

**ASSEMBLY BILL**

**No. 1217**

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**Introduced by Assembly Member Lowenthal**  
(Coauthor: Senator Price)

February 22, 2013

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

LEGISLATIVE COUNSEL'S DIGEST

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

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

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

This bill would enact the Home Care Services Consumer Protection Act of 2013, which would provide, on and after July 1, 2014, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, and the certification of home care aides. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure requirements on a home care organization. The bill would also impose a civil penalty on an individual or entity that operates a home care organization without a license, except as specified. The bill would

require a home care organization to provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services, and the extent to which payment may be expected from specified sources. In addition, this bill would require a home care organization, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and providing proof of certification as a home care aide, as specified.

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

This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified. The bill would require the department to impose various fees to be deposited in the Home Care Organization and Home Care Aide Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide and violations of specified requirements by an employment agency, as defined.

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.

1 (c) The Employment Development Department has identified  
2 home care services as one of the fastest growing fields of  
3 employment.

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

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

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

17 (g) Discharge planners commonly maintain lists of home care  
18 aides and home care organizations for purposes of patient referral  
19 without any information about the individuals or the organizations,  
20 thereby placing both the patient and the referring organization at  
21 risk.

22 (h) Typically, family members looking for home care services  
23 are in a crisis and will not ask all of the "right" questions when  
24 choosing a home care organization or an individual provider. In  
25 addition, there is currently no centralized list of home care  
26 organizations or individual providers in California for family  
27 members, seniors, or disabled individuals to consult when in need  
28 of home care services for their loved ones or themselves.

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

31  
32 CHAPTER 13. HOME CARE SERVICES

33  
34 Article 1. General Provisions

35  
36 1796.10. This chapter shall be known and may be cited as the  
37 Home Care Services Consumer Protection Act of 2013.

38 1796.11. The State Department of Social Services shall  
39 administer and enforce this chapter.

1 1796.12. For purposes of this chapter, the following definitions  
2 shall apply:

3 (a) “Client” means an individual who receives home care  
4 services.

5 (b) “Department” means the State Department of Social  
6 Services.

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

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

22 (e) “Geographic location” means the city or county in which  
23 the home care organization is located.

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

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

33 (A) A family member of the person who receives home care  
34 services.

35 (B) A person who is employed by, or contracts with, an  
36 organization vendored or contracted through a regional center or  
37 the State Department of Developmental Services pursuant to the  
38 Lanterman Developmental Disabilities Services Act (Division 4.5  
39 (commencing with Section 4500) of the Welfare and Institutions  
40 Code) and the California Early Intervention Services Act (Title

1 14 (commencing with Section 95000) of the Government Code)  
2 to provide services and support for persons with developmental  
3 disabilities, as defined in Section 4512 of the Welfare and  
4 Institutions Code, when funding for those services is provided  
5 through the State Department of Developmental Services and more  
6 than 50 percent of the recipients of the home care services provided  
7 by the organization are persons with developmental disabilities.

8 (g) (1) “Home care organization,” “organization,” or “home  
9 care agency” means an individual, partnership, corporation, limited  
10 liability company, joint venture, association, or other entity that  
11 arranges for the provision of home care services by a home care  
12 aide to a client in the client’s residence and that is licensed pursuant  
13 to this chapter.

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

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

18 (B) A hospice licensed under Chapter 8.5 (commencing with  
19 Section 1745).

20 (C) A health facility licensed under Chapter 2 (commencing  
21 with Section 1250).

22 (D) A county providing in-home supportive services pursuant  
23 to Article 7 (commencing with Section 12300) of Chapter 3 of  
24 Part 3 of Division 9 of the Welfare and Institutions Code, without  
25 regard to whether the county provides these services as a public  
26 authority or through a nonprofit consortium established pursuant  
27 to Section 12301.6 of the Welfare and Institutions Code.

28 (E) A home medical device retail facility licensed under Section  
29 111656.

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

1 provided by the organization are persons with developmental  
2 disabilities.

3 (G) An employment agency, as defined in Section 1812.5095  
4 of the Civil Code, that procures, offers, refers, provides, or attempts  
5 to provide a home care aide or other worker who provides home  
6 care services or domestic services to clients and consumers  
7 pursuant to that section, as long as the agency is not the employer  
8 of the home care aide or other worker who provides to the clients  
9 or consumers assistance with activities of daily living, including,  
10 but not limited to, bathing, dressing, feeding, toileting, ambulation,  
11 and transferring.

