stating that the disclosures required by this section were received.*
31 *The acknowledgment shall be evidenced in one of the following*
32 *ways:*

33 (1) *The signature of the person being referred, or his or her*
34 *conservator, guardian, authorized family—member, member or other*
35 *authorized representative, attorney in fact, or agent under a power*
36 *of attorney on the document containing the required disclosures.*

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

1 (3) A faxed confirmation that includes the date, time, and fax
2 number and displays the required disclosures.

3 (4) A telephonic, oral acknowledgment of the person being
4 referred, or his or her conservator, guardian, authorized family
5 ~~member~~, *member or other authorized representative, attorney in*
6 *fact*, 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 ~~in-person~~,
9 *in-person* oral acknowledgment.

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

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

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

24 (h) *For the purposes of this section, the following terms have*
25 *the following meaning:*

26 (1) *“Facility” means a residential care facility for the elderly*
27 *as set forth in Section 1569.2.*

28 (2) *“Licensee” means a referral agency that is licensed pursuant*
29 *to Section 1405.*

30 SEC. 11. Section 1409.5 is added to the Health and Safety
31 Code, to read:

32 1409.5. Owners, operators, and employees of a ~~licensee referral~~
33 *agency licensed pursuant to Section 1405* are mandated reporters
34 of elder or dependent adult abuse pursuant to Section 15630 of the
35 Welfare and Institutions Code.

36 SEC. 12. Section 1409.6 is added to the Health and Safety
37 Code, to read:

38 1409.6. (a) It is unlawful for a licensee to share any personal
39 information, including, but not limited to, the name, address, age,
40 gender, or medical information of the person receiving services

1 from the licensee, with any unauthorized person or third-party
2 affiliate of the licensee, unless authorized pursuant to subdivision
3 (b).

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

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

24 (2) As part of the disclosures required by Section 1409.4, if the
25 acknowledgment required by subdivision (e) of Section 1409.4
26 clearly indicates that the individual being referred, or his or her
27 conservator, guardian, ~~authorized family member, member or other~~
28 *authorized representative, attorney in fact*, or agent under power
29 of attorney, ~~is consenting~~ *consents* to the referral agency's
30 disclosure of his or her personal information to a facility or
31 facilities for which he or she is being referred. The licensee shall
32 provide to the individual being referred the name and location of
33 the facility or facilities that will receive the personal information,
34 as applicable.

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

38 (d) *For the purposes of this section, the following terms have*
39 *the following meaning:*

1 (1) “Facility” means a residential care facility for the elderly
2 as set forth in Section 1569.2.

3 (2) “Licensee” means a referral agency that is licensed pursuant
4 to Section 1405.

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~~ referral agency licensed
8 pursuant to Section 1405 to hold any power of attorney for a person
9 receiving placement referral services from that licensee, or to
10 receive or hold a client’s property in any capacity.

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

13 1409.8. On and after July 1, 2017, all persons, associations, or
14 corporations licensed pursuant to ~~this chapter~~ Section 1405 shall
15 maintain liability insurance coverage in an amount of at least one
16 million dollars (\$1,000,000) per person occurrence and three
17 million dollars (\$3,000,000) in the total annual aggregate, for
18 negligent acts or omissions by the licensee.

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

21 1409.9. A licensee shall display the licensee’s name and license
22 number on all advertising, promotional or marketing material, and
23 Internet Web sites paid for or operated by the licensee.

24 SEC. 16. Section 1409.10 is added to the Health and Safety
25 Code, to read:

26 1409.10. (a) It is unlawful for a medical professional or
27 employee of a government agency, hospital, or other healthcare
28 institution, including, but not limited to, physicians, nurses, social
29 workers, discharge planners, therapists, and geriatric care
30 managers, to offer, provide, or accept a payment, rebate, refund,
31 commission, preference, or discount, whether in the form of money
32 or other consideration, as payment, compensation, or inducement
33 for referring patients, clients, or customers to a facility.

34 (b) For the purposes of this section, the following terms have
35 the following meanings:

36 (1) “Facility” means a residential care facility for the elderly
37 as set forth in Section 1569.2.

38 (2) “Licensee” means a referral agency that is licensed pursuant
39 to Section 1405.

