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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 2. Health Facilities [1250 - 1339.59] (*Chapter 2 repealed and added by Stats. 1973, Ch. 1202.*)

ARTICLE 9. Training Programs in Skilled Nursing and Intermediate Care Facilities [1337 - 1338.6] (*Article 9 added by Stats. 1978, Ch. 351.*)

1337. (a) The Legislature finds that the quality of patient care in skilled nursing and intermediate care facilities is dependent upon the competence of the personnel who staff its facilities. The Legislature further finds that direct patient care in skilled nursing and intermediate care facilities is currently rendered largely by certified nurse assistants. To assure the availability of trained personnel in skilled nursing and intermediate care facilities, the Legislature intends that all such facilities in this state participate in approved training programs established under this article. This article shall not apply to intermediate care facilities/developmentally disabled habilitative, intermediate care facility/developmentally disabled-nursing, and intermediate care facility/developmentally disabled-continuous nursing which have staff training programs approved by the State Department of Developmental Services, general acute care hospitals, acute psychiatric hospitals, or special hospitals.

(b) The requirement that certified nurse assistants obtain a criminal record clearance upon certification and biannually thereafter shall apply regardless of the setting in which the certified nurse assistant is employed.

(c) The department shall develop procedures to ensure that certified nurse assistants employed by intermediate care facilities for the developmentally disabled/habilitative and intermediate care facilities for the developmentally disabled/nursing shall not be required to obtain multiple criminal record clearances.

(d) For the purpose of this article:

(1) "Nurse assistant" means any unlicensed aide, assistant, or orderly, who performs nursing services directed at the safety, comfort, personal hygiene, or protection of patients in a skilled nursing or intermediate care facility.

(2) "Approved training program" means a program for the training of nurse assistants that meets the criteria established and approved under this chapter.

(3) "Certified nurse assistant" means any person who holds himself or herself out as a certified nurse assistant and who, for compensation, performs basic patient care services directed at the safety, comfort, personal hygiene, and protection of patients, and is certified as having completed the requirements of this article. These services shall not include any services which may only be performed by a licensed person and otherwise shall be performed under the supervision of a registered nurse, as defined in Section 2725 of the Business and Professions Code, or a licensed vocational nurse, as defined in Section 2859 of the Business and Professions Code.

(4) "State department" means the State Department of Public Health.

(Amended by Stats. 2009, 4th Ex. Sess., Ch. 5, Sec. 8. Effective July 28, 2009.)

1337.1. A skilled nursing facility or intermediate care facility shall adopt an approved training program that meets standards established by the department. The approved training program shall consist of at least all of the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing facilities or intermediate care facilities.

(b) (1) A precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and resident abuse prevention, recognition, and reporting pursuant to subdivision (e). The 60 classroom hours of training may be conducted within a skilled nursing facility or intermediate care facility or in

an educational institution or agency. A skilled nursing facility or intermediate care facility may conduct the 60 classroom hours of training in an online or distance learning course format, as approved by the department.

(2) In addition to the 60 classroom hours of training required under paragraph (1), the precertification training program shall consist of at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of nurse training or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training shall address the special needs of persons with developmental and mental disorders, including intellectual disability, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness. At least two hours of the 60 hours of classroom training shall address the special needs of persons with Alzheimer's disease and related dementias.

(4) At least four hours of the 100 hours of supervised clinical training shall address the special needs of persons with developmental and mental disorders, including intellectual disability, cerebral palsy, epilepsy, Alzheimer's disease and related dementias, and Parkinson's disease.

(5) In a precertification training program subject to this subdivision, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing facility or intermediate care facility.

(6) This subdivision does not apply to a skilled nursing facility or intermediate care facility that demonstrates to the department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to ensure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(e) (1) The approved training program shall include, within the 60 hours of classroom training, a minimum of six hours of instruction on preventing, recognizing, and reporting instances of resident abuse utilizing those courses developed pursuant to Section 13823.93 of the Penal Code, and a minimum of one hour of instruction on preventing, recognizing, and reporting residents' rights violations.

(2) A minimum of four hours of instruction on preventing, recognizing, and reporting instances of resident abuse, including instruction on preventing, recognizing, and reporting residents' rights violations, shall be included within the total minimum hours of continuing education or in-service training required and in effect for certified nurse assistants.

