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Health and Welfare

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Health and Welfare

Health and Welfare; child abuse reporting

Penal Code §§11161.5, 11161.6, 11161.7 (repealed), Article 2.5 (commencing with §11165) (new).
SB 781 (Rains); STATS 1980, Ch 1071
Support: Department of Finance; Office of the Governor, Legal Affairs Unit.

Chapter 1071 clarifies existing law¹ by requiring specified medical, non-medical, and child care custodians² who have a reasonable suspicion³ based upon knowledge or an observation that a child is a victim of child abuse to report this information immediately by telephone⁴ and by written report within 36 hours⁵ to designated child protective agencies.⁶ Child abuse⁷ is defined to include sexual assault,⁸ willful neglect and cruelty,⁹ corporal punishment,¹⁰ abuse in out-of-home care,¹¹ and mental suffering.¹² Chapter 1071 also clarifies the duties and responsibilities of all persons required to report evidence of child abuse¹³ and provides that a standard of reasonable suspicion be used to determine when the filing of a report is necessary.¹⁴

Enactment of a reasonable suspicion standard will allow professionals to report any suspicious injuries to the appropriate agencies,¹⁵ even

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². See CAL. PENAL CODE §§11165(b), (i), (j) (definitions of medical and non-medical practitioners and child care custodians).
³. See id. §11166(a) (definition of reasonable suspicion).
⁴. See id. §11167(a) (information to be included in a telephone report).
⁵. See id. §11166(a).
⁶. See id. §11165(k) (definition of child protective agency). Compare id. §11166 with CAL. STATS. 1979, c. 373, §251, at —.
⁷. See CAL. PENAL CODE §11165(g) (definition of child abuse).
⁸. See id. §11165(b) (definition of sexual assault).
⁹. Id. §11165(o), (d) (definitions of neglect, willful cruelty, or unjustifiable punishment of a child).
¹⁰. Id. §11165(e) (definition of corporal punishment or injury).
¹¹. Id. §11165(f) (definition of abuse in out-of-home care).
¹². Id. §11166(b) (mental suffering). Compare id. §11166(b) with CAL. STATS. 1979, c. 373, §251, at —.
¹⁵. See CAL. PENAL CODE §11166. See generally id. §11165(k).

Selected 1980 California Legislation
if they do not actually observe the injuries,16 without fear of potential liability.17 In addition, if the requisite reasonable suspicion exists,18 a physician and surgeon or dentist, or their agents,19 will now be allowed to take skeletal X-rays of children without first obtaining parental consent, but only to aid in the diagnosis of possible cases of child abuse.20 Furthermore, during any court proceeding or administrative hearing, neither the physician-patient nor the psychotherapist-patient privilege applies to any information contained in a child abuse report.21

Chapter 1071 is designed to foster cooperation between agencies interested in preventing child abuse and other persons required to report, thereby insuring that through the collective judgment of the child protective agencies involved, the interest of the child will be protected without interfering with reasonable parental discipline and right of control.22 The legislature is encouraging the establishment of a 24-hour toll-free telephone number for reporting purposes,23 and is encouraging the county Board of Supervisors to appoint a committee including representatives from local agencies24 and other concerned citizens to set guidelines for sharing information and coordination of the investigation of child abuse cases.25 The county welfare department will immediately notify other agencies by telephone of reported incidents of child abuse and must send a written report within 36 hours of receiving information concerning the incident26 to the law enforcement agency having jurisdiction in the case,27 and may also give such information to an investigator from a child protective agency who is investigating the case.28 In addition, the country welfare department will perform an assessment of the family or household of each child named in a child abuse report.29 A communications network will be set up between child protective agencies:30 agencies that report incidents of child

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17. See CAL. PENAL CODE §11172(a).
18. See id. §11166(a).
19. See id. §11165(i), (j).
20. See id. §11171(a).
21. See id. §11171(b).
22. See CAL. STATS. 1980, c. 1071, §5, at —.
23. Id.
24. See id. (representatives from the county welfare, probation, and health departments, and local law enforcement agencies).
25. See id.
27. See id. §11166(f). See generally CAL. WELF. & INST. CODE §300 (persons subject to jurisdiction).
28. See CAL. PENAL CODE §11167(b).
29. See CAL. STATS. 1980, c. 1071, §5, at —.
abuse will be notified of any relevant information that the Department of Justice has regarding that incident,31 and upon completion of an agency investigation or upon final disposition of the matter, the investigating agency must inform the person who was required to report the results of the investigation and any action that has been taken in the case.32 Further, the California Department of Justice will (1) provide forms to be used by child protective agencies for reporting purposes,33 (2) compile an index of completed child abuse reports34 to be used by other agencies to aid in the prevention of child abuse,35 (3) enact guidelines and regulations for the investigation of child abuse in group homes and child care institutions,36 and (4) ensure that an investigation of alleged child abuse be conducted in accordance with these guidelines.37

