

Assembly Bill No. 1710

Passed the Assembly August 24, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1266, 1416.36, 1416.38, and 1416.70 of the Health and Safety Code, relating to health and care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, Yamada. Nursing home administrators: fees and fines.

Existing law, the Nursing Home Administrators' Act, provides for the licensing of nursing home administrators by the State Department of Public Health. Existing law prescribes specified licensing fees, and requires that the fees be adjusted annually, as directed by the Legislature in the annual Budget Act, by an amount not to exceed the California Consumer Price Index, as specified. Existing law provides for the issuance of citations and administrative fines for the violation of any state or federal statute or regulation governing licensed nursing home administrators. Existing law requires that these fees and associated fines be deposited in the Nursing Home Administrator's State License Examining Fund, a continuously appropriated fund.

This bill would eliminate the Nursing Home Administrator's State License Examining Fund and instead require that these fees and fines be deposited into the State Department of Public Health Licensing and Certification Program Fund. This bill would authorize the department to adjust the fees, and would remove the adjustment limitation relating to the California Consumer Price Index.

This bill would require the department, by February 1 of each year, to prepare a list of proposed fee adjustments and a specified report relating to nursing home administrator fees, fee adjustments, and nursing home administration generally. The bill would require the department to submit this list and report to the appropriate policy and fiscal committees of the Legislature and to post this report on its Internet Web site.

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

SECTION 1. It is the intent of the Legislature that activities of the Nursing Home Administrator Program related to licensure

of nursing home administrators be supported by fee revenue that is sufficient to fund these activities.

SEC. 2. Section 1266 of the Health and Safety Code is amended to read:

1266. (a) The Licensing and Certification Division shall be supported entirely by federal funds and special funds by no earlier than the beginning of the 2009–10 fiscal year unless otherwise specified in statute, or unless funds are specifically appropriated from the General Fund in the annual Budget Act or other enacted legislation. For the 2007–08 fiscal year, General Fund support shall be provided to offset licensing and certification fees in an amount of not less than two million seven hundred eighty-two thousand dollars (\$2,782,000).

(b) (1) The Licensing and Certification Program fees for the 2006–07 fiscal year shall be as follows:

Type of Facility	Fee	
General Acute Care Hospitals	\$ 134.10	per bed
Acute Psychiatric Hospitals	\$ 134.10	per bed
Special Hospitals	\$ 134.10	per bed
Chemical Dependency Recovery Hospitals	\$ 123.52	per bed
Skilled Nursing Facilities	\$ 202.96	per bed
Intermediate Care Facilities	\$ 202.96	per bed
Intermediate Care Facilities – Developmentally Disabled	\$ 592.29	per bed
Intermediate Care Facilities – Developmentally Disabled – Habilitative	\$1,000.00	per facility
Intermediate Care Facilities – Developmentally Disabled – Nursing	\$1,000.00	per facility
Home Health Agencies	\$2,700.00	per facility
Referral Agencies	\$5,537.71	per facility
Adult Day Health Centers	\$4,650.02	per facility
Congregate Living Health Facilities	\$ 202.96	per bed
Psychology Clinics	\$ 600.00	per facility
Primary Clinics – Community and Free	\$ 600.00	per facility
Specialty Clinics – Rehab Clinics		
(For profit)	\$2,974.43	per facility
(Nonprofit)	\$ 500.00	per facility
Specialty Clinics – Surgical and Chronic	\$1,500.00	per facility
Dialysis Clinics	\$1,500.00	per facility

Pediatric Day Health/Respite Care	\$ 142.43	per bed
Alternative Birthing Centers	\$2,437.86	per facility
Hospice	\$1,000.00	per facility
Correctional Treatment Centers	\$ 590.39	per bed

(2) In the first year of licensure for intermediate care facility/developmentally disabled-continuous nursing (ICF/DD-CN) facilities, the licensure fee for those facilities shall be equivalent to the licensure fee for intermediate care facility/developmentally disabled-nursing facilities during the same year. Thereafter, the licensure fee for ICF/DD-CN facilities shall be established pursuant to subdivisions (c) and (d).

(c) Commencing February 1, 2007, and every February 1 thereafter, the department shall publish a list of estimated fees pursuant to this section. The calculation of estimated fees and the publication of the report and list of estimated fees shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) Notwithstanding Section 10231.5 of the Government Code, by February 1 of each year, the department shall prepare the following reports and shall make those reports, and the list of estimated fees required to be published pursuant to subdivision (c), available to the public by submitting them to the Legislature and posting them on the department's Internet Web site:

(1) A report of all costs for activities of the Licensing and Certification Program. At a minimum, this report shall include a narrative of all baseline adjustments and their calculations, a description of how each category of facility was calculated, descriptions of assumptions used in any calculations, and shall recommend Licensing and Certification Program fees in accordance with the following:

(A) Projected workload and costs shall be grouped for each fee category, including workload costs for facility categories that have been established by statute and for which licensing regulations and procedures are under development.

