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AMENDED IN ASSEMBLY AUGUST 15, 2011
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AMENDED IN SENATE MAY 31, 2011
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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, *on and after July 1, 2012*, for the licensure and regulation of home care organizations, as defined, by the State Department of ~~Public Health~~ *Social Services*, 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~~ *Home Care Organization and Home Care Aide Fund*. This bill, in addition, would prescribe

enforcement procedures, fines, and penalties for violations of the act 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 or an individual provider. In
32 addition, there is currently no centralized list of home care

1 organizations or individual providers in California for family
 2 members, seniors, or disabled individuals to consult when in need
 3 of home care services for their loved ones or themselves.

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

6
 7
 8
 9

CHAPTER 13. HOME CARE SERVICES

Article 1. General Provisions

10

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

13 1796.11. The State Department of ~~Public Health~~ *Social Services*
 14 shall administer and enforce this chapter.

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

17 (a) “Client” means an individual who receives home care
 18 services.

19 (b) “Department” means the State Department of ~~Public Health~~
 20 *Social Services*.

21 (c) “Family member” means any person who is related to the
 22 person who receives home care services. This relationship shall
 23 be by blood, adoption, marriage, domestic partnership, or affinity
 24 within the fifth degree of kinship, including stepparents,
 25 stepsiblings, and all relatives whose status is preceded by the
 26 words “great,” “great-great,” or “grand” or the spouse of any
 27 of these persons, even if the marriage was terminated by death or
 28 dissolution.

29 (e)

30 (d) (1) “Home care aide” means an individual who provides
 31 home care services to a client in the client’s residence, and is
 32 synonymous, for purposes of this chapter, with “caregiver,”
 33 “custodial care,” “personal care attendant,” “homemaker,” and
 34 “companion.” In addition, “home care aide” includes an individual
 35 who qualifies as a personal attendant, as defined in Industry Wage
 36 Order 15-2001, issued by the Industrial Welfare Commission, who
 37 provides home care services.

38 (2) “Home care aide” does not include ~~any~~ *either of the*
 39 *following*:

1 (A) *A family member of the person who receives home care*
2 *services.*

3 (B) A person who is employed by, or contracts with, an
4 organization vendored or contracted through a regional center or
5 the State Department of Developmental Services pursuant to the
6 Lanterman Developmental Disabilities Services Act (Division 4.5
7 (commencing with Section 4500) of the Welfare and Institutions
8 Code) and the California Early Intervention Services Act (Title
9 14 (commencing with Section 95000) of the Government Code)
10 to provide services and support for persons with developmental
11 disabilities, as defined in Section 4512 of the Welfare and
12 Institutions Code, when funding for those services is provided
13 through the State Department of Developmental Services and more
14 than 50 percent of the recipients of the home care services provided
15 by the organization are persons with developmental disabilities.

16 ~~(d)~~

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

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

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

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

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

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

36 (E) A home medical device retail facility licensed under Section
37 111656.

38 (F) An organization vendored or contracted through a regional
39 center or the State Department of Developmental Services pursuant
40 to the Lanterman Developmental Disabilities Services Act

1 (Division 4.5 (commencing with Section 4500) of the Welfare and
2 Institutions Code) and the California Early Intervention Services
3 Act (Title 14 (commencing with Section 95000) of the Government
4 Code) to provide services and support for persons with
5 developmental disabilities, as defined in Section 4512 of the
6 Welfare and Institutions Code, when funding for those services is
7 provided through the State Department of Developmental Services
8 and more than 50 percent of the recipients of the home care services
9 provided by the organization are persons with developmental
10 disabilities.

11 (G) An employment agency, as defined in Section 1812.5095
12 of the Civil Code, that procures, offers, refers, provides, or attempts
13 to provide a home care aide or other worker who provides home
14 care services or domestic services to clients and consumers
15 pursuant to that section, as long as the agency is not the employer
16 of; the home care aide or other worker who provides to the clients
17 or consumers assistance with activities of daily living, including,
18 but not limited to, bathing, dressing, feeding, toileting, ambulation,
19 and transferring.