Chapter 1071 maintains that reporting duties are individual in nature,38 and persons required to make a report of suspected child abuse will not incur any civil or criminal liability as a result of making the reports.39 This exception from liability also applies to any person properly directed to take photographs of child abuse victims.40 The identity of a person not required to make a report will be confidential if the report was filed,41 and he or she will not incur any liability unless, upon filing, the report was known to be false.42 However, misdemeanor penalties are provided if a person fails to report incidents of child abuse that he or she knew or reasonably should have known existed.43 When two or more persons who are required to report are present and have knowledge of the suspected instance of child abuse, they may agree that a single member of the team must carry out the reporting duties.44 By removing the potential liability for reporting suspected cases of

31. See id. §§11169, 11170.
32. See id.
33. See id. §§11168, 11169.
34. See id. §11170. See generally Willful Child Abuse, supra note 14, at 1817.
35. See CAL. PENAL CODE §§11166, 11168-11170.
36. See id. §11174.
37. Id.
38. See id. §11166(e).
40. See id. §§11167(a).
41. See id. §11167(c). See generally id. §11166(c).
43. See id. §§11172(b).
44. See id. §11166(d).
Health and Welfare

child abuse,\(^\text{45}\) the legislature apparently intends\(^\text{46}\) that professional reluctance to report child abuse can be overcome,\(^\text{47}\) thereby increasing the number of child abuse reports received from persons who in their professional capacity have contact with children who may be victims of child abuse.\(^\text{48}\)

**COMMENT**

In *Landeros v. Flood*,\(^\text{49}\) the California Supreme Court held that a private cause of action for negligence could be based on a violation of former Penal Code Section 11161.5.\(^\text{50}\) The court, however, declared that the statute was “ambiguous” with respect to the required state of mind of the violator.\(^\text{51}\) The court resolved this ambiguity in favor of the offender,\(^\text{52}\) enunciating a subjective standard\(^\text{53}\) under which liability could be imposed only if the trier of fact found that it *actually* appeared to the defendant that a child’s injuries were intentionally inflicted.\(^\text{54}\) This standard made more difficult the imposition of civil or criminal liability for failure to report apparent child abuse.\(^\text{55}\) A defendant could escape liability by claiming that he or she believed the injuries were accidental.\(^\text{56}\)

Chapter 1071 solves the problems of “vague standards”\(^\text{57}\) and obscure legislative intent\(^\text{58}\) in the former child abuse reporting provisions

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\(^{45}\) See id. \(\S\)148.5. Compare id. \(\S\)11172(a) with Cal. Stats. 1979, c. 373, \$251, at —.

\(^{46}\) See Cal. Welf. & Inst. Code \$18950. Compare Cal. Penal Code \$11172(a) with id. \$16509.


\(^{49}\) 17 Cal. 3d 399, 551 P.2d 389, 131 Cal. Rptr. 69 (1976).


\(^{51}\) See 17 Cal. 3d at 415, 551 P.2d at 397, 131 Cal. Rptr. at 77.

\(^{52}\) See id. at 415, 551 P.2d at 396, 131 Cal. Rptr. at 76.

\(^{53}\) See *Willful Child Abuse*, supra note 14, at 1814.

\(^{54}\) See 17 Cal. 3d at 415, 551 P.2d at 397, 131 Cal. Rptr. at 77. See generally *Willful Child Abuse*, supra note 14, at 1814.

\(^{55}\) See generally *Willful Child Abuse*, supra note 14, at 1814-16.

\(^{56}\) See *Willful Child Abuse*, supra note 14, at 1816. Apparently, there have been few, if any, criminal convictions under the child abuse reporting statutes. Research reveals no reported appellate cases on the issue. See also Kohlman, *Malpractice Liability for Failing to Report Child Abuse*, 49 Cal. St. B.J. 118, 122 (1974). Likewise, *Landeros v. Flood* appears to be the only reported case of civil liability under former Penal Code Section 11161.5.

\(^{57}\) *Willful Child Abuse*, supra note 14, at 1816.

\(^{58}\) See *Willful Child Abuse*, supra note 14, at 1816.
by adopting an objective standard of "reasonable suspicion". This clear legislative standard will facilitate convictions of, or civil judgments against, specified persons who violate their statutory duties to report incidents of apparent child abuse.

59. See CAL. PENAL CODE §11166(a).
60. See CAL. STATS. 1980, c. 1071, §5, at — (legislature did not intend to alter holding of Landeros v. Flood with respect to civil liability for failure to report child abuse).
61. See CAL. PENAL CODE §§11165(b), (i), (j).

