

Assembly Bill No. 68

CHAPTER 242

An act to amend Section 100445 of, and to add Chapter 8.3 (commencing with Section 1743) to Division 2 of, the Health and Safety Code, and to amend Section 9016 of, and to add Section 14105.13 to, the Welfare and Institutions Code, relating to health care.

[Approved by Governor September 5, 2001. Filed with Secretary of State September 5, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 68, Migden. Health care providers: private duty nursing agencies.

Existing law contains provisions governing the licensure of home health agencies, defined to include certain entities within the state that provide, or arrange for the provision of, skilled nursing services to persons in their temporary or permanent place of residence. Existing law provides for the administration of these provisions by the State Department of Health Services. A violation of these provisions or the rules and regulations promulgated under these provisions is a misdemeanor.

This bill would similarly provide for the licensure of private duty nursing agencies, defined to include certain entities within the state, that provide, or arrange for the provision of, private duty nursing services, as defined. The bill would make related changes in other programs concerning the provision of private duty nursing services.

This bill would make it a crime to violate the private duty nursing agency licensure provisions, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Chapter 8.3 (commencing with Section 1743) is added to Division 2 of the Health and Safety Code, to read:



CHAPTER 8.3. PRIVATE DUTY NURSING AGENCIES

1743. (a) The Legislature finds and declares all of the following:

(1) There is currently a crisis in accessing home health care.
(2) Approximately 300 home health agencies have closed in the past two years.

(3) The reduction in the number of home health agencies has made it difficult for many children and adults needing skilled nursing services provided on a shift basis under home- and community-based waivers to receive the services they need, and also jeopardizes the ability of people with disabilities and others from remaining in home- and community-based settings.

(4) Home health agencies have historically been designed as a model of care for elderly Medicare beneficiaries, but this model is not well-suited for the kind of care required by adults and children with disabilities.

(b) It is the intent of the Legislature in enacting this chapter to ensure adequate access to home- and community-based skilled nursing services provided on a shift basis for people who need these services, including people with disabilities.

(c) It is the intent of the Legislature, in adopting a new licensure category for private duty nursing agencies, to provide appropriate nursing care while upholding the same strong consumer protections applicable to home health agencies under Title 22 of the California Code of Regulations.

1743.2. (a) “Private duty nursing agency” means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, that provides, or arranges for the provision of, private duty nursing services, as described in Section 1743.3.

(b) “Private duty nursing services” means skilled nursing services provided on a shift basis for patients who require individual and continuous nursing care, and that meets all of the following requirements:

(1) Is provided by a registered nurse or a licensed vocational nurse, except that any person accepted for service whose care requires medical orders shall be under the care of a physician, dentist, podiatrist, or other licensed practitioner within his or her scope of practice.

(2) Is provided to the patient in his or her temporary or permanent place of residence or other community-based setting and includes, one or both of the following locations:

(A) The patient’s home.



(B) Outside of the patient's home, as necessitated by normal life activities.

1743.3. Each private duty nursing agency providing services shall do all of the following:

(a) Provide for a plan of treatment for patients receiving private duty nursing services.

(b) Maintain clinical records on all patients.

(c) Maintain policies regarding the delivery and supervision of patient care that are reviewed annually by a group of professional personnel including a physician and surgeon and a registered nurse and revised as needed.

(d) Meet all applicable federal, state, and local requirements.

(e) Maintain, and revise as needed, and implement policies regarding the purchase, storage, furnishing, and transportation of legend devices that are reviewed annually by a group of professional personnel, including a physician and surgeon, pharmacist, and a registered nurse. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

(f) Meet other standards, rules, and regulations adopted by the department in order to implement this chapter.

1743.7. Any person, organization, political subdivision of the state or governmental agency desiring a license under this chapter, or any health facility as defined in Section 1250 that desires to establish, conduct, or maintain a private duty nursing agency, shall file with the department a verified application on a form prescribed, prepared, and furnished by the department, containing information as may be required by the department for the proper administration and enforcement of this chapter.

