

ASSEMBLY BILL

No. 322

Introduced by Assembly Member Yamada
(Coauthor: Senator Correa)

February 12, 2013

An act to add Chapter 13 (commencing with Section 1796) to Division 2 of the Health and Safety Code, relating to home care services, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as introduced, Yamada. Home Care Services Act of 2013.

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 2013 and would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services. The bill would establish home care organizations as being recognized in the health care industry. The bill would prohibit, after January 1, 2016, an entity from arranging for the provision of home care services by a home care aide without first obtaining a license and would impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would also impose various licensure requirements on a home care organization. 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, the home care organization would

be required to, among other things, distribute to the client a written notice of certain enumerated rights.

This bill would 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. The 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 Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund to the department to carry out the provisions of the act. The bill, in addition, would prescribe enforcement procedures and penalties for violations of the act.

Vote: $\frac{2}{3}$. 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 frequently
- 4 find themselves in need of part-time to full-time assistance from
- 5 a caregiver in order to live at home independently.
- 6 (b) The Employment Development Department has identified
- 7 home care services as one of the fastest growing fields.
- 8 (c) In California, most individuals hiring a home care
- 9 organization believe that the home care aide entering their home
- 10 has been thoroughly screened and trained. However, a business
- 11 license is the only requirement needed to provide nonmedical home
- 12 care services in an individual's home.
- 13 (d) In view of the increasing number of home care aides entering
- 14 private homes, the number of incidents of abuse and neglect by
- 15 home care aides currently being reported in the media is alarming
- 16 and a matter of concern because, according to prosecutors, for
- 17 every reported incident of abuse or neglect, four others go
- 18 unreported.

1 (e) Discharge planners commonly keep lists of home care aides
2 and home care organizations for purposes of patient referral without
3 any information about the individuals or the organizations, thereby
4 placing the client and the referring organization at risk.

5 SEC. 2. Chapter 13 (commencing with Section 1796) is added
6 to Division 2 of the Health and Safety Code, to read:

7
8 CHAPTER 13. HOME CARE SERVICES ACT OF 2013

9
10 Article 1. General Provisions

11
12 1796. This chapter shall be known and may be cited as the
13 Home Care Services Act of 2013.

14 1796.1. The State Department of Social Services shall
15 administer and enforce this chapter.

16 1796.2. For purposes of this chapter, the following definitions
17 shall apply:

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

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

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

30 (d) "Home care organization" or "organization" means an
31 individual, partnership, corporation, limited liability company,
32 joint venture, association, or other entity that arranges for the
33 provision of home care services by a home care aide to a client in
34 the client's residence and that is licensed pursuant to this chapter.
35 Home care organization shall not include any of the following:

36 (1) A home health agency licensed under Chapter 8
37 (commencing with Section 1725).

38 (2) A hospice licensed under Chapter 8.5 (commencing with
39 Section 1745).

- 1 (3) A health facility licensed under Chapter 2 (commencing
2 with Section 1250).
- 3 (4) A county providing in-home supportive services pursuant
4 to Article 7 (commencing with Section 12300) of Chapter 3 of
5 Part 3 of Division 9 of the Welfare and Institutions Code, without
6 regard to whether the county provides these services as a public
7 authority or through a nonprofit consortium established pursuant
8 to Section 12301.6 of the Welfare and Institutions Code.
- 9 (5) An employment agency, as defined under Chapter 1
10 (commencing with Section 1812.500) of Title 2.91 of Part 4 of
11 Division 3 of the Civil Code.
- 12 (6) A nurses' registry, as defined under Chapter 7 (commencing
13 with Section 1812.524) of Title 2.91 of Part 4 of Division 3 of the
14 Civil Code.
- 15 (e) (1) "Home care services" means services provided by a
16 home care aide to a client who, because of advanced age or physical
17 or mental infirmity, cannot care for the client's own needs. These
18 services include, but are not limited to, bathing, dressing, feeding,
19 exercising, personal hygiene and grooming, transferring,
20 ambulating, positioning, toileting and incontinence care, assisting
21 with medication that the client normally self-administers,
22 housekeeping, meal planning and preparation, laundry,
23 transportation, making telephone calls, shopping for personal care
24 items or groceries, and companionship. Nothing in this subdivision
25 shall be construed to authorize a home care aide to administer
26 medication.
- 27 (2) Home care services shall not include any of the following:
 - 28 (A) Services authorized to be provided by a licensed home
29 health agency under Chapter 8 (commencing with Section 1725).
 - 30 (B) Services authorized to be provided by a licensed hospice
31 pursuant to Chapter 8.5 (commencing with Section 1745).
 - 32 (C) Services authorized to be provided by a licensed health
33 facility pursuant to Chapter 2 (commencing with Section 1250) of
34 Division 2.
 - 35 (D) In-home supportive services provided pursuant to Article
36 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
37 Division 9 of the Welfare and Institutions Code.
 - 38 (E) Services provided by organizations that provide only
39 housekeeping services.

