

AMENDED IN ASSEMBLY AUGUST 19, 2016

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

Introduced by Senator Mendoza
(Coauthor: Assembly Member Levine)

February 27, 2015

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~~ *an employee, independent contractor, or other person who is acting on behalf of* a governmental agency, hospital, or other 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~~ *facility or licensee*.

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.

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

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

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

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

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

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

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

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

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

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

3 1402. “Residential care facility for the elderly” has the same
4 meaning as set forth in Section 1569.2.

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

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

13 (b) The State Department of Public Health shall set the annual
14 Licensing and Certification Program fee in accordance with Section
15 1266.

16 (c) (1) The State Department of Social Services shall set the
17 annual Licensing and Certification Program fee at an amount no
18 greater than the amount required to cover the reasonable and actual
19 costs of administering the licensing program.

20 (2) *The State Department of Social Services shall, no later than*
21 *February 1, 2017, and no later than February 1 of each year*
22 *thereafter, submit a proposed fee schedule as part of its budget*
23 *proposal to the Legislature.*

24 SEC. 5. Section 1404 of the Health and Safety Code is amended
25 to read:

26 1404. No licensee under this chapter shall have a direct or
27 indirect financial interest in any facility doing business with the
28 licensee.

29 SEC. 6. Section 1404.5 of the Health and Safety Code is
30 amended to read:

31 1404.5. A license application shall be submitted to either or
32 both licensing departments, as appropriate, whenever any of the
33 following circumstances occur:

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

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

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

37 SEC. 7. Section 1405 of the Health and Safety Code is amended
38 to read:

39 1405. Any person, partnership, firm, corporation, or association
40 desiring to obtain a license to refer persons to extended care

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

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

13 (b) Name of referral agency.

14 (c) The location of the referral agency.

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

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

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

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

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

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

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

1 (k) A declaration that the licensee will not have any financial
2 interest in any health facility doing business with the referral
3 agency.

4 (l) Evidence satisfactory to the licensing department that the
5 applicant demonstrates reputable and responsible character and
6 the capability to comply with this chapter.

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

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

17 (A) The level of care requested by the person seeking the
18 referral.

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

21 (C) The social needs and preferences of the person seeking the
22 referral.

23 (D) The geographic location of the facility and the geographic
24 preference of the person seeking the referral.

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

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

31 (B) State governance and administrative functions of agency
32 operations, including resident assessment and admission
33 procedures.

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

35 (D) Community supports, cultural competency and sensitivity
36 to residents’ needs.

37 SEC. 8. Section 1407 of the Health and Safety Code is amended
38 to read:

39 1407. (a) Any licensee desiring to voluntarily surrender his
40 or her license for cancellation or temporary suspension shall notify

1 the licensing department in writing as soon as possible and, in all
2 cases, at least 30 days prior to the effective date of cancellation or
3 temporary suspension of the license.

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

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

34 1409.3. (a) The licensee shall notify either or both licensing
35 departments, as appropriate, within 10 days in writing when a
36 change of stockholder owning 10 percent or more of the nonpublic
37 corporate stock occurs. The writing shall include the name and
38 principal mailing addresses of the new stockholder.

39 (b) When a change of agency manager occurs, either or both
40 licensing departments, as appropriate, shall be notified in writing

1 within 10 days by the licensee. The notification shall include the
2 name of the new agency manager.

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

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

12 SEC. 11. Section 1409.4 is added to the Health and Safety
13 Code, to read:

14 1409.4. (a) Before referring a person to any facility, a licensee
15 shall disclose all of the following to the person:

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

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

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

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

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

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

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

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

8 (2) Information regarding the facility and the services offered
9 by the facility.

10 (3) (A) Subject to the provisions of subdivision (m) of Section
11 1405, a suitability advisory, to be written on the disclosure form,
12 or read aloud, as follows:

13 “State law does not require that we determine whether facilities
14 to which we refer you are suitable for you based upon your care
15 and social needs, financial means, and location. We cannot and
16 are not required to make this decision for you and your family.
17 We cannot be sure whether a facility has an opening or whether it
18 is still available when you need it. You should contact the facility
19 yourself to verify whether an opening is available.”

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

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

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

30 (3) If the disclosures are provided electronically, they shall be
31 provided in a manner that is consistent with provisions set forth
32 in Title 2.5 (commencing with Section 1633.1) of Part 2 of Division
33 3 of the Civil Code, and shall be displayed on a secured Web page
34 in a larger type than the surrounding text.

