

AMENDED IN ASSEMBLY MAY 24, 2001

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:



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

1 (al) The California Board of Occupational Therapy.

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

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

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

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

15 (1) California Board of Accountancy.

16 (2) State Athletic Commission.

17 (3) Board of Behavioral Sciences.

18 (4) Court Reporters Board of California.

19 (5) State Board of Guide Dogs for the Blind.

20 (6) California State Board of Pharmacy.

21 (7) Board of Registered Nursing.

22 (8) Veterinary Medical Board.

23 (9) Registered Veterinary Technician Committee.

24 (10) Board of Vocational Nursing and Psychiatric Technicians.

25 (11) Respiratory Care Board of California.

26 (12) Hearing Aid Dispensers Advisory Commission.

27 (13) Physical Therapy Board of California.

28 (14) Physician Assistant Committee of the Medical Board of
29 California.

30 (15) Speech-Language Pathology and Audiology Board.

31 (16) Medical Board of California.

32 (17) State Board of Optometry.

33 (18) Acupuncture Board.

34 (19) Cemetery and Funeral Programs.

35 (20) Bureau of Security and Investigative Services.

36 (21) Division of Investigation.

37 (22) Board of Psychology.

38 (23) The California Board of Occupational Therapy.

39 SEC. 3. Section 205 of the Business and Professions Code is
40 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. At a minimum, the standards shall be designed to
35 ensure that nursing home administrators shall be individuals who
36 have not committed acts or crimes constituting grounds for denial
37 of licensure and who are qualified by training or experience in the
38 field of institutional administration to serve as nursing home
39 administrators.

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

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

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

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

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

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

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

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

36 (j) To give due consideration to the recommendations of the
37 National Advisory Council on Nursing Home Administration, in
38 accordance with the provisions of subdivision (f) of Section 1908
39 of Title XIX of the Social Security Act (42 U.S.C. Sec. 1396g(f)).

1 1416.12. The following enforcement actions taken by the
2 department against a facility and the name of the licensed
3 administrator of the facility shall be reported to the program.

4 (a) Temporary suspension orders.

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

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

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

12 Article 3. Licensing

13
14 1416.20. (a) The nursing home administrator licensing
15 examination shall cover the broad aspects of nursing home
16 administration.

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

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

33 1416.22. (a) To qualify for the licensing examination, an
34 applicant must be at least 18 years of age, be a citizen of the United
35 States, be of reputable and responsible character, demonstrate an
36 ability to comply with this chapter, and comply with at least one
37 of the following requirements:

38 (1) Have a master's degree in nursing home administration or
39 a related health administration field. The master's program in
40

which the degree was obtained must have included an internship or residency of at least 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
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 years of work experience shall be in a position as a department manager.

(7) 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, and the completion of a program-approved AIT Program of at least 1,000 hours. At least

1 the most recent five years of the 10 years of work experience shall
2 be in a supervisory position.

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

12 1416.24. (a) An application for a nursing home administrator
13 license shall be submitted to the program on a form provided by
14 the program, with the appropriate nonrefundable fee for any
15 required examination, the application, and licensure. The
16 application shall contain information the program deems
17 necessary to determine the applicant's qualifications and a
18 statement whether the individual has been convicted of any crime
19 other than a minor traffic violation. Each applicant shall meet the
20 current requirements for any required examination and licensure.
21 Applicants for licensure shall submit evidence of electronic
22 transmission of fingerprints or fingerprint cards to the program.

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

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

32 (2) The suspension, expiration, or forfeiture by operation of
33 law of a license issued by the department, the suspension,
34 forfeiture, or cancellation by order of the department or a court of
35 law of a license, or the surrender without the written consent of the
36 department of a license, shall not deprive the department of its
37 authority to institute or continue a disciplinary proceeding against
38 the licensee upon any ground provided by law or to enter an order
39 suspending or revoking the license or otherwise taking
40 disciplinary action against the licensee on any grounds.



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

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

10 (f) At the time of the examination, the applicant shall read and
11 sign the Examination Security Agreement and comply with its
12 terms.

