

AMENDED IN ASSEMBLY JULY 12, 2011
AMENDED IN ASSEMBLY JUNE 21, 2011
AMENDED IN ASSEMBLY JUNE 15, 2011
AMENDED IN SENATE MAY 31, 2011
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, Lieu, Padilla, and
Vargas)**

(Coauthors: Assembly Members Beall, Lara, and Bonnie Lowenthal)

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.

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, 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, *except as specified*. 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. In addition, this bill would require a home care organization, 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.

The bill would require certain employment agencies to maintain liability insurance, as specified, and ensure that any person it refers to provide home care services has been certified prior to the referral.

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 require the department to impose various fees to be deposited in 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 by a home care organization and violations of specified requirements by an employment agency, as defined.~~

Vote: majority. Appropriation: 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

1 family members, seniors, or disabled individuals to consult when
2 in need of home care services for their loved ones or themselves.
3 SEC. 2. Chapter 13 (commencing with Section 1796.10) is
4 added to Division 2 of the Health and Safety Code, to read:

5
6 CHAPTER 13. HOME CARE SERVICES

7
8 Article 1. General Provisions

9
10 1796.10. This chapter shall be known and may be cited as the
11 Home Care Services Act of 2011.

12 1796.11. The State Department of Public Health shall
13 administer and enforce this chapter.

14 1796.12. For purposes of this chapter, the following definitions
15 shall apply:

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

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

19 (c) (1) "Home care aide" means an individual who provides
20 home care services to a client in the client's residence, and is
21 synonymous, for purposes of this chapter, with "caregiver,"
22 "custodial care," "personal care attendant," "homemaker," and
23 "companion." In addition, "home care aide" includes an individual
24 who qualifies as a personal attendant, as defined in Industry Wage
25 Order 15-2001, issued by the Industrial Welfare Commission, who
26 provides home care services.

27 (2) "Home care aide" does not include any person who is
28 employed by, or contracts with, an organization vendored or
29 contracted through a regional center or the State Department of
30 Developmental Services pursuant to the Lanterman Developmental
31 Disabilities Services Act (Division 4.5 (commencing with Section
32 4500) of the Welfare and Institutions Code) and the California
33 Early Intervention Services Act (Title 14 (commencing with
34 Section 95000) of the Government Code) to provide services and
35 support for persons with developmental disabilities, as defined in
36 Section 4512 of the Welfare and Institutions Code, when funding
37 for those services is provided through the State Department of
38 Developmental Services *and more than 50 percent of the recipients*
39 *of the home care services provided by the organization are persons*
40 *with developmental disabilities.*

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

6 (2) “Home care organization” does not include any of the
7 following:

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

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

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

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

20 (E) A home medical device retail facility licensed under Section
21 111656.

22 (F) An organization vendored or contracted through a regional
23 center or the State Department of Developmental Services pursuant
24 to the Lanterman Developmental Disabilities Services Act
25 (Division 4.5 (commencing with Section 4500) of the Welfare and
26 Institutions Code) and the California Early Intervention Services
27 Act (Title 14 (commencing with Section 95000) of the Government
28 Code) to provide services and support for persons with
29 developmental disabilities, as defined in Section 4512 of the
30 Welfare and Institutions Code, when funding for those services is
31 provided through the State Department of Developmental Services
32 *and more than 50 percent of the recipients of the home care*
33 *services provided by the organization are persons with*
34 *developmental disabilities.*

35 (G) *An employment agency that procures, offers, refers,*
36 *provides, or attempts to provide, but is not the employer of, a home*
37 *care aide or other workers who provide home care services or*
38 *domestic services to clients and consumers in accordance with*
39 *Section 1812.5095 of the Civil 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 (g) “*Employment agency*” shall have the same meaning as in
7 *Section 1812.5095 of the Civil Code*.

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

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

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

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

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

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

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

35 (6) Services authorized to be provided pursuant to Section 2731
36 of the Business and Professions Code.

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

Article 2. Licensure

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1796.20. (a) ~~An~~ Except for an employment agency that only procures, offers, refers, provides, or attempts to provide, but is not the employer of, a home care aide or other workers who provide home care services or domestic services to clients and consumers in accordance with Section 1812.5095 of the Civil Code, an individual, partnership, corporation, limited liability company, joint venture, association, or other entity shall not arrange for the provision of home care services by a home care aide to a client in this state without first obtaining a license pursuant to this chapter.

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

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

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

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

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

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

(a) Have an office in California.

