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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 3.3. California Adult Day Health Care Act [1570 - 1596.5] (*Heading of Chapter 3.3 renumbered from Chapter 3.2 by Stats. 1988, Ch. 160, Sec. 92.*)

ARTICLE 3. Licensure [1575 - 1579] (*Article 3 added by Stats. 1977, Ch. 1066.*)

1575. No person or public agency within this state shall provide adult day health care in this state, without first obtaining a license therefor as provided in this chapter.

(*Added by Stats. 1977, Ch. 1066.*)

1575.1. (a) (1) Each applicant for a license to operate an adult day health care center shall disclose to the department the name and business address of each general partner if the applicant is a partnership, or each director and officer if the applicant is a corporation, and each person having a beneficial ownership or control interest of 5 percent or more in the applicant corporation, company, or partnership.

(2) If any person described in paragraph (1) has served or currently serves as an administrator, general partner, trustee or trust applicant, sole proprietor of any applicant or licensee who is a sole proprietor, executor, or corporate officer or director of, or has held a beneficial ownership or control interest of 5 percent or more in, any health facility as defined in Section 1250, adult day health care center, residential care facility for the elderly, home health agency, clinic, or community care facility licensed pursuant to Chapter 3 (commencing with Section 1500), the applicant shall disclose the relationship to the department, including the name and current or last address of the health facility, adult day health care center, residential care facility for the elderly, home health agency, clinic, or community care facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) (A) If the center is operated by, or proposed to be operated in whole or in part under, a management contract, the names and addresses of any person or organization, or both, having an ownership or control interest of 5 percent or more in the management company shall be disclosed to the department.

(B) This paragraph shall not apply if the management company has submitted an application for licensure with the department and has complied with paragraph (1).

(4) If the applicant or licensee is a subsidiary of another organization, the information shall include the names and addresses of the parent organization of the subsidiary and the names and addresses of any officer or director of the parent organization.

(b) The information required by subdivision (a) shall be provided to the department upon initial application for licensure, and upon payment of the annual renewal licensure fee.

(c) Failure to comply with subdivision (a) or (b) may result in action to revoke or deny a license. The information required by subdivisions (a) and (b) shall be made available to the public upon request, and shall be included in the public file of the center.

(d) On or after January 1, 2002, no person may acquire a beneficial or control interest of 5 percent or more in any corporation, company, or partnership licensed to operate an adult day health care center or in any management company under contract with a licensee of an adult day health care center, nor may any person become an officer or director of, or a general partner in, a corporation, partnership, or management company of this type without the prior written approval of the department. Each application for departmental approval pursuant to this subdivision shall include the information specified in subdivision (a) with regard to the person for whom the application is made.

(e) The department may deny approval of a license application or of an application for approval under subdivision (d) or revoke a license if a person named in the application, as required by this section, was suspended as a Medi-Cal provider or excluded as a medicaid or Medicare provider, was an officer, director, general partner, or owner of a 5 percent or greater beneficial or control

interest in a licensee of, or in a management company under contract with a licensee of, a health facility, community care facility, residential care facility for the elderly, home health agency, clinic, or adult day health care center at a time when one or more violations of law were committed therein that resulted in suspension or revocation of its license, or at a time when a court-ordered receiver was appointed pursuant to Section 1327, or at a time when a final medicaid decertification action was taken under federal law. However, the prior suspension, revocation, or court-ordered receivership of a license shall not be grounds for denial of the application if the applicant shows to the satisfaction of the department that both of the following conditions exist:

(1) The person in question took every reasonably available action to prevent the violation or violations that resulted in the disciplinary action.

(2) The person in question took every reasonably available action to correct the violation or violations once he or she knew, or with the exercise of reasonable diligence should have known, of the violation or violations.

(f) No application shall be denied pursuant to this section until the department provides the applicant with notice in writing of grounds for the proposed denial of application and affords the applicant an opportunity to submit additional documentary evidence in opposition to the proposed denial.

(g) This section shall not apply to a bank, trust company, financial institution, title insurer, controlled escrow company, or underwritten title company to which a license is issued in a fiduciary capacity.

(Added by Stats. 2001, Ch. 681, Sec. 5. Effective January 1, 2002.)

1575.2. An applicant for initial licensure as an adult day health care center shall file with the department, pursuant to its regulations, an application on forms furnished by the department, that shall include, but not be limited to, the following:

(a) Evidence satisfactory to the department that the applicant, its directors, officers, and the person designated to manage the day-to-day affairs of the proposed adult day health care center are of reputable and responsible character.

(b) Evidence satisfactory to the department of the ability of the applicant to comply with the provisions of this chapter and of rules and regulations adopted pursuant thereto by the department.

(c) Evidence satisfactory to the department that the applicant for a license to operate an adult day health care center possesses financial resources sufficient to operate each licensed center for a period of not less than 30 calendar days and that these resources are identified for adult day health care center operations. The financial reserve requirements may be met, in whole or in part, by a line of credit or a loan.

(d) Any other information as may be required by the department for the proper administration and enforcement of this chapter.

(Amended by Stats. 2001, Ch. 681, Sec. 6. Effective January 1, 2002.)

