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AMENDED IN SENATE APRIL 28, 2011
AMENDED IN SENATE APRIL 26, 2011
AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 411

Introduced by Senator Price
(Coauthors: Senators Alquist, DeSaulnier, Padilla, and Vargas)

February 16, 2011

An act to add Chapter 13 (commencing with Section 1796.10) to Division 2 of the Health and Safety Code, relating to public health, and making an appropriation therefor: *health*.

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as amended, Price. Home Care Services Act of 2011.

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program.

Existing law provides for the licensing and regulation of various community care facilities by the State Department of Social Services.

This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health, and the certification of home care aides. The bill would exclude specified entities from the definition of a home care organization. The bill would

impose various licensure requirements on a home care organization ~~and, including requiring a licensed home care organization to be accredited by an appropriate accrediting organization, as specified.~~ *The bill would also impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, and the extent to which payment may be expected from specified sources, and the availability of services provided by the State Long-Term Care Ombudsman.* In addition, ~~this bill would require~~ the home care organization ~~would be required,~~ among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would ~~establish the Home Care Organization and Home Care Aide Certification Fund,~~ would authorize ~~require~~ the department to impose various fees to be deposited in ~~that fund, and would make a continuous appropriation from that fund, except~~ as specified, ~~to the department to carry out the provisions of the bill~~ *the State Department of Public Health Licensing and Certification Program Fund.* This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act, *and would authorize the department to implement the bill through all-facility letters or similar instructions, pending the adoption of regulations.*

Vote: majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: no.

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:

3 (a) Seniors, individuals with disabilities, and the frail elderly
4 frequently find themselves in need of part-time to full-time
5 assistance from a caregiver in order to live at home independently.

6 (b) Out of the 701,000 estimated home care aides working in
7 the country, more than 70,000 work in California.

8 (c) The Employment Development Department has identified
9 home care services as one of the fastest growing fields of
10 employment.

11 (d) In California, most individuals hiring a home care
12 organization believe that the home care aide entering their home
13 has been thoroughly screened and trained. However, a business
14 license is the only requirement needed to provide nonmedical home
15 care services in an individual's home.

16 (e) In view of the increasing number of home care aides entering
17 private homes, the number of incidents of abuse and neglect by
18 home care aides currently being reported in the media is alarming
19 and concerning because, according to prosecutors, for every
20 reported incident of abuse or neglect, four others go unreported.

21 (f) Twenty-three states, including Texas, Illinois, Florida, and
22 New York, have standards requiring home care organizations to
23 register or obtain a license.

24 (g) Discharge planners commonly maintain lists of home care
25 aides and home care organizations for purposes of patient referral
26 without any information about the individuals or the organizations,
27 thereby placing both the patient and the referring organization at
28 risk.

29 (h) Typically, family members looking for home care services
30 are in a crisis and will not ask all of the "right" questions when
31 choosing a home care organization. In addition, there is currently
32 no centralized list of home care organizations in California for
33 family members, seniors, or disabled individuals to consult when
34 in need of home care services for their loved ones or themselves.

35 SEC. 2. Chapter 13 (commencing with Section 1796.10) is
36 added to Division 2 of the Health and Safety Code, to read:

CHAPTER 13. HOME CARE SERVICES

Article 1. General Provisions

1796.10. This chapter shall be known and may be cited as the Home Care Services Act of 2011.

1796.11. The State Department of Public Health shall administer and enforce this chapter.

1796.12. For purposes of this chapter, the following definitions shall apply:

(a) "Client" means an individual who receives home care services.

(b) "Department" means the State Department of Public Health.

(c) "Home care aide" means an individual who provides home care services to a client in the client's residence, and is synonymous, for purposes of this chapter, with "caregiver," "custodial care," "personal care attendant," "homemaker," and "companion." In addition, "home care aide" includes an individual who qualifies as a personal attendant, as defined in Industry Wage Order 15-2001, issued by the Industrial Welfare Commission, who provides home care services.

(d) (1) "Home care organization" or "organization" means an individual, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for the provision of home care services by a home care aide to a client in the client's residence and that is licensed pursuant to this chapter.

(2) "Home care organization" does not include any of the following:

(A) A home health agency licensed under Chapter 8 (commencing with Section 1725).

(B) A hospice licensed under Chapter 8.5 (commencing with Section 1745).

(C) A health facility licensed under Chapter 2 (commencing with Section 1250).

