

AMENDED IN SENATE SEPTEMBER 3, 2013

AMENDED IN SENATE AUGUST 12, 2013

AMENDED IN SENATE JUNE 18, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1217**

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**Introduced by Assembly Member Lowenthal**  
**(Coauthor: Assembly Member Rendon)**  
(Coauthors: Senators Beall, Padilla, and Price)

February 22, 2013

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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

AB 1217, as amended, Lowenthal. Home Care Services Consumer Protection Act of 2013.

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 Consumer Protection Act of 2013, which would provide, on and after July 1, 2014, for the

licensure and regulation of home care organizations, as defined, by the State Department of 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. 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 providing proof of certification as a home care aide, 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. The bill would require the department to impose various fees to be deposited in the Home Care Organization and Home Care Aide Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide and violations of specified requirements by an employment agency, as defined.

This bill would specify that the provisions do not supersede local laws regulating home care organizations and home care services, including licensing, reporting, registration, and providing for civil penalties.

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

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

CHAPTER 13. HOME CARE SERVICES

Article 1. General Provisions

1796.10. This chapter shall be known and may be cited as the Home Care Services Consumer Protection Act of 2013.

1796.11. The State Department of Social Services shall administer and enforce this chapter.

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

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

(b) "Department" means the State Department of Social Services.

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

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

(e) "Geographic location" means ~~the~~ *only the specific* city or county in which the home care organization *or home care aide* is located.

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

1 (2) “Home care aide” does not include either of the following:

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

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

17 (g) (1) “Home care organization” or “home care agency” means  
18 an 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 (h) “Priority one complaint” means a complaint of sexual abuse  
 23 that involves penetration, a complaint of physical abuse that  
 24 involves an act that results in great bodily injury, such as a broken  
 25 bone, severe cut, head injury, or burn, or a complaint of suspicious  
 26 circumstances regarding the death of a client.

27 (i) “Priority two complaint” means a complaint of sexual abuse  
 28 that involves sexual behavior that does not include penetration, a  
 29 complaint of physical abuse that involves an act that results in a  
 30 minor injury or bruise, or a complaint of felony offenses, including,  
 31 but not limited to, robbery, arson, grand theft, and chemical  
 32 restraint.

33 (j) “Residence” means a temporary or permanent location where  
 34 a client receives home care services.

35 (k) “Transportation” means transportation in a motor vehicle  
 36 in good working order provided by a home care aide who is a  
 37 licensed and insured driver.

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

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

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

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

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

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

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

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

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

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

30 (d) Nothing in this chapter shall preempt or supersede local law  
31 regulating home care organizations or home care services, including  
32 regulation of home care organizations that are coextensive or  
33 duplicative of the provisions of this chapter, including, but not  
34 limited to, licensing, reporting, and registry requirements.

35

36

## Article 2. Licensure

37

38 1796.20. (a) On and after July 1, 2014, subject to the  
39 exceptions set forth in paragraph (2) of subdivision (f) of Section  
40 1796.12, an individual, partnership, corporation, limited liability

1 company, joint venture, association, or other entity shall not arrange  
2 for the provision of home care services by a home care aide to a  
3 client in this state before obtaining a license pursuant to this  
4 chapter.

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

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

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

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

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

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

31 1796.21. (a) A home care organization that has its principal  
32 place of business in another state, in addition to the other  
33 requirements of this chapter, before arranging for home care  
34 services provided by a home care aide to a client in California,  
35 shall have an office in California.

36 (b) If the home care organization is a foreign corporation,  
37 foreign limited liability company, foreign limited partnership,  
38 foreign association, or a foreign limited liability partnership, as  
39 defined in Sections 170, 171, 171.03, 171.05, and 16101 of the  
40 Corporations Code, before arranging for home care services



1 provided by a home care aide to a client in California, *the home*  
2 *care organization* shall have an office in California and shall  
3 register with the Secretary of State to conduct intrastate business  
4 in California.

5 1796.22. The enactment of this chapter is an exercise of the  
6 police power of the state for the protection of the public welfare,  
7 prosperity, health, safety, and peace of its people. The civil  
8 penalties provided by this chapter are in addition to any other  
9 penalty provided by law.

