

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE APRIL 12, 2011

**SENATE BILL**

**No. 408**

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**Introduced by Senator Hernandez**

February 16, 2011

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An act to ~~amend Section 1265 of~~ *add Section 1265.9* to the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 408, as amended, Hernandez. Health facilities: licensure.

Existing law provides for the licensure and regulation of health facilities administered by the State Department of Public Health. A violation of these provisions is a crime.

Existing law requires those desiring a license for a health facility, approval for a specified special service, or approval to manage a specified type of licensed health facility, that have not filed an application for a license to operate that facility, to file with the department a verified application on forms prescribed and furnished by the department, containing specified information.

Existing law provides that any requirement placed upon, or reference to, a corporation in the provisions regulating health facilities shall also apply to a limited liability company.

This bill would require a new license application to be filed ~~when the holder of an existing license for a health facility, as defined, changes ownership when there is a change of ownership, as defined, or a change in ownership, as defined. This bill would provide that a change of ownership occurs whenever the current holder of the license sells, transfers, leases, exchanges, options, conveys, or otherwise disposes of, a material amount of its assets or operations, as provided, to another~~

individual or entity. This bill would provide that a change of ownership also occurs whenever the current holder of the license transfers control, responsibility, or governance, as prescribed, of a material amount of its assets or operations, as provided, to another individual or entity. *This bill would also require a prescribed notice to be filed with the department prior to a change in ownership change of ownership, or change in control interest, as defined, or certain health facilities.*

Because this bill expands the definition of a crime, it would impose 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 1265.9 is added to the Health and Safety
- 2     Code, to read:
- 3     1265.9. (a) For purposes of this section, the following
- 4     definitions shall apply:
- 5     (1) “Change of ownership” means any of the following:
- 6     (A) For a partnership, the removal, addition, or substitution of
- 7     a partner.
- 8     (B) For an unincorporated sole proprietorship, the transfer of
- 9     title and property to another person.
- 10    (C) For a corporation, the merger of the applicant’s or
- 11    provider’s corporation into another corporation, or the
- 12    consolidation of two or more corporations, resulting in the creation
- 13    of a new corporation. The transfer of corporate stock or the merger
- 14    of another corporation into the applicant’s or provider’s
- 15    corporation does not constitute a change of ownership.
- 16    (D) For a lease, the lease of all or part of an applicant’s or
- 17    provider’s facility constitutes a change of ownership of the leased
- 18    portion.
- 19    (2) “Change in ownership” means a transaction where there
- 20    is a change of ownership and any of the following occurs:

1 (A) A sale, transfer, lease, exchange, conveyance, or other  
2 disposal of a limited partnership interest, corporate shares, or  
3 limited liability company interest representing at least 20 percent  
4 of all ownership interests in a health facility that is described in  
5 subdivision (a), (b), or (f) of Section 1250 or in the current  
6 licenseholder.

7 (B) The merger of an entity that owns or operates a health  
8 facility described in subdivision (a), (b), or (f) of Section 1250 that  
9 does not result in a change in the taxpayer identification number  
10 of the licenseholder.

11 (C) A substitution of a new corporate member or member of the  
12 governing body, or any arrangement, written or oral, that would  
13 transfer voting control of, or responsibility for, or governance of,  
14 a health facility described in subdivision (a), (b), or (f) of Section  
15 1250.

16 (3) “Change in control interest” means a transaction where  
17 any of the following, except a change of ownership or change in  
18 ownership, occurs:

19 (A) A sale, transfer, lease, exchange, conveyance, or other  
20 disposal of a limited partnership interest, corporate shares, or  
21 limited liability company interest representing at least 10 percent  
22 of all ownership interests in a health facility described in  
23 subdivision (a), (b), or (f) of Section 1250, or in the license holder,  
24 but that represents less than 20 percent of the ownership interests  
25 in the health facility or license holder.

26 (B) A change in any member of the governing body or principal  
27 officers of a health facility described in subdivision (a), (b), or (f)  
28 of Section 1250 that does not transfer voting control of, or  
29 responsibility for, the health facility.