20 (H) *A residential care facility for the elderly licensed under*
21 *Chapter 3.2 (commencing with Section 1569).*

22 (e)

23 (f) “Residence” means a temporary or permanent location where
24 a client receives home care services.

25 (f)

26 (g) “Transportation” means transportation in a motor vehicle
27 in good working order provided by a home care aide who is a
28 licensed and insured driver.

29 (g)

30 (h) “Employment agency” means an employment agency that
31 procures, offers, refers, provides, or attempts to provide but is not
32 the employer of, a home care aide who provides, home care
33 services to clients and consumers in accordance with Section
34 1812.5095 of the Civil Code, as long as the agency is not the
35 employer of a home care aide or other worker who provides
36 assistance with activities of daily living to the consumer.

37 1796.13. (a) For purposes of this chapter, “home care services”
38 means services provided by a home care aide to a client who,
39 because of advanced age or physical or mental infirmity, cannot
40 perform these services for himself or herself. These services

1 include, but are not limited to, bathing, dressing, feeding,
 2 exercising, personal hygiene and grooming, transferring,
 3 ambulating, positioning, toileting and incontinence care, assisting
 4 with medication that the client normally self-administers,
 5 housekeeping, meal planning and preparation, laundry,
 6 transportation, correspondence, making telephone calls, shopping
 7 for personal care items or groceries, and companionship. This
 8 subdivision shall not be construed to authorize a home care aide
 9 to administer medication that would otherwise require
 10 administration or oversight by a licensed healthcare professional.

- 11 (b) Home care services shall not include any of the following:
- 12 (1) Services authorized to be provided by a licensed home health
 13 agency under Chapter 8 (commencing with Section 1725).
 - 14 (2) Services authorized to be provided by a licensed hospice
 15 pursuant to Chapter 8.5 (commencing with Section 1745).
 - 16 (3) Services authorized to be provided by a licensed health
 17 facility pursuant to Chapter 2 (commencing with Section 1250).
 - 18 (4) In-home supportive services provided pursuant to Article 7
 19 (commencing with Section 12300) of Chapter 3 of Part 3 of
 20 Division 9 of the Welfare and Institutions Code.
 - 21 (5) Services authorized to be provided by a licensed residential
 22 care facility for the elderly pursuant to Chapter 3.2 (commencing
 23 with Section 1569).
 - 24 (6) Services authorized to be provided pursuant to Section 2731
 25 of the Business and Professions Code.
- 26 (c) This chapter shall not be construed to prohibit an individual
 27 from employing a home care aide without the assistance of a home
 28 care organization.

29
 30 Article 2. Licensure

31
 32 1796.20. (a) ~~Subject~~ *On and after July 1, 2012, subject* to the
 33 exceptions set forth in paragraph (2) of subdivision ~~(d)~~ (e) of
 34 Section 1796.12, an individual, partnership, corporation, limited
 35 liability company, joint venture, association, or other entity shall
 36 not arrange for the provision of home care services by a home care
 37 aide to a client in this state before obtaining a license pursuant to
 38 this chapter.

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

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

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

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

16 (3) Bring an action against the individual or entity under Chapter
17 5 (commencing with Section 17200) of Part 2 of Division 7 of the
18 Business and Professions Code.

19 (d) The requirements of this section shall not apply to an
20 employment agency, as defined in Section 1812.5095 of the Civil
21 Code, that procures, offers, refers, provides, or attempts to provide
22 a home care aide or other worker who provides home care services
23 or domestic services to clients and consumers pursuant to that
24 section, as long as the agency is not the employer of the home care
25 aide or other worker who provides assistance with activities of
26 daily living to the consumer.

27 1796.21. A home care organization that has its principal place
28 of business in another state, in addition to the other requirements
29 of this chapter, shall comply with both of the following
30 requirements before arranging for the provision of home care
31 services by a home care aide to a client in California:

32 (a) Have an office in California.

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

35 1796.22. The enactment of this chapter is an exercise of the
36 police power of the state for the protection of the public welfare,
37 prosperity, health, safety, and peace of its people. The civil
38 penalties provided by this chapter are in addition to any other
39 penalty provided by law.

