

MEMORANDUM

DATE	June 6, 2017
TO	Board of Psychology
FROM	 Cherise Burns Central Services Manager
SUBJECT	Agenda Item #12(b)(1)(b) – AB 1456 (Low) Professional licensure

Background:

Existing law prohibits the licensure requirements for professional personnel, including psychologists, marriage and family therapists, clinical social workers, and professional clinical counselors, in the state and other governmental health facilities licensed by the California Department of Public Health (CDPH) or Department of Health Care Services (DHCS), or operated by the Department of State Hospitals (DSH) or California Department of Corrections and Rehabilitation (CDCR) from being less than for those professional personnel in health facilities under private ownership. These departments can waive that requirement for persons in the profession of psychology who are gaining qualifying experience for licensure in that profession, but prohibits the waiver from exceeding three (3) years from the date the employment commences with CDPH, DHCS, DSH or CDCR licensed/operated facility.

As of the June 5 amendments, this bill would extend the exemption waivers to five (5) at CDPH, DHCS, DSH or CDCR licensed/operated facilities. Now that the provision extending the exemption waiver to six (6) years was removed from the bill, staff has no concerns with the provisions of the bill. Board staff believes it is good policy to bring conformity to the various licensure exemption provisions as this would diminish confusion for both exempt setting employers and their employees, and the public.

Location: Senate Committee on Health

Status: 6/5/17 From committee chair with author's amendments. Amended and re-referred to Senate Committee on Health.

Votes: 5/4/2017 Assembly Floor (74-0-6)
4/18/2017 Assembly Committee on Health (15-0-0)

Action Requested:

Prior to the June 5 amendments, the Policy and Advocacy Committee recommended the Board take an Oppose Unless Amended position on AB 1456 (Low) and request that the author amend bill to only allow a five (5) year exemption for psychologists in these exempt settings. Since the recommended amendments have been made, staff recommends that the Board take a **Support** position on AB 1456 (Low).

Attachment A: AB 1456 (Low) Staff Analysis
Attachment B: AB 1456 (Low) Text

2017 Bill Analysis – REVISED

Author: Low	Bill Number: AB 1456	Related Bills: Not Applicable
Sponsor: AFSCME Local 2620: Health and Social Service Professional Employees	Version: Amended 6/5/2017	
Subject: Professional licensure.		

SUMMARY

Existing law prohibits the licensure requirements for professional personnel, including psychologists, marriage and family therapists, clinical social workers, and professional clinical counselors, in the state and other governmental health facilities licensed by the California Department of Public Health (CDPH) or Department of Health Care Services (DHCS), or operated by the Department of State Hospitals (DSH) or California Department of Corrections and Rehabilitation (CDCR) from being less than for those professional personnel in health facilities under private ownership. These departments can waive that requirement for persons in the profession of psychology who are gaining qualifying experience for licensure in that profession, but prohibits the waiver from exceeding three (3) years from the date the employment commences with CDPH, DHCS, DSH or CDCR licensed/operated facility. This bill would extend the exemption waivers to five (5) years at CDPH, DHCS, DSH, or CDCR licensed/operated facilities.

RECOMMENDATION

SUPPORT – Board staff has no concerns with the extension of licensure exemptions to five (5) years for all exempt settings, and believes it is good policy to bring conformity to the various licensure exemption provisions as this would diminish confusion for both exempt setting employers and their employees, and the public.

REASON FOR THE BILL

According to the author, many prisons and state hospitals are in remote locations and require long commutes that restrict study time and make the three (3) year waiver timeline genuinely unattainable for individuals working in these exempt settings. Additionally, the author highlights the problem that DSH has been experiencing severe