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

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

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

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

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

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

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

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

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

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

1 (h) For the purposes of this section, the following terms have
2 the following ~~meaning~~: *meanings*:

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

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

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

9 1409.5. Owners, operators, and employees of a referral agency
10 licensed pursuant to Section 1405 are mandated reporters of elder
11 or dependent adult abuse pursuant to Section 15630 of the Welfare
12 and Institutions Code.

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

15 1409.6. (a) It is unlawful for a licensee to share any personal
16 information, including, but not limited to, the name, address, age,
17 gender, or medical information of the person receiving services
18 from the licensee, with any unauthorized person or third-party
19 affiliate of the licensee, unless authorized pursuant to subdivision
20 (b).

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

33 (1) As a separate authorization form that clearly discloses that
34 the individual is consenting to the disclosure of his or her personal
35 information to a facility or facilities for which they are being
36 referred. This authorization form shall include the name and
37 location of the facility or facilities that may receive the personal
38 information, and shall be executed in the manner described in
39 subdivision (e) of Section 1409.4.

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

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

14 (d) For the purposes of this section, the following terms have
15 the following meanings:

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

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

20 SEC. 14. Section 1409.7 is added to the Health and Safety
21 Code, to read:

22 1409.7. It is unlawful for a referral agency licensed pursuant
23 to Section 1405 to hold any power of attorney for a person
24 receiving placement referral services from that licensee, or to
25 receive or hold a client's property in any capacity.

26 SEC. 15. Section 1409.8 is added to the Health and Safety
27 Code, to read:

28 1409.8. On and after July 1, 2017, all persons, associations, or
29 corporations licensed pursuant to Section 1405 shall maintain
30 liability insurance coverage in an amount of at least one million
31 dollars (\$1,000,000) per person occurrence and three million dollars
32 (\$3,000,000) in the total annual aggregate, for negligent acts or
33 omissions by the licensee.

34 SEC. 16. Section 1409.9 is added to the Health and Safety
35 Code, to read:

36 1409.9. A licensee shall display the licensee's name and license
37 number on all advertising, promotional or marketing material, and
38 Internet Web sites paid for or operated by the licensee.

39 SEC. 17. Section 1409.10 is added to the Health and Safety
40 Code, to read:

1 1409.10. (a) It is unlawful for ~~a medical professional or~~
2 ~~employee an employee, independent contractor, or other person~~
3 ~~who is acting on behalf of a government agency, hospital, or other~~
4 health care institution, including, but not limited to, *medical*
5 *professionals*, physicians, nurses, social workers, discharge
6 planners, therapists, and geriatric care managers, to offer, provide,
7 or accept a payment, rebate, refund, commission, preference, or
8 discount, whether in the form of money or other consideration, as
9 payment, compensation, or inducement for referring patients,
10 clients, or customers to a ~~facility.~~ *facility or licensee.*

11 (b) For the purposes of this section, the following terms have
12 the following meanings:

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

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

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

19 1410. The licensing department may suspend or revoke a
20 license issued under this chapter for violation of any provisions
21 of this chapter or any rules and regulations promulgated hereunder.
22 In addition, the licensing department shall assess a civil penalty
23 in the amount of fees received by a licensee as a result of a
24 violation of any provisions of this chapter or rules and regulations
25 promulgated hereunder. Proceedings to suspend or revoke a license
26 conducted by the State Department of Public Health shall be
27 conducted pursuant to Section 100171.

28 SEC. 19. Section 15630 of the Welfare and Institutions Code
29 is amended to read:

30 15630. (a) All of the following persons are mandated reporters:

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

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

37 (3) A health practitioner.

38 (4) A clergy member.

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

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

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

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

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

23 (i) If the suspected abuse results in serious bodily injury, a
24 telephone report shall be made to the local law enforcement agency
25 immediately, but also no later than within two hours of the
26 mandated reporter observing, obtaining knowledge of, or
27 suspecting the physical abuse, and a written report shall be made
28 to the local ombudsman, the corresponding licensing agency, and
29 the local law enforcement agency within two hours of the mandated
30 reporter observing, obtaining knowledge of, or suspecting the
31 physical abuse.

