

AMENDED IN ASSEMBLY APRIL 23, 2013

AMENDED IN ASSEMBLY APRIL 8, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

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 amended, 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 individual or entity from arranging for the provision of home care services, as defined, by a home care aide without first obtaining a license and would authorize a district attorney, the Attorney General, or the department to 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

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

1 and a matter of concern because, according to prosecutors, for
2 every reported incident of abuse or neglect, four others go
3 unreported.

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

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

10
11 CHAPTER 13. HOME CARE SERVICES ACT OF 2013

12
13 Article 1. General Provisions

14
15 1796. This chapter shall be known and may be cited as the
16 Home Care Services Act of 2013.

17 1796.1. The State Department of Social Services shall
18 administer and enforce this chapter.

19 1796.2. For purposes of this chapter, the following definitions
20 shall apply:

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

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

25 (c) (1) "Home care aide" means an individual who is paid to
26 provide home care services to a client in the client's residence,
27 and is synonymous with "caregiver," "custodial care," "personal
28 care attendant," "homemaker," and "companion." In addition,
29 "home care aide" includes an individual who qualifies as a personal
30 attendant, as defined in Industry Wage Order 15-2001, issued by
31 the Industrial Welfare Commission, and provides home care
32 services.

33 (2) A "home care aide" does not include a person who is
34 employed by, or contracts with, an organization vendored by or
35 contracted through a regional center of the State Department of
36 Developmental Services pursuant to the Lanterman Developmental
37 Disabilities Services Act (Division 4.5 (commencing with Section
38 4500) of the Welfare and Institutions Code) or the California Early
39 Intervention Services Act (Title 14 (commencing with Section
40 95000) of the Government Code) to provide services and supports

1 for persons with developmental disabilities, as defined in Section
2 4512 of the Welfare and Institutions Code, when funding for those
3 services is provided through the State Department of
4 Developmental Services.

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

10 Home care organization shall not include any of the following:

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

13 (2) A hospice licensed under Chapter 8.5 (commencing with
14 Section 1745).

15 (3) A health facility licensed under Chapter 2 (commencing
16 with Section 1250).

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

23 (5) An employment agency, as defined under Chapter 1
24 (commencing with Section 1812.500) of Title 2.91 of Part 4 of
25 Division 3 of the Civil Code.

26 (6) A nurses’ registry, as defined under Chapter 7 (commencing
27 with Section 1812.524) of Title 2.91 of Part 4 of Division 3 of the
28 Civil Code.

29 (e) (1) “Home care services” means services provided by a
30 home care aide to a client who, because of advanced age or physical
31 or mental infirmity, cannot care for the client’s own needs. These
32 services include, but are not limited to, bathing, dressing, feeding,
33 exercising, personal hygiene and grooming, transferring,
34 ambulating, positioning, toileting and incontinence care, assisting
35 with medication that the client normally self-administers,
36 housekeeping, meal planning and preparation, laundry,
37 transportation, making telephone calls, shopping for personal care
38 items or groceries, and companionship. Nothing in this subdivision
39 shall be construed to authorize a home care aide to administer
40 medication.

1 (2) Home care services shall not include any of the following:

2 (A) Services authorized to be provided by a licensed home
3 health agency under Chapter 8 (commencing with Section 1725).

4 (B) Services authorized to be provided by a licensed hospice
5 pursuant to Chapter 8.5 (commencing with Section 1745).

6 (C) Services authorized to be provided by a licensed health
7 facility pursuant to Chapter 2 (commencing with Section 1250) of
8 Division 2.

9 (D) In-home supportive services provided pursuant to Article
10 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
11 Division 9 of the Welfare and Institutions Code.

12 (E) Services provided by organizations that provide only
13 housekeeping services.

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

17 (G) Services provided by an organization vendored by or
18 contracted through a regional center or the State Department of
19 Developmental Services pursuant to the Lanterman Developmental
20 Disabilities Services Act (Division 4.5 (commencing with Section
21 4500) of the Welfare and Institutions Code) or the California Early
22 Intervention Services Act (Title 14 (commencing with Section
23 95000) of the Government Code) to provide services and supports
24 for persons with developmental disabilities, as defined in Section
25 4512 of the Welfare and Institutions Code, when funding for those
26 services is provided through the State Department of
27 Developmental Services.

