

Introduced by Senator PriceFebruary 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health. The bill would specifically exclude entities that provide services under the IHSS program from the definition of a home care organization. The bill would impose various licensure requirements on a home care organization and would also impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would require a home care organization to inform a client of certain things 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, the home care organization would be required, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

This bill would require a home care organization to conduct background clearances on home care aides, as specified, and to require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would establish the Home Care Organization and Home Care Aide Certification Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund, except as specified, to the department to carry out the provisions of the bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act.

Vote: majority. Appropriation: yes. 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.

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

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

9 (g) Discharge planners commonly maintain lists of home care
10 aides and home care organizations for purposes of patient referral
11 without any information about the individuals or the organizations,
12 thereby placing both the patient and the referring organization at
13 risk.

14 (h) Typically, family members looking for home care services
15 are in a crisis and will not ask all of the “right” questions when
16 choosing a home care organization. In addition, there is currently
17 no centralized list of home care organizations in California for
18 family members, seniors, or disabled individuals to consult when
19 in need of home care services for their loved ones or themselves.

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

22
23 CHAPTER 13. HOME CARE SERVICES

24
25 Article 1. General Provisions

26
27 1796.10. This chapter shall be known and may be cited as the
28 Home Care Services Act of 2011.

29 1796.11. The State Department of Public Health shall
30 administer and enforce this chapter.

31 1796.12. For purposes of this chapter, the following definitions
32 shall apply:

33 (a) “Client” means an individual who receives home care
34 services.

35 (b) “Department” means the State Department of Public Health.

36 (c) “Home care aide” means an individual who provides home
37 care services to a client in the client’s residence, and is
38 synonymous, for purposes of this chapter, with “caregiver,”
39 “custodial care,” “personal care attendant,” “homemaker,” and
40 “companion.” In addition, “home care aide” includes an individual

1 who qualifies as a personal attendant, as defined in Industry Wage
2 Order 15-2001, issued by the Industrial Welfare Commission, who
3 provides home care services.

4 (d) “Home care organization” or “organization” means an
5 individual, partnership, corporation, limited liability company,
6 joint venture, association, or other entity that arranges for the
7 provision of home care services by a home care aide to a client in
8 the client’s residence and that is licensed pursuant to this chapter.
9 “Home care organization” does not include any county providing
10 in-home supportive services pursuant to Article 7 (commencing
11 with Section 12300) of Chapter 3 of Part 3 of Division 9 of the
12 Welfare and Institutions Code, without regard to whether the
13 county provides these services as a public authority or through a
14 nonprofit consortium established pursuant to Section 12301.6 of
15 the Welfare and Institutions Code.

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

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

21 1796.13. (a) For purposes of this chapter, “home care services”
22 means services provided by a home care aide to a client who,
23 because of advanced age or physical or mental infirmity, cannot
24 perform these services for himself or herself. These services
25 include, but are not limited to, bathing, dressing, feeding,
26 exercising, personal hygiene and grooming, transferring,
27 ambulating, positioning, toileting and incontinence care, assisting
28 with medication that the client normally self-administers,
29 housekeeping, meal planning and preparation, laundry,
30 transportation, correspondence, making telephone calls, shopping
31 for personal care items or groceries, and companionship. This
32 subdivision shall not be construed to authorize a home care aide
33 to administer medication that would otherwise require
34 administration or oversight by a licensed healthcare professional.

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

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

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

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

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

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

9
10 Article 2. Licensure

11
12 1796.20. (a) An individual, partnership, corporation, limited
13 liability company, joint venture, association, or other entity shall
14 not arrange for the provision of home care services by a home care
15 aide to a client in this state without first obtaining a license pursuant
16 to this chapter.

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

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

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

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

32 (3) Bring an action against the individual or entity under Chapter
33 5 (commencing with Section 17200) of Part 2 of Division 7 of the
34 Business and Professions Code.

35 1796.21. A home care organization that has its principal place
36 of business in another state, in addition to the other requirements
37 of this chapter, shall comply with both of the following
38 requirements before arranging for the provision of home care
39 services by a home care aide to a client in California:

40 (a) Have an office in California.

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

3 1796.22. The enactment of this chapter is an exercise of the
4 police power of the state for the protection of the public welfare,
5 prosperity, health, safety, and peace of its people. The civil
6 penalties provided by this chapter are in addition to any other
7 penalty provided by law.

8 1796.23. In order to carry out the provisions of this chapter,
9 the department shall do all of the following:

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

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

13 (c) Make available on the department's Internet Web site a list
14 of home care organizations, including, for each organization, the
15 organization's name, address, license number, effective date of its
16 license, and a list of all serious violations.

17 1796.24. (a) The department shall issue a license to a home
18 care organization that meets all of the following requirements:

19 (1) Submits an application, on a form prescribed by the
20 department.

21 (2) Pays a licensure fee, as prescribed by the department
22 pursuant to Section 1796.71.

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

26 (4) Submits proof of a valid workers' compensation policy
27 covering its home care aides. The proof shall consist of the policy
28 number, the effective and expiration dates of the policy, and the
29 name and address of the policy carrier.