30 (b) A new license application for a health facility described in  
31 subdivision (a), (b), (c), (d), or (f) of Section 1250 shall be filed  
32 when there is a change of ownership in the health facility.

33 (c) At least 45 days prior to a change of ownership, change in  
34 ownership, or change in control interest in a health facility that  
35 is described in subdivision (a), (b), or (f) of Section 1250, a notice  
36 of the change shall be filed with the department. If the transaction  
37 is a change in ownership, a new license application shall be filed  
38 with the notice. If the transaction is a change of control interest,  
39 a State Department of Public Health form HS 215A shall be filed  
40 with the notice.

1 (d) Notwithstanding the rulemaking provisions of Chapter 3.5  
2 (commencing with Section 11340) of Part 1 of Title 2 of the  
3 Government Code, the department may implement this section by  
4 means of all facility letters, or similar instructions, without taking  
5 further regulatory action.

6 ~~SECTION 1. Section 1265 of the Health and Safety Code is~~  
7 ~~amended to read:~~

8 ~~1265. (a) Any person, political subdivision of the state, or~~  
9 ~~governmental agency desiring a license for a health facility,~~  
10 ~~approval for a special service under this chapter, or approval to~~  
11 ~~manage a health facility currently licensed as a health facility, as~~  
12 ~~defined in subdivision (a), (b), (c), (d), or (f) of Section 1250, that~~  
13 ~~has not filed an application for a license to operate that facility~~  
14 ~~shall file with the department a verified application on forms~~  
15 ~~prescribed and furnished by the department, containing all of the~~  
16 ~~following:~~

17 ~~(1) The name of the applicant and, if an individual, whether the~~  
18 ~~applicant has attained the age of 18 years.~~

19 ~~(2) The type of facility or health facility.~~

20 ~~(3) The location thereof.~~

21 ~~(4) The name of the person in charge thereof.~~

22 ~~(5) Evidence satisfactory to the department that the applicant~~  
23 ~~is of reputable and responsible character. If the applicant is a firm,~~  
24 ~~association, organization, partnership, business trust, corporation,~~  
25 ~~or company, like evidence shall be submitted as to the members~~  
26 ~~or shareholders thereof, and the person in charge of the health~~  
27 ~~facility for which application for license is made. If the applicant~~  
28 ~~is a political subdivision of the state or other governmental agency,~~  
29 ~~like evidence shall be submitted as to the person in charge of the~~  
30 ~~health facility for which application for license is made.~~

31 ~~(6) Evidence satisfactory to the department of the ability of the~~  
32 ~~applicant to comply with this chapter and of rules and regulations~~  
33 ~~promulgated under this chapter by the department.~~

34 ~~(7) Evidence satisfactory to the department that the applicant~~  
35 ~~to operate a skilled nursing facility or intermediate care facility~~  
36 ~~possesses financial resources sufficient to operate the facility for~~  
37 ~~a period of at least 45 days. A management company shall not be~~  
38 ~~required to submit this information.~~

39 ~~(8) Each applicant for a license to operate a skilled nursing~~  
40 ~~facility or intermediate care facility shall disclose to the department~~

1 evidence of the right to possession of the facility at the time the  
2 application will be granted, which may be satisfied by the  
3 submission of a copy of applicable portions of a lease agreement  
4 or deed of trust. The names and addresses of any persons or  
5 organizations listed as owner of record in the real estate, including  
6 the buildings and the grounds appurtenant to the buildings, shall  
7 be disclosed to the department.

8 (9) Any other information as may be required by the department  
9 for the proper administration and enforcement of this chapter.

10 (10) Upon submission of an application to the department by  
11 an intermediate care facility/developmentally disabled habilitative  
12 or an intermediate care facility/developmentally disabled nursing,  
13 the application shall include a statement of need signed by the  
14 chairperson of the area board pursuant to Chapter 4 (commencing  
15 with Section 4570) of Division 4.5 of the Welfare and Institutions  
16 Code. In the event the area board has not provided the statement  
17 of need within 30 days of receipt of the request from the applicant,  
18 the department may process the application for license without the  
19 statement.

