

AMENDED IN ASSEMBLY AUGUST 15, 2016

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**

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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, *1403*, 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, 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 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~~ *health care* 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 the licensed residential care  
33 facility for the elderly.

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

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

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

3 *SEC. 4. Section 1403 of the Health and Safety Code is amended*  
4 *to read:*

5 1403. (a) Each application for a license or renewal of license  
6 under this chapter shall be accompanied by an annual Licensing  
7 and Certification Program fee ~~set in accordance with Section 1266.~~  
8 *fee.* Each license shall expire 12 months from its date of issuance  
9 and application for renewal accompanied by the fee shall be filed  
10 with the director not later than 30 days prior to the date of  
11 expiration.

12 (b) *The State Department of Public Health shall set the annual*  
13 *Licensing and Certification Program fee in accordance with*  
14 *Section 1266.*

15 (c) *The State Department of Social Services shall set the annual*  
16 *Licensing and Certification Program fee at an amount no greater*  
17 *than the amount required to cover the reasonable and actual costs*  
18 *of administering the licensing program.*

19 ~~SEC. 4.~~

20 *SEC. 5. Section 1404 of the Health and Safety Code is amended*  
21 *to read:*

22 1404. No licensee under this chapter shall have a direct or  
23 indirect financial interest in any facility doing business with the  
24 licensee.

25 ~~SEC. 5.~~

26 *SEC. 6. Section 1404.5 of the Health and Safety Code is*  
27 *amended to read:*

28 1404.5. A license application shall be submitted to either or  
29 both licensing departments, as appropriate, whenever any of the  
30 following circumstances occur:

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

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

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

34 ~~SEC. 6.~~

35 *SEC. 7. Section 1405 of the Health and Safety Code is amended*  
36 *to read:*

37 1405. Any person, partnership, firm, corporation, or association  
38 desiring to obtain a license to refer persons to extended care  
39 facilities, skilled nursing homes, or intermediate care facilities, or  
40 a distinct part of a facility providing extended care, skilled nursing

1 home care, or intermediate care, shall file with the State  
2 Department of Public Health an application on forms furnished  
3 by the State Department of Public Health. Any person, partnership,  
4 firm, corporation, or association desiring to obtain a license to  
5 refer persons to residential care facilities for the elderly shall file  
6 with the State Department of Social Services an application on  
7 forms furnished by the State Department of Social Services. The  
8 applications shall contain all of the following:

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

11 (b) Name of referral agency.

12 (c) The location of the referral agency.

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

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

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

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

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

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

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

38 (k) A declaration that the licensee will not have any financial  
39 interest in any health facility doing business with the referral  
40 agency.

1 (l) Evidence satisfactory to the licensing department that the  
2 applicant demonstrates reputable and responsible character and  
3 the capability to comply with this chapter.

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

6 (1) A declaration that the licensee will either conduct a  
7 suitability determination of each person who seeks a referral from  
8 the licensee and who is referred to a facility or facilities, or will  
9 comply with the requirements of paragraph (3) of subdivision (b)  
10 of Section 1409.4. For purposes of this subdivision, “a suitability  
11 determination” means a determination made by the licensee that  
12 the facility offers services to meet the needs of the person seeking  
13 a referral because of the following considerations:

14 (A) The level of care requested by the person seeking the  
15 referral.

16 (B) The cost of the facility and the ability of the financial means  
17 of the person seeking the referral.

18 (C) The social needs and preferences of the person seeking the  
19 referral.

20 (D) The geographic location of the facility and the geographic  
21 preference of the person seeking the referral.

22 (2) A declaration that the licensee trains all employees who  
23 make referrals to residential care facilities for the elderly regarding  
24 all of the following issues:

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

28 (B) State governance and administrative functions of agency  
29 operations, including resident assessment and admission  
30 procedures.

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

32 (D) Community supports, cultural competency and sensitivity  
33 to residents’ needs.