(B) Cost estimates, and the estimated fees, shall be based on the appropriation amounts in the Governor's proposed budget for the next fiscal year, with and without policy adjustments to the fee methodology.

(C) The allocation of program, operational, and administrative overhead, and indirect costs to fee categories shall be based on generally accepted cost allocation methods. Significant items of costs shall be directly charged to fee categories if the expenses can be reasonably identified to the fee category that caused them. Indirect and overhead costs shall be allocated to all fee categories using a generally accepted cost allocation method.

(D) The amount of federal funds and General Fund moneys to be received in the budget year shall be estimated and allocated to each fee category based upon an appropriate metric.

(E) The fee for each category shall be determined by dividing the aggregate state share of all costs for the Licensing and Certification Program by the appropriate metric for the category of licensure. Amounts actually received for new licensure applications, including change of ownership applications, and late payment penalties, pursuant to Section 1266.5, during each fiscal year shall be calculated and 95 percent shall be applied to the appropriate fee categories in determining Licensing and Certification Program fees for the second fiscal year following receipt of those funds. The remaining 5 percent shall be retained in the fund as a reserve until appropriated.

(2) (A) A staffing and systems analysis to ensure efficient and effective utilization of fees collected, proper allocation of departmental resources to licensing and certification activities, survey schedules, complaint investigations, enforcement and appeal activities, data collection and dissemination, surveyor training, and policy development.

(B) The analysis under this paragraph shall be made available to interested persons and shall include all of the following:

(i) The number of surveyors and administrative support personnel devoted to the licensing and certification of health care facilities.

(ii) The percentage of time devoted to licensing and certification activities for the various types of health facilities.

(iii) The number of facilities receiving full surveys and the frequency and number of follow up visits.

(iv) The number and timeliness of complaint investigations.

(v) Data on deficiencies and citations issued, and numbers of citation review conferences and arbitration hearings.

(vi) Other applicable activities of the licensing and certification division.

(3) The annual program fee report described in subdivision (d) of Section 1416.36.

(e) The reports required pursuant to subdivision (d) shall be submitted in compliance with Section 9795 of the Government Code.

(f) (1) The department shall adjust the list of estimated fees published pursuant to subdivision (c) if the annual Budget Act or other enacted legislation includes an appropriation that differs from those proposed in the Governor's proposed budget for that fiscal year.

(2) The department shall publish a final fee list, with an explanation of any adjustment, by the issuance of an all facilities letter, by posting the list on the department's Internet Web site, and by including the final fee list as part of the licensing application package, within 14 days of the enactment of the annual Budget Act. The adjustment of fees and the publication of the final fee list shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(g) (1) No fees shall be assessed or collected pursuant to this section from any state department, authority, bureau, commission, or officer, unless federal financial participation would become available by doing so and an appropriation is included in the annual Budget Act for that state department, authority, bureau, commission, or officer for this purpose. No fees shall be assessed or collected pursuant to this section from any clinic that is certified only by the federal government and is exempt from licensure under Section 1206, unless federal financial participation would become available by doing so.

(2) For the 2006–07 state fiscal year, no fee shall be assessed or collected pursuant to this section from any general acute care hospital owned by a health care district with 100 beds or less.

(h) The Licensing and Certification Program may change annual license expiration renewal dates to provide for efficiencies in operational processes or to provide for sufficient cash flow to pay for expenditures. If an annual license expiration date is changed, the renewal fee shall be prorated accordingly. Facilities shall be

provided with a 60-day notice of any change in their annual license renewal date.

SEC. 3. Section 1416.36 of the Health and Safety Code is amended to read:

1416.36. (a) The fees prescribed by this chapter are as follows:

(1) The application fee for reviewing an applicant's eligibility to take the examination shall be twenty-five dollars (\$25).

(2) The application fee for persons applying for reciprocity consideration licensure under Section 1416.40 shall be fifty dollars (\$50).

(3) The application fee for persons applying for the AIT Program shall be one hundred dollars (\$100).

(4) The examination fees shall be:

(A) Two hundred seventy-five dollars (\$275) for an automated national examination.

(B) Two hundred ten dollars (\$210) for an automated state examination or one hundred forty dollars (\$140) for a written state examination.

(5) The fee for an initial license shall be one hundred ninety dollars (\$190).

(6) The renewal fee for an active or inactive license shall be one hundred ninety dollars (\$190).

(7) The delinquency fee shall be fifty dollars (\$50).

(8) The duplicate license fee shall be twenty-five dollars (\$25).

(9) The fee for a provisional license shall be two hundred fifty dollars (\$250).

(10) The fee for endorsement of credentials to the licensing authority of another state shall be twenty-five dollars (\$25).

(11) The preceptor certification fee shall be fifty dollars (\$50) for each three-year period.

(12) The biennial fee for approval of a continuing education provider shall be one hundred fifty dollars (\$150).

(13) The biennial fee for approval of a continuing education course shall be not more than fifteen dollars (\$15).

