

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 848**

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**Introduced by Assembly Member Mark Stone**

February 26, 2015

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An act to amend Sections 11834.03 and 11834.36 of, to add Sections 11834.025 and 11834.026 to, and to add and repeal Section 11834.05 of, the Health and Safety Code, relating to alcohol and drug treatment programs.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as amended, Mark Stone. Alcoholism and drug abuse treatment facilities.

Existing law requires the State Department of Health Care Services to license adult alcoholism ~~and~~ *or* drug abuse recovery or treatment facilities, as defined. Existing law provides for the licensure and regulation of health care practitioners by various boards and other entities within the Department of Consumer Affairs, and prescribes the scope of practice of those health care practitioners.

This bill would authorize a facility *that is licensed under those provisions* to allow a licensed physician and surgeon or other health care practitioner, as defined, to provide incidental medical services to a resident of the facility at the facility premises under specified limited circumstances. The bill would require the department to conduct an evaluation of that program, and, on or before January 1, 2019, to report that evaluation to the appropriate fiscal and policy committees of the Legislature. The bill would also make related findings and declarations.

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

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

1 SECTION 1. The Legislature hereby finds and declares all of  
2 the following:

3 (a) Substance abuse is a medical condition requiring  
4 interdisciplinary treatment including, when medically necessary,  
5 treatment by a licensed physician and surgeon.

6 (b) Subsequent to the enactment of state law licensing and  
7 regulating residential facilities providing alcohol and other drug  
8 detoxification treatment, public knowledge of addiction and  
9 treatment has advanced significantly.

10 (c) Lack of scientific understanding at the time of enactment of  
11 those state laws prevents the State Department of Health Care  
12 Services from licensing a residential treatment facility that uses a  
13 California-licensed physician and surgeon to provide necessary  
14 evaluation and treatment at the facility premises.

15 (d) This prohibition has been found to endanger persons in  
16 treatment, can result in treatment below the recognized standard  
17 of care, jeopardizes patient health, and delays patient recovery.

18 (e) To resolve this problem, it is the intent of the Legislature to  
19 enact this act in order to modernize and update state law and allow  
20 those in treatment *to* be protected and to receive modern medical  
21 treatment for a medical condition.

22 SEC. 2. Section 11834.025 is added to the Health and Safety  
23 Code, to read:

24 11834.025. (a) (1) As a condition of providing alcoholism or  
25 drug abuse recovery or treatment services under this chapter at a  
26 facility licensed by the department, the facility shall obtain from  
27 an applicant for services a signed certification described in  
28 subdivision (b) from a health care practitioner.

29 (2) For purposes of this chapter, “health care practitioner” means  
30 a person duly licensed and regulated under Division 2  
31 (commencing with Section 500) of the Business and Professions  
32 Code, who is acting within the scope of practice *of* his or her  
33 license or certificate.

34 (b) The department shall develop a standard certification form  
35 for use by a health care practitioner. The form shall include, but  
36 not be limited to, a description of the alcoholism and drug abuse  
37 recovery or treatment services that a licensed alcoholism or drug  
38 abuse recovery or treatment facility may provide under state law,

1 and a certification by the health care practitioner that the health  
2 condition or medical or psychiatric history of the applicant does  
3 not require a level of care that is higher than the level of care that  
4 may legally be provided by a licensed alcoholism or drug abuse  
5 recovery or treatment facility.

6 (c) On or before January 1, 2017, the department shall adopt  
7 emergency regulations to implement this section. The regulations  
8 shall prescribe, among other things, the timeframe within which  
9 the certification described in subdivision (b) shall be provided to  
10 a facility.

11 (1) (A) The initial adoption of emergency regulations pursuant  
12 to this section and each readoption of emergency regulations shall  
13 be deemed an emergency and necessary for the immediate  
14 preservation of the public peace, health, safety, or general welfare.  
15 Initial emergency regulations and any readoption of emergency  
16 regulations authorized by this section shall be exempt from review  
17 by the Office of Administrative Law. The initial emergency  
18 regulations and each readoption of emergency regulations  
19 authorized by this section shall be submitted to the Office of  
20 Administrative Law for filing with the Secretary of State and  
21 publication in the California Code of Regulations and each shall  
22 remain in effect only until the earlier of 180 days following the  
23 effective date of the emergency regulations or the effective date  
24 of final regulations adopted by the department.

25 (B) The department shall adopt final regulations on or before  
26 July 1, ~~2016~~ 2017. The final regulations shall be adopted in  
27 accordance with the Administrative Procedure Act (Chapter 3.5  
28 (commencing with Section 11340) of Part 1 of Division 3 of Title  
29 2 of the Government Code).