(Amended by Stats. 2019, Ch. 497, Sec. 151. (AB 991) Effective January 1, 2020.)

1337.15. (a) A person who provides instruction or training, at a skilled nursing facility or intermediate care facility or in an educational institution, as part of a certified nurse assistant precertification training program described in Section 1337.1 or 1337.3 may be any licensed vocational nurse or registered nurse with no less than two years of nursing experience, of which no less than one year is in providing care and services to chronically ill or elderly patients in an acute care hospital, skilled nursing facility, intermediate care facility, home care, hospice care, or other long-term care setting.

(b) Notwithstanding any other law, a person described in subdivision (a) shall not be required to hold a teaching credential to provide instruction as part of a certified nurse assistant precertification training program described in Section 1337.1 or 1337.3.

(Added by Stats. 2018, Ch. 769, Sec. 3. (AB 2850) Effective January 1, 2019.)

1337.16. (a) An online or distance learning nurse assistant training program shall comply with all of the following requirements:

(1) Provide online instruction in which the trainees and the approved instructor are online at the same or similar times and which allows them to use real-time collaborative software that combines audio, video, file sharing, or any other forms of approved interaction and communication.

(2) Require the use of a personal identification number or personal identification information that confirms the identity of the trainees and instructors, including, but not limited to, having trainees sign an affidavit attesting under penalty of perjury to their identity while completing the program.

(3) Provide safeguards to protect personal information.

(4) Include policies and procedures to ensure that instructors are accessible to trainees outside of the normal instruction times.

(5) Include policies and procedures for equipment failures, student absences, and completing assignments past original deadlines.

(6) Provide a clear explanation on its Internet Web site of all technology requirements to participate and complete the program.

(7) Provide the department with statistics about the performance of trainees in the program, including, but not limited to, exam pass rate and the rate at which trainees repeat each module of the program, and any other information requested by the department regarding trainee participation in and completion of the program.

(b) In addition to the requirements set forth in subdivision (a), an online or distance learning nurse assistant training program shall meet the same standards as a traditional, classroom-based program, and comply with any other standard established by the department for online or distance learning nurse assistant training programs. Notwithstanding any other law, the department may, without taking any regulatory actions 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 section by means of an All Facilities Letter (AFL) or similar instruction.

(c) As a condition of approval by the department, an online or distance learning nurse assistant training program shall provide the department with access rights to the program for the purposes of verifying that program complies with all requirements and allowing the department to monitor online or distance learning sessions.

(Added by Stats. 2018, Ch. 769, Sec. 4. (AB 2850) Effective January 1, 2019.)

1337.2. (a) An applicant for certification as a certified nurse assistant shall comply with each of the following:

(1) Be at least 16 years of age.

(2) Have successfully completed a training program approved by the department, which includes an examination to test the applicant's knowledge and skills related to basic patient care services.

(3) Obtain a criminal record clearance pursuant to Section 1338.5.

(b) (1) No later than July 1, 2019, the department shall require the applicant to provide either the individual taxpayer identification number or social security number for purposes of applying for a certificate or the renewal of a certificate.

(2) If the department utilizes a national examination to issue a certificate, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of the department may release an individual's taxpayer identification number or social security number to an examination or certifying entity, only for the purpose of verification of certification or examination status.

(3) The individual taxpayer identification or the social security number shall serve to establish the identification of persons affected by state tax laws and for purposes of establishing compliance with subsection (a) of Section 666 of Title 42 of the United States Code, Section 60.15 of Title 45 of the Code of Federal Regulations, Section 17520 of the Family Code, and Section 11105 of the Penal Code, and to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(4) The department shall not do either of the following:

(A) Require an applicant to disclose citizenship status or immigration status for purposes of the application or renewal of a certificate.

(B) Deny licensure to an otherwise qualified and eligible applicant based solely on his or her citizenship status or immigration status.

(c) The state department may establish procedures for issuing certificates which recognize certification programs in other states and countries.

(d) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate competency examination, the state department may issue a certificate to any applicant who possesses a valid state license as either a licensed vocational nurse or a registered nurse issued by any other state or foreign country, and who, in the opinion of the state department, has the qualifications specified in this article.