1575.3. (a) If an adult day health care center or an applicant for a license has not been previously licensed, the department may only issue a provisional license to the center as provided in this section.

(b) A provisional license to operate an adult day health care center shall expire one year from the date of issuance, or at an earlier time as determined by the department at the time of issuance.

(c) Within 30 days prior to the expiration of a provisional license, the department shall give the adult day health care center a full and complete inspection, and, if the adult day health care center meets all applicable requirements for licensure, a regular license shall be issued. If the adult day health care center does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the department, the initial provisional license shall be renewed for six months.

(d) If the department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the department determines upon its inspection made within 30 days prior to the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate an adult day health care center has been denied a license, the applicant may contest the denial by requesting an adjudicative hearing. The proceedings to review the denial shall be conducted pursuant to Section 100171.

(f) The department shall not apply less stringent criteria when issuing a provisional license pursuant to this section than it applies when issuing a regular license.

(Amended by Stats. 2000, Ch. 869, Sec. 2. Effective January 1, 2001.)

1575.4. (a) The department may issue a provisional license to an adult day health care center if all of the following conditions are met:

(1) The adult day health care center and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(2) No violation of this chapter or regulations adopted under this chapter exists in the adult day health care center that jeopardizes the health or safety of patients.

(3) The applicant has adopted a plan for correction of any existing violations that is satisfactory to the department.

(b) A provisional license issued under this section shall expire not later than one year after the date of issuance, or at an earlier time as determined by the department at the time of issuance, and may not be renewed.

(c) At the expiration of the provisional license period, the department shall assess the adult day health care center's full compliance with licensure requirements. If the adult day health care center meets all applicable requirements for licensure, the department shall issue a regular license.

(d) The department shall not apply less stringent criteria when issuing a provisional license pursuant to this section than it applies when issuing a regular license.

(Amended by Stats. 2000, Ch. 869, Sec. 3. Effective January 1, 2001.)

1575.45. (a) If the department determines that the adult day health care center operating under a provisional license has serious deficiencies that pose a risk to the health and safety of the participants, the department may immediately take any of the following actions, including, but not limited to:

(1) Require a plan of correction.

(2) Limit participant enrollment.

(3) Prohibit new participant enrollment.

(b) When appropriate, the California Department of Aging and the department shall coordinate an action or actions to ensure consistency and uniformity.

(c) The licensee shall have the right to dispute an action or actions taken pursuant to paragraphs (2) and (3) of subdivision (a). The department shall accept, consider, and resolve disputes filed pursuant to this subdivision by a licensee in a timely manner.

(d) The director shall ensure that public records accurately reflect the current status of any action or actions taken pursuant to this section, including any resolution of disputes.

(Added by Stats. 2000, Ch. 869, Sec. 4. Effective January 1, 2001.)

1575.6. (a) As a prudent business practice, a licensee shall maintain sufficient financial resources for adult day health care operations to enable each licensed facility to operate for 30 calendar days.

(b) The financial resource requirement contained in subdivision (a) may be met, in whole or in part, by a line of credit, grant, or loan.

(c) Whenever a licensee fails to meet the financial resource requirement contained in subdivision (a) for a period of 10 working days, the licensee shall notify the department of that fact within 48 hours.

(Added by Stats. 2001, Ch. 681, Sec. 6.5. Effective January 1, 2002.)

1575.7. (a) (1) The State Department of Public Health, prior to issuing a new license, shall obtain a criminal record clearance for the administrator, program director, and fiscal officer of the proposed adult day health care center. The department shall obtain the criminal record clearances each time these positions are to be filled. When the conditions set forth in paragraph (3) of subdivision (a) of Section 1265.5, subparagraph (A) of paragraph (1) of subdivision (a) of Section 1338.5, and paragraph (1) of subdivision (a) of Section 1736.6 are met, the licensing and certification program shall issue an All Facilities Letter (AFL) informing facility licensees. After the AFL is issued, facilities shall not allow newly hired administrators, program directors, and fiscal officers 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 from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required.

(2) The criminal record clearance shall require the administrator, program director, and fiscal officer to submit electronic fingerprint images to the Department of Justice.

(3) 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.

(b) A past conviction of any crime, especially any crime involving misuse of funds or involving physical abuse shall, in the discretion of the department, be grounds for denial of the license, and shall be grounds to prohibit the person from providing services in an adult day health care center.

(c) Suspension of the applicant from the Medi-Cal program or prior violations of statutory provisions or regulations relating to licensure of a health facility, community care facility, or clinic shall also be grounds for a denial of licensure, where determined by the state department to indicate a substantial probability that the applicant will not comply with this chapter and regulations adopted hereunder.

(d) No applicant which is licensed as a health facility, community care facility, or clinic may be issued a license for an adult day health care center while there exists a subsisting, uncorrected violation of the statutes or regulations relating to such licensure.

(e) The 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.

(f) Notwithstanding any other provision of law, the department may 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 his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

(Amended by Stats. 2007, Ch. 483, Sec. 17. Effective January 1, 2008.)

1575.9. Each application for a new license or renewal submitted to the state department shall be accompanied by an annual Licensing and Certification Program fee set in accordance with Section 1266.

