

AMENDED IN ASSEMBLY APRIL 18, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1409

Introduced by Assembly Member Chan

February 23, 2001

An act to amend Sections 101, 144, and 205 of, and to repeal Chapter 8.5 (commencing with Section 3901) of Division 2 of, the Business and Professions Code, to add Chapter 2.35 (commencing with Section 1416) to Division 2 of, and to repeal Section 1429.5 of, the Health and Safety Code, relating to nursing homes, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1409, as amended, Chan. Nursing home administrators.

Existing law, the Nursing Home Administrator's License law, which is contained in the Business and Professions Code, provides for the licensing and regulation of nursing home administrators by the State Board of Nursing Home Administrators of the State of California and specifies the duties of the board.

This bill would repeal these provisions. The bill, instead, would enact provisions in the Health and Safety Code that would establish in the State Department of Health Services a Nursing Home Administrator Program (NHAP) that would license and regulate nursing home administrators. In this regard, the bill would specify duties and authority of the program, define various terms, specify licensing requirements, including application procedures, qualifications for and content of licensing examinations, and application and examination fee requirements, provide procedures for out-of-state nursing home

administrator licensees to obtain a one-year provisional license, and require the department to develop a specified administrator-in-training program and establish a designated citation and administrative fine assessment system.

The bill would make it a misdemeanor to engage in certain subversive activities related to the implementation of the nursing administrator licensing examination. Because the bill would create a new crime, it would impose a state-mandated local program.

Existing law provides for the Nursing Home Administrator's State License Examining Board Fund, a continuously appropriated fund, in the Professions and Vocations Fund in the State Treasury.

Existing law specifies a schedule of fees that are charged for the application and examination of applicants for licensure as nursing home administrators and requires those fees to be deposited in the Nursing Home Administrator's State License Examining Board Fund.

This bill would rename the fund the Nursing Home Administrator's State License Examining Fund and continue the fund in existence in the State Treasury. The bill would revise the fee schedule. The bill would also require that fines collected under the citation and administrative fine assessment system required under this bill be deposited in the Nursing Home Administrator's State License Examining Fund.

Because the bill would increase the amount deposited into the Nursing Home Administrator's State License Examining Fund, as renamed by this bill, which is a continuously appropriated fund, it would make an appropriation.

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: ²/₃. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

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

- 1 SECTION 1. Section 101 of the Business and Professions
- 2 Code is amended to read:
- 3 101. The department is comprised of:
- 4 (a) The Dental Board of California.



- 1 (b) The Medical Board of California.
- 2 (c) The State Board of Optometry.
- 3 (d) The California State Board of Pharmacy.
- 4 (e) The Veterinary Medical Board.
- 5 (f) The California Board of Accountancy.
- 6 (g) The California Architects Board.
- 7 (h) The Barbering and Cosmetology Program.
- 8 (i) The Board for Professional Engineers and Land Surveyors.
- 9 (j) The Contractors' State License Board.
- 10 (k) The Funeral Directors and Embalmers Program.
- 11 (l) The Structural Pest Control Board.
- 12 (m) The Bureau of Home Furnishings and Thermal Insulation.
- 13 (n) The Board of Registered Nursing.
- 14 (o) The Board of Behavioral Sciences.
- 15 (p) The State Athletic Commission.
- 16 (q) The Cemetery Program.
- 17 (r) The State Board of Guide Dogs for the Blind.
- 18 (s) The Bureau of Security and Investigative Services.
- 19 (t) The Court Reporters Board of California.
- 20 (u) The Board of Vocational Nursing and Psychiatric
- 21 Technicians.
- 22 (v) The Landscape Architects Technical Committee.
- 23 (w) The Bureau of Electronic and Appliance Repair.
- 24 (x) The Division of Investigation.
- 25 (y) The Bureau of Automotive Repair.
- 26 (z) The State Board of Registration for Geologists and
- 27 Geophysicists.
- 28 (aa) The Respiratory Care Board of California.
- 29 (ab) The Acupuncture Board.
- 30 (ac) The Board of Psychology.
- 31 (ad) The California Board of Podiatric Medicine.
- 32 (ae) The Physical Therapy Board of California.
- 33 (af) The Arbitration Review Program.
- 34 (ag) The Committee on Dental Auxiliaries.
- 35 (ah) The Hearing Aid Dispensers Advisory Commission.
- 36 (ai) The Physician Assistant Committee.
- 37 (aj) The Speech-Language Pathology and Audiology Board.
- 38 (ak) The Tax Preparers Program.
- 39 (al) The California Board of Occupational Therapy.

1 (am) Any other boards, offices, or officers subject to its
2 jurisdiction by law.

3 SEC. 2. Section 144 of the Business and Professions Code is
4 amended to read:

5 144. (a) Notwithstanding any other provision of law, an
6 agency designated in subdivision (b) shall require an applicant to
7 furnish to the agency a full set of fingerprints for purposes of
8 conducting criminal history record checks. Any agency
9 designated in subdivision (b) may obtain and receive, at its
10 discretion, criminal history information from the Department of
11 Justice and the United States Federal Bureau of Investigation.

12 (b) Subdivision (a) applies to the following boards or
13 committees:

- 14 (1) California Board of Accountancy.
- 15 (2) State Athletic Commission.
- 16 (3) Board of Behavioral Sciences.
- 17 (4) Court Reporters Board of California.
- 18 (5) State Board of Guide Dogs for the Blind.
- 19 (6) California State Board of Pharmacy.
- 20 (7) Board of Registered Nursing.
- 21 (8) Veterinary Medical Board.
- 22 (9) Registered Veterinary Technician Committee.
- 23 (10) Board of Vocational Nursing and Psychiatric Technicians.
- 24 (11) Respiratory Care Board of California.
- 25 (12) Hearing Aid Dispensers Advisory Commission.
- 26 (13) Physical Therapy Board of California.
- 27 (14) Physician Assistant Committee of the Medical Board of
28 California.
- 29 (15) Speech-Language Pathology and Audiology Board.
- 30 (16) Medical Board of California.
- 31 (17) State Board of Optometry.
- 32 (18) Acupuncture Board.
- 33 (19) Cemetery and Funeral Programs.
- 34 (20) Bureau of Security and Investigative Services.
- 35 (21) Division of Investigation.
- 36 (22) Board of Psychology.
- 37 (23) The California Board of Occupational Therapy.

38 SEC. 3. Section 205 of the Business and Professions Code is
39 amended to read:



205. (a) There is in the State Treasury the Professions and Vocations Fund. The fund shall consist of the following special funds:

- (1) Accountancy Fund.
- (2) California Board of Architectural Examiners' Fund.
- (3) Athletic Commission Fund.
- (4) Barbering and Cosmetology Contingent Fund.
- (5) Cemetery Fund.
- (6) Contractors' License Fund.
- (7) State Dentistry Fund.
- (8) State Funeral Directors and Embalmers Fund.
- (9) Guide Dogs for the Blind Fund.
- (10) Bureau of Home Furnishings and Thermal Insulation Fund.
- (11) California Board of Architectural Examiners-Landscape Architects Fund.
- (12) Contingent Fund of the Medical Board of California.
- (13) Optometry Fund.
- (14) Pharmacy Board Contingent Fund.
- (15) Physical Therapy Fund.
- (16) Private Investigator Fund.
- (17) Professional Engineers' and Land Surveyors' Fund.
- (18) Consumer Affairs Fund.
- (19) Behavioral Sciences Fund.
- (20) Licensed Midwifery Fund.
- (21) Court Reporters' Fund.
- (22) Structural Pest Control Fund.
- (23) Veterinary Medical Board Contingent Fund.
- (24) Vocational Nurses Account of the Vocational Nursing and Psychiatric Technicians Fund.
- (25) State Dental Auxiliary Fund.
- (26) Electronic and Appliance Repair Fund.
- (27) Geology and Geophysics Fund.
- (28) Dispensing Opticians Fund.
- (29) Acupuncture Fund.
- (30) Hearing Aid Dispensers Fund.
- (31) Physician Assistant Fund.
- (32) Board of Podiatric Medicine Fund.
- (33) Psychology Fund.
- (34) Respiratory Care Fund.