30 (2) Notwithstanding the rulemaking provisions of the  
31 Administrative Procedure Act, the department may, if it deems  
32 appropriate, implement, interpret, or make specific this section by  
33 means of provider bulletins, written guidelines, or similar  
34 instructions from the department only until the department adopts  
35 emergency regulations.

36 SEC. 3. Section 11834.026 is added to the Health and Safety  
37 Code, to read:

38 11834.026. (a) As used in this section, “incidental medical  
39 services” means services, as specified by the department in  
40 regulations, to address physical and mental health issues associated

1 with either detoxification from alcohol or drugs or the provision  
2 of alcoholism or drug abuse recovery or treatment services, that  
3 in the opinion of a physician are not required to be performed in  
4 a licensed clinic or licensed health facility, as defined in Section  
5 1200 or 1250, respectively.

6 (b) Notwithstanding any other law, a licensed alcoholism or  
7 drug abuse recovery or treatment facility may permit incidental  
8 medical services to be provided to a resident at the facility premises  
9 by one or more independent physicians and surgeons licensed by  
10 the Medical Board of California or the Osteopathic Medical Board  
11 who are knowledgeable about addiction medicine, or one or more  
12 other health care ~~practitioner~~ *practitioners* acting within the scope  
13 of practice of his or her license and under the direction of a  
14 physician and surgeon, and *who are* also knowledgeable about  
15 addiction medicine, when all of the following conditions are met:

16 (1) The facility, in the judgment of the department, has the  
17 ability to comply with the requirements of this chapter and all other  
18 applicable laws and regulations to meet the needs of a resident  
19 receiving incidental medical services from a physician pursuant  
20 to this chapter. The department shall specify in regulations the  
21 minimum requirements that a facility shall meet in order to be  
22 approved to permit the provision of incidental medical services  
23 on its premises. The license of a facility approved to provide  
24 incidental medical services shall reflect that those services are  
25 permitted to be provided at the facility premises.

26 (2) The physician and surgeon and any other health care  
27 practitioner has signed an acknowledgment on a form provided  
28 by the department that he or she has been advised of and  
29 understands the statutory and regulatory limitations on the services  
30 that may legally be provided by *a* licensed alcoholism or drug  
31 abuse recovery or treatment facility, and the statutory and  
32 regulatory requirements and limitations for the physician and  
33 surgeon or other health care protection and for the facility, related  
34 to providing incidental medical services. The licensee shall  
35 maintain a copy of the signed form at the facility for a physician  
36 and surgeon or other health care practitioner providing incidental  
37 medical services at the facility premises.

38 (3) There is an agreed-upon written protocol between the  
39 physician and surgeon and the alcoholism or drug abuse recovery  
40 or treatment facility signed by the physician and surgeon and the

1 licensee. The protocol shall address, at a minimum, the respective  
2 areas of responsibility of the physician and surgeon and the facility  
3 and the need for ~~communication~~ *communicating* and sharing  
4 resident information related to the physician and surgeon providing  
5 incidental medical services. The department shall specify by  
6 regulations the issues that shall be addressed and the information  
7 that shall be included in the protocol. The facility shall maintain  
8 a copy of the signed protocol at the facility.

9 (4) The facility in its admissions agreement with a client shall  
10 clearly identify the individual financially responsible for incidental  
11 medical services provided and the manner in which those services  
12 shall be billed.

13 (5) There is ongoing communication between the physician and  
14 the alcoholism or drug abuse recovery or treatment facility about  
15 the services provided to the resident by the physician and surgeon  
16 and the frequency and duration of incidental medical services to  
17 be provided. Resident information shall be shared between the  
18 physician and surgeon and the alcoholism or drug abuse recovery  
19 or treatment facility regarding the resident's need for incidental  
20 medical services and the services to be provided to the resident by  
21 the physician and surgeon, including, but not limited to, medical  
22 information, as defined by the Confidentiality of Medical  
23 Information Act (Part 2.6 (commencing with Section 56) of  
24 Division 1 of the Civil Code). The department shall specify by  
25 regulations any other requirements or limitations on these  
26 communications.

27 (6) There is initial and ongoing communication between the  
28 physician and surgeon or other health care practitioner and the  
29 resident's health plan or health insurer prior to the provision of  
30 incidental medical services, to the extent allowable by state and  
31 federal privacy and confidentiality laws, to ensure coordination of  
32 care.

33 (7) The facility does not provide incidental medical services  
34 and does not assist with or interfere with the physician and surgeon  
35 or other health care practitioner providing incidental medical  
36 services.