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

1796.22. The enactment of this chapter is an exercise of the police power of the state for the protection of the public welfare,

1 prosperity, health, safety, and peace of its people. The civil
2 penalties provided by this chapter are in addition to any other
3 penalty provided by law.

4 1796.23. In order to carry out the provisions of this chapter,
5 the department shall do all of the following:

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

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

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

12 ~~(d) Maintain a registry, on the department's Internet Web site,~~
13 ~~of the certification status of all certified home care aides, the name~~
14 ~~and location of the home care aide's employer, home care~~
15 ~~organization, and the status of any proposed or completed~~
16 ~~disciplinary action against the certified home care aide. The~~
17 ~~department also may request and maintain additional employment~~
18 ~~information for certified home care aides, as necessary, which~~
19 ~~shall not be publicly available on the registry.~~

20 *(d) Maintain on the department's Internet Web site a registry*
21 *of, with the capability to look up the certification status of, any*
22 *certified home care aide, the name and location of the home care*
23 *aide's employer, if there is one, or name and location of all*
24 *employers if there are more than one, and any disciplinary action*
25 *taken against the home care aide. In the case of a home care aide*
26 *who is an independent contractor and not employed by an*
27 *organization, the Internet Web site shall indicate that status. To*
28 *expedite the ability of a consumer to search and locate an*
29 *appropriate home care aide, the Internet Web site shall enable*
30 *consumers to look up the certification status, including any*
31 *disciplinary action taken against the home care aide, by providing*
32 *the home care aide's name, certificate number, and geographic*
33 *location. The Internet Web site shall not provide any additional,*
34 *individually identifiable information about a home care aide. The*
35 *department also may request and maintain additional employment*
36 *information for a certified home care aide, as necessary, which*
37 *shall not be publicly available on the registry. The department*
38 *shall update the Internet Web site upon receiving notification from*
39 *a certified home care aide that he or she has left a home care*
40 *organization or has changed home care organizations.*

1 (e) *Maintain a registry on the department’s Internet Web site*
2 *on the licensure status of all licensed home care organizations,*
3 *along with the name, address, and telephone number of the home*
4 *care organization, and the status of any proposed or completed*
5 *disciplinary action against the licensed home care organization.*
6 *The department also may request and maintain additional*
7 *information for a licensed home care organization, as necessary,*
8 *which shall not be publicly available on the registry.*

9 1796.24. (a) Notwithstanding any other provision of this
10 chapter, the department shall issue a home care organization license
11 to an entity that satisfies all of the following requirements:

12 (1) Is accredited as a home care agency by either the Joint
13 Commission on Accreditation of Healthcare Organizations
14 (JCAHO), the Community Health Accreditation Program (CHAP),
15 or any other nationally recognized accrediting organization that
16 has an accreditation program for home care organizations, and that
17 is approved by the department. The accrediting organization shall
18 forward to the department copies of all initial and subsequent
19 survey and other accreditation reports or findings.

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

22 (3) Satisfies any other additional licensure requirements of, or
23 regulations adopted pursuant to, this chapter, that the department
24 identifies, after consulting with either the JCAHO or, the CHAP,
25 or other accreditation organization approved pursuant to paragraph
26 (1), as more stringent than the accreditation requirements of the
27 accreditation organization.

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

31 (5) Submits proof of a valid workers’ compensation policy
32 covering its home care aides. The proof shall consist of the policy
33 number, the effective and expiration dates of the policy, and the
34 name and address of the policy carrier.

35 (6) Provides the department with a complete list of its home
36 care aides, and proof that each satisfies the requirements of Section
37 1796.60.

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

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

5 (c) The department may require a survey of an accredited home
6 care organization to investigate complaints of substantial
7 noncompliance, as determined by the department, with the
8 accreditation standards.

9 (d) Notwithstanding subdivisions (a), (b), and (c), the department
10 shall retain its full range of authority over accredited home care
11 organizations to ensure the licensure and accreditation requirements
12 are satisfied. This authority shall include the entire scope of
13 enforcement sanctions and options available under Section 1796.20.

14 1796.25. At least 30 days before the expiration of a license,
15 the department shall mail to the licensee, at the latest address
16 furnished by the licensee to the department, a notice stating the
17 amount of the renewal fee and the date on which it is due, and that
18 failure to pay that fee on or before the date due will result in the
19 expiration of the license.