1 (35) Speech-Language Pathology and Audiology Fund.

2 (36) Board of Registered Nursing Fund.

3 (37) Psychiatric Technician Examiners Account of the
4 Vocational Nursing and Psychiatric Technicians Fund.

5 (38) Animal Health Technician Examining Committee Fund.

6 (39) Structural Pest Control Education and Enforcement Fund.

7 (40) Structural Pest Control Research Fund.

8 (b) For accounting and recordkeeping purposes, the
9 Professions and Vocations Fund shall be deemed to be a single
10 special fund, and each of the several special funds therein shall
11 constitute and be deemed to be a separate account in the
12 Professions and Vocations Fund. Each account or fund shall be
13 available for expenditure only for the purposes as are now or may
14 hereafter be provided by law.

15 SEC. 4. Chapter 8.5 (commencing with Section 3901) of
16 Division 2 of the Business and Professions Code is repealed.

17 SEC. 5. Chapter 2.35 (commencing with Section 1416) is
18 added to Division 2 of the Health and Safety Code, to read:

19
20 CHAPTER 2.35. NURSING HOME ADMINISTRATOR PROGRAM

21
22 Article 1. General Provisions

23
24 1416. There is hereby established in the State Department of
25 Health Services a Nursing Home Administrator Program
26 (NHAP), which shall license and regulate nursing home
27 administrators.

28 1416.2. (a) The following definitions shall apply to this
29 chapter:

30 (1) "Department" means the State Department of Health
31 Services.

32 (2) "NHAP" or "program" means the Nursing Home
33 Administrator Program.

34 (3) "State" means California, unless applied to the different
35 parts of the United States. In this latter case, "state" includes the
36 District of Columbia and the territories.

37 (4) "Nursing home" means any institution, facility, place,
38 building, or agency, or portion thereof, licensed as a skilled
39 nursing facility, intermediate care facility, or intermediate care
40 facility/developmentally disabled, as defined in Chapter 2

(commencing with Section 1250). “Nursing home” also means an intermediate care facility/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, or congregate living health facility, as defined in Chapter 2 (commencing with Section 1250), if a licensed nursing home administrator is charged with the general administration of the facility.

(5) “Nursing home administrator” means an individual educated and trained within the field of nursing home administration who carries out the policies of the licensee of a nursing home and is licensed in accordance with this chapter. The nursing home administrator is charged with the general administration of a nursing home, regardless of whether he or she has an ownership interest and whether the administrator’s function or duties are shared with one or more other individuals.

(6) “Administrator-in-Training Program” or “AIT Program” means a program that is approved by the NHAP in which qualified persons participate under the coordination, supervision, and teaching of a preceptor, as described in Section 1416.57, who has obtained approval from the NHAP.

(b) Nothing in this section shall be construed to allow the program to have jurisdiction over an administrator of an intermediate care facility/developmentally disabled-nursing or an intermediate care facility/ developmentally disabled habilitative, if the administrator of the facility is not using licensure under this chapter to qualify as an administrator in accordance with subdivision (d) of Section 1276.5.

(c) Nothing in this section shall be construed to define an intermediate care facility/developmentally disabled-nursing or an intermediate care facility/developmentally disabled habilitative as a nursing home for purposes other than the licensure of nursing home administrators under this chapter.

1416.4. The program shall adopt rules and regulations that are reasonably necessary to carry out this chapter. The rules and regulations shall be adopted, amended, and repealed in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. To the extent that the regulations governing the nursing home administrator program that are in effect prior to January 1, 2002, are not in

1 conflict with this chapter, they shall remain in effect until new
2 regulations are implemented for purposes of this chapter.

3 1416.6. (a) It shall be a misdemeanor for any person to act or
4 serve in the capacity of a nursing home administrator, unless he or
5 she is the holder of an active nursing home administrator's license
6 issued in accordance with this chapter. Persons carrying out
7 functions and duties delegated by a licensed nursing home
8 administrator shall not be acting in violation of this chapter.

9 (b) (1) This chapter shall not apply to any person who serves
10 as an acting administrator as provided in this subdivision when a
11 licensed administrator is not available because of death, illness, or
12 any other reason.

13 (2) A person who is acting as an administrator shall notify the
14 program in writing within five days of acting in this capacity and
15 provide factual information and specific circumstances
16 necessitating the use of an acting administrator.

17 (3) No person shall act as an administrator for more than 10
18 days unless arrangements have been made for direct onsite
19 supervision of his or her activities at least 20 hours per week by a
20 nursing home administrator who holds a license or provisional
21 license under this chapter. The program shall be notified in writing
22 of the nature of this arrangement. No person shall act as an
23 administrator for more than two months without the written
24 approval of the program. The program shall not approve a person
25 to act as an administrator for more than six months.

26 Article 2. Administration

27
28
29 1416.10. In conformity with the requirements of Section
30 1908(c) of the Social Security Act (42 U.S.C. Sec. 1396g(c)), the
31 program shall have all of the following *powers and* duties:

32 (a) To develop, impose, and enforce standards that shall be met
33 by individuals in order to receive a license as a nursing home
34 administrator. ~~The~~ *At a minimum, the* standards shall be designed
35 to ensure that nursing home administrators shall be individuals
36 who have not committed acts or crimes constituting grounds for
37 denial of licensure and who are qualified by training or experience
38 in the field of institutional administration to serve as nursing home
39 administrators.

1 (b) To develop and apply ~~appropriate techniques~~ *procedures*,
2 including examinations and investigations, for determining
3 whether an individual meets the standards.

4 (c) To issue licenses to individuals ~~determined, after the~~
5 ~~application of the techniques~~, *who have been determined* to meet
6 the standards, and to revoke or suspend licenses where grounds
7 exist for those actions.

8 (d) To establish and carry out procedures designed to ensure
9 that individuals licensed as nursing home administrators will,
10 during any period that they serve as an administrator, comply with
11 the required standards.

12 (e) To receive, investigate, and take appropriate action with
13 respect to any charge or complaint filed with the program alleging
14 that an individual licensed as a nursing home administrator has
15 failed to comply with the required standards.

16 (f) To conduct studies of the administration of nursing homes
17 within the state, with a view to the improvement of the standards
18 imposed for the licensing of nursing home administrators, and of
19 procedures and methods for the enforcement of standards with
20 respect to administrators of nursing homes who have been licensed
21 under this chapter.

22 (g) To receive and administer all funds and grants as are made
23 available to the program in order to carry out the purposes of this
24 chapter.

25 (h) To encourage qualified educational institutions and other
26 qualified organizations to establish, provide, and conduct training
27 and instruction programs and courses that will enable all otherwise
28 qualified individuals to attain the qualifications necessary to meet
29 the standards set by the program for licensed nursing home
30 administrators, and to enable licensed nursing home
31 administrators to meet the continuing education requirements for
32 the renewal of their licenses.

33 (i) To consult with and seek the recommendations of the
34 appropriate statewide professional societies, associations,
35 institutional organizations, and educational institutions in the
36 development of educational programs.

37 (j) To give due consideration to the recommendations of the
38 National Advisory Council on Nursing Home Administration, in
39 accordance with ~~to~~ the provisions of subdivision (f) of Section

1 1908 of Title XIX of the Social Security Act (42 U.S.C. Sec.
2 1396g(f)).

3 1416.12. The following enforcement actions taken by the
4 department against a facility and the name of the licensed
5 administrator of the facility shall be reported to the program.

6 (a) Temporary suspension orders.

7 (b) Final decertification from the Medi-Cal or Medicare
8 programs based on failure to meet certification requirements.

9 (c) Service of an accusation to revoke a facility's license.