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

30 1796.3. Nothing in this chapter shall be construed to prohibit
31 an individual from employing, *contracting with, or hiring* a home
32 care aide without the assistance of a home care organization.

33 1796.4. This chapter shall establish home care organizations
34 as being recognized in the health care industry.

35

36

Article 2. Licensure

37

38 1796.5. (a) Commencing January 1, 2016, an individual,
39 partnership, corporation, limited liability company, joint venture,
40 association, or other entity shall not arrange for the provision of

1 home care services by a home care aide to a client in the state
 2 without first obtaining a license pursuant to this chapter.

3 (b) Upon discovering that an individual or entity is in violation
 4 of this chapter, the department shall send a written notice of
 5 noncompliance to the individual or entity and to a district attorney
 6 or the Attorney General. Upon receiving this notice, a district
 7 attorney or the Attorney General may do any of the following:

8 (1) Issue a cease and desist order, which shall remain in effect
 9 until the individual or entity has obtained a license pursuant to this
 10 chapter. Upon receipt of a cease and desist order, the individual
 11 or entity in violation shall be responsible for the safe and timely
 12 transfer of clients to a licensed provider of similar services. If the
 13 department assumes responsibility for the safe and timely transfer
 14 of clients to a licensed provider of similar services, then the
 15 individual or entity in violation is responsible for all costs incurred
 16 by the department in association with the transfer. The individual
 17 or entity in violation shall in no way benefit, financially or
 18 otherwise, through the transfer process. If the individual or entity
 19 fails to comply with the cease and desist notice, the Attorney
 20 General or a district attorney may petition the court for the issuance
 21 of an injunction restraining the individual or entity from continuing
 22 the violation of this chapter.

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

25 (3) Bring an action against the individual or entity under Chapter
 26 5 (commencing with Section 17200) of Part 2 of Division 7 of the
 27 Business and Professions Code.

28 *1796.6. A duly authorized officer, employee, or agent of the*
 29 *department may, upon presentation of proper identification, enter*
 30 *a home care organization at any time, with or without advance*
 31 *notice, to secure compliance with, or to prevent a violation of, any*
 32 *provision of this chapter.*

33 *1796.7. A home care organization that has its principal place*
 34 *of business in another state shall, in addition to the other*
 35 *requirements of this chapter, comply with all of the following*
 36 *requirements before arranging for the provision of home care*
 37 *services by a home care aide to a client in California:*

38 (a) Have a physical location in California.

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

1 (c) Comply with Section 1796.21.

2 1796.8. No private or public organization, excluding any county
3 providing in-home supportive services 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, licensed home
6 health agency pursuant to Chapter 8 (commencing with Section
7 1725), or licensed hospice pursuant to Chapter 8.5 (commencing
8 with Section 1745), shall do any of the following unless it is
9 licensed under this chapter:

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

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

18 1796.9. The enactment of this chapter is an exercise of the
19 general authority of the state for the protection of the public
20 welfare, prosperity, health, safety, and peace of its people. The
21 civil penalties provided by this chapter are in addition to any other
22 penalty provided by law.

23 1796.11. In order to administer this chapter, the department
24 shall do all of the following:

25 (a) Adopt rules and regulations to implement and administer
26 this chapter.

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

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

33 1796.13. (a) The department shall issue a license to a home
34 care organization that meets all of the following requirements:

35 (1) Submits an application, on a form prescribed by the
36 department.

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

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

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

8 (5) The owner of the organization passes a background clearance
9 pursuant to Section 1796.17.

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

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

15 1796.15. At least 60 days before the expiration of a license,
16 the department shall provide the licensee, through electronic mail
17 or other means, at the latest contact address furnished by the
18 licensee to the department, a notice stating the amount of the
19 renewal fee and the date on which it is due, and that failure to pay
20 that fee on or before the date due shall result in the expiration of
21 the license.

22 1796.17. (a) In order for a home care organization to obtain a
23 license, the following individual or individuals shall consent to
24 the background clearance described in subdivision (b) of Section
25 1796.33:

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

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

31 (b) If the background clearance conducted pursuant to
32 subdivision (a) discloses a conviction for a crime that is
33 substantially related to the qualifications, functions, or duties of
34 operating a home care organization, the application for a license
35 may be denied, except that a license shall not be denied pursuant
36 to this subdivision if the individual has obtained a certificate of
37 rehabilitation pursuant to Chapter 3.5 (commencing with Section
38 4852.01) of Title 6 of Part 3 of the Penal Code or if the information
39 or accusation against the individual has been dismissed pursuant
40 to Section 1203.4 of the Penal Code.