20 1796.26. (a) In order to obtain a license, the following
21 individual or individuals shall consent to the background clearance
22 described in ~~subdivision (b)~~ of Section 1796.62:

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

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

28 (b) (1) If the background clearance conducted pursuant to
29 subdivision (a) discloses a conviction for a crime that is
30 substantially related to the qualifications, functions, or duties of
31 operating a home care organization, the application for a license
32 may be denied.

33 (2) Notwithstanding paragraph (1), a license shall not be denied
34 under this section if the applicant has obtained a certificate of
35 rehabilitation under Chapter 3.5 (commencing with Section
36 4852.01) of Title 6 of Part 3 of the Penal Code or the information
37 or accusation against him or her has been dismissed pursuant to
38 Section 1203.4 of the Penal Code.

39 (c) In determining whether or not to deny the application for
40 licensure or renewal pursuant to subdivision (b), the department

1 shall take into consideration the following factors as evidence of
2 good character and rehabilitation:

3 (1) The nature and seriousness of the conduct or crime under
4 consideration and its relationship to the person's employment
5 duties and responsibilities.

6 (2) Activities since conviction, including employment or
7 participation in therapy or education, that would indicate changed
8 behavior.

9 (3) The time that has elapsed since the commission of the
10 conduct or offense referred to in paragraph (1) or (2) and the
11 number of offenses.

12 (4) The extent to which the person has complied with any terms
13 of parole, probation, restitution, or any other sanction lawfully
14 imposed against the person.

15 (5) Any rehabilitation evidence, including character references,
16 submitted by the person.

17 (6) Employment history and current employer recommendations.

18 (7) Circumstances surrounding the commission of the offense
19 that would demonstrate the unlikelihood of repetition.

20 (d) If the department makes a determination to deny an
21 application, the department shall notify the applicant of this
22 determination by either personal service or registered mail. The
23 notice shall include the following information:

24 (1) A statement of the department's reasons for the denial that
25 evaluates evidence of rehabilitation submitted by the applicant, if
26 any, and that specifically addresses any evidence submitted relating
27 to the factors considered in subdivision (c).

28 (2) A copy of the applicant's criminal offender record
29 information search response. The department shall provide this
30 information in a manner that protects the confidentiality and
31 privacy of the criminal offender record information search
32 response.

33 (A) The state criminal history record shall not be modified or
34 altered from its form or content as provided by the Department of
35 Justice.

36 (B) The department shall record the date the copy of the
37 response was provided to the individual.

38 (C) The criminal offender record information search response
39 shall not be made available by the department to any individual
40 other than the applicant.

1 (3) An opportunity to correct inaccurate information on the
2 record by submitting certified court minute orders to the
3 department.

4 (e) (1) Upon written notification that the department has
5 determined that a license shall be denied, the applicant may request
6 an administrative hearing by submitting a written request to the
7 department within 15 business days of receipt of the written
8 notification. Upon receipt of a written request, the department shall
9 hold an administrative hearing consistent with the procedures
10 specified in Section 100171, except where those procedures are
11 inconsistent with this section.

12 (2) A hearing under this subdivision shall be conducted by a
13 hearing officer or administrative law judge designated by the
14 director. A written decision shall be sent by certified mail to the
15 applicant.

16 1796.27. A private or public organization, with the exception
17 of a county providing in-home supportive services pursuant to
18 Article 7 (commencing with Section 12300) of Chapter 3 of Part
19 3 of Division 9 of the Welfare and Institutions Code, shall not do
20 any of the following, unless it is licensed under this chapter:

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

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

29 1796.28. (a) If one accrediting agency denies, revokes, or
30 suspends the accreditation of a home care organization licensed
31 under this chapter, that action shall apply to all other accrediting
32 agencies. A home care organization for which accreditation is
33 denied, revoked, or suspended may reapply for accreditation with
34 the same accrediting agency. The home care ~~agency~~ *organization*
35 may also apply for accreditation from another accrediting agency,
36 but only if it discloses the full accreditation report of the accrediting
37 agency that denied, revoked, or suspended accreditation. A home
38 care organization for which accreditation has been denied, revoked,
39 or suspended shall disclose the accreditation report to any other
40 accrediting agency to which it submits an application.

1 (b) An accreditation agency that denies, revokes, or suspends
2 a home care organization’s certification of accreditation, shall do
3 all of the following:

4 (1) Notify the department of the action.

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

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

12
13 Article 3. Complaints, Inspections, and Investigations

14
15 1796.30. (a) The department shall investigate complaints filed
16 against home care organizations.