10 1796.23. In order to carry out the provisions of this chapter,  
11 the department may do any of the following:

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

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

15 (c) Investigate priority one and priority two complaints against  
16 certified home care aides not employed by a home care  
17 organization. The department may take disciplinary action in  
18 accordance with subdivision (d) of Section 1796.30.

19 (d) (1) Maintain on the department's Internet Web site a registry  
20 of, with the capability to look up the certification status of, any  
21 certified home care aide, the name and geographic location of the  
22 home care aide's ~~employer~~ *home care organization*, if there is one,  
23 or name and geographic location of all ~~employers~~ *home care*  
24 *organizations*, if there are more than one, and any disciplinary  
25 action taken against the home care aide. In the case of a home care  
26 aide who is an independent contractor and not employed by a home  
27 care organization, the Internet Web site shall indicate that status.  
28 To 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.

38 (2) The department shall update the Internet Web site upon  
39 receiving notification from a certified home care aide that he or

1 she has left a home care organization or has changed home care  
2 organizations.

3 (3) The department's Internet Web site registry of certified aides  
4 shall include a link and reference to the California Employment  
5 Development Department's Household Employer Guide.

6 (e) Maintain a registry on the department's Internet Web site  
7 on the licensure status of all licensed home care organizations,  
8 along with the name, address, and telephone number of the home  
9 care organization, and the status of any completed disciplinary  
10 action against the licensed home care organization. The department  
11 also may request and maintain additional information for a licensed  
12 home care organization, as necessary, which shall not be publicly  
13 available on the registry.

14 1796.235. The department shall share information that it obtains  
15 pursuant to this chapter, including information reported by home  
16 care organizations, home care aides, and the Department of Justice,  
17 with any city, county, or district or any agency, department, officer,  
18 or official, upon request and to the fullest extent permitted by law,  
19 including contracted restrictions applicable to information reported  
20 by the Department of Justice.

21 1796.24. Notwithstanding any other provision of this chapter,  
22 the department shall issue a home care organization license to an  
23 entity that satisfies all of the following requirements:

24 (a) Files an application, including the fees required pursuant to  
25 Section 1796.70.

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

29 (c) Submits proof of a valid workers' compensation policy  
30 covering its home care aides. The proof shall consist of the policy  
31 number, the effective and expiration dates of the policy, and the  
32 name and address of the policy carrier.

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

36 (e) The owner or owners of the home care organization pass a  
37 background clearance, as required pursuant to Section 1796.26.

38 1796.25. (a) The term of a license issued pursuant to this  
39 chapter shall be two years.

1 (b) A license may be renewed upon application to the department  
2 and the payment of a renewal fee prescribed by the department.

3 (c) At least 90 days before the expiration of a license, the  
4 department shall mail to the licensee, at the latest address furnished  
5 by the licensee to the department, a notice stating the amount of  
6 the renewal fee and the date on which it is due, and that failure to  
7 pay that fee on or before the date due will result in the expiration  
8 of the license.

9 1796.26. (a) In order to obtain a license, the following  
10 individual or individuals shall consent to the background clearance  
11 described in Section 1796.62:

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

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

17 (b) (1) If the background clearance conducted pursuant to  
18 subdivision (a) discloses a conviction for a crime that is  
19 substantially related to the qualifications, functions, or duties of  
20 operating a home care organization, the application for a license  
21 may be denied.

22 (2) Notwithstanding paragraph (1), a license shall not be denied  
23 under this section if the applicant has obtained a certificate of  
24 rehabilitation under Chapter 3.5 (commencing with Section  
25 4852.01) of Title 6 of Part 3 of the Penal Code or the information  
26 or accusation against him or her has been dismissed pursuant to  
27 Section 1203.4 of the Penal Code.

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

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

35 (2) Activities since conviction, including employment or  
36 participation in therapy or education, that would indicate changed  
37 behavior.

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

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

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

6 (6) Employment history and current employer recommendations.

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

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

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

17 (2) A copy of the applicant's criminal offender record  
18 information search response. The department shall provide this  
19 information in a manner that protects the confidentiality and  
20 privacy of the criminal offender record information search  
21 response.

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

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

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

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

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

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

5 1796.27. A private or public organization, with the exception  
6 of a county providing in-home supportive services pursuant to  
7 Article 7 (commencing with Section 12300) of Chapter 3 of Part  
8 3 of Division 9 of the Welfare and Institutions Code, and the  
9 exceptions provided for in subdivision (c), shall not do any of the  
10 following, unless it is licensed under this chapter:

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

16 (b) Use the terms “home care organization,” “home care,”  
17 “in-home care,” or any combination of those terms, within its  
18 name.

