

Senate Bill No. 648

Passed the Senate August 29, 2016

Secretary of the Senate

Passed the Assembly August 24, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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 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.

The people of the State of California do enact as follows:

SECTION 1. Section 1400 of the Health and Safety Code is amended to read:

1400. (a) It is unlawful for any person, association, or corporation to establish, conduct, or maintain a referral agency or to refer any person for remuneration to any extended care facility, skilled nursing home, intermediate care facility, or residential care facility for the elderly, or a distinct part of a facility providing extended care, skilled nursing home care, or intermediate care, without first having obtained a written license as provided in this chapter from the State Public Health Officer or from an inspection service approved by the State Public Health Officer pursuant to Section 1257, from the State Department of Social Services, or from both, as appropriate.

(b) It is unlawful for any person, association, or corporation to establish, conduct, or maintain a referral agency or to refer any person for remuneration to any person or agency outside a long-term health care facility, as defined in Section 1418, for

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

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

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

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

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

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

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

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

extended care, skilled nursing home care, or intermediate care. “Referral agency” does not include any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Name of applicant, and if an individual, whether the applicant has attained the age of 18 years.
- (b) Name of referral agency.
- (c) The location of the referral agency.
- (d) The business or occupation engaged in by each applicant, and by each partner, officer, and director, for at least two years immediately preceding the filing of the application. In addition, each such person shall submit a statement setting forth whether he or she has previously engaged in the operation of a referral agency, whether he or she has been involved in, or the subject of, a refusal or revocation of a referral agency license, and whether he or she has been convicted of a crime other than a minor traffic offense.

(e) If the applicant is a corporation, the name and principal business address of each officer and director of the corporation;

and for nonpublic corporations, the name and business address of each stockholder owning 10 percent or more of the stock and the name and business address of any corporation member who has responsibility in the operation of the facility.

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

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

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

(i) A copy of the current organization chart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) If the applicant is not in compliance with this chapter, the licensing department shall deny the applicant a license. Immediately upon the denial of any license, the licensing

department shall notify the applicant in writing. Within 20 days of receipt of the notice, the applicant may present his or her written petition for a hearing to the licensing department. Proceedings conducted by the State Department of Public Health shall be conducted in accordance with Section 100171.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Nothing shall require a licensee who declares, pursuant to subdivision (m) of Section 1405, that the licensee will conduct a

suitability determination of each person who seeks a referral from the licensee, to comply with the requirements of this paragraph.

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

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

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

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

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

(e) The disclosures shall be signed or otherwise acknowledged by 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 required by this section were received. The acknowledgment shall be evidenced in one of the following ways:

(1) The signature of 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 on the document containing the required disclosures.

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

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

(4) A telephonic, oral acknowledgment of the person being referred, or his or her conservator, guardian, authorized family member or other authorized representative, attorney in fact, or agent under power of attorney, which shall be recorded, with that

person's consent, consistent with Sections 632 and 632.7 of the Penal Code. This paragraph does not authorize an in-person oral acknowledgment.

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

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

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

(h) For the purposes of this section, the following terms have the following meanings:

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

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

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

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

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

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

(b) A referral agency that refers a person to any facility or facilities shall obtain from the person being referred, or his or her conservator, guardian, authorized family member or other authorized representative, attorney in fact, or agent under power

of attorney, prior to making the referral, authorization allowing the referral agency to share the referred person's personal information, as well as the name and a description of the care or services needed by the individual being referred, with a facility or facilities for purposes of the referral. The personal information, or other information shared, shall be limited to only that information which is necessary to complete the referral process. The authorization shall be obtained in either of the following ways:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1410. The licensing department may suspend or revoke a license issued under this chapter for violation of any provisions of this chapter or any rules and regulations promulgated hereunder. In addition, the licensing department shall assess a civil penalty in the amount of fees received by a licensee as a result of a violation of any provisions of this chapter or rules and regulations promulgated hereunder. Proceedings to suspend or revoke a license

conducted by the State Department of Public Health shall be conducted pursuant to Section 100171.

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

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

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

(2) An elder or dependent adult care custodian.

(3) A health practitioner.

(4) A clergy member.

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

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

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

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

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

(i) If the suspected abuse results in serious bodily injury, a telephone report shall be made to the local law enforcement agency immediately, but also no later than within two hours of the

mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse, and a written report shall be made to the local ombudsman, the corresponding licensing agency, and the local law enforcement agency within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting the physical abuse.

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

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

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

(B) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, or any other law, the department may implement subparagraph (A), in whole or in part, by means of

all-county letters, provider bulletins, or other similar instructions without taking regulatory action.

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

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

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

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

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

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

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

(E) (i) If the suspected or alleged abuse or neglect occurred in a state mental hospital or a state developmental center, and the suspected or alleged abuse or neglect resulted in any of the following incidents, a report shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the

State Department of Developmental Services, and also to the local law enforcement agency:

- (I) A death.
 - (II) A sexual assault, as defined in Section 15610.63.
 - (III) An assault with a deadly weapon, as described in Section 245 of the Penal Code, by a nonresident of the state mental hospital or state developmental center.
 - (IV) An assault with force likely to produce great bodily injury, as described in Section 245 of the Penal Code.
 - (V) An injury to the genitals when the cause of the injury is undetermined.
 - (VI) A broken bone when the cause of the break is undetermined.
- (ii) All other reports of suspected or alleged abuse or neglect that occurred in a state mental hospital or a state developmental center shall be made immediately, but no later than within two hours of the mandated reporter observing, obtaining knowledge of, or suspecting abuse, to designated investigators of the State Department of State Hospitals or the State Department of Developmental Services, or to the local law enforcement agency.
 - (iii) When a local law enforcement agency receives an initial report of suspected or alleged abuse or neglect in a state mental hospital or a state developmental center pursuant to clause (i), the local law enforcement agency shall coordinate efforts with the designated investigators of the State Department of State Hospitals or the State Department of Developmental Services to provide the most immediate and appropriate response warranted to investigate the mandated report. The designated investigators of the State Department of State Hospitals or the State Department of Developmental Services and local law enforcement agencies may collaborate to develop protocols to implement this clause.
 - (iv) Except in an emergency, the local law enforcement agency shall, as soon as practicable, report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse.
 - (v) Notwithstanding any other law, a mandated reporter who is required to report pursuant to Section 4427.5 shall not be required to report under clause (i).
- (F) If the abuse has occurred in any place other than a long-term care facility, a state mental hospital, or a state developmental

center, the report shall be made to the adult protective services agency or the local law enforcement agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local

ombudsman shall report any case of known or suspected abuse to the State Department of Public Health and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud and Elder Abuse, as soon as is practicable.

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

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

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

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

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

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

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

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

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

(h) Failure to report, or impeding or inhibiting a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more than six months in a county jail, by a fine of not more than one thousand dollars (\$1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report, or impedes or inhibits a report of, physical abuse, as defined in Section 15610.63, abandonment, abduction, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, if that abuse results in death or great bodily injury, shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars (\$5,000), or by both that fine and imprisonment. If a mandated reporter intentionally conceals his or her failure to report an incident known by the mandated reporter to be abuse or severe neglect under this section, the failure to report is a continuing offense until a law

enforcement agency specified in paragraph (1) of subdivision (b) of Section 15630 discovers the offense.

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

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

Approved _____, 2016

Governor