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

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

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

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

31
32 Article 4. Home Care Organization Operating Requirements

33
34 1796.40. A home care organization shall do all of the following:

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

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

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

- 1 (1) Plans and procedures to be followed in the event of
- 2 emergencies or natural disasters that would result in the interruption
- 3 of home care services.
- 4 (2) A documented backup staffing plan in the event that a home
- 5 care aide scheduled to provide home care services becomes
- 6 unavailable.
- 7 (3) A written policy regarding advance directives.
- 8 (4) A receipt and disbursement policy for expenditures made
- 9 on behalf of a client to ensure that financial abuse does not occur.
- 10 (d) Maintain a valid workers' compensation policy covering its
- 11 home care aides.
- 12 (e) Maintain an employee dishonesty bond, including third-party
- 13 coverage, with a minimum limit of ten thousand dollars (\$10,000).
- 14 (f) Comply with the regulations adopted by the department
- 15 implementing this chapter.
- 16 1796.41. With respect to home care aides employed by a home
- 17 care organization, the organization shall consult the department's
- 18 registry before hiring an individual or placing him or her in direct
- 19 contact with patients. In addition, the organization shall do all of
- 20 the following:
- 21 (a) Ensure that each of its home care aides meets the
- 22 requirements of Section 1796.61.
- 23 (b) Investigate complaints made by a client, or a client's family
- 24 member or guardian, against home care aides regarding a service
- 25 that is or fails to be furnished. The organization shall document
- 26 both the existence and the resolution of those complaints.
- 27 (c) Evaluate home care aides as follows:
- 28 (1) Conduct an annual assessment of the performance and
- 29 effectiveness of each home care aide, including, if client consent
- 30 is obtained, at least one observation of the aide providing home
- 31 care services in the residence of a client.
- 32 (2) Every 62 days, supervise each home care aide providing
- 33 home care services in the residence of a client, provided that client
- 34 consent is obtained. The supervision required by this paragraph
- 35 shall not be billed to the client.
- 36 (d) Ensure that a home care aide, when providing services to a
- 37 client, has access at all times to a representative of the organization
- 38 who is in a supervisory capacity and who does not regularly render
- 39 home care services to that client.

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

4 (1) The aide's name.

5 (2) A photograph of the aide.

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

7 (4) The expiration date of the license of the home care
8 organization.

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

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

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

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

19
20 *Article 4.5. Employment Agency Insurance*

21
22 *1796.45. An employment agency that procures, offers, refers,*
23 *provides, or attempts to provide, but is not the employer of, a home*
24 *care aide or other workers who provide home care services or*
25 *domestic services to clients and consumers in accordance with*
26 *Section 1812.5095 of the Civil Code shall, at all times, maintain*
27 *general and professional liability insurance in the amount of at*
28 *least one million dollars (\$1,000,000) per occurrence and three*
29 *million dollars (\$3,000,000) in the aggregate.*

30
31 *Article 5. Client Rights*

32
33 1796.50. With respect to clients, a home care organization shall
34 do all of the following:

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

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

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

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

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

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

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

13 (d) Have a written agreement with the client that includes, but
14 is not limited to, the cost of and the hours during which home care
15 services will be provided to the client and reference to the personal
16 attendant requirements, if applicable, as referenced in Wage Order
17 15-2001, issued by the Industrial Welfare Commission.

18 1796.51. (a) Home care clients are entitled to the following
19 rights:

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

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

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

26 (4) The right to confidentiality of the client's personal
27 information.

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

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

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

39 (e) A home care organization shall protect, and promote the
40 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 *and that any person referred by an employment agency be certified prior to any referral.*

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

~~(1)~~

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

~~(2)~~

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

~~(3)~~

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

(2) *If the department determines that the training required by paragraph (1) is unavailable in an applicant's county within 30 days of the deadline specified in this section, the department shall issue a temporary home care aide certificate to that individual that will be valid until the date that proper training is made available in that county. Upon completion of the required training, the department shall replace the temporary home care aide certificate and issue a permanent home care aide certificate.*

(3) *The entry-level training may be completed through an online training program.*

(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.

1 (e) The applicant shall consent to the background clearance
2 described in Section 1796.62.

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

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

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

10 1796.61. (a) On and after January 1, 2012, a home care
11 organization shall not hire an individual as a home care aide unless
12 the individual complies with all of the following requirements:

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

15 (2) Provides at least two work- or school-related references or,
16 for an individual with no previous work experience, at least two
17 character references from nonrelatives. The organization shall
18 verify the references before hiring the individual.