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

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

23 (2) An employment agency, as defined in Section 1812.5095  
24 of the Civil Code, that procures, offers, refers, provides, or attempts  
25 to provide a home care aide or other worker who provides home  
26 care services or domestic services to clients and consumers  
27 pursuant to that section, as long as the agency is not the employer  
28 of a home care aide or other worker who provides domestic  
29 services.

30

31 Article 3. Complaints, Inspections, and Investigations

32

33 1796.30. (a) The department may review and, if it determines  
34 necessary, investigate complaints filed against home care  
35 organizations or home care aides not employed by a home care  
36 organization that meet the specified definition of a priority one or  
37 priority two complaint.

38 (b) The department shall verify through random, unannounced  
39 inspections at least once every five years that a home care

1 organization meets the requirements of this chapter and the  
2 regulations adopted pursuant thereto.

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

6 (1) Inspection of the books, records, and premises of a home  
7 care organization. A home care organization’s refusal to make  
8 those records, books, or premises available shall constitute cause  
9 for the revocation of the home care organization’s license.

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

13 (d) If the department determines that a home care aide is in  
14 violation of this chapter or any rules promulgated hereunder, a  
15 notice of violation shall be served upon the individual. Each notice  
16 of violation shall be prepared in writing and shall specify the nature  
17 of the violation and the statutory provision or rule alleged to have  
18 been violated. The notice shall inform the individual of any action  
19 the department may take under this chapter, including an action  
20 to suspend, revoke, or deny renewal of the certificate. The director  
21 or his or her designee shall also inform the individual of his or her  
22 rights to a hearing under this chapter.

23

24 Article 4. Home Care Organization Operating Requirements

25

26 1796.40. A home care organization shall do all of the following:

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

29 (b) Operate the home care organization in a commercial office  
30 space that complies with local zoning ordinances.

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

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

36 (2) A documented backup staffing plan in the event that a home  
37 care aide scheduled to provide home care services becomes  
38 unavailable.

39 (3) A written policy regarding advance directives.

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

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

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

7 (f) Comply with the regulations adopted by the department  
8 implementing this chapter.

9 1796.41. With respect to home care aides employed by a home  
10 care organization, the home care organization shall consult the  
11 department's registry, if a registry is maintained by the department,  
12 before hiring an individual or placing him or her in direct contact  
13 with patients. In addition, the home care organization shall do all  
14 of the following:

15 (a) (1) Ensure that each of its home care aides employed before  
16 January 1, 2015, meets the requirements of Section 1796.61 no  
17 later than July 1, 2015.

18 (2) Ensure that all individuals hired on or after January 1, 2015,  
19 have met the requirements of Section 1796.61 before being hired  
20 as a home care aide.

21 (b) (1) Investigate complaints made by a client, or a client's  
22 family member or guardian, against home care aides regarding a  
23 service that is or fails to be furnished. The home care organization  
24 shall document both the existence and the resolution of those  
25 complaints.

26 (2) If the home care organization completes an investigation of  
27 a complaint against a home care aide pursuant to paragraph (1)  
28 and finds that, in its opinion, the home care aide is in violation of  
29 this chapter, the home care organization shall immediately notify  
30 the department in order for the department to take the appropriate  
31 steps, which may include revoking the home care aide's certificate.

32 (c) Evaluate home care aides as follows:

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

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

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

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

- 8 (1) The aide’s name.
- 9 (2) A photograph of the aide.
- 10 (3) The name of the home care organization.
- 11 (4) The expiration date of the license of the home care  
12 organization.

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

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

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

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

22 (i) Immediately notify the department when the home care  
23 organization no longer employs an individual as a home care aide  
24 in order for the department to update its Internet Web site.

25

26 Article 4.5. Employment Agency Insurance

27

28 1796.45. (a) An employment agency, as defined in Section  
29 1812.5095 of the Civil Code, that procures, offers, refers, provides,  
30 or attempts to provide a home care aide who provides home care  
31 services or other worker who provides assistance with activities  
32 of daily living to the client or consumer pursuant to that section,  
33 shall, at all times, maintain general and professional liability  
34 insurance in the amount of at least one million dollars (\$1,000,000)  
35 per occurrence and three million dollars (\$3,000,000) in the  
36 aggregate.