10 (d) All class "AA" citations and class "A" citations issued to
11 a facility. The department ~~district offices~~ shall notify the program
12 in the event that citations are overturned or modified in citation
13 review conference, through binding arbitration, or on appeal.

14

15 Article 3. Licensing

16

17 1416.20. (a) *The nursing home administrator licensing*
18 *examination shall cover the broad aspects of nursing home*
19 *administration.*

20 (b) Unless otherwise provided in this article, every applicant
21 for an initial license as a nursing home administrator shall pass a
22 nursing home administrator licensing examination, which shall
23 consist of a state and national examination. The state examination
24 shall be held at least four times a year, at a time and place
25 determined by the program. The national examination is
26 computer-based and shall be scheduled by the applicant after the
27 applicant is notified by the program of his or her eligibility to take
28 the examination.

29 ~~(b) The nursing home administrator licensing examination~~
30 ~~shall cover the broad aspects of nursing home administration.~~

31 (c) If an applicant for licensure under this article, submits an
32 endorsement certificate from another state indicating that he or she
33 scored at least 75 percent on the national examination, the
34 applicant shall be required to take only the California state *part of*
35 *the licensing* examination. If the applicant scored less than 75
36 percent on the national examination, he or she shall take both the
37 state and national examination.

38 1416.22. (a) To qualify for the licensing examination, an
39 applicant must be at least 18 years of age, be a citizen of the United
40 States, be of reputable and responsible character, demonstrate an



ability to comply with this chapter, and comply with at least one of the following requirements:

(1) Have a master's degree in nursing home administration or a related health administration field. The master's program in which the degree was obtained must have included an internship or residency of at least ~~40~~ 480 hours in a skilled nursing facility or intermediate care facility.

(2) (A) With regard to applicants who have a current valid license as a nursing home administrator in another state and apply for licensure in this state, meet the minimum education requirements that existed in this state at the time the applicant was originally licensed in the other state.

(B) The minimum education requirements that have existed in California are as follows:

Prior to 7/1/73	None
From 7/1/73 to 6/30/74	30 semester units
From 7/1/74 to 6/30/75	45 semester units
From 7/1/75 to 6/30/80	60 semester units
After 7/1/80	
From 7/1/80 to 1/1/02	Baccalaureate degree

(3) A doctorate degree in medicine and a current valid license as a physician and surgeon with 10 years of recent work experience, and the completion of a program-approved AIT Program of at least 1,000 hours.

(4) A baccalaureate degree, and the completion of a program-approved AIT Program of at least 1,000 hours.

(5) Ten years of recent full-time work experience, *and a current license*, as a licensed registered nurse, and the completion of a program-approved AIT program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(6) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility developmentally/disabled with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10

1 years of work experience shall be in a position as a department
2 manager.

3 (7) Ten years of full-time hospital administration experience in
4 an acute care hospital with at least 60 semester units (or 90 quarter
5 units) of college or university courses, and the completion of a
6 program-approved AIT Program of at least 1,000 hours. At least
7 the most recent five years of the 10 years of work experience shall
8 be in a supervisory position.

9 (b) The applicant shall submit an official transcript that
10 evidences the completion of required college and university
11 courses, degrees, or both. An applicant who ~~qualifies~~ *applies* for
12 the licensing examination on the basis of work experience shall
13 submit a declaration signed under penalty of perjury, verifying his
14 or her work experience. This declaration shall be signed by a
15 licensed nursing home administrator, physician and surgeon, chief
16 of staff, director of nurses, or registered nurse who can attest to the
17 applicant's work experience.

18 1416.24. (a) An application for a nursing home administrator
19 license shall be submitted to the program on a form provided by
20 the program, with the appropriate nonrefundable fee for any
21 required examination, the application, and licensure. The
22 application shall contain information the program deems
23 necessary to determine the applicant's qualifications and a
24 statement whether the individual has been convicted of any crime
25 *other than a minor traffic violation*. Each applicant shall meet the
26 current requirements for any required examination and licensure.
27 Applicants for licensure shall submit evidence of electronic
28 transmission of fingerprints or fingerprint cards to the program.

29 (b) A completed application package, together with the
30 examination application, and licensure fees must be received by
31 the program at least 30 days prior to the examination date.

32 (c) (1) The withdrawal of an application for a license after it
33 has been filed with the department shall not, unless the department
34 consents in writing to the withdrawal, deprive the department of
35 its authority to institute or continue a proceeding against the
36 applicant for the denial of the license upon any ground provided
37 by law or to enter an order denying the license upon that ground.

38 (2) The suspension, expiration, or forfeiture by operation of
39 law of a license issued by the department, the suspension,
40 forfeiture, or cancellation by order of the department or a court of

1 law of a license, or the surrender without the written consent of the
2 department of a license, shall not deprive the department of its
3 authority to institute or continue a disciplinary proceeding against
4 the licensee upon any ground provided by law or to enter an order
5 suspending or revoking the license or otherwise taking
6 disciplinary action against the licensee on any grounds.

7 (d) An application that is submitted to the program is valid for
8 only one year after the date of receipt. An applicant who fails to
9 meet all requirements for licensure, including successfully passing
10 the national and state examinations during that one-year period,
11 shall be required to submit another application and appropriate
12 application and examination fees to the program before attempting
13 further examinations.

14 (e) An applicant shall submit documentation and evidence to
15 the program of his or her eligibility for licensure.

16 (f) *At the time of the examination, the applicant shall read and*
17 *sign the Examination Security Agreement and comply with its*
18 *terms.*

19 1416.26. (a) As part of the application process for a nursing
20 home administrator license, an applicant shall submit to the
21 department two sets of completed fingerprint cards for a criminal
22 record clearance through the Department of Justice and the Federal
23 Bureau of Investigation. As an alternative, the applicant may also
24 provide proof of electronic transmission of fingerprints to the
25 Department of Justice and the Federal Bureau of Investigation.
26 Upon receipt of the fingerprints, the Department of Justice and the
27 Federal Bureau of Investigation shall notify the department of the
28 criminal record information. If no criminal record information has
29 been recorded, the Department of Justice and the Federal Bureau
30 of Investigation shall provide the department with a statement of
31 that fact.

32 (b) This criminal record clearance shall be completed prior to
33 issuing a license. Applicants shall be responsible for any costs
34 associated with the criminal record clearance. The fee to cover the
35 processing costs of the Department of Justice, not including the
36 costs associated with rolling the fingerprint cards, shall not exceed
37 thirty-two dollars (\$32) per card for state fingerprints, and shall
38 not exceed twenty-four dollars (\$24) per card for federal
39 fingerprints.

1 1416.28. (a) Notwithstanding any other law, the program
2 shall at the time of application, issuance, or renewal of a nursing
3 home administrator license require that the applicant or licensee
4 provide his or her federal employer identification number or his or
5 her social security number.

6 (b) Any applicant or licensee failing to provide his or her
7 federal identification number or social security number shall be
8 reported by the program to the Franchise Tax Board and, if failing
9 to provide after notification pursuant to paragraph (1) of
10 subdivision (b) of Section 19528 of the Revenue and Taxation
11 Code, shall be subject to the penalty provided in paragraph (2) of
12 subdivision (b) of Section 19528 of the Revenue and Taxation
13 Code.

14 (c) In addition to the penalty specified in subdivision (b), the
15 program may not process any application, original license, or
16 renewal of a license unless the applicant or licensee provides his
17 or her federal employer identification number or social security
18 number where requested on the application.

19 (d) The program shall, upon request of the Franchise Tax
20 Board, furnish to the Franchise Tax Board the following
21 information with respect to every licensee:

22 (1) Name.

23 (2) Address or addresses of record.

24 (3) Federal employer identification number or social security
25 number.

26 (4) Type of license.

27 (5) Effective date of license or renewal.

28 (6) Expiration date of license.

29 (7) Whether license is active or inactive, if known.

