

## **Background Checks – Effective January 1, 2023**

**AB 1720 (Holden)** Chapter 581, Statutes of 2022

Prepared for CALA Members October 2022

\*DSS Implementation Plan pending

### **Why was this bill introduced?**

This bill was introduced to address the lengthy exemption process that essentially shuts out people with even minor prior convictions from working in Residential Care Facilities for the Elderly (RCFEs) and other DSS licensed programs.

### **What was CALA's position?**

CALA was initially opposed to AB 1720 due to concerns that expanding simplified exemptions would have the unintended effect of increasing the time to grant simplified exemptions. In addition, CALA was concerned about the removal of the criminal history self-disclosure, which provides important information regarding the potential for an exemption and allows RCFEs to better plan for staffing challenges while waiting to fill a position. CALA worked with the author, sponsors, and DSS to address concerns about increasing time to grant simplified exemptions. With repeated assurances from DSS that this bill would result in faster simplified exemptions, and that RCFEs are allowed to continue asking for the self-disclosure even if DSS does not, CALA moved to a neutral position.

### **How does this bill solve the problem?**

This bill adds simplified exemption requirements to the Health and Safety Code and expands the current regulatory criteria for granting simplified exemptions (additional minor crimes will be considered for a "simplified exemption"). DSS has stated that expanding the criteria used to grant simplified exemptions will move more applicants into a simplified exemption process and out of the even more lengthy and burdensome standard exemption process. Fewer standard exemptions will hopefully result in a faster process for those applicants as well.

### **What do RCFEs need to know?**

- Applicants must wait until cleared through Guardian, which entails a DOJ, FBI, and Administrative Action Registry System (AARS) search, before they can begin working.
  - This aligns statute with the current practice of not allowing applicants to begin working if the DOJ clearance has returned but the FBI report is pending, and they have not disclosed any criminal history on the self-attestation form (LIC 508) signed under penalty of perjury.
- DSS can no longer require applicants to self-disclose criminal history (LIC 508).
  - Licensees can still ask applicants to disclose criminal history at any point in the hiring process because RCFEs are exempt from "Ban the Box" legislation [Government Code 12952(d)(4)]. This section does not apply in any of the following circumstances: "To a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history."
- DSS may grant a simplified exemption if the applicant meets all the following requirements:
  - They have not been convicted of a violent crime.
  - They have not been convicted of a crime within the last five years.
  - They have not been convicted of a felony within the last 10 years.
  - They have five or fewer misdemeanor convictions.

- They have no more than one felony conviction.
  - They have not been convicted of a non-exemptible crime.
- DSS has the discretion to require someone who would otherwise qualify for a simplified exemption to go through the standard exemption process.