37 (b) An employment agency shall submit to the department proof  
38 of insurance required pursuant to subdivision (a) no later than July  
39 1, 2014, and annually thereafter.



1 (c) The department may assess a civil penalty not to exceed  
2 nine hundred dollars (\$900) a day for violation of this section.

3 (d) Nothing in this section shall authorize the department to  
4 assess a civil penalty on an employment agency for lack of  
5 coverage if the lack of coverage is found to be the fault of the  
6 professional liability insurer.

7  
8 Article 5. Client Rights  
9

10 1796.50. With respect to clients, a home care organization shall  
11 do all of the following:

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

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

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

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

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

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

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

30 (d) Have a written agreement with the client that includes, but  
31 is not limited to, the cost of and the hours during which home care  
32 services will be provided to the client and reference to the personal  
33 attendant requirements, if applicable, as referenced in Wage Order  
34 15-2001, issued by the Industrial Welfare Commission.

35 1796.51. (a) Home care clients are entitled to the following  
36 rights:

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

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

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

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

5 (b) Before arranging for the provision of home care services to  
6 a client, a home care organization shall provide a written notice  
7 to the client stating that the client has all of the rights enumerated  
8 in subdivision (a).

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

11 (d) If a client lacks the capacity to understand the rights listed  
12 in this section, as determined by a court of competent jurisdiction  
13 or by the client’s physician, unless the physician’s opinion is  
14 controverted by the client or the client’s legal representative, the  
15 client’s legal representative shall have those rights.

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

18

19

Article 6. Home Care Aides

20

21 1796.60. (a) (1) Beginning January 1, 2015, the department  
22 shall require any person hired as a home care aide on or after  
23 January 1, 2015, to be certified before being hired and shall require  
24 that any home care aide or person providing assistance with  
25 activities of daily living to the client or consumer referred by an  
26 employment agency, as defined in Section 1812.5095 of the Civil  
27 Code, be certified prior to any referral.

28 (2) The term of a certificate issued pursuant to this chapter shall  
29 be two years. The certificate may be renewed upon application to  
30 the department and payment of the renewal fee prescribed by the  
31 department pursuant to this chapter.

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

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

- 1 (A) Two hours of orientation training regarding his or her role  
2 as caregiver and the applicable terms of employment.
- 3 (B) Three hours of safety training, including basic safety  
4 precautions, emergency procedures, and infection control.
- 5 (C) Other training related to core competencies and  
6 population-specific competencies as required by regulation, which  
7 shall include, but are not limited to, the following areas:
- 8 (i) Client rights and safety.
- 9 (ii) How to provide for and respond to a client's daily living  
10 needs.
- 11 (iii) How to report, prevent, and detect abuse and neglect.
- 12 (iv) How to assist a client with personal hygiene and other home  
13 care services.
- 14 (v) If transportation services are provided, how to safely  
15 transport a client.
- 16 (2) If the department determines that the training required by  
17 paragraph (1) is unavailable in an applicant's county, the  
18 department shall issue a temporary home care aide certificate to  
19 that individual that will be valid until the date that proper training  
20 is made available in that county. Upon completion of the required  
21 training, the department shall replace the temporary home care  
22 aide certificate and issue a permanent home care aide certificate.
- 23 (3) The entry-level training, and annual training on  
24 department-approved job-related topics, may be completed through  
25 an online training program.
- 26 (d) The department shall only approve a training curriculum  
27 that satisfies both of the following conditions:
- 28 (1) The training curriculum has been developed with input from  
29 consumer and worker representatives.
- 30 (2) The training curriculum requires comprehensive instruction  
31 by qualified instructors on the competencies and training topics  
32 identified in this section.
- 33 (e) The applicant shall consent to the background clearance  
34 described in Section 1796.62.
- 35 (f) The department shall issue a home care aide certificate to  
36 each individual who meets the requirements of this section.
- 37 (g) The department shall set a fee for certification under this  
38 section that shall be paid for by the home care aide.

1 (h) The applicant shall submit to an examination, as defined in  
2 Section 1796.63, to determine if he or she is free of active  
3 tuberculosis.