1 (F) Services authorized to be provided by a licensed residential
2 care facility for the elderly pursuant to Chapter 3.2 (commencing
3 with Section 1569).

4 (f) "Residence" means a temporary or permanent location where
5 a client receives home care services.

6 1796.3. Nothing in this chapter shall be construed to prohibit
7 an individual from employing a home care aide without the
8 assistance of a home care organization.

9 1796.4. This chapter shall establish home care organizations
10 as being recognized in the health care industry.

11
12 Article 2. Licensure
13

14 1796.5. (a) Commencing January 1, 2016, an individual,
15 partnership, corporation, limited liability company, joint venture,
16 association, or other entity shall not arrange for the provision of
17 home care services by a home care aide to a client in the state
18 without first obtaining a license pursuant to this chapter.

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

24 (1) Issue a cease and desist order, which shall remain in effect
25 until the individual or entity has obtained a license pursuant to this
26 chapter. Upon receipt of a cease and desist order, the individual
27 or entity in violation shall be responsible for the safe and timely
28 transfer of clients to a licensed provider of similar services. If the
29 department assumes responsibility for the safe and timely transfer
30 of clients to a licensed provider of similar services, then the
31 individual or entity in violation is responsible for all costs incurred
32 by the department in association with the transfer. The individual
33 or entity in violation shall in no way benefit, financially or
34 otherwise, through the transfer process. If the individual or entity
35 fails to comply with the cease and desist notice, the Attorney
36 General or a district attorney may petition the court for the issuance
37 of an injunction restraining the individual or entity from continuing
38 the violation of this chapter.

39 (2) Impose a civil penalty of four hundred dollars (\$400) per
40 day for each calendar day of violation.

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

4 1796.7. A home care organization that has its principal place
5 of business in another state shall, in addition to the other
6 requirements of this chapter, comply with both of the following
7 requirements before arranging for the provision of home care
8 services by a home care aide to a client in California:

9 (a) Have a physical location in California.

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

12 (c) Comply with Section 1796.21.

13 1796.8. No private or public organization, excluding any county
14 providing in-home supportive services pursuant to Article 7
15 (commencing with Section 12300) of Chapter 3 of Part 3 of
16 Division 9 of the Welfare and Institutions Code, shall do any of
17 the following unless it is licensed under this chapter:

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

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

26 1796.9. The enactment of this chapter is an exercise of the
27 general authority of the state for the protection of the public
28 welfare, prosperity, health, safety, and peace of its people. The
29 civil penalties provided by this chapter are in addition to any other
30 penalty provided by law.

31 1796.11. In order to administer this chapter, the department
32 shall do all of the following:

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

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

37 (c) Make available on the department’s Internet Web site a list
38 of home care organizations, including, for each organization, the
39 organization’s name, address, license number, and the effective
40 date of its license.

1 1796.13. (a) The department shall issue a license to a home
2 care organization that meets all of the following requirements:

3 (1) Submits an application, on a form prescribed by the
4 department.

5 (2) Pays a licensure fee, as prescribed by the department
6 pursuant to Section 1796.39.

7 (3) 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 (4) 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 (5) The owner of the organization passes a background clearance
15 pursuant to Section 1796.17.

16 (6) Complies with the requirements of this chapter.

17 (b) The term of a license issued under this section is two years.
18 The license may be renewed upon application to the department
19 and payment of the renewal fee prescribed by the department
20 pursuant to Section 1796.39.

21 1796.15. At least 60 days before the expiration of a license,
22 the department shall provide the licensee, through electronic mail
23 or other means, at the latest contact address furnished by the
24 licensee to the department, a notice stating the amount of the
25 renewal fee and the date on which it is due, and that failure to pay
26 that fee on or before the date due shall result in the expiration of
27 the license.

