

AMENDED IN ASSEMBLY JULY 2, 2014
AMENDED IN ASSEMBLY JUNE 19, 2014
AMENDED IN SENATE MAY 27, 2014
AMENDED IN SENATE APRIL 30, 2014

SENATE BILL

No. 1384

Introduced by Senator Mitchell
(Coauthors: Senators Beall and De León)
(Coauthor: Assembly Member Ammiano)

February 21, 2014

An act to amend Sections 1337.9 and 1338.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1384, as amended, Mitchell. Certified nurse assistants.

Existing law provides for the certification of nurse assistants by the State Department of Public Health. Existing law authorizes the department to deny an application for, initiate an action to suspend or revoke a certificate for, or deny a training and examination application for a nurse assistant under specified circumstances. Existing law requires, with some exceptions, the department to deny a training and examination application and deny, suspend, or revoke a certificate if the applicant or certificate holder has been convicted of a violation of or attempted violation of one or more specified crimes.

This bill would delete the requirement that the department deny a training and examination application and deny, suspend, or revoke a certificate if the applicant or certificate holder has been convicted of a violation or attempted violation of one or more of the specified crimes.

The bill would make findings and declarations related to these provisions, and would make other related and conforming changes.

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

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

1 SECTION 1. Section 1337.9 of the Health and Safety Code is
2 amended to read:

3 1337.9. (a) The Legislature finds and declares all of the
4 following:

5 (1) Recidivism is reduced when criminal offenders are given
6 the opportunity to secure employment and engage in a trade,
7 occupation, or profession.

8 (2) It is in the interest of public safety to assist in the
9 rehabilitation of criminal offenders by removing impediments and
10 restrictions upon ~~their~~ *the offenders'* ability to obtain employment
11 or engage in a trade, occupation, or profession based solely upon
12 the existence of a criminal record.

13 (3) It is the intent of the Legislature that the state department,
14 in determining eligibility under this section, have discretion to
15 consider a conviction, but that the conviction not operate as an
16 automatic bar to certification.

17 (b) The state department may deny an application for, initiate
18 an action to suspend or revoke a certificate for, or deny a training
19 and examination application for, a nurse assistant for any of the
20 following:

21 (1) Unprofessional conduct, including, but not limited to,
22 incompetence, gross negligence, unless due to circumstances
23 beyond the nurse assistant's control, physical, mental, or verbal
24 abuse of patients, or misappropriation of property of patients or
25 others.

26 (2) Conviction of a crime substantially related to the
27 qualifications, functions, and duties of a certified nurse assistant
28 if the state department determines that the applicant or certificate
29 holder has not adequately demonstrated that he or she has been
30 rehabilitated and will present a threat to the health, safety, or
31 welfare of patients.

32 (3) Conviction for, or use of, any controlled substance as defined
33 in Division 10 (commencing with Section 11000), or any dangerous

1 drug, as defined in Section 4022 of the Business and Professions
2 Code, or alcoholic beverages, to an extent or in a manner dangerous
3 or injurious to the certified nurse assistant, any other person, or
4 the public, to the extent that this use would impair the ability to
5 conduct, with safety to the public, the practice authorized by a
6 certificate.

7 (4) Procuring a certified nurse assistant certificate by fraud or
8 misrepresentation or mistake.

9 (5) Making or giving any false statement or information in
10 conjunction with the application for issuance of a nurse assistant
11 certificate or training and examination application.

12 (6) Impersonating any applicant, or acting as proxy for an
13 applicant, in any examination required under this article for the
14 issuance of a certificate.

15 (7) Impersonating another certified nurse assistant, a licensed
16 vocational nurse, or a registered nurse, or permitting or allowing
17 another person to use a certificate for the purpose of providing
18 nursing services.

19 (8) Violating or attempting to violate, directly or indirectly, or
20 assisting in or abetting the violating of, or conspiring to violate
21 any provision or term of, this article.