30 (8) Whether license is new or a renewal.

31 (e) The reports required under this section shall be filed on
32 magnetic media or in other machine-readable form, according to
33 standards furnished by the Franchise Tax Board.

34 (f) The program shall provide to the Franchise Tax Board the
35 information required by this section at a time that the Franchise
36 Tax ~~board~~ Board may require.

37 (g) Notwithstanding Chapter 3.5 (commencing with Section
38 6250) of Division 7 of Title 1 of the Government Code, the social
39 security number and federal employer identification number

furnished pursuant to this section shall not be deemed to be a public record and shall not be open to the public for inspection.

(h) Any deputy, agent, clerk, officer, or employee of the program described in this chapter, any former officer or employee, or other individual who in the course of his or her employment or duty has or has had access to the information required to be furnished under this chapter, may not disclose or make known in any manner that information, except as provided in this section to the Franchise Tax Board or as provided in subdivision (j).

(i) It is the intent of the Legislature in enacting this section to utilize the social security account number or federal employer identification number for the purpose of establishing the identification of persons affected by state tax laws and for purposes of compliance with Section 17520 of the Family Code and, to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(j) If the program utilizes a national examination to issue a license, and if a reciprocity agreement or comity exists between California and the state requesting release of the social security number, any deputy, agent, clerk, officer, or employee of the program described in this chapter may release a social security number to an examination or licensing entity, only for the purpose of verification of licensure or examination status.

1416.30. (a) *The program shall require compliance with any judgment or order for support prior to issuance or renewal of a license.*

(b) Each applicant for the issuance or renewal of a nursing home administrator license, who is not in compliance with a judgment or order for support shall be subject to Section 11350.6 of the Welfare and Institutions Code.

(c) *“Compliance with a judgment or order of support” has the same meaning as specified in paragraph (4) of subdivision (a) of Section 11350.6 of the Welfare and Institutions Code.*

1416.32. (a) Prior to admission to the licensing examination, the applicant shall read and sign an examination security agreement and comply with its terms.

(b) The program may deny, suspend, revoke, or otherwise restrict the license of an applicant or a licensee for any of the following acts:

1 (1) Having or attempting to have an impersonator take the
2 examination on one's behalf.

3 (2) Impersonating or attempting to impersonate another to take
4 the examination on that person's behalf.

5 (3) Communicating or attempting to communicate about the
6 examination content with another examinee or with any person
7 other than the examination staff. This includes divulging the ~~intent~~
8 ~~or~~ content of specific written examination items to examination
9 preparation providers.

10 (4) Copying questions or making notes of examination
11 materials or revealing the content of the examination to others who
12 are preparing to take the NHAP examination or who are preparing
13 others to take such examination.

14 (5) Obstructing or attempting to obstruct the administration of
15 the examination in any way.

16 (c) It is a misdemeanor for any person to engage in any conduct
17 that subverts or attempts to subvert any licensing examination or
18 the administration of an examination, including, but not limited to,
19 the following conduct:

20 (1) Conduct that violates the security of the examination
21 materials, removing from the examination room any examination
22 materials without authorization, the unauthorized reproduction by
23 any means of any portion of the actual licensing examination,
24 aiding by any means the unauthorized reproduction of any portion
25 of the actual licensing examination, paying or using professional
26 or paid examination-takers for the purpose of reconstructing any
27 portion of the licensing examination, obtaining examination
28 questions or other examination material, except by specific
29 authorization either before, during, or after an examination, using
30 or purporting to use any examination questions or materials that
31 were improperly removed or taken from any examination for the
32 purpose of instructing or preparing any applicant for examination,
33 or selling, distributing, buying, receiving, or having unauthorized
34 possession of any portion of a future, current, or previously
35 administered licensing examination.

36 (2) Communicating with any other candidate during the
37 administration of a licensing examination, copying answers from
38 another examinee or permitting one's answers to be copied by
39 another examinee, having in one's possession during the
40 administration of the licensing examination any books,

1 equipment, notes, written or printed materials, or data of any kind,
2 other than the examination materials distributed, or otherwise
3 authorized to be in one's possession during the examination, or
4 impersonating any examinee or having an impersonator take the
5 licensing examination on one's behalf.

6 (d) Nothing in this section shall preclude prosecution under the
7 authority provided for in any other provision of law.

8 (e) In addition to any other penalties, a person found guilty of
9 violating this section, shall be liable for the actual damages
10 sustained by the agency administering the examination not to
11 exceed ten thousand dollars (\$10,000) and the costs of litigation.

12 (f) The proceedings under this section shall be governed by
13 Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of
14 the Code of Civil Procedure.

15 (g) The remedy provided for by this section shall be in addition
16 to, and not a limitation on, the authority provided for in any other
17 provision of law.

18 1416.34. (a) (1) In order to have a passing score on either the
19 national or state examination, an examinee shall earn a score of at
20 least 75 percent.

21 (2) An applicant who fails to pass either the national or state
22 examination shall retake the entire national or state examination.

23 (3) An applicant who fails to pass either the state or national
24 examination after three attempts shall receive additional training
25 as outlined by the program from a program-approved preceptor,
26 prior to participating in another examination.

27 (b) The examination shall be administered and evaluated by
28 either of the following:

29 (1) The department.

30 (2) A contractor or vendor pursuant to a written agreement with
31 the program or department.

32 (c) The results of the examination shall be provided to each
33 applicant in a timely manner, not to exceed 90 days from the date
34 of the examination.

35 (d) The program shall issue a license to an applicant who
36 successfully passes the required examination and has satisfied all
37 other requirements for licensure.

38 (e) A license shall be effective for a period of two years from
39 the date of issuance.

(f) The program shall issue a provisional license to candidates who meet the provisional licensure requirements established by this chapter.

(g) The program shall replace a lost, damaged, or destroyed license *certificate* upon receipt of a written request from a licensee and payment of the duplicate license fee. A licensee shall complete a request for a duplicate license on the required program form, and then submit it to the program.

(h) A licensee shall inform the program of the licensee's current home address, mailing address, and if employed by a nursing facility, the name and address of that employer. A licensee shall report a change in any of this information to the program within 30 calendar days. Failure of the licensee to provide timely notice to the program ~~shall~~ *may* result in a citation penalty. A licensee shall provide to the program an address to be included in the public files.

(i) A licensee shall display his or her license in a locality that is in public view in order to inform patients or the public as to the identity of the regulatory agency that they may contact if they have questions or complaints regarding the licensee.

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 two-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) Commencing July 1, 2002, fees provided in this section shall be adjusted annually, as directed by the Legislature in the annual Budget Act. *The proposed adjustment in the examination fees shall not exceed the increase in the California Consumer Price Index, except as provided in subdivision (d).* The department shall provide an annual fiscal year program fee report to the Legislature each April 1, commencing on April 1, 2002.

(c) The department shall, by July 30 of each year, publish a list of 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 ~~the~~ Title 2 of the Government Code.

(d) 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 by not more than twice the increase in the Consumer Price Index.

1416.38. (a) The Nursing Home Administrator's State License Examining Board Fund in the Professions and Vocations Fund in the State Treasury is hereby renamed the Nursing Home Administrator's State License Examining Fund and continued in existence in the State Treasury.

(b) 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 Nursing Home Administrator's State License Examining Fund.

(c) The funding paid into the Nursing Home Administrator's State License Examining Fund shall be continuously appropriated to the program for expenditures in the manner prescribed by law

1 to defray the expenses of the program and in carrying out and
2 enforcing the provisions of this chapter.

3 1416.40. (a) *For purposes of this chapter, “reciprocity*
4 *applicant” means any applicant who holds a current license as a*
5 *nursing home administrator in another state where the program*
6 *finds the standards for licensure, at the time of initial licensure in*
7 *that jurisdiction, are at least the substantial equivalent of those*
8 *prevailing in this state at the same time, and the applicant is*
9 *otherwise qualified.*

10 (b) An applicant who holds a current valid license as a nursing
11 home administrator in another state may be issued a one-year
12 provisional license as a reciprocity applicant pursuant to this
13 section. The provisional license authorizes the holder to work in
14 this state at a licensed nursing facility during the one-year
15 licensure period.