30 (5) Passes any background clearance, as required pursuant to
31 Section 1796.26.

32 (6) Provides the department with a list of all of its home care
33 aides and proof that each satisfies the requirements of Section
34 1796.60.

35 (7) Complies with the requirements of this chapter.

36 (b) The term of a license issued under this section is one year.

37 The license may be renewed upon application to the board and
38 payment of the renewal fee prescribed by the board pursuant to
39 Section 1796.71.

1 (c) Following the receipt of an application for a license or
2 renewal of a license under this section, the department shall
3 conduct an onsite inspection of the applicant to ensure compliance
4 with this chapter.

5 1796.25. At least 30 days before the expiration of a license,
6 the department shall mail to the licensee, at the latest address
7 furnished by the licensee to the department, a notice stating the
8 amount of the renewal fee and the date on which it is due, and that
9 failure to pay that fee on or before the date due will result in the
10 expiration of the license.

11 1796.26. (a) In order to obtain a license, the following
12 individual or individuals shall consent to the background clearance
13 described in subdivision (b) of Section 1796.62:

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

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

19 (b) If the background clearance conducted pursuant to
20 subdivision (a) discloses a conviction for a felony or a crime that
21 evidences an unfitness to operate a home care organization, the
22 application for a license shall be denied. This subdivision shall not
23 be applied to deny a license if the individual or individuals, as
24 applicable, present evidence satisfactory to the department that
25 the individual or individuals, as applicable, have been rehabilitated
26 and presently are of good character so as to justify the issuance of
27 a license.

28
29 Article 3. Complaints, Inspections, and Investigations
30

31 1796.40. (a) The department shall investigate complaints filed
32 against home care organizations.

33 (b) The department shall verify through annual random,
34 unannounced inspections that a home care organization meets the
35 requirements of this chapter and the regulations adopted pursuant
36 thereto.

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

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

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

8

9 Article 4. Home Care Organization Operating Requirements

10

11 1796.40. A home care organization shall do all of the following:

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

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

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

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

21 (2) A documented backup staffing plan in the event that a home
22 care aide scheduled to provide home care services becomes
23 unavailable.

24 (3) A written policy regarding advance directives.

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

27 (d) Maintain a valid workers’ compensation policy covering its
28 home care aides.

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

31 (f) Comply with the regulations adopted by the department
32 implementing this chapter.

33 1796.41. With respect to home care aides employed by a home
34 care organization, the organization shall do all of the following:

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

37 (b) Investigate complaints made by a client, or a client’s family
38 member or guardian, against home care aides regarding a service
39 that is or fails to be furnished. The organization shall document
40 both the existence and the resolution of those complaints.

- 1 (c) Evaluate home care aides as follows:
- 2 (1) Conduct an annual assessment of the performance and
- 3 effectiveness of each home care aide, including, if client consent
- 4 is obtained, at least one observation of the aide providing home
- 5 care services in the residence of a client.
- 6 (2) Every 62 days, supervise each home care aide providing
- 7 home care services in the residence of a client, provided that client
- 8 consent is obtained. The supervision required by this paragraph
- 9 shall not be billed to the client.
- 10 (d) Ensure that a home care aide, when providing services to a
- 11 client, has access at all times to a representative of the organization
- 12 who is in a supervisory capacity and who does not regularly render
- 13 home care services to that client.
- 14 (e) Require a home care aide, while providing home care
- 15 services, to wear a badge that includes all of the following
- 16 information in 12-point type or larger:
- 17 (1) The aide’s name.
- 18 (2) A photograph of the aide.
- 19 (3) The name of the home care organization.
- 20 (4) The expiration date of the license of the home care
- 21 organization.
- 22 (5) The home care aide’s certificate number as issued by the
- 23 department.
- 24 (f) Require home care aides to demonstrate that they are free
- 25 of active tuberculosis, pursuant to Section 1796.63.
- 26 (g) Require home care aides to annually complete not less than
- 27 eight paid hours of paid department-approved training on
- 28 job-related topics.
- 29 (h) Prohibit home care aides from accepting money or property
- 30 from a client without written permission from the home care
- 31 organization.

32
33 Article 5. Client Rights

34
35 1796.50. With respect to clients, a home care organization shall
36 do all of the following:

- 37 (a) Advise a client of any change in the client’s plan for home
- 38 care services.
- 39 (b) Before arranging for the provision of home care services to
- 40 a client, do all of the following:

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

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

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

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

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

15 (d) Have a written agreement with the client that includes, but
16 is not limited to, the cost of and the hours during which home care
17 services will be provided to the client and reference to the personal
18 attendant requirements, if applicable, as referenced in Wage Order
19 15-2001, issued by the Industrial Welfare Commission.

20 1796.51. (a) Home care clients are entitled to the following
21 rights:

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

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

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

28 (4) The right to confidentiality of the client's personal
29 information.

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

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

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

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

3
4 Article 6. Home Care Aides
5

6 1796.60. (a) Beginning January 1, 2012, the department shall
7 require any person hired as a long-term care worker for the elderly
8 or persons with disabilities to be certified as a home care aide
9 within 180 days from the date of being hired.