22 (c) In determining whether or not to deny the application for
23 licensure or renewal pursuant to paragraph (2) of subdivision (b),
24 the department shall take into consideration the following factors
25 as evidence of good character and rehabilitation:

26 (1) The nature and seriousness of the conduct or crime under
27 consideration and its relationship to their employment duties and
28 responsibilities.

29 (2) Activities since conviction, including employment or
30 participation in therapy or education, that would indicate changed
31 behavior.

32 (3) The period of time that has elapsed since the commission
33 of the conduct or offense referred to in paragraph (1) or (2) and
34 the number of offenses.

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

38 (5) Any rehabilitation evidence, including character references,
39 submitted by the person.

40 (6) Employment history and current employer recommendations.

- 1 (7) Circumstances surrounding the commission of the offense
- 2 that would demonstrate the unlikelihood of repetition.
- 3 (8) An order from a superior court pursuant to Section 1203.4,
- 4 1203.4a, or 1203.41 of the Penal Code.
- 5 (9) The granting by the Governor of a full and unconditional
- 6 pardon.
- 7 (10) A certificate of rehabilitation from a superior court.
- 8 (d) When the state department determines that a certificate shall
- 9 be suspended, the state department shall specify the period of actual
- 10 suspension. The state department may stay the suspension and
- 11 place the certificate holder on probation with specified conditions
- 12 for a period not to exceed two years. If the state department
- 13 determines that probation is the appropriate action, the certificate
- 14 holder shall be notified that in lieu of the state department
- 15 proceeding with a formal action to suspend the certification and
- 16 in lieu of an appeal pursuant to subdivision (g), the certificate
- 17 holder may request to enter into a diversion program agreement.
- 18 A diversion program agreement shall specify terms and conditions
- 19 related to matters, including, but not limited to, work performance,
- 20 rehabilitation, training, counseling, progress reports, and treatment
- 21 programs. If a certificate holder successfully completes a diversion
- 22 program, no action shall be taken upon the allegations that were
- 23 the basis for the diversion agreement. Upon failure of the certificate
- 24 holder to comply with the terms and conditions of an agreement,
- 25 the state department may proceed with a formal action to suspend
- 26 or revoke the certification.
- 27 (e) A plea or verdict of guilty, or a conviction following a plea
- 28 of nolo contendere shall be deemed a conviction within the
- 29 meaning of this article. The state department may deny an
- 30 application or deny, suspend, or revoke a certification based on a
- 31 conviction as provided in this article when the judgment of
- 32 conviction is entered or when an order granting probation is made
- 33 suspending the imposition of sentence.
- 34 (f) Upon determination to deny an application or deny, revoke,
- 35 or suspend a certificate, the state department shall notify the
- 36 applicant or certificate holder in writing by certified mail of all of
- 37 the following:
- 38 (1) The reasons for the determination.
- 39 (2) The applicant's or certificate holder's right to appeal the
- 40 determination.

1 (g) (1) Upon written notification that the state department has
2 determined that an application shall be denied or a certificate shall
3 be denied, suspended, or revoked, the applicant or certificate holder
4 may request an administrative hearing by submitting a written
5 request to the state department within 20 business days of receipt
6 of the written notification. Upon receipt of a written request, the
7 state department shall hold an administrative hearing pursuant to
8 the procedures specified in Section 100171, except where those
9 procedures are inconsistent with this section.

10 (2) A hearing under this section shall be conducted within 60
11 days of the receipt of the written request of the applicant or
12 certificate holder submitted pursuant to paragraph (1) by a hearing
13 officer or administrative law judge designated by the director at a
14 location, other than the work facility, convenient to the applicant
15 or certificate holder unless the applicant or certificate holder agrees
16 to an extension. The hearing shall be tape recorded and a written
17 decision shall be sent by certified mail to the applicant or certificate
18 holder within 30 calendar days of the hearing. Except as specified
19 in subdivision (h), the effective date of an action to revoke or
20 suspend a certificate shall be specified in the written decision, or
21 if no administrative hearing is timely requested, the effective date
22 shall be 21 business days from written notification of the
23 department's determination to revoke or suspend.