Other Boards/Departments that may be affected: CDPH, DHCS, DSH, CDCR	
<input type="checkbox"/> Change in Fee(s) <input type="checkbox"/> Affects Licensing Processes <input type="checkbox"/> Affects Enforcement Processes	
<input checked="" type="checkbox"/> Urgency Clause <input type="checkbox"/> Regulations Required <input type="checkbox"/> Legislative Reporting <input type="checkbox"/> New Appointment Required	
Policy & Advocacy Committee Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input checked="" type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: <u>May 15, 2017</u> Vote: <u>2 Aye, 0 No; Passed (Prior version of bill)</u>	Full Board Position: <input type="checkbox"/> Support <input type="checkbox"/> Support if Amended <input type="checkbox"/> Oppose <input type="checkbox"/> Oppose Unless Amended <input type="checkbox"/> Neutral <input type="checkbox"/> Watch Date: _____ Vote: _____

vacancies in these positions, making a longer exemption to attain licensure critical for individuals employed at these facilities. Lastly, the author also points out that psychologists and other mental health professionals working in other exempt settings have four (4) to five (5) years to obtain their license. The author believes AB 1456 will eliminate the differing waiver timelines and brings uniformity in the state code for state psychologists.

ANALYSIS

Under current law, licensure exemptions for unlicensed employees providing psychological services as psychologists in exempt settings varies from three (3) to five (5) years depending on the setting that the individual is employed or contracted with. At the request of Cal HR, Board staff wrote two articles in 2016 to help clarify the differences in these licensure exemptions as there had been significant confusion about these limitations in the field. The following table shows the differences between the limitations for each setting:

Exempt Setting Type	Authorizing Statute	Waiver Granting Entity	Waiver Limitation
Accredited or Approved Colleges, Junior Colleges, or Universities Federal, State, County, or Municipal Government Entities Public Schools (K-12)	Business and Professions Code (BPC) section 2910	No waiver, provided, exemption is based on Board of Psychology statute	5 years (cumulative total) meeting following criteria: <ul style="list-style-type: none"> • Psychological activities are part of the duties for which they were hired. • Activities are performed solely within the jurisdiction/ confines of the organization. • Individual does not use any title or description of activities incorporating the words “psychology,” “psychological,” or “psychologist.” • Primary purpose is gaining the supervised professional experience required for licensure, consistent with statutory and regulatory requirements.
CDCR Facilities, DSH Facilities	Penal Code (PEN) section 5068.5	CDCR	3 years (from the date employment commences) and only for the purposes of gaining qualifying experience required for licensure. Note: extensions may be granted to employees with extenuating circumstances (1 year) and part-time employees (2 years), but not exceeding 5 years total.
CDPH Licensed Facilities under HSC section 1250 et. seq.	Health and Safety Code (HSC) section 1277(b)	CDPH	3 years (from the date employment commences) and only to the extent necessary to qualify for licensure. Note: an extension may be granted to part-time employees (2 years), but not exceeding 5 years total.
Local Mental Health Programs	Welfare and Institutions Code (WIC) section 5751.2(d)	DHCS	5 years (from the date of employment/contract) and only for the purposes of gaining experience required for licensure, except for individuals recruited from out of state, who are limited to 3 years.

In addition to exempt settings, individuals who are pursuing licensure as a psychologist can also provide limited psychological services under supervision at a variety of other settings as long as they are registered with the Board as a psychological assistant. Currently, psychological assistants can be registered with the Board in a training capacity for a cumulative total of six (6) years (72 months); however, the Board’s Licensing Committee is currently proposing changes to this regulatory section to reduce it to five (5) years.

Under AB 1456, the maximum allowed licensure exemptions provided under the Penal Code and Health and Safety Code for those working at CDPH, DHCS, DSH, or CDCR licensed/operated facilities would be changed as follows:

Authorizing Statute	Facility Types Included	Current Law	AB 1456 (6/5 Version)
BPC section 2910	Colleges, Public Schools, Federal, State, County, or Municipal Government Entities	Maximum Limitation: 5 years	No Change (BPC section 2910 is not included in AB 1456)
PEN section 5068 .5	CDCR and DSH Facilities	Initial Limitation: 3 years Maximum Limitation: 5 years Extensions Available: Extenuating circumstances (additional 1 year), Part-time employees (additional 2 years)	Initial Limitation: 4 years Maximum Limitation: 5 years Extensions Available: Extenuating circumstances (additional 1 year), Part-time employees (additional 1 year)
HSC section 1277 (b)	CPDH Licensed (Hospitals, Acute Psychiatric Hospitals, Skilled Nursing Facilities, etc.)	Initial Limitation: 3 years Maximum Limitation: 5 years Extensions Available: Part-time employees (additional 2 years)	Initial Limitation: 4 years Maximum Limitation: 5 years Extensions Available: Part-time employees (additional 1 year)
WIC section 5751 .2(d)	Local Mental Health Programs	Maximum Limitation: 5 years, except out of state recruited employees who are limited to 3 years	Maximum Limitation: 5 years