1743.9. (a) To qualify for a private duty nursing agency license, the following requirements shall be met:

(1) Every applicant shall satisfy the following conditions:

(A) Be of good moral character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, all principal managing members thereof, and the person in charge of the agency for which application for a license is made, shall satisfy this requirement. If the applicant is a political subdivision of the state or other governmental agency, the person in charge of the agency for which application for a license is made shall satisfy this requirement.

(B) Possess and demonstrate the ability to comply with this chapter and the rules and regulations adopted under this chapter by the department.



(C) File his or her application pursuant to and in full compliance with this chapter.

(2) The following persons shall submit to the department an application, including fingerprints, for the furnishing of the person's criminal record to the department, at the person's expense as provided in subdivision (b), for the purpose of a criminal record review:

(A) The owner or owners of a private agency if the owners are individuals.

(B) If the owner of a private agency is a corporation, partnership, or association, any person having a 10 percent or greater interest in that corporation, partnership, or association.

(C) The administrator of a private duty nursing agency.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with rolling the fingerprint cards. The fee to cover the processing costs of the Department of Justice, not including the costs associated with rolling the fingerprint cards, shall not exceed thirty-two dollars (\$32) per card.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide private duty nursing services, the application for a license shall be denied, or the person shall be prohibited from providing service in the private duty nursing agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the department that the person has been rehabilitated and presently is of that good character that justifies the issuance of the license or the provision of service in the private duty nursing agency.

1743.11. (a) If a private duty nursing agency or an applicant for a license has not been previously licensed, the department may only issue a provisional license to the agency as provided in this section.

(b) A provisional license to operate a private duty nursing agency shall terminate six months from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the department shall give the agency a full and complete inspection, and, if the agency meets all applicable requirements for licensure, a regular license shall be issued. If the private duty nursing agency does not meet the requirements for licensure, but has made substantial progress towards meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six months.

(d) If the department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the department determines upon its inspection made within 30 days of the termination of a renewed



provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate a private duty nursing agency has been denied provisional licensing by the state department, the applicant may contest the denial by filing a request for a hearing pursuant to Section 100171.

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

1743.13. (a) Notwithstanding Sections 1743.9 and 1743.15, if a private duty nursing agency or an applicant for a license has been previously licensed as a home health agency, the department may issue a provisional license to the private duty nursing agency if all of the following conditions are satisfied:

(1) The agency and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(2) No violation of this chapter or regulations adopted under this chapter exists in the agency that jeopardizes the health or safety of patients.

(3) The applicant has adopted a plan for correction of any existing violations that is satisfactory to the department.

(b) A provisional license issued under this section shall expire not later than six months after the date of issuance, or at an earlier time as determined by the department at the time of issuance, and may not be renewed.

(c) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

1743.15. (a) Upon filing an application for a private duty nursing agency license as provided for in, and upon the full compliance with, the provisions of this chapter and the rules and regulations promulgated under this chapter by the department, the department shall issue a private duty nursing agency license to the applicant.

(b) Notwithstanding subdivision (a), any health facility, as defined in Section 1250 that is licensed under Chapter 2 (commencing with Section 1250) is not required to obtain a license. In order for a health facility to establish, conduct, or maintain a private duty nursing agency, it shall comply with all the provisions of this chapter and be approved by the department. The approval shall be deemed to be licensure and shall not extend past midnight on the 31st day of December of each calendar year. The fee set forth in Section 1743.17 shall be paid before approval is granted. Approval may be denied or withdrawn by the department on the



same grounds as provided for denial, suspension, or revocation of a private duty nursing agency license. The department may take the same action against any approved health facility private duty nursing agency as it may against any licensed private duty nursing agency under this chapter.

(c) As an alternative to subdivision (a), the department may issue a license to a private duty nursing agency that meets the requirements for a home health agency as provided in subdivision (a) of Section 1728.7, including accreditation, except the application and fees shall be submitted pursuant to this chapter. If the department issues a license pursuant to this subdivision, subdivisions (b), (c), and (d) of Section 1728.7 as they apply to home health agencies shall apply to private duty nursing agencies.