16 ~~(b)~~

17 (c) The applicant shall obtain an application form from the
18 program, complete the form accurately, and, under penalty of
19 perjury, certify the experience, education, and criminal record
20 history information supplied in the application. The applicant shall
21 submit the application to the program, along with any supporting
22 documents to substantiate the application and the applicable
23 provisional, examination, and licensure fees.

24 ~~(c)~~

25 (d) The provisional license may be granted to a reciprocity
26 applicant who complies with all of the following informational
27 requirements:

28 (1) Provides a statement of health consistent with an ability to
29 perform the duties of a nursing home administrator.

30 (2) Discloses the fact of and the circumstances surrounding any
31 of the following:

32 (A) Conviction of any criminal law violation of any country,
33 state, or municipality, except minor traffic violations. The
34 applicant shall submit appropriate criminal record information for
35 purposes of this subparagraph.

36 (B) Any discipline affecting nursing home administrator
37 licensure in any state.

38 ~~(C) Failure of any nursing home administrator licensure~~
39 ~~examinations.~~

40 ~~(D)~~

(C) Any pending investigations or disciplinary actions concerning, or surrender of, nursing home administrator licensure in any state. The applicant shall submit an endorsement certificate to *verify state licensure and* substantiate if he or she has no pending investigation, disciplinary action, or surrender under this subparagraph.

(3) Submits official transcripts as evidence of completed college or university courses and degrees.

(4) Provides satisfactory evidence of current or recent employment experience within the last five years as a licensed nursing home administrator.

(5) Submits proof that the applicant is at least 18 years of age.

(6) Submits proof of United States citizenship or evidence of legal residence status. This evidence may include a certified copy of a birth certificate, naturalization papers, or current visa status.

~~(d)~~

(e) The reciprocity applicant who holds a provisional license as authorized by this section shall be required to pass the state examination. If the provisional licensee, fails to pass the state examination within the one-year provisional licensure period, the provisional license shall expire and no further reciprocity accommodations shall be allowed. The provisional license may not be renewed or extended. At the expiration of the provisional license the applicant may seek licensure in this state through standard procedures.

1416.42. (a) Except for provisional licenses issued pursuant to Section 1416.40, each license issued pursuant to this chapter shall expire 24 months from the date of issuance.

(b) To renew an unexpired license the licensee shall, at least 30 days prior to the expiration of the license, submit an application for renewal on a form provided by the program, accompanied by the renewal fee. An applicant may request either an active license or an inactive license. If an applicant requests an active license, he or she shall submit proof of completion of the required hours of program-approved continuing education.

(c) A delinquency fee is payable for license renewals not received by the program one day after the license expires.

(d) A license which has expired may be reinstated within three years following the date of expiration. The licensee shall apply for reinstatement on a form provided by the program and submit the

1 completed form together with the current fee for license renewal.
2 If the licensee requests an active license, he or she shall furnish
3 proof of completion of the required hours of continuing education.
4 The reinstatement shall be effective on the date that the completed
5 application, including required fees, is submitted and approved.

6 1416.44. (a) Notwithstanding any other provision of law, a
7 licensee who permitted his or her license to expire while serving
8 in any branch of the armed services of the United States during a
9 period of war, *as defined in subdivision (e)*, may, upon application,
10 reinstate his or her license without examination or penalty if the
11 following conditions are met:

12 (1) His or her license was valid at the time he or she entered the
13 armed services.

14 (2) The application for reinstatement is made while serving in
15 the armed services, not later than one year from the date of
16 discharge from active service or return to inactive military status,
17 or within three years following the license date of expiration
18 whichever is the most recent time period.

19 (3) The application for reinstatement is accompanied by an
20 affidavit showing the date of entrance into the service, whether still
21 in the service or date of discharge, and the renewal fee for the
22 current renewal period in which the application is filed is paid.

23 (4) The application for reinstatement indicates no criminal
24 convictions while absent from the profession.

25 (b) If application for reinstatement is filed more than one year
26 after discharge or return to inactive status, the applicant, in the
27 discretion of the licensing program, may be required to pass an
28 examination and pay additional fees.

29 (c) Unless otherwise specifically provided by law, any licensee
30 who, either part time or full time, practices in this state the nursing
31 home administrator profession shall be required to maintain his or
32 her license in good standing even though he or she is in military
33 service.

34 (d) For the purposes in this section, time spent by a licensee in
35 receiving treatment or hospitalization in any veterans' facility
36 during which he or she is prevented from practicing his or her
37 profession or vocation shall be excluded in determining the
38 periods specified in paragraph (2) of subdivision (a).

39 (e) As used in this section, "war" means any of the following
40 circumstances:

1 (1) Whenever Congress has declared war and peace has not
2 formally been restored.

3 (2) Whenever the United States is engaged in active military
4 operations against any foreign power, whether or not war has been
5 formally declared.

6 (3) Whenever the United States is assisting the United Nations,
7 in actions involving the use of armed force, to restore international
8 peace and security.

9 *1416.45. A licensee may not engage in licensed activity while
10 his or her license is suspended or revoked, or after it has expired.*

11 *1416.46. (a) A revoked license may not be renewed.*

12 *(b) A licensee whose license has been revoked may petition the
13 program for reinstatement after a period of not less than one year
14 has elapsed from the effective date of the decision or from the date
15 of the denial of a similar petition. The petitioner shall be afforded
16 an opportunity to present either oral or written argument before the
17 program. The program shall decide the petition and the decision
18 shall include the reasons therefor, and any terms and conditions
19 that the program reasonably deems appropriate to impose as a
20 condition of reinstatement.*

21 ~~*1416.48. (a) A licensee may not engage in licensed activity
22 while his or her license is suspended or revoked, or after it has
23 expired.*~~

24 ~~*(b)*~~

25 *1416.48. A licensee who does not intend to engage in activity
26 requiring nursing home administrator licensure may file a request
27 to place his or her license in inactive status. An inactive license is
28 subject to all requirements for renewal, including payment of fees,
29 but completion of continuing education is not required to renew an
30 inactive license. However, proof of completion of 40 continuing
31 education credits during the last two years shall be submitted
32 together with an application for reinstatement of an active license.*

33 *1416.50. (a) For purposes of this chapter, “continuing
34 education” means any course of study offered by an educational
35 institution, association, professional society, or organization for
36 the purpose of providing continuing education for nursing home
37 administrators.*

38 *(b) This section shall govern the continuing education
39 requirements needed by a nursing home administrator to renew his
40 or her nursing home administrator license.*

1 ~~(b)~~

2 (c) In order to renew a license, the applicant shall provide
3 evidence satisfactory to the program that he or she has completed
4 40 hours of program-approved continuing education courses, of
5 which at least 10 total hours shall be specifically in the area of
6 aging or patient care.

7 ~~(c)~~

8 (d) The continuing education courses to be approved for credit
9 toward the continuing education requirements may include the
10 following subject areas offered by accredited colleges,
11 universities, ~~or community colleges~~ *community colleges, or a*
12 *training entity approved by the department.*

13 (1) Resident care.

14 (2) Personnel management.

15 (3) Financial management.

16 (4) Environmental management.

17 (5) Regulatory management.

18 (6) Organizational management.

19 (7) Patient care and aging.

20 ~~(d)~~

21 (e) No continuing education credit shall be allowed for courses
22 failed according to the institution's grading determination.

23 ~~(e)~~

24 (f) If the program finds that programs of training and
25 instruction conducted within the state are not sufficient in number
26 or content to enable nursing home administrators to meet
27 requirements established by law and this chapter, the program may
28 approve courses conducted within and without this state as
29 sufficient to meet educational requirements established by law and
30 this chapter. For the purposes of this subdivision, the program shall
31 have the authority to receive funds in a manner consistent with the
32 requirements of the federal government.

