

ASSEMBLY BILL

No. 3162

Introduced by Assembly Member Friedman
(Coauthors: Senators Allen and Stern)

February 16, 2018

An act to amend Sections 11834.31 and 11834.34 of, to add Section 11834.11 to, and to repeal and add Sections 11834.09 and 11834.10 of, the Health and Safety Code, relating to alcoholism or drug abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 3162, as introduced, Friedman. Alcoholism or drug abuse recovery or treatment facilities.

Existing law provides for the licensure and regulation of alcoholism or drug abuse recovery or treatment facilities serving adults by the State Department of Health Care Services, as prescribed. Existing law makes a violation of these provisions punishable by a civil penalty of not less than \$25 or more than \$50 per day for each violation, with additional penalties for repeat violations, as specified.

This bill would require, for any licensing application submitted on or after January 1, 2019, the department to deny an application for a new facility license, if the proposed location is in proximity to an existing facility that would result in overconcentration, as defined. The bill would prohibit the expansion or intensification of licensed existing facilities, as defined. The bill would require the department, at least 45 days prior to approving any application for any new facility, to post on its Internet Web site the address of the proposed new facility.

This bill would additionally make initial licenses to providers provisional for one year and revokable for good cause, as defined. The bill would require all programs and medical services offered or provided

by a licensed alcoholism or drug abuse recovery or treatment facility to be specified in the license application and provided exclusively within the licensed facility on the licensed property and for the benefit of the residents. The bill would increase the penalties for a violation of the licensing and regulatory provisions to not less than \$1,000 or more than \$15,000 per day for each violation, and increase the additional penalties for repeat violations, as specified. The bill would prohibit a person or entity found to be in violation of the licensing provisions described above from applying for initial licensure for 2 years, as specified. The bill would require the department to adopt regulations to implement these provisions on or before July 1, 2022, and would authorize the department to issue provider bulletins, written guidelines, or similar instructions until regulations are adopted, as specified.

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. Section 11834.09 of the Health and Safety Code
- 2 is repealed.
- 3 ~~11834.09. (a) Upon receipt of a completed written application,~~
- 4 ~~fire clearance, and licensing fee from the prospective licensee, and~~
- 5 ~~subject to the department's review and determination that the~~
- 6 ~~prospective licensee can comply with this chapter and regulations~~
- 7 ~~adopted pursuant to this chapter, the department may issue a single~~
- 8 ~~license to the following types of alcoholism or drug abuse recovery~~
- 9 ~~or treatment facilities:~~
- 10 ~~(1) A residential facility.~~
- 11 ~~(2) A facility wherein separate buildings or portions of a~~
- 12 ~~residential facility are integral components of a single alcoholism~~
- 13 ~~or drug abuse recovery or treatment facility and all of the~~
- 14 ~~components of the facility are managed by the same licensee.~~
- 15 ~~(b) Failure to submit a completed written application, fire~~
- 16 ~~clearance, and payment of the required licensing fee in a timely~~
- 17 ~~manner shall result in termination of the department's licensure~~
- 18 ~~review and shall require submission of a new application by the~~
- 19 ~~prospective licensee.~~
- 20 ~~(c) Failure of the prospective licensee to demonstrate the ability~~
- 21 ~~to comply with this chapter or the regulations adopted pursuant to~~

1 ~~this chapter shall result in departmental denial of the prospective~~
2 ~~licensee's application for licensure.~~

3 SEC. 2. Section 11834.09 is added to the Health and Safety
4 Code, to read:

5 11834.09. (a) The department may issue a single license to
6 operate an alcoholism or drug abuse recovery or treatment facility
7 upon receipt of a completed written application, fire clearance,
8 and licensing fee subject to the department's review and
9 determination that the applicant can comply with this chapter and
10 regulations adopted pursuant to this chapter.

11 (b) Failure to submit a completed written application, fire
12 clearance, and payment of the required licensing fee in a timely
13 manner shall result in termination of the department's licensure
14 review and shall require submission of a new application by the
15 applicant.

16 (c) Failure of the applicant to demonstrate the ability to comply
17 with this chapter or the regulations adopted pursuant to this chapter
18 shall result in departmental denial of the application for licensure.

19 (d) Initial licenses for new facilities shall be provisional for one
20 year. During the term of the provisional license, the department
21 may revoke the license for good cause. For the purposes of this
22 section, "good cause" means failure to operate in compliance with
23 this chapter or the regulations adopted pursuant to this chapter. A
24 licensee may not reapply for an initial license for two years
25 following a revocation of a provisional license.

26 (e) On or before July 1, 2022, the department shall adopt
27 regulations to implement this section in accordance with the
28 Administrative Procedure Act (Chapter 3.5 (commencing with
29 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
30 Code).