1 ~~SEC. 16.~~

2 *SEC. 17.* Section 1410 of the Health and Safety Code is
3 amended to read:

4 1410. The licensing department may suspend or revoke a
5 license issued under this chapter for violation of any provisions
6 of this chapter or *any* rules and regulations promulgated hereunder.
7 In addition, the licensing department shall assess a civil penalty
8 in the amount of fees received by a licensee as a result of a
9 violation of any provisions of this chapter or rules and regulations
10 promulgated hereunder. Proceedings to suspend or revoke a license
11 conducted by the State Department of Public Health shall be
12 conducted pursuant to Section 100171.

13 ~~SEC. 17.~~

14 *SEC. 18.* Section 15630 of the Welfare and Institutions Code
15 is amended to read:

16 15630. (a) All of the following persons are mandated reporters:

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

22 (2) An elder or dependent adult care custodian.

23 (3) A health practitioner.

24 (4) A clergy member.

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

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

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

30 (b) (1) Any mandated reporter who, in his or her professional
31 capacity, or within the scope of his or her employment, has
32 observed or has knowledge of an incident that reasonably appears
33 to be physical abuse, as defined in Section 15610.63, abandonment,
34 abduction, isolation, financial abuse, or neglect, or is told by an
35 elder or dependent adult that he or she has experienced behavior,
36 including an act or omission, constituting physical abuse, as defined
37 in Section 15610.63, abandonment, abduction, isolation, financial
38 abuse, or neglect, or reasonably suspects that abuse, shall report
39 the known or suspected instance of abuse by telephone or through
40 a confidential Internet reporting tool, as authorized by Section

1 15658, immediately or as soon as practicably possible. If reported
2 by telephone, a written report shall be sent, or an Internet report
3 shall be made through the confidential Internet reporting tool
4 established in Section 15658, within two working days.

5 (A) If the suspected or alleged abuse is physical abuse, as
6 defined in Section 15610.63, and the abuse occurred in a long-term
7 care facility, except a state mental health hospital or a state
8 developmental center, the following shall occur:

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

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

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

33 (iv) When applicable, reports made pursuant to clauses (i) and
34 (ii) shall be deemed to satisfy the reporting requirements of the
35 federal Elder Justice Act of 2009, as set out in Subtitle H of the
36 federal Patient Protection and Affordable Care Act (Public Law
37 111-148), Section 1418.91 of the Health and Safety Code, and
38 Section 72541 of Title 22 of California Code of Regulations. When
39 a local law enforcement agency receives an initial report of
40 suspected abuse in a long-term care facility pursuant to this

1 subparagraph, the local law enforcement agency may coordinate
2 efforts with the local ombudsman to provide the most immediate
3 and appropriate response warranted to investigate the mandated
4 report. The local ombudsman and local law enforcement agencies
5 may collaborate to develop protocols to implement this
6 subparagraph.

7 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
8 (commencing with Section 11340) of Part 1 of Division 3 of Title
9 2 of the Government Code, or any other law, the department may
10 implement subparagraph (A), in whole or in part, by means of
11 all-county letters, provider bulletins, or other similar instructions
12 without taking regulatory action.

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

18 (D) With regard to abuse reported pursuant to subparagraph
19 (C), the local ombudsman and the local law enforcement agency
20 shall, as soon as practicable, except in the case of an emergency
21 or pursuant to a report required to be made pursuant to clause (v),
22 in which case these actions shall be taken immediately, do all of
23 the following:

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

28 (ii) Report to the State Department of Social Services any case
29 of known or suspected abuse occurring in a residential care facility
30 for the elderly, as defined in Section 1569.2 of the Health and
31 Safety Code, or in an adult day program, as defined in paragraph
32 (2) of subdivision (a) of Section 1502 of the Health and Safety
33 Code.

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

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

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

4 (E) (i) If the suspected or alleged abuse or neglect occurred in
5 a state mental hospital or a state developmental center, and the
6 suspected or alleged abuse or neglect resulted in any of the
7 following incidents, a report shall be made immediately, but no
8 later than within two hours of the mandated reporter observing,
9 obtaining knowledge of, or suspecting abuse, to designated
10 investigators of the State Department of State Hospitals or the
11 State Department of Developmental Services, and also to the local
12 law enforcement agency:

13 (I) A death.

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

15 (III) An assault with a deadly weapon, as described in Section
16 245 of the Penal Code, by a nonresident of the state mental hospital
17 or state developmental center.

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

20 (V) An injury to the genitals when the cause of the injury is
21 undetermined.

22 (VI) A broken bone when the cause of the break is
23 undetermined.