37 (8) In addition to any other medical authorization that may be  
38 required before a facility resident receives incidental medical  
39 services, the resident is authorized by the physician and surgeon  
40 as medically appropriate to receive the incidental medical services

1 at the premises of the licensed facility. A copy of the authorization,  
2 on a form provided by the department, shall be signed by the  
3 physician *and surgeon* and maintained in the resident's file at the  
4 facility.

5 (9) Before a facility resident receives incidental medical  
6 services, the resident has signed an acknowledgment and consent  
7 to receive those services on a form provided by the department.  
8 The form, at a minimum, shall describe the incidental medical  
9 services that the facility may permit to be provided and shall state  
10 that the permitted incidental medical services will be provided by  
11 a physician and surgeon or other health care practitioner working  
12 under the direction of the physician and surgeon and not by the  
13 facility staff. The department shall specify in regulations, at a  
14 minimum, the content and manner of providing the form, and any  
15 other information that the department deems appropriate. The  
16 facility shall maintain a copy of the signed acknowledgment and  
17 consent in the resident's file.

18 (10) Once incidental medical services are initiated for a resident,  
19 the physician and surgeon and facility shall continuously monitor  
20 the resident to ensure that the resident remains appropriate to  
21 receive those services. If the physician and surgeon determines  
22 that a change in the resident's medical or psychiatric condition  
23 requires other medical or psychiatric services or that a higher level  
24 of care is required than the facility may legally provide, the  
25 physician and surgeon shall immediately notify the licensee and  
26 shall assist the licensee to initiate emergency care, urgent care, or  
27 other higher level of care, as appropriate. If the licensee believes  
28 that a resident requires a higher level of care than the facility can  
29 legally provide, the licensee shall immediately notify the physician  
30 and surgeon and the department. The department shall specify by  
31 regulations any other requirements or limitations pertaining to  
32 changes in condition of a resident who is receiving incidental  
33 medical services, and any other requirements the department deems  
34 appropriate.

35 (11) The facility maintains in its files a copy of the physician  
36 and surgeon's license or other written evidence of licensure to  
37 practice medicine in the state.

38 (12) The physician and surgeon and the facility both maintain  
39 compliance with the department's regulations relating to providing  
40 incidental medical services.

1 (c) The facility shall ~~timely~~ report to the department *in a timely*  
2 *manner* any violation or suspected violation by the physician and  
3 surgeon of the regulations relating to providing incidental medical  
4 services or the signed protocol described in paragraph (3) of  
5 subdivision (b). The department shall specify in regulations, at a  
6 minimum, the steps required to be taken when the department  
7 substantiates that information provided by the licensee.

8 (d) This section does not require a facility to provide incidental  
9 medical services or any services beyond those permitted by this  
10 chapter.

11 (e) The department shall not evaluate or have any responsibility  
12 or liability with respect to evaluating incidental medical services  
13 provided. This section does not limit the department's ability to  
14 report suspected misconduct by a physician and surgeon or other  
15 health care practitioner to the appropriate licensing entity or to law  
16 enforcement.

17 (f) A facility licensed and approved by the department to allow  
18 provision of incidental medical services shall not by offering  
19 approved incidental medical services be considered a clinic or  
20 health facility within the meaning of Section 1200 or 1250,  
21 respectively.

22 (g) Other than incidental medical services provided, minor first  
23 aid, or in the case of a life threatening emergency, this section does  
24 not authorize the provision at the premises of the facility of any  
25 medical or health care services or any other services that require  
26 a higher level of care than the care that may be provided within a  
27 licensed alcoholism or drug abuse recovery or treatment facility.

28 (h) The department shall promulgate regulations to implement  
29 this section.

30 (1) The department shall adopt emergency regulations on or  
31 before January 1, 2017. Prior to adoption of emergency regulations,  
32 the department shall seek appropriate technical assistance from  
33 stakeholders and shall allow interested stakeholders to provide  
34 comments through any means the department deems appropriate.

35 (2) (A) The initial adoption of emergency regulations pursuant  
36 to this section and each readoption of emergency regulations shall  
37 be deemed an emergency and necessary for the immediate  
38 preservation of the public peace, health, safety, or general welfare.  
39 Initial emergency regulations and each readoption of emergency  
40 regulations authorized by this section shall be exempt from review

1 by the Office of Administrative Law. The initial emergency  
2 regulations and each readoption of emergency regulations  
3 authorized by this section shall be submitted to the Office of  
4 Administrative Law for filing with the Secretary of State and  
5 publication in the California Code of Regulations and each shall  
6 remain in effect only until the earlier of 180 days following the  
7 effective date of the emergency regulations or the effective date  
8 of final regulations adopted by the department.