33
34 Article 4. Training

35
36 1416.55. (a) An ~~administrator-in-training~~ ~~program~~
37 *Administrator-in-Training Program* (AIT Program) shall be
38 developed by the NHAP, in consultation with representatives from
39 the long-term care industry and advocacy groups. The AIT

1 Program shall include, but not be limited to, all of the following
2 areas of instruction:

- 3 (1) Orientation.
- 4 (2) Administration and business office.
- 5 (3) State and federal regulations governing long-term care
6 facilities.
- 7 (4) Residents' rights and abuse prevention.
- 8 (5) Staffing requirements and work force retention.
- 9 (6) Nursing services.
- 10 (7) Resident activities.
- 11 (8) Resident care.
- 12 (9) Social services.
- 13 (10) Dietary management.
- 14 (11) Environmental care, including housekeeping, laundry,
15 and maintenance.
- 16 (12) Financial management.
- 17 (13) General management.
- 18 (14) Government regulations.
- 19 (15) Legal management.
- 20 (16) Personnel management and training.
- 21 (17) Consultants and contracts.
- 22 (18) Medical records.
- 23 (19) Public relations and marketing.

24 (b) A person who seeks to satisfy requirements for admission
25 to licensure examinations through participation in an AIT
26 Program shall first receive approval to begin the AIT Program. An
27 applicant shall successfully complete the AIT Program in a
28 program-approved facility under the coordination, supervision,
29 and teaching of a preceptor who has obtained certification from the
30 program and continues to meet the qualifications set forth in the
31 rules and regulations of the program.

32 (c) In order to be eligible for the AIT Program, an applicant
33 shall submit an application package on forms provided by the
34 NHAP, and pay the applicable fees established by this chapter. The
35 applicant shall be at least 18 years of age and provide proof of
36 United States citizenship or evidence of legal resident status. This
37 evidence may include a certified copy of a birth certificate,
38 naturalization papers, or current visa status.

(d) In addition to the requirements in subdivision (c), the applicant shall meet one or a combination of the following requirements to be eligible for the AIT Program:

(1) A doctorate degree in medicine and a current valid license as a physician and surgeon with at least 10 years of recent work experience.

(2) A baccalaureate degree.

(3) Ten years of full-time work experience and a current valid license as a registered nurse. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(4) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility/developmentally disabled with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(5) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units) of college or university courses. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(e) The applicant shall submit an official transcript that evidences the completion of required college or university courses, degrees, or both. An applicant who qualifies for the AIT Program on the basis of work experience shall submit a declaration signed under penalty of perjury verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

1416.57. (a) An individual may, upon compliance with the requirements of this section, be approved by the program to be a preceptor who is authorized to provide a training program in which the preceptor coordinates, supervises, and teaches persons seeking to meet specified requirements to qualify for the licensing examination under this chapter. The approval obtained under this section shall be effective for a period of two years, after which the preceptor is required to renew his or her preceptor status and attend a preceptor training course provided by the program.

(b) In order to qualify to be a preceptor, a person shall meet all of the following conditions:

(1) Be a current active California licensed nursing home administrator.

~~(2) Have no disciplinary record or pending actions.~~

(2) Have no pending disciplinary actions.

(3) Have served for at least two years as the designated administrator of a California licensed nursing home or for at least four years as the designated assistant administrator of a California licensed nursing home.

(4) Have gained experience in all administrative functions of a nursing home.

(c) The applicant seeking approval to be a preceptor shall submit an application form provided by the program that requires the applicant's name, address, birth date, the states and dates of issuance of all professional licenses, including those as a nursing home administrator, and any other information required by the program.

(d) At the time of application, for purposes of substantiating that the conditions specified in subdivision (b) have been met, the applicant shall provide satisfactory evidence of his or her education, experience, and knowledge that qualifies him or her to supervise the training of an AIT Program participant and verification that the facilities at which the applicant has had direct management control as an administrator had a continuous operating history, free from major deficiencies, during the period of the applicant's administration.

(e) An applicant shall not be approved as a preceptor until the applicant attends a preceptor's training seminar provided *or approved* by the program.

(f) (1) For purposes of this section, "AIT" means administrator-in-training.

(2) The following requirements shall apply to a preceptor approved pursuant to this section:

~~(A) The preceptor may not supervise or train a member of his or her family.~~

~~(B)–~~

(A) The preceptor ~~must~~ *shall* provide a directly supervised training program that will include a minimum of 20 hours per week and a maximum of 60 hours per week and be available at least

1 by telephone at all other times. There shall be regular personal
2 contact between the preceptor and the AIT during the training
3 program. *For purposes of this subparagraph, “a directly*
4 *supervised training program” means supervision by a preceptor*
5 *of an AIT during the performance of duties authorized by this*
6 *section. The preceptor shall be available during the AIT’s*
7 *performance of those duties.*

8 ~~(C)~~

9 (B) The preceptor shall be the designated administrator of the
10 facility where the training is conducted.

11 ~~(D)~~

12 (C) The preceptor may not supervise more than two AIT
13 trainees during the same time period.

14 ~~(E)~~

15 (D) The preceptor shall inform the NHAP of any training
16 program changes dealing with his or her specific AIT.

17 ~~(F)~~

18 (E) The preceptor shall rate the AIT’s training performance and
19 complete an AIT ~~Evaluation Report~~ *evaluation report* at the end
20 of the AIT’s training.

21 ~~(G)~~

22 (F) The preceptor shall be evaluated by the program based on
23 the examination success and failure history of his or her AIT
24 trainees and the program may revoke or suspend preceptor
25 certificates as appropriate.

27 Article 5. Enforcement

28
29 1416.60. Each licensee shall, within 30 days, after each
30 appointment as the designated administrator of a nursing home and
31 after any termination of that appointment, notify the program.
32 Each notification shall include the name of the administrator, the
33 nursing home administrator number assigned, the name and
34 address of the facility or facilities involved, and the date of the
35 appointment or termination. All information provided pursuant to
36 this section shall be public information.

37 1416.62. The program shall maintain a current list of nursing
38 home administrators who have been placed on probation or had
39 their licenses suspended or revoked within the last three years. The
40 program shall provide the current list of these administrators to

1 licensed nursing homes and the department district offices every
2 six months. The current list shall also be available to the general
3 public upon request.

4 1416.64. (a) The program shall maintain a record of
5 enforcement actions reported to the program, pursuant to Section
6 1416.12. The program shall routinely review the citation logs and
7 files of nursing home administrators whose facilities have
8 received citations from the department to determine if remedial or
9 disciplinary action against the administrator is warranted. ~~The~~
10 ~~program shall initiate disciplinary action against an administrator~~
11 ~~if a pattern of poor performance is established and validated by~~
12 ~~evidence available to the program.~~ *based on the administrator's*
13 *involvement or culpability in the citations. Regardless of the*
14 *facility's performance record, the program may initiate*
15 *disciplinary action against an administrator who violates any*
16 *statute or regulation governing licensed nursing home*
17 *administrators.*

18 (b) Following receipt of reports on temporary suspension
19 orders, service of an accusation for facility license revocations, or
20 final decertification of a facility from participation in the Medi-Cal
21 or Medicare programs, due to failure to meet certification
22 standards, the program shall make a determination as to whether
23 the evidence available warrants remedial or disciplinary action
24 against the administrator or constitutes grounds for denial,
25 suspension, or revocation pursuant to Section 1416.76.

26 (c) If the program determines that action against the
27 administrator is not warranted, the program shall document in the
28 file the reasons and specific circumstances for not taking remedial
29 or disciplinary action against the administrator's license.

30 (d) The program shall consider all of the following prior to
31 making a determination to initiate disciplinary action:

32 (1) Any information provided to the program by the
33 administrator pursuant to this section.