(b) (1) If the revenue projected to be collected is less than the projected costs for the budget year, the department may propose that fees be adjusted to an amount sufficient to cover the reasonable regulatory costs to the department. Notwithstanding Section 10231.5 of the Government Code, commencing February 1, 2013, and every February 1 thereafter, the department shall publish a list

of proposed adjustments to fees pursuant to this section. The department shall make this list available to the public by submitting it to the appropriate policy and fiscal committees of the Legislature and by posting it on the department's Internet Web site.

(2) The list described in paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(c) (1) The department shall, within 30 days of the enactment of the annual Budget Act each year, publish a list of actual numerical fee charges as adjusted pursuant to this section. The final fee list, with an explanation of any adjustment, shall be published by both of the following means:

(A) On the department's Internet Web site.

(B) In the initial licensing application package, by including a reference to the link to the department's Internet Web site address as described in subparagraph (A).

(2) (A) 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.

(d) (1) Notwithstanding Section 10231.5 of the Government Code, by February 1 of each year, the department shall prepare a report containing the following information, and shall make this report available to the public by submitting it to the appropriate policy and fiscal committees of the Legislature and by posting it on the department's Internet Web site, as required by Section 1266:

(A) Estimates of costs to implement activities required by this chapter and estimated fee revenue.

(B) Recommended adjustments to fees based on projected workload and costs.

(C) An analysis containing the following information for the current fiscal year and each of the previous four fiscal years:

(i) The number of persons applying for a nursing home administrator's license, the number of nursing home administrator licenses approved or denied, and the number of nursing home administrator licenses renewed.

(ii) The number of applicants taking the nursing home administrator exam and the number of applicants who pass or fail the exam.

(iii) The number of persons applying for, accepted into, and completing the AIT Program.

(iv) The number, source, and disposition of complaints made against persons in the AIT Program and licensed nursing home administrators, including the length of time between receipt of the complaint and completion of the investigation.

(v) The number and type of final administrative, remedial, or disciplinary actions taken against licensed nursing home administrators.

(vi) A listing of the names and nature of violations for individual licensed nursing home administrators, including final administrative, remedial, or disciplinary actions taken.

(vii) The number of appeals, informal conferences, or hearings filed by nursing home administrators or held, the length of time between the request being filed and the final determination of the appeal, and the number of administrative, remedial, or disciplinary actions taken.

(2) The report required to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 4. Section 1416.38 of the Health and Safety Code is amended to read:

1416.38. Within 10 days after the beginning of every month, all fees collected by the program for the month preceding, under this chapter, shall be paid into the State Department of Public Health Licensing and Certification Program Fund established by Section 1266.9, to defray the expenses of the program and in carrying out and enforcing the provisions of this chapter.

SEC. 5. Section 1416.70 of the Health and Safety Code is amended to read:

1416.70. (a) The program shall establish a system for the issuance of citations to licensees, examinees, or participants of any program activity offered or approved by the program. The citations may contain an order of abatement, an order to pay an administrative fine assessed by the program chief, or both, where the licensee, examinee, or participant is in violation of any state or federal statute or regulation governing licensed nursing home administrators.

(b) The system shall contain all of the following provisions:

(1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.

(2) Where appropriate, the citation shall contain an order of abatement fixing reasonable time for abatement of the violation.

(3) (A) Administrative fines assessed by the program shall be separate from and shall not preclude the levying of any other fines or any civil or criminal penalty.

(B) In no event shall the administrative fine assessed by the program be less than fifty dollars (\$50) or exceed two thousand five hundred dollars (\$2,500) for each violation. The total assessment shall not exceed ten thousand dollars (\$10,000) for each investigation or for counts involving fraudulent billings submitted to insurance companies, Medi-Cal, or Medicare programs.

(4) In assessing a fine, the program shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith effort of the licensee, examinee, or participant, the unprofessional conduct, including, but not limited to, incompetence and negligence in the performance of the duties and responsibilities of an administrator, the extent to which the cited person has mitigated or attempted to mitigate any damage or injury caused by his or her violation, whether the violation was related to patient care, the history of any previous violations, and other matters as may be appropriate.

(5) A citation or fine assessment issued pursuant to a citation shall inform the licensee, examinee, or participant that if he or she desires a hearing to contest the finding of a violation, the hearing shall be requested by written notice to the program within 30 days after the date of issuance of the citation or assessment. A licensee may, in lieu of contesting a citation pursuant to this section, transmit to the state department 75 percent of the amount specified in the citation for each violation within 15 business days after the issuance of the citation.

(6) Failure of a licensee, examinee, or participant to pay a fine within 30 days of the date of the assessment, unless the citation is being appealed, may result in further disciplinary action being taken by the program. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine, along with any accrued penalty interest, shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee, fine, and accrued interest penalty. A citation may be issued without the assessment of an administrative fine.

(c) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act. Notwithstanding any other provisions of law, where a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosures. Administrative fines collected pursuant to this section shall be deposited in the State Department of Public Health Licensing and Certification Program Fund established by Section 1266.9.

Approved _____, 2012

Governor