(e) Upon written application, criminal record clearance pursuant to Section 1338.5, and documentation of passing an appropriate examination, the state department may issue a certificate to any applicant who has completed the fundamentals of nursing courses in a school for registered nurses, approved by the Board of Registered Nursing, or in a school for licensed vocational nurses, approved by the Board of Vocational Nurse and Psychiatric Technician Examiners, which are substantially equivalent to the certification training program specified in this article.

(f) Every person certified as a nurse assistant under this article may be known as a "certified nurse assistant" and may place the letters CNA after his or her name when working in a licensed health facility. An individual working independently, providing personal care services, may not advertise or represent himself or herself as a certified nurse assistant.

(g) Any person holding a nurse assistant certificate issued by the state department prior to January 1, 1988, may continue to hold himself or herself out as a certified nurse assistant until January 1, 1991. Thereafter, it shall be unlawful for any person not certified under this article to hold himself or herself out to be a certified nurse assistant. Any person willfully making any false representation as being a certified nurse assistant is guilty of a misdemeanor.

(h) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both such fine and imprisonment.

(Amended by Stats. 2018, Ch. 838, Sec. 8. (SB 695) Effective January 1, 2019.)

1337.3. (a) (1) The department shall prepare and maintain a list of approved training programs for nurse assistant certification. The list shall include training programs conducted by skilled nursing facilities or intermediate care facilities, as well as local agencies and education programs. In addition, the list shall include information on whether a training center is currently training nurse assistants, their competency test pass rates, and the number of nurse assistants they have trained. Clinical portions of the training programs may be obtained as on-the-job training, supervised by a qualified director of staff development or licensed nurse.

(2) No later than December 31, 2025, the department shall solicit applications from vendors to provide the written and oral competency examination of a nurse assistant certification examination in Spanish.

(3) No later than July 1, 2029, the department shall publish on its internet website, and update at least twice annually, a list including all of the following:

(A) All approved training programs, including skilled nursing facilities, intermediate care facilities, and local agencies and education programs.

(B) Whether each training center is currently training nurse assistants.

(C) The competency test pass rates for the previous two years, aggregated by the language in which the test was taken.

(D) The number of nurse assistants trained in the previous two years.

(b) It shall be the duty of the department to inspect a representative sample of training programs. The department shall protect consumers and students in any training program against fraud, misrepresentation, or other practices that may result in improper or excessive payment of funds paid for training programs. In evaluating a training center's training program, the department shall examine each training center's trainees' competency test passage rate, and require each program to maintain an average 60 percent test score passage rate to maintain its participation in the program. The average test score passage rate shall be calculated over a two-year period. If the department determines that a training program is not complying with regulations or is not meeting the competency passage rate requirements, notice thereof in writing shall be immediately given to the program. If the program has not been brought into compliance within a reasonable time, the program may be removed from the approved list and notice thereof in writing given to it. Programs removed under this article shall be afforded an opportunity to request reinstatement of program approval at any time. The department's district offices shall inspect facility-based centers as part of their annual survey.

(c) Notwithstanding Section 1337.1, the approved training program shall consist of at least the following:

(1) A 16-hour orientation program to be given to newly employed nurse assistants prior to providing direct patient care, and consistent with federal training requirements for facilities participating in the Medicare or Medicaid programs.

(2) (A) A precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and elder abuse recognition and reporting pursuant to subdivision (e) of Section 1337.1. The 60 classroom hours of training may be conducted within a skilled nursing facility, an intermediate care facility, or an educational institution or agency. A health facility, educational institution, or local agency may conduct the 60 classroom hours of training in an online or distance learning course format, as approved by the department.

(B) In addition to the 60 classroom hours of training required under subparagraph (A), the precertification program shall also consist of 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant under the supervision of either the director of staff development or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including intellectual disability, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(d) The department, in consultation with the State Department of Education and other appropriate organizations, shall develop criteria for approving training programs, that includes program content for orientation, training, inservice and the examination for testing knowledge and skills related to basic patient care services and shall develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants. This group shall also recommend, and the department shall adopt, regulation changes necessary to provide for patient care when facilities utilize noncertified nurse assistants who are performing direct patient care. The requirements of this subdivision shall be established by January 1, 1989.