13 1416.26. (a) As part of the application process for a nursing
14 home administrator license, an applicant shall submit to the
15 department two sets of completed fingerprint cards for a criminal
16 record clearance through the Department of Justice and the Federal
17 Bureau of Investigation. As an alternative, the applicant may also
18 provide proof of electronic transmission of fingerprints to the
19 Department of Justice and the Federal Bureau of Investigation.
20 Upon receipt of the fingerprints, the Department of Justice and the
21 Federal Bureau of Investigation shall notify the department of the
22 criminal record information. If no criminal record information has
23 been recorded, the Department of Justice and the Federal Bureau
24 of Investigation shall provide the department with a statement of
25 that fact.

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

34 1416.28. (a) Notwithstanding any other law, the program
35 shall at the time of application, issuance, or renewal of a nursing
36 home administrator license require that the applicant or licensee
37 provide his or her federal employer identification number or his or
38 her social security number.

39 (b) Any applicant or licensee failing to provide his or her
40 federal identification number or social security number shall be

1 reported by the program to the Franchise Tax Board and, if failing
2 to provide after notification pursuant to paragraph (1) of
3 subdivision (b) of Section 19528 of the Revenue and Taxation
4 Code, shall be subject to the penalty provided in paragraph (2) of
5 subdivision (b) of Section 19528 of the Revenue and Taxation
6 Code.

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

12 (d) The program shall, upon request of the Franchise Tax
13 Board, furnish to the Franchise Tax Board the following
14 information with respect to every licensee:

15 (1) Name.

16 (2) Address or addresses of record.

17 (3) Federal employer identification number or social security
18 number.

19 (4) Type of license.

20 (5) Effective date of license or renewal.

21 (6) Expiration date of license.

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

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

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

27 (f) The program shall provide to the Franchise Tax Board the
28 information required by this section at a time that the Franchise
29 Tax Board may require.

30 (g) Notwithstanding Chapter 3.5 (commencing with Section
31 6250) of Division 7 of Title 1 of the Government Code, the social
32 security number and federal employer identification number
33 furnished pursuant to this section shall not be deemed to be a public
34 record and shall not be open to the public for inspection.

35 (h) Any deputy, agent, clerk, officer, or employee of the
36 program described in this chapter, any former officer or employee,
37 or other individual who in the course of his or her employment or
38 duty has or has had access to the information required to be
39 furnished under this chapter, may not disclose or make known in

1 any manner that information, except as provided in this section to
2 the Franchise Tax Board or as provided in subdivision (j).

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

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

17 1416.30. (a) The program shall require compliance with any
18 judgment or order for support prior to issuance or renewal of a
19 license.

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

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

27 1416.32. (a) Prior to admission to the licensing examination,
28 the applicant shall read and sign an examination security
29 agreement and comply with its terms.

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

33 (1) Having or attempting to have an impersonator take the
34 examination on one’s behalf.

35 (2) Impersonating or attempting to impersonate another to take
36 the examination on that person’s behalf.

37 (3) Communicating or attempting to communicate about the
38 examination content with another examinee or with any person
39 other than the examination staff. This includes divulging the

1 content of specific written examination items to examination
2 preparation providers.

3 (4) Copying questions or making notes of examination
4 materials or revealing the content of the examination to others who
5 are preparing to take the NHAP examination or who are preparing
6 others to take such examination.

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

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

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

29 (2) Communicating with any other candidate during the
30 administration of a licensing examination, copying answers from
31 another examinee or permitting one's answers to be copied by
32 another examinee, having in one's possession during the
33 administration of the licensing examination any books,
34 equipment, notes, written or printed materials, or data of any kind,
35 other than the examination materials distributed, or otherwise
36 authorized to be in one's possession during the examination, or
37 impersonating any examinee or having an impersonator take the
38 licensing examination on one's behalf.

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

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

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

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

11 1416.34. (a) (1) In order to have a passing score on either the
12 national or state examination, an examinee shall earn a score of at
13 least 75 percent.

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

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

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

22 (1) The department.

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

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

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

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

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

36 (g) The program shall replace a lost, damaged, or destroyed
37 license certificate upon receipt of a written request from a licensee
38 and payment of the duplicate license fee. A licensee shall complete
39 a request for a duplicate license on the required program form, and
40 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 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.

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

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

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

12 (c) The department shall, by July 30 of each year, publish a list
13 of actual numerical fee charges as adjusted pursuant to this section.
14 This adjustment of fees and the publication of the fee list shall not
15 be subject to the requirements of Chapter 3.5 (commencing with
16 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
17 Code.