1 1796.23. In order to carry out the provisions of this chapter,
2 the department shall do all of the following:

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

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

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

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

30 (e) Maintain a registry on the department's Internet Web site
31 on the licensure status of all licensed home care organizations,
32 along with the name, address, and telephone number of the home
33 care organization, and the status of any proposed or completed
34 disciplinary action against the licensed home care organization.
35 The department also may request and maintain additional
36 information for a licensed home care organization, as necessary,
37 which shall not be publicly available on the registry.

38 1796.24. ~~(a)~~ Notwithstanding any other provision of this
39 chapter, the department shall issue a home care organization license
40 to an entity that satisfies all of the following requirements:

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

9 ~~(2)~~

10 ~~(a) Files an application, including the fees required pursuant to~~
11 ~~Section 1796.70.~~

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

18 ~~(4)~~

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

22 ~~(5)~~

23 ~~(c) 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)~~

28 ~~(d) Provides the department with a complete list of its home~~
29 ~~care aides, and proof that each satisfies the requirements of Section~~
30 ~~1796.60.~~

31 ~~(7)~~

32 ~~(e) The owner or owners of the organization pass a background~~
33 ~~clearance, as required pursuant to Section 1796.26.~~

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

38 ~~(c) The department may require a survey of an accredited home~~
39 ~~care organization to investigate complaints of substantial~~

1 noncompliance, as determined by the department, with the
2 accreditation standards.

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

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

14 1796.26. (a) In order to obtain a license, the following
15 individual or individuals shall consent to the background clearance
16 described in Section 1796.62:

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

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

22 (b) (1) If the background clearance conducted pursuant to
23 subdivision (a) discloses a conviction for a crime that is
24 substantially related to the qualifications, functions, or duties of
25 operating a home care organization, the application for a license
26 may be denied.

27 (2) Notwithstanding paragraph (1), a license shall not be denied
28 under this section if the applicant has obtained a certificate of
29 rehabilitation under Chapter 3.5 (commencing with Section
30 4852.01) of Title 6 of Part 3 of the Penal Code or the information
31 or accusation against him or her has been dismissed pursuant to
32 Section 1203.4 of the Penal Code.

33 (c) In determining whether or not to deny the application for
34 licensure or renewal pursuant to subdivision (b), the department
35 shall take into consideration the following factors as evidence of
36 good character and rehabilitation:

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

- 1 (2) Activities since conviction, including employment or
2 participation in therapy or education, that would indicate changed
3 behavior.
- 4 (3) The time that has elapsed since the commission of the
5 conduct or offense referred to in paragraph (1) or (2) and the
6 number of offenses.
- 7 (4) The extent to which the person has complied with any terms
8 of parole, probation, restitution, or any other sanction lawfully
9 imposed against the person.
- 10 (5) Any rehabilitation evidence, including character references,
11 submitted by the person.
- 12 (6) Employment history and current employer recommendations.
- 13 (7) Circumstances surrounding the commission of the offense
14 that would demonstrate the unlikelihood of repetition.
- 15 (d) If the department makes a determination to deny an
16 application, the department shall notify the applicant of this
17 determination by either personal service or registered mail. The
18 notice shall include the following information:
 - 19 (1) A statement of the department’s reasons for the denial that
20 evaluates evidence of rehabilitation submitted by the applicant, if
21 any, and that specifically addresses any evidence submitted relating
22 to the factors considered in subdivision (c).
 - 23 (2) A copy of the applicant’s criminal offender record
24 information search response. The department shall provide this
25 information in a manner that protects the confidentiality and
26 privacy of the criminal offender record information search
27 response.
 - 28 (A) The state criminal history record shall not be modified or
29 altered from its form or content as provided by the Department of
30 Justice.
 - 31 (B) The department shall record the date the copy of the
32 response was provided to the individual.
 - 33 (C) The criminal offender record information search response
34 shall not be made available by the department to any individual
35 other than the applicant.
 - 36 (3) An opportunity to correct inaccurate information on the
37 record by submitting certified court minute orders to the
38 department.
- 39 (e) (1) Upon written notification that the department has
40 determined that a license shall be denied, the applicant may request

1 an administrative hearing by submitting a written request to the
2 department within 15 business days of receipt of the written
3 notification. Upon receipt of a written request, the department shall
4 hold an administrative hearing consistent with the procedures
5 specified in Section 100171, except where those procedures are
6 inconsistent with this section.