4 1796.61. (a) On and after January 1, 2015, a home care  
5 organization shall not hire an individual as a home care aide unless  
6 the individual complies with all of the following requirements:

7 (1) Completes an individual interview, to the satisfaction of the  
8 home care organization.

9 (2) Provides at least two work- or school-related references or,  
10 for an individual with no previous work experience, at least two  
11 character references from nonrelatives. The home care organization  
12 shall verify the references before hiring the individual.

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

16 (4) Provides proof of certification as a home care aide, pursuant  
17 to Section 1796.60.

18 (b) For home care aides employed by a home care organization  
19 before January 1, 2015, a certificate pursuant to this chapter shall  
20 be obtained by July 1, 2015, in order for both the home care aide  
21 and the home care organization to be in compliance with this  
22 chapter.

23 (c) (1) Notwithstanding any other provision of law, an  
24 employment agency, as defined in Section 1812.5095 of the Civil  
25 Code, shall ensure that any home care aide it refers to provide  
26 home care services, or person it refers who provides assistance  
27 with activities of daily living to the client or consumer, has been  
28 certified under Section 1796.60 prior to the referral.

29 (2) The department may investigate complaints against an  
30 employment agency, as defined in Section 1812.5095 of the Civil  
31 Code, including, but not limited to, complaints made by a client  
32 or a client’s family member or guardian if the employment agency  
33 fails to comply with the provisions of this section. An employment  
34 agency that violates this subdivision shall be liable for a civil  
35 penalty not to exceed nine hundred dollars (\$900) per day for each  
36 calendar day of each violation.

37 1796.62. (a) A background clearance is required, unless the  
38 individual holds a valid, unexpired license, certification, or  
39 registration in a health-related field that requires a background  
40 check as a condition of the license, certification, or registration.

1 (b) (1) The department shall electronically submit to the  
2 Department of Justice fingerprint images and related information  
3 required by the Department of Justice of all home care aides, as  
4 defined under subdivision (e) of Section 1796.12, and owners of  
5 home care organizations, as set forth in Section 1796.26, for the  
6 purposes of obtaining information as to the existence and content  
7 of a record of state convictions and state arrests, and also  
8 information as to the existence and content of a record of state  
9 arrests for which the Department of Justice establishes that the  
10 person is free on bail or on his or her own recognizance pending  
11 trial or appeal.

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

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

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

22 (c) If the background check required by subdivision (b) discloses  
23 a conviction or incarceration for a conviction of any of the  
24 following provisions of the Penal Code within 10 years, the  
25 department shall deny the home care aide certification to that  
26 individual:

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

30 (2) A violent or serious felony, as specified in subdivision (c)  
31 of Section 667.5 of the Penal Code and subdivision (c) of Section  
32 1192.7 of the Penal Code.

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

39 (d) Notwithstanding subdivision (c), a certification shall not be  
40 denied under this section if the applicant has obtained a certificate

1 of rehabilitation under Chapter 3.5 (commencing with Section  
2 4852.01) of Title 6 of Part 3 of the Penal Code or the information  
3 or accusation against him or her has been dismissed pursuant to  
4 Section 1203.4 of the Penal Code.

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

11 (f) An applicant who has been convicted of an offense identified  
12 in subdivision (c) may seek from the department a general  
13 exception to the exclusion provided for in this section. The  
14 department shall consider the same factors when determining  
15 whether to grant a general exception as considered in subdivision  
16 (c) of Section 1796.26.

17 (g) (1) Upon written notification that the department has  
18 determined that a request for exception shall be denied, the  
19 applicant may request an administrative hearing by submitting a  
20 written request to the department within 15 business days of receipt  
21 of the written notification. Upon receipt of a written request, the  
22 department shall hold an administrative hearing consistent with  
23 the procedures specified in Section 100171, except where those  
24 procedures are inconsistent with this section.

25 (2) A hearing under this subdivision shall be conducted by a  
26 hearing officer or administrative law judge designated by the  
27 director. A written decision shall be sent by certified mail to the  
28 applicant.

29 (h) The applicant shall complete and pay for the background  
30 clearance specified in subdivision (b).

31 (i) A home care aide employed on or after July 1, 2014, shall  
32 not be permitted to provide home care services until he or she  
33 passes the background clearance pursuant to this section.

