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AMENDED IN SENATE MAY 31, 2011

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SENATE BILL

No. 411

Introduced by Senator Price

**(Coauthors: Senators Alquist, DeSaulnier, Lieu, Padilla, and
Vargas)**

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

February 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

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

Existing law provides for the In-Home Supportive Services (IHSS) program, a county-administered program under which qualified aged, blind, and disabled persons receive services enabling them to remain in their own homes. The IHSS program includes various eligibility requirements for individuals who provide services to recipients under

the program. Under existing law, a private provider of in-home care services is not subject to the requirements of the IHSS program.

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

This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health, and the certification of home care aides. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure requirements on a home care organization, including requiring a licensed home care organization to be accredited by an appropriate accrediting organization, as specified. The bill would also impose a civil penalty on an individual or entity that operates a home care organization without a license, except as specified. The bill would require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, and the extent to which payment may be expected from specified sources. In addition, this bill would require a home care organization, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

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

This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would require the department to impose various fees to be deposited in the State Department of Public Health Licensing and Certification Program Fund. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for

violations of the act by a home care organization and violations of specified requirements by an employment agency, as defined.

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

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

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

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

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

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

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

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

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

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

29 (h) Typically, family members looking for home care services
30 are in a crisis and will not ask all of the "right" questions when
31 choosing a home care organization *or an individual provider*. In
32 addition, there is currently no centralized list of home care
33 organizations *or individual providers* in California for family

1 members, seniors, or disabled individuals to consult when in need
2 of home care services for their loved ones or themselves.

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

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CHAPTER 13. HOME CARE SERVICES

Article 1. General Provisions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (G) An employment agency ~~that procures, offers, refers,~~
36 ~~provides, or attempts to provide, but is not the employer of, a home~~
37 ~~care aide or other workers who provide home care services or~~
38 ~~domestic services to clients and consumers in accordance with~~
39 ~~Section 1812.5095 of the Civil Code., as defined in Section~~
40 *1812.5095 of the Civil Code, that procures, offers, refers, provides,*

1 *or attempts to provide a home care aide or other worker who*
2 *provides home care services or domestic services to clients and*
3 *consumers pursuant to that section, as long as the agency is not*
4 *the employer of, the home care aide or other worker who provides*
5 *to the clients or consumers assistance with activities of daily living,*
6 *including, but not limited to, bathing, dressing, feeding, toileting,*
7 *ambulation, and transferring.*

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

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

13 (g) “Employment agency” ~~shall have the same meaning as in~~
14 ~~Section 1812.5095 of the Civil Code.~~ *means an employment agency*
15 *that procures, offers, refers, provides, or attempts to provide but*
16 *is not the employer of, a home care aide who provides, home care*
17 *services to clients and consumers in accordance with Section*
18 *1812.5095 of the Civil Code, as long as the agency is not the*
19 *employer of a home care aide or other worker who provides*
20 *assistance with activities of daily living to the consumer.*

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

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

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

14
15 Article 2. Licensure

16
17 ~~1796.20. (a) Except for an employment agency that only
18 procures, offers, refers, provides, or attempts to provide, but is not
19 the employer of, a home care aide or other workers who provide
20 home care services or domestic services to clients and consumers
21 in accordance with Section 1812.5095 of the Civil Code, an
22 individual, partnership, corporation, limited liability company,
23 joint venture, association, or other entity shall not arrange for the
24 provision of home care services by a home care aide to a client in
25 this state without first obtaining a license pursuant to this chapter.~~

26 *1796.20. (a) Subject to the exceptions set forth in paragraph
27 (2) of subdivision (d) of Section 1796.12, an individual,
28 partnership, corporation, limited liability company, joint venture,
29 association, or other entity shall not arrange for the provision of
30 home care services by a home care aide to a client in this state
31 before obtaining a license pursuant to this chapter.*

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

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

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

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

7 (3) Bring an action against the individual or entity under Chapter
8 5 (commencing with Section 17200) of Part 2 of Division 7 of the
9 Business and Professions Code.

10 *(d) The requirements of this section shall not apply to an*
11 *employment agency, as defined in Section 1812.5095 of the Civil*
12 *Code, that procures, offers, refers, provides, or attempts to provide*
13 *a home care aide or other worker who provides home care services*
14 *or domestic services to clients and consumers pursuant to that*
15 *section, as long as the agency is not the employer of the home care*
16 *aide or other worker who provides assistance with activities of*
17 *daily living to the consumer.*

18 1796.21. A home care organization that has its principal place
19 of business in another state, in addition to the other requirements
20 of this chapter, shall comply with both of the following
21 requirements before arranging for the provision of home care
22 services by a home care aide to a client in California:

23 (a) Have an office in California.