28 1796.17. (a) In order for a home care organization to obtain a
29 license, the following individual or individuals shall consent to
30 the background clearance described in subdivision (b) of Section
31 1796.33:

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

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

37 (b) If the background clearance conducted pursuant to
38 subdivision (a) discloses a conviction for a crime that is
39 substantially related to the qualifications, functions, or duties of
40 operating a home care organization, the application for a license

1 may be denied, except that a license shall not be denied pursuant
2 to this subdivision if the individual has obtained a certificate of
3 rehabilitation pursuant to Chapter 3.5 (commencing with Section
4 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
5 or accusation against the individual has been dismissed pursuant
6 to Section 1203.4 of the Penal Code.

7 (c) If the department denies an application for a license because
8 of a conviction for a crime as described in subdivision (b) or if the
9 department denies a license renewal based upon a subsequent
10 conviction for a crime as described in subdivision (b), the
11 department shall notify the individual convicted of that crime of
12 this determination by either personal service or registered mail,
13 and this notice shall include all of the following:

14 (1) A statement of the department's reasons for the denial. This
15 statement shall evaluate any evidence of rehabilitation submitted
16 by the individual.

17 (2) A copy of the individual'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 response was
26 provided by the Department of Justice and the date the department
27 provided the copy of the response to the individual.

28 (C) The criminal offender record information search response
29 shall not be made available by the department to any individual
30 other than an individual convicted of a crime that is the basis for
31 a denial by the department pursuant to this section.

32 (d) (1) An individual with a conviction that results in the denial
33 of a license pursuant to this section may request an administrative
34 hearing by submitting a written request to the department within
35 15 business days of receipt of the written notice pursuant to
36 subdivision (c).

37 (2) The department shall hold an administrative hearing upon
38 receipt of the written request from the individual pursuant to
39 paragraph (1). The administrative hearing shall be consistent with
40 the procedures specified in Section 100171, except where those

1 procedures are inconsistent with this section. The administrative
2 hearing shall be conducted by a hearing officer or administrative
3 law judge designated by the director.

4 (3) The hearing officer or administrative law judge shall make
5 a written decision that shall be sent by certified mail to the
6 individual who requested the hearing.

7
8 Article 3. Complaints, Inspections, and Investigations
9

10 1796.19. (a) The department shall review and, if it determines
11 necessary, investigate complaints filed against a home care
12 organization.

13 (b) An investigation or inspection by the department pursuant
14 to this chapter may include both of the following:

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

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

22
23 Article 4. Organization Operating Requirements
24

25 1796.21. (a) A home care organization shall do all of the
26 following:

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

29 (2) Maintain a physical address.

30 (3) Have policies for client protection and client rights.

31 (4) Have a written agreement with clients that includes a
32 specification of fees charged.

33 (5) Classify all workers engaged in the direct provision of home
34 care services as employees of the home care organization.

35 (6) Maintain valid general and professional liability insurance
36 policies in the amount of at least one million dollars (\$1,000,000)
37 per occurrence and three million dollars (\$3,000,000) in the
38 aggregate.

39 (7) Maintain a valid workers' compensation policy covering its
40 home care aides.

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

3 (9) Comply with the regulations adopted by the department
4 pursuant to this chapter and laws adopted regarding the provision
5 of home care services.

6 (b) Nothing in this chapter shall prohibit a licensed home care
7 organization from contracting with another licensed home care
8 organization for the provision of services.

9 1796.23. With respect to home care aides employed by a home
10 care organization, the organization shall do all of the following:

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

15 (b) Evaluate home care aides by conducting an annual
16 assessment of the performance and effectiveness of each home
17 care aide. The evaluation shall include, if client consent is obtained,
18 at least one observation of the aide providing home care services
19 in the residence of a client.

20 (c) Ensure that a home care aide, when providing services to a
21 client, has access at all times to a representative of the organization
22 who is in a supervisory capacity.

23 (d) Require a home care aide, while providing home care
24 services, to carry an organization-approved identification card.

25 (e) Require home care aides to demonstrate that they are free
26 of active tuberculosis pursuant to Section 1796.35.

27 (f) Prohibit home care aides from accepting money or property
28 from a client without written permission from the home care
29 organization.