(D) A county providing in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, without regard to whether the county provides these services as a public authority or through a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code.

1 (e) “Residence” means a temporary or permanent location where
2 a client receives home care services.

3 (f) “Transportation” means transportation in a motor vehicle in
4 good working order provided by a home care aide who is a licensed
5 and insured driver.

6 1796.13. (a) For purposes of this chapter, “home care services”
7 means services provided by a home care aide to a client who,
8 because of advanced age or physical or mental infirmity, cannot
9 perform these services for himself or herself. These services
10 include, but are not limited to, bathing, dressing, feeding,
11 exercising, personal hygiene and grooming, transferring,
12 ambulating, positioning, toileting and incontinence care, assisting
13 with medication that the client normally self-administers,
14 housekeeping, meal planning and preparation, laundry,
15 transportation, correspondence, making telephone calls, shopping
16 for personal care items or groceries, and companionship. This
17 subdivision shall not be construed to authorize a home care aide
18 to administer medication that would otherwise require
19 administration or oversight by a licensed healthcare professional.

20 (b) Home care services shall not include any of the following:

21 (1) Services authorized to be provided by a licensed home health
22 agency under Chapter 8 (commencing with Section 1725).

23 (2) Services authorized to be provided by a licensed hospice
24 pursuant to Chapter 8.5 (commencing with Section 1745).

25 (3) Services authorized to be provided by a licensed health
26 facility pursuant to Chapter 2 (commencing with Section 1250).

27 (4) In-home supportive services provided pursuant to Article 7
28 (commencing with Section 12300) of Chapter 3 of Part 3 of
29 Division 9 of the Welfare and Institutions Code.

30 (5) Services authorized to be provided by a licensed residential
31 care facility for the elderly pursuant to Chapter 3.2 (commencing
32 with Section 1569).

33 (c) This chapter shall not be construed to prohibit an individual
34 from employing a home care aide without the assistance of a home
35 care organization.

36
37 Article 2. Licensure

38
39 1796.20. (a) An individual, partnership, corporation, limited
40 liability company, joint venture, association, or other entity shall

1 not arrange for the provision of home care services by a home care
2 aide to a client in this state without first obtaining a license pursuant
3 to this chapter.

4 (b) An individual or entity that violates this chapter shall be
5 liable for a civil penalty not to exceed nine hundred dollars (\$900)
6 per day for each calendar day of each violation.

7 (c) Upon discovering that an individual or entity is in violation
8 of this chapter, the department shall send a written notice of
9 noncompliance to the individual or entity and to the Attorney
10 General or appropriate district attorney. Upon receiving this notice,
11 the Attorney General or district attorney shall do any or all of the
12 following:

13 (1) Issue a cease and desist order, which shall remain in effect
14 until the individual or entity has obtained a license pursuant to this
15 chapter. If the individual or entity fails to comply with the cease
16 and desist order within 20 calendar days, the Attorney General or
17 a district attorney shall apply for an injunction.

18 (2) Impose the civil penalty described in subdivision (b).

19 (3) Bring an action against the individual or entity under Chapter
20 5 (commencing with Section 17200) of Part 2 of Division 7 of the
21 Business and Professions Code.

22 1796.21. A home care organization that has its principal place
23 of business in another state, in addition to the other requirements
24 of this chapter, shall comply with both of the following
25 requirements before arranging for the provision of home care
26 services by a home care aide to a client in California:

27 (a) Have an office in California.

28 (b) Obtain authorization from the Secretary of State to conduct
29 business in California.

30 1796.22. The enactment of this chapter is an exercise of the
31 police power of the state for the protection of the public welfare,
32 prosperity, health, safety, and peace of its people. The civil
33 penalties provided by this chapter are in addition to any other
34 penalty provided by law.

35 1796.23. In order to carry out the provisions of this chapter,
36 the department shall do all of the following:

37 (a) Adopt rules and regulations to implement this chapter.

38 (b) Establish procedures for the receipt, investigation, and
39 resolution of complaints against home care organizations.

1 (c) Investigate complaints concerning misconduct by certified
2 home care aides. The department may take disciplinary action in
3 accordance with subdivision (b) of Section 1796.41.

4 (d) Maintain a registry, on the department's Internet Web site,
5 of the certification status of all certified home care aides, the name
6 and location of the home care aide's employer, home care
7 organization, and the status of any proposed or completed
8 disciplinary action against the certified home care aide. The
9 department also may request and maintain additional employment
10 information for certified home care aides, as necessary, which
11 shall not be publicly available on the registry.

