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AB-381 Licensed facilities: duties. (2021-2022)

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Assembly Bill No. 381

CHAPTER 437

An act to amend Sections 11834.026 and 11834.26 of the Health and Safety Code, relating to substance use disorder.

[Approved by Governor October 01, 2021. Filed with Secretary of State October 01, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 381, Davies. Licensed facilities: duties.

Existing law requires the State Department of Health Care Services to license and regulate facilities that provide residential nonmedical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services. Existing law requires a licensee to develop a plan to address when a resident relapses, including when a resident is on the licensed premises after consuming alcohol or using illicit drugs.

This bill would require a licensee, at all times, to maintain at least 2 unexpired doses of naloxone hydrochloride, or any other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, on the premises and have at least one staff member on the premises who knows the specific location of the naloxone hydrochloride, or other opioid antagonist, and who has been trained to administer it, as specified. The bill would prohibit a trained staff member from being held civilly or criminally liable for the administration, in good faith, of naloxone hydrochloride, or other opioid antagonist that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose, to a person appearing to experience an opioid-related overdose. The bill would specify that the administration of naloxone hydrochloride, or other opioid antagonist that is approved by the United States Food and Drug Administration for the treatment of an opioid overdose, is an emergent care required in the case of a life-threatening emergency for purposes of the medical or health care services a licensed facility may provide. The bill would require the department to adopt regulations to implement these provisions on or before July 1, 2024.

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

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

SECTION 1. Section 11834.026 of the Health and Safety Code is amended to read:

11834.026. (a) As used in this section, "incidental medical services" means services that are in compliance with the community standard of practice and are not required to be performed in a licensed clinic or licensed health facility, as defined by Section 1200 or 1250, respectively, to address medical issues associated with either detoxification from alcohol or drugs or the provision of alcoholism or drug abuse recovery or treatment services, including all of the following categories of services that the department shall further define by regulation:

(1) Obtaining medical histories.

(2) Monitoring health status to determine whether the health status warrants transfer of the patient in order to receive urgent or emergent care.

(3) Testing associated with detoxification from alcohol or drugs.

(4) Providing alcoholism or drug abuse recovery or treatment services.

(5) Overseeing patient self-administered medications.

(6) Treating substance abuse disorders, including detoxification.

(b) Incidental medical services do not include the provision of general primary medical care.

(c) 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, or under the supervision of, one or more 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 their license and under the direction of a physician and surgeon, and who are also knowledgeable about addiction medicine, if 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 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 permit the provision of incidental medical services shall reflect that those services are permitted 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 they have been advised of and understand the statutory and regulatory limitations on the services that may legally be provided at 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 practitioner 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) A physician and surgeon or other health care practitioner shall assess a resident, prior to that resident receiving incidental medical services, to determine whether it is medically appropriate for that resident to receive these services at the premises of the licensed facility. A copy of the form provided by the department shall be signed by the physician and surgeon and maintained in the resident's file at the facility.

(4) The resident has signed an admission agreement. The admission agreement, 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, or under the supervision of, a physician and surgeon. The department shall specify in regulations, at a minimum, the content and manner of providing the admission agreement, and any other information that the department deems appropriate. The facility shall maintain a copy of the signed admission agreement in the resident's file.

(5) Once incidental medical services are initiated for a resident, the physician and surgeon and facility shall 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 condition requires other medical services or that a higher level of care is required, the facility shall immediately arrange for the other medical services or higher level of care, as appropriate.

(6) The facility maintains in its files a copy of the relevant professional license or other written evidence of licensure to practice medicine or perform medical services in the state for the physician and surgeon and any other health care practitioner providing incidental medical services at the facility.

(d) The department is not required to evaluate or have any responsibility or liability with respect to evaluating the incidental medical services provided by a physician and surgeon or other health care practitioner at a licensed facility. 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.

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

(f) Other than incidental medical services permitted to be provided or any urgent or emergent care required in the case of a life-threatening emergency, including the administration of naloxone hydrochloride, or any other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, 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.

(g) This section does not require a residential treatment facility licensed by the department to provide incidental medical services or any services not otherwise permitted by law.

(h) (1) On or before July 1, 2024, 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).

(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 regulations are adopted.

SEC. 2. Section 11834.26 of the Health and Safety Code is amended to read:

11834.26. (a) The licensee shall provide at least one of the following nonmedical services:

- (1) Recovery services.
- (2) Treatment services.
- (3) Detoxification services.

(b) The department shall adopt regulations requiring records and procedures that are appropriate for each of the services specified in subdivision (a). The records and procedures may include all of the following:

- (1) Admission criteria.
- (2) Intake process.
- (3) Assessments.
- (4) Recovery, treatment, or detoxification planning.
- (5) Referral.
- (6) Documentation of provision of recovery, treatment, or detoxification services.
- (7) Discharge and continuing care planning.
- (8) Indicators of recovery, treatment, or detoxification outcomes.

(c) A licensee shall not deny admission to any individual based solely on the individual having a valid prescription from a licensed health care professional for a medication approved by the federal Food and Drug Administration for the purpose of narcotic replacement treatment or medication-assisted treatment of substance use disorders.

(d) A licensee shall develop a plan to address when a resident relapses, including when a resident is on the licensed premises after consuming alcohol or using illicit drugs. The plan shall include details of how the treatment stay and treatment plan of the resident will be adjusted to address the relapse episode and how the resident will be treated and supervised while under the influence of alcohol or illicit drugs, as well as discharge and continuing care planning, including when a licensee determines that a resident requires services beyond the scope of the licensee. This subdivision does not require a licensee to discharge a resident.

(e) The department shall have the authority to implement subdivisions (d) and (f) by bulletin or all-county or all-provider letter, after stakeholder input, until such time that regulations are promulgated. The department shall promulgate regulations to implement subdivisions (d) and (f) no later than July 1, 2024.

(f) (1) A licensee shall, at all times, maintain at least two unexpired doses of naloxone hydrochloride, or any other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, on the premises and shall, at all times, have at least one staff member on the premises who knows the specific location of the naloxone hydrochloride, or other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, and who has been trained on the administration of naloxone hydrochloride, or the other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, in accordance with the training

requirements set forth by the department. Proof of completion of training on the administration of naloxone hydrochloride, or other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, shall be documented in the staff member's individual personnel file.

(2) A trained staff member shall not be liable for damages in a civil action or subject to criminal prosecution for the administration, in good faith, of naloxone hydrochloride, or any other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, to a person appearing to experience an opioid-related overdose. This paragraph shall not apply in a case where the person who renders emergency care treatment by the use of naloxone hydrochloride, or any other opioid antagonist that is approved by the United States Food and Drug Administration for treatment of an opioid overdose, acts with gross negligence or engages in willful and wanton misconduct.

(g) In the development of regulations implementing this section, the written record requirements shall be modified or adapted for social model programs.