Health and Welfare; compensation to victims of violent crime

Government Code §§13961.1, 13961.2, 13961.3 (new); §§13960, 13961, 13962, 13963, 13964, 13965, 13966, 13973 (amended); Labor Code §4913 (amended).
AB 203 (Levine); STATS 1980, Ch 1370
(Effective October 1, 1980)
Support: California Trial Lawyers Association; Department of General Services; District Attorneys Association; Peace Officers Research Association of California
Opposition: Department of Finance
SB 1737 (Petris); STATS 1980, Ch 1375
Support: Department of Finance
Opposition: Office of the Governor, Legal Affairs Unit

In 1973, a comprehensive compensation program for victims of crime was enacted in recognition of the public interest in indemnifying and assisting in the rehabilitation of California residents who suffer a pecuniary loss as the direct result of a crime. Chapter 1375 enlarges the class of persons eligible for this program, expands the coverage of the program to include some cases of emotional injury, and exempts retired and disabled persons on fixed incomes from the minimum loss requirement. In addition, Chapter 1375 imposes requirements pertaining to the content of compensation application forms and defines

2. Compare CAL. GOV'T CODE §§13960(a) with CAL. STATS. 1977, c. 521, §1, at 1663.
3. Compare CAL. GOV'T CODE §§13960(a), (b) with CAL. STATS. 1977, c. 521, §1, at 1663.
4. Compare CAL. GOV'T CODE §§13960(e) with CAL. STATS. 1977, c. 521, §1, at 1663-64.
5. See CAL. GOV'T CODE §13961(b).

Selected 1980 California Legislation
serious financial hardship as a standard for recovery. Chapter 1370 modifies application review and award procedures and establishes an emergency award program.

Existing law states that a person must qualify as a victim of a crime in order to be eligible for assistance. Prior to the enactment of Chapter 1375, the term "victim" included any person who sustained physical injury or death as a direct result of a crime of violence or anyone legally dependent upon that person for support. Chapter 1375 expands the coverage of the compensation program by making these parties eligible for assistance when the injury sustained is emotional, provided the emotional injury was accompanied by physical injury or threat of physical injury. In addition, Chapter 1375 defines victim to include any member of the family of, or any person having a close relationship to, a person sustaining injury or death as a result of a violent crime, provided he or she was present during the actual commission of the crime. Furthermore, emotional injury suffered by these persons is also covered by the provisions of Chapter 1375.

Under existing law, in addition to qualifying as a victim, the applicant must have incurred, as a direct result of the crime, a pecuniary loss that cannot be recouped without causing serious financial hardship to the victim. Pecuniary loss encompasses medical or medically related expenses and loss of income or support incurred by the victim as a result of the injury or death that has not been or will not be indemnified from any other source. Chapter 1375 now specifies that medical or medically related expenses include, but are not limited to, psychological or psychiatric expenses, and eyeglasses, hearing aids, dentures, and any prosthetic device taken, lost, or destroyed during the commission of the crime, or made necessary as a result of the crime. These expenses are also defined to include the psychological or psychiatric expenses incurred by any person whose treatment or presence during

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6. See id. §13960(f).
7. Compare id. §13962(b), (d) with CAL. STATS. 1977, c. 636, §2, at 2126-27; compare CAL. GOV'T CODE §13963(a)(1) with CAL. STATS. 1977, c. 636, §3, at 2127; compare CAL. GOV'T CODE §13968(d) with CAL. STATS. 1977, c. 636, §4, at 2127.
8. See CAL. GOV'T CODE §§13961.1, 13961.2.
9. See id. §13961(a).
10. See id. §13960(c) (definition of crime of violence).
12. Compare CAL. GOV'T CODE §13960(a)(1), (2), (b) with CAL. STATS. 1977, c. 521, §1, at 1663.
14. See id. §13960(a)(3), (b).
15. See id. §13964.
16. See id. §13960(e).
17. See id.
the treatment of the victim is medically required for the successful treatment of the victim.\textsuperscript{18} To qualify for assistance when the loss is of income or support, existing law requires that the amount of the loss either be greater than $100 or equal to 20 percent or more of the victim's net monthly income, whichever is less.\textsuperscript{19} Chapter 1375, however, provides an exemption from this minimum loss requirement for victims who are on fixed incomes from retirement or disability.\textsuperscript{20} Further, Chapter 1375 extends pecuniary loss to include nonmedical remedial care and treatment provided in conformance with a religious method of healing recognized by state law.\textsuperscript{21}

Under prior law, serious financial hardship was found to exist when the victim of the crime suffered pecuniary loss to the extent that he or she could no longer meet essential obligations from available assets or from financial assistance reasonably expected from any other source.\textsuperscript{22} In reaching this finding, the State Board of Control was required to consider the victim's total financial resources.\textsuperscript{23} Chapter 1375 now establishes that serious financial hardship exists when the victim does not have cash in excess of $30,000 readily available for use, without penalty or financial loss being incurred for the transfer of funds.\textsuperscript{24}

Currently, the State Board of Control must supply and make available compensation application forms; however, Chapter 1375 imposes specific requirements regarding the content of these forms.\textsuperscript{25} To expedite the application process, the forms must be in one part,\textsuperscript{26} and the language used must be readily understood by the majority of applicants and written with the assumption that the forms will be completed without legal assistance.\textsuperscript{27} Wherever possible, questions must be written to allow for a "yes" or "no" answer.\textsuperscript{28} Additionally, each form must be accompanied by an informational brochure that sets forth eligibility requirements, a description of the types of claims covered and the maximum amount recoverable for each, and an explanation of the claim evaluation procedure.\textsuperscript{29}