24 (h) The state department may revoke or suspend a certificate
25 prior to any hearing when immediate action is necessary in the
26 judgment of the director to protect the public welfare. Notice of
27 this action, including a statement of the necessity of immediate
28 action to protect the public welfare, shall be sent in accordance
29 with subdivision (d). If the certificate holder requests an
30 administrative hearing pursuant to subdivision (g), the state
31 department shall hold the administrative hearing as soon as possible
32 but not later than 30 calendar days from receipt of the request for
33 a hearing. A written hearing decision upholding or setting aside
34 the action shall be sent by certified mail to the certificate holder
35 within 30 calendar days of the hearing.

36 (i) Upon the expiration of the term of suspension, he or she shall
37 be reinstated by the state department and shall be entitled to resume
38 practice unless it is established to the satisfaction of the state
39 department that the person has practiced as a certified nurse

1 assistant in this state during the term of suspension. In this event,
2 the state department shall revoke the person’s certificate.

3 (j) Upon a determination to deny an application or deny, revoke,
4 or suspend a certificate, the state department shall notify the
5 employer of the applicant and certificate holder in writing of that
6 determination, and whether the determination is final, or whether
7 a hearing is pending relating to this determination. If a licensee or
8 facility is required to deny employment or terminate employment
9 of the employee based upon notice from the state that the employee
10 is determined to be unsuitable for employment under this section,
11 the licensee or facility shall not incur criminal, civil, unemployment
12 insurance, workers’ compensation, or administrative liability as a
13 result of that denial or termination.

14 SEC. 2. Section 1338.5 of the Health and Safety Code is
15 amended to read:

16 1338.5. (a) (1) (A) A criminal record clearance shall be
17 conducted for all nurse assistants by the submission of fingerprint
18 images and related information to the state department for
19 processing at the Department of Justice. The licensing and
20 certification program shall issue an All Facilities Letter (AFL) to
21 facility licensees when both of the following criteria are met:

22 (i) The program receives, within three business days, 95 percent
23 of its total responses indicating no evidence of recorded criminal
24 information from the Department of Justice.

25 (ii) The program processes 95 percent of its total responses
26 requiring disqualification in accordance with subparagraph (C) of
27 paragraph (2) of subdivision (a) of Section 1337.9, as that section
28 read on January 1, 2014, no later than 45 days after the date that
29 the report is received from the Department of Justice.

30 (B) After the AFL is issued, licensees shall not allow nurse
31 assistant trainees or newly hired nurse assistants to have direct
32 contact with clients or residents of the facility prior to completion
33 of the criminal record clearance. A criminal record clearance shall
34 be complete when the department has obtained the person’s
35 criminal offender record information search response information
36 from the Department of Justice and has determined that the person
37 is not disqualified from engaging in the activity for which clearance
38 is required. Notwithstanding any other provision of law, the
39 department may, without taking regulatory action pursuant to
40 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division

1 3 of Title 2 of the Government Code, implement, interpret, or make
2 specific this paragraph by means of an AFL or similar instruction.
3 The fee to cover the processing costs of the Department of Justice,
4 not including the costs associated with capturing or transmitting
5 the fingerprint images and related information, shall not exceed
6 thirty-two dollars (\$32) per submission.

7 (C) An applicant or certificate holder who may be disqualified
8 on the basis of a criminal conviction shall provide the department
9 with a certified copy of the judgment of each conviction. In
10 addition, the individual may, during a period of two years after
11 the department receives the criminal record report, provide the
12 department with evidence of good character and rehabilitation in
13 accordance with subdivision (c) of Section 1337.9. Upon receipt
14 of a new application for certification of the individual, the
15 department may receive and consider the evidence during the
16 two-year period without requiring additional fingerprint imaging
17 to clear the individual.

18 (D) The department's Licensing and Certification Program shall
19 explore and implement methods for maximizing its efficiency in
20 processing criminal record clearances within the requirements of
21 law, including a streamlined clearance process for persons who
22 have been disqualified on the basis of criminal convictions.

