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AMENDED IN SENATE JUNE 8, 2006

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AMENDED IN ASSEMBLY MAY 8, 2006

AMENDED IN ASSEMBLY APRIL 17, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2564**

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**Introduced by Assembly Member Matthews**

February 23, 2006

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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~~; *clearances and blood glucose testing*.

Existing law provides for the licensure of various intermediate care facilities by the State Department of Health Services. 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 request~~ criminal record *information* for direct care staff from the Department of Justice, would specify that the criminal record *clearance* 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, *in accordance with specified procedures*. ~~By~~ *This bill would also provide that if the department fails to meet certain criteria relating to the criminal record clearance for a period of 90 days, those procedures shall be suspended, as prescribed. This bill would also require the department to explore options to work with private and governmental agencies to ensure that facility licensees have adequate access to electronic transmission services, as provided.*

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~~ *further* 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: 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  
5 intermediate care facility/developmentally disabled habilitative,  
6 an intermediate care facility/developmentally disabled nursing, or  
7 an intermediate care facility/developmentally disabled, other than  
8 an intermediate care facility/developmentally disabled operated  
9 by the state that secures criminal record clearances for its  
10 employees through a method other than as specified in this  
11 section or upon the hiring of direct care staff by any of these  
12 facilities, the ~~state~~ department shall ~~secure from request~~ the  
13 Department of Justice ~~a~~ *to search for* criminal record  
14 *information* to determine whether the applicant, facility  
15 administrator or manager, any direct care staff, or any other adult  
16 living in the same location, has ever been convicted of a crime  
17 other than a minor traffic violation.  
18 (2) The criminal record clearance shall require the applicant to  
19 submit electronic fingerprint images *and related information* of  
20 the facility administrator or manager, and any direct care staff, or  
21 any other adult living in the same location, to the Department of  
22 Justice. Applicants shall be responsible for any cost associated  
23 with *capturing or* transmitting the fingerprint images *and related*  
24 *information. The department shall explore options to work with*  
25 *private entities, government agencies, and law enforcement*  
26 *agencies to ensure that licensees have adequate access to*  
27 *electronic transmission sites. The department shall maintain a*  
28 *contract for electronic transmission services in each of the*  
29 *district offices where facilities have indicated problems with*  
30 *timely access to electronic transmission sites or consistent delays*  
31 *of more than three business days in obtaining appointments for*  
32 *electronic transmission services through a private entity,*  
33 *government agency, or law enforcement agency.*

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

(3) (A) *The Licensing and Certification Program shall issue an All Facilities Letter (AFL) to facility licensees when both of the following criteria are met:*

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

(ii) *The program processes 95 percent of its total responses requiring disqualification in accordance with subdivision (c), no later than 45 days after the date that the report is received from the Department of Justice.*

(B) *After the AFL is issued, licensees shall not allow newly hired facility administrators, managers, direct care staff, or any other adult living in the same location to have direct contact with clients or residents of the facility prior to completion of the criminal record clearance. A criminal record clearance shall be complete when the department has obtained the person's criminal record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required. Notwithstanding any other provision of law, the department may, without taking regulatory action pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, implement, interpret, or make specific this paragraph by means of an AFL or similar instruction.*

(4) *An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not he or she has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit*

1 *fingerprint images as part of a criminal background clearance*  
2 *process. Every applicant shall provide information on any prior*  
3 *administrative action taken against him or her by any federal,*  
4 *state, or local governmental agency and shall certify that, to the*  
5 *best of his or her knowledge, the information provided is true. An*  
6 *applicant or other person required to provide information*  
7 *pursuant to this section that knowingly or willfully makes false*  
8 *statements, representations, or omissions may be subject to*  
9 *administrative action, including, but not limited to, denial of his*  
10 *or her application or exemption or revocation of any exemption*  
11 *previously granted.*

12 (b) (1) The application for licensure or renewal shall be  
13 denied if the criminal record indicates that the person seeking  
14 initial licensure or renewal of a license referred to in subdivision  
15 (a) has been convicted of a violation or attempted violation of  
16 any one or more of the following Penal Code provisions: Section  
17 187, subdivision (a) of Section 192, Section 203, 205, 206, 207,  
18 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1,  
19 Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285,  
20 subdivisions (c), (d), (f), and (g) of Section 286, Section 288,  
21 subdivisions (c), (d), (f), and (g) of Section 288a, Section 288.5,  
22 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d  
23 to 484j, inclusive, or Section 487, 488, 496, 503, 518, or 666,  
24 unless any of the following applies:

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

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

34 (C) The person was convicted of a felony or a misdemeanor,  
35 but has previously disclosed the fact of each conviction to the  
36 department and the department has made a determination in  
37 accordance with law that the conviction does not disqualify the  
38 person.

39 (2) The application for licensure or renewal shall be denied if  
40 the criminal record of the person includes a conviction in another

1 state for an offense that, if committed or attempted in this state,  
2 would have been punishable as one or more of the offenses set  
3 forth in paragraph (1), unless evidence of rehabilitation  
4 comparable to the dismissal of a misdemeanor or a certificate of  
5 rehabilitation as set forth in subparagraph (A) or (B) of paragraph  
6 (1) is provided to the department.

7 (c) If the criminal record of a person described in subdivision  
8 (a) indicates any conviction other than a minor traffic violation or  
9 other than a conviction listed in subdivision (b), the department  
10 may deny the application for licensure or renewal. In determining  
11 whether or not to deny the application for licensure or renewal  
12 pursuant to this subdivision, the department shall take into  
13 consideration the following factors as evidence of good character  
14 and rehabilitation:

15 (1) The nature and seriousness of the offense under  
16 consideration and its relationship to their employment duties and  
17 responsibilities.