\textsuperscript{18} See id.
\textsuperscript{19} See id.
\textsuperscript{20} See id.
\textsuperscript{21} See id.
\textsuperscript{22} See 2 CAL. ADM. CODE §649.5.
\textsuperscript{23} See CAL. STATS. 1977, c. 521, §3, at 1664 (amending CAL. GOV'T CODE §13964).
\textsuperscript{24} See CAL. GOV'T CODE §13960(f).
\textsuperscript{25} See id. §13961(b).
\textsuperscript{26} See id.
\textsuperscript{27} See id.
\textsuperscript{28} See id.
\textsuperscript{29} See id. §13961(b)(1), (2). See also id. §13963(a)(1) (prior to hearing on application, the staff of the board must brief applicants on the rules and procedures used at the hearing).
Applications received by the Board must be promptly verified. Chapter 1370 provides that to effectuate the verification process supplemental forms will be sent to all hospitals, physicians, law enforcement officials, and other parties involved to corroborate all information deemed necessary by the board, including the treatment of the victim, the circumstances of the crime, and amounts paid or received by or for the victim. In addition, law enforcement agencies are required to provide to the board on request a complete copy of the report and any supplemental reports regarding the incident that gave rise to the application for assistance. The verified applications are reviewed at a hearing held at the time and location chosen by the board. Chapter 1370 limits this choice to the extent that the hearing must be held where and when necessary to provide for speedy adjudication of the applications. Furthermore, if necessary to achieve this purpose, hearing examiners will be delegated to hear the applications.

If the application is approved, the board must determine what type of state assistance to award. Prior law authorized (1) cash payments not exceeding $10,000 for medical or medically related expenses, (2) cash payments up to $10,000 for loss of wages or support, and (3) payment of attorney's fees not exceeding ten percent of the amount of the award or $500, whichever was less. Chapter 1370 raises these award limits to $20,000 (medical), $20,000 (wages and support), and $5000 and $1000 (attorney's fees) respectively provided that federal funds are available to pay the increases. When cash payments are granted, the state is subrogated to the rights of the victim and entitled to a lien on any judgment, award, or settlement recovered by or on behalf of the victim. Further, the board is now authorized to compromise or settle and release a lien if that action would be in the best interest of the state.

30. See id. §13962(b).
31. See id. (verification forms must be returned to the board within ten business days). See also id. §13968(f) (circumstances of disclosure by state agencies, departments, boards, commissions).
32. See id. §13968(d), (e) (agency may withhold the names of witnesses and information if disclosure would be detrimental to the parties or the investigation).
33. See id. §13962(b).
34. Compare id. §13962(d) with Cal. Stats. 1977, c. 636, §2, at 2126-27.
36. See id. §13965(a).
38. "$5000 and" and "respectively" should have been struck from the bill, the intent being that the award for attorney's fees would be raised to ten percent or $1000, whichever is less. Telephone conversation with Annette Porini, Administrative Assistant to Assemblyman Levine, November 4, 1980, Sacramento, California.
40. See id. §13966(a).
41. Compare id. §13966(b) with Cal. Stats. 1977, c. 521, §4, at 1665.
Health and Welfare

or if failure to do so would cause undue hardship for the victim.\footnote{42}

Chapter 1370 establishes an emergency award procedure for victims of violent crimes,\footnote{43} to be effective through December 31, 1981.\footnote{44} Victims who incur a loss of income or support as a result of a violent crime may apply for an emergency award by completing forms provided by the State Board of Control for this purpose.\footnote{45} The application form may require only (1) the names, addresses, and telephone numbers of the victim, the victim's employer or self-employing entity, and the victim's medical provider, (2) a brief description of the nature and circumstances of the crime, (3) the date the crime was reported and the name and address of the law enforcement agency that received the report, (4) the loss of income or support and medical costs incurred to date and an estimate of future loss of income or support, and (5) a listing of creditors by name, address, and amounts of debts who the Board should contact to request forebearance on collection.\footnote{46}

An emergency award may be granted solely on the basis of the application, but may be denied if the Board has reason to believe that the applicant will not ultimately qualify for assistance.\footnote{47} The amount of the award is dependent upon the immediate needs of the applicant, but cannot exceed $1000,\footnote{48} and disbursement must be made within 30 business days of the application.\footnote{49} If the applicant fails to complete the full application process for assistance under the compensation program or is ultimately denied assistance, the victim must repay the amount of the emergency award pursuant to an agreed upon schedule.\footnote{50} Similarly, if the applicant receives assistance, but the amount received is less than the emergency award, he or she is required to repay the excess amount; if the final award received is greater, the amount of the emergency award will be deducted and the remainder paid to the victim.\footnote{51}

In summary, the scope of the compensation of crime victims program is broadened by making more persons eligible for assistance and by extending the types of injury covered.\footnote{52} Additionally, applicants are provided with improved information on the required application and