30 (g) Oversee the care of the client, including supervisory visits
31 and updates to the plan of care as necessary.

32

33

Article 5. Client Rights

34

35 1796.25. (a) Clients of home care organizations are entitled
36 to the following 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 be informed of the hours, services, and costs
4 that will be provided in the client's home.

5 (5) The right to be informed of the client records policies and
6 have the confidentiality of the client's personal information
7 protected.

8 (b) Within seven days of the start of the provision of home care
9 services to a client, a home care organization shall provide a written
10 notice to the client that the client has all of the rights enumerated
11 in subdivision (a).

12 (c) A home care organization shall maintain written
13 documentation showing that it has complied with subdivision (b).

14 (d) If a client lacks the capacity to understand the rights listed
15 in this section, as determined by a court of competent jurisdiction
16 or by the client's physician, unless the physician's opinion is
17 controverted by the client or the client's legal representative, the
18 client's legal representative shall have the rights listed in this
19 section.

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

22 1796.27. (a) Home care clients are entitled to the following
23 rights:

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

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

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

30 (4) The right to confidentiality of the client's personal
31 information.

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

36 (c) A home care organization shall maintain written
37 documentation showing that it has complied with subdivision (b).

38 (d) If a client lacks the capacity to understand the rights listed
39 in this section, as determined by a court of competent jurisdiction
40 or by the client's physician, unless the physician's opinion is

1 controverted by the client or the client’s legal representative, the
 2 client’s legal representative shall have those rights.
 3 (e) A home care organization shall protect, and promote the
 4 exercise of, the rights listed in this section.

5
 6 Article 6. Home Care Aides
 7

8 1796.31. A home care organization shall, by January 1, 2015,
 9 ensure that home care aids who were hired before January 1, 2015,
 10 meet both of the following requirements:

11 (a) Demonstrate the language skills specified in paragraph (1)
 12 of subdivision (a) of Section 1796.27.

13 (b) Demonstrate basic competency in the areas specified in
 14 subdivision (b) of Section 1796.27.

15 1796.33. (a) A home care organization shall conduct a
 16 background clearance on an individual hired as a home care aide,
 17 unless the individual holds a valid, unexpired license or registration
 18 in a health-related field that requires, as a condition of the license
 19 or registration, a background check or a criminal history record
 20 check as specified in subdivision (b).

21 (b) The background clearance shall consist of a criminal history
 22 record check conducted by the Department of Justice and
 23 administered by the State Department of Social Services.

24 (c) The organization shall deny or terminate, as applicable, the
 25 employment of an individual if the background check required by
 26 subdivision (b) discloses that it has been less than 10 years since
 27 the date of a conviction for, or the date of incarceration following
 28 a conviction for, any of the following:

29 (1) Fraud against a government health care or supportive
 30 services program, including, but not limited to, Medicare,
 31 Medicaid, or services provided under Title V, Title XX, or Title
 32 XXI of the federal Social Security Act, or a violation of subdivision
 33 (a) of Section 273a of the Penal Code, Section 368 of the Penal
 34 Code, or similar 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 or 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 pursuant to subdivision (c) of Section 290 of the Penal Code. For
 40 purposes of this paragraph, the 10-year time period specified in

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

4 (d) Notwithstanding subdivision (c), the organization shall not
5 deny or terminate the employment of any individual pursuant to
6 this section if the individual has obtained a certificate of
7 rehabilitation pursuant to Chapter 3.5 (commencing with Section
8 4852.01) of Title 6 of Part 3 of the Penal Code or the information
9 or accusation against the individual has been dismissed pursuant
10 to Section 1203.4 of the Penal Code.

11 (e) Notwithstanding subdivision (c), an individual who has been
12 convicted of an offense identified in subdivision (c) may seek from
13 the department a general exception to the exclusion provided for
14 in this section. In determining whether to grant a general exception,
15 the department shall consider as evidence of good character and
16 rehabilitation the following factors:

17 (1) The nature and seriousness of the conviction under
18 consideration and its relationship to the individual's employment
19 duties and responsibilities.

20 (2) Activities since conviction that would indicate changed
21 behavior, including, but not limited to, employment, participation
22 in therapy, or education.

23 (3) The time that has elapsed since the commission of the crime
24 and the number of offenses.