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

26 1796.22. The enactment of this chapter is an exercise of the
27 police power of the state for the protection of the public welfare,
28 prosperity, health, safety, and peace of its people. The civil
29 penalties provided by this chapter are in addition to any other
30 penalty provided by law.

31 1796.23. In order to carry out the provisions of this chapter,
32 the department shall do all of the following:

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

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

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

39 (d) Maintain on the department's Internet Web site a registry
40 of, with the capability to look up the certification status of, any

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

20 (e) Maintain a registry on the department's Internet Web site
21 on the licensure status of all licensed home care organizations,
22 along with the name, address, and telephone number of the home
23 care organization, and the status of any proposed or completed
24 disciplinary action against the licensed home care organization.
25 The department also may request and maintain additional
26 information for a licensed home care organization, as necessary,
27 which shall not be publicly available on the registry.

28 1796.24. (a) Notwithstanding any other provision of this
29 chapter, the department shall issue a home care organization license
30 to an entity that satisfies all of the following requirements:

31 (1) Is accredited as a home care agency by either the Joint
32 Commission on Accreditation of Healthcare Organizations
33 (JCAHO), the Community Health Accreditation Program (CHAP),
34 or any other nationally recognized accrediting organization that
35 has an accreditation program for home care organizations, and that
36 is approved by the department. The accrediting organization shall
37 forward to the department copies of all initial and subsequent
38 survey and other accreditation reports or findings.

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

1 (3) Satisfies any other additional licensure requirements of, or
2 regulations adopted pursuant to, this chapter, that the department
3 identifies, after consulting with either the JCAHO or, the CHAP,
4 or other accreditation organization approved pursuant to paragraph
5 (1), as more stringent than the accreditation requirements of the
6 accreditation organization.

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

10 (5) Submits proof of a valid workers' compensation policy
11 covering its home care aides. The proof shall consist of the policy
12 number, the effective and expiration dates of the policy, and the
13 name and address of the policy carrier.

14 (6) Provides the department with a complete list of its home
15 care aides, and proof that each satisfies the requirements of Section
16 1796.60.

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

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

23 (c) The department may require a survey of an accredited home
24 care organization to investigate complaints of substantial
25 noncompliance, as determined by the department, with the
26 accreditation standards.

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

32 1796.25. At least 30 days before the expiration of a license,
33 the department shall mail to the licensee, at the latest address
34 furnished by the licensee to the department, a notice stating the
35 amount of the renewal fee and the date on which it is due, and that
36 failure to pay that fee on or before the date due will result in the
37 expiration of the license.

38 1796.26. (a) In order to obtain a license, the following
39 individual or individuals shall consent to the background clearance
40 described in Section 1796.62:

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

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

6 (b) (1) If the background clearance conducted pursuant to
7 subdivision (a) discloses a conviction for a crime that is
8 substantially related to the qualifications, functions, or duties of
9 operating a home care organization, the application for a license
10 may be denied.

11 (2) Notwithstanding paragraph (1), a license shall not be denied
12 under this section if the applicant has obtained a certificate of
13 rehabilitation under Chapter 3.5 (commencing with Section
14 4852.01) of Title 6 of Part 3 of the Penal Code or the information
15 or accusation against him or her has been dismissed pursuant to
16 Section 1203.4 of the Penal Code.

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

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

24 (2) Activities since conviction, including employment or
25 participation in therapy or education, that would indicate changed
26 behavior.

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

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

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

35 (6) Employment history and current employer recommendations.

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

38 (d) If the department makes a determination to deny an
39 application, the department shall notify the applicant of this

1 determination by either personal service or registered mail. The
2 notice shall include the following information:

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

7 (2) A copy of the applicant's criminal offender record
8 information search response. The department shall provide this
9 information in a manner that protects the confidentiality and
10 privacy of the criminal offender record information search
11 response.

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

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

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

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

23 (e) (1) Upon written notification that the department has
24 determined that a license shall be denied, the applicant may request
25 an administrative hearing by submitting a written request to the
26 department within 15 business days of receipt of the written
27 notification. Upon receipt of a written request, the department shall
28 hold an administrative hearing consistent with the procedures
29 specified in Section 100171, except where those procedures are
30 inconsistent with this section.

