

DHS Suggested Amendments w CDC to AB 1739 (as Introduced)
Draft 4/09/03

Amendment 1

Amend Section 1247.2 (g) of the Business and Professions Code to read:

1247.2 (g) **“Passing grade” means a score of 70% or better.**

(h) “Trainee” means a person in training as a hemodialysis technician who is under immediate supervision.

(i) ~~(h)~~ “Training agency” means either of the following:

(1) A chronic dialysis clinic or unit within a general acute care hospital, as defined respectively in Section 1204 and 1250 of the Health and Safety Code.

(2) An accredited college, accredited university, regional occupational center, adult education center, or private school that provides a hemodialysis technician training and testing program. As used in this article, “accredited” has the same meaning as defined in Section 94712 of the Education Code.

(j) ~~(i)~~ “Training director” means a registered nurse who is responsible for the development, management, and supervision of the training and competency testing program.

(k) ~~(j)~~ “Training program” means a hemodialysis technician training program authorized by this article to prepare trainees for certification as hemodialysis technicians.

[DHS justification: Clarifying amendment to define 70% as the minimum passing grade.]

Amendment 2

Amend Section 1247.4 (b) & (c) of the Business and Professions Code to read:

1247.4(b) The regulations adopted by the department shall prescribe minimum standards for **training program** staffing with qualified ~~licensed~~ personnel, and shall include training and testing in the administration of local anesthetics, heparin, and **sodium** chloride solutions.

1247.4(c) The regulations shall permit program flexibility by allowing a training program to use alternative concepts, methods, procedures, techniques, equipment, or personnel qualifications as long as the statutory requirements are met and the training program obtains prior written approval from the department. The department’s approval shall set forth the terms and conditions for the alternative use. A training program shall submit a program flexibility request on a standardized form provided by the department with supporting documentation.

[DHS justification: The California Dialysis Council (CDC) requested that DHS specify that the regulations would be specific to “training program” staffing and not for all staff in a dialysis clinic. Also requested that DHS delete the term “licensed” since clinics may utilize other technicians as trainers. DHS agreed that these CDC proposed amendments meet the intent of our proposal. The insertion of the word “sodium” is a technical amendment – DHS inadvertently left it out when amending this section of current law.]

Amendment 3

Amend Section 1247.45 (a)(3) of the Business and Professions Code to read:

1247.45 (a)(3) Disclosure of ownership information **applicable only to private training programs. Stockholders owning 10 percent or more of a corporation are required to disclose that ownership. The disclosure shall include the name and principal mailing address of the stockholder.**

[DHS justification: CDC suggested amendment. Licensed chronic dialysis clinics are already required to disclose this information upon licensure and renewal of licensure. DHS agreed to this clarification, since DHS does not intend that licensed facilities submit this information twice.]

Amendment 4

Amend Section 1247.45 (b)(1) of the Business and Professions Code to read:

1247.45 (b)(1) Training agencies operated by private schools and public educational institutions shall contract with a **licensed** chronic dialysis clinic or unit to provide a clinical setting to conduct the clinical training portion of their program.

[DHS justification: Clarifying amendment suggested by CDC.]

Amendment 5

Amend Section 1247.45 (c) of the Business and Professions Code to read:

1247.45(c) If the department determines that the applicant fails to comply with the requirements for approval, the department shall give a written notice to the applicant by certified mail of the reasons for the determination and of the applicant's right to appeal the determination. **The applicant shall notify, the Department of Health Services, Deputy Director of Licensing & Certification of the applicant's intent to appeal the determination in writing 10 days from the date of receipt of the letter of determination. The Deputy Director's decision of the appeal shall be considered final.**

[DHS justification: Clarifying amendment to give direction as to how to appeal the department's denial of approval to operate a training program.]

Amendment 6

Amend Section 1247.47 of the Business and Professions Code to read:

1246.47 A training program curriculum shall include at least the following:

(a) One hundred ~~eighty~~ **twenty** hours of classroom **or didactic or both**, instruction, conducted in a chronic dialysis clinic or unit, accredited college, accredited university, regional occupational center, adult education center, or private school, on all of the following:

1247.47(b) ~~Three hundred~~ **Two hundred eighty** hours of supervised clinical training. The clinical training shall include clinical instruction without patients present and clinical training with patients present. To ensure patient safety and quality of care during clinical training, a trainee must demonstrate that he or she has sufficient knowledge to perform a clinical skill competently prior to being assigned to perform the clinical skill.

[DHS justification: CDC recommended changes to lower the number of hours for classroom and supervised clinical training, and to insert the term “didactic” to clarify that classroom training can also include other forms of training (e.g., on-line or training modules.) DHS discussed changes with CDC and determined that we could not go lower than 120 hours for classroom/didactic and 280 hours for clinical instruction, which are similar to what we require for certified nurse assistants. Since hemodialysis technicians are involved in far more invasive medical procedures than certified nurse assistants, we could not justify lowering the classroom training requirement below that required for certified nurse assistants.]