25 (4) The extent to which the individual has complied with any
26 terms of parole, probation, restitution, or any other sanction
27 lawfully imposed against the individual.

28 (5) Any rehabilitation evidence submitted by the individual,
29 including, but not limited to, character references.

30 (6) Employment history and current employer recommendations.

31 (7) Circumstances surrounding the commission of the crime
32 that would demonstrate the unlikelihood of repetition.

33 (f) Upon determination to deny a request for exception, the
34 department shall notify the individual of this determination by
35 either personal service or registered mail, and this notice shall
36 include all of the following:

37 (1) A statement of the department's reasons for the denial. This
38 statement shall evaluate any evidence of rehabilitation submitted
39 by the individual, and specifically address any evidence submitted
40 relating to the factors considered in subdivision (e).

1 (2) A copy of the individual's criminal offender record
2 information search response. The department shall provide this
3 information in a manner that protects the confidentiality and
4 privacy of the criminal offender record information search
5 response.

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

9 (B) The department shall record the date the response was
10 provided by the Department of Justice and the date the department
11 provided the copy of the response to the individual.

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

15 (g) (1) An individual whose request for an exception has been
16 denied may request an administrative hearing by submitting a
17 written request to the department within 15 business days of receipt
18 of the written notice pursuant to subdivision (f).

19 (2) The department shall hold an administrative hearing upon
20 receipt of the written request from the individual pursuant to
21 paragraph (1). The administrative hearing shall be consistent with
22 the procedures specified in Section 100171, except where those
23 procedures are inconsistent with this section. The administrative
24 hearing shall be conducted by a hearing officer or administrative
25 law judge designated by the director.

26 (3) The hearing officer or administrative law judge shall make
27 a written decision that shall be sent by certified mail to the
28 individual who requested the hearing.

29 (h) The organization shall complete the background clearance
30 specified in subdivision (b) on home care aides whose employment
31 began before January 1, 2014, within two years of the effective
32 date of this section.

33 (i) A home care aide hired on or after January 1, 2014, shall not
34 be permitted to provide home care services until he or she passes
35 the background clearance or has been granted a general exception
36 by the department pursuant to this section.

37 1796.35. (a) An individual hired as a home care aide on or
38 after January 1, 2014, shall be terminated from employment unless
39 the individual submitted to an examination within six months prior
40 to employment or submits to an examination within 14 days after

1 employment to determine that the individual is free of active
2 tuberculosis. For purposes of this section, “examination” consists
3 of a tuberculin skin test and, if that test is positive, an X-ray of the
4 lungs.

5 (b) A home care aide whose employment with a home care
6 organization began before January 1, 2014, shall, on or before
7 March 1, 2014, submit to the examination described in subdivision
8 (a).

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

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

18 (e) The examination shall be a condition of initial and continuing
19 employment with the home care organization. The home care aide
20 shall pay the cost of the examination.

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

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

32 (1) The individual’s name, address, and telephone number.

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

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

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

38 (B) Chronic fatigue or listlessness for a period exceeding two
39 weeks.

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

- 1 (D) Night sweats.
- 2 (E) Unexplained weight loss.

3
4
5

Article 7. Revenues

6 1796.37. There is in the State Treasury the Home Care
7 Organization Fund. Notwithstanding Section 13340 of the
8 Government Code, all money in the fund is continuously
9 appropriated to the department for the purpose of carrying out and
10 enforcing this chapter.

11 1796.39. The department shall assess fees for each location of
12 a home care organization in amounts sufficient to cover the costs
13 of administering this chapter. The department may periodically
14 adjust these fees for inflation. The fees collected pursuant to this
15 chapter shall be deposited in the Home Care Organization Fund.
16 The department shall consult with the state home care industry
17 association in developing the fee methodology.

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Article 8. Enforcement and Penalties

21 1796.40. (a) A home care organization operating in violation
22 of this chapter or any rule adopted hereunder may be subject to
23 the penalties or fines levied or licensure action taken by the
24 department as specified in this section.

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

36 (c) The department may impose an administrative fine of up to
37 four hundred dollars (\$400) per day commencing on the date the
38 violation was identified and ending on the date the violation is
39 corrected, or action is taken to suspend, revoke, or deny renewal
40 of the license, whichever comes first.

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

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

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

10 (3) Any previous violations committed by the licensee.

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

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

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