34 ~~SEC. 7.~~

35 *SEC. 8.* Section 1407 of the Health and Safety Code is amended  
36 to read:

37 1407. (a) Any licensee desiring to voluntarily surrender his  
38 or her license for cancellation or temporary suspension shall notify  
39 the licensing department in writing as soon as possible and, in all

1 cases, at least 30 days prior to the effective date of cancellation or  
2 temporary suspension of the license.

3 (b) Any license placed in temporary suspension pursuant to this  
4 section may be reinstated by the licensing department within 12  
5 months of the date of the voluntary suspension on receipt of an  
6 application and evidence showing compliance with licensing  
7 requirements.

8 ~~SEC. 8.~~

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

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

14 (b) When issuing a license to a referral agency that provides  
15 referrals to residential care facilities for the elderly, the State  
16 Department of Social Services is not required to conduct an onsite  
17 licensing inspection as a condition of verifying compliance with  
18 this chapter.

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

22 (d) If the applicant is not in compliance with this chapter, the  
23 licensing department shall deny the applicant a license.  
24 Immediately upon the denial of any license, the licensing  
25 department shall notify the applicant in writing. Within 20 days  
26 of receipt of the notice, the applicant may present his or her written  
27 petition for a hearing to the licensing department. Proceedings  
28 conducted by the State Department of Public Health shall be  
29 conducted in accordance with Section 100171.

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

32 ~~SEC. 9.~~

33 *SEC. 10.* Section 1409.3 of the Health and Safety Code is  
34 amended to read:

35 1409.3. (a) The licensee shall notify either or both licensing  
36 departments, as appropriate, within 10 days in writing when a  
37 change of stockholder owning 10 percent or more of the nonpublic  
38 corporate stock occurs. The writing shall include the name and  
39 principal mailing addresses of the new stockholder.



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

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

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

14 ~~SEC. 10.~~

15 *SEC. 11.* Section 1409.4 is added to the Health and Safety  
16 Code, to read:

17 1409.4. (a) Before referring a person to any facility, a licensee  
18 shall disclose all of the following to the person:

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

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

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

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

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

34 (6) The contact information, including address and telephone  
35 number, of the State Department of Social Services or State  
36 Department of Public Health, as appropriate, and the contact  
37 information for filing consumer complaints, including contact  
38 information for the local long-term care ombudsman. If the  
39 disclosure statement is provided electronically, the contact

1 information for each department and the local long-term care  
2 ombudsman may be provided as a hyperlink.

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

5 (1) The date of the licensee's most recent tour or visit to the  
6 facility, if any, verification that the facility is licensed and in good  
7 standing, and a hyperlink to, or copy of, the most recent evaluation  
8 report for the facility which the person is being referred, prepared  
9 pursuant to Section 1569.33 and published by the State Department  
10 of Social Services, if an evaluation report has been prepared in the  
11 previous 24 months.

12 (2) Information regarding the facility and the services offered  
13 by the facility.

14 (3) (A) Subject to the provisions of subdivision (m) of Section  
15 1405, a suitability advisory, to be written on the disclosure form,  
16 or read aloud, as follows:

17 "State law does not require that we determine whether facilities  
18 to which we refer you are suitable for you based upon your care  
19 and social needs, financial means, and location. We cannot and  
20 are not required to make this decision for you and your family."

21 ~~"We-family. We cannot be sure whether a facility has an opening~~  
22 ~~or whether it is still available when you need it. You should contact~~  
23 ~~the facility yourself to verify whether an opening is available."~~

24 (B) Nothing shall require a licensee who declares, pursuant to  
25 subdivision (m) of Section 1405, that the licensee will conduct a  
26 suitability determination of each person who seeks a referral from  
27 the licensee, to comply with the requirements of this paragraph.

28 (c) (1) The disclosures and the suitability advisory, if provided,  
29 shall be dated and shall contain, in addition to the requirements of  
30 subdivisions (a) and (b), the name of the person being referred and  
31 the name of the employee making the referral.

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

34 (3) If the disclosures are provided electronically, they shall be  
35 provided in a manner that is consistent with provisions set forth  
36 in Title 2.5 (commencing with Section 1633.1) of Part 2 of Division  
37 3 of the Civil Code, and shall be displayed on a secured Web page  
38 in a larger type than the surrounding text.