34 (2) Whether the administrator was in fact the designated
35 administrator of the facility when the violation occurred, or the
36 designated administrator of the facility during the period of time
37 the citation covered.

38 (3) Whether the administrator should have or could have
39 prevented the violation or violations that occurred.

(e) Prior to making a final determination to initiate action against an administrator, the program shall notify the administrator that the program is considering action and provide the administrator with an opportunity to show just cause why remedial or disciplinary action should not be initiated.

(f) If the program determines that grounds for remedial or disciplinary action exist, the program may initiate either or both of the following actions, as warranted:

(1) Remedial action, including, but not limited to, a conference with the administrator, a letter of warning, or both.

(2) Disciplinary action, including, but not limited to, citations, fines, formal letters of reprimand, probation, denial, suspension, revocation of the administrator's license, or any combination of these actions.

1416.66. (a) The program shall develop and make available a form that may be utilized at the nursing home administrator's option to provide the program with relevant information, documentation, and background on any actions reported to the program pursuant Section 1416.12.

(b) Any reports received pursuant to Section ~~1429.12~~ 1416.12 shall remain in the administrator's file for five years, unless the program is notified that the action has been modified or overturned. Any modification of an action shall be noted and documented in the administrator's file.

1416.68. (a) It is the responsibility of the nursing home administrator as the managing officer of the facility to plan, organize, direct, and control the day-to-day functions of a facility and to provide the highest level of care and safety possible to the residents entrusted to the facility for care.

(b) The administrator shall be vested with adequate authority to comply with the laws, rules, and regulations relating to the management of the facility.

(c) No licensee shall be cited for any violation caused by any person licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code) if the person is independent of, and not connected with, the facility and the licensee shows that he or she has exercised reasonable care and diligence in notifying these persons of their duties to the patients in the nursing facility.

(d) The delegation of any authority by a licensee shall not diminish the responsibilities of that licensee.

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 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

1 may, in lieu of contesting a citation pursuant to this section,
2 transmit to the state department 75 percent of the amount specified
3 in the citation for each violation within 15 business days after the
4 issuance of the citation.

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

14 (c) Assessment of administrative fines may be limited to only
15 particular violations of the applicable licensing act.
16 Notwithstanding any other provisions of law, where a fine is paid
17 to satisfy an assessment based on the finding of a violation,
18 payment of the fine shall be represented as satisfactory resolution
19 of the matter for purposes of public disclosures. Administrative
20 fines collected pursuant to this section shall be deposited in the
21 Nursing Home Administrator's State License Examining Fund.

22 1416.72. (a) The program may issue a citation to any person
23 who holds a license from the program and who violates any statute
24 or regulation governing licensed nursing home administrators.

25 (b) Any licensee served with a citation may contest the citation
26 by appeal to the program within 30 days of service of the citation.
27 Appeals shall be conducted pursuant to Section 100171.

28 (c) In addition to requesting a hearing before an administrative
29 law judge, the licensee may, within 10 days after service of the
30 citation, notify the department in writing of his or her request for
31 an informal conference with the department regarding the
32 violations cited in the citation. At the time of requesting an
33 informal conference, the licensee shall inform the department
34 whether he or she shall be represented at the informal conference
35 by legal counsel. Failure to notify the department of legal
36 representation shall not result in forfeiture of the right to have legal
37 counsel present. Unless the request for an informal hearing is made
38 within the 10-day period, the licensee's right to an informal
39 hearing is deemed waived.



1 (d) The department shall hold an informal conference with the
2 licensee and, if applicable, his or her legal counsel or authorized
3 representatives. At the conclusion of the informal conference the
4 department may affirm, modify, or dismiss the citation, including
5 any administrative fine levied, or order of abatement issued.

6 (e) The licensee does not waive his or her request for a hearing
7 to contest a citation by requesting an informal conference. If the
8 citation is dismissed after the informal conference, the request for
9 a hearing on the matter of the citation shall be deemed to be
10 withdrawn. If the citation, including any administrative fine levied
11 or order of abatement, is modified or affirmed, the citation shall
12 be upheld and the licensee shall, within 15 working days from the
13 date the citation review conference decision was rendered, notify
14 the director or the director's designee that he or she wishes to
15 appeal the decision through the procedures set forth in Section
16 100171.

17 1416.74. (a) The time allowed for abatement of violation
18 shall begin the first day after the order of abatement has been
19 served or received. If a licensee who has been issued an order of
20 abatement is unable to complete the correction within the time set
21 forth in the citation because of conditions beyond his or her control
22 after the exercise of reasonable diligence, the licensee may request
23 from the program an extension of time in which to complete the
24 correction. The request shall be in writing and made within the
25 time set for abatement.

26 (b) An order of abatement shall either be personally served
27 upon the licensee or mailed by certified mail, return receipt
28 requested.

29 (c) When an order of abatement is not contested, or if the order
30 is appealed and the licensee does not prevail, failure to abate the
31 violation cited within the time specified in the citation shall
32 constitute a violation and failure to comply with the order of
33 abatement. Where a licensee has failed to correct a violation within
34 the time specified in the citation the department shall assess the
35 licensee a civil penalty in the amount of fifty dollars (\$50) for each
36 day that the violation continues beyond the date specified in the
37 citation. If the licensee disputes a determination by the department
38 regarding alleged failure to correct a violation or regarding the
39 reasonableness of the proposed deadline for correction, the

1 licensee may request an informal conference to contest the
2 determination.

3 (d) Any unpaid administrative fine shall begin accruing a
4 7-percent interest penalty on the unpaid balance due. This interest
5 shall continue to accrue until the administrative fine and interest
6 are paid in full.

7 1416.75. (a) (1) *The program shall deny any application for*
8 *any license, and shall suspend or revoke any existing license, if the*
9 *applicant for, or the holder of, a license has been convicted of any*
10 *of the following crimes or any crime under a predecessor or*
11 *successor statute that includes all of the elements of any of the*
12 *following crimes, unless paragraph (2) applies, in which case the*
13 *application, suspension, or revocation shall be considered*
14 *pursuant to subdivisions (d) and (e):*

15 (A) Any violent felony, as defined in subdivision (c) of Section
16 667.5 of the Penal Code.

17 (B) Any serious felony, as defined in subdivision (c) of Section
18 1192.7 of the Penal Code.

19 (C) Any of the crimes listed in clause (i) of subparagraph (A),
20 or subparagraph (B), of paragraph (1) of subdivision (g) of
21 Section 1522, subparagraph (A) or (B) of paragraph (1) of
22 subdivision (f) of Section 1568.09, subparagraph (A) or (B) of
23 paragraph (1) of subdivision (f) of Section 1569.17, or
24 subparagraph (A) or (B) of paragraph (1) of subdivision (f) of
25 Section 1596.871.

26 (D) Any of the crimes listed in paragraph (1) of subdivision (b)
27 of Section 1265.5, paragraph (2) of subdivision (a) of Section
28 1337.9, or subdivision (a) of Section 1736.5.

29 (2) If either of the following applies, paragraph (1) shall not
30 apply and the application, suspension, or revocation shall be
31 considered pursuant to subdivisions (d) and (e):

32 (A) The person was convicted of a felony and has obtained a
33 certificate of rehabilitation under Chapter 3.5 (commencing with
34 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
35 information or accusation against the person has been dismissed
36 pursuant to Section 1203.4 of the Penal Code with regard to that
37 felony.

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

1 (b) An application for licensure or the renewal of a license shall
2 be denied if the criminal record of the person includes a conviction
3 in another jurisdiction for an offense that, if committed or
4 attempted in this state, would have been punishable as one or more
5 of the offenses set forth in this section, unless evidence of
6 rehabilitation comparable to the dismissal of a misdemeanor or a
7 certificate of rehabilitation as set forth in paragraph (2) of
8 subdivision (a) is provided to the department.