(d) A currently licensed home health agency may apply for conversion of that license to a private duty nursing license by filing a written request with the department. If the home health agency holds a valid license and is in good standing, the department shall issue a private duty nursing agency license to that applicant within 30 days of receiving the application.

1743.17. (a) Each application for a private duty nursing agency license under this chapter, except applications by political subdivisions, shall be accompanied by a fee for the headquarters or main office of the agency and for each additional branch office maintained and operated by the agency in the amount of eight hundred ninety-eight dollars (\$898). If a license is denied by the department, all but twenty-five dollars (\$25) of the fee shall be returned to the applicant.

(b) The fee shall be adjusted annually in the manner specified in Section 100445. The adjustments shall be rounded off to the nearest whole dollar amount.

1743.19. Each private duty nursing agency license issued under this chapter shall expire 12 months from the date of its issuance. Application for renewal of license accompanied by the necessary fee shall be filed with the department annually, not less than 10 days prior to expiration date. Failure to make a timely renewal shall result in expiration of the license.

1743.21. (a) Every private duty nursing agency for which a license has been issued, except a facility that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both, shall be periodically inspected by a duly authorized representative of the department. Reports of each inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the



department and filed with the department. These inspections shall be for the purpose of ensuring that the provisions of this chapter and the rules and regulations of the department are being followed. The department is directed to ensure by these inspections that the private duty nursing agency is providing high quality care to its patients in accordance with the orders of the patient's physician.

(b) Nothing in this chapter shall be deemed to require a private duty nursing agency to comply with federal Medicare conditions of participation, if the agency is not serving medicare beneficiaries.

1743.23. (a) The department shall apply its current regulations governing home health agencies to home health agencies and to private duty nursing agencies and may thereafter modify, amend, or rescind, reasonable rules and regulations to carry out the purposes of this chapter, including, the prohibition of specific conduct, determined by the department to be inimical to the public health, morals, welfare, or safety of the people of the State of California in the maintenance and operation of a private duty nursing services agency for which a license is issued. In adopting, modifying, amending, or rescinding the rules and regulations, the department shall consult with, and receive recommendations from, among others, physicians and surgeons, pharmacists, public health nurses, and persons representing hospitals, nonprofit home health and private duty nursing agencies, proprietary home health and private duty nursing agencies, and counties whose health department or hospital has a home health or private duty nursing agency. The department shall also comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The department shall apply current rules and regulations governing home health agencies regarding the purchase, storage, furnishing, and transportation of legend devices for a patient of a private duty nursing agency. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

(c) It is the intent of the Legislature that the department apply current regulations governing home health agencies to private duty nursing facilities that are similar to those that govern home health agencies including, but not limited to, those regulations related to services and the scope and duration of benefits, except to the extent the regulations would be inconsistent with the authority provided under, and the restrictions prescribed by, this chapter.

1743.25. (a) The department may deny any application for, or suspend or revoke, any private duty nursing license issued under this



chapter upon any of the following grounds and in the manner provided in this chapter:

(1) Violation by the licensee of any of the provisions of this chapter or of any other law of this state or of the rules and regulations promulgated under this chapter.

(2) Aiding, abetting, or permitting the commission of any illegal act.

(3) Misrepresentation of a material fact in the application for a license.

(b) (1) Proceedings for the denial, suspension, or revocation of licenses or the denial or withdrawal of approval under this chapter shall be conducted in accordance with Section 100171.

(2) The suspension, expiration, or forfeiture by operation of law of a license issued by the department; its suspension, forfeiture, or cancellation by order of the department or by order of a court of law; or its surrender without the written consent of the department, shall not deprive the department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any ground provided by law.

1743.27. (a) Any license revoked pursuant to this chapter may be reinstated pursuant to Section 11522 of the Government Code.

(b) Any licensee may, with the approval of the department, surrender his or her license for suspension or cancellation by the department. Any license suspended or canceled pursuant to this section may be reinstated by the department on receipt of an application showing compliance with the requirements of Section 1743.7.

1743.29. The provisions of this chapter do not apply to the adherents of any well recognized church or religious denomination that provides for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

1743.31. Any person who violates any of the provisions of this chapter, or of the rules and regulations promulgated under this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000), by imprisonment in a county jail for a period not to exceed 180 days, or by both the fine and imprisonment.