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

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

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

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

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

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

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

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

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

33 (f) The department shall maintain on its Internet Web site a list
34 of, and contact information for, each holder of a home care aide
35 certificate in good standing.

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

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

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

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

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

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

13 (b) A home care organization that hires an individual pursuant
14 to subdivision (a) shall ensure that the individual, within the first
15 18 days of employment, satisfactorily completes the home care
16 certification training in Section 1796.60.

17 1796.62. (a) A home care organization shall conduct and pay
18 for a background clearance on an individual hired as a home care
19 aide, unless the individual holds a valid, unexpired license or
20 registration in a health-related field that requires a background
21 check as a condition of the license or registration.

22 (b) The background clearance shall consist of a livescan criminal
23 history record check conducted by the Department of Justice.

24 (c) If the background check required by subdivision (b) discloses
25 a conviction or incarceration for a conviction of any of the
26 following provisions of the Penal Code within 10 years, the
27 organization shall deny or terminate, as applicable, the employment
28 of that individual:

29 (1) Fraud against a government health care or supportive
30 services program, including Medicare, Medicaid, or services
31 provided under Title V, Title XX, or Title XXI of the federal Social
32 Security Act, or a violation of subdivision (a) of Section 273a of
33 the Penal Code, or Section 368 of the Penal Code, or similar
34 violations in another jurisdiction.

35 (2) A violent or serious felony, as specified in subdivision (c)
36 of Section 667.5 of the Penal Code and subdivision (c) of Section
37 1192.7 of the Penal Code.

38 (3) A felony offense for which a person is required to register
39 under subdivision (c) of Section 290 of the Penal Code. For
40 purposes of this subparagraph, the 10-year time period specified

1 in this section shall commence with the date of conviction for, or
2 incarceration following a conviction for, the underlying offense,
3 and not the date of registration.

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

6 (d) Notwithstanding subdivision (c), a certification shall not be
7 denied under this section if the applicant has obtained a certificate
8 of rehabilitation under Chapter 3.5 (commencing with Section
9 4852.01) of Title 6 of Part 3 of the Penal Code or the information
10 or accusation against him or her has been dismissed pursuant to
11 Section 1203.4 of the Penal Code.

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

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

19 1796.63. (a) An individual hired as a home care aide on or
20 after January 1, 2012, shall be terminated from employment unless
21 the individual submitted to an examination within six months prior
22 to employment or submits to an examination within 14 days after
23 employment to determine that the individual is free of active
24 tuberculosis. For purposes of this section, “examination” consists
25 of a tuberculin skin test and, if that test is positive, an X-ray of the
26 lungs.

27 (b) A health care aide whose employment with a home care
28 organization began before January 1, 2012, within 14 days of the
29 effective date of this section, shall submit to the examination
30 described in subdivision (a).

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

36 (d) After the examination, a home care aide shall submit, and
37 the organization shall keep on file, a certificate from the examining
38 practitioner showing that the home care aide was examined and
39 found free from active tuberculosis.

1 (e) The examination is a condition of initial and continuing
2 employment with the home care organization. The home care aide
3 shall pay the cost of the examination.

4 (f) A home care aide who transfers employment from one
5 organization to another shall be deemed to meet the requirements
6 of subdivision (a) or (b) if that individual can produce a certificate
7 showing that he or she submitted to the examination within the
8 past two years and was found to be free of communicable
9 tuberculosis, or if it is verified by the organization previously
10 employing him or her that it has a certificate on file which contains
11 that showing.

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

- 15 (1) The individual’s name, address, and telephone number.
- 16 (2) The date and result of all previous tuberculin skin tests and,
17 where applicable, all X-ray examinations.
- 18 (3) Answers to questions concerning whether the individual has
19 recently experienced any of the following symptoms:
 - 20 (A) A chronic cough for a period exceeding two weeks.
 - 21 (B) Chronic fatigue or listlessness for a period exceeding two
22 weeks.
 - 23 (C) Fever for a period exceeding one week.
 - 24 (D) Night sweats.
 - 25 (E) Unexplained weight loss of eight pounds or more.

26
27 Article 7. Revenues

28
29 1796.70. (a) There is in the State Treasury the Home Care
30 Organization and Home Care Aide Certification Fund.
31 Notwithstanding Section 13340 of the Government Code, and
32 except as provided in subdivision (b), all money in the fund is
33 continuously appropriated to the department for the purpose of
34 carrying out and enforcing this chapter.

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

39 1796.71. (a) The department shall assess licensure, renewal,
40 background check, and other fees for each location of a home care

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

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

8

9

Article 8. Enforcement and Penalties

10

11 1796.80. (a) A home care organization operating in violation
12 of this chapter or any rule adopted hereunder may be subject to
13 the penalties or fines levied or licensure action taken by the
14 department as specified in this section.

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

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

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

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

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

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

- 1 (4) The financial benefit to the home care organization of
- 2 committing or continuing the violation.
- 3 (e) The department shall adopt regulations establishing
- 4 procedures for notices, correction plans, appeals, and hearings. In
- 5 developing the procedures, the department shall convene and
- 6 consult with a working group of affected stakeholders.