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

8 (1) A statement of the department's reasons for the denial. This
9 statement shall evaluate any evidence of rehabilitation submitted
10 by the individual.

11 (2) A copy of the individual's criminal offender record
12 information search response. The department shall provide this
13 information in a manner that protects the confidentiality and
14 privacy of the criminal offender record information search
15 response.

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

19 (B) The department shall record the date the response was
20 provided by the Department of Justice and the date the department
21 provided the copy of the response to the individual.

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

26 (d) (1) An individual with a conviction that results in the denial
27 of a license pursuant to this section may request an administrative
28 hearing by submitting a written request to the department within
29 15 business days of receipt of the written notice pursuant to
30 subdivision (c).

31 (2) The department shall hold an administrative hearing upon
32 receipt of the written request from the individual pursuant to
33 paragraph (1). The administrative hearing shall be consistent with
34 the procedures specified in Section 100171, except where those
35 procedures are inconsistent with this section. The administrative
36 hearing shall be conducted by a hearing officer or administrative
37 law judge designated by the director.

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

1 Article 3. Complaints, Inspections, and Investigations

2
3 1796.19. (a) The department shall review and, if it determines
4 necessary, investigate complaints filed against a home care
5 organization.

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

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

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

15
16 Article 4. Organization Operating Requirements

17
18 1796.21. (a) A home care organization shall do all of the
19 following:

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

22 (2) Maintain a physical address.

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

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

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

28 (6) Maintain valid general and professional liability insurance
29 policies in the amount of at least one million dollars (\$1,000,000)
30 per occurrence and three million dollars (\$3,000,000) in the
31 aggregate.

32 (7) Maintain a valid workers’ compensation policy covering its
33 home care aides.

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

36 (9) Comply with the regulations adopted by the department
37 pursuant to this chapter and laws adopted regarding the provision
38 of home care services.

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

4 1796.23. With respect to home care aides employed by a home
5 care organization, the organization shall do all of the following:

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

10 (b) Evaluate home care aides by conducting an annual
11 assessment of the performance and effectiveness of each home
12 care aide. The evaluation shall include, if client consent is obtained,
13 at least one observation of the aide providing home care services
14 in the residence of a client.

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

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

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

22 (f) Prohibit home care aides from accepting money or property
23 from a client without written permission from the home care
24 organization.

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

27 (h) *Nothing in this section shall be construed to prohibit the*
28 *department from inspecting or investigating a complaint filed by*
29 *a home care aide, an employee of a home care organization, or a*
30 *recipient or a relative of a recipient of home care services pursuant*
31 *to Article 3 (commencing with Section 1796.19).*

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 aides who were hired before January 1,~~
10 ~~2015, meet both of the following requirements:~~

11 ~~(a) Demonstrate that he or she has sufficient language skills to~~
12 ~~communicate with the client.~~

13 ~~(b) Demonstrate basic competency in the skills required to meet~~
14 ~~the needs of the client.~~

15 *1796.31. (a) On and after January 1, 2015, a home care*
16 *organization shall not hire an individual as a home care aide*
17 *unless the individual demonstrates that he or she has language*
18 *skills that are sufficient to understand instructions and*
19 *communicate with a client.*

20 *(b) On and after January 1, 2015, a home care organization*
21 *that hires an individual shall ensure that the individual, within the*
22 *first 30 days of employment, demonstrates basic competency in*
23 *all of the following areas:*

24 *(1) Health precautions, including, but not limited to, infection*
25 *control.*

26 *(2) Client rights and safety.*

27 *(3) The home care organization’s emergency procedures.*

28 *(4) How to provide for and respond to a client’s daily living*
29 *skills.*

30 *(5) How to detect, prevent, and report abuse and neglect.*

31 *(6) How to assist a client with personal hygiene and other home*
32 *care services.*

33 *(7) If the home care organization provides transportation*
34 *services, how to safely transport a client.*

35 1796.33. (a) A home care organization shall conduct a
36 background clearance on an individual hired as a home care aide,
37 unless the individual holds a valid, unexpired license or registration
38 in a health-related field that requires, as a condition of the license
39 or registration, a background check or a criminal history record
40 check as specified in subdivision (b).