12 ~~1796.24. (a) The department shall issue a license to a home
13 care organization that meets all of the following requirements:~~

14 ~~(1) Submits an application, on a form prescribed by the
15 department.~~

16 ~~(2) Pays a licensure fee, as prescribed by the department
17 pursuant to Section 1796.71.~~

18 ~~(3) Submits proof of general and professional liability insurance
19 in the amount of at least one million dollars (\$1,000,000) per
20 occurrence and three million dollars (\$3,000,000) in the aggregate.~~

21 ~~(4) Submits proof of a valid workers' compensation policy
22 covering its home care aides. The proof shall consist of the policy
23 number, the effective and expiration dates of the policy, and the
24 name and address of the policy carrier.~~

25 ~~(5) Passes any background clearance, as required pursuant to
26 Section 1796.26.~~

27 ~~(6) Provides the department with a list of all of its home care
28 aides and proof that each satisfies the requirements of Section
29 1796.60.~~

30 ~~(7) Complies with the requirements of this chapter.~~

31 ~~(b) The term of a license issued under this section is one year.
32 The license may be renewed upon application to the board and
33 payment of the renewal fee prescribed by the board pursuant to
34 Section 1796.71.~~

35 ~~(c) Following the receipt of an application for a license or
36 renewal of a license under this section, the department shall
37 conduct an onsite inspection of the applicant to ensure compliance
38 with this chapter.~~

1 1796.24. (a) Notwithstanding any other provision of this
2 chapter, the department shall issue a home care organization
3 license to an entity that satisfies all of the following requirements:

4 (1) Is accredited as a home care agency by either the Joint
5 Commission on Accreditation of Healthcare Organizations
6 (JCAHO), the Community Health Accreditation Program (CHAP),
7 or any other nationally recognized accrediting organization that
8 has an accreditation program for home care organizations, and
9 that is approved by the department. The accrediting organization
10 shall forward to the department copies of all initial and subsequent
11 survey and other accreditation reports or findings.

12 (2) Files an application, including the fees required pursuant
13 to Section 1796.70.

14 (3) Satisfies any other additional licensure requirements of, or
15 regulations adopted pursuant to, this chapter, that the department
16 identifies, after consulting with either the JCAHO or, the CHAP,
17 or other accreditation organization approved pursuant to
18 paragraph (1), as more stringent than the accreditation
19 requirements of the accreditation organization.

20 (4) Submits proof of general and professional liability insurance
21 in the amount of at least one million dollars (\$1,000,000) per
22 occurrence and three million dollars (\$3,000,000) in the aggregate.

23 (5) Submits proof of a valid workers' compensation policy
24 covering its home care aides. The proof shall consist of the policy
25 number, the effective and expiration dates of the policy, and the
26 name and address of the policy carrier.

27 (6) Provides the department with a complete list of its home
28 care aides, and proof that each satisfies the requirements of Section
29 1796.60.

30 (7) The owner or owners of the organization pass a background
31 clearance, as required pursuant to Section 1796.26.

32 (b) At the request of the department, the accreditation
33 organization shall conduct a survey of an accredited home care
34 organization to ensure the accreditation requirements are satisfied.
35 These surveys shall be conducted using a selective sample basis.

36 (c) The department may require a survey of an accredited home
37 care organization to investigate complaints of substantial
38 noncompliance, as determined by the department, with the
39 accreditation standards.

1 (d) Notwithstanding subdivisions (a), (b), and (c), the
2 department shall retain its full range of authority over accredited
3 home care organizations to ensure the licensure and accreditation
4 requirements are satisfied. This authority shall include the entire
5 scope of enforcement sanctions and options available under Section
6 1796.20.

7 1796.25. At least 30 days before the expiration of a license,
8 the department shall mail to the licensee, at the latest address
9 furnished by the licensee to the department, a notice stating the
10 amount of the renewal fee and the date on which it is due, and that
11 failure to pay that fee on or before the date due will result in the
12 expiration of the license.

13 1796.26. (a) In order to obtain a license, the following
14 individual or individuals shall consent to the background clearance
15 described in subdivision (b):

16 (1) The owner or owners of a home care organization if the
17 owners are individuals.

18 (2) If the owner of a home care organization is a corporation,
19 limited liability company, joint venture, association, or other entity,
20 an individual having a 10-percent or greater interest in that entity.