7 (2) A hearing under this subdivision shall be conducted by a
8 hearing officer or administrative law judge designated by the
9 director. A written decision shall be sent by certified mail to the
10 applicant.

11 1796.27. A private or public organization, with the exception
12 of a county providing in-home supportive services pursuant to
13 Article 7 (commencing with Section 12300) of Chapter 3 of Part
14 3 of Division 9 of the Welfare and Institutions Code, and the
15 exceptions provided for in subdivision (c), shall not do any of the
16 following, unless it is licensed under this chapter:

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

22 (b) Use the terms “home care organization,” “home care,”
23 “in-home care,” or any combination of those terms, within its
24 name.

25 (c) This section does not apply to either of the following:

26 (1) A county providing in-home supportive services pursuant
27 to Article 7 (commencing with Section 12300) of Chapter 3 of
28 Part 3 of Division 9 of the Welfare and Institutions Code.

29 (2) An employment agency, as defined in Section 1812.5095
30 of the Civil Code, that procures, offers, refers, provides, or attempts
31 to provide a home care aide or other worker who provides home
32 care services or domestic services to clients and consumers
33 pursuant to that section, as long as the agency is not the employer
34 of a home care aide or other worker who provides domestic
35 services.

36 ~~1796.28. (a) If one accrediting agency denies, revokes, or~~
37 ~~suspends the accreditation of a home care organization licensed~~
38 ~~under this chapter, that action shall apply to all other accrediting~~
39 ~~agencies. A home care organization for which accreditation is~~
40 ~~denied, revoked, or suspended may reapply for accreditation with~~

~~1 the same accrediting agency. The home care organization may
2 also apply for accreditation from another accrediting agency, but
3 only if it discloses the full accreditation report of the accrediting
4 agency that denied, revoked, or suspended accreditation. A home
5 care organization for which accreditation has been denied, revoked,
6 or suspended shall disclose the accreditation report to any other
7 accrediting agency to which it submits an application.~~

~~8 (b) An accreditation agency that denies, revokes, or suspends
9 a home care organization's certification of accreditation, shall do
10 all of the following:~~

~~11 (1) Notify the department of the action.~~

~~12 (2) Send a notification letter to the home care organization of
13 the action. The notification letter shall state that the agency is no
14 longer allowed to provide home care services that require home
15 care agency accreditation.~~

~~16 (3) Require the home care organization to remove its
17 accreditation certification and to post the notification letter in a
18 conspicuous location that is accessible to public view.~~

Article 3. Complaints, Inspections, and Investigations

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

(b) The department shall verify through ~~annual~~ random, unannounced inspections *once every three years* that a home care organization meets the requirements of this chapter and the regulations adopted pursuant thereto.

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

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

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

1 Article 4. Home Care Organization Operating Requirements

2
3 1796.40. A home care organization shall do all of the following:

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

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

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

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

13 (2) A documented backup staffing plan in the event that a home
14 care aide scheduled to provide home care services becomes
15 unavailable.

16 (3) A written policy regarding advance directives.

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

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

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

23 (f) Comply with the regulations adopted by the department
24 implementing this chapter.

25 1796.41. With respect to home care aides employed by a home
26 care organization, the organization shall consult the department's
27 registry before hiring an individual or placing him or her in direct
28 contact with patients. In addition, the organization shall do all of
29 the following:

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

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

36 (c) Evaluate home care aides as follows:

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

1 (2) Every ~~62~~ 90 days, supervise each home care aide providing
2 home care services in the residence of a client, provided that client
3 consent is obtained. The supervision required by this paragraph
4 shall not be billed to the client.

5 (d) Ensure that a home care aide, when providing services to a
6 client, has access at all times to a representative of the organization
7 who is in a supervisory capacity and who does not regularly render
8 home care services to that client.

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

- 12 (1) The aide’s name.
- 13 (2) A photograph of the aide.
- 14 (3) The name of the home care organization.
- 15 (4) The expiration date of the license of the home care
16 organization.

17 (5) The home care aide’s certificate number as issued by the
18 department.

