

AMENDED IN ASSEMBLY APRIL 22, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1863**

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**Introduced by Assembly Member Jones**

February 19, 2014

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An act to amend Sections ~~1796.22, 1796.33, 1796.38, and 1796.63~~ of 1796.12, 1796.14, 1796.22, 1796.29, 1796.33, 1796.34, 1796.35, 1796.37, 1796.38, 1796.39, 1796.41, 1796.42, 1796.44, 1796.45, 1796.51, 1796.52, 1796.53, 1796.55, 1796.61, and 1769.63 of, and to add Sections 1796.18, 1796.40, and 1796.50 to, the Health and Safety Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

AB 1863, as amended, Jones. Home Care Services Consumer Protection Act.

Existing law establishes the Home Care Services Consumer Protection Act (the act), which provides, on and after January 1, 2015, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, and for the registration of home care aides. *Violation of the act is a misdemeanor.* Existing law requires background clearances for home care aides and home care organizations, as specified. Existing law authorizes any individual that possesses, among other things, a valid Alien Registration Card, and who has submitted an application, to initiate a background examination to be either a registered home care aide or to be a licensed home care organization.

This bill, *commencing January 1, 2016, would make the provisions of the act applicable to home care referral agencies, as defined, including licensure, fees, enforcement and fines, and regulation of*

registered home care aides having agreements with those agencies. By expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would authorize any individual that possesses either a valid Alien Registration Receipt Card or valid Permanent Resident Card to initiate a background examination to be either a registered home care aide or to be a licensed home care organization.

Existing law requires the State Department of Social Services to post any proposed regulations promulgated for purposes of implementing the act on its public Internet Web site no earlier than 10 calendar days prior to the effective date of the proposed rule, as specified.

This bill would instead require the State Department of Social Services to post any proposed regulations promulgated on its public Internet Web site no later than 90 calendar days prior to the effective date of the proposed rule, as specified.

This bill would also correct an erroneous cross-reference.

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

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

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

- 1     SECTION 1. Section 1796.12 of the Health and Safety Code
- 2     is amended to read:
- 3     1796.12. For purposes of this chapter, the following definitions
- 4     shall apply:
- 5     (a) "Affiliated home care aide" means an individual, 18 years
- 6     of age or older, who is employed by a home care organization to
- 7     provide home care services to a client and is listed on the home
- 8     care aide registry.
- 9     (b) "Child" or "children" means an individual or individuals
- 10    under 18 years of age.
- 11    (c) "Client" means an individual who receives home care
- 12    services from a registered home care aide.
- 13    (d) "Department" means the State Department of Social
- 14    Services.

1 (e) “Director” means the Director of Social Services.

2 (f) “Family member” means any spouse, by marriage or  
3 otherwise, child or stepchild, by natural birth or by adoption,  
4 parent, brother, sister, half-brother, half-sister, parent-in-law,  
5 brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first  
6 cousin, or any person denoted by the prefix “grand” or “great,” or  
7 the spouse of any of these persons, even if the marriage has been  
8 terminated by death or dissolution.

9 (g) “Home care aide applicant” means an individual, 18 years  
10 of age or older, who is requesting to become an registered home  
11 care aide and the department has received and is processing the  
12 individual’s complete home care aide application and fees.

13 (h) “Home care aide application” means the official form,  
14 designated by the department, to request to become a registered  
15 home care aide.

16 (i) “Home care aide registry” means a department-established  
17 and department-maintained Internet Web site of registered home  
18 care aides and home care aide applicants, which includes all of the  
19 following: the individual’s name, registration number, registration  
20 status, registration expiration date, and, if applicable, the home  
21 care organization to which the affiliated home care aide or affiliated  
22 home care aide applicant is associated.

23 (j) “Home care organization” means an individual, 18 years of  
24 age or older, firm, partnership, corporation, limited liability  
25 company, joint venture, association, or other entity that arranges  
26 for home care services by an affiliated home care aide to a client,  
27 and is licensed pursuant to this chapter.

28 (k) “Home care organization application” means the official  
29 form, designated by the department, to request to become a licensed  
30 home care organization.

31 (l) “Home care organization licensee” means an individual, 18  
32 years of age or older, firm, partnership, corporation, limited liability  
33 company, joint venture, association, or other entity having the  
34 authority and responsibility for the operation of a licensed home  
35 care organization.