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

22 (b) A home care organization that hires an individual pursuant
23 to subdivision (a) shall ensure that the individual, within the first
24 30 days of employment, satisfactorily completes the home care
25 certification training in Section 1796.60.

26 (c) *Notwithstanding any other provision of law, an employment*
27 *agency shall ensure that any person it refers to provide home care*
28 *services has been certified under this section prior to the referral.*

29 1796.62. (a) A background clearance is required, unless the
30 individual holds a valid, unexpired license or registration in a
31 health-related field that requires a background check as a condition
32 of the license or registration.

33 (b) (1) The applicant shall electronically submit to the
34 Department of Justice fingerprint images and related information
35 required by the Department of Justice of all home care aides, as
36 defined under subdivision (c) of Section 1796.12, for the purposes
37 of obtaining information as to the existence and content of a record
38 of state convictions and state arrests, and also information as to
39 the existence and content of a record of state arrests for which the

1 Department of Justice establishes that the person is free on bail or
2 on his or her own recognizance pending trial or appeal.

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

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

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

13 (c) If the background check required by subdivision (b) discloses
14 a conviction or incarceration for a conviction of any of the
15 following provisions of the Penal Code within 10 years, the
16 ~~organization shall deny or terminate, as applicable, the employment~~
17 ~~of that individual:~~ *department shall deny the home care aide*
18 *certification to that individual:*

19 (1) A violation of subdivision (a) of Section 273a of the Penal
20 Code, or Section 368 of the Penal Code, or similar violations in
21 another jurisdiction.

22 (2) A violent or serious felony, as specified in subdivision (c)
23 of Section 667.5 of the Penal Code and subdivision (c) of Section
24 1192.7 of the Penal Code.

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

31 (d) Notwithstanding subdivision (c), a certification shall not be
32 denied under this section if the applicant has obtained a certificate
33 of rehabilitation under Chapter 3.5 (commencing with Section
34 4852.01) of Title 6 of Part 3 of the Penal Code or the information
35 or accusation against him or her has been dismissed pursuant to
36 Section 1203.4 of the Penal Code.

37 (e) Upon determination to deny an application, if the denial of
38 a certificate is due at least in part to the applicant's state criminal
39 history record, the department shall notify the applicant of this
40 determination by either personal service or registered mail, and

1 the notification shall include the same information as required in
2 subdivision (d) of Section 1796.26.

3 (f) An applicant who has been convicted of an offense identified
4 in subdivision (c) may seek from the department a general
5 exception to the exclusion provided for in this section. The
6 department shall consider the same factors when determining
7 whether to grant a general exception as considered in subdivision
8 (c) of Section 1796.26.

9 (g) (1) Upon written notification that the department has
10 determined that a request for exception shall be denied, the
11 applicant may request an administrative hearing by submitting a
12 written request to the department within 15 business days of receipt
13 of the written notification. Upon receipt of a written request, the
14 department shall hold an administrative hearing consistent with
15 the procedures specified in Section 100171, except where those
16 procedures are inconsistent with this section.

17 (2) A hearing under this subdivision shall be conducted by a
18 hearing officer or administrative law judge designated by the
19 director. A written decision shall be sent by certified mail to the
20 applicant.

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

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

28 1796.63. (a) An individual hired as a home care aide on or
29 after January 1, 2012, shall be terminated from employment unless
30 the individual submitted to an examination within six months prior
31 to employment or submits to an examination within 14 days after
32 employment to determine that the individual is free of active
33 tuberculosis. For purposes of this section, “examination” consists
34 of a tuberculin skin test and, if that test is positive, an X-ray of the
35 lungs.

36 (b) A home care aide whose employment with a home care
37 organization began before January 1, 2012, within 14 days of the
38 effective date of this section, shall submit to the examination
39 described in subdivision (a).

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

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

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

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

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

24 (1) The individual's name, address, and telephone number.

25 (2) The date and result of all previous tuberculin skin tests and,
26 where applicable, all X-ray examinations.

27 (3) Answers to questions concerning whether the individual has
28 recently experienced any of the following symptoms:

29 (A) A chronic cough for a period exceeding two weeks.

30 (B) Chronic fatigue or listlessness for a period exceeding two
31 weeks.

32 (C) Fever for a period exceeding one week.

33 (D) Night sweats.

34 (E) Unexplained weight loss of eight pounds or more.