21 (b) (1) The department shall electronically submit to the
22 Department of Justice fingerprint images and related information
23 required by the Department of Justice of all home care organization
24 owners, as described in subdivision (a) for the purposes of
25 obtaining information as to the existence and content of a record
26 of state or federal convictions and state or federal arrests and also
27 information as to the existence and content of a record of state or
28 federal arrests for which the Department of Justice establishes that
29 the person is free on bail or on his or her own recognizance pending
30 trial or appeal.

31 (2) When received, the Department of Justice shall forward to
32 the Federal Bureau of Investigation requests for federal summary
33 criminal history information received pursuant to this section. The
34 Department of Justice shall review the information returned from
35 the Federal Bureau of Investigation and compile and disseminate
36 a response to the department.

37 (3) The Department of Justice shall provide a state and federal
38 response to the department pursuant to paragraph (1) of subdivision
39 (p) of Section 11105 of the Penal Code.

1 (4) The department shall request from the Department of Justice
2 subsequent arrest notification service, as provided pursuant to
3 Section 11105.2 of the Penal Code, for persons described in
4 paragraph (1).

5 (5) The Department of Justice shall charge a fee not to exceed
6 the actual cost of processing the request described in this
7 subdivision.

8 (c) If the background clearance conducted pursuant to
9 subdivision (a) discloses a conviction for a felony or a crime that
10 evidences an unfitness to operate a home care organization, the
11 application for a license shall be denied. This subdivision shall not
12 be applied to deny a license if the individual or individuals, as
13 applicable, present evidence satisfactory to the department that
14 the individual or individuals, as applicable, have been rehabilitated
15 and presently are of good character so as to justify the issuance of
16 a license.

17 1796.27. A private or public organization, with the exception
18 of a county providing in-home supportive services pursuant to
19 Article 7 (commencing with Section 12300) of Chapter 3 of Part
20 3 of Division 9 of the Welfare and Institutions Code, shall not do
21 any of the following, unless it is licensed under this chapter:

22 (a) Represent itself to be a home care organization by its name
23 or advertising, soliciting, or any other presentments to the public,
24 or in the context of services within the scope of this chapter, imply
25 that it is licensed to provide those services or to make any reference
26 to employee bonding in relation to those services.

27 (b) Use the terms “home care organization,” “home care,”
28 “in-home care,” or any combination of those terms, within its
29 name.

30 1796.28. *(a) If one accrediting agency denies, revokes, or*
31 *suspends the accreditation of a home care organization licensed*
32 *under this chapter, that action shall apply to all other accrediting*
33 *agencies. A home care organization for which accreditation is*
34 *denied, revoked, or suspended may reapply for accreditation with*
35 *the same accrediting agency. The home care agency may also*
36 *apply for accreditation from another accrediting agency, but only*
37 *if it discloses the full accreditation report of the accrediting agency*
38 *that denied, revoked, or suspended accreditation. A home care*
39 *organization for which accreditation has been denied, revoked,*

1 *or suspended shall disclose the accreditation report to any other*
2 *accrediting agency to which it submits an application.*

3 *(b) An accreditation agency that denies, revokes, or suspends*
4 *a home care organization's certification of accreditation, shall do*
5 *all of the following:*

6 *(1) Notify the department of the action.*

7 *(2) Send a notification letter to the home care organization of*
8 *the action. The notification letter shall state that the agency is no*
9 *longer allowed to provide home care services that require home*
10 *care agency accreditation.*

11 *(3) Require the home care organization to remove its*
12 *accreditation certification and to post the notification letter in a*
13 *conspicuous location that is accessible to public view.*

14

15 Article 3. Complaints, Inspections, and Investigations

16

17 1796.30. (a) The department shall investigate complaints filed
18 against home care organizations.

19 (b) The department shall verify through annual random,
20 unannounced inspections that a home care organization meets the
21 requirements of this chapter and the regulations adopted pursuant
22 thereto.

23 (c) An investigation or inspection conducted by the department
24 pursuant to this chapter may include, but is not limited to, the
25 following:

26 (1) Inspection of the books, records, and premises of a home
27 care organization. An organization's refusal to make those records,
28 books, or premises available shall constitute cause for the
29 revocation of the organization's license.

30 (2) Direct observation of the provision of home care services
31 to a client in the client's residence, if the client's consent is
32 obtained.