1743.33. The director may bring an action to enjoin the violation or threatened violation of Section 1743 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code



of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss.

1743.35. Any officer, employee, or agent of the department may enter and inspect any building, premises, record, or file of a private duty nursing agency licensee at any reasonable time to secure compliance with, or to prevent a violation of, any provision of this chapter.

1743.37. The district attorney of every county shall, upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation within the district attorney's county or any provisions of this chapter.

SEC. 2. Section 100445 of the Health and Safety Code is amended to read:

100445. (a) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Sections 1403, 1575.9, 1729, and 1743.17 shall be adjusted annually, commencing July 1, 1988, by the percentage change printed in the Budget Act and determined by dividing the General Fund appropriation to the Licensing and Certification Division in the current state fiscal year by the General Fund appropriation to the Licensing and Certification Division in the preceding state fiscal year. Commencing July 1, 1988, the fees or charges subject to adjustment pursuant to this subdivision shall be the fees or charges that would have been payable in the prior calendar year without regard to the provisions of subdivision (b).

(b) The fees or charges required to accompany an application for the issuance or renewal of any license pursuant to Sections 1729 and 1743.17 shall also be adjusted annually, commencing July 1, 1988, by a percentage determined by dividing the total amount of federal funds available for home health and private duty nursing agencies during the federal fiscal year ending on September 30 of the year immediately preceding the effective date of the change in fees, less federal funds available for home health and private duty nursing agencies for the federal fiscal year that began on October 1 of the year immediately preceding the effective date of the change in fees, by the total estimated revenue derived pursuant to Sections 1729 and 1743.17 for the fiscal year beginning July 1 of the year immediately preceding the effective date of the change in fees.

(c) The department shall by July 1 of each year publish a list of the actual numerical fee charges as adjusted pursuant to this section. This adjustment of fees and the publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.



SEC. 3. Section 9016 of the Welfare and Institutions Code is amended to read:

9016. “Long-term care” means a coordinated continuum of preventive, diagnostic, therapeutic, rehabilitative, supportive, and maintenance services that address the health, social, and personal needs of individuals who have restricted self-care capabilities. Services shall be designed to recognize the positive capabilities of the individual and maximize the potential for the optimum level of physical, social, and mental well-being in the least restrictive environment. Emphasis shall be placed on seeking services alternatives to institutionalization. Services may be provided by formal or informal support systems, and may be continuous or intermittent. “Long-term care” may include licensed nursing facility, adult residential care, residential facility for the elderly, private duty nursing, or home- and community-based services.

SEC. 4. Section 14105.13 is added to the Welfare and Institutions Code, to read:

14105.13. (a) Private duty nursing agencies shall be a provider of skilled nursing services provided on a shift basis covered under the early and periodic screening, diagnosis, and treatment supplemental and home- and community-based waiver programs, subject to federal approval and availability of federal financial participation. In addition to satisfying any other requirements as a condition to participating in the Medi-Cal program under this chapter, a private duty nursing agency licensed under Chapter 8.3 (commencing with Section 1743) of Division 2 of the Health and Safety Code shall satisfy all of the following requirements:

(1) The agency shall be in compliance with the requirements of Chapter 8.3 (commencing with Section 1743) of Division 2 of the Health and Safety Code, and any regulations adopted under that chapter.

(2) The agency shall provide services as specified in Section 1743.2 of the Health and Safety Code.

(3) The agency shall provide skilled nursing services on a shift basis in a patient’s home or other community-based site appropriate for patient care.

(b) The department shall request federal approval of an amendment to the existing nursing facility waiver and model nursing facility waiver in order to include private duty nursing agencies as a provider of skilled nursing services on a shift basis.

(c) The department shall review all other federally approved existing waivers that include home health care as a covered service and request federal approval for adding private duty nursing agencies as a provider of skilled nursing services provided on a shift basis, including home- and



community-based waivers under Section 1915(c) of the federal Social Security Act (42 U.S.C. Sec. 1396n(c)).

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

