



State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: January 29, 2019

MHSUDS INFORMATION NOTICE NO.: 19-003

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES
CALIFORNIA CONSORTIUM OF ADDICTION PROGRAMS AND PROFESSIONALS

SUBJECT: IMPLEMENTATION OF ASSEMBLY BILL 3162 AND SENATE BILL 992

PURPOSE

The purpose of this Information Notice is to implement provisions of Assembly Bill (AB) 3162 and Senate Bill (SB) 992.

BACKGROUND

AB 3162 repeals Sections 11834.09 and 11834.10 of the Health and Safety Code (HSC) and adds new Sections 11834.09 and 11834.10. AB 3162 also amends HSC Sections 11834.31 and 11834.34. SB 992 amends HSC Sections 11834.02, 11834.26, and 11834.36, as well as adds Chapter 7.4 (commencing with Section 11833.05) of Part 2, Division 10.5. These bills affect applicants seeking licensure pursuant to Chapter 7.5 or certification pursuant to Chapter 7, and licensed or certified alcohol and drug programs. Below is a summary of the statutory changes followed by the Discussion section that identifies those provisions of the HSC specifically implemented by this Information Notice.

Required Disclosures – HSC Section 11833.05 (SB 992)

Applicants, licensed alcoholism or drug abuse recovery or treatment facilities (residential treatment facilities), and certified alcohol and/or other drug programs (AOD programs) are required to disclose any ownership or control of, or financial interest in, a recovery residence as defined in HSC Section 11833.05(c). Additionally, applicants, licensed residential treatment facilities, and AOD programs must disclose any contractual relationship with an entity that provides professional services, addiction treatment, or recovery services to clients of programs licensed or certified by DHCS. These disclosures must be made at the time of: (1) application for initial licensure or certification, (2) application for extension of licensure or certification, and (3) acquiring or starting a relationship described in HSC Section 11833.05, subsections (a)(1) or (2). DHCS may suspend or revoke the license or certification of a residential treatment facility or an AOD program for failure to disclose the required information.

Removal of “24-hour” Designation – HSC Section 11834.02(a) (SB 992)

The definition of “alcoholism or drug abuse recovery or treatment facility” in HSC Section 11834.02, subsection (a) is amended to remove the “24-hour” qualifier.

Provisional License – HSC Section 11834.09 (AB 3162)

Applicants approved for an initial residential treatment facility license on or after January 1, 2019, will receive a two-year license that is provisional for one year. Prior to the expiration date noted on the provisional license, a residential treatment facility deemed to be in compliance with applicable regulations and statutes, including civil penalty fees, shall continue to operate beyond the provisional date on the license and until the licensure expiration date.

Services at the Residential Treatment Facility - HSC Section 11834.10 (AB 3162)

All licensable treatment services must be provided by a residential treatment facility exclusively within the facility or within any facility identified on a single license by street address.

Medication Assisted Treatment – HSC Section 11834.26(c) (SB 992)

A licensed residential treatment facility cannot deny admission to an individual based solely on the individual having a valid prescription from a licensed health care professional for a medication approved by the United States Food and Drug

Administration (FDA) for the purpose of medication assisted treatment of substance use disorders.

Relapse Plan – HSC Section 11834.26(d) (SB 992)

A licensed residential treatment facility must develop and maintain a written plan to address resident relapses.

Increase of Civil Penalties – HSC Section 11834.31 and 11834.34 (AB 3162)

Civil penalties for operating a residential treatment facility without a license increased from two hundred dollars (\$200) a day to two thousand dollars (\$2,000) a day for every day the facility continues to provide services.

Civil penalties assessed against a licensed residential treatment facility for regulatory and statutory violations increased to no less than two hundred fifty (\$250) or no more than five hundred (\$500) per day for each violation, unless the nature or seriousness of the violation warrants a higher penalty. The maximum daily civil penalty shall not exceed one thousand (\$1,000) per day. Civil penalties assessed for repeating the same violation also increased as set forth in HSC Section 11834.34, subsection (a)(2) and (3).

Unlicensed Facilities – HSC Section 11834.31 (AB 3162)

A person or entity cited for operating a facility that provides recovery, treatment, or detoxification services without a license cannot apply for an initial license for a period of five (5) years from the date specified on the written notice issued to the facility/operator in accordance with HSC Section 11834.31, subsection (b).

Suspension and Revocation of Licenses – HSC Section 11834.36(a) and (b) (SB 992)

In the event DHCS takes administrative action to suspend or revoke a residential treatment facility license, DHCS may also suspend or revoke any other residential treatment facility license(s) held by the same person or entity.

Application Termination – HSC Section 11834.36(c) (SB 992)

DHCS will terminate its review of any application for licensure from a person or entity that previously had a residential treatment facility license suspended or revoked for five (5) years from the date of the final decision and order.

DISCUSSION

Applicants, licensed residential treatment facilities, and certified AOD programs shall comply with this Information Notice until DHCS adopts regulations.

Provisional Licenses – HSC Section 11834.09 (AB 3162)

An initial license issued on or after January 1, 2019, to operate a residential treatment facility will be valid for a period of two years and provisional for the first year. Information regarding initial licensure is available on the DHCS website. A facility that is deemed to be in compliance with applicable regulations and statutes, shall continue to operate beyond the provisional date reflected on the license and until the licensure expiration date. DHCS will review applications for licensure in accordance with Title 9, California Code of Regulations (CCR), Division 4, Chapter 5, Section 10522.