33

34 Article 4. Home Care Organization Operating Requirements

35

36 1796.40. A home care organization shall do all of the following:

37 (a) Post its license in its place of business in a conspicuous
38 location, visible both to clients and to its home care aides.

39 (b) Operate the organization in a commercial office space that
40 complies with local zoning ordinances.

1 (c) Have plans, procedures, and policies in place, including all
2 of the following:

3 (1) Plans and procedures to be followed in the event of
4 emergencies or natural disasters that would result in the interruption
5 of home care services.

6 (2) A documented backup staffing plan in the event that a home
7 care aide scheduled to provide home care services becomes
8 unavailable.

9 (3) A written policy regarding advance directives.

10 (4) A receipt and disbursement policy for expenditures made
11 on behalf of a client to ensure that financial abuse does not occur.

12 (d) Maintain a valid workers' compensation policy covering its
13 home care aides.

14 (e) Maintain an employee dishonesty bond, including third-party
15 coverage, with a minimum limit of ten thousand dollars (\$10,000).

16 (f) Comply with the regulations adopted by the department
17 implementing this chapter.

18 1796.41. With respect to home care aides employed by a home
19 care organization, the organization shall consult the department's
20 registry before hiring an individual or placing him or her in direct
21 contact with patients. In addition, the organization shall do all of
22 the following:

23 (a) Ensure that each of its home care aides meets the
24 requirements of Section 1796.61.

25 (b) Investigate complaints made by a client, or a client's family
26 member or guardian, against home care aides regarding a service
27 that is or fails to be furnished. The organization shall document
28 both the existence and the resolution of those complaints.

29 (c) Evaluate home care aides as follows:

30 (1) Conduct an annual assessment of the performance and
31 effectiveness of each home care aide, including, if client consent
32 is obtained, at least one observation of the aide providing home
33 care services in the residence of a client.

34 (2) Every 62 days, supervise each home care aide providing
35 home care services in the residence of a client, provided that client
36 consent is obtained. The supervision required by this paragraph
37 shall not be billed to the client.

38 (d) Ensure that a home care aide, when providing services to a
39 client, has access at all times to a representative of the organization

1 who is in a supervisory capacity and who does not regularly render
2 home care services to that client.

3 (e) Require a home care aide, while providing home care
4 services, to wear a badge that includes all of the following
5 information in 12-point type or larger:

6 (1) The aide's name.

7 (2) A photograph of the aide.

8 (3) The name of the home care organization.

9 (4) The expiration date of the license of the home care
10 organization.

11 (5) The home care aide's certificate number as issued by the
12 department.

13 (f) Require home care aides to demonstrate that they are free
14 of active tuberculosis, pursuant to Section 1796.63.

15 (g) Require home care aides to annually complete not less than
16 eight paid hours of paid department-approved training on
17 job-related topics.

18 (h) Prohibit home care aides from accepting money or property
19 from a client without written permission from the home care
20 organization.

21

22 Article 5. Client Rights

23

24 1796.50. With respect to clients, a home care organization shall
25 do all of the following:

26 (a) Advise a client of any change in the client's plan for home
27 care services.

28 (b) Before arranging for the provision of home care services to
29 a client, do all of the following:

30 (1) Distribute to the client its advance directive policy, along
31 with a written summary of applicable state law.

32 (2) Advise the client of its policy regarding the disclosure of
33 client records.

34 (3) Inform the client of the types and hours of available home
35 care services.

36 (4) Inform the client, orally and in writing, of the home care
37 services that are or are not covered by Medi-Cal or Medicare, as
38 applicable, and the extent to which payment may be expected from
39 the client, from Medicare or Medi-Cal, and from any other source.

1 (c) Inform the client, both orally and in writing, of a change to
2 the information provided in paragraph (4) of subdivision (b) as
3 soon as possible, but not later than 30 days of becoming aware of
4 that change.

5 (d) Have a written agreement with the client that includes, but
6 is not limited to, the cost of and the hours during which home care
7 services will be provided to the client and reference to the personal
8 attendant requirements, if applicable, as referenced in Wage Order
9 15-2001, issued by the Industrial Welfare Commission.

10 ~~(e) Inform the client, both orally and in writing, at the time of~~
11 ~~arranging for the provision of home care services, of the availability~~
12 ~~of services provided by the Office of State Long-Term Care~~
13 ~~Ombudsman, including independent complaint resolution services,~~
14 ~~and provide the client with written contact information for the~~
15 ~~office.~~

16 1796.51. (a) Home care clients are entitled to the following
17 rights:

18 (1) The right to have the client's property treated with respect.