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

12 (d) The program may deny an application for licensure or
13 suspend or revoke a license if the applicant or licenseholder has
14 been convicted of any crime substantially related to the
15 qualifications, functions, or duties of a nursing home
16 administrator, irrespective of a subsequent order under Section
17 1203.4, 1203.4a, or Chapter 3.5 (commencing with Section
18 4852.01) of Title 6 of Part 3 of the Penal Code, where the
19 department determines that the applicant or licenseholder has not
20 adequately demonstrated that he or she has been rehabilitated and
21 the department believes that he or she will present a threat to the
22 health, safety, or welfare of patients.

23 (e) If the criminal record of a person indicates any conviction
24 of a crime other than a minor traffic violation or other than a
25 conviction of a crime listed in this section, the program may deny
26 the application for licensure or renewal of a license. In
27 determining whether or not to deny the application for licensure
28 or the renewal of a license pursuant to this subdivision, the
29 program shall take into consideration the following factors:

30 (1) The nature and seriousness of the offense under
31 consideration and its relationship to the person's employment,
32 duties, and responsibilities.

33 (2) Activities since conviction, including employment or
34 participation in therapy or education, that would indicate changed
35 behavior.

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

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

1 (5) Any rehabilitation evidence, including character
2 references, submitted by the person.

3 (6) Employment history and current employer
4 recommendations.

5 (7) Circumstances surrounding the commission of the offense
6 that would demonstrate the unlikelihood of repetition.

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

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

10 (f) A plea or verdict of guilty or a conviction following a plea
11 of nolo contendere shall be deemed a conviction within the
12 meaning of this section. The program may deny any application for
13 licensure or suspend or revoke a license based on a conviction as
14 provided in this section when the judgment of conviction is entered
15 or when an order granting probation is made suspending the
16 imposition of sentence.

17 1416.76. The program may deny, or may suspend or revoke,
18 a nursing home administrator license or participation in specific
19 training program areas under this chapter upon any of the
20 following grounds:

21 (a) Unprofessional conduct, including, but not limited to,
22 incompetence and negligence in the performance of the duties and
23 responsibilities of an administrator.

24 (b) Misappropriation of funds or property of the facility, the
25 patients, or of others, or physical, mental, or verbal abuse of
26 patients or residents.

27 (c) Using fraud, deception, or misrepresentation in applying
28 for the AIT Program, the examination for licensure, or any other
29 program functions provided for in this chapter.

30 (d) Procuring a nursing home license by fraud, deception, or
31 misrepresentation.

32 (e) Impersonating any applicant or acting as a proxy for an
33 applicant in an examination.

34 (f) Impersonating any licensed nursing home administrator.

35 (g) Treating or attempting to treat any physical or mental
36 condition without having a valid license to do so.

37 (h) Violating Section 650 of the Business and Professions
38 Code, any provisions of this chapter, or any rule or regulation of
39 the program adopted pursuant to this chapter.

1 (i) Lack of any qualification requirement for a license,
2 participation in the AIT Program or preceptor program.

3 (j) A pattern of failure to report changes under Section 1416.60
4 to the program without just cause.

5 (k) Failure to comply with this chapter or the laws, rules, and
6 regulations relating to health facilities.

7 (l) The commission of any dishonest, corrupt, or fraudulent act
8 or any act of physical or mental, including sexual, abuse of any
9 person in connection with the administration of, or any patient in,
10 a nursing home.

11 (m) Discovery by the program of criminal record information
12 that was not disclosed to the program, including any criminal
13 convictions discovered by the program after licensure. This shall
14 include state, federal, and international criminal record
15 information.

16 (n) Violation by the licensee of any of the provisions of this
17 chapter or of the rules and regulations promulgated under this
18 chapter.

19 (o) Aiding, abetting, or permitting the violation of any
20 provisions of this chapter or of the rules and regulations
21 promulgated under this chapter.

22 (p) Conduct inimical to the public health, morals, welfare, or
23 safety of the people of the State of California in the provision of
24 services for which a license is issued.

25 (q) Violation of the examination security agreement, or failure
26 or refusal to sign the examination agreement.

27 1416.78. (a) The program may place a nursing home
28 administrator license on probation in lieu of formal action to
29 suspend or revoke the license if the department determines that
30 probation is the appropriate action. *Upon successful completion of*
31 *the probation period, the license shall be restored to regular status.*

32 (b) The probationary license shall be based upon an agreement
33 entered into between the licensee and the program that specifies
34 terms and conditions of licensure during the probationary period.
35 The terms and conditions shall be related to matters, including, but
36 not limited to, work performance, rehabilitation, training,
37 counseling, progress reports, and treatment programs.

38 (c) The term of the probationary license shall not exceed two
39 years. If the licensee successfully completes the term of probation,
40 as determined by the department, no further action shall be taken

1 upon the allegations that were the basis for the probationary
2 license. If the licensee fails to comply with the terms and
3 conditions of the probationary license agreement, the department
4 may proceed with a formal action to suspend or revoke the license.

5 1416.80. Upon the determination to deny application for
6 licensure for grounds specified in Section 1416.76, the program
7 shall immediately notify the applicant in writing by certified mail.

8 A petition for an administrative hearing must be received by the
9 program ~~with~~ *within* 20 business days of receipt of notification.
10 Upon receipt, the department shall set the matter for administrative
11 hearing, pursuant to procedures specified in Section 100171.

12 1416.82. (a) Proceedings to suspend or revoke licensure for
13 grounds specified in Section 1416.76 shall be conducted in
14 accordance with Section 100171. In the event of conflict between
15 this chapter and Section 100171, Section 100171 shall prevail.

16 (b) (1) The program may temporarily suspend any license
17 prior to any hearing if the action is necessary to protect the public
18 welfare. The program shall notify the licensee of the temporary
19 suspension and the effective date. Upon receipt of a notice of
20 defense by the licensee, the department shall set the matter within
21 15 days. The administrative hearing conducted in accordance with
22 Section 100171 shall be held as soon as possible but not later than
23 30 days after receipt of the notice. The temporary suspension shall
24 remain in effect until the hearing is completed and the department
25 has made a final determination on the merits. However, the
26 temporary suspension shall be deemed vacated if the department
27 fails to make a final determination on the merits of the action
28 within 60 days after the original hearing has been completed. If the
29 provisions of this chapter or the rules or regulations promulgated
30 by the director are violated by a licensee, the director may suspend
31 the license for the violation.

32 (2) If the program determines that the temporary suspension
33 shall become an actual suspension, the department shall specify
34 the period of the suspension, not to exceed two years. The program
35 may determine that the suspension shall be stayed, and place the
36 licensee on probation for a period that shall not exceed two years.

37 (c) The program may *suspend or* revoke a license prior to any
38 hearing when immediate action is necessary in the judgment of the
39 director to protect the public welfare. Proceedings for immediate
40 revocation shall be conducted in accordance with Section 100171.

1 The department shall set the matter for hearing within 15 days and
2 hold the administrative hearing as soon as possible but not later
3 than 30 calendar days from receipt of the request for a hearing. A
4 written hearing decision upholding or setting aside the action shall
5 be sent by certified mail to the license holder within 30 calendar
6 days of the hearing.

7 1416.84. Whenever any person has engaged, or is about to
8 engage, in any acts or practices that constitute, or will constitute,
9 a violation of this chapter, the superior court in and for the county
10 in which those acts or practices take place, or are about to take
11 place, may issue an injunction or other appropriate order,
12 restraining the conduct on application of the program, the
13 Attorney General, or the district attorney.

14 1416.86. If any provision of this chapter, or the application
15 thereof to any person or circumstance, is held invalid, that
16 invalidity shall not affect other provisions or applications of this
17 chapter that can be given effect without the invalid provision or
18 application, and to this end the provisions of this chapter are
19 declared to be severable.

20 SEC. 6. Section 1429.5 of the Health and Safety Code is
21 repealed.

22 SEC. 7. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.