(Amended by Stats. 2006, Ch. 74, Sec. 17. Effective July 12, 2006.)

1576. The director shall approve an application for a new license if no substantial basis for denial of the license exists under Section 1575.7, and the applicant has met all the requirements for licensure set forth in this chapter and regulations adopted hereunder. Otherwise the director shall deny issuance of the license.

(Amended by Stats. 2003, 1st Ex. Sess., Ch. 7, Sec. 10. Effective May 5, 2003.)

1576.2. Each license issued or renewed pursuant to this chapter shall not be transferable and the initial license shall expire 12 months from the date of its issuance. The director shall be given the discretion to approve applications for relicensure for a period of up to 24 months. Application for annual renewal of a license, accompanied by the required fee, shall be filed with the department not less than 30 days prior to the expiration date. Failure to submit a renewal application prior to that date shall result in expiration of the license.

(Amended by Stats. 2011, Ch. 119, Sec. 4. (SB 91) Effective July 25, 2011.)

1576.5. Immediately upon the denial of any application for issuance or renewal of a license, the state department shall notify the applicant in writing. Not later than 10 days after the state department mails the notice, the applicant may submit a written petition for a hearing to the state department. Upon receipt by the state department of the petition in proper form, such petition shall be set for hearing. The hearing shall be held within 60 calendar days of receipt of the petition. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department has all the powers granted therein.

(Added by Stats. 1977, Ch. 1066.)

1578. A provider may share space with another licensed health facility, community care facility, senior center, or other appropriate structure, upon the approval of the department, based upon a determination of all of the following:

(a) The use of the shared space does not jeopardize the welfare of the participant or other clients.

(b) The shared use does not exceed occupancy capacity established for fire safety.

(c) The space used by the adult day health care center is not essential to meet the other program's licensing requirements.

(d) Each entity schedules services and activities at separate times. This subdivision shall not apply to space used for meals or for space used by another licensed adult day services program.

For purposes of this section, "shared space" means the mutual use of exits and entrances, offices, hallways, bathrooms, treatment rooms, and dining rooms by an adult day health care center and another program.

(Added by Stats. 2001, Ch. 681, Sec. 8. Effective January 1, 2002.)

1578.1. (a) Notwithstanding subdivisions (b) and (c) of Section 1570.7 or any other provision of law, if an adult day health care center licensee also provides adult day program services, the adult day health care license shall be the only license required to provide these additional services. Costs shall be allocated among the programs in accordance with generally accepted accounting practices.

(b) A provider choosing to add an adult day program within the adult day health care facility shall submit a notice to the department on such forms as may be required.

(c) Review and approval of the application to provide a dual program shall not require an on-site inspection.

(d) The maximum licensed capacity shall be determined by the local fire authority and shall include limits for ambulatory and nonambulatory participants.

(Amended by Stats. 2011, Ch. 119, Sec. 5. (SB 91) Effective July 25, 2011.)

1579. (a) A rural alternative adult day health care center shall operate its programs a minimum of three days weekly, unless the program can justify, to the satisfaction of the department, fewer days of operation due to space, staff, financial, or participant reasons.

(b) Any program desiring to become a parent center and develop a satellite program may be located in an area that does not meet the population requirements of the rural service areas and need not be in the same county as a satellite. The satellite shall be located in an area that meets the population requirements of a rural service area, and shall be located within a reasonable distance of the parent center to allow sharing of administration, services, and supervision. Parent and satellite centers shall be located in the same licensing district office.

(c) Notwithstanding any other provision of law, the administrator or program director of a parent center may, with the approval of the department, serve as the administrator or program director for up to three additional satellite sites.

(d) For the purposes of this section, the following definitions apply:

(1) "Parent" means a licensed and certified adult day health care center that establishes one or more satellites. A satellite may be in the county of the parent or a rural service area. The parent center shall provide administration, supervision, and, with the approval of the department, may share services and staff with one or more satellite centers. The parent center's license and certification shall cover adult day health care services at one or more satellites.

(2) "Rural alternative adult day health care center" means an adult day health care center located in a rural service area.

(3) "Rural service area" means an identified service area within one hour driving time from the center and with two or more of the following characteristics:

(A) Is more than one-half hour direct driving time from an urban area of 50,000 population or more.

(B) Has no other adult day health care center within one-half hour direct driving time.

(C) Has geographic or climatic barriers, including, but not limited to, snow, fog, ice, mountains, inadequate highways, or weather, that make transportation to another adult day health care center impractical.

(D) Is located in a county with an overall population density of less than 100 persons per square mile.

(E) Can demonstrate in the application for licensure that a shortage of qualified professionals exists in the county or identified service area.

(4) "Satellite" means an adult day health care center established in a rural service area by an existing licensed and certified adult day health care center for the purposes of extending rural adult day health care services to another location. A satellite shall be located close enough to the adult day health center so that administration, supervision, and services may be shared in a manner that does not compromise care and makes it unnecessary for the satellite to be separately licensed. Each satellite shall meet fire and life safety regulations and laws. Prior approval from the department is required before operating or opening a satellite.