DHCS may conduct an unannounced compliance review prior to the provisional license expiration date. During the compliance review, DHCS may interview residents, staff, and/or health care practitioner(s) and inspect licensee records in private or outside the presence of the licensee. Within ten (10) working days following the completion of the compliance review, DHCS will issue a licensing report if there are no deficiencies or a notice of deficiency report if there are deficiencies. At any time during the one-year provisional period, DHCS may revoke a license for good cause if the licensee fails to operate in compliance with Chapter 7.5 of Part 2, Division 10.5 of the HSC or any regulations adopted pursuant to that chapter.

In addition to the grounds set forth in Title 9, CCR, Section 10548, subsection (a), DHCS may revoke a provisional license if the licensee:

- (a) Repeats any Class A deficiency within the one-year period;
- (b) Repeats any Class B deficiency within the one-year period;
- (c) Provides incidental medical services without obtaining approval from DHCS;
- (d) Fails to monitor, or document, resident detoxification checks;
- (e) Fails to staff the facility's operation with qualified individuals, including detoxification services;
- (f) Fails to monitor, or document, resident self-administration of medication;
- (g) Fails to securely store medications;
- (h) Allows, either intentionally or unintentionally, the use of prescription medications for any person other than the individual whose name appears on the label;
- (i) Allows bulk medications at the residential treatment facility, excluding over the counter medications;

- (j) Fails to destroy medications in accordance with the licensee's written policy and procedures, as approved by DHCS;
- (k) Operates beyond the authorized treatment capacity;
- (l) Denies DHCS staff entry into the residential treatment facility;
- (m) Fails to provide documents requested by DHCS, including resident and staff files;
- (n) Fails to begin providing licensable services within three (3) months from the effective date on the provisional license;
- (o) Fails to adhere to the licensee's policy and procedures; or
- (p) Misrepresents any material fact to DHCS by purposefully, knowingly, recklessly, or negligently asserting a false fact or statement, orally or in writing, or concealing a fact or information.

In the event DHCS seeks to revoke a license during the provisional period, 9, CCR, Section 10548, subsections (b)–(f) shall apply. A licensee cannot apply for an initial residential treatment facility license for a period of five (5) years following a revocation of a provisional license.

Services at the Residential Treatment Facility - HCS Section 11834.10 (AB 3162)

A licensee must provide all licensable services to its residents within the facility or facilities identified by street address on the license.

A licensee shall not move, or otherwise transport, its residents to an off-site location to receive any licensable service. An off-site location means any building, structure, or place other than the facility or facilities identified by street address on the license.

For purposes of this Information Notice, licensable services are defined as follows:

- **Detoxification Services:** Any service designed to support and assist an individual in the alcohol and/or drug withdrawal process and to explore plans for continued service;
- **Recovery Services:** Any assistance provided to a resident to maintain abstinence from the use of alcohol or drugs, maintain sobriety, or maintain any goal achieved during treatment for a substance use disorder. Recovery services include the following: assessment, case management, counseling services, educational sessions, medication monitoring, and/or development of a recovery plan, and;
- **Treatment Services:** Any assistance provided to a resident to obtain abstinence from the use of alcohol or drugs, obtain sobriety, or obtain any goal associated with recovery from a substance use disorder. Treatment services include the

following: assessment, case management, counseling services, educational sessions, medication monitoring, and/or development of a treatment plan.

Relapse Plan – HSC Section 11834.26(d) (SB 992)

A licensed residential treatment facility must develop and maintain a written plan to address resident relapses. The relapse plan must address:

- When a resident relapses, including when a resident is on the licensed premises after consuming alcohol or using illicit drugs;
- Details of how the treatment stay and treatment plan of the resident will be adjusted to address the relapse episode;
- How the resident will be treated and supervised while under the influence of alcohol or illicit drugs; and
- Resident discharge and continuing care plan, including when a residential treatment facility determines that a resident requires services beyond the scope of their license.

As part of the relapse plan, a licensed residential treatment facility must detail its policies and procedures for treatment and supervision of a resident who consumed alcohol or illicit drugs within the past twenty-four (24) hours. Treatment and supervision of a resident must include making appropriate, timely referrals. A licensed residential treatment facility must keep a copy of the relapse plan onsite, or at a central administrative location, provided the plan is readily available for staff and DHCS upon request.

Initial Applicants

Beginning January 1, 2019, all initial applicants for residential treatment facility licensure must submit a relapse plan with the Initial Treatment Provider Application (DHCS 6002).

Applicants Pending Licensure

Applicants that submitted an application for licensure prior to January 1, 2019, but have not yet been approved will be issued a notification stating that the submission of a relapse plan is required prior to licensure.

Existing Licensees

Residential treatment facilities with current licenses must submit a relapse plan to their assigned DHCS analyst no later than April 1, 2019. Within thirty (30) working days of receipt of the relapse plan, DHCS will review the plan to determine compliance with the statutory requirements. DHCS will notify the licensee whether the relapse plan is

complete or incomplete and specify the missing information. A licensee shall have thirty (30) calendar days from receipt of an incomplete notice to submit a revised relapse plan. Any licensee that fails to adhere with these requirements shall be cited after April 1, 2019.

RESOURCES

Chapter 775, Assembly Bill 3162:

https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB3162

Chapter 784, Senate Bill 992:

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180SB992

Information regarding IMS can be found on the DHCS website at:

<http://www.dhcs.ca.gov/provgovpart/Pages/Incidental-Medical-Services.aspx>

Licensing and Certification information can be found on the DHCS website at:

<https://www.dhcs.ca.gov/provgovpart/Pages/SUDS-Compliance.aspx>

If you have questions about this Information Notice, please contact Nadalie Meadows-Martin by email at Nadalie.Meadows-Martin@dhcs.ca.gov or Pelumi Abimbola at Pelumi.Abimbola@dhcs.ca.gov.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services