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

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

24 (h) Prohibit home care aides from accepting money or property
25 from a client without written permission from the home care
26 organization.

27
28 Article 4.5. Employment Agency Insurance

29
30 1796.45. An employment agency, as defined in Section
31 1812.5095 of the Civil Code, that procures, offers, refers, provides,
32 or attempts to provide a home care aide who provides home care
33 services or other worker who provides assistance with activities
34 of daily living to the client or consumer pursuant to that section,
35 shall, at all times, maintain general and professional liability
36 insurance in the amount of at least one million dollars (\$1,000,000)
37 per occurrence and three million dollars (\$3,000,000) in the
38 aggregate.

Article 5. Client Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The right to confidentiality of the client’s personal information.

(b) Before arranging for the provision of home care services to a client, a home care organization shall provide a written notice

1 to the client stating that the client has all of the rights enumerated
2 in subdivision (a).

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

5 (d) If a client lacks the capacity to understand the rights listed
6 in this section, as determined by a court of competent jurisdiction
7 or by the client’s physician, unless the physician’s opinion is
8 controverted by the client or the client’s legal representative, the
9 client’s legal representative shall have those rights.

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

12
13 Article 6. Home Care Aides
14

15 1796.60. (a) Beginning January 1, 2013, the department shall
16 require any person hired as a home care aide to be certified within
17 30 days from the date of being hired and shall require that any
18 home care aide or person providing assistance with activities of
19 daily living to the client or consumer referred by an employment
20 agency, as defined in Section 1812.5095 of the Civil Code, be
21 certified prior to any referral.

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

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

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

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

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

36 (2) If the department determines that the training required by
37 paragraph (1) is unavailable in an applicant’s county within 30
38 days of the deadline specified in this section, the department shall
39 issue a temporary home care aide certificate to that individual that
40 will be valid until the date that proper training is made available

1 in that county. Upon completion of the required training, the
2 department shall replace the temporary home care aide certificate
3 and issue a permanent home care aide certificate.

4 (3) The entry-level training, and annual training on
5 department-approved job-related topics, may be completed through
6 an online training program.

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

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

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

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

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

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

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

23 (i) *The applicant shall submit to an examination, as defined in*
24 *Section 1796.63, to determine if he or she is free of active*
25 *tuberculosis.*

26 1796.61. (a) On and after January 1, ~~2012~~, 2013, a home care
27 organization shall not hire an individual as a home care aide unless
28 the individual complies with all of the following requirements:

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

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

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

38 ~~(b) A home care organization that hires an individual pursuant~~
39 ~~to subdivision (a) shall ensure that the individual, within the first~~

1 ~~30 days of employment, satisfactorily completes the home care~~
2 ~~certification training in Section 1796.60.~~

3 *(4) Provides proof of certification as a home care aide, pursuant*
4 *to Section 1796.60, within 30 days from the date of hire.*

5 (e)

6 (b) Notwithstanding any other provision of law, an employment
7 agency, as defined in Section 1812.5095 of the Civil Code, shall
8 ensure that any home care aide it refers to provide home care
9 services, or person it refers who provides assistance with activities
10 of daily living to the client or consumer, has been certified under
11 Section 1796.60 prior to the referral.

12 1796.62. (a) A background clearance is required, unless the
13 individual holds a valid, unexpired license, certification, or
14 registration in a health-related field that requires a background
15 check as a condition of the license, certification, or registration.

16 (b) (1) The applicant shall electronically submit to the
17 Department of Justice fingerprint images and related information
18 required by the Department of Justice of all home care aides, as
19 defined under subdivision (c) of Section 1796.12, for the purposes
20 of obtaining information as to the existence and content of a record
21 of state convictions and state arrests, and also information as to
22 the existence and content of a record of state arrests for which the
23 Department of Justice establishes that the person is free on bail or
24 on his or her own recognizance pending 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 department shall request from the Department of Justice
29 subsequent arrest notification service, as provided pursuant to
30 Section 11105.2 of the Penal Code, for persons described in
31 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 department shall deny the home care aide certification to that
39 individual:

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

4 (2) A violent or serious felony, as specified in subdivision (c)
5 of Section 667.5 of the Penal Code and subdivision (c) of Section
6 1192.7 of the Penal Code.