Amendment 7

Amend Section 1247.49(b) of the Business and Professions Code to read:

1247.49(b) The training director shall notify the department in writing of the trainees who have successfully completed the **training and** testing program, within ~~seven~~ **thirty** business days following the completion of the testing program.

[DHS justification: Suggested by CDC to clarify that this notification includes training and testing, and to allow more time to notify DHS of that determination. DHS agrees that 30 days is a reasonable time to notify DHS of successful completion.]

Amendment 8

Amend Section 1247.52 (c) of the Business and Professions Code to read:

1247.52(c) A training program shall retain training records for six years from the date the program was approved. The records shall be available to the department for inspection upon request. A training program shall retain individual course training records that include the date and time of the training, course title, and name of the instructor. The training records of trainees who have completed the program shall be available to the department for inspection for six years from the date the trainee completed the program. ~~The training program shall retain training records of trainees who failed to complete the program for two years.~~

[DHS justification: DHS suggests deleting this requirement, initially proposed by DHS, since it is not required of any other training programs overseen by DHS.]

Amendment 9

Delete Section 1247.54 (a)(3) of the Business and Professions Code.

~~**1247.54(a)(3) A training program engages in conduct inimical to the public health, morals, welfare, or safety of the people of California.**~~

[DHS justification: CDC suggested amendment, since it is not clear how this would apply to a program – CDC felt it was more specific to an individual. Language was taken from certified nurse assistant statutes, where it was specific to individuals. DHS agrees to take this suggested amendment.]

Amendment 10

Delete Section 1247.54 (b)

~~1247.54 (b) – A proceeding to deny, suspend, or revoke program approval under this article shall be conducted in accordance with Section 100171 of the Health and Safety Code.~~

[DHS justification: DHS did not mean for the denial, suspension, or revocation of approval to operate as a training program to be subject to a full administrative hearing, per Section 100171 of the Health and Safety Code. Recommends deleting this reference, and clarifies in Amendment 5 that the appeal shall be to the deputy director of Licensing and Certification, and that appeal shall be final.]

Amendment 11

Delete Section 1247.58 of the Business and Professions Code.

~~1247.58(a) – A chronic dialysis unit or clinic that does not provide a training program shall have the following information available for inspection by the department:~~

- ~~(1) – The local training program with which it contracts, or proof that the hemodialysis technicians employed meet the requirements of Section 1247.6.~~**
- ~~(2) – The names of the hemodialysis technicians and hemodialysis technician trainees employed in the unit or clinic.~~**

[DHS justification: CDC requested amendment. Deletes reference to a chronic dialysis unit or clinic that does not provide a training program since they all provide a training programs.]

Amendment 12

Amend Section 1247.59(a) & (a)(2) of the Business and Professions Code to read:

1247.59(a) The training program **operated by private schools** shall notify the department in writing within 10 days of any change in the following:

[DHS justification: CDC amendment to clarify that information requested in (a) is only applicable to private schools since that information is already required to be reported to DHS as a condition of licensure as a chronic dialysis clinic. DHS agrees to this suggested amendment, since we do not intend for licensed clinics to report this information to DHS twice.]

Amendment 13

1247.59(a)(2) Stockholders owning **5 10** percent or more of a corporation. The notice shall include the name and principal mailing address of the new stockholder.

[DHS justification: DHS proposes to change the percentage to 10 since that is consistent with other licensing categories where this reporting is required.]

Amendment 14

Amend Section 1247.59 (b) of the Business and Professions Code to read:

1247.59 (b) The training program shall notify the department in writing thirty (30) days prior to **any substantive changes to changing** an approved training program curriculum.

[DHS justification: CDC suggested amendment to clarify that DHS only needs to be notified of substantive changes to curriculum. DHS concurs that we only intend for substantive changes to curriculum to be reported.]

Amendment 15

Amend Section 1247.60 of the Business and Professions Code to read:

1247.60 (a) Except during training under immediate supervisions, a person may not provide services as a hemodialysis technician without being certified by the department.

(b) The department may certify a person based on any of the following;

(1) The person is certified by the Board of Nephrology Examination for Nurses and Technicians (BONENT).

(2) The person is certified by the National Nephrology Certification Organization.

~~(2)~~**(3)** The person has completed a department-approved training program in a **hemodialysis chronic dialysis** clinic or unit.

~~(3)~~**(4)** The person is a graduate of a training and testing program that complies with this article and the regulations adopted under this article.

(c) ~~(b)~~ This article does not apply to a person who meets all of the following requirements:

(1) He or she is a home dialysis patient or a patient helper.

(2) The person **is** not employed by a licensed facility.