19 (2) The right to voice grievances free from reprisal regarding a
20 home care service that is or fails to be provided or regarding the
21 violation of any of the rights listed in this section.

22 (3) The right to be informed of and to participate in the planning
23 of the client's home care services.

24 (4) The right to confidentiality of the client's personal
25 information.

26 (b) Before arranging for the provision of home care services to
27 a client, a home care organization shall provide a written notice
28 to the client stating that the client has all of the rights enumerated
29 in subdivision (a).

30 (c) A home care organization shall maintain written
31 documentation showing that it has complied with subdivision (a).

32 (d) If a client lacks the capacity to understand the rights listed
33 in this section, as determined by a court of competent jurisdiction
34 or by the client's physician, unless the physician's opinion is
35 controverted by the client or the client's legal representative, the
36 client's legal representative shall have those rights.

37 (e) A home care organization shall protect, and promote the
38 exercise of, the rights listed in this section.

Article 6. Home Care Aides

1796.60. (a) Beginning January 1, 2013, the department shall require any person hired as a home care aide to be certified within 30 days from the date of being hired.

(b) In order to receive a certificate from the department to provide home care services for the elderly or persons with disabilities, a home care aide shall meet the minimum training requirements in this section. Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section.

(c) A prospective home care aide shall complete a minimum of five hours of entry-level training, as follows:

(1) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment.

(2) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control.

(3) Other training related to core competencies and population-specific competencies as required by regulation.

(d) The department shall only approve a training curriculum that satisfies both of the following conditions:

(1) The training curriculum has been developed with input from consumer and worker representatives.

(2) The training curriculum requires comprehensive instruction by qualified instructors on the competencies and training topics identified in this section.

(e) The department shall issue a home care aide certificate to each individual who meets the requirements of this section.

(f) The department shall set a fee for certification under this section that shall be paid for by the employer.

(g) An individual who wishes, independent of an employer-employee relationship, to obtain a certificate to provide home care aide services, shall pay for his or her own certification.

1796.61. (a) On and after January 1, 2012, a home care organization shall not hire an individual as a home care aide unless the individual complies with all of the following requirements:

(1) Completes an individual interview, to the satisfaction of the organization.

(2) Provides at least two work- or school-related references or, for an individual with no previous work experience, at least two

1 character references from nonrelatives. The organization shall
2 verify the references before hiring the individual.

3 (3) Demonstrates that he or she possesses sufficient language
4 skills to read and understand instructions, prepare and maintain
5 written reports and records, and communicate with a client.

6 (b) A home care organization that hires an individual pursuant
7 to subdivision (a) shall ensure that the individual, within the first
8 30 days of employment, satisfactorily completes the home care
9 certification training in Section 1796.60.

10 1796.62. (a) A home care organization shall conduct and pay
11 for a background clearance on an individual hired as a home care
12 aide, unless the individual holds a valid, unexpired license or
13 registration in a health-related field that requires a background
14 check as a condition of the license or registration.

15 (b) (1) The home care organization shall electronically submit
16 to the Department of Justice fingerprint images and related
17 information required by the Department of Justice of all home care
18 aides, as defined under subdivision (c) of Section 1796.12, for the
19 purposes of obtaining information as to the existence and content
20 of a record of state convictions and state arrests, and also
21 information as to the existence and content of a record of state
22 arrests for which the Department of Justice establishes that the
23 person is free on bail or on his or her own recognizance pending
24 trial or appeal.

25 (2) The Department of Justice shall provide a state response to
26 the department pursuant to paragraph (1) of subdivision (n) of
27 Section 11105 of the Penal Code.

28 (3) The home care organization shall request from the
29 Department of Justice subsequent arrest notification service, as
30 provided pursuant to Section 11105.2 of the Penal Code, for
31 persons described in paragraph (1).

32 (4) The Department of Justice shall charge a fee not to exceed
33 the actual cost of processing the request described in this
34 subdivision.

35 (c) If the background check required by subdivision (b) discloses
36 a conviction or incarceration for a conviction of any of the
37 following provisions of the Penal Code within 10 years, the
38 organization shall deny or terminate, as applicable, the employment
39 of that individual:

1 (1) Fraud against a government health care or supportive
2 services program, including Medicare, Medicaid, or services
3 provided under Title V, Title XX, or Title XXI of the federal Social
4 Security Act, or a violation of subdivision (a) of Section 273a of
5 the Penal Code, or Section 368 of the Penal Code, or similar
6 violations in another jurisdiction.