Board staff has no concerns with the extension of licensure exemptions to five (5) years for all exempt settings, as conformity in the licensure exemptions would diminish confusion for both exempt setting employers and their employees, and the public. Similarly, the Board has no comment on how those five (5) years should be allotted, either as a total maximum amount of time or as four (4) years with a one (1) year extension available for extenuating circumstances and/or part-time employees.

Under the May 1 version of the bill, the extension to the waiver would have allowed CDPH, DHCS, DSH, or CDCR licensed/operated facilities to have a maximum waiver of six (6) years. These changes were made as a compromise to achieve passage in the Assembly Health Committee. Board staff did have significant concerns with exceeding the five (5) year total exemption and any attempts to go beyond the five (5) year maximum, because this would have created a new inconsistency in the law by allowing more time in certain exempt settings. Board staff brought these concerns to the Policy and Advocacy Committee and made the author's office aware of these concerns as well. As of the June 5 amendments to AB 1456, the provisions extending the waiver to six (6) years have been removed and Board staff has no concerns with the provisions in the bill. Furthermore, Board staff believes it is good policy to bring conformity to the various licensure exemption provisions as this would diminish confusion for both exempt setting employers and their employees, and the public.

LEGISLATIVE HISTORY

AB 705 (Eggman, Chapter 218, Statutes of 2015, Section 3) limited the exemption from licensure allowed at accredited or approved academic institutions, public schools, or

governmental agencies to a cumulative total of five (5) years. Previously there was no time limit to this exemption.

AB 1628 (Committee on Budget, Chapter 729, Statutes of 2010, Section 6) allowed a one year extension for employees experiencing extenuating circumstances to the three (3) year exemption from licensure allowed at CDCR and DSH facilities.

OTHER STATES' INFORMATION

Not Applicable

PROGRAM BACKGROUND

The Board advances quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the practice. To accomplish this, the Board regulates licensed psychologists, psychological assistants, and registered psychologists.

Employees working in exempt settings under licensure exemptions specified in AB 1456 are not registered with the Board.

FISCAL IMPACT

The fiscal impact of this bill is unknown since the Board does not regulate or track the number of individuals with licensure exemptions at CDPH, DHCS, DSH, or CDCR licensed/operated facilities.

ECONOMIC IMPACT

Not Applicable

LEGAL IMPACT

Not Applicable

APPOINTMENTS

Not Applicable

SUPPORT/OPPOSITION

Support: AFSCME AFL-CIO and AFSCME Local 2620: Health and Social Service Professional Employees (Sponsor); California Psychological Association (CPA)

Opposition: None on File

ARGUMENTS

Proponents: AFSCME represents psychologists working at DSH facilities and states that "while continuing to work full-time, studying and many with family

obligations, it is incredibly difficult for a student who is still learning on the job to meet this short timeline. Other mental health professionals working in the state (Marriage and Family Therapists, Professional Clinical Counselors and Licensed Clinical Social Workers) have four to five years to obtain their licenses. In order to eliminate the differing timelines our state psychologists should also have five years in which to obtain their license.”

CPA states that this bill brings conformity to the law governing licensure for psychologists by extending the timeline to obtain a license from three years to five years in certain state settings. This bill adds institutions regulated by the penal code to the five-year waiver in other "exempt settings." Currently, after earning a doctoral degree, but before becoming licensed, aspiring psychologists must earn at least 1,500 hours of supervised hours before being allowed to sit for the licensing examinations. The three-year timeline has proven problematic for some and does not mirror requirements for other similar state agencies.

Opponents: Not Applicable

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1277. (a) No license shall be issued by the ~~state~~ department unless it finds that the premises, the management, the bylaws, rules and regulations, the equipment, the staffing, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the health facility is operated in the manner required by this chapter and by the rules and regulations adopted hereunder.

