

ASSEMBLY BILL

No. 2813

Introduced by Assembly Member Salinas

February 25, 2002

An act to amend Section 1575.7 of, and to add Sections 1575.11 and 1575.12 to, the Health and Safety Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

AB 2813, as introduced, Salinas. Adult day health care providers.

Existing law provides for the implementation of adult day health care center oversight by the State Department of Health Services, and authorizes that department to enter into an interagency agreement with the California Department of Aging for the administration of that program. Existing law establishes standards for certification as an adult day health care provider and adult day health care center licensing.

Existing law makes the suspension of an applicant from the Medi-Cal program or prior violations of statutory provisions or regulations relating to licensure of a health facility, community care facility, or clinic grounds for a denial of licensure of an adult day health care center where the department determines that there is a substantial probability that the applicant will not comply with the provisions relating to adult day health care centers.

This bill would expand the scope of those entities for which violations of law or regulations concerning those entities are grounds for a denial of licensure of an adult day health care center.

Existing law requires the State Department of Health Services, prior to issuing a new license for a proposed adult day health care center, to secure from an appropriate law enforcement agency records of any criminal activity, other than a minor traffic violation, of the

administrator, program director, and fiscal officer of the proposed health care center.

This bill would revise the procedures required to be followed prior to the initial licensure, would apply them to the renewal of a license, and would require a criminal record clearance for defined direct care staff.

Under existing law, any person who negligently, repeatedly, or willfully violates the provisions relating to adult day health care facilities is guilty of a misdemeanor. Because this bill would change the definition of a crime, this bill would result in 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.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

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

1 SECTION 1. Section 1575.7 of the Health and Safety Code
2 is amended to read:

3 1575.7. ~~The State Department of Health Services, prior to~~
4 ~~issuing a new license, shall secure from an appropriate law~~
5 ~~enforcement agency records of any criminal activity, other than~~
6 ~~minor traffic violations, of the administrator, program director,~~
7 ~~and fiscal officer of the proposed adult day health care center. The~~
8 ~~state department shall obtain the records each time these positions~~
9 ~~are to be filled. A past conviction of any crime, especially any~~
10 ~~crime involving misuse of funds or involving physical abuse shall,~~
11 ~~in the discretion of the State Department of Health Services, be~~
12 ~~grounds for denial of the license.~~

13 Suspension

14 (a) *The suspension* of the applicant from the Medi-Cal program
15 or prior violations of statutory provisions or regulations relating
16 to licensure of a health facility, *adult day health care center,*
17 *residential care facility for the elderly,* community care facility,
18 *home health agency,* or clinic shall ~~also~~ be grounds for a denial of
19 licensure, where determined by the ~~state department~~ to indicate a



1 substantial probability that the applicant will not comply with this
2 chapter and regulations adopted hereunder.

3 ~~No~~

4 (b) ~~No applicant which~~ that is licensed as a health facility, *adult*
5 *day health care center, residential care facility for the elderly,*
6 *community care facility, home health agency,* or clinic may be
7 issued a license for an adult day health care center while there
8 exists a subsisting, uncorrected violation of the statutes or
9 regulations relating to ~~such~~ licensure *of the facility, center, agency,*
10 *or clinic.*

11 SEC. 2. Section 1575.11 is added to the Health and Safety
12 Code, to read:

13 1575.11. (a) Prior to the initial licensure or renewal of a
14 license of any person to operate or manage an adult day health care
15 center, the applicant shall submit fingerprint cards for the
16 applicant, administrator, manager, program director, and fiscal
17 officer, to the department for the purpose of obtaining a criminal
18 record clearance in accordance with Section 1575.12. If the
19 criminal record indicates that any of these persons have been
20 convicted of a crime, other than a minor traffic violation, the
21 application shall be processed pursuant to Section 1575.12. The
22 department shall obtain the records each time a position is filled
23 and prior to actual employment. The cost for the criminal record
24 clearance shall be paid by the employer. If fingerprinting cards are
25 submitted, each card shall be accompanied by the fee to cover the
26 processing costs for the Department of Justice, which shall not
27 exceed thirty-two dollars (\$32) per card.

28 (b) Upon the employment of any direct care staff, and prior to
29 any contact with participants, the adult day health care center shall
30 submit fingerprint cards to the department for the purpose of
31 obtaining a criminal record clearance. An adult day health care
32 center shall not knowingly employ a person to provide direct care
33 who has been convicted of a crime, other than a minor traffic
34 violation, unless he or she has received a clearance in accordance
35 with Section 1575.12. The cost for the criminal record clearance
36 shall be paid by the employer. If fingerprinting cards are
37 submitted, each card shall be accompanied by the fee to cover the
38 processing costs for the Department of Justice, which shall not
39 exceed thirty-two dollars (\$32) per card.



1 (c) For purposes of this section, “direct care staff” means any
2 staff member at an adult day health care center who directly
3 provides program and nursing services to participants.
4 Administrative and licensed personnel shall be considered direct
5 care staff when directly providing program or nursing services to
6 participants. Persons employed as consultants and acting as direct
7 care staff shall be subject to the same requirements for a criminal
8 record clearance as other direct care staff, except that the
9 employing center shall not be required to pay any costs associated
10 with that criminal record clearance if the consulting services are
11 provided through a contract with the adult day health care center.
12 A contractor or consultant who holds a professional license in
13 good standing issued by a state agency that includes a criminal
14 record clearance by an appropriate law enforcement agency as part
15 of the licensure process, shall not be subject to an additional
16 criminal record clearance as direct care staff while providing
17 professional services within his or her scope of licensure.