7 (2) A violent or serious felony, as specified in subdivision (c)
8 of Section 667.5 of the Penal Code and subdivision (c) of Section
9 1192.7 of the Penal Code.

10 (3) A felony offense for which a person is required to register
11 under subdivision (c) of Section 290 of the Penal Code. For
12 purposes of this subparagraph, the 10-year time period specified
13 in this section shall commence with the date of conviction for, or
14 incarceration following a conviction for, the underlying offense,
15 and not the date of registration.

16 (4) A felony offense described in paragraph (2) of subdivision
17 (c) or paragraph (2) of subdivision (g) of Section 10980.

18 (d) Notwithstanding subdivision (c), a certification shall not be
19 denied under this section if the applicant has obtained a certificate
20 of rehabilitation under Chapter 3.5 (commencing with Section
21 4852.01) of Title 6 of Part 3 of the Penal Code or the information
22 or accusation against him or her has been dismissed pursuant to
23 Section 1203.4 of the Penal Code.

24 (e) The organization shall complete and pay for the background
25 clearance specified in subdivision (b) on home care aides whose
26 employment began before January 1, 2012, within 180 days of the
27 effective date of this section.

28 (f) A home care aide hired on or after January 1, 2012, shall not
29 be permitted to provide home care services until he or she passes
30 the background clearance pursuant to this section.

31 1796.63. (a) An individual hired as a home care aide on or
32 after January 1, 2012, shall be terminated from employment unless
33 the individual submitted to an examination within six months prior
34 to employment or submits to an examination within 14 days after
35 employment to determine that the individual is free of active
36 tuberculosis. For purposes of this section, “examination” consists
37 of a tuberculin skin test and, if that test is positive, an X-ray of the
38 lungs.

39 (b) A home care aide whose employment with a home care
40 organization began before January 1, 2012, within 14 days of the

1 effective date of this section, shall submit to the examination
2 described in subdivision (a).

3 (c) After submitting to an examination, a home care aide whose
4 tuberculin skin test is negative shall be required to undergo an
5 examination at least once every two years. Once a home care aide
6 has a documented positive skin test that has been followed by an
7 X-ray, the examination is no longer required.

8 (d) After the examination, a home care aide shall submit, and
9 the organization shall keep on file, a certificate from the examining
10 practitioner showing that the home care aide was examined and
11 found free from active tuberculosis.

12 (e) The examination is a condition of initial and continuing
13 employment with the home care organization. The home care aide
14 shall pay the cost of the examination.

15 (f) A home care aide who transfers employment from one
16 organization to another shall be deemed to meet the requirements
17 of subdivision (a) or (b) if that individual can produce a certificate
18 showing that he or she submitted to the examination within the
19 past two years and was found to be free of communicable
20 tuberculosis, or if it is verified by the organization previously
21 employing him or her that it has a certificate on file which contains
22 that showing.

23 (g) Notwithstanding the results of an examination, a home care
24 aide shall annually complete a tuberculosis survey that includes,
25 but is not limited to, all of the following information:

- 26 (1) The individual's name, address, and telephone number.
- 27 (2) The date and result of all previous tuberculin skin tests and,
28 where applicable, all X-ray examinations.
- 29 (3) Answers to questions concerning whether the individual has
30 recently experienced any of the following symptoms:
 - 31 (A) A chronic cough for a period exceeding two weeks.
 - 32 (B) Chronic fatigue or listlessness for a period exceeding two
33 weeks.
 - 34 (C) Fever for a period exceeding one week.
 - 35 (D) Night sweats.
 - 36 (E) Unexplained weight loss of eight pounds or more.

Article 7. Revenues

~~1796.70. (a) There is in the State Treasury the Home Care Organization and Home Care Aide Certification Fund. Notwithstanding Section 13340 of the Government Code, and except for money in the fines and penalties account as set forth in subdivision (b), all money in the fund is continuously appropriated to the department for the purpose of carrying out and enforcing this chapter.~~

~~(b) Fines and penalties collected pursuant to this chapter shall be deposited into a separable penalty account in the fund and shall be expended, upon appropriation by the Legislature, for the purpose of carrying out and enforcing this chapter.~~

~~1796.71.~~

1796.70. (a) The department shall assess licensure, renewal, background check, and other fees for each location of a home care organization in amounts sufficient to cover the costs of administering this chapter. The department shall also assess from the employer of each home care aid a fee in an amount sufficient to pay the cost of providing certification of home care aides.