18 (d) If the revenue projected to be collected is less than the
19 projected costs for the budget year, the department may propose
20 that fees be adjusted by not more than twice the increase in the
21 Consumer Price Index.

22 1416.38. (a) The Nursing Home Administrator's State
23 License Examining Board Fund in the Professions and Vocations
24 Fund in the State Treasury is hereby renamed the Nursing Home
25 Administrator's State License Examining Fund and continued in
26 existence in the State Treasury.

27 (b) Within 10 days after the beginning of every month, all fees
28 collected by the program for the month preceding, under this
29 chapter, shall be paid into the Nursing Home Administrator's State
30 License Examining Fund.

31 (c) The funding paid into the Nursing Home Administrator's
32 State License Examining Fund shall be continuously appropriated
33 to the program for expenditures in the manner prescribed by law
34 to defray the expenses of the program and in carrying out and
35 enforcing the provisions of this chapter.

36 1416.40. (a) For purposes of this chapter, "reciprocity
37 applicant" means any applicant who holds a current license as a
38 nursing home administrator in another state where the program
39 finds the standards for licensure, at the time of initial licensure in
40 that jurisdiction, are at least the substantial equivalent of those

1 prevailing in this state at the same time, and the applicant is
2 otherwise qualified.

3 (b) An applicant who holds a current valid license as a nursing
4 home administrator in another state may be issued a one-year
5 provisional license as a reciprocity applicant pursuant to this
6 section. The provisional license authorizes the holder to work in
7 this state at a licensed nursing facility during the one-year
8 licensure period.

9 (c) The applicant shall obtain an application form from the
10 program, complete the form accurately, and, under penalty of
11 perjury, certify the experience, education, and criminal record
12 history information supplied in the application. The applicant shall
13 submit the application to the program, along with any supporting
14 documents to substantiate the application and the applicable
15 provisional, examination, and licensure fees.

16 (d) The provisional license may be granted to a reciprocity
17 applicant who complies with all of the following informational
18 requirements:

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

21 (2) Discloses the fact of and the circumstances surrounding any
22 of the following:

23 (A) Conviction of any criminal law violation of any country,
24 state, or municipality, except minor traffic violations. The
25 applicant shall submit appropriate criminal record information for
26 purposes of this subparagraph.

27 (B) Any discipline affecting nursing home administrator
28 licensure in any state.

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

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

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

40 (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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) A licensee whose license has been revoked may petition the program for reinstatement after a period of not less than one year

has elapsed from the effective date of the decision or from the date of the denial of a similar petition. The petitioner shall be afforded an opportunity to present either oral or written argument before the program. The program shall decide the petition and the decision shall include the reasons therefor, and any terms and conditions that the program reasonably deems appropriate to impose as a condition of reinstatement.

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

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

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

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

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

- (1) Resident care.
- (2) Personnel management.
- (3) Financial management.
- (4) Environmental management.
- (5) Regulatory management.
- (6) Organizational management.
- (7) Patient care and aging.

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

3 (f) If the program finds that programs of training and
4 instruction conducted within the state are not sufficient in number
5 or content to enable nursing home administrators to meet
6 requirements established by law and this chapter, the program may
7 approve courses conducted within and without this state as
8 sufficient to meet educational requirements established by law and
9 this chapter. For the purposes of this subdivision, the program shall
10 have the authority to receive funds in a manner consistent with the
11 requirements of the federal government.

12
13 Article 4. Training
14

15 1416.55. (a) An Administrator-in-Training Program (AIT
16 Program) shall be developed by the NHAP, in consultation with
17 representatives from the long-term care industry and advocacy
18 groups. The AIT Program shall include, but not be limited to, all
19 of the following areas of instruction:

- 20 (1) Orientation.
21 (2) Administration and business office.
22 (3) State and federal regulations governing long-term care
23 facilities.
24 (4) Residents' rights and abuse prevention.
25 (5) Staffing requirements and workforce retention.
26 (6) Nursing services.
27 (7) Resident activities.
28 (8) Resident care.
29 (9) Social services.
30 (10) Dietary management.
31 (11) Environmental care, including housekeeping, laundry,
32 and maintenance.
33 (12) Financial management.
34 (13) General management.
35 (14) Government regulations.
36 (15) Legal management.
37 (16) Personnel management and training.
38 (17) Consultants and contracts.
39 (18) Medical records.
40 (19) Public relations and marketing.