\footnote{42}{See Cal. Gov't Code §13966(c).}
\footnote{43}{See id. §§13961.1, 13961.2.}
\footnote{44}{See Cal. Stats. 1980, c. 1370, §6, at —.}
\footnote{45}{See Cal. Gov't Code §§13961.1(a), (b).}
\footnote{46}{See id. §§13961.1(f)(1)-(6).}
\footnote{47}{See id. §13961.1(c).}
\footnote{48}{See id. §§13960(a), (b).}

\footnote{50}{See id. §13961.1(d) (final disposition for this purpose means the final decision of the board on the application before any appellate action is instituted).}
\footnote{51}{See id.}
\footnote{52}{See id. §13960(a), (b).}

Selected 1980 California Legislation

483
review procedures. The Board of Control is provided with more definite guidelines for determining whether serious financial hardship exists in a given case and for conducting the verification process. Finally, a prompt recovery of financial assistance by crime victims is more adequately insured by requiring speedy adjudication of applications and establishing an emergency award procedure.

53. See id. §§13961(b), 13963(a)(1).
54. See id. §13960(f).
55. See id. §13962(b).
56. See id. §13962(d).
57. See id. §§13961.1, 13961.2.

Health and Welfare; health and community care facilities—licensure

Health and Safety Code §§1564, 1565, 1567.3, (repealed); §§1265.1, 1265.2, 1520.3 (new); §§1294, 1504, 1509, 1513, 1520, 1520.5, 1522, 1525.5, 1536, 1541, 1550, 1554, 1560 (amended).

SB 2752 (Nolan); STATS 1980, Ch 708
Support: California Attorney General; Department of Health Services; Department of Social Services

SB 1726 (Presley); STATS 1980, Ch 1285
Support: Department of Finance; Department of Social Services; Department of Youth Authority

Chapter 1285 revises the licensing procedures for community care facilities currently defined by the California Community Care Facilities Act and modifies the provisions governing revocation and suspension of licenses and special permits. Chapter 708 similarly affects licensing provisions for health facilities.

Community Care Facilities

Existing law requires evidence of the ability of an applicant for a community care facility license or special permit to comply with the

1. See CAL. HEALTH & SAFETY CODE §1502(a) (definition of community care facility).
2. See generally id. §§1500-1567.9.
3. Compare id. §§1550, 1554 with CAL. STATS. 1979, c. 1063, §§5, 7, at —.
4. See CAL. HEALTH & SAFETY CODE §§1250 (definition of health facility), 1265.1, 1265.2.
6. See id. §1503 (definition of license).

Pacific Law Journal Vol. 12
provisions and rules of the California Community Care Facilities Act, or, in the case of an application for renewal, evidence of substantial compliance in the past.\textsuperscript{7} In addition, evidence that the applicant is of reputable and responsible character is required.\textsuperscript{8} These provisions are expanded by Chapter 1285. Specifically required of the applicant now are: (1) an employment history and character reference;\textsuperscript{9} (2) evidence of financial resources sufficient to maintain the required standards of service in the facility;\textsuperscript{10} (3) disclosure of past or present service in a managerial capacity with a community care facility, or any previous or present holding of a ten percent or greater beneficial interest in a facility;\textsuperscript{11} and (4) disclosure of any revocation or other disciplinary action taken against a license currently or previously held.\textsuperscript{12}

Under prior law, the applicant, facility manager or administrator, and any adult living at the facility were only subject to the required criminal record clearance prior to the issuance of a license.\textsuperscript{13} Chapter 1285 makes the clearance a condition precedent to the issuance of both a license and a special permit.\textsuperscript{14} In addition, any person regularly in the facility having routine contact with the residents and any person or organization having a greater than ten percent beneficial ownership interest in the applicant are now subject to the criminal record clearance.\textsuperscript{15} A clearance of other officers of the governing body or persons with a financial interest in the facility may be required, depending upon the person's ability to exercise substantial influence over the operation of the facility.\textsuperscript{16} Discovery of a conviction\textsuperscript{17} of a crime other than a minor traffic violation on the record of any of these parties requires denial of the application unless an exemption is granted by the Director of Social Services.\textsuperscript{18}

In addition to the criminal record clearance, the filing of a surety

\textsuperscript{7} See id. §1520(a).
\textsuperscript{8} See id. §1520(b).
\textsuperscript{9} See id.
\textsuperscript{10} See id. §1520(c) (where licensure for child day care facilities is sought, this information is required only upon initial application and when written request and explanation for need is made by the Department of Social Services).
\textsuperscript{11} See id. §1520(d).
\textsuperscript{12} See id. §1520(e). See also id. §1520.3 (if previously held license was revoked, review of current application will not continue until two years have elapsed since the revocation).
\textsuperscript{15} See cal. Health & Safety Code §1522(b)(1)-(3).
\textsuperscript{16} See id. §1522(b)(4).
\textsuperscript{17} See id. §1522(c) (definition of conviction).
\textsuperscript{18} See id. §1522(a). See also id. §1522(d) (standard for finding permissible exemption).
bond is a condition precedent to the issuance or renewal of a license.\textsuperscript{19} Prior law provided for an exception to this requirement when the licensee handled less than a specified amount of money belonging to facility residents.\textsuperscript{20} The number of cases in which the exception will be recognized is apparently reduced by Chapter 1285, which now requires that the facility must also be one licensed to care for children.\textsuperscript{21} Finally, the bond requirement is extended to the issuance or renewal of a special permit, subject to the same exception.\textsuperscript{22}