(e) On or before January 1, 2004, the department, in consultation with the State Department of Education, the American Red Cross, and other appropriate organizations, shall do the following:

(1) Review the current examination for approved training programs for certified nurse assistants to ensure the accurate assessment of whether a nurse assistant has obtained the required knowledge and skills related to basic patient care services.

(2) Develop a plan that identifies and encourages career ladder opportunities for certified nurse assistants, including the application of on-the-job postcertification hours to educational credits.

(f) A skilled nursing facility or intermediate care facility shall determine the number of specific clinical hours within each module identified by the department required to meet the requirements of subdivision (d), subject to subdivisions (b) and (c). The facility shall consider the specific hours recommended by the state department when adopting the precertification training program required by this chapter.

(g) This article shall not apply to a program conducted by any church or denomination for the purpose of training the adherents of the church or denomination in the care of the sick in accordance with its religious tenets.

(h) The Chancellor of the California Community Colleges shall provide to the department a standard process for approval of college credit. The department shall make this information available to all training programs in the state.

(i) An online or distance learning nurse assistant training program shall meet the same standards as a traditional, classroom-based program.

(j) An online nurse assistant training program shall contract with a licensed skilled nursing facility or intermediate care facility for the purpose of coordinating and completing the clinical portion of the nurse assistant training program.

(Amended by Stats. 2024, Ch. 380, Sec. 1. (AB 2131) Effective January 1, 2025.)

1337.4. Every skilled nursing or intermediate care facility shall designate a licensed nurse as a director of staff development who shall be responsible for the management of the approved training program.

(Amended by Stats. 1988, Ch. 825, Sec. 3.)

1337.5. (a) Approved training programs shall be conducted during the normal working hours of the nurse assistant unless the nurse assistant receives at least the normal hourly wage for any additional time spent in the training program.

(b) On or after September 1, 1978, only the following persons may be employed by a skilled nursing facility or intermediate care facility as a nurse assistant:

(1) A certified nurse assistant.

(2) A nurse assistant hired on a temporary basis who has been employed less than a maximum total of three months in skilled nursing facilities or intermediate care facilities, including the current period of employment.

(3) A nurse assistant who, within three months of the date of employment, is enrolled in an approved certification training program which requires completion not more than six months from the date of employment; provided, that the employing facility may apply to the state department for an extension of the deadline under this paragraph for enrollment in a certification training program if the facility has a contract to obtain the training from an educational institution, approved by the facility, which operates on a semester basis and cannot enroll nursing assistant students except at semester intervals; and the delayed enrollment will not postpone completion of certification training beyond nine months from the date of employment.

(Added by renumbering Section 1337.9 by Stats. 1987, Ch. 1177, Sec. 11.)

1337.6. (a) Certificates issued under this article shall be renewed every two years and renewal shall be conditional upon the occurrence of all of the following:

(1) The certificate holder submitting documentation of completion of 48 hours of in-service training every two years obtained through an approved training program or taught by a director of staff development for a licensed skilled nursing or intermediate care facility that has been approved by the department, or by individuals or programs approved by the department. At least 12 of the 48 hours of in-service training shall be completed in each of the two years. Twenty-four of the 48 hours of in-service training may be obtained through an online computer training program approved by the Licensing and Certification Division of the department.

(2) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion where the participants receive feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(iii) A final screen displaying a printable statement, to be signed by the participant, certifying that the identified participant completed the course. The vendor shall obtain a copy of the final screen statement with the original signature of the participant prior to the issuance of a certificate of completion. The signed statement of completion shall be maintained by the vendor for a period of three years and shall be made available to the department upon demand.

(B) The department may approve online programs for continuing education that do not meet the requirements of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the other requirements of this section.

(3) The certificate holder obtaining a criminal record clearance.

(b) Certificates issued under this article shall expire on the certificate holder's birthday.

(c) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a form provided by the department and submit documentation of the required in-service training.