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

13 (d) Notwithstanding subdivision (c), a certification shall not be
14 denied under this section if the applicant has obtained a certificate
15 of rehabilitation under Chapter 3.5 (commencing with Section
16 4852.01) of Title 6 of Part 3 of the Penal Code or the information
17 or accusation against him or her has been dismissed pursuant to
18 Section 1203.4 of the Penal Code.

19 (e) Upon determination to deny an application, if the denial of
20 a certificate is due at least in part to the applicant's state criminal
21 history record, the department shall notify the applicant of this
22 determination by either personal service or registered mail, and
23 the notification shall include the same information as required in
24 subdivision (d) of Section 1796.26.

25 (f) An applicant who has been convicted of an offense identified
26 in subdivision (c) may seek from the department a general
27 exception to the exclusion provided for in this section. The
28 department shall consider the same factors when determining
29 whether to grant a general exception as considered in subdivision
30 (c) of Section 1796.26.

31 (g) (1) Upon written notification that the department has
32 determined that a request for exception shall be denied, the
33 applicant may request an administrative hearing by submitting a
34 written request to the department within 15 business days of receipt
35 of the written notification. Upon receipt of a written request, the
36 department shall hold an administrative hearing consistent with
37 the procedures specified in Section 100171, except where those
38 procedures are inconsistent with this section.

39 (2) A hearing under this subdivision shall be conducted by a
40 hearing officer or administrative law judge designated by the

1 director. A written decision shall be sent by certified mail to the
2 applicant.

3 (h) The organization shall complete and pay for the background
4 clearance specified in subdivision (b) on home care aides whose
5 employment began before January 1, ~~2012~~, 2013, within 180 days
6 of the effective date of this section.

7 (i) A home care aide employed on or after January 1, ~~2012~~,
8 2013, shall not be permitted to provide home care services until
9 he or she passes the background clearance pursuant to this section.

10 1796.63. (a) An individual hired as a home care aide on or
11 after January 1, ~~2012~~, 2013, shall be terminated from employment
12 unless the individual submitted to an examination within six
13 months prior to employment or submits to an examination within
14 14 days after employment to determine that the individual is free
15 of active tuberculosis. For purposes of this section, “examination”
16 consists of a tuberculin skin test and, if that test is positive, an
17 X-ray of the lungs.

18 (b) A home care aide whose employment with a home care
19 organization began before January 1, ~~2012~~, 2013, within 14 days
20 of the effective date of this section, shall submit to the examination
21 described in subdivision (a).

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

27 (d) After the examination, a home care aide shall submit, and
28 the organization shall keep on file, a certificate from the examining
29 practitioner showing that the home care aide was examined and
30 found free from active tuberculosis.

31 (e) The examination is a condition of initial and continuing
32 employment with the home care organization. The home care aide
33 shall pay the cost of the examination.

34 (f) A home care aide who transfers employment from one
35 organization to another shall be deemed to meet the requirements
36 of subdivision (a) or (b) if that individual can produce a certificate
37 showing that he or she submitted to the examination within the
38 past two years and was found to be free of communicable
39 tuberculosis, or if it is verified by the organization previously

1 employing him or her that it has a certificate on file which contains
2 that showing.

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

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

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

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

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

12 (B) Chronic fatigue or listlessness for a period exceeding two
13 weeks.

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

15 (D) Night sweats.

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

17

18 Article 7. Revenues

19

20 ~~1796.70.— (a) The department shall assess licensure, renewal,~~
21 ~~background check, and other fees for each location of a home care~~
22 ~~organization in amounts sufficient to cover the costs of~~
23 ~~administering this chapter. The department shall also assess from~~
24 ~~the employer of each home care aid a fee in an amount sufficient~~
25 ~~to pay the cost of providing certification of home care aides.~~

26 *1796.70. (a) The department shall assess licensure and*
27 *certification fees in amounts sufficient to support the costs of each*
28 *activity authorized by this chapter. Except for general fund moneys*
29 *that are otherwise transferred or appropriated for the initial costs*
30 *of administering this chapter, or penalties collected pursuant to*
31 *this chapter that are appropriated by the Legislature for the*
32 *purposes of this chapter, no general fund moneys shall be used*
33 *for any purpose under this chapter.*