39 (4) The licensing department may develop standard disclosure  
40 forms and a suitability advisory that conform to the requirements

1 of this section. Nothing in this paragraph precludes licensees from  
2 the ability to give disclosures orally, as set forth herein.

3 (d) The licensee shall make the disclosures pursuant to  
4 subdivisions (a) and (b) in the same language in which the licensee  
5 negotiates any referral services with the person receiving services.

6 (e) The disclosures shall be signed or otherwise acknowledged  
7 by the person being referred, or his or her conservator, guardian,  
8 authorized family member or other authorized representative,  
9 attorney in fact, or agent under a power of attorney, stating that  
10 the disclosures required by this section were received. The  
11 acknowledgment shall be evidenced in one of the following ways:

12 (1) The signature of the person being referred, or his or her  
13 conservator, guardian, authorized family member or other  
14 authorized representative, attorney in fact, or agent under a power  
15 of attorney on the document containing the required disclosures.

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

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

22 (4) A telephonic, oral acknowledgment of the person being  
23 referred, or his or her conservator, guardian, authorized family  
24 member or other authorized representative, attorney in fact, or  
25 agent under power of attorney, which shall be recorded, with that  
26 person's consent, consistent with Sections 632 and 632.7 of the  
27 Penal Code. This paragraph does not authorize an in-person oral  
28 acknowledgment.

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

31 (g) (1) If the disclosures, or any other referral-related document,  
32 are provided electronically, the licensee shall provide a written  
33 copy, in 16-point bold type, to the person being referred, or his or  
34 her conservator, guardian, authorized family member or other  
35 authorized representative, attorney in fact, or agent under power  
36 of attorney following any referral. This written copy may be  
37 provided by fax, email, or other means of electronic  
38 communication, if appropriate.

1 (2) Recorded telephonic acknowledgments shall, upon request,  
2 be provided in a reasonably accessible format to the person being  
3 referred or the licensing department within five days of the request.

4 (h) For the purposes of this section, the following terms have  
5 the following meaning:

6 (1) "Facility" means a residential care facility for the elderly as  
7 set forth in Section 1569.2.

8 (2) "Licensee" means a referral agency that is licensed pursuant  
9 to Section 1405.

10 ~~SEC. 11.~~

11 *SEC. 12.* Section 1409.5 is added to the Health and Safety  
12 Code, to read:

13 1409.5. Owners, operators, and employees of a referral agency  
14 licensed pursuant to Section 1405 are mandated reporters of elder  
15 or dependent adult abuse pursuant to Section 15630 of the Welfare  
16 and Institutions Code.

17 ~~SEC. 12.~~

18 *SEC. 13.* Section 1409.6 is added to the Health and Safety  
19 Code, to read:

20 1409.6. (a) It is unlawful for a licensee to share any personal  
21 information, including, but not limited to, the name, address, age,  
22 gender, or medical information of the person receiving services  
23 from the licensee, with any unauthorized person or third-party  
24 affiliate of the licensee, unless authorized pursuant to subdivision  
25 (b).

26 (b) A referral agency that refers a person to any facility or  
27 facilities shall obtain from the person being referred, or his or her  
28 conservator, guardian, authorized family member or other  
29 authorized representative, attorney in fact, or agent under power  
30 of attorney, prior to making the referral, authorization allowing  
31 the referral agency to share the referred person's personal  
32 information, as well as the name and a description of the care or  
33 services needed by the individual being referred, with a facility or  
34 facilities for purposes of the referral. The personal information, or  
35 other information shared, shall be limited to only that information  
36 which is necessary to complete the referral process. The  
37 authorization shall be obtained in either of the following ways:

38 (1) As a separate authorization form that clearly discloses that  
39 the individual is consenting to the disclosure of his or her personal  
40 information to a facility or facilities for which they are being

1 referred. This authorization form shall include the name and  
2 location of the facility or facilities that may receive the personal  
3 information, and shall be executed in the manner described in  
4 subdivision (e) of Section 1409.4.