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

35 1796.27. A private or public organization, with the exception
36 of a county providing in-home supportive services pursuant to
37 Article 7 (commencing with Section 12300) of Chapter 3 of Part
38 3 of Division 9 of the Welfare and Institutions Code, *and the*
39 *exceptions provided for in subdivision (c)*, shall not do any of the
40 following, unless it is licensed under this chapter:

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

6 (b) Use the terms “home care organization,” “home care,”
7 “in-home care,” or any combination of those terms, within its
8 name.

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

10 (1) *A county providing in-home supportive services pursuant*
11 *to Article 7 (commencing with Section 12300) of Chapter 3 of Part*
12 *3 of Division 9 of the Welfare and Institutions Code.*

13 (2) *An employment agency, as defined in Section 1812.5095 of*
14 *the Civil Code, that procures, offers, refers, provides, or attempts*
15 *to provide a home care aide or other worker who provides home*
16 *care services or domestic services to clients and consumers*
17 *pursuant to that section, as long as the agency is not the employer*
18 *of a home care aide or other worker who provides domestic*
19 *services.*

20 1796.28. (a) If one accrediting agency denies, revokes, or
21 suspends the accreditation of a home care organization licensed
22 under this chapter, that action shall apply to all other accrediting
23 agencies. A home care organization for which accreditation is
24 denied, revoked, or suspended may reapply for accreditation with
25 the same accrediting agency. The home care organization may
26 also apply for accreditation from another accrediting agency, but
27 only if it discloses the full accreditation report of the accrediting
28 agency that denied, revoked, or suspended accreditation. A home
29 care organization for which accreditation has been denied, revoked,
30 or suspended shall disclose the accreditation report to any other
31 accrediting agency to which it submits an application.

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

35 (1) Notify the department of the action.

36 (2) Send a notification letter to the home care organization of
37 the action. The notification letter shall state that the agency is no
38 longer allowed to provide home care services that require home
39 care agency accreditation.

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

4

5 Article 3. Complaints, Inspections, and Investigations

6

7 1796.30. (a) The department shall investigate complaints filed
8 against home care organizations.

9 (b) The department shall verify through annual random,
10 unannounced inspections that a home care organization meets the
11 requirements of this chapter and the regulations adopted pursuant
12 thereto.

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

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

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

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 organization in a commercial office space that
30 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 organization shall consult the department's
11 registry before hiring an individual or placing him or her in direct
12 contact with patients. In addition, the organization shall do all of
13 the following:

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

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

20 (c) Evaluate home care aides as follows:

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

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

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

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

36 (1) The aide's name.

37 (2) A photograph of the aide.

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

39 (4) The expiration date of the license of the home care
40 organization.

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

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

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

8 (h) Prohibit home care aides from accepting money or property
9 from a client without written permission from the home care
10 organization.

11
12 Article 4.5. Employment Agency Insurance

13
14 1796.45. An employment agency ~~that procures, offers, refers,~~
15 ~~provides, or attempts to provide, but is not the employer of, a home~~
16 ~~care aide or other workers who provide home care services or~~
17 ~~domestic services to clients and consumers in accordance with~~
18 ~~Section 1812.5095 of the Civil Code, as defined in Section~~
19 ~~1812.5095 of the Civil Code, that procures, offers, refers, provides,~~
20 ~~or attempts to provide a home care aide who provides home care~~
21 ~~services or other worker who provides assistance with activities~~
22 ~~of daily living to the client or consumer pursuant to that section,~~
23 shall, at all times, maintain general and professional liability
24 insurance in the amount of at least one million dollars (\$1,000,000)
25 per occurrence and three million dollars (\$3,000,000) in the
26 aggregate.

27
28 Article 5. Client Rights

29
30 1796.50. With respect to clients, a home care organization shall
31 do all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 6. Home Care Aides

1
2
3 1796.60. (a) Beginning January 1, 2013, the department shall
4 require any person hired as a home care aide to be certified within
5 30 days from the date of being hired and ~~that any person referred~~
6 ~~by an employment agency be certified prior to any referral.~~ *shall*
7 *require that any home care aide or person providing assistance*
8 *with activities of daily living to the client or consumer referred by*
9 *an employment agency, as defined in Section 1812.5095 of the*
10 *Civil Code, be certified prior to any referral.*

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

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

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

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

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

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

33 (3) The entry-level training, *and annual training on*
34 *department-approved job-related topics*, may be completed through
35 an online training program.