34 1796.63. (a) An individual hired as a home care aide on or  
35 after January 1, 2015, shall be terminated from employment unless  
36 the individual submitted to an examination within six months prior  
37 to employment to determine that the individual is free of active  
38 tuberculosis. For purposes of this section, "examination" consists  
39 of a tuberculin skin test and, if that test is positive, an X-ray of the  
40 lungs.

1 (b) A home care aide whose employment with a home care  
2 organization began before January 1, 2015, shall submit to the  
3 examination described in subdivision (a) before July 1, 2015.

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

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

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

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

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

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

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

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

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

33 (B) Chronic fatigue or listlessness for a period exceeding two  
34 weeks.

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

36 (D) Night sweats.

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

Article 7. Revenues

1  
 2  
 3 1796.70. (a) The department shall assess licensure and  
 4 certification fees in amounts sufficient to support the costs of each  
 5 activity authorized by this chapter. Except for General Fund  
 6 moneys that are otherwise transferred or appropriated for the initial  
 7 costs of administering this chapter, or penalties collected pursuant  
 8 to this chapter that are appropriated by the Legislature for the  
 9 purposes of this chapter, no General Fund moneys shall be used  
 10 for any purpose under this chapter.

11 (b) The Home Care Organization and Home Care Aide Fund is  
 12 hereby created within the State Treasury for the purpose of this  
 13 chapter. All licensure and certification fees authorized by this  
 14 chapter shall be deposited into the Home Care Organization and  
 15 Home Care Aide Fund. Moneys in this fund shall, upon  
 16 appropriation by the Legislature, be made available to the  
 17 department for purposes of administering this chapter.

18 (c) The licensure fee shall be equivalent to the cost of  
 19 administering the licensure program, as defined by the department.

20 (d) The certification fee shall be equivalent to the cost of  
 21 administering the certification program, as defined by the  
 22 department.

23 (e) Commencing February 1, 2015, and every February 1  
 24 thereafter, the department shall publish the fees estimated pursuant  
 25 to this section. The calculation of estimated fees and the publication  
 26 of estimated fees shall not be subject to the rulemaking  
 27 requirements of Chapter 3.5 (commencing with Section 11340) of  
 28 Part 1 of Division 3 of Title 2 of the Government Code. By  
 29 February 1 of each year, the department shall make the fee  
 30 estimates available to the public by submitting them to the  
 31 Legislature and posting them on the department’s Internet Web  
 32 site.

33 (f) (1) The department shall prepare a report of all costs for  
 34 home care licensure and home care aide certification activities. At  
 35 a minimum, this report shall include a narrative of all baseline  
 36 adjustments and their calculations, descriptions of assumptions  
 37 used in any calculations, and shall recommend home care  
 38 organization licensure fees and home care aide certification fees  
 39 sufficient to support projected costs.



1 (2) The department shall make a copy of the report available to  
2 the public on the department's Internet Web site and provide a  
3 copy to the Legislature. A report to the Legislature shall be  
4 submitted in compliance with Section 9795 of the Government  
5 Code.

6  
7 Article 8. Enforcement and Penalties

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

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

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

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

36 (1) The gravity of the violation, including the probability that  
37 death or serious physical or mental harm to a client will result or  
38 has resulted, the severity of the actual or potential harm, and the  
39 extent to which the provisions of the applicable statutes or  
40 regulations were violated.

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

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

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

6 (e) The department shall adopt regulations establishing  
7 procedures for notices, correction plans, appeals, and hearings. In  
8 developing the procedures, the department shall convene and  
9 consult with a working group of affected stakeholders.

10 (f) Nothing in this section shall prohibit local laws from  
11 regulating privately funded home care services, whether provided  
12 by home care organizations or other entities, including, but not  
13 limited to, agencies regulated pursuant to Section 1725.

14 (g) Nothing in this section shall prohibit local laws from  
15 providing for civil penalties, including, but not limited to, the  
16 suspension or revocation of the local license of a home care  
17 organization, for any violation of local laws regulating home care  
18 organizations, or a violation of this chapter.

19 1796.81. Any fines and penalties collected pursuant to this  
20 chapter shall be deposited into the Home Care Organization and  
21 Home Care Aide Penalties Subaccount, which is hereby created  
22 within the Home Care Organization and Home Care Aide Fund  
23 created pursuant to Section 1796.70. Moneys in this account shall,  
24 upon appropriation by the Legislature, be made available to the  
25 department for purposes of enforcing this chapter.