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

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

1 Program on the basis of work experience shall submit a declaration
2 signed under penalty of perjury verifying his or her work
3 experience. This declaration shall be signed by a licensed nursing
4 home administrator, physician and surgeon, chief of staff, director
5 of nurses, or registered nurse who can attest to the applicant's work
6 experience.

7 1416.57. (a) An individual may, upon compliance with the
8 requirements of this section, be approved by the program to be a
9 preceptor who is authorized to provide a training program in which
10 the preceptor coordinates, supervises, and teaches persons seeking
11 to meet specified requirements to qualify for the licensing
12 examination under this chapter. The approval obtained under this
13 section shall be effective for a period of two years, after which the
14 preceptor is required to renew his or her preceptor status and attend
15 a preceptor training course provided by the program.

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

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

20 (2) Have no pending disciplinary actions.

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

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

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

33 (d) At the time of application, for purposes of substantiating
34 that the conditions specified in subdivision (b) have been met, the
35 applicant shall provide satisfactory evidence of his or her
36 education, experience, and knowledge that qualifies him or her to
37 supervise the training of an AIT Program participant and
38 verification that the facilities at which the applicant has had direct
39 management control as an administrator had a continuous

1 operating history, free from major deficiencies, during the period
2 of the applicant's administration.

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

6 (f) (1) For purposes of this section, "AIT" means
7 ~~administrator-in-training~~ *Administrator-in-Training*.

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

10 (A) The preceptor shall provide a directly supervised training
11 program that will include a minimum of 20 hours per week and a
12 maximum of 60 hours per week and be available at least by
13 telephone at all other times. There shall be regular personal contact
14 between the preceptor and the AIT during the training program.
15 For purposes of this subparagraph, "a directly supervised training
16 program" means supervision by a preceptor of an AIT during the
17 performance of duties authorized by this section. The preceptor
18 shall be available during the AIT's performance of those duties.

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

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

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

25 (E) The preceptor shall rate the AIT's training performance and
26 complete an AIT evaluation report at the end of the AIT's training.

27 (F) The preceptor shall be evaluated by the program based on
28 the examination success and failure history of his or her AIT
29 trainees and the program may revoke or suspend preceptor
30 certificates as appropriate.

31
32 Article 5. Enforcement
33

34 1416.60. Each licensee shall, within 30 days, after each
35 appointment as the designated administrator of a nursing home and
36 after any termination of that appointment, notify the program.
37 Each notification shall include the name of the administrator, the
38 nursing home administrator number assigned, the name and
39 address of the facility or facilities involved, and the date of the

1 appointment or termination. All information provided pursuant to
2 this section shall be public information.

3 1416.62. The program shall maintain a current list of nursing
4 home administrators who have been placed on probation or had
5 their licenses suspended or revoked within the last three years. The
6 program shall provide the current list of these administrators to
7 licensed nursing homes and the department district offices every
8 six months. The current list shall also be available to the general
9 public upon request.

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

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

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

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

35 (1) Any information provided to the program by the
36 administrator pursuant to this section.

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



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

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

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

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

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

17 1416.66. (a) The program shall develop and make available
18 a form that may be utilized at the nursing home administrator's
19 option to provide the program with relevant information,
20 documentation, and background on any actions reported to the
21 program pursuant Section 1416.12.

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

27 1416.68. (a) It is the responsibility of the nursing home
28 administrator as the managing officer of the facility to plan,
29 organize, direct, and control the day-to-day functions of a facility
30 and to provide the highest level of care and safety possible to the
31 residents entrusted to the facility for care.

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

35 (c) No licensee shall be cited for any violation caused by any
36 person licensed pursuant to the Medical Practice Act (Chapter 5
37 (commencing with Section 2000) of Division 2 of the Business and
38 Professions Code) if the person is independent of, and not
39 connected with, the facility and the licensee shows that he or she

1 has exercised reasonable care and diligence in notifying these
2 persons of their duties to the patients in the nursing facility.

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

5 1416.70. (a) The program shall establish a system for the
6 issuance of citations to licensees, examinees, or participants of any
7 program activity offered or approved by the program. The
8 citations may contain an order of abatement, an order to pay an
9 administrative fine assessed by the program chief, or both, where
10 the licensee, examinee, or participant is in violation of any state or
11 federal statute or regulation governing licensed nursing home
12 administrators.