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

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

9 (1) Fraud against a government health care or supportive
10 services program, including, but not limited to, Medicare,
11 Medicaid, or services provided under Title V, Title XX, or Title
12 XXI of the federal Social Security Act, or a violation of subdivision
13 (a) of Section 273a of the Penal Code, Section 368 of the Penal
14 Code, or similar violations in another jurisdiction.

15 (2) A violent or serious felony, as specified in subdivision (c)
16 of Section 667.5 of the Penal Code or subdivision (c) of Section
17 1192.7 of the Penal Code.

18 (3) A felony offense for which a person is required to register
19 pursuant to subdivision (c) of Section 290 of the Penal Code. For
20 purposes of this paragraph, the 10-year time period specified in
21 this section shall commence with the date of conviction for, or the
22 date of incarceration following a conviction for, the underlying
23 offense and not the date of registration.

24 (d) Notwithstanding subdivision (c), the organization shall not
25 deny or terminate the employment of any individual pursuant to
26 this section if the individual has obtained a certificate of
27 rehabilitation pursuant to Chapter 3.5 (commencing with Section
28 4852.01) of Title 6 of Part 3 of the Penal Code or the information
29 or accusation against the individual has been dismissed pursuant
30 to Section 1203.4 of the Penal Code.

31 (e) Notwithstanding subdivision (c), an individual who has been
32 convicted of an offense identified in subdivision (c) may seek from
33 the department a general exception to the exclusion provided for
34 in this section. In determining whether to grant a general exception,
35 the department shall consider as evidence of good character and
36 rehabilitation the following factors:

37 (1) The nature and seriousness of the conviction under
38 consideration and its relationship to the individual's employment
39 duties and responsibilities.

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

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

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

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

11 (6) Employment history and current employer recommendations.

12 (7) Circumstances surrounding the commission of the crime
13 that would demonstrate the unlikelihood of repetition.

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

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

22 (2) A copy of the individual's criminal offender record
23 information search response. The department shall provide this
24 information in a manner that protects the confidentiality and
25 privacy of the criminal offender record information search
26 response.

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

30 (B) The department shall record the date the response was
31 provided by the Department of Justice and the date the department
32 provided the copy of the response to the individual.

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

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

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

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

11 (h) The organization shall complete the background clearance
12 specified in subdivision (b) on home care aides whose employment
13 began before January 1, 2014, within ~~two years~~ *six months* of the
14 effective date of this section.

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

19 1796.35. (a) An individual hired as a home care aide on or
20 after January 1, 2014, 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 home care aide whose employment with a home care
28 organization began before January 1, 2014, shall, on or before
29 March 1, 2014, submit to the examination described in subdivision
30 (a).

31 (c) After submitting to an examination, a home care aide who
32 is skin test negative shall be required to undergo an examination
33 at least once every two years. Once a home care aide has a
34 documented positive skin test that has been followed by an X-ray,
35 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 shall be 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.

26
27 Article 7. Revenues

28
29 1796.37. There is in the State Treasury the Home Care
30 Organization Fund. Notwithstanding Section 13340 of the
31 Government Code, all money in the fund is continuously
32 appropriated to the department for the purpose of carrying out and
33 enforcing this chapter.

34 1796.39. The department shall assess fees for each location of
35 a home care organization in amounts sufficient to cover the costs
36 of administering this chapter. The department may periodically
37 adjust these fees for inflation. The fees collected pursuant to this
38 chapter shall be deposited in the Home Care Organization Fund.
39 The department shall consult with the state home care industry
40 association in developing the fee methodology.

Article 8. Enforcement and Penalties

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3 1796.40. (a) A home care organization operating in violation
4 of this chapter or any rule adopted hereunder may be subject to
5 the penalties or fines levied or licensure action taken by the
6 department as specified in this section.

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

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

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

25 (1) The gravity of the violation, including the probability that
26 death or serious physical or mental harm to a client will result or
27 has resulted, the severity of the actual or potential harm, and the
28 extent to which the provisions of the applicable statutes or
29 regulations were violated.

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

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

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

35 (e) The department shall adopt regulations establishing
36 procedures for *the filing and investigation of complaints*, notices,
37 correction plans, appeals, and hearings. In developing the

- 1 procedures, the department shall convene and consult with a
- 2 working group of affected stakeholders.

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