32 (ii) If the suspected abuse does not result in serious bodily injury,
33 a telephone report shall be made to the local law enforcement
34 agency within 24 hours of the mandated reporter observing,
35 obtaining knowledge of, or suspecting the physical abuse, and a
36 written report shall be made to the local ombudsman, the
37 corresponding licensing agency, and the local law enforcement
38 agency within 24 hours of the mandated reporter observing,
39 obtaining knowledge of, or suspecting the physical abuse.

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

8 (iv) When applicable, reports made pursuant to clauses (i) and
9 (ii) shall be deemed to satisfy the reporting requirements of the
10 federal Elder Justice Act of 2009, as set out in Subtitle H of the
11 federal Patient Protection and Affordable Care Act (Public Law
12 111-148), Section 1418.91 of the Health and Safety Code, and
13 Section 72541 of Title 22 of the California Code of Regulations.
14 When a local law enforcement agency receives an initial report of
15 suspected abuse in a long-term care facility pursuant to this
16 subparagraph, the local law enforcement agency may coordinate
17 efforts with the local ombudsman to provide the most immediate
18 and appropriate response warranted to investigate the mandated
19 report. The local ombudsman and local law enforcement agencies
20 may collaborate to develop protocols to implement this
21 subparagraph.

22 (B) Notwithstanding the rulemaking provisions of Chapter 3.5
23 (commencing with Section 11340) of Part 1 of Division 3 of Title
24 2 of the Government Code, or any other law, the department may
25 implement subparagraph (A), in whole or in part, by means of
26 all-county letters, provider bulletins, or other similar instructions
27 without taking regulatory action.

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

33 (D) With regard to abuse reported pursuant to subparagraph
34 (C), the local ombudsman and the local law enforcement agency
35 shall, as soon as practicable, except in the case of an emergency
36 or pursuant to a report required to be made pursuant to clause (v),
37 in which case these actions shall be taken immediately, do all of
38 the following:

39 (i) Report to the State Department of Public Health any case of
40 known or suspected abuse occurring in a long-term health care

1 facility, as defined in subdivision (a) of Section 1418 of the Health
2 and Safety Code.

3 (ii) Report to the State Department of Social Services any case
4 of known or suspected abuse occurring in a residential care facility
5 for the elderly, as defined in Section 1569.2 of the Health and
6 Safety Code, or in an adult day program, as defined in paragraph
7 (2) of subdivision (a) of Section 1502 of the Health and Safety
8 Code.

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

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

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

18 (E) (i) If the suspected or alleged abuse or neglect occurred in
19 a state mental hospital or a state developmental center, and the
20 suspected or alleged abuse or neglect resulted in any of the
21 following incidents, a report shall be made immediately, but no
22 later than within two hours of the mandated reporter observing,
23 obtaining knowledge of, or suspecting abuse, to designated
24 investigators of the State Department of State Hospitals or the
25 State Department of Developmental Services, and also to the local
26 law enforcement agency:

27 (I) A death.

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

29 (III) An assault with a deadly weapon, as described in Section
30 245 of the Penal Code, by a nonresident of the state mental hospital
31 or state developmental center.

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

34 (V) An injury to the genitals when the cause of the injury is
35 undetermined.

36 (VI) A broken bone when the cause of the break is
37 undetermined.

38 (ii) All other reports of suspected or alleged abuse or neglect
39 that occurred in a state mental hospital or a state developmental
40 center shall be made immediately, but no later than within two

1 hours of the mandated reporter observing, obtaining knowledge
2 of, or suspecting abuse, to designated investigators of the State
3 Department of State Hospitals or the State Department of
4 Developmental Services, or to the local law enforcement agency.

5 (iii) When a local law enforcement agency receives an initial
6 report of suspected or alleged abuse or neglect in a state mental
7 hospital or a state developmental center pursuant to clause (i), the
8 local law enforcement agency shall coordinate efforts with the
9 designated investigators of the State Department of State Hospitals
10 or the State Department of Developmental Services to provide the
11 most immediate and appropriate response warranted to investigate
12 the mandated report. The designated investigators of the State
13 Department of State Hospitals or the State Department of
14 Developmental Services and local law enforcement agencies may
15 collaborate to develop protocols to implement this clause.