Existing law allows the issuance of a nonrenewable provisional license for a maximum period of six months if the facility is found to be in substantial compliance with the Community Care Facilities Act and if no life safety risks exist.\textsuperscript{23} Chapter 1285 stipulates that, in determining whether life safety risks exist, the director must require completion of all fire clearances and criminal record clearances.\textsuperscript{24} Although a provisional license may not be renewed, it may be extended at the time of application in the director’s discretion for an additional six months if more than the original six months will be required to achieve full compliance due to circumstances beyond the applicant’s control.\textsuperscript{25}

\textit{Health Facilities}

Chapter 708 authorizes denial of an application for licensure of a health facility if (1) the applicant, (2) an officer, director, or a shareholder having a greater than ten percent interest in the applicant, or (3) a person in charge of the facility is convicted\textsuperscript{26} of a crime.\textsuperscript{27} Chapter 708 further requires that the crime be substantially related to the qualifications or duties of the applicant or the functions of the facility and that any action based on a conviction be prohibited if the director determines, based on all competent evidence, that the person has been rehabilitated.\textsuperscript{28} Denial of an application may also be predicated on the applicant’s knowingly making a false statement of fact that is required to be revealed on an application.\textsuperscript{29}

\textsuperscript{19} See id. §1560.
\textsuperscript{21} See Cal. Health & Safety Code §1560(a), (b).
\textsuperscript{22} Compare id. §1560 with Cal. Stats. 1973, c. 1203, §4, at 2591.
\textsuperscript{23} See Cal. Health & Safety Code §1525.5.
\textsuperscript{24} See id.
\textsuperscript{25} See id.
\textsuperscript{26} See id. §§1265.1(c) (record of conviction or certified copy thereof constitutes conclusive evidence of conviction), 1265.2 (definition of conviction).
\textsuperscript{27} See id. §§1265.1(a), (b).
\textsuperscript{28} See id. §1265.2.
\textsuperscript{29} See id. §1265.1(a).
Suspension or Revocation

Existing law allows suspension or revocation of a community care facility license, registration, or special permit under specified conditions. Chapter 1285 additionally authorizes this action where any person subject to the initial criminal record clearance is subsequently convicted of a crime other than a minor traffic violation during the period of licensure. Formerly, reinstatement of a revoked license could be sought. Chapter 1285 precludes reinstatement of a revoked license, but does allow reinstatement of a revoked special permit. Both special permits and licenses that have been suspended, however, may be reinstated. Chapter 708 similarly expands the power of the State Department of Social Services to suspend or revoke a license or special permit issued to a health facility. A conviction during licensure of a person subject to a criminal record clearance of a crime substantially related to the operation of the facility constitutes grounds for suspension or revocation unless the director determines that the person has been rehabilitated.

Conclusion

Chapter 1285 appears to provide for a more thorough and informed review of applications for community care facility licenses or special permits through the addition of broader applicant disclosure provisions and through criminal record clearance of those parties having regular contact with, or significant influence over, the facility. Also, more specific guidelines for issuing provisional licenses are established and standards for granting exceptions to the surety bond requirement are increased. Finally, both Chapter 1285 and Chapter 708 expand the power of the State Department of Social Services to deny, suspend, or revoke a license issued to health and community care

30. See id. §1550 (violation of, or aiding, abetting or permitting violation of, rules and regulations of Community Care Facilities Act; conduct inimical to health, morals, safety, or welfare of persons in the facility or the people of California).
31. See id. §1522.
32. Compare id. §1550 with CAL. STATS. 1979, c. 1063, §5, at —.
34. See CAL. HEALTH & SAFETY CODE §1554. See generally CAL. GOV'T CODE §11522 (procedure for reinstatement).
35. See CAL. HEALTH & SAFETY CODE §1554.
37. See CAL. HEALTH & SAFETY CODE §§1265.1(a), (b), 1265.2, 1294(d).
38. See id. §1520.
39. See id. §1522.
40. See id. §1525.5.
41. See id. §1560.
facilities.  

Health and Welfare

Business and Professions Code §20733 (new); Health and Safety Code §19955.6 (new).
AB 3113 (Felando); STATS 1980, Ch 480
Support: Department of Finance; Department of Rehabilitation

Under existing law, physically disabled persons are entitled to the same full and free use of public accommodations and facilities enjoyed by nondisabled persons, and standards have been established to protect this right. Chapter 480 extends this protection by requiring that specified vehicle service stations provide refueling services for disabled drivers.