18 (2) Activities since conviction, including employment or  
19 participation in therapy or education, that would indicate changed  
20 behavior.

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

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

27 (5) Any rehabilitation evidence, including character  
28 references, submitted by the person.

29 (6) Employment history and current employer  
30 recommendations.

31 (7) Circumstances surrounding the commission of the offense  
32 that would demonstrate the unlikelihood of repetition.

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

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

36 (d) Nothing in this section shall be construed to require a  
37 criminal record check of a person receiving services in an  
38 intermediate care facility/developmentally disabled habilitative,  
39 intermediate care facility/developmentally disabled-nursing, or  
40 intermediate care facility/developmentally disabled.

1 (e) For purposes of this section, “direct care staff” means all  
2 facility staff who are trained and experienced in the care of  
3 persons with developmental disabilities and who directly provide  
4 program and nursing services to clients. Administrative and  
5 licensed personnel shall be considered direct care staff when  
6 directly providing program and nursing services to clients.  
7 Persons employed as consultants and acting as direct care staff  
8 shall be subject to the same requirements for a criminal record  
9 clearance as other direct care staff. However, the employing  
10 facility shall not be required to pay any costs associated with that  
11 criminal record clearance.

12 (f) Upon the employment of any person specified in  
13 subdivision (a), and prior to any contact with clients or residents,  
14 the facility shall ensure that electronic fingerprint images *and*  
15 *related information* are submitted to the Department of Justice  
16 for the purpose of obtaining a criminal record check.

17 (g) The department shall develop procedures to ensure that  
18 any licensee, direct care staff, or certificate holder for whom a  
19 criminal record has been obtained pursuant to this section or  
20 Section 1338.5 or 1736 shall not be required to obtain multiple  
21 criminal record clearances.

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

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

28 (2) The person is a registered nurse, licensed vocational nurse,  
29 physical therapist, occupational therapist, or speech-language  
30 pathologist.

31 (3) The person has obtained a criminal record clearance as a  
32 prerequisite to holding a license or certificate to provide direct  
33 care services.

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

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

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

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

7 SEC. 2. Section 1265.6 is added to the Health and Safety  
8 Code, to read:

9 1265.6. Notwithstanding any other provision of law, a  
10 registered nurse within his or her scope of practice may require  
11 direct care staff in an intermediate care facility/developmentally  
12 disabled habilitative or an intermediate care  
13 facility/developmentally disabled nursing to administer blood  
14 glucose testing for a person with developmental disabilities who  
15 resides at the facility and who has diabetes, if all of the following  
16 criteria are met:

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

20 (b) Prior to performing the blood glucose testing, the direct  
21 care staff shall be trained by the registered nurse to perform the  
22 testing and shall demonstrate proficiency in performing the  
23 testing while under the immediate supervision of the registered  
24 nurse.

25 (c) Training of direct care staff to perform blood glucose  
26 testing shall include, but not be limited to, an overview of the  
27 basic disease process of type I and type II diabetes, recognition  
28 of the signs and symptoms of hypoglycemia and hyperglycemia,  
29 the role of nutrition management in diabetes, diabetes and blood  
30 sugar control, long term complications of diabetes, specific  
31 instruction in utilizing and the use of specific over-the-counter  
32 glucose monitoring device that is approved by the FDA,  
33 including the cleaning and maintaining the accuracy of the  
34 client-specific glucose monitoring device, proper infection  
35 control practices related to the use of the device, including the  
36 handling and disposal of infectious waste, and recording accurate  
37 records of blood glucose readings in the client medical record.  
38 Records of blood glucose readings shall be reviewed by the  
39 facility registered nurse at least monthly.

1 (d) A signed written statement shall be prepared by the  
2 registered nurse that includes a certification of the direct care  
3 staff's competence to perform the testing and that identifies the  
4 clients residing at the facility for whom the certification is  
5 applicable. This certification shall be placed and maintained in  
6 the direct care staff's training record.

7 (e) The certification of competence to perform the blood  
8 glucose testing shall be procedure and client specific, and shall  
9 not be transferred between clients residing at the facility or other  
10 facilities.

11 (f) The registered nurse shall be responsible for monitoring  
12 and implementing the direct care staff blood glucose testing. At  
13 least once every three months, the registered nurse shall observe  
14 and confirm the direct care staff person's proficiency in  
15 performing the approved testing and shall update the  
16 certification. The proficiency determination shall include a  
17 determination by the registered nurse that the direct care staff  
18 remains proficient in demonstrating the specified method for  
19 cleaning and recalibration of the glucose monitoring device.

20 (g) A registered nurse shall provide continuing inservice  
21 education on the management of diabetes and the use of blood  
22 glucose monitoring devices not less than once per year and  
23 include documentation of the content of the training and the staff  
24 who were in attendance.

25 (h) A facility shall develop a written policy and procedure  
26 governing blood glucose testing for clients residing at the facility  
27 that shall include procedures for the training and competency  
28 assessment of direct care staff as required by this section.

29 (i) A facility shall have received a certificate of waiver  
30 pursuant to subdivision (n) of Section 483.460 of Title 42 of the  
31 Code of Federal Regulations prior to the implementation of blood  
32 glucose testing and shall retain a copy of the CLIA waiver for  
33 inspection by the department.

34 SEC. 3. No reimbursement is required by this act pursuant to  
35 Section 6 of Article XIII B of the California Constitution because  
36 the only costs that may be incurred by a local agency or school  
37 district will be incurred because this act creates a new crime or  
38 infraction, eliminates a crime or infraction, or changes the  
39 penalty for a crime or infraction, within the meaning of Section  
40 17556 of the Government Code, or changes the definition of a

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

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