12 (H) A residential care facility for the elderly licensed under  
13 Chapter 3.2 (commencing with Section 1569).

14 (h) “Priority one complaint” means a complaint of sexual abuse  
15 that involves penetration, a complaint of physical abuse that  
16 involves an act that results in great bodily injury, such as a broken  
17 bone, severe cut, head injury, or burn, or a complaint of suspicious  
18 circumstances regarding the death of a client.

19 (i) “Priority two complaint” means a complaint of sexual abuse  
20 that involves sexual behavior that does not include penetration, a  
21 complaint of physical abuse that involves an act that results in a  
22 minor injury or bruise, or a complaint of felony offenses, including,  
23 but not limited to, robbery, arson, grand theft, and chemical  
24 restraint.

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

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

30 1796.13. (a) For purposes of this chapter, “home care services”  
31 means services provided by a home care aide to a client who,  
32 because of advanced age or physical or mental infirmity, cannot  
33 perform these services for himself or herself. These services  
34 include, but are not limited to, bathing, dressing, feeding,  
35 exercising, personal hygiene and grooming, transferring,  
36 ambulating, positioning, toileting and incontinence care, assisting  
37 with medication that the client normally self-administers,  
38 housekeeping, meal planning and preparation, laundry,  
39 transportation, correspondence, making telephone calls, shopping  
40 for personal care items or groceries, and companionship. This

1 subdivision shall not be construed to authorize a home care aide  
2 to administer medication that would otherwise require  
3 administration or oversight by a licensed healthcare professional.

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

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

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

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

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

14 (5) 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 (6) Services authorized to be provided pursuant to Section 2731  
18 of the Business and Professions Code.

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

22

23 Article 2. Licensure

24

25 1796.20. (a) On and after July 1, 2014, subject to the  
26 exceptions set forth in paragraph (2) of subdivision (f) of Section  
27 1796.12, an individual, partnership, corporation, limited liability  
28 company, joint venture, association, or other entity shall not arrange  
29 for the provision of home care services by a home care aide to a  
30 client in this state before obtaining a license pursuant to this  
31 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 may do any 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 priority one and priority two complaints by  
37 certified home care aides not employed by a home care  
38 organization. The department may take disciplinary action in  
39 accordance with subdivision (d) of Section 1796.30.

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

19 (2) The department shall update the Internet Web site upon  
20 receiving notification from a certified home care aide that he or  
21 she has left a home care organization or has changed home care  
22 organizations.

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

31 1796.24. Notwithstanding any other provision of this chapter,  
32 the department shall issue a home care organization license to an  
33 entity that satisfies all of the following requirements:

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

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

39 (c) Submits proof of a valid workers' compensation policy  
40 covering its home care aides. The proof shall consist of the policy

1 number, the effective and expiration dates of the policy, and the  
2 name and address of the policy carrier.

3 (d) Provides the department with a complete list of its home  
4 care aides, and proof that each satisfies the requirements of Section  
5 1796.60.

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

8 1796.25. (a) The term of a license issued pursuant to this  
9 chapter shall be two years.

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

12 (c) At least 90 days before the expiration of a license, the  
13 department shall mail to the licensee, at the latest address furnished  
14 by the licensee to the department, a notice stating the amount of  
15 the renewal fee and the date on which it is due, and that failure to  
16 pay that fee on or before the date due will result in the expiration  
17 of the license.

18 1796.26. (a) In order to obtain a license, the following  
19 individual or individuals shall consent to the background clearance  
20 described in Section 1796.62:

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

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

26 (b) (1) If the background clearance conducted pursuant to  
27 subdivision (a) discloses a conviction for a crime that is  
28 substantially related to the qualifications, functions, or duties of  
29 operating a home care organization, the application for a license  
30 may be denied.

31 (2) Notwithstanding paragraph (1), a license shall not be denied  
32 under this section if the applicant has obtained a certificate of  
33 rehabilitation under Chapter 3.5 (commencing with Section  
34 4852.01) of Title 6 of Part 3 of the Penal Code or the information  
35 or accusation against him or her has been dismissed pursuant to  
36 Section 1203.4 of the Penal Code.