(3) The person has undergone a home dialysis training program operated by a licensed clinic or hospital, as defined in Sections 1204 and 1250 of the Health and Safety Code.

(4) The person is certified by the medical director of the facility as being competent to perform home dialysis treatment.

[DHS justification: CDC proposed amendment to allow other entities than BONENT that offer certification with a clinical competency component. DHS agreed to add the National Nephrology Certification Organization since they use the same criteria as BONENT for certification.]

Amendment 16

Amend Section 1247.64 of the Business and Professions Code to read:

1247.64 (a) A certificate issued under this article shall expire on the certificate holder's birthday. The first expiration shall be on the certificate holder's birthday not more than four years or less than three years from the initial certification and every four years thereafter.

(b) To renew an unexpired certificate, the certificate holder shall ~~do all of the following~~ on or before the certificate expiration date:

(1) Apply for renewal on a form provided by the department.

(2) Pay the renewal fee prescribed by this article.

(3) Submit documentation of completion of the required continuing education training.

(c) The department shall give written notice ~~of to~~ a certificate holder 90 days in advance of the renewal date that includes **written** information about the provisions of this section. Failure to receive the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(d) An expired certificate may be renewed at any time within two years after its expiration by filing an application for renewal on a form prescribed by the department, payment of the renewal fee in effect on the date the application is filed, and submission of documentation of the required continuing education training.

~~(e) Except as provided in subdivision (h), a certified hemodialysis technician who applies for renewal more than two years after the expiration date, shall complete an approved training program. The training program will assess the hemodialysis technician's knowledge and understanding of dialysis treatment, and his or her need for classroom and clinical training. If a certified hemodialysis technician applies for renewal more than two years after the expiration date, the certified hemodialysis technician shall:-~~

~~(1) complete an approved training program. The training program shall assess the hemodialysis technician's knowledge and understanding of dialysis treatment, and his or her need for classroom and clinical training. The training requirements shall be modified to meet the individual hemodialysis technician's needs. At the conclusion of the program and prior to applying for certification renewal, the hemodialysis technician must pass a written examination and demonstrate clinical competency of required skills as required by section 1247.49 or~~

~~(2) take and achieve a passing grade on a written examination and demonstrate clinical competency required by section 1247.49 without requiring additional training. Upon receipt of the written examination results a certificate holder may petition the department for certificate renewal. The certificate holder must submit the following:~~

~~(A) Documentation verifying a passing grade on the written examination.~~

~~(B) Payment of the application fee provided by this article.~~

~~(C) Documentation of required continuing education training.~~

~~(b) The training requirements will be modified to meet the individual hemodialysis technician's needs. At the conclusion of the program and prior to applying for certification renewal, the hemodialysis technician must pass a written examination and demonstrate competency of required skills as required by section 1247.49~~

(f) A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certification holder, while the certificate remains suspended, and, until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended. The certificate holder must submit a renewal application, fee, and documentation of continuing education training as required by this article.

~~(g) To renew a certificate that has been expired for more than four years, a certificate holder who takes and achieves a passing grade on a competency test required by Section 1247.49, without requiring additional training, may petition the department for certificate renewal. The certificate holder must submit the following documents to the department:~~

~~(1) Documentation verifying a passing grade on the competency test.~~

~~(2) Payment of the application fee provided by this article.~~

~~(3) Documentation of required continuing education training.~~

[DHS justification: These amendments clarify originally submitted renewal requirements to allow any technician whose certificate has lapsed for more than two years to either re-train and re-test or to challenge the test and re-train only if the individual cannot achieve a passing grade on the test.]

Amendment 17

Amend Section 1247.66(d) of the Business and Professions Code to read:

1247.66 (d) In determining whether or not to deny the application for certification or to suspend or revoke certification pursuant to **paragraph (1) of** subdivision (c) or paragraph (4) of subdivision (b),

the department shall take into consideration the following factors, as evidence of good character and rehabilitation:

[DHS justification: Existing language required the department to consider evidence of good character and rehabilitation when making a decision to deny/revoke certification for any reasons contained under subparagraph (c), which is enumerated (1) through (3).

An amendment to reference only (c)(1) is necessary because good character and rehabilitation should not be an issue when misconduct or offenses related to patient care is substantiated. This would be inconsistent with the department's requirement to "exclude" such individuals from participation in Title XVIII (Medicare) and Title XIX (Medicaid) and all other federal health care programs as described under as described under Section 14123 of the Welfare and Institutions Code and in compliance with Sections 1128 and 1128B of the Social Security Act.

If a revocation resulted from abuse of a dialysis patient, it would not be prudent for the department to grant a certificate simply because the accused is able to submit character references and has a good employment history. Further, it is clear that the intent of BP Section (d) is for convictions only, as demonstrated by the language contained therein, such as "activities since the conviction", "the extent to which the person has complied with parole".]