Existing law requires all passenger vehicle service stations built with private funds to be accessible to, and usable by, the physically handicapped. Chapter 480 additionally requires that operators of these stations, and of other facilities offering motor vehicle fuel for sale to the public, provide refueling services to severely disabled drivers of specially licensed vehicles who request that service. Furthermore, the driver receiving the service cannot be charged a higher price than that charged a nondisabled driver. Exclusive self-service stations and convenience stores that sell gasoline are exempted from the refueling service requirement if they use remotely controlled pumps operated by a single cashier and never provide pump service. The Bureau of Automotive Repair is requested, however, to notify all gasoline stations and convenience stores of the service requirement, apparently for the purpose

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2. See CAL. HEALTH & SAFETY CODE §19955 (public accommodations).
3. Compare CAL. BUS. & PROF. CODE §20733 and CAL. HEALTH & SAFETY CODE §19955.6 with CAL. GOV’T CODE §4450 and CAL. HEALTH & SAFETY CODE §19955.5.
4. See CAL. HEALTH & SAFETY CODE §19955.5; CAL. GOV’T CODE §4450.
5. See CAL. BUS. & PROF. CODE §20733(a); CAL. HEALTH & SAFETY CODE §19955.6(a). See also CAL. VEH. CODE §§9105 (issuance of special license plates or placards to disabled veterans), 22511.5 (issuance of special license plates or placards to disabled persons).
6. See CAL. BUS. & PROF. CODE §20733(b); CAL. HEALTH & SAFETY CODE §19955.6(b).
7. See CAL. BUS. & PROF. CODE §20733(c); CAL. HEALTH & SAFETY CODE §19955.6(c).
pose of encouraging their voluntary compliance whenever practical.\textsuperscript{8} Oil companies and franchisors of self-service stations and convenience stores are also requested to notify their franchisees.\textsuperscript{9}

\textsuperscript{8} \textit{See} \textsc{Cal. Stats.} 1980, c. 480, §3, at —.  
\textsuperscript{9} \textit{See } \textit{id}.

\section*{Health and Welfare; sexually transmitted diseases}

Civil Code §34.7 (amended).  
\textsc{AB} 1956 (Tucker); \textsc{Stats} 1980, Ch 152  
Support: California Conference of Local Health Officers; Department of Health Services; Office of the Governor, Legal Affairs Unit

Existing law allows minors 12 years of age or older to give consent to treatment for \textit{specific} infectious, communicable, or contagious diseases,\textsuperscript{1} including syphilis and gonorrhea,\textsuperscript{2} without first obtaining parental consent.\textsuperscript{3} Prior to the enactment of Chapter 152, parental consent had to be given for treatment of sexually transmitted diseases that were not included in the list of diseases\textsuperscript{4} required by law to be reported to the local health officer.\textsuperscript{5} Venereal diseases such as herpes, monilia, and trichonomiasis,\textsuperscript{6} which are reaching epidemic proportions,\textsuperscript{7} therefore could not be treated without parental consent.\textsuperscript{8} Chapter 152 now authorizes a minor to consent to treatment of \textit{any} sexually transmitted disease, as determined by the State Director of Health Services.\textsuperscript{9}

\textsuperscript{2} \textit{See} \textsc{17 Cal. Adm. Code} §2500.  
\textsuperscript{4} \textit{See} \textsc{17 Cal. Adm. Code} §2500.  
\textsuperscript{5} \textsc{Cal. Stats.} 1968, c. 417, §1, at 859.  
\textsuperscript{6} \textit{See} \textsc{17 Cal. Adm. Code} §2500; \textsc{Cal. Civ. Code} §34.7; \textsc{Cal. Health & Safety Code} §3123.  
\textsuperscript{7} \textit{See Business Week}, July 30, 1979, at 79.  
\textsuperscript{8} \textit{Compare} \textsc{17 Cal. Adm. Code} §2500 with \textsc{Cal. Stats.} 1968, c. 417, §1, at 859. \textit{See generally} \textsc{1 Op. Atty Gen.} 541 (1943).  
\textsuperscript{9} \textit{Compare} \textsc{Cal. Civ. Code} §34.7 with \textsc{Cal. Stats.} 1968, c. 417, §1, at 859. \textit{See generally} \textsc{Cal. Health & Safety Code} §§1102, 1122, 1123, 1180, 1181.

\textit{Selected 1980 California Legislation} 489
Health and Welfare; controlled substances

Health and Safety Code §§11055, 11158, 11164 (amended); Penal Code §1203.07 (amended).
AB 2378 (Statham); STATS 1980, Ch 1223
Support: Attorney General of California; Department of Consumer Affairs; Department of Corrections
Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice; Office of the Governor, Legal Affairs Unit

Prior to the enactment of Chapter 1223, the California Uniform Controlled Substances Act provided that physicians, dentists, veterinarians, podiatrists, and other qualified individuals could administer or prescribe, but not dispense, controlled substances listed in Schedule II of the Health and Safety Code. Chapter 1223 amends the Act to allow a physician or other authorized person to dispense a 72-hour supply of a controlled substance listed in Schedule II, but only when the patient is not expected to require any additional amount of the substance beyond the 72-hour period. When a practitioner dispenses a controlled substance in accordance with these provisions, he or she must prepare a written report on the official forms issued by the Department of Justice and must transmit a copy of the report to the Department.