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

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

4 (2) Activities since conviction, including employment or  
5 participation in therapy or education, that would indicate changed  
6 behavior.

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

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

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

15 (6) Employment history and current employer recommendations.

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

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

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

26 (2) A copy of the applicant's criminal offender record  
27 information search response. The department shall provide this  
28 information in a manner that protects the confidentiality and  
29 privacy of the criminal offender record information search  
30 response.

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

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

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

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

4 (e) (1) Upon written notification that the department has  
5 determined that a license shall be denied, the applicant may request  
6 an administrative hearing by submitting a written request to the  
7 department within 15 business days of receipt of the written  
8 notification. Upon receipt of a written request, the department shall  
9 hold an administrative hearing consistent with the procedures  
10 specified in Section 100171, except where those procedures are  
11 inconsistent with this section.

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

16 1796.27. A private or public organization, with the exception  
17 of a county providing in-home supportive services pursuant to  
18 Article 7 (commencing with Section 12300) of Chapter 3 of Part  
19 3 of Division 9 of the Welfare and Institutions Code, and the  
20 exceptions provided for in subdivision (c), shall not do any of the  
21 following, unless it is licensed under this chapter:

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

27 (b) Use the terms “home care organization,” “home care,”  
28 “in-home care,” or any combination of those terms, within its  
29 name.

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

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

34 (2) An employment agency, as defined in Section 1812.5095  
35 of the Civil Code, that procures, offers, refers, provides, or attempts  
36 to provide a home care aide or other worker who provides home  
37 care services or domestic services to clients and consumers  
38 pursuant to that section, as long as the agency is not the employer  
39 of a home care aide or other worker who provides domestic  
40 services.

1 Article 3. Complaints, Inspections, and Investigations

2  
3 1796.30. (a) The department may review and, if it determines  
4 necessary, investigate complaints filed against home care  
5 organizations or home care aides not employed by a home care  
6 organization that meet the specified definition of a priority one or  
7 priority two complaint.

8 (b) The department shall verify through random, unannounced  
9 inspections at least once every five years that a home care  
10 organization meets the requirements of this chapter and the  
11 regulations adopted pursuant thereto.

12 (c) An investigation or inspection conducted by the department  
13 pursuant to this chapter may include, but is not limited to, the  
14 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 (d) If the department determines that a home care aide is in  
23 violation of this chapter or any rules promulgated hereunder, a  
24 notice of violation shall be served upon the individual. Each notice  
25 of violation shall be prepared in writing and shall specify the nature  
26 of the violation and the statutory provision or rule alleged to have  
27 been violated. The notice shall inform the individual of any action  
28 the department may take under this chapter, including an action  
29 to suspend, revoke, or deny renewal of the certificate. The director  
30 or his or her designee shall also inform the individual of his or her  
31 rights to a hearing under this chapter.

32  
33 Article 4. Home Care Organization Operating Requirements

34  
35 1796.40. A home care organization shall do all of the following:

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

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

- 1 (c) Have plans, procedures, and policies in place, including all
- 2 of the following:
- 3 (1) Plans and procedures to be followed in the event of
- 4 emergencies or natural disasters that would result in the interruption
- 5 of home care services.
- 6 (2) A documented backup staffing plan in the event that a home
- 7 care aide scheduled to provide home care services becomes
- 8 unavailable.
- 9 (3) A written policy regarding advance directives.
- 10 (4) A receipt and disbursement policy for expenditures made
- 11 on behalf of a client to ensure that financial abuse does not occur.
- 12 (d) Maintain a valid workers' compensation policy covering its
- 13 home care aides.
- 14 (e) Maintain an employee dishonesty bond, including third-party
- 15 coverage, with a minimum limit of ten thousand dollars (\$10,000).
- 16 (f) Comply with the regulations adopted by the department
- 17 implementing this chapter.
- 18 1796.41. With respect to home care aides employed by a home
- 19 care organization, the organization shall consult the department's
- 20 registry, if a registry is maintained by the department, before hiring
- 21 an individual or placing him or her in direct contact with patients.
- 22 In addition, the organization shall do all of the following:
- 23 (a) (1) Ensure that each of its home care aides employed before
- 24 January 1, 2015, meets the requirements of Section 1796.61 no
- 25 later than July 1, 2015.
- 26 (2) Ensure that all individuals hired on or after January 1, 2015,
- 27 have met the requirements of Section 1796.61 before being hired
- 28 as a home care aide.
- 29 (b) (1) Investigate complaints made by a client, or a client's
- 30 family member or guardian, against home care aides regarding a
- 31 service that is or fails to be furnished. The organization shall
- 32 document both the existence and the resolution of those complaints.
- 33 (2) If the home care organization completes an investigation of
- 34 a complaint against a home care aide pursuant to paragraph (1)
- 35 and finds that, in its opinion, the home care aide is in violation of
- 36 this chapter, the home care organization shall immediately notify
- 37 the department in order for the department to take the appropriate
- 38 steps, which may include revoking the home care aide's certificate.
- 39 (c) Evaluate home care aides as follows:

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

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

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

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

16 (1) The aide's name.

17 (2) A photograph of the aide.

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

19 (4) The expiration date of the license of the home care  
20 organization.

21 (5) The home care aide's certificate number as issued by the  
22 department.

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

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

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

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

33  
34 Article 4.5. Employment Agency Insurance

35  
36 1796.45. (a) An employment agency, as defined in Section  
37 1812.5095 of the Civil Code, that procures, offers, refers, provides,  
38 or attempts to provide a home care aide who provides home care  
39 services or other worker who provides assistance with activities  
40 of daily living to the client or consumer pursuant to that section,

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

5 (b) An employment agency shall submit to the department proof  
6 of insurance required pursuant to subdivision (a) no later than July  
7 1, 2014, and annually thereafter.

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

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

14

15 Article 5. Client Rights

16

17 1796.50. With respect to clients, a home care organization shall  
18 do all of the following:

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

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

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

25 (2) Advise the client of its policy regarding the disclosure of  
26 client records.

27 (3) Inform the client of the types and hours of available home  
28 care services.

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

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

37 (d) Have a written agreement with the client that includes, but  
38 is not limited to, the cost of and the hours during which home care  
39 services will be provided to the client and reference to the personal

1 attendant requirements, if applicable, as referenced in Wage Order  
2 15-2001, issued by the Industrial Welfare Commission.

3 1796.51. (a) Home care clients are entitled to the following  
4 rights:

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

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

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

11 (4) The right to confidentiality of the client's personal  
12 information.

13 (b) Before arranging for the provision of home care services to  
14 a client, a home care organization shall provide a written notice  
15 to the client stating that the client has all of the rights enumerated  
16 in subdivision (a).

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

19 (d) If a client lacks the capacity to understand the rights listed  
20 in this section, as determined by a court of competent jurisdiction  
21 or by the client's physician, unless the physician's opinion is  
22 controverted by the client or the client's legal representative, the  
23 client's legal representative shall have those rights.

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

26

27

#### Article 6. Home Care Aides

28

29 1796.60. (a) (1) Beginning January 1, 2015, the department  
30 shall require any person hired as a home care aide on or after  
31 January 1, 2015, to be certified before being hired and shall require  
32 that any home care aide or person providing assistance with  
33 activities of daily living to the client or consumer referred by an  
34 employment agency, as defined in Section 1812.5095 of the Civil  
35 Code, be certified prior to any referral.

36 (2) The term of a certificate issued pursuant to this chapter shall  
37 be two years. The certificate may be renewed upon application to  
38 the department and payment of the renewal fee prescribed by the  
39 department pursuant to this chapter.

1 (b) In order to receive a certificate from the department to  
2 provide home care services for the elderly or persons with  
3 disabilities, a home care aide shall meet the minimum training  
4 requirements in this section. Only training curriculum approved  
5 by the department may be used to fulfill the training requirements  
6 specified in this section.

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

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

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

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

15 (2) If the department determines that the training required by  
16 paragraph (1) is unavailable in an applicant's county, the  
17 department shall issue a temporary home care aide certificate to  
18 that individual that will be valid until the date that proper training  
19 is made available in that county. Upon completion of the required  
20 training, the department shall replace the temporary home care  
21 aide certificate and issue a permanent home care aide certificate.