20 (11) The information required pursuant to this section, other  
21 than individuals' social security numbers, shall be made available  
22 to the public upon request, and shall be included in the  
23 department's public file regarding the facility.

24 (12) With respect to a facility licensed as a health facility, as  
25 defined in subdivision (a), (b), or (f) of Section 1250, for purposes  
26 of this section, "manage" means to assume operational control of  
27 the facility.

28 (b) A new license application shall be filed when the holder of  
29 an existing license for a health facility, as defined in subdivision  
30 (a), (b), or (f) of Section 1250, changes ownership. A change of  
31 ownership occurs whenever the current holder of the license:

32 (1) Sells, transfers, leases, exchanges, options, conveys, or  
33 otherwise disposes of, a material amount of its assets or operations  
34 to another individual or entity.

35 (2) Transfers control, responsibility, or governance of a material  
36 amount of the assets or operations of the current licenseholder to  
37 another individual or entity.

38 (c) An agreement or transaction involves a "material amount  
39 of the assets or operations" pursuant to paragraph (1) of subdivision  
40 (b) if either:

1 ~~(1) The agreement or transaction directly affects more than 10~~  
2 ~~percent of the value of the health facility, as defined in subdivision~~  
3 ~~(a), (b), or (f) of Section 1250, that provide similar health care that~~  
4 ~~are operated or controlled by the current licenseholder, or~~

5 ~~(2) The agreement or transaction involves the sale, transfer,~~  
6 ~~exchange, change in control, governance, or otherwise disposes~~  
7 ~~of any health facility, as defined in subdivision (a), (b), or (f) of~~  
8 ~~Section 1250, that provides similar health care and that is~~  
9 ~~controlled, operated, or managed by the current licenseholder and~~  
10 ~~that has a fair market value that exceeds three million dollars~~  
11 ~~(\$3,000,000).~~

12 ~~(d) An agreement or transaction will “transfer control,~~  
13 ~~responsibility, or governance” pursuant to paragraph (2) of~~  
14 ~~subdivision (b) if any of the following occurs:~~

15 ~~(1) There is a transfer, assignment, or disposition of 10 percent~~  
16 ~~or more of the membership interests or voting rights of a limited~~  
17 ~~liability company or partnership which operates or manages a~~  
18 ~~licensed health facility, as defined in subdivision (a), (b), or (f) of~~  
19 ~~Section 1250, to a new partner or member that did not hold 10~~  
20 ~~percent or more of the membership interests or voting rights at the~~  
21 ~~time the existing license was issued to the limited liability company~~  
22 ~~or partnership.~~

23 ~~(2) There is a transfer, assignment, or disposition of 10 percent~~  
24 ~~or more of the stock or voting rights of a corporation which~~  
25 ~~operates or manages a licensed health facility, or which is a~~  
26 ~~member of a limited liability company that operates or manages~~  
27 ~~a licensed health facility, as defined in subdivision (a), (b), or (f)~~  
28 ~~of Section 1250, to a new stockholder that did not hold 10 percent~~  
29 ~~or more of the stock or voting rights at the time the existing license~~  
30 ~~was issued to the corporation.~~

31 ~~(3) There is a substitution of a new corporate member or~~  
32 ~~members that transfers the control of, responsibility for, or~~  
33 ~~governance of, the current licenseholder.~~

34 ~~(4) There is a substitution of one or more members of the~~  
35 ~~governing body, or any arrangement, written or oral, that would~~  
36 ~~transfer voting control of the members of the governing body.~~

37 SEC. 2. No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty  
2 for a crime or infraction, within the meaning of Section 17556 of  
3 the Government Code, or changes the definition of a crime within  
4 the meaning of Section 6 of Article XIII B of the California  
5 Constitution.

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