5 (2) As part of the disclosures required by Section 1409.4, if the  
6 acknowledgment required by subdivision (e) of Section 1409.4  
7 clearly indicates that the individual being referred, or his or her  
8 conservator, guardian, authorized family member or other  
9 authorized representative, attorney in fact, or agent under power  
10 of attorney, consents to the referral agency's disclosure of his or  
11 her personal information to a facility or facilities for which he or  
12 she is being referred. The licensee shall provide to the individual  
13 being referred the name and location of the facility or facilities  
14 that will receive the personal information, as applicable.

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

18 (d) For the purposes of this section, the following terms have  
19 the following ~~meaning~~: *meanings*:

20 (1) "Facility" means a residential care facility for the elderly as  
21 set forth in Section 1569.2.

22 (2) "Licensee" means a referral agency that is licensed pursuant  
23 to Section 1405.

24 ~~SEC. 13.~~

25 *SEC. 14.* Section 1409.7 is added to the Health and Safety  
26 Code, to read:

27 1409.7. It is unlawful for a referral agency licensed pursuant  
28 to Section 1405 to hold any power of attorney for a person  
29 receiving placement referral services from that licensee, or to  
30 receive or hold a client's property in any capacity.

31 ~~SEC. 14.~~

32 *SEC. 15.* Section 1409.8 is added to the Health and Safety  
33 Code, to read:

34 1409.8. On and after July 1, 2017, all persons, associations, or  
35 corporations licensed pursuant to Section 1405 shall maintain  
36 liability insurance coverage in an amount of at least one million  
37 dollars (\$1,000,000) per person occurrence and three million dollars  
38 (\$3,000,000) in the total annual aggregate, for negligent acts or  
39 omissions by the licensee.

1 ~~SEC. 15.~~

2 *SEC. 16.* Section 1409.9 is added to the Health and Safety  
3 Code, to read:

4 1409.9. A licensee shall display the licensee’s name and license  
5 number on all advertising, promotional or marketing material, and  
6 Internet Web sites paid for or operated by the licensee.

7 ~~SEC. 16.~~

8 *SEC. 17.* Section 1409.10 is added to the Health and Safety  
9 Code, to read:

10 1409.10. (a) It is unlawful for a medical professional or  
11 employee of a government agency, hospital, or other ~~healthcare~~  
12 *health care* institution, including, but not limited to, physicians,  
13 nurses, social workers, discharge planners, therapists, and geriatric  
14 care managers, to offer, provide, or accept a payment, rebate,  
15 refund, commission, preference, or discount, whether in the form  
16 of money or other consideration, as payment, compensation, or  
17 inducement for referring patients, clients, or customers to a facility.

18 (b) For the purposes of this section, the following terms have  
19 the following meanings:

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

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

24 ~~SEC. 17.~~

25 *SEC. 18.* Section 1410 of the Health and Safety Code is  
26 amended to read:

27 1410. The licensing department may suspend or revoke a  
28 license issued under this chapter for violation of any provisions  
29 of this chapter or any rules and regulations promulgated hereunder.  
30 In addition, the licensing department shall assess a civil penalty  
31 in the amount of fees received by a licensee as a result of a  
32 violation of any provisions of this chapter or rules and regulations  
33 promulgated hereunder. Proceedings to suspend or revoke a license  
34 conducted by the State Department of Public Health shall be  
35 conducted pursuant to Section 100171.

36 ~~SEC. 18.~~

37 *SEC. 19.* Section 15630 of the Welfare and Institutions Code  
38 is amended to read:

39 15630. (a) All of the following persons are mandated reporters:

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

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

7 (3) A health practitioner.

8 (4) A clergy member.

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

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

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

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

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

33 (i) If the suspected abuse results in serious bodily injury, a  
34 telephone report shall be made to the local law enforcement agency  
35 immediately, but also no later than within two hours of the  
36 mandated reporter observing, obtaining knowledge of, or  
37 suspecting the physical abuse, and a written report shall be made  
38 to the local ombudsman, the corresponding licensing agency, and  
39 the local law enforcement agency within two hours of the mandated

1 reporter observing, obtaining knowledge of, or suspecting the  
2 physical abuse.

