

AMENDED IN SENATE JUNE 8, 2006  
AMENDED IN ASSEMBLY MAY 18, 2006  
AMENDED IN ASSEMBLY MAY 8, 2006  
AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2564**

---

---

**Introduced by Assembly Member Matthews**

February 23, 2006

---

---

An act to amend Section 1265.5 of, *and to add Section 1265.6 to*, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2564, as amended, Matthews. Health facilities: criminal record clearances.

Existing law provides for the licensure of various intermediate care facilities by the State Department of Health Services. ~~Prior~~ *A violation of these provisions is a crime.*

*Under existing law, prior to the initial licensure or license renewal for these facilities, the department is required to secure from an appropriate law enforcement agency a criminal record to determine whether any direct care staff has ever been convicted of a crime other than a minor traffic violation. Existing law defines direct care staff and requires the department to develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to specified provisions of existing law shall not be required to obtain multiple criminal record clearances. Existing law requires persons employed as consultants and acting as*

direct care staff to be subject to the same requirements for a clearance as other direct care staff.

*This bill would, instead, require the department to secure a criminal record for direct care staff from the Department of Justice, would specify that the criminal record shall be complete when the State Department of Health Services has obtained the criminal clearance, and would prohibit direct contact by the applicant with residents until completion of the clearance. By imposing additional licensure requirements on these facilities, the bill would change the definition of an existing crime, thus creating a state-mandated local program.*

This bill would also prohibit specified persons employed as consultants and acting as direct care staff from being required to obtain a separate criminal record clearance.

*Existing law authorizes specified persons who are not licensed health care professionals, but who are trained to administer injections by a licensed health care professional, to administer injections of insulin, and to perform glucose monitoring, as prescribed by a child’s physician to a foster child placement.*

*This bill would authorize direct care staff, who are trained and certified by a registered nurse acting within the scope of his or her practice, to administer blood glucose testing for a person with developmental disabilities who has diabetes and who is residing in an intermediate care facility/developmentally disabled habilitative or an intermediate care facility/developmentally disabled nursing, if specified criteria are met.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1 SECTION 1. Section 1265.5 of the Health and Safety Code is
- 2 amended to read:
- 3 1265.5. (a) (1) Prior to the initial licensure or renewal of a
- 4 license of any person or persons to operate or manage an

1 intermediate care facility/developmentally disabled habilitative,  
2 an intermediate care facility/developmentally disabled nursing, or  
3 an intermediate care facility/developmentally disabled, other than  
4 an intermediate care facility/developmentally disabled operated  
5 by the state that secures criminal record clearances for its  
6 employees through a method other than as specified in this  
7 section or upon the hiring of direct care staff by any of these  
8 facilities, the state department shall secure from ~~an appropriate~~  
9 ~~law enforcement agency~~ *the Department of Justice* a criminal  
10 record to determine whether the applicant, facility administrator  
11 or manager, any direct care staff, or any other adult living in the  
12 same location, has ever been convicted of a crime other than a  
13 minor traffic violation.

14 *(2) The criminal record clearance shall require the applicant*  
15 *to submit electronic fingerprint images of the facility*  
16 *administrator or manager, and any direct care staff, or any other*  
17 *adult living in the same location, to the Department of Justice.*  
18 *Applicants shall be responsible for any cost associated with*  
19 *transmitting the fingerprint images.*

20 *(3) The criminal record clearance shall be completed prior to*  
21 *direct staff contact with residents of the facility. A criminal*  
22 *record clearance shall be complete when the department has*  
23 *obtained the person's criminal record information from the*  
24 *Department of Justice and has determined that he or she is not*  
25 *disqualified from engaging in the activity for which clearance is*  
26 *required.*

27 (b) (1) The application for licensure or renewal shall be  
28 denied if the criminal record indicates that the person seeking  
29 initial licensure or renewal of a license referred to in subdivision  
30 (a) has been convicted of a violation or attempted violation of  
31 any one or more of the following Penal Code provisions: Section  
32 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,  
33 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,  
34 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,  
35 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,  
36 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,  
37 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d  
38 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,  
39 unless any of the following applies:

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

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

10 (C) The person was convicted of a felony or a misdemeanor,  
11 but has previously disclosed the fact of each conviction to the  
12 department and the department has made a determination in  
13 accordance with law that the conviction does not disqualify the  
14 person.