36 (m) “Home care referral agency” means an employment agency,  
37 as defined in Section 1812.5095 of the Civil Code that arranges  
38 for home care services provided by a registered home care aide  
39 to a client, and is licensed pursuant to this chapter.

1 (n) “Home care referral agency applicant” means an individual,  
 2 18 years of age or older, or a firm, partnership, corporation,  
 3 limited liability company, joint venture, association, or other entity  
 4 that is requesting to become a home care referral agency licensee  
 5 and the department has received and is processing the complete  
 6 home care referral agency application and nonrefundable  
 7 application fee.

8 (o) “Home care referral agency application” means the official  
 9 form, designated by the department, to request to become a licensed  
 10 home care referral agency.

11 (p) “Home care referral agency licensee” means an individual,  
 12 18 years of age or older, firm, partnership, corporation, limited  
 13 liability company, joint venture, association, or other entity having  
 14 the authority and responsibility for the operation of a licensed  
 15 home care referral agency.

16 ~~(m)~~

17 (q) “Home care services” means nonmedical services and  
 18 assistance provided by a registered home care aide to a client who,  
 19 because of advanced age or physical or mental disability, cannot  
 20 perform these services. These services enable the client to remain  
 21 in his or her residence and include, but are not limited to, assistance  
 22 with the following: bathing, dressing, feeding, exercising, personal  
 23 hygiene and grooming, transferring, ambulating, positioning,  
 24 toileting and incontinence care, assisting with medication that the  
 25 client self-administers, housekeeping, meal planning and  
 26 preparation, laundry, transportation, correspondence, making  
 27 telephone calls, shopping for personal care items or groceries, and  
 28 companionship. This subdivision shall not authorize a registered  
 29 home care aide to assist with medication that the client  
 30 self-administers that would otherwise require administration or  
 31 oversight by a licensed health care professional.

32 (r) “Independent home care aide” means an individual, 18  
 33 years of age or older, who is not employed by a home care  
 34 organization, but who is listed on the home care aide registry and  
 35 is providing home care services through a direct agreement with  
 36 a client.

37 ~~(n)~~

38 (s) “Registered home care aide” means an affiliated home care  
 39 aide or independent home care aide, 18 years of age or older, who  
 40 is listed on the home care aide registry.

1 ~~(e) “Independent home care aide” means an individual, 18 years~~  
2 ~~of age or older, who is not employed by a home care organization,~~  
3 ~~but who is listed on the home care aide registry and is providing~~  
4 ~~home care services through a direct agreement with a client.~~

5 *SEC. 2. Section 1796.14 of the Health and Safety Code is*  
6 *amended to read:*

7 1796.14. (a) Individuals who are not employed by a home care  
8 organization but who provide home care services to a client may  
9 be listed on the home care aide registry.

10 (b) An affiliated home care aide shall be listed on the home care  
11 aide registry prior to providing home care services to a client. *A*  
12 *home care aide shall be listed on the registry prior to being*  
13 *referred by a home care referral agency to a client.*

14 (c) An individual providing home care services to a child is  
15 exempt from any requirement to be listed on the home care aide  
16 registry if the individual is one of the following:

17 (1) A family member of the child.

18 (2) A guardian of the child.

19 (3) A conservator of the child.

20 (4) A foster parent of the child, in a foster family home, as  
21 defined in paragraph (5) of subdivision (a) of Section 1502, or a  
22 certified family home, as defined in subdivision (d) of Section  
23 1506.

24 (5) Nonrelative extended family member, as defined in Section  
25 362.7 of the Welfare and Institutions Code.

26 (6) Providing home care services in a facility in which only  
27 Indian children who are eligible under the federal Indian Child  
28 Welfare Act (25 U.S.C. 1901 et seq.) are placed and is one of the  
29 following:

30 (A) An extended family member of the Indian child, as defined  
31 in Section 1903 of Title 25 of the United States Code.

32 (B) A foster home that is licensed, approved, or specified by  
33 the Indian child’s tribe pursuant to Section 1915 of Title 25 of the  
34 United States Code.

35 (7) Providing home care services as part of his or her job duties  
36 through one of the following entities:

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

39 (B) A hospice licensed under Chapter 8.5 (commencing with  
40 Section 1745).