3 (ii) If the suspected abuse does not result in serious bodily injury,  
4 a telephone report shall be made to the local law enforcement  
5 agency within 24 hours of the mandated reporter observing,  
6 obtaining knowledge of, or suspecting the physical abuse, and a  
7 written report shall be made to the local ombudsman, the  
8 corresponding licensing agency, and the local law enforcement  
9 agency within 24 hours of the mandated reporter observing,  
10 obtaining knowledge of, or suspecting the physical abuse.

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

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

32 (B) Notwithstanding the rulemaking provisions of Chapter 3.5  
33 (commencing with Section 11340) of Part 1 of Division 3 of Title  
34 2 of the Government Code, or any other law, the department may  
35 implement subparagraph (A), in whole or in part, by means of  
36 all-county letters, provider bulletins, or other similar instructions  
37 without taking regulatory action.

38 (C) If the suspected or alleged abuse is abuse other than physical  
39 abuse, and the abuse occurred in a long-term care facility, except  
40 a state mental health hospital or a state developmental center, a



1 telephone report and a written report shall be made to the local  
2 ombudsman or the local law enforcement agency.

3 (D) With regard to abuse reported pursuant to subparagraph  
4 (C), the local ombudsman and the local law enforcement agency  
5 shall, as soon as practicable, except in the case of an emergency  
6 or pursuant to a report required to be made pursuant to clause (v),  
7 in which case these actions shall be taken immediately, do all of  
8 the following:

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

13 (ii) Report to the State Department of Social Services any case  
14 of known or suspected abuse occurring in a residential care facility  
15 for the elderly, as defined in Section 1569.2 of the Health and  
16 Safety Code, or in an adult day program, as defined in paragraph  
17 (2) of subdivision (a) of Section 1502 of the Health and Safety  
18 Code.

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

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

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

28 (E) (i) If the suspected or alleged abuse or neglect occurred in  
29 a state mental hospital or a state developmental center, and the  
30 suspected or alleged abuse or neglect resulted in any of the  
31 following incidents, a report shall be made immediately, but no  
32 later than within two hours of the mandated reporter observing,  
33 obtaining knowledge of, or suspecting abuse, to designated  
34 investigators of the State Department of State Hospitals or the  
35 State Department of Developmental Services, and also to the local  
36 law enforcement agency:

37 (I) A death.

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

1 (III) An assault with a deadly weapon, as described in Section  
2 245 of the Penal Code, by a nonresident of the state mental hospital  
3 or state developmental center.

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

6 (V) An injury to the genitals when the cause of the injury is  
7 undetermined.

8 (VI) A broken bone when the cause of the break is  
9 undetermined.

10 (ii) All other reports of suspected or alleged abuse or neglect  
11 that occurred in a state mental hospital or a state developmental  
12 center shall be made immediately, but no later than within two  
13 hours of the mandated reporter observing, obtaining knowledge  
14 of, or suspecting abuse, to designated investigators of the State  
15 Department of State Hospitals or the State Department of  
16 Developmental Services, or to the local law enforcement agency.

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

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

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

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

38 (2) (A) A mandated reporter who is a clergy member who  
39 acquires knowledge or reasonable suspicion of elder or dependent  
40 adult abuse during a penitential communication is not subject to

1 paragraph (1). For purposes of this subdivision, “penitential  
2 communication” means a communication that is intended to be in  
3 confidence, including, but not limited to, a sacramental confession  
4 made to a clergy member who, in the course of the discipline or  
5 practice of his or her church, denomination, or organization is  
6 authorized or accustomed to hear those communications and under  
7 the discipline tenets, customs, or practices of his or her church,  
8 denomination, or organization, has a duty to keep those  
9 communications secret.

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

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

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

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

30 (ii) The mandated reporter is not aware of any independent  
31 evidence that corroborates the statement that the abuse has  
32 occurred.

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

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

1 (B) This paragraph shall not be construed to impose upon  
2 mandated reporters a duty to investigate a known or suspected  
3 incident of abuse and shall not be construed to lessen or restrict  
4 any existing duty of mandated reporters.