15 ~~(D) The person was convicted of a misdemeanor violation of~~  
16 ~~Section 488 or 496 and has had no subsequent conviction of~~  
17 ~~either offense in the last five years. This paragraph shall become~~  
18 ~~inoperative on August 1, 2001.~~

19 (2) The application for licensure or renewal shall be denied if  
20 the criminal record of the person includes a conviction in another  
21 state for an offense that, if committed or attempted in this state,  
22 would have been punishable as one or more of the offenses set  
23 forth in paragraph (1), unless evidence of rehabilitation  
24 comparable to the dismissal of a misdemeanor or a certificate of  
25 rehabilitation as set forth in subparagraph (A) or (B) of paragraph  
26 (1) is provided to the department.

27 (c) If the criminal record of a person described in subdivision  
28 (a) indicates any conviction other than a minor traffic violation or  
29 other than a conviction listed in subdivision (b), the department  
30 may deny the application for licensure or renewal. In determining  
31 whether or not to deny the application for licensure or renewal  
32 pursuant to this subdivision, the department shall take into  
33 consideration the following factors as evidence of good character  
34 and rehabilitation:

35 (1) The nature and seriousness of the offense under  
36 consideration and its relationship to their employment duties and  
37 responsibilities.

38 (2) Activities since conviction, including employment or  
39 participation in therapy or education, that would indicate changed  
40 behavior.

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

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

7 (5) Any rehabilitation evidence, including character  
8 references, submitted by the person.

9 (6) Employment history and current employer  
10 recommendations.

11 (7) Circumstances surrounding the commission of the offense  
12 that would demonstrate the unlikelihood of repetition.

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

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

16 (d) Nothing in this section shall be construed to require a  
17 criminal record check of a person receiving services in an  
18 intermediate care facility/developmentally disabled habilitative,  
19 intermediate care facility/developmentally disabled-nursing, or  
20 intermediate care facility/developmentally disabled.

21 (e) For purposes of this section, “direct care staff” means all  
22 facility staff who are trained and experienced in the care of  
23 persons with developmental disabilities and who directly provide  
24 program and nursing services to clients. Administrative and  
25 licensed personnel shall be considered direct care staff when  
26 directly providing program and nursing services to clients.  
27 Persons employed as consultants and acting as direct care staff  
28 shall be subject to the same requirements for a criminal record  
29 clearance as other direct care staff. However, the employing  
30 facility shall not be required to pay any costs associated with that  
31 criminal record clearance.

32 (f) Upon the employment of any person specified in  
33 subdivision (a), and prior to any contact with clients or residents,  
34 the facility shall ~~submit fingerprint cards to the department~~  
35 *ensure that electronic fingerprint images are submitted to the*  
36 *Department of Justice* for the purpose of obtaining a criminal  
37 record check.

38 (g) The department shall develop procedures to ensure that  
39 any licensee, direct care staff, or certificate holder for whom a  
40 criminal record has been obtained pursuant to this section or

1 Section 1338.5 or 1736 shall not be required to obtain multiple  
2 criminal record clearances.

3 (h) In addition to the persons who are not required to obtain  
4 multiple criminal record clearances pursuant to subdivision (g), a  
5 person shall not be required to obtain a separate criminal record  
6 clearance if the person meets all of the following criteria:

7 (1) The person is employed as a consultant and acts as direct  
8 care staff.

9 (2) The person is a registered nurse, licensed vocational nurse,  
10 physical therapist, occupational therapist, or speech-language  
11 pathologist.

12 (3) The person has obtained a criminal record clearance as a  
13 prerequisite to holding a license or certificate to provide direct  
14 care services.

15 (4) The person has a license or certificate to provide direct  
16 care service that is in good standing with the appropriate  
17 licensing or certification board.

18 (5) The person is providing time-limited, specialized clinical  
19 care or services.

20 (6) The person is not left alone with a client.