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

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

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

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

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

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

38 (5) A citation or fine assessment issued pursuant to a citation
39 shall inform the licensee, examinee, or participant, that if he or she
40 desires a hearing to contest the finding of a violation, the hearing

shall be requested by written notice to the program within 30 days after the date of issuance of the citation or assessment. A licensee may, in lieu of contesting a citation pursuant to this section, transmit to the state department 75 percent of the amount specified in the citation for each violation within 15 business days after the issuance of the citation.

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

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

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

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

(c) In addition to requesting a hearing before an administrative law judge, the licensee may, within 10 days after service of the citation, notify the department in writing of his or her request for an informal conference with the department regarding the violations cited in the citation. At the time of requesting an informal conference, the licensee shall inform the department whether he or she shall be represented at the informal conference by legal counsel. Failure to notify the department of legal representation shall not result in forfeiture of the right to have legal counsel present. Unless the request for an informal hearing is made

1 within the 10-day period, the licensee's right to an informal
2 hearing is deemed waived.

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

8 (e) The licensee does not waive his or her request for a hearing
9 to contest a citation by requesting an informal conference. If the
10 citation is dismissed after the informal conference, the request for
11 a hearing on the matter of the citation shall be deemed to be
12 withdrawn. If the citation, including any administrative fine levied
13 or order of abatement, is modified or affirmed, the citation shall
14 be upheld and the licensee shall, within 15 working days from the
15 date the citation review conference decision was rendered, notify
16 the director or the director's designee that he or she wishes to
17 appeal the decision through the procedures set forth in Section
18 100171.

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

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

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

1 reasonably of the proposed deadline for correction, the
2 licensee may request an informal conference to contest the
3 determination.

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

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

16 ~~(A) Any violent felony, as defined in subdivision (c) of Section~~
17 ~~667.5 of the Penal Code.~~

18 ~~(B) Any serious felony, as defined in subdivision (c) of Section~~
19 ~~1192.7 of the Penal Code.~~

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

1 *listed in paragraph (1) of subdivision (b) of Section 1265.5, or*
2 *crimes listed under a predecessor or successor statute that*
3 *includes all of the elements of any of the listed crimes, unless any*
4 *of the exceptions set forth in paragraph (1) of subdivision (b) of*
5 *Section 1265.5 applies, in which case the application, suspension,*
6 *revocation, or criminal record clearance shall be considered*
7 *pursuant to subdivision (c) of Section 1265.5.*

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

16 ~~(c) The denial, suspension, or revocation of a license for~~
17 ~~conviction of any crime listed in subdivision (a) or (b) is not~~
18 ~~subject to appeal.~~

19 ~~(d) The program may deny an application for licensure or~~
20 ~~suspend or revoke a license if the applicant or licenseholder has~~
21 ~~been convicted of any crime substantially related to the~~
22 ~~qualifications, functions, or duties of a nursing home~~
23 ~~administrator, irrespective of a subsequent order under Section~~
24 ~~1203.4, 1203.4a, or Chapter 3.5 (commencing with Section~~
25 ~~4852.01) of Title 6 of Part 3 of the Penal Code, where the~~
26 ~~department determines that the applicant or licenseholder has not~~
27 ~~adequately demonstrated that he or she has been rehabilitated and~~
28 ~~the department believes that he or she will present a threat to the~~
29 ~~health, safety, or welfare of patients.~~

30 ~~(e) If the criminal record of a person indicates any conviction~~
31 ~~of a crime other than a minor traffic violation or other than a~~
32 ~~conviction of a crime listed in this section, the program may deny~~
33 ~~the application for licensure or renewal of a license. In determining~~
34 ~~whether or not to deny the application for licensure or the renewal~~
35 ~~of a license pursuant to this subdivision, the program shall take into~~
36 ~~consideration the following factors:~~

37 ~~(1) The nature and seriousness of the offense under~~
38 ~~consideration and its relationship to the person's employment,~~
39 ~~duties, and responsibilities.~~

1 ~~(2) Activities since conviction, including employment or~~
2 ~~participation in therapy or education, that would indicate changed~~
3 ~~behavior.~~

4 ~~(3) The time that has elapsed since the commission of the~~
5 ~~conduct or offense and the number of offenses.~~