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

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

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

26 (2) (A) A mandated reporter who is a clergy member who
27 acquires knowledge or reasonable suspicion of elder or dependent
28 adult abuse during a penitential communication is not subject to
29 paragraph (1). For purposes of this subdivision, “penitential
30 communication” means a communication that is intended to be in
31 confidence, including, but not limited to, a sacramental confession
32 made to a clergy member who, in the course of the discipline or
33 practice of his or her church, denomination, or organization is
34 authorized or accustomed to hear those communications and under
35 the discipline tenets, customs, or practices of his or her church,
36 denomination, or organization, has a duty to keep those
37 communications secret.

38 (B) This subdivision shall not be construed to modify or limit
39 a clergy member’s duty to report known or suspected elder and
40 dependent adult abuse if he or she is acting in the capacity of a

1 care custodian, health practitioner, or employee of an adult
2 protective services agency.

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

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

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

18 (ii) The mandated reporter is not aware of any independent
19 evidence that corroborates the statement that the abuse has
20 occurred.

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

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

28 (B) This paragraph shall not be construed to impose upon
29 mandated reporters a duty to investigate a known or suspected
30 incident of abuse and shall not be construed to lessen or restrict
31 any existing duty of mandated reporters.

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

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

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

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

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

5 (B) This paragraph shall not be construed to require a mandated
6 reporter to seek, nor to preclude a mandated reporter from seeking,
7 information regarding a known or suspected incident of abuse prior
8 to reporting. This paragraph shall apply only to those categories
9 of mandated reporters that the State Department of Public Health
10 determines, upon approval by the Bureau of Medi-Cal Fraud and
11 Elder Abuse and the state long-term care ombudsman, have access
12 to plans of care and have the training and experience necessary to
13 determine whether the conditions specified in this section have
14 been met.

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

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

29 (3) If the suspected or alleged abuse occurred in a state mental
30 health hospital or a state developmental center, the report may be
31 made to the designated investigator of the State Department of
32 State Hospitals or the State Department of Developmental Services
33 or to a local law enforcement agency. Except in an emergency,
34 the local law enforcement agency shall report any case of known
35 or suspected criminal activity to the Bureau of Medi-Cal Fraud
36 and Elder Abuse, as soon as is practicable.

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

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

4 (d) If two or more mandated reporters are present and jointly
5 have knowledge or reasonably suspect that types of abuse of an
6 elder or a dependent adult for which a report is or is not mandated
7 have occurred, and there is agreement among them, the telephone
8 report or Internet report, as authorized by Section 15658, may be
9 made by a member of the team selected by mutual agreement, and
10 a single report may be made and signed by the selected member
11 of the reporting team. Any member who has knowledge that the
12 member designated to report has failed to do so shall thereafter
13 make the report.

14 (e) A telephone report or Internet report, as authorized by
15 Section 15658, of a known or suspected instance of elder or
16 dependent adult abuse shall include, if known, the name of the
17 person making the report, the name and age of the elder or
18 dependent adult, the present location of the elder or dependent
19 adult, the names and addresses of family members or any other
20 adult responsible for the elder's or dependent adult's care, the
21 nature and extent of the elder's or dependent adult's condition, the
22 date of the incident, and any other information, including
23 information that led that person to suspect elder or dependent adult
24 abuse, as requested by the agency receiving the report.

25 (f) The reporting duties under this section are individual, and
26 no supervisor or administrator shall impede or inhibit the reporting
27 duties, and no person making the report shall be subject to any
28 sanction for making the report. However, internal procedures to
29 facilitate reporting, ensure confidentiality, and apprise supervisors
30 and administrators of reports may be established, provided they
31 are not inconsistent with this chapter.

32 (g) (1) Whenever this section requires a county adult protective
33 services agency to report to a law enforcement agency, the law
34 enforcement agency shall, immediately upon request, provide a
35 copy of its investigative report concerning the reported matter to
36 that county adult protective services agency.

37 (2) Whenever this section requires a law enforcement agency
38 to report to a county adult protective services agency, the county
39 adult protective services agency shall, immediately upon request,

1 provide to that law enforcement agency a copy of its investigative
2 report concerning the reported matter.

3 (3) The requirement to disclose investigative reports pursuant
4 to this subdivision shall not include the disclosure of social services
5 records or case files that are confidential, nor shall this subdivision
6 be construed to allow disclosure of any reports or records if the
7 disclosure would be prohibited by any other provision of state or
8 federal law.

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

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

30 SEC. 20. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

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