(d) The department shall give written notice to a certificate holder 90 days in advance of the renewal date and, 90 days in advance of the expiration of the fourth year that a renewal application has not been submitted, and shall give written notice informing the certificate holder, in general terms, of the provisions of this article. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within two years after its expiration on the filing of an application for renewal on a form prescribed by the department and documentation of the required in-service education.

Renewal under this article shall be effective on the date on which the application is filed. If so renewed, the certificate shall continue in effect until the date provided for in this article, when it shall expire if it is not again renewed.

(f) If a certified nurse assistant applies for renewal more than two years after the expiration, the certified nurse assistant shall complete an approved 75-hour competency evaluation training program and competency evaluation program. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and, until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

(g) A revoked certificate is subject to expiration as provided in this article, but it cannot be renewed.

(h) Except as provided in subdivision (i), a certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification program unless deemed otherwise by the department if both of the following conditions are met:

(1) No fact, circumstance, or condition exists that, if the certificate was issued, would justify its revocation or suspension.

(2) The person takes and passes any examination that may be required of an applicant for a new certificate at that time, that shall be given by an approved provider of a certification training program.

(i) A certified nurse assistant whose certificate has expired after two years may have his or her certificate renewed if he or she completes 75 hours in an approved competency evaluation training program, passes a competency test, and obtains a criminal background clearance prior to the renewal. The department shall develop a training program for these previously certified individuals.

(j) Certificate holders shall notify the department within 60 days of any change of address. Any notice sent by the department shall be effective if mailed to the current address filed with the department.

(k) Certificate holders that have been certified as both nurse assistants pursuant to this article and home health aides pursuant to Chapter 8 (commencing with Section 1725) of Division 2 shall renew their certificates at the same time on one application.

(Amended by Stats. 2006, Ch. 74, Sec. 12. Effective July 12, 2006.)

1337.8. (a) The state department shall investigate complaints concerning misconduct by certified nurse assistants and may take disciplinary action pursuant to Section 1337.9.

(b) The state department shall maintain a registry that includes the certification status of all certified nurse assistants, including the status of any proposed or completed disciplinary actions.

(c) Long-term health care facilities, as defined in Section 1418, that hire certified nursing assistants shall consult the state department's registry prior to hiring these individuals or placing them in direct contact with patients.

(Repealed and added by Stats. 1994, Ch. 1246, Sec. 6. Effective January 1, 1995.)

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

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

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

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

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

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

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

(3) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000), or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the certified nurse assistant, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

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

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

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

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

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

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

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

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

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

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

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

(6) Employment history and current employer recommendations.

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

(8) An order from a superior court pursuant to Section 1203.4, 1203.4a, or 1203.41 of the Penal Code.

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

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

(d) When the state department determines that a certificate shall be suspended, the state department shall specify the period of actual suspension. The state department may stay the suspension and place the certificate holder on probation with specified conditions for a period not to exceed two years. If the state department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the state department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters, including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the state department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere shall be deemed a conviction within the meaning of this article. The state department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the state department shall notify the applicant or certificate holder in writing by certified mail of all of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination.

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

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

(h) The state department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (d). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the state department shall 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 certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, he or she shall be reinstated by the state department and shall be entitled to resume practice unless it is established to the satisfaction of the state department that the person has practiced as a certified nurse assistant in this state during the term of suspension. In this event, the state department shall revoke the person's certificate.

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

(Amended by Stats. 2014, Ch. 847, Sec. 1. (SB 1384) Effective January 1, 2015.)

1338. (a) The state department shall, through the Medi-Cal program, provide rate adjustments to skilled nursing or intermediate care facilities for the portion of additional costs attributable to the requirements of Sections 1337.1, 1337. 3, and 1337.5 with respect to Medi-Cal patients. The portion of such additional costs attributable to Medi-Cal shall be the same as the ratio of Medi-Cal patients to total patients in the facility. Such rate adjustments shall also include provisions for an increase in wages for nurse assistants who receive certificates pursuant to Section 1337.3 and a continuing wage differential between certified and uncertified nurse assistants thereafter.