(b) (1) Notwithstanding any provision of Part 2 (commencing with Section 5600) of Division 5 of, or Division 7 (commencing with Section 7100) of, the Welfare and Institutions Code or any other law to the contrary, except Sections 2072 and 2073 of the Business and Professions Code, the licensure requirements for professional personnel, including, but not limited to, physicians and surgeons, dentists, podiatrists, psychologists, marriage and family therapists, pharmacists, registered nurses, clinical social workers, and professional clinical counselors in the state and other governmental health facilities licensed by the ~~state~~ department shall not be less than for those professional personnel in health facilities under private ownership.

(2) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same state or other governmental health facility licensed by the ~~state~~ department, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of paragraph (1).

(3) The requirements of paragraph (1) may be waived by the ~~state~~ department solely for persons in the professions of psychology, marriage and family therapy, clinical social work, or professional clinical counseling who are gaining qualifying experience for licensure in such profession in this state. A waiver granted pursuant to this paragraph shall not exceed ~~three years from the date the employment commences in this state in the case of psychologists, or~~ four years from commencement of the employment in this ~~state in the case of marriage and family therapists, clinical social workers, and professional clinical counselors,~~ ~~state,~~ at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure ~~for marriage and family therapists, clinical social workers, and professional clinical counselors~~ may be granted for one additional year, based on extenuating circumstances determined by the ~~state~~ department pursuant to subdivision (e). For persons employed as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers, marriage and family therapists, or professional clinical counselors, or five years in the case of psychologists.

(4) The durational limitation upon waivers pursuant to paragraph (3) shall not apply to any of the following:

(A) Active candidates for a doctoral degree in social work, social welfare, or social science, who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of this training.

(B) Active candidates for a doctoral degree in marriage and family therapy who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4980.36 of, or subdivision (b) of Section 4980.37 of, the Business and Professions Code, but the limitations shall apply following completion of the training.

(C) Active candidates for a doctoral degree in professional clinical counseling who are enrolled at a school, college, or university, specified in subdivision (b) of Section 4999.32 of, or subdivision (b) of Section 4999.33 of, the Business and Professions Code, but the limitations shall apply following the completion of the training.

(5) A waiver pursuant to paragraph (3) shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain

admission to a licensing examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure examination at the earliest possible date after the date of his or her ~~employment, and if~~ *employment*. *If* the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the next possible examination, subject to the one-year ~~limit for marriage and family therapists, clinical social workers, and professional clinical counselors, and subject to a two-year limit for psychologists.~~ *limit*.

(c) A special permit shall be issued by the ~~state~~ department when it finds that the staff, both professional and nonprofessional, and the standards of care and services are adequate and appropriate, and that the special services unit is operated in the manner required in this chapter and by the rules and regulations adopted hereunder.

(d) The ~~state~~ department shall apply the same standards to state and other governmental health facilities that it licenses as it applies to health facilities in private ownership, including standards specifying the level of training and supervision of all unlicensed practitioners. Except for psychologists, the department may grant an extension of a waiver of licensure for personnel recruited from outside this state for one additional year, based upon extenuating circumstances as determined by the department pursuant to subdivision (e).

(e) The department shall grant a request for an extension of a waiver based on extenuating circumstances, pursuant to subdivision (b) or (d), if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event ~~which that~~ may impair the person's ability to qualify for and pass the license examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster, serious and prolonged illness of the person, serious and prolonged illness or death of a child, spouse, or parent, or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist ~~which that~~ substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship ~~which that~~ the department, in its discretion, determines to warrant the extension.

SEC. 2. Section 5068.5 of the Penal Code is amended to read:

5068.5. (a) Notwithstanding any other law, except as provided in subdivisions (b) and (c), any person employed or under contract to provide diagnostic, treatment, or other mental health services in the state or to supervise or provide consultation on these services in the state correctional system shall be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state.