9 (B) On or before July 1, 2017, the department shall adopt final  
10 regulations in accordance with the Administrative Procedure Act  
11 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
12 Division 3 of Title 2 of the Government Code).

13 (3) Notwithstanding the rulemaking provisions of the  
14 Administrative Procedure Act, the department may, if it deems  
15 appropriate, implement, interpret, or make specific this section by  
16 means of provider bulletins, written guidelines, or similar  
17 instructions from the department until emergency regulations are  
18 adopted.

19 SEC. 4. Section 11834.03 of the Health and Safety Code is  
20 amended to read:

21 11834.03. (a) A person or entity applying for licensure shall  
22 file with the department, on forms provided by the department, all  
23 of the following:

24 (1) A completed written application for licensure.

25 (2) A fire clearance approved by the State Fire Marshal or local  
26 fire enforcement officer.

27 (3) A licensure fee, established in accordance with Chapter 7.3  
28 (commencing with Section 11833.01).

29 (b) If an applicant intends to permit services pursuant to Section  
30 11834.026, the applicant shall submit a copy of the written  
31 protocol, evidence of a valid license of the physician and surgeon  
32 who will provide those services, and any other information the  
33 department deems appropriate, including, but not limited to, a copy  
34 of the alcoholism or drug abuse recovery or treatment facility's  
35 accreditation by a nationally recognized accrediting organization.

36 (c) The department may establish an additional licensure fee  
37 for an application that includes a request to provide detoxification  
38 services or services pursuant to Section 11834.026.

39 SEC. 5. Section 11834.05 is added to the Health and Safety  
40 Code, to read:



1 11834.05. (a) The department shall conduct an evaluation of  
2 the program licensing those alcoholism or drug abuse recovery or  
3 treatment facilities identified *in* Section 11834.026. On or before  
4 January 1, 2019, the department shall submit a report on that  
5 evaluation to the appropriate policy and fiscal committees of the  
6 Legislature.

7 (b) This section shall remain in effect only until January 1, 2020,  
8 and as of that date is repealed, unless a later enacted statute, that  
9 is enacted before January 1, 2020, deletes or extends that date.

10 SEC. 6. Section 11834.36 of the Health and Safety Code is  
11 amended to read:

12 11834.36. (a) The director may suspend or revoke any license  
13 issued under this chapter, or deny an application for licensure, for  
14 extension of the licensing period, or to modify the terms and  
15 conditions of a license, upon any of the following grounds and in  
16 the manner provided in this chapter:

17 (1) Violation by the licensee of any provision of this chapter or  
18 regulations adopted pursuant to this chapter.

19 (2) Repeated violation by the licensee of any of the provisions  
20 of this chapter or regulations adopted pursuant to this chapter.

21 (3) Aiding, abetting, or permitting the violation of, or any  
22 repeated violation of, any of the provisions described in paragraph  
23 (1) or (2).

24 (4) Conduct in the operation of an alcoholism or drug abuse  
25 recovery or treatment facility that is inimical to the health, morals,  
26 welfare, or safety of either an individual in, or receiving services  
27 from, the facility or to the people of the State of California.

28 (5) Misrepresentation of any material fact in obtaining the  
29 alcoholism or drug abuse recovery or treatment facility license,  
30 including, but not limited to, providing false information or  
31 documentation to the department.

32 (6) The licensee's refusal to allow the department entry into the  
33 facility to determine compliance with the requirements of this  
34 chapter or regulations adopted pursuant to this chapter.

35 (7) Violation by the licensee of Section 11834.026 or the  
36 regulations adopted pursuant to that section.

37 (8) Failure to pay any civil penalties assessed by the department.

38 (b) The director may temporarily suspend any license prior to  
39 any hearing when, in the opinion of the director, the action is  
40 necessary to protect residents of the alcoholism or drug abuse

1 recovery or treatment facility from physical or mental abuse,  
2 abandonment, or any other substantial threat to health or safety.  
3 The director shall notify the licensee of the temporary suspension  
4 and the effective date of the temporary suspension and at the same  
5 time shall serve the provider with an accusation. Upon receipt of  
6 a notice of defense to the accusation by the licensee, the director  
7 shall, within 15 days, set the matter for hearing, and the hearing  
8 shall be held as soon as possible. The temporary suspension shall  
9 remain in effect until the time the hearing is completed and the  
10 director has made a final determination on the merits. However,  
11 the temporary suspension shall be deemed vacated if the director  
12 fails to make a final determination on the merits within 30 days  
13 after the department receives the proposed decision from the Office  
14 of Administrative Hearings.

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