34 *(b) The Home Care Organization and Home Care Aide Fund*
35 *is hereby created within the State Treasury for the purpose of this*
36 *chapter. All licensure and certification fees authorized by this*
37 *chapter shall be deposited into the Home Care Organization and*
38 *Home Care Aide Fund. Moneys in this fund shall, upon*
39 *appropriation by the Legislature, be made available to the*
40 *department for purposes of administering this chapter.*

1 ~~(b)~~

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

10 ~~(e) All licensure, renewal, background check, and other fees~~
11 ~~shall be deposited in the State Department of Public Health~~
12 ~~Licensing and Certification Program Fund established pursuant to~~
13 ~~Section 1266.9. 1266.~~

14 (d) In the first year of certification for home care aides,
15 certification fees shall be set at \$20.

16 (e) Commencing February 1, 2013, and every February 1
17 thereafter, the department shall publish the fees estimated pursuant
18 to this section. The calculation of estimated fees and the publication
19 of estimated fees shall not be subject to the rulemaking
20 requirements of Chapter 3.5 (commencing with Section 11340) of
21 Part 1 of Division 3 of Title 2 of the Government Code. By
22 February 1 of each year, the department shall make the fee
23 estimates available to the public by submitting them to the
24 Legislature and posting them on the department's Internet Web
25 site.

26 (f) (1) The department shall prepare a report of all costs for
27 home care licensure and home care aide certification activities.
28 At a minimum, this report shall include a narrative of all baseline
29 adjustments and their calculations, descriptions of assumptions
30 used in any calculations, and shall recommend home care
31 organization licensure fees and home care aide certification fees
32 sufficient to support projected costs.

33 (2) The department shall make a copy of the report available
34 to the public on the department's Internet Web site and provide a
35 copy to the Legislature. A report to the Legislature shall be
36 submitted in compliance with Section 9795 of the Government
37 Code.

1 Article 8. Enforcement and Penalties

2
3 1796.80. (a) A home care organization or employment agency,
4 as defined in Section 1812.5095 of the Civil Code, providing
5 certified home care aides, that operates in violation of any
6 requirement or obligation imposed by this chapter or any
7 implementing rule or regulation, may be subject to the fines levied
8 or licensure action taken by the department as specified in this
9 section.

10 (b) When the department determines that a home care
11 organization is in violation of this chapter or any rules promulgated
12 hereunder or that an employment agency is in violation of Section
13 1796.45 or subdivision (a) of Section 1796.60, a notice of violation
14 shall be served upon the licensee. Each notice of violation shall
15 be prepared in writing and shall specify the nature of the violation
16 and the statutory provision or rule alleged to have been violated.
17 The notice shall inform the licensee of any action the department
18 may take under this chapter, including the requirement of an agency
19 plan of correction, assessment of a penalty, or action to suspend,
20 revoke, or deny renewal of the license. The director or his or her
21 designee shall also inform the licensee of rights to a hearing under
22 this chapter.

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

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

30 (1) The gravity of the violation, including the probability that
31 death or serious physical or mental harm to a client will result or
32 has resulted, the severity of the actual or potential harm, and the
33 extent to which the provisions of the applicable statutes or
34 regulations were violated.

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

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

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

1 (e) The department shall adopt regulations establishing
2 procedures for notices, correction plans, appeals, and hearings. In
3 developing the procedures, the department shall convene and
4 consult with a working group of affected stakeholders.

5 1796.81. Any *fin*es and penalties collected pursuant to this
6 chapter shall be deposited into the Home Care Organization and
7 Home Care Aide Penalties Subaccount, which is hereby created
8 within the ~~State Health Facilities Citation Penalties Account, which~~
9 ~~is within the Special Deposit Fund created within the State~~
10 ~~Treasury, pursuant to Section 1417.2. Moneys in this subaccount~~
11 ~~shall, upon~~ *Home Care Organization and Home Care Aide Fund*
12 *created pursuant to Section 1796.70. Moneys in this account shall,*
13 *upon* appropriation by the Legislature, be made available to the
14 department for purposes of enforcing this chapter.