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

36 SEC. 3. Section 11834.10 of the Health and Safety Code is
37 repealed.

38 ~~11834.10. A licensee shall not operate an alcoholism or drug~~
39 ~~abuse recovery or treatment facility beyond the conditions and~~
40 ~~limitations specified on the license.~~

SEC. 4. Section 11834.10 is added to the Health and Safety Code, to read:

11834.10. (a) A licensee shall not operate an alcoholism or drug abuse recovery or treatment facility beyond the conditions and limitations specified on the license. All programs and services offered or provided by a licensed alcoholism or drug abuse recovery or treatment facility, including, but not limited to, incidental medical services pursuant to Section 11834.025, shall be specified in the license application and provided exclusively within the licensed facility on the licensed property and for the benefit of the residents.

(b) On or before July 1, 2022, the department shall adopt 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).

(c) 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 regulations are adopted.

SEC. 5. Section 11834.11 is added to the Health and Safety Code, to read:

11834.11. (a) For any licensing application submitted on or after January 1, 2019, the department shall deny an application for a new facility license, if the proposed location is in proximity to an existing facility that would result in overconcentration in an area zoned for residential use.

(b) As used in this section, “overconcentration” means that if a new license is issued, two or more alcoholism or drug abuse recovery or treatment facilities will be within a distance of 300 feet or less, as measured from the nearest property line on which an existing facility is located to the nearest property line of the proposed facility in an area zoned residential.

(c) (1) Licensed existing facilities may continue to operate subject to the terms and conditions of their existing licenses. Expansion or intensification of licensed facilities shall not be allowed unless the facility conforms with the requirements of this section.

(2) For the purposes of this section, a “licensed existing facility” is a licensed facility that is operating in compliance with all state laws on or before December 1, 2018, located within 300 feet or less of another licensed facility, as measured from the nearest property lines on which the existing facilities are located, as long as they are in continuous operation with no lapse in licensure.

(d) At least 45 days prior to approving any application for a new facility, the department shall post on its Internet Web site the address of the proposed new facility.

(e) On or before July 1, 2022, the department shall adopt 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).

(f) 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 regulations are adopted.

SEC. 6. Section 11834.31 of the Health and Safety Code is amended to read:

11834.31. If a facility is alleged to be in violation of Section 11834.30, the department shall conduct a site visit to investigate the allegation. If the department’s employee or agent finds evidence that the facility is providing alcoholism or drug abuse recovery, treatment, or detoxification services without a license, the employee or agent shall take the following actions:

(a) Submit the findings of the investigation to the department.

(b) Upon departmental authorization, issue a written notice to the facility stating that the facility is operating in violation of Section 11834.30. The notice shall include all of the following:

(1) The date by which the facility shall cease providing services.

(2) Notice that the department will assess against the facility a civil penalty of two ~~hundred dollars (\$200)~~ *thousand dollars (\$2,000)* per day for every day the facility continues to provide services beyond the date specified in the notice.

(3) Notice that the case will be referred for civil proceedings pursuant to Section 11834.32 in the event the facility continues to provide services beyond the date specified in the notice.

1 (c) Inform the facility of the licensing requirements of this
2 chapter.

3 (d) *A person or entity found to be in violation of Section*
4 *11834.30 shall be prohibited from applying for initial licensure*
5 *for a period of two years from the date of the notice specified in*
6 *subdivision (b).*

7 SEC. 7. Section 11834.34 of the Health and Safety Code is
8 amended to read:

9 11834.34. (a) In addition to the penalties of suspension or
10 revocation of a license issued under this chapter, the department
11 may also levy a civil penalty for violation of this chapter or the
12 regulations adopted pursuant to this chapter.

13 (1) The amount of the civil penalty shall not be less than
14 ~~twenty-five dollars (\$25)~~ *one thousand dollars (\$1,000)* or more
15 ~~than fifty dollars (\$50)~~ *fifteen thousand dollars (\$15,000)* per day
16 for each violation, except where the nature or seriousness of the
17 violation or the frequency of the violation warrants a higher penalty
18 or an immediate civil penalty assessment, or both, as determined
19 by the department. ~~Except for penalties assessed pursuant to~~
20 ~~Section 11834.31, in~~ *In* no event shall a civil penalty assessment
21 ~~exceed one hundred fifty dollars (\$150)~~ *fifteen thousand dollars*
22 *(\$15,000)* per day.

23 (2) ~~Any~~ *A* licensee that is cited for repeating the same violation
24 within 24 months of the first violation is subject to an immediate
25 civil penalty of ~~one hundred fifty dollars (\$150) and fifty dollars~~
26 ~~(\$50)~~ *thousand five hundred dollars (\$1,500) and one thousand*
27 *dollars (\$1,000)* for each day the violation continues until the
28 deficiency is corrected.

29 (3) ~~Any~~ *A* licensee that has been assessed a civil penalty
30 pursuant to paragraph (2) that repeats the same violation within
31 24 months of the violation subject to paragraph (2) is subject to
32 an immediate civil penalty of ~~one hundred fifty dollars (\$150)~~ *two*
33 *thousand dollars (\$2,000)* for each day the violation continues
34 until the deficiency is corrected.

35 (b) Prior to the assessment of any civil penalty, the department
36 shall provide the licensee with notice requiring the licensee to
37 correct the deficiency within the period of time specified in the
38 notice.

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