- 1 (C) A health facility licensed under Chapter 2 (commencing  
2 with Section 1250).
- 3 (D) Any clinic licensed under Sections 1204 or 1204.1.
- 4 (E) A county providing in-home supportive services pursuant  
5 to Article 7 (commencing with Section 12300) of Chapter 3 of  
6 Part 3 of Division 9 of the Welfare and Institutions Code, without  
7 regard to whether the county provides these services as a public  
8 authority or through a nonprofit consortium established pursuant  
9 to Section 12301.6 of the Welfare and Institutions Code.
- 10 (F) A home medical device retail facility licensed under Section  
11 111656.
- 12 (G) An organization vendored or contracted through a regional  
13 center or the State Department of Developmental Services pursuant  
14 to the Lanterman Developmental Disabilities Services Act  
15 (Division 4.5 (commencing with Section 4500) of the Welfare and  
16 Institutions Code) and the California Early Intervention Services  
17 Act (Title 14 (commencing with Section 95000) of the Government  
18 Code) to provide services and supports for persons with  
19 developmental disabilities, as defined in Section 4512 of the  
20 Welfare and Institutions Code, when funding for those services is  
21 provided through the State Department of Developmental Services  
22 and more than 50 percent of the recipients of the home care services  
23 provided by the organization are persons with developmental  
24 disabilities.
- 25 (H) A community care facility as licensed under Chapter 3  
26 (commencing with Section 1500), a residential care facility for  
27 persons with special health care needs licensed under Chapter 3.01  
28 (commencing with Section 1568.01), a residential care facility for  
29 the elderly licensed under Chapter 3.2 (commencing with Section  
30 1569), or a child day care licensed under Chapter 3.4 (commencing  
31 with Section 1596.70).
- 32 (I) Any alcoholism or drug abuse recovery or treatment facility  
33 as defined by Section 11834.02.
- 34 (J) Any other entity providing services similar to those described  
35 in this paragraph, as determined by the director.
- 36 (8) Providing services authorized pursuant to Section 2731 of  
37 the Business and Professions Code
- 38 (d) (1) Home care aides shall not include individuals who are  
39 providing home care services as part of their job duties through  
40 one of the following entities:

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

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

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

7 (D) In-home supportive services provided pursuant to Article  
8 7 (commencing with Section 12300) of Chapter 3 of Part 3 of  
9 Division 9 of the Welfare and Institutions Code.

10 (E) Services authorized to be provided by one of the following:

11 (i) A licensed residential care facility for the elderly pursuant  
12 to Chapter 3.2 (commencing with Section 1569).

13 (ii) A licensed community care facility pursuant to Chapter 3  
14 (commencing with Section 1500).

15 (iii) A licensed residential care facility for persons with chronic  
16 life-threatening illness pursuant to Chapter 3.01 (commencing with  
17 Section 1568.01).

18 (iv) A licensed facility, pursuant to the California Child Day  
19 Care Act (Chapter 3.4 (commencing with Section 1596.70)), which  
20 includes day care centers under Chapter 3.5 (commencing with  
21 Section 1596.90) and family day care homes under to Chapter 3.6  
22 (commencing with Section 1597.30).

23 (2) Home care aides shall not include individuals providing  
24 services authorized to be provided pursuant to Section 2731 of the  
25 Business and Professions Code.

26 *SEC. 3. Section 1796.18 is added to the Health and Safety*  
27 *Code, immediately following Section 1796.17, to read:*

28 *1796.18. (a) A home care referral agency does not include*  
29 *any of the following:*

30 *(1) A home health agency licensed under Chapter 8*  
31 *(commencing with Section 1725).*

32 *(2) A hospice licensed under Chapter 8.5 (commencing with*  
33 *Section 1745).*

34 *(3) A health facility licensed under Chapter 2 (commencing*  
35 *with Section 1250).*

36 *(4) A county providing in-home supportive services pursuant*  
37 *to Article 7 (commencing with Section 12300) of Chapter 3 of Part*  
38 *3 of Division 9 of the Welfare and Institutions Code, without regard*  
39 *to whether the county provides these services as a public authority*

1 *or through a nonprofit consortium established pursuant to Section*  
2 *12301.6 of the Welfare and Institutions Code.*

3 *(5) A home medical device retail facility licensed under Section*  
4 *111656.*