6 ~~(4) The extent to which the person has complied with any terms~~
7 ~~of parole, probation, restitution, or any other sanction lawfully~~
8 ~~imposed against the person.~~

9 ~~(5) Any rehabilitation evidence, including character~~
10 ~~references, submitted by the person.~~

11 ~~(6) Employment history and current employer~~
12 ~~recommendations.~~

13 ~~(7) Circumstances surrounding the commission of the offense~~
14 ~~that would demonstrate the unlikelihood of repetition.~~

15 ~~(8) The granting by the Governor of a full and unconditional~~
16 ~~pardon.~~

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

18 ~~(f) A plea or verdict of guilty or a conviction following a plea~~
19 ~~of nolo contendere shall be deemed a conviction within the~~
20 ~~meaning of this section. The program may deny any application~~
21 ~~for licensure or suspend or revoke a license based on a conviction~~
22 ~~as provided in this section when the judgment of conviction is~~
23 ~~entered or when an order granting probation is made suspending~~
24 ~~the imposition of sentence.~~

25 1416.76. The program may deny, or may suspend or revoke,
26 a nursing home administrator license or participation in specific
27 training program areas under this chapter upon any of the
28 following grounds:

29 (a) Unprofessional conduct, including, but not limited to,
30 incompetence and negligence in the performance of the duties and
31 responsibilities of an administrator.

32 (b) Misappropriation of funds or property of the facility, the
33 patients, or of others, or physical, mental, or verbal abuse of
34 patients or residents.

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

38 (d) Procuring a nursing home license by fraud, deception, or
39 misrepresentation.

- 1 (e) Impersonating any applicant or acting as a proxy for an
2 applicant in an examination.
- 3 (f) Impersonating any licensed nursing home administrator.
- 4 (g) Treating or attempting to treat any physical or mental
5 condition without having a valid license to do so.
- 6 (h) Violating Section 650 of the Business and Professions
7 Code, any provisions of this chapter, or any rule or regulation of
8 the program adopted pursuant to this chapter.
- 9 (i) Lack of any qualification requirement for a license,
10 participation in the AIT Program or preceptor program.
- 11 (j) A pattern of failure to report changes under Section 1416.60
12 to the program without just cause.
- 13 (k) Failure to comply with this chapter or the laws, rules, and
14 regulations relating to health facilities.
- 15 (l) The commission of any dishonest, corrupt, or fraudulent act
16 or any act of physical or mental, including sexual, abuse of any
17 person in connection with the administration of, or any patient in,
18 a nursing home.
- 19 (m) Discovery by the program of criminal record information
20 that was not disclosed to the program, including any criminal
21 convictions discovered by the program after licensure. This shall
22 include state, federal, and international criminal record
23 information.
- 24 (n) Violation by the licensee of any of the provisions of this
25 chapter or of the rules and regulations promulgated under this
26 chapter.
- 27 (o) Aiding, abetting, or permitting the violation of any
28 provisions of this chapter or of the rules and regulations
29 promulgated under this chapter.
- 30 (p) Conduct inimical to the public health, morals, welfare, or
31 safety of the people of the State of California in the provision of
32 services for which a license is issued.
- 33 (q) Violation of the examination security agreement, or failure
34 or refusal to sign the examination agreement.
- 35 1416.78. (a) The program may place a nursing home
36 administrator license on probation in lieu of formal action to
37 suspend or revoke the license if the department determines that
38 probation is the appropriate action. Upon successful completion of
39 the probation period, the license shall be restored to regular status.

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

(c) The term of the probationary license shall not exceed two years. If the licensee successfully completes the term of probation, as determined by the department, no further action shall be taken upon the allegations that were the basis for the probationary license. If the licensee fails to comply with the terms and conditions of the probationary license agreement, the department may proceed with a formal action to suspend or revoke the license.

1416.80. Upon the determination to deny application for licensure for grounds specified in Section 1416.76, the program shall immediately notify the applicant in writing by certified mail. A petition for an administrative hearing must be received by the program within 20 business days of receipt of notification. Upon receipt, the department shall set the matter for administrative hearing, pursuant to procedures specified in Section 100171.

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

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

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

(c) The program may suspend or revoke a license prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Proceedings for immediate revocation shall be conducted in accordance with Section 100171. The department shall set the matter for hearing within 15 days and hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the licenseholder within 30 calendar days of the hearing.

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

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

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

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

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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