35
36 Article 7. Revenues

37
38 1796.70. (a) The department shall assess licensure, renewal,
39 background check, and other fees for each location of a home care
40 organization in amounts sufficient to cover the costs of

1 administering this chapter. The department shall also assess from
2 the employer of each home care aid a fee in an amount sufficient
3 to pay the cost of providing certification of home care aides.

4 (b) In the first year of licensure for home care organizations,
5 the licensure fee shall be equivalent to the licensure fee for home
6 health agencies for the 2011–12 fiscal year, as set by the
7 department pursuant to paragraph (2) of subdivision (e) of Section
8 1266. Thereafter, the Licensing and Certification Division of the
9 department shall comply with subdivisions (c) and (d) of Section
10 1266 with respect to home health agencies in establishing licensure
11 fees for home care organizations.

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

16

17 Article 8. Enforcement and Penalties

18

19 1796.80. (a) A home care organization ~~operating in violation~~
20 ~~of that violates~~ this chapter or any rule adopted hereunder may be
21 subject to the penalties or fines levied or licensure action taken by
22 the department as specified in this section. *An employment agency*
23 *that violates Section 1796.45 or subdivision (c) of Section 1796.60*
24 *may be subject to the fines levied or licensure action taken by the*
25 *department as specified in this section.*

26 (b) When the department determines that a home care
27 organization is in violation of this chapter or any rules promulgated
28 hereunder *or that an employment agency is in violation of Section*
29 *1796.45 or subdivision (c) of Section 1796.60*, a notice of violation
30 shall be served upon the licensee. Each notice of violation shall
31 be prepared in writing and shall specify the nature of the violation
32 and the statutory provision or rule alleged to have been violated.
33 The notice shall inform the licensee of any action the department
34 may take under this chapter, including the requirement of an agency
35 plan of correction, assessment of a penalty, or action to suspend,
36 revoke, or deny renewal of the license. The director or his or her
37 designee shall also inform the licensee of rights to a hearing under
38 this chapter.

39 (c) The department may impose a fine of up to nine hundred
40 dollars (\$900) per violation per day commencing on the date the

1 violation was identified and ending on the date each violation is
2 corrected, or action is taken to suspend, revoke, or deny renewal
3 of the license, whichever comes first.

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

6 (1) The gravity of the violation, including the probability that
7 death or serious physical or mental harm to a client will result or
8 has resulted, the severity of the actual or potential harm, and the
9 extent to which the provisions of the applicable statutes or
10 regulations were violated.

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

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

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

16 (e) The department shall adopt regulations establishing
17 procedures for notices, correction plans, appeals, and hearings. In
18 developing the procedures, the department shall convene and
19 consult with a working group of affected stakeholders.

20 1796.81. Any penalties collected pursuant to this chapter shall
21 be deposited into the Home Care Organization and Home Care
22 Aide Penalties Subaccount, which is hereby created within the
23 State Health Facilities Citation Penalties Account, which is within
24 the Special Deposit Fund created within the State Treasury,
25 pursuant to Section 1417.2. Moneys in this subaccount shall, upon
26 appropriation by the Legislature, be made available to the
27 department for purposes of enforcing this chapter.

28 ~~1796.82. (a) Notwithstanding the rulemaking provisions of~~
29 ~~the Administrative Procedure Act (Chapter 3.5 (commencing with~~
30 ~~Section 11340) of Part 1 of Division 3 of Title 2 of the Government~~
31 ~~Code), the department may implement and administer this chapter~~
32 ~~through all-facility letters or similar instructions from the~~
33 ~~department until regulations are adopted. The department shall~~
34 ~~adopt emergency regulations implementing this chapter no later~~
35 ~~than January 1, 2013. The department may readopt any emergency~~
36 ~~regulation authorized by this section that is the same as or~~
37 ~~substantially equivalent to an emergency regulation previously~~
38 ~~adopted under this section.~~

39 ~~(b) The initial adoption of emergency regulations implementing~~
40 ~~this chapter and the one readoption of emergency regulations~~

1 authorized by this subdivision shall be deemed an emergency and
2 necessary for the immediate preservation of the public peace,
3 health, safety, or general welfare. Initial emergency regulations
4 and the one readoption of emergency regulations authorized by
5 this section shall be exempt from review by the Office of
6 Administrative Law. The initial emergency regulations and the
7 one readoption of emergency regulations authorized by this section
8 shall be submitted to the Office of Administrative Law for filing
9 with the Secretary of State, and each emergency regulation shall
10 remain in effect for no more than 180 days, by which time final
11 regulations may be adopted.

O