21 *SEC. 2. Section 1265.6 is added to the Health and Safety*  
22 *Code, to read:*

23 *1265.6. Notwithstanding any other provision of law, a*  
24 *registered nurse within his or her scope of practice may require*  
25 *direct care staff in an intermediate care facility/developmentally*  
26 *disabled habilitative or an intermediate care*  
27 *facility/developmentally disabled nursing to administer blood*  
28 *glucose testing for a person with developmental disabilities who*  
29 *resides at the facility and who has diabetes, if all of the following*  
30 *criteria are met:*

31 *(a) The blood glucose testing is specifically ordered by a*  
32 *physician. The results of the testing shall be reported to a*  
33 *registered nurse as specified in the physician's order.*

34 *(b) Prior to performing the blood glucose testing, the direct*  
35 *care staff shall be trained by the registered nurse to perform the*  
36 *testing and shall demonstrate proficiency in performing the*  
37 *testing while under the immediate supervision of the registered*  
38 *nurse.*

39 *(c) Training of direct care staff to perform blood glucose*  
40 *testing shall include, but not be limited to, an overview of the*

1 *basic disease process of type I and type II diabetes, recognition*  
2 *of the signs and symptoms of hypoglycemia and hyperglycemia,*  
3 *the role of nutrition management in diabetes, diabetes and blood*  
4 *sugar control, long term complications of diabetes, specific*  
5 *instruction in utilizing and the use of specific over-the-counter*  
6 *glucose monitoring device that is approved by the FDA,*  
7 *including the cleaning and maintaining the accuracy of the*  
8 *client-specific glucose monitoring device, proper infection*  
9 *control practices related to the use of the device, including the*  
10 *handling and disposal of infectious waste, and recording*  
11 *accurate records of blood glucose readings in the client medical*  
12 *record. Records of blood glucose readings shall be reviewed by*  
13 *the facility registered nurse at least monthly.*

14 *(d) A signed written statement shall be prepared by the*  
15 *registered nurse that includes a certification of the direct care*  
16 *staff's competence to perform the testing and that identifies the*  
17 *clients residing at the facility for whom the certification is*  
18 *applicable. This certification shall be placed and maintained in*  
19 *the direct care staff's training record.*

20 *(e) The certification of competence to perform the blood*  
21 *glucose testing shall be procedure and client specific, and shall*  
22 *not be transferred between clients residing at the facility or other*  
23 *facilities.*

24 *(f) The registered nurse shall be responsible for monitoring*  
25 *and implementing the direct care staff blood glucose testing. At*  
26 *least once every three months, the registered nurse shall observe*  
27 *and confirm the direct care staff person's proficiency in*  
28 *performing the approved testing and shall update the*  
29 *certification. The proficiency determination shall include a*  
30 *determination by the registered nurse that the direct care staff*  
31 *remains proficient in demonstrating the specified method for*  
32 *cleaning and recalibration of the glucose monitoring device.*

33 *(g) A registered nurse shall provide continuing inservice*  
34 *education on the management of diabetes and the use of blood*  
35 *glucose monitoring devices not less than once per year and*  
36 *include documentation of the content of the training and the staff*  
37 *who were in attendance.*

38 *(h) A facility shall develop a written policy and procedure*  
39 *governing blood glucose testing for clients residing at the facility*

1 *that shall include procedures for the training and competency*  
2 *assessment of direct care staff as required by this section.*

3 *(i) A facility shall have received a certificate of waiver*  
4 *pursuant to subdivision (n) of Section 483.460 of Title 42 of the*  
5 *Code of Federal Regulations prior to the implementation of*  
6 *blood glucose testing and shall retain a copy of the CLIA waiver*  
7 *for inspection by the department.*

8 *SEC. 3. No reimbursement is required by this act pursuant to*  
9 *Section 6 of Article XIII B of the California Constitution because*  
10 *the only costs that may be incurred by a local agency or school*  
11 *district will be incurred because this act creates a new crime or*  
12 *infraction, eliminates a crime or infraction, or changes the*  
13 *penalty for a crime or infraction, within the meaning of Section*  
14 *17556 of the Government Code, or changes the definition of a*  
15 *crime within the meaning of Section 6 of Article XIII B of the*  
16 *California Constitution.*