

Assembly Bill No. 1456

CHAPTER 151

An act to amend Section 1277 of the Health and Safety Code, to amend Section 5068.5 of the Penal Code, and to amend Section 5751.2 of the Welfare and Institutions Code, relating to professional licensure, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 31, 2017. Filed with
Secretary of State July 31, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1456, Low. Professional licensure.

(1) Existing law provides for the licensure and regulation of health facilities by the State Department of Public Health. 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 department from being less than for those professional personnel in health facilities under private ownership. Existing law authorizes the department to waive that requirement for persons in the profession of psychology who are gaining qualifying experience for licensure in that profession in this state, and prohibits the waiver from exceeding 3 years from the date the employment commences in this state.

Existing law requires that a 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 be a physician and surgeon, a psychologist, or other health professional, licensed to practice in this state. Existing law authorizes the Secretary of the Department of Corrections and Rehabilitation to waive that requirement for persons in the profession of psychology who are gaining qualifying experience for licensure in that profession in this state, and prohibits the waiver from exceeding 3 years from the date the employment commences in this state.

This bill would extend the applicable time for those waivers to 4 years from commencement of the employment in this state, and would authorize the extension of the waiver for one additional year.

(2) Existing law, the Bronzan-McCorquodale Act, contains provisions governing the operation and financing of community mental health services for the mentally disordered in every county through locally administered and locally controlled community mental health programs. The act requires persons employed or under contract to provide mental health services pursuant to these provisions to be subject to all applicable requirements of law regarding professional licensure, and prohibits a person from being

employed to provide services for which a license is required unless the person possesses a valid license. The act requires the State Department of Health Care Services to waive these requirements for persons who have been recruited for employment from outside the 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, and prohibits the waiver from exceeding 3 years from the date of employment by, or contract with, a local mental health program.

This bill would extend the applicable time for that waiver to 5 years from the date of employment by, or contract with, a local mental health program under the act.

Existing law establishes the Medi-Cal program, administered by the State Department of Health Care Services, under which basic health care services are provided to qualified low-income persons. Existing law provides that specialty mental health services are covered under the Medi-Cal program for eligible Medi-Cal beneficiaries and coverage for those services is provided through mental health plans.

The bill would also make the above-mentioned requirements and waivers regarding professional licensure applicable for persons employed or under contract to provide mental health services as part of a mental health plan that contracts with the department to provide specialty mental health services under the Medi-Cal program.

The bill would require the department to implement, interpret, or make specific these provisions by means of information notices, plan or provider bulletins, or similar instructions until regulations are adopted on or before December 31, 2020.

(3) This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1277 of the Health and Safety Code is amended to read:

1277. (a) No license shall be issued by the 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 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 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 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 four years from commencement of the employment in this state, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure may be granted for one additional year, based on extenuating circumstances determined by the 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. 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.

(c) A special permit shall be issued by the 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 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 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 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. 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, including those persons on authorized leave, but not including intermittent personnel.

(2) Persons employed on January 1, 1989, to supervise or provide consultation on the diagnostic or treatment services, including persons on authorized 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 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 four years from commencement of the employment in this state, at which time licensure shall have been obtained or the employment shall be terminated, except that an extension of a waiver of licensure 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.

(d) The department shall grant a request for an extension of a waiver of licensure 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 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, or pursuant to Article 5 (commencing with Section 14680) of Chapter 8.8 of, or Chapter 8.9 (commencing with Section 14700) of, Part 3 of Division 9, 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, or pursuant to Article 5 (commencing with Section 14680) of Chapter 8.8 of, or Chapter 8.9 (commencing with Section 14700) of, Part 3 of Division 9, 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 as psychologists pursuant to this part, or pursuant to Article 5 (commencing with Section 14680) of Chapter 8.8 of, or Chapter 8.9 (commencing with Section 14700) of, Part 3 of Division 9, who are gaining the experience required for licensure. A waiver granted under this subdivision 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 employed or under contract to provide mental health services as psychologists, clinical social workers, marriage and family therapists, or professional clinical counselors pursuant to this part, or pursuant to Article 5 (commencing with Section 14680) of Chapter 8.8 of, or Chapter 8.9 (commencing with Section 14700) of, Part

3 of Division 9, who have been recruited for employment from outside this state and whose experience is sufficient to gain admission to a licensing examination. A waiver granted under this subdivision shall not exceed 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.

(f) (1) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department, without taking any further regulatory action, shall implement, interpret, or make specific this section by means of information notices, plan or provider bulletins, or similar instructions until the time that regulations are adopted.

(2) The department shall adopt regulations on or before December 31, 2020, in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

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.