(b) On and after September 1, 1978, the rate adjustments specified in subdivision (a) shall not be paid to any skilled nursing facility or intermediate care facility which has not received approval of the state department for an approved training program that meets the standards and requirements of Section 1337.1, unless the facility has had an application for such approval on file with the state department on or before August 1, 1978, which has not been approved or rejected. However, payment of such rate adjustments to facilities with applications on file with the state department on or before August 1, 1978, which have not received action by the state department, shall cease upon rejection of the application.

Within one week after the effective date of this article the state department shall notify all skilled nursing facilities or intermediate care facilities, which have not filed an application with the state department for approval of an approved training program, of the requirements of this subdivision.

(c) Facilities granted an exemption by the state department prior to the effective date of this section pursuant to subsection (i) of Section 51510 or subsection (h) of Section 51511 of Title 22 of the California Administrative Code shall be entitled to continuance of such exemption unless and until the facility ceases to meet any of the eligibility criteria which are specified in such regulations on the effective date of this section.

(Added by Stats. 1978, Ch. 351.)

1338.1. The state department shall assign sufficient qualified employees to supervise and evaluate training programs required by this article.

(Added by Stats. 1978, Ch. 351.)

1338.2. (a) The state department shall convene a work group to develop recommendations to the department on ways to expand the availability of training programs and certified nurse assistants available for hire in the state. The work group shall investigate, but not be limited to investigating, all of the following:

- (1) Work-based learning programs for students in the regional occupational programs in the state.
- (2) Utilization of apprenticeships.
- (3) Promotional programs for training centers and certified nurse assistant jobs.
- (4) Utilization of expanded data resources.

(b) The recommendations required by subdivision (a) shall be submitted by the work group to the state department on or before July 1, 2001.

(c) The work group shall consist of, but not be limited to, all of the following:

- (1) A representative from the State Department of Education.
- (2) Nurse-Assistant training center representatives.
- (3) A director of staff development for a long-term health care facility.
- (4) A publisher of nurse assistant training and competency curricula.
- (5) An industry representative.

- (6) A currently certified nurse assistant.
- (7) A consumer representative.
- (8) A labor union representative.
- (9) A representative of the American Red Cross.
- (10) The Chancellor of the California Community Colleges.
- (11) A representative from the Office of Statewide Health Planning and Development.
- (12) A registered nurse and a licensed vocational nurse, both of whom are currently providing long-term care nursing services.

(Added by Stats. 1999, Ch. 719, Sec. 5. Effective January 1, 2000.)

1338.3. The State Director of Health Services may adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 3 of the Government Code to implement this article. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted by the State Department of Health Services in order to implement this article shall not be subject to the review and approval of the Office of Administrative Law. These regulations shall become effective immediately upon filing with the Secretary of State.

(Repealed and added by Stats. 1987, Ch. 1177, Sec. 13.)

1338.5. (a) (1) (A) A criminal record clearance shall be conducted for all nurse assistants by the submission of fingerprint images and related information to the state department for processing at the Department of Justice. 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 subparagraph (C) of paragraph (2) of subdivision (a) of Section 1337.9, as that section read on January 1, 2014, 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 nurse assistant trainees or newly hired nurse assistants 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 offender record information search response information 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. The fee to cover the processing costs of the Department of Justice, not including the costs associated with capturing or transmitting the fingerprint images and related information, shall not exceed thirty-two dollars (\$32) per submission.

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

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

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

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

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

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

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

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

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

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

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

(Amended by Stats. 2014, Ch. 847, Sec. 2. (SB 1384) Effective January 1, 2015.)

1338.6. (a) For purposes of Section 668.14 of Title 34 of the Code of Federal Regulations, the required minimum number of hours, or the equivalent, established in this state for educational or training programs for certification training programs for nurse assistants, pursuant to Section 1337.1, or home health aides, pursuant to Section 1736.1, approved by the department shall be equal to the number of clock or credit hours, or the equivalent, that is approved for each program by the department as of the effective date of this section.

(b) An education and training program approved by the department that submits an application on or after the effective date of this section shall not exceed the highest of the minimum number of hours required by federal or state statute or regulation.

(c) This section shall remain in effect only until January 1, 2027, and as of that date is repealed.

(Added by Stats. 2024, Ch. 41, Sec. 52. (SB 164) Effective June 29, 2024. Repealed as of January 1, 2027, by its own provisions.)