18 (d) Any contract for services provided directly to participants
19 shall contain provisions to ensure that each service provider, prior
20 to any contact with participants, shall submit fingerprint cards to
21 the department for the purpose of obtaining a criminal record
22 check. An adult day health care center shall not knowingly contract
23 for direct care services by a service provider who has been
24 convicted of a crime, other than a minor traffic violation, unless
25 that person has been cleared in accordance with Section 1575.12
26 or is not subject to criminal record clearance pursuant to
27 subdivision (c).

28 SEC. 3. Section 1575.12 is added to the Health and Safety
29 Code, to read:

30 1575.12. (a) (1) The department shall deny an application
31 for a license, suspend or revoke an existing license, or deny a
32 criminal record clearance, if the applicant for, or the holder of, a
33 license, or any of the persons listed in subdivision (a) of Section
34 1575.11, or direct care staff, has been convicted of any of the
35 following crimes or any crimes under a predecessor or successor
36 statute that includes all of the elements of any of the following
37 crimes, unless paragraph (2) applies, in which case the application,
38 suspension, revocation, or criminal record clearance shall be
39 considered pursuant to subdivisions (d) and (e), or unless the
40 convicted person is promptly removed from his or her position:



1 (A) Any violent felony, as defined in subdivision (c) of Section
2 667.5 of the Penal Code.

3 (B) Any serious felony, as defined in subdivision (c) of Section
4 1192.7 of the Penal Code.

5 (C) Any crime listed in clause (i) of subparagraph (A), or
6 subparagraph (B), of paragraph (1) of subdivision (g) of Section
7 1522, subparagraph (A) or (B) of paragraph (1) of subdivision (f)
8 of Section 1568.09, subparagraph (A) or (B) of paragraph (1) of
9 subdivision (f) of Section 1569.17, or subparagraph (A) or (B) of
10 paragraph (1) of subdivision (f) of Section 1596.871.

11 (D) Any crime listed in paragraph (1) of subdivision (b) of
12 Section 1265.5, paragraph (2) of subdivision (a) of Section
13 1337.9, or subdivision (a) of Section 1736.5.

14 (2) If either of the following applies, the application,
15 suspension, revocation, or criminal record clearance shall be
16 considered pursuant to subdivisions (d) and (e):

17 (A) The person was convicted of a felony and has obtained a
18 certificate of rehabilitation under Chapter 3.5 (commencing with
19 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
20 information or accusation against the person has been dismissed
21 pursuant to Section 1203.4 of the Penal Code with regard to that
22 felony.

23 (B) The person was convicted of a misdemeanor and the
24 information or accusation against the person has been dismissed
25 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

26 (b) An application for licensure, the renewal of a license, or a
27 criminal record clearance shall be denied if the criminal record of
28 the person includes a conviction in another jurisdiction for an
29 offense that, if committed or attempted in this state, would have
30 been punishable as one or more of the offenses set forth in this
31 section, unless evidence of rehabilitation comparable to the
32 dismissal of a misdemeanor or a certificate of rehabilitation as set
33 forth in this section, is provided to the department.

34 (c) The denial, suspension, or revocation of a license for
35 conviction of any crime listed in subdivision (a) or (b) is not
36 subject to appeal.

37 (d) The department may deny an application for licensure,
38 suspend or revoke a license to operate or manage an adult day
39 health care center, or deny a criminal record clearance for
40 conviction of any crime substantially related to the qualifications,



1 functions, and duties of an applicant, administrator, manager,
2 program director, fiscal officer, or direct care staff of an adult day
3 health care center, irrespective of a subsequent order under Section
4 1203.4, 1203.4a, or Chapter 3.5 (commencing with Section
5 4852.01) of Title 6 of Part 3, of the Penal Code, where the
6 department determines that the applicant, licenseholder,
7 administrator, manager, program director, fiscal officer, or direct
8 care staff has not adequately demonstrated that he or she has been
9 rehabilitated and the department believes that he or she will
10 present a threat to the health, safety, or welfare of patients.

11 (e) If the criminal record of a person indicates any conviction
12 of a crime other than a minor traffic violation or other than a
13 conviction listed in this section, the department may deny the
14 application for licensure or renewal, deny a criminal record
15 clearance, or suspend or revoke an existing license. In determining
16 whether or not to deny the application for licensure or renewal,
17 deny a criminal record clearance, or suspend or revoke an existing
18 license pursuant to this subdivision, the department shall take into
19 consideration the following factors:

20 (1) The nature and seriousness of the offense under
21 consideration and its relationship to the person's employment,
22 duties, and responsibilities.

23 (2) Activities since conviction, including employment or
24 participation in therapy or education, that would indicate changed
25 behavior.

26 (3) The time that has elapsed since the commission of the
27 conduct or offense and the number of offenses.

28 (4) The extent to which the person has complied with any terms
29 of parole, probation, restitution, or any other sanction lawfully
30 imposed against the person.

31 (5) Any rehabilitation evidence, including character
32 references, submitted by the person.

33 (6) Employment history and current employer
34 recommendations.

35 (7) Circumstances surrounding the commission of the offense
36 that would demonstrate the unlikelihood of repetition.

37 (8) The granting by the Governor of a full and unconditional
38 pardon.

39 (9) A certificate of rehabilitation from a superior court.



1 (f) A plea or verdict of guilty, or a conviction following a plea
2 of nolo contendere shall be deemed a conviction within the
3 meaning of this section. The department may deny any application
4 for licensure or renewal, deny a criminal record clearance, or
5 suspend or revoke an existing license based on a conviction as
6 provided in this section when the judgment of conviction is entered
7 or when an order granting probation is made suspending the
8 imposition of sentence.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