Amendment 18

Amend Section 1247.66(e) of the Business and Professions Code to read:

1247.66 (e) When the department determines to suspend **or revoke** a certification, the department shall specify the period of suspension. The department may determine that the suspension **or revocation** shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the department determines that probation is the appropriate action, the certificate holder shall be notified that the probation is in lieu of **suspension or revocation the department proceeding with a formal action to suspend the certification** and in lieu of an appeal pursuant to subdivision **(h)(i). If the certificate holder fails to comply with the conditions of probation, the department may proceed with a formal action to revoke or suspend the certification.**

(f)(1) **In lieu of suspension or revocation,** ~~T~~the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions, including, but not limited to, work performance, rehabilitation, training counseling, progress reports and treatment programs.

(2) If a certificate holder **successfully** completes a diversion program, the department shall not take action upon the allegations that were the basis for the diversion agreement.

(3) If the certificate holder fails to comply with the diversion program agreement, the department may proceed with a formal action to suspend or revoke the certification.

[DHS justification: For 1247.66 (e): To authorize flexibility of potential remedies that may be imposed by the department. Offers DHS the option of giving a licensee a less severe penalty, if warranted. Allows the department to consider additional circumstances and avoid lengthier administrative hearings. Probation avoids a more formal action of either suspension or revocation and allows licensees to continue to perform duties with another opportunity for appropriate professional conduct.

For 1247.66 (f)(1): DHS original language does not specify under what type of circumstance that a certificate holder would request to enter into a diversion agreement. The proposed amendment

simply clarifies the circumstances in which it would be applicable. As with probation, diversion should be a viable option to either suspension OR revocation and it is in the best interest of both the department and the certificate holder to entertain either option to the extent that the language does not prohibit the department from declining the request.]

Amendment 19

Amend Section 1247.66(i)(1) & (i)(2)(b) of the Business and Professions Code to read:

1247.66(i)(1) Upon written notification that the department has determined that an application shall be denied or a certificate shall be suspended or revoked, the applicant or certificate holder may request an administrative hearing by submitting a written request to the department within 20 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing pursuant to the procedures specified in **Health & Safety Code** Section 100171, except where those procedures are inconsistent with this section.

1247.66(i)(2)(B) The hearing shall be tape recorded and a written decision shall be sent by certified mail to the applicant or certificate holder. Except as specified in subdivision ~~(i)~~(j), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

[DHS justification: Clarifying amendments.]

Amendment 20

Amend Section 1247.66 (j) of the Business and Professions Code to read:

1247.66(j) The department may revoke or suspend a certificate prior to a hearing when immediate action is necessary in the director's judgment to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (h). **If the certificate holder requests an administrative hearing pursuant to subdivision (i), to appeal a suspension or revocation under this subdivision, the department shall hold the administrative hearing as soon as possible but no later than 30 calendar days from receipt of the request for hearing.**

[DHS justification: to provide timelines for appeals of suspensions or revocations that is similar to other certificate programs overseen by DHS.]

Amendment 21

Amend Section 1247.66(k) of the Business and Professions Code to read:

1247.66(k) If the certificate holder requests, an administrative hearing pursuant to subdivision (i), the state department shall hold the administrative hearing as soon as possible but not later than **30 60** calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within **30 60** calendar days of the hearing.

[DHS justification: To provide DHS a reasonable time frame for DHS to process requests for administrative hearings and to provide a determination from that hearing.]

Amendment 22

Amend Section 1247.66 (m) of the Business and Professions Code to read:

1247.66(m) **Upon a determination to deny an application, or revoke or suspend a certification, the** department shall notify the applicant's or certificate holder's employer in writing of the following:

- (1) That the applicant's application was denied or that the certificate holder's certificate was revoked **or suspended**.
- (2) Whether the determination is final or whether a hearing is pending.

[DHS justification: Clarifying amendment.]

Amendment 23

Amend Section 1247.71 of the Business and Professions Code to read:

A hemodialysis technicians applying for **a** certificate of renewal shall submit proof that he or she has obtained 30 hours of continuing education training **or in-service training, or both,** in dialysis care or general health care since the last certificate renewal.

[DHS justification: CDC suggested amendment to allow for in-service training to meet the continuing education requirements, as in current law. DHS agrees that facility in-service shall be allowed to count as continuing education.]

Amendment 24

Amend Section 1247.74 of the Business and Professions Code to read:

A hemodialysis technician shall obtain the **in-service training or** continuing education required by Section 1247.71 from one or more of the following sources:

[DHS justification: same as amendment 23]

Amendment 25

Delete Section 9 (changes to Section 120910 of the Health and Safety Code) and revert to current law.

Justification: DHS has withdrawn its proposed legislation to delete the required DHS annual report to the Legislature on Early Intervention Projects.