In addition, Chapter 1223 modifies existing law regarding the penalties associated with the possession, manufacture, and sale of phencyclidine (hereinafter referred to as PCP). Prior to the enactment of Chapter 1223, probation could not be granted to manufacturers of PCP except in unusual cases when the interests of justice would be served. Notwithstanding this provision, Chapter 1223 states that probation may not be granted to, nor may the execution or imposition of a sentence be suspended for, any person convicted of one of the following: (1) possession of one-half ounce or more of PCP for the purpose of sale; (2) selling, offering for sale, or manufacturing PCP; (3) using a minor as an agent to violate the laws regulating PCP; or

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3. See CAL. HEALTH & SAFETY CODE §11150 (definition of authorized person).
4. See id. §§11158(b).
5. See id. §§11158(b), 11164(f).
7. See id. §1203.07(a)(4).
8. See id. §1203.07(a)(4).
9. See id. §1203.07(a)(5).
10. See id. §1203.07(a)(6).
Health and Welfare; exemption from restricted disclosure of medical information

Civil Code §56.26 (new).
SB 1967 (Petris); STATS 1980, Ch 384
Support: Office of the Governor, Legal Affairs Unit

In 1979, the legislature enacted the Confidentiality of Medical Information Act (hereinafter referred to as the Act) to limit the unauthorized disclosure of medical information to persons requesting information for purposes of employment, insurance, insurability, or claims under a life or disability insurance policy. Under the Act, an authorization from the patient is required for the release of medical information except when disclosure is compelled by (1) a court order, (2) an administrative agency for adjudication of a matter within its authority, (3) a party to a proceeding before a court or administrative agency pursuant to a subpoena, (4) an arbitrator or arbitration panel, or (5) any other provision of law. In addition, there are a number of exemptions to compliance with the provisions of the Act.

Chapter 384 specifically provides that investigations of on-the-job accidents or illnesses conducted pursuant to the California Occupational Safety and Health Act or investigations of possible pesticide illnesses pursuant to the Pesticide Act will be exempt from compliance with the provisions regarding the acquisition or disclosure of medical information. This will allow the Division of Occupational Safety and Health of the Department of Industrial Relations to request and

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1. See generally CAL. CIV. CODE §§56-56.32.
2. See id. §§56.05(b), 56.15. See generally 11 PAC. L.J., REVIEW OF SELECTED 1979 CALIFORNIA LEGISLATION 381 (1980).
3. See CAL. CIV. CODE §§56.05(c), 56.15-56.22.
4. See id. §§56.15(c)(1)(A).
5. See id. §§56.15(c)(1)(B).
6. See id. §§56.15(c)(1)(C).
7. See id. §§56.15(c)(1)(D).
8. See id. §§56.15(c)(1)(E).
10. See generally CAL. LAB. CODE §§6300-6708.
11. See generally CAL. HEALTH & SAFETY CODE §§2950-2952.2.

Selected 1980 California Legislation
receive medical information related to their investigations. The information obtained from hospitals or health care providers as to the cause of the injury or illness, however, may be maintained in the division's file only until the case under investigation is closed. Moreover, this information is considered confidential and will not be open to public inspection under the provisions of the California Public Records Act, even though the Department of Industrial Relations is one of the agencies otherwise required to establish procedures for making its records available for inspection.

Health and Welfare; Medi-Cal provider suspension

Welfare and Institutions Code §14123 (amended).
AB 2782 (Rosenthal); STATS 1980, Ch 303
Support: Department of Finance

Under existing law, the State Director of Health Services may order the suspension of a provider of service for conviction of any crime involving (1) fraud, (2) abuse of the Medi-Cal program or any patient, or (3) otherwise substantially related to the qualifications, functions, or duties of a provider of service, when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or an order granting probation has been made suspending imposition of sentence.

The director must use regular administrative hearing procedures to suspend a provider. In an apparent effort to bring California law into compliance with current federal regulations, Chapter 303 requires the State Director of Health Services to promptly suspend a physician or other individual practitioner from participation in, and payment under, the medical assistance program upon written notification from

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1. See 22 CAL. ADM. CODE §1051 (definition of provider of service).
2. See 22 id. §§50003, 50058; CAL. WELF. & INST. CODE §14063 (definition of Medi-Cal).
4. See 22 id. §§2361-2436.
5. See 22 CAL. BUS. & PROF. CODE §§2361-2436.
7. See 22 CAL. WELF. & INST. CODE §§14123(a), (d).
the Secretary of the Department of Health and Welfare that the practitioner has been suspended from the federal Medicare or Medicaid programs due to a criminal conviction. This automatic suspension is not subject to the administrative hearing procedures otherwise required.

8. See id. §14123(b).
9. See id.