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

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

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

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

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

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

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

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

1 (3) If the suspected or alleged abuse occurred in a state mental  
2 health hospital or a state developmental center, the report may be  
3 made to the designated investigator of the State Department of  
4 State Hospitals or the State Department of Developmental Services  
5 or to a local law enforcement agency. Except in an emergency,  
6 the local law enforcement agency shall report any case of known  
7 or suspected criminal activity to the Bureau of Medi-Cal Fraud  
8 and Elder Abuse, as soon as is practicable.

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

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

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

25 (e) A telephone report or Internet report, as authorized by  
26 Section 15658, of a known or suspected instance of elder or  
27 dependent adult abuse shall include, if known, the name of the  
28 person making the report, the name and age of the elder or  
29 dependent adult, the present location of the elder or dependent  
30 adult, the names and addresses of family members or any other  
31 adult responsible for the elder's or dependent adult's care, the  
32 nature and extent of the elder's or dependent adult's condition, the  
33 date of the incident, and any other information, including  
34 information that led that person to suspect elder or dependent adult  
35 abuse, as requested by the agency receiving the report.

36 (f) The reporting duties under this section are individual, and  
37 no supervisor or administrator shall impede or inhibit the reporting  
38 duties, and no person making the report shall be subject to any  
39 sanction for making the report. However, internal procedures to  
40 facilitate reporting, ensure confidentiality, and apprise supervisors

1 and administrators of reports may be established, provided they  
2 are not inconsistent with this chapter.

3 (g) (1) Whenever this section requires a county adult protective  
4 services agency to report to a law enforcement agency, the law  
5 enforcement agency shall, immediately upon request, provide a  
6 copy of its investigative report concerning the reported matter to  
7 that county adult protective services agency.

8 (2) Whenever this section requires a law enforcement agency  
9 to report to a county adult protective services agency, the county  
10 adult protective services agency shall, immediately upon request,  
11 provide to that law enforcement agency a copy of its investigative  
12 report concerning the reported matter.

13 (3) The requirement to disclose investigative reports pursuant  
14 to this subdivision shall not include the disclosure of social services  
15 records or case files that are confidential, nor shall this subdivision  
16 be construed to allow disclosure of any reports or records if the  
17 disclosure would be prohibited by any other provision of state or  
18 federal law.

19 (h) Failure to report, or impeding or inhibiting a report of,  
20 physical abuse, as defined in Section 15610.63, abandonment,  
21 abduction, isolation, financial abuse, or neglect of an elder or  
22 dependent adult, in violation of this section, is a misdemeanor,  
23 punishable by not more than six months in ~~the~~ a county jail, by a  
24 fine of not more than one thousand dollars (\$1,000), or by both  
25 that fine and imprisonment. Any mandated reporter who willfully  
26 fails to report, or impedes or inhibits a report of, physical abuse,  
27 as defined in Section 15610.63, abandonment, abduction, isolation,  
28 financial abuse, or neglect of an elder or dependent adult, in  
29 violation of this section, if that abuse results in death or great bodily  
30 injury, shall be punished by not more than one year in a county  
31 jail, by a fine of not more than five thousand dollars (\$5,000), or  
32 by both that fine and imprisonment. If a mandated reporter  
33 intentionally conceals his or her failure to report an incident known  
34 by the mandated reporter to be abuse or severe neglect under this  
35 section, the failure to report is a continuing offense until a law  
36 enforcement agency specified in paragraph (1) of subdivision (b)  
37 of Section 15630 discovers the offense.

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

1     ~~SEC. 19.~~

2     *SEC. 20.* No reimbursement is required by this act pursuant to  
3 Section 6 of Article XIII B of the California Constitution because  
4 the only costs that may be incurred by a local agency or school  
5 district will be incurred because this act creates a new crime or  
6 infraction, eliminates a crime or infraction, or changes the penalty  
7 for a crime or infraction, within the meaning of Section 17556 of  
8 the Government Code, or changes the definition of a crime within  
9 the meaning of Section 6 of Article XIII B of the California  
10 Constitution.

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