22 (3) The entry-level training, and annual training on  
23 department-approved job-related topics, may be completed through  
24 an online training program.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 1796.62. (a) A background clearance is required, unless the  
35 individual holds a valid, unexpired license, certification, or  
36 registration in a health-related field that requires a background  
37 check as a condition of the license, certification, or registration.

38 (b) (1) The applicant shall electronically submit to the  
39 Department of Justice fingerprint images and related information  
40 required by the Department of Justice of all home care aides, as

1 defined under subdivision (e) of Section 1796.12, for the purposes  
2 of obtaining information as to the existence and content of a record  
3 of state convictions and state arrests, and also information as to  
4 the existence and content of a record of state arrests for which the  
5 Department of Justice establishes that the person is free on bail or  
6 on his or her own recognizance pending trial or appeal.

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

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

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

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

22 (1) A violation of subdivision (a) of Section 273a of the Penal  
23 Code, or Section 368 of the Penal Code, or similar violations in  
24 another jurisdiction.

25 (2) A violent or serious felony, as specified in subdivision (c)  
26 of Section 667.5 of the Penal Code and subdivision (c) of Section  
27 1192.7 of the Penal Code.

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

34 (d) Notwithstanding subdivision (c), a certification shall not be  
35 denied under this section if the applicant has obtained a certificate  
36 of rehabilitation under Chapter 3.5 (commencing with Section  
37 4852.01) of Title 6 of Part 3 of the Penal Code or the information  
38 or accusation against him or her has been dismissed pursuant to  
39 Section 1203.4 of the Penal Code.

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

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

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

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

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

27 (i) A home care aide employed on or after January 1, 2015, shall  
28 not be permitted to provide home care services until he or she  
29 passes the background clearance pursuant to this section.

30 1796.63. (a) An individual hired as a home care aide on or  
31 after January 1, 2015, shall be terminated from employment unless  
32 the individual submitted to an examination within six months prior  
33 to employment to determine that the individual is free of active  
34 tuberculosis. For purposes of this section, "examination" consists  
35 of a tuberculin skin test and, if that test is positive, an X-ray of the  
36 lungs.

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

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

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

10 (e) The examination is a condition of initial and continuing  
11 employment with the home care organization. The home care aide  
12 shall pay the cost of the examination.

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

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

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

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Article 7. Revenues

38 1796.70. (a) The department shall assess licensure and  
39 certification fees in amounts sufficient to support the costs of each  
40 activity authorized by this chapter. Except for General Fund

1 moneys that are otherwise transferred or appropriated for the initial  
2 costs of administering this chapter, or penalties collected pursuant  
3 to this chapter that are appropriated by the Legislature for the  
4 purposes of this chapter, no General Fund moneys shall be used  
5 for any purpose under this chapter.

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

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

15 (d) The certification fee shall be equivalent to the cost of  
16 administering the certification program, as defined by the  
17 department.

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

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

35 (2) The department shall make a copy of the report available to  
36 the public on the department's Internet Web site and provide a  
37 copy to the Legislature. A report to the Legislature shall be  
38 submitted in compliance with Section 9795 of the Government  
39 Code.

Article 8. Enforcement and Penalties

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1796.80. (a) A home care organization 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 (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 violation and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of any action the department may take under this chapter, including the requirement of an agency plan of correction, assessment of a penalty, or action to suspend, revoke, or deny renewal of the license. The director or his or her designee shall also inform the licensee of rights to a hearing under this chapter.

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

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

- (1) The gravity of the violation, including the probability that death or serious physical or mental harm to a client will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or regulations were violated.
- (2) The reasonable diligence exercised by the licensee and efforts to correct violations.
- (3) Any previous violation committed by the licensee.
- (4) The financial benefit to the home care organization of committing or continuing the violation.

1 (e) The department shall adopt regulations establishing  
2 procedures for notices, correction plans, appeals, and hearings. In  
3 developing the procedures, the department shall convene and  
4 consult with a working group of affected stakeholders.

5 1796.81. Any fines and penalties collected pursuant to this  
6 chapter shall be deposited into the Home Care Organization and  
7 Home Care Aide Penalties Subaccount, which is hereby created  
8 within the Home Care Organization and Home Care Aide Fund  
9 created pursuant to Section 1796.70. Moneys in this account shall,  
10 upon appropriation by the Legislature, be made available to the  
11 department for purposes of enforcing this chapter.

O