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

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

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

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

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

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

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

13 1796.61. (a) On and after January 1, 2012, a home care
14 organization shall not hire an individual as a home care aide unless
15 the individual complies with all of the following requirements:

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

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

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

25 (b) A home care organization that hires an individual pursuant
26 to subdivision (a) shall ensure that the individual, within the first
27 30 days of employment, satisfactorily completes the home care
28 certification training in Section 1796.60.

29 (c) Notwithstanding any other provision of law, an employment
30 ~~agency shall ensure that any person it refers to provide home care~~
31 ~~services has been certified under this section prior to the referral.~~
32 *agency, as defined in Section 1812.5095 of the Civil Code, shall*
33 *ensure that any home care aide it refers to provide home care*
34 *services, or person it refers who provides assistance with activities*
35 *of daily living to the client or consumer, has been certified under*
36 *Section 1796.60 prior to the referral.*

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 applicant 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 (c) of Section 1796.12, for the purposes
5 of obtaining information as to the existence and content of a record
6 of state convictions and state arrests, and also information as to
7 the existence and content of a record of state arrests for which the
8 Department of Justice establishes that the person is free on bail or
9 on his or her own recognizance pending trial or appeal.

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

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

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

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

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

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

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

37 (d) Notwithstanding subdivision (c), a certification shall not be
38 denied under this section if the applicant has obtained a certificate
39 of rehabilitation under Chapter 3.5 (commencing with Section
40 4852.01) of Title 6 of Part 3 of the Penal Code or the information

1 or accusation against him or her has been dismissed pursuant to
2 Section 1203.4 of the Penal Code.

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

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

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

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

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

31 (i) A home care aide ~~hired~~ *employed* on or after January 1, 2012,
32 shall not be permitted to provide home care services until he or
33 she 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, 2012, shall be terminated from employment unless
36 the individual submitted to an examination within six months prior
37 to employment or submits to an examination within 14 days after
38 employment to determine that the individual is free of active
39 tuberculosis. For purposes of this section, "examination" consists

1 of a tuberculin skin test and, if that test is positive, an X-ray of the
2 lungs.

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

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

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

16 (e) The examination is a condition of initial and continuing
17 employment with the home care organization. The home care aide
18 shall pay the cost of the examination.

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

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

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

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

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

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

36 (B) Chronic fatigue or listlessness for a period exceeding two
37 weeks.

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

39 (D) Night sweats.

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

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Article 7. Revenues

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

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

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

Article 8. Enforcement and Penalties

1796.80. (a) ~~A home care organization that violates this chapter or any rule adopted hereunder may be subject to the penalties or fines levied or licensure action taken by the department as specified in this section. An employment agency that violates Section 1796.45 or subdivision (e) of Section 1796.60 or employment agency, as defined in Section 1812.5095 of the Civil Code, providing certified home care aides, that operates in violation of any requirement or obligation imposed by this chapter or any implementing rule or regulation, may be subject to the fines levied or licensure action taken by the department as specified in this section.~~

(b) When the department determines that a home care organization is in violation of this chapter or any rules promulgated hereunder or that an employment agency is in violation of Section 1796.45 or subdivision ~~(e)~~ (a) of Section 1796.60, a notice of violation shall be served upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the

1 violation and the statutory provision or rule alleged to have been
2 violated. The notice shall inform the licensee of any action the
3 department may take under this chapter, including the requirement
4 of an agency plan of correction, assessment of a penalty, or action
5 to suspend, revoke, or deny renewal of the license. The director
6 or his or her designee shall also inform the licensee of rights to a
7 hearing under this chapter.

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

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

15 (1) The gravity of the violation, including the probability that
16 death or serious physical or mental harm to a client will result or
17 has resulted, the severity of the actual or potential harm, and the
18 extent to which the provisions of the applicable statutes or
19 regulations were violated.

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

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

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

25 (e) The department shall adopt regulations establishing
26 procedures for notices, correction plans, appeals, and hearings. In
27 developing the procedures, the department shall convene and
28 consult with a working group of affected stakeholders.

29 1796.81. Any penalties collected pursuant to this chapter shall
30 be deposited into the Home Care Organization and Home Care
31 Aide Penalties Subaccount, which is hereby created within the
32 State Health Facilities Citation Penalties Account, which is within
33 the Special Deposit Fund created within the State Treasury,
34 pursuant to Section 1417.2. Moneys in this subaccount shall, upon
35 appropriation by the Legislature, be made available to the
36 department for purposes of enforcing this chapter.

O