~~(b) The department may periodically adjust these fees for inflation. The fees collected pursuant to this chapter shall be deposited in the fund.~~

(b) In the first year of licensure for home care organizations, the licensure fee shall be equivalent to the licensure fee for home health agencies for the 2011–12 fiscal year, as set by the department pursuant to paragraph (2) of subdivision (e) of Section 1266. Thereafter, the Licensing and Certification Division of the department shall comply with subdivisions (c) and (d) of Section 1266 with respect to home health agencies in establishing licensure fees for home care organizations.

(c) All licensure, renewal, background check, and other fees shall be deposited in the State Department of Public Health Licensing and Certification Program Fund established pursuant to Section 1266.9.

Article 8. Enforcement and Penalties

1796.80. (a) A home care organization operating in violation of this chapter or any rule adopted hereunder may be subject to

1 the penalties or fines levied or licensure action taken by the
2 department as specified in this section.

3 (b) When the department determines that a home care
4 organization is in violation of this chapter or any rules promulgated
5 hereunder, a notice of violation shall be served upon the licensee.
6 Each notice of violation shall be prepared in writing and shall
7 specify the nature of the violation and the statutory provision or
8 rule alleged to have been violated. The notice shall inform the
9 licensee of any action the department may take under this chapter,
10 including the requirement of an agency plan of correction,
11 assessment of a penalty, or action to suspend, revoke, or deny
12 renewal of the license. The director or his or her designee shall
13 also inform the licensee of rights to a hearing under this chapter.

14 (c) The department may impose a fine of up to nine hundred
15 dollars (\$900) per violation per day commencing on the date the
16 violation was identified and ending on the date each violation is
17 corrected, or action is taken to suspend, revoke, or deny renewal
18 of the license, whichever comes first.

19 (d) In determining the penalty or licensure action, the director
20 shall consider all of the following factors:

21 (1) The gravity of the violation, including the probability that
22 death or serious physical or mental harm to a client will result or
23 has resulted, the severity of the actual or potential harm, and the
24 extent to which the provisions of the applicable statutes or
25 regulations were violated.

26 (2) The reasonable diligence exercised by the licensee and
27 efforts to correct violations.

28 (3) Any previous violation committed by the licensee.

29 (4) The financial benefit to the home care organization of
30 committing or continuing the violation.

31 (e) The department shall adopt regulations establishing
32 procedures for notices, correction plans, appeals, and hearings. In
33 developing the procedures, the department shall convene and
34 consult with a working group of affected stakeholders.

35 *1796.81. Any penalties collected pursuant to this chapter shall*
36 *be deposited into the Home Care Organization and Home Care*
37 *Aide Penalties Subaccount, which is hereby created within the*
38 *State Health Facilities Citation Penalties Account, which is within*
39 *the Special Deposit Fund created within the State Treasury,*
40 *pursuant to Section 1417.2. Moneys in this subaccount shall, upon*

1 appropriation by the Legislature, be made available to the
2 department for purposes of enforcing this chapter.

3 1796.82. (a) Notwithstanding the rulemaking provisions of
4 the Administrative Procedure Act (Chapter 3.5 (commencing with
5 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
6 Code), the department may implement and administer this chapter
7 through all-facility letters or similar instructions from the
8 department until regulations are adopted. The department shall
9 adopt emergency regulations implementing this chapter no later
10 than January 1, 2013. The department may readopt any emergency
11 regulation authorized by this section that is the same as or
12 substantially equivalent to an emergency regulation previously
13 adopted under this section.

14 (b) The initial adoption of emergency regulations implementing
15 this chapter and the one readoption of emergency regulations
16 authorized by this subdivision shall be deemed an emergency and
17 necessary for the immediate preservation of the public peace,
18 health, safety, or general welfare. Initial emergency regulations
19 and the one readoption of emergency regulations authorized by
20 this section shall be exempt from review by the Office of
21 Administrative Law. The initial emergency regulations and the
22 one readoption of emergency regulations authorized by this section
23 shall be submitted to the Office of Administrative Law for filing
24 with the Secretary of State, and each emergency regulation shall
25 remain in effect for no more than 180 days, by which time final
26 regulations may be adopted.

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