24 (ii) All other reports of suspected or alleged abuse or neglect
25 that occurred in a state mental hospital or a state developmental
26 center shall be made immediately, but no later than within two
27 hours of the mandated reporter observing, obtaining knowledge
28 of, or suspecting abuse, to designated investigators of the State
29 Department of State Hospitals or the State Department of
30 Developmental Services, or to the local law enforcement agency.

31 (iii) When a local law enforcement agency receives an initial
32 report of suspected or alleged abuse or neglect in a state mental
33 hospital or a state developmental center pursuant to clause (i), the
34 local law enforcement agency shall coordinate efforts with the
35 designated investigators of the State Department of State Hospitals
36 or the State Department of Developmental Services to provide the
37 most immediate and appropriate response warranted to investigate
38 the mandated report. The designated investigators of the State
39 Department of State Hospitals or the State Department of

1 Developmental Services and local law enforcement agencies may
2 collaborate to develop protocols to implement this clause.

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

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

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

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

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

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

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

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

5 (ii) The mandated reporter is not aware of any independent
6 evidence that corroborates the statement that the abuse has
7 occurred.

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

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

15 (B) This paragraph shall not be construed to impose upon
16 mandated reporters a duty to investigate a known or suspected
17 incident of abuse and shall not be construed to lessen or restrict
18 any existing duty of mandated reporters.

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

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

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

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

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

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

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

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

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

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

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

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

39 (e) A telephone report or Internet report, as authorized by
40 Section 15658, of a known or suspected instance of elder or

1 dependent adult abuse shall include, if known, the name of the
2 person making the report, the name and age of the elder or
3 dependent adult, the present location of the elder or dependent
4 adult, the names and addresses of family members or any other
5 adult responsible for the elder's or dependent adult's care, the
6 nature and extent of the elder's or dependent adult's condition, the
7 date of the incident, and any other information, including
8 information that led that person to suspect elder or dependent adult
9 abuse, as requested by the agency receiving the report.

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

17 (g) (1) Whenever this section requires a county adult protective
18 services agency to report to a law enforcement agency, the law
19 enforcement agency shall, immediately upon request, provide a
20 copy of its investigative report concerning the reported matter to
21 that county adult protective services agency.

22 (2) Whenever this section requires a law enforcement agency
23 to report to a county adult protective services agency, the county
24 adult protective services agency shall, immediately upon request,
25 provide to that law enforcement agency a copy of its investigative
26 report concerning the reported matter.

27 (3) The requirement to disclose investigative reports pursuant
28 to this subdivision shall not include the disclosure of social services
29 records or case files that are confidential, nor shall this subdivision
30 be construed to allow disclosure of any reports or records if the
31 disclosure would be prohibited by any other provision of state or
32 federal law.

33 (h) Failure to report, or impeding or inhibiting a report of,
34 physical abuse, as defined in Section 15610.63, abandonment,
35 abduction, isolation, financial abuse, or neglect of an elder or
36 dependent adult, in violation of this section, is a misdemeanor,
37 punishable by not more than six months in the county jail, by a
38 fine of not more than one thousand dollars (\$1,000), or by both
39 that fine and imprisonment. Any mandated reporter who willfully
40 fails to report, or impedes or inhibits a report of, physical abuse,

1 as defined in Section 15610.63, abandonment, abduction, isolation,
2 financial abuse, or neglect of an elder or dependent adult, in
3 violation of this section, if that abuse results in death or great bodily
4 injury, shall be punished by not more than one year in a county
5 jail, by a fine of not more than five thousand dollars (\$5,000), or
6 by both that fine and imprisonment. If a mandated reporter
7 intentionally conceals his or her failure to report an incident known
8 by the mandated reporter to be abuse or severe neglect under this
9 section, the failure to report is a continuing offense until a law
10 enforcement agency specified in paragraph (1) of subdivision (b)
11 of Section 15630 discovers the offense.

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

14 ~~SEC. 18.~~

15 *SEC. 19.* No reimbursement is required by this act pursuant to
16 Section 6 of Article XIII B of the California Constitution because
17 the only costs that may be incurred by a local agency or school
18 district will be incurred because this act creates a new crime or
19 infraction, eliminates a crime or infraction, or changes the penalty
20 for a crime or infraction, within the meaning of Section 17556 of
21 the Government Code, or changes the definition of a crime within
22 the meaning of Section 6 of Article XIII B of the California
23 Constitution.