23 (2) (A) Upon enrollment in a training program for nurse
24 assistant certification, and prior to direct contact with residents, a
25 candidate for training shall submit a training and examination
26 application and the fingerprint cards to the state department to
27 receive a criminal record review through the Department of Justice.
28 Submission of the fingerprints to the Federal Bureau of
29 Investigation shall be at the discretion of the state department.

30 (B) An applicant and any other person specified in this
31 subdivision, as part of the background clearance process, shall
32 provide information as to whether or not the person has any prior
33 criminal convictions, has had any arrests within the past 12-month
34 period, or has any active arrests, and shall certify that, to the best
35 of his or her knowledge, the information provided is true. This
36 requirement is not intended to duplicate existing requirements for
37 individuals who are required to submit fingerprint images as part
38 of a criminal background clearance process. Every applicant shall
39 provide information on any prior administrative action taken
40 against him or her by any federal, state, or local government agency

1 and shall certify that, to the best of his or her knowledge, the
2 information provided is true. An applicant or other person required
3 to provide information pursuant to this section that knowingly or
4 willfully makes false statements, representations, or omissions
5 may be subject to administrative action, including, but not limited
6 to, denial of his or her application or exemption or revocation of
7 any exemption previously granted.

8 (3) Each health facility that operates and is used as a clinical
9 skills site for certification training, and each health facility, prior
10 to hiring a nurse assistant applicant certified in another state or
11 country, shall arrange for and pay the cost of the fingerprint live
12 scan service and the Department of Justice processing costs for
13 each applicant. Health facilities may not pass these costs through
14 to nurse assistant applicants unless allowed by federal law enacted
15 subsequent to the effective date of this paragraph.

16 (b) The use of fingerprint live scan technology implemented by
17 the Department of Justice by the year 1999 shall be used by the
18 Department of Justice to generate timely and accurate positive
19 fingerprint identification prior to nurse assistant certification and
20 prior to direct contact with residents by the nurse assistant
21 applicant. The department shall explore options to work with
22 private and governmental agencies to ensure that licensees have
23 adequate access to electronic transmission sites, including requiring
24 the department to maintain a contract for electronic transmission
25 services in each of the district offices where facilities have
26 indicated problems with timely access to electronic transmission
27 sites or consistent delays of more than three business days in
28 obtaining appointments for electronic transmission services through
29 a private entity, government agency, or law enforcement agency.

30 (c) The state department shall develop procedures to ensure that
31 any licensee, direct care staff, or certificate holder for whom a
32 criminal record has been obtained pursuant to this section or
33 Section 1265.5 or 1736 shall not be required to obtain multiple
34 criminal record clearances.

35 (d) If the department is experiencing a delay in processing the
36 renewal of the certified nursing assistant's certification at the time
37 of the expiration of the certified nursing assistant's certification,
38 the department may extend the expiration of the certified nursing
39 assistant's certification for six months.

1 (e) If, at any time, the department determines that it does not
2 meet the standards specified in clauses (i) and (ii) of subparagraph
3 (A) of paragraph (1) of subdivision (a), for a period of 90
4 consecutive days, the requirements in paragraph (1) of subdivision
5 (a) shall be inoperative until the department can demonstrate it has
6 met those standards for a period of 90 consecutive days.

7 (f) During any time in which the requirements of paragraph (1)
8 of subdivision (a) are inoperative, facilities may allow newly hired
9 nurse assistants to have direct contact with clients or residents of
10 the facility after those persons have submitted live scan fingerprint
11 images to the Department of Justice, and the department shall issue
12 an AFL advising facilities of this change in the statutory
13 requirements.

14 (g) Notwithstanding any other law, the department is authorized
15 to provide an individual with a copy of his or her state or federal
16 level criminal offender record information search response as
17 provided to that department by the Department of Justice if the
18 department has denied a criminal background clearance based on
19 this information and the individual makes a written request to the
20 department for a copy specifying an address to which it is to be
21 sent. The state or federal level criminal offender record information
22 search response shall not be modified or altered from its form or
23 content as provided by the Department of Justice and shall be
24 provided to the address specified by the individual in their written
25 request. The department shall retain a copy of the individual's
26 written request and the response and date provided.