




## MEMORANDUM

DATE	June 12, 2015
TO	Board of Psychology Members
FROM	 Jonathan Burke Administrative Services Coordinator
SUBJECT	<b>AB 848 (Stone) Alcoholism and Drug Abuse Treatment Facilities</b>

### Background:

#### **- AB 848 (Stone) Alcoholism and Drug Abuse Treatment Facilities**

SUMMARY: Authorizes a licensed adult alcoholism and drug abuse recovery or treatment facility to allow a licensed physician and surgeon or other health care practitioner to provide incidental medical services to a resident of the facility at the facility premises under specified limited circumstances. Requires the Department of Consumer Affairs to establish and collect a fee from those facilities to cover the Department's costs of regulating the provision of those services.

**LOCATION:** 06/03/2015 In ASSEMBLY. Read third time. Passed ASSEMBLY. \*\*\*\*\*To SENATE. (74 3)

### Action Requested:

The staff recommendation is to continue to watch AB 848 (Stone)

**Attachment A** is the language of AB 848.



# California

## LEGISLATIVE INFORMATION

### AB-848 Alcoholism and drug abuse treatment facilities. (2015-2016)

AMENDED IN ASSEMBLY JUNE 01, 2015

AMENDED IN ASSEMBLY MAY 06, 2015

AMENDED IN ASSEMBLY APRIL 06, 2015

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

## ASSEMBLY BILL

**No. 848**

**Introduced by Assembly Member Mark Stone**

**February 26, 2015**

An act to amend Sections 11834.03 and 11834.36 of, and to add Sections 11834.025 and 11834.026 to, 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 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~~ *an adult alcoholism or drug abuse recovery or treatment* 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 establish and collect an additional fee from those facilities, in an amount sufficient to cover the department's reasonable costs of regulating the provision of those services.* The bill would also make related findings and declarations.

Vote: majority Appropriation: no Fiscal Committee: **yes** Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

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



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

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

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

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

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

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

(b) The department shall develop a standard certification form for use by a health care practitioner. The form shall include, but not be limited to, a description of the alcoholism and drug abuse recovery or treatment services that a licensed alcoholism or drug abuse recovery or treatment facility may provide under state law, and a certification by the health care practitioner that the health condition or medical or psychiatric history of the applicant does not require a level of care that is higher than the level of care that may legally be provided by a licensed alcoholism or drug abuse recovery or treatment facility.

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

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

~~(B)~~

~~(c) (1)~~ The department shall adopt ~~final regulations~~ *regulations*, on or before July 1, ~~2017~~ *2017*, *to implement this section*. The ~~final~~ regulations shall be adopted in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

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

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

**11834.026.** (a) As used in this section, "incidental medical services" means services, as specified by the department in regulations, to address physical and mental health issues associated with either detoxification from alcohol or drugs or the provision of alcoholism or drug abuse recovery or treatment services, that in the opinion of a physician are not required to be performed in a licensed clinic or licensed health facility, as defined in Section 1200 or 1250, respectively.

(b) Notwithstanding any other law, a licensed alcoholism or drug abuse recovery or treatment facility may permit incidental medical services to be provided to a resident at the facility premises by one or more independent physicians and surgeons licensed by the Medical Board of California or the Osteopathic Medical Board who are knowledgeable about addiction medicine, or one or more other health care practitioners acting

within the scope of practice of his or her license and under the direction of a physician and surgeon, and who are also knowledgeable about addiction medicine, when all of the following conditions are met:

- (1) The facility, in the judgment of the department, has the ability to comply with the requirements of this chapter and all other applicable laws and regulations to meet the needs of a resident receiving incidental medical services from a physician pursuant to this chapter. The department shall specify in regulations the minimum requirements that a facility shall meet in order to be approved to permit the provision of incidental medical services on its premises. The license of a facility approved to provide incidental medical services shall reflect that those services are permitted to be provided at the facility premises.
- (2) The physician and surgeon and any other health care practitioner has signed an acknowledgment on a form provided by the department that he or she has been advised of and understands the statutory and regulatory limitations on the services that may legally be provided by a licensed alcoholism or drug abuse recovery or treatment facility, and the statutory and regulatory requirements and limitations for the physician and surgeon or other health care protection and for the facility, related to providing incidental medical services. The licensee shall maintain a copy of the signed form at the facility for a physician and surgeon or other health care practitioner providing incidental medical services at the facility premises.
- (3) There is an agreed-upon written protocol between the physician and surgeon and the alcoholism or drug abuse recovery or treatment facility signed by the physician and surgeon and the licensee. The protocol shall address, at a minimum, the respective areas of responsibility of the physician and surgeon and the facility and the need for communicating and sharing resident information related to the physician and surgeon providing incidental medical services. The department shall specify by regulations the issues that shall be addressed and the information that shall be included in the protocol. The facility shall maintain a copy of the signed protocol at the facility.
- (4) The facility in its admissions agreement with a client shall clearly identify the individual financially responsible for incidental medical services provided and the manner in which those services shall be billed.
- (5) There is ongoing communication between the physician and the alcoholism or drug abuse recovery or treatment facility about the services provided to the resident by the physician and surgeon and the frequency and duration of incidental medical services to be provided. Resident information shall be shared between the physician and surgeon and the alcoholism or drug abuse recovery or treatment facility regarding the resident's need for incidental medical services and the services to be provided to the resident by the physician and surgeon, including, but not limited to, medical information, as defined by the Confidentiality of Medical Information Act (Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code). The department shall specify by regulations any other requirements or limitations on these communications.
- (6) There is initial and ongoing communication between the physician and surgeon or other health care practitioner and the resident's health plan or health insurer prior to the provision of incidental medical services, to the extent allowable by state and federal privacy and confidentiality laws, to ensure coordination of care.
- (7) The facility does not provide incidental medical services and does not assist with or interfere with the physician and surgeon or other health care practitioner providing incidental medical services.
- (8) In addition to any other medical authorization that may be required before a facility resident receives incidental medical services, the resident is authorized by the physician and surgeon as medically appropriate to receive the incidental medical services at the premises of the licensed facility. A copy of the authorization, on a form provided by the department, shall be signed by the physician and surgeon and maintained in the resident's file at the facility.
- (9) Before a facility resident receives incidental medical services, the resident has signed an acknowledgment and consent to receive those services on a form provided by the department. The form, at a minimum, shall describe the incidental medical services that the facility may permit to be provided and shall state that the permitted incidental medical services will be provided by a physician and surgeon or other health care practitioner working under the direction of the physician and surgeon and not by the facility staff. The department shall specify in regulations, at a minimum, the content and manner of providing the form, and any other information that the department deems appropriate. The facility shall maintain a copy of the signed acknowledgment and consent in the resident's file.
- (10) Once incidental medical services are initiated for a resident, the physician and surgeon and facility shall continuously monitor the resident to ensure that the resident remains appropriate to receive those services. If the physician and surgeon determines that a change in the resident's medical or psychiatric condition requires other medical or psychiatric services or that a higher level of care is required than the facility may legally



provide, the physician and surgeon shall immediately notify the licensee and shall assist the licensee to initiate emergency care, urgent care, or other higher level of care, as appropriate. If the licensee believes that a resident requires a higher level of care than the facility can legally provide, the licensee shall immediately notify the physician and surgeon and the department. The department shall specify by regulations any other requirements or limitations pertaining to changes in condition of a resident who is receiving incidental medical services, and any other requirements the department deems appropriate.

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

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

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

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

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

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

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

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

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

~~(2)(A) The initial adoption of emergency regulations pursuant to this section and each readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and each readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and each readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect only until the earlier of 180 days following the effective date of the emergency regulations or the effective date of final regulations adopted by the department.~~

~~(B)~~

~~(h)~~ (1) On or before July 1, 2017, the department shall adopt ~~final~~ regulations *to implement this section* in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

~~(3)~~

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

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

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

- (1) A completed written application for licensure.
- (2) A fire clearance approved by the State Fire Marshal or local fire enforcement officer.
- (3) A licensure fee, established in accordance with Chapter 7.3 (commencing with Section 11833.01).
- (b) (1) If an applicant intends to permit services pursuant to Section 11834.026, the applicant shall submit a copy of the written protocol, evidence of a valid license of the physician and surgeon who will provide those services, and any other information the department deems appropriate, including, but not limited to, a copy of the alcoholism or drug abuse recovery or treatment facility's accreditation by a nationally recognized accrediting organization.

(e)

(2) The department ~~may~~ *shall* establish *and collect* an additional licensure fee for an application that includes a request to provide detoxification services or services pursuant to Section 11834.026. *The fee shall be set at an amount sufficient to cover the department's reasonable costs of regulating the provision of those services.*

**SEC. 5.** Section 11834.36 of the Health and Safety Code is amended to read:

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

- (1) Violation by the licensee of any provision of this chapter or regulations adopted pursuant to this chapter.
- (2) Repeated violation by the licensee of any of the provisions of this chapter or regulations adopted pursuant to this chapter.
- (3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions described in paragraph (1) or (2).
- (4) Conduct in the operation of an alcoholism or drug abuse recovery or treatment facility that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California.
- (5) Misrepresentation of any material fact in obtaining the alcoholism or drug abuse recovery or treatment facility license, including, but not limited to, providing false information or documentation to the department.
- (6) The licensee's refusal to allow the department entry into the facility to determine compliance with the requirements of this chapter or regulations adopted pursuant to this chapter.
- (7) Violation by the licensee of Section 11834.026 or the regulations adopted pursuant to that section.
- (8) Failure to pay any civil penalties assessed by the department.

(b) The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the alcoholism or drug abuse recovery or treatment facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the department receives the proposed decision from the Office of Administrative Hearings.