(b) Notwithstanding Section 5068 or Section 704 of the Welfare and Institutions Code, the following persons are exempt from the requirements of subdivision (a), so long as they continue in employment in the same class and in the same department:

(1) Persons employed on January 1, 1985, as psychologists to provide diagnostic or treatment ~~services~~ *services*, including those persons on authorized ~~leave~~ *leave*, but not including intermittent personnel.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment ~~services~~ *services*, including persons on authorized ~~leave~~ *leave*, but not including intermittent personnel.

(c) (1) The requirements of subdivision (a) may be waived by the secretary solely for persons in the professions of psychology or clinical social work who are gaining qualifying experience for licensure in those professions in this state. Providers working in a licensed health care facility operated by the department ~~must~~ *shall* receive a waiver in accordance with Section 1277 of the Health and Safety Code.

(2) A waiver granted pursuant to this subdivision shall not exceed ~~three years from the date the employment commences in this state in the case of psychologists, or~~ four years from commencement of the employment in this ~~state in the case of clinical social workers,~~ *state*, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure ~~for clinical social workers~~ may be granted for one additional year, based on extenuating circumstances determined by the department pursuant to subdivision (d). For persons employed as psychologists or clinical social workers less than full time, an extension of a waiver of licensure may be granted for additional years proportional to the extent of part-time employment, as

long as the person is employed without interruption in service, but in no case shall the waiver of licensure exceed six years in the case of clinical social workers or five years in the case of psychologists. However, this durational limitation upon waivers shall not apply to active candidates for a doctoral degree in social work, social welfare, or social science who are enrolled at an accredited university, college, or professional school, but these limitations shall apply following completion of that training.

(3) A waiver pursuant to this subdivision shall be granted only to the extent necessary to qualify for licensure, except that personnel recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensure examination shall nevertheless have one year from the date of their employment in California to become licensed, at which time licensure shall have been obtained or the employment shall be terminated, provided that the employee shall take the licensure examination at the earliest possible date after the date of his or her employment, and if the employee does not pass the examination at that time, he or she shall have a second opportunity to pass the next possible examination, subject to the one-year ~~limit for clinical social workers, and subject to a two-year limit for psychologists.~~ *limit.*

(d) The department shall grant a request for an extension of a waiver of licensure ~~for a clinical social worker~~ pursuant to subdivision (c) based on extenuating circumstances if any of the following circumstances exist:

(1) The person requesting the extension has experienced a recent catastrophic event that may impair the person's ability to qualify for and pass the licensure examination. Those events may include, but are not limited to, significant hardship caused by a natural disaster; serious and prolonged illness of the person; serious and prolonged illness or death of a child, spouse, or parent; or other stressful circumstances.

(2) The person requesting the extension has difficulty speaking or writing the English language, or other cultural and ethnic factors exist ~~which~~ *that* substantially impair the person's ability to qualify for and pass the license examination.

(3) The person requesting the extension has experienced other personal hardship that the department, in its discretion, determines to warrant the extension.

SEC. 3. Section 5751.2 of the Welfare and Institutions Code is amended to read:

5751.2. (a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law regarding professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which a license is required, unless the person possesses a valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a).

(c) While registered with the licensing board of jurisdiction for the purpose of acquiring the experience required for licensure, persons employed or under contract to provide mental health services pursuant to this part as clinical social workers, marriage and family therapists, or professional clinical counselors shall be exempt from subdivision (a). Registration shall be subject to regulations adopted by the appropriate licensing board.

(d) The requirements of subdivision (a) shall be waived by the State Department of Health Care Services for persons employed or under contract to provide mental health services pursuant to this part as psychologists who are gaining the experience required for licensure. A waiver granted under this subdivision ~~may shall~~ not exceed five years from the date of employment by, or contract with, a local mental health program for persons in the profession of psychology.

(e) The requirements of subdivision (a) shall be waived by the State Department of Health Care Services for persons who have been recruited for employment from outside this state as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors and whose experience is sufficient to gain admission to a licensing examination. A waiver granted under this subdivision ~~may shall~~ not exceed ~~three~~ *five* years from the date of employment by, or contract with, a local mental health program for persons in these four professions who are recruited from outside this state.

SEC. 4. *This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:*

To allow specific types of mental health providers who are at risk of being unable to work without extended license waivers to continue to provide critical mental health services within this state, it is necessary for this act to take effect immediately.