5 *(6) An organization vendored or contracted through a regional*  
6 *center or the State Department of Developmental Services pursuant*  
7 *to the Lanterman Developmental Disabilities Services Act (Division*  
8 *4.5 (commencing with Section 4500) of the Welfare and Institutions*  
9 *Code) and the California Early Intervention Services Act (Title*  
10 *14 (commencing with Section 95000) of the Government Code) to*  
11 *provide services and supports for persons with developmental*  
12 *disabilities, as defined in Section 4512 of the Welfare and*  
13 *Institutions Code, when funding for those services is provided*  
14 *through the State Department of Developmental Services and more*  
15 *than 50 percent of the recipients of the home care services provided*  
16 *by the organization are persons with developmental disabilities.*

17 *(7) A home care organization.*

18 *(8) A community care facility licensed under Chapter 3*  
19 *(commencing with Section 1500), or a residential care facility for*  
20 *persons with chronic life-threatening illness licensed under*  
21 *Chapter 3.01 (commencing with Section 1568.01), a residential*  
22 *care facility for the elderly licensed under Chapter 3.2*  
23 *(commencing with Section 1569), or a facility licensed under the*  
24 *California Child Day Care Act (Chapter 3.4 (commencing with*  
25 *Section 1596.70)), which includes day care centers under Chapter*  
26 *3.5 (commencing with Section 1596.90) and family day care homes*  
27 *pursuant to Chapter 3.6 (commencing with Section 1597.30).*

28 *(9) An alcoholism or drug abuse recovery or treatment facility*  
29 *as defined in Section 11834.02.*

30 *(10) Providing services authorized pursuant to Section 2731 of*  
31 *the Business and Professions Code.*

32 *(11) A clinic licensed under Section 1204 or 1204.1.*

33 *(12) A nonrelative extended family member, as defined in Section*  
34 *362.7 of the Welfare and Institutions Code.*

35 *(13) A facility that provides home care services in which only*  
36 *Indian children who are eligible under the federal Indian Child*  
37 *Welfare Act (25 U.S.C. 1901 et seq.) are placed and is one of the*  
38 *following:*

39 *(A) An extended family member of the Indian child, as defined*  
40 *in Section 1903 of Title 25 of the United States Code.*

1 (B) A foster home that is licensed, approved, or specified by the  
2 Indian child's tribe pursuant to Section 1915 of Title 25 of the  
3 United States Code.

4 (b) In the event of conflict between this chapter and a provision  
5 listed in subdivision (a), the provision in subdivision (a) shall  
6 control.

7 **SECTION 4.**

8 *SEC. 4.* Section 1796.22 of the Health and Safety Code is  
9 amended to read:

10 1796.22. Any individual who has submitted an application and  
11 who possesses any one of the following identification cards may  
12 initiate a background examination to be a registered home care  
13 aide:

14 (a) A valid California driver's license.

15 (b) A valid identification card issued by the Department of  
16 Motor Vehicles.

17 (c) A valid Alien Registration Receipt Card or valid Permanent  
18 Resident Card.

19 (d) In the case of a person living in a state other than California,  
20 a valid numbered photo identification card issued by an agency of  
21 the state other than California.

22 *SEC. 5.* Section 1796.29 of the Health and Safety Code is  
23 amended to read:

24 1796.29. The department shall do both of the following in the  
25 administration of the home care aide registry:

26 (a) Establish and maintain on the department's Internet Web  
27 site the registry of registered home care aides and home care aide  
28 applicants.

29 (1) To expedite the ability of a consumer to search and locate  
30 a registered home care aide or home care aide applicant, the  
31 Internet Web site shall enable consumers to look up the registration  
32 status by providing the registered home care aide's or home care  
33 aide applicant's name, registration number, registration status, and  
34 registration expiration date.

35 (2) The Internet Web site shall not provide any additional,  
36 individually identifiable information about a registered home care  
37 aide or home care aide applicant. The department may request and  
38 may maintain additional information for registered home care aides  
39 or home care aide applicants, as necessary for the administration

1 of this chapter, which shall not be publicly available on the home  
 2 care aide registry.

3 (b) Update the home care registry upon receiving notification  
 4 from a home care organization that an affiliated home care aide is  
 5 no longer employed by the home care organization.

6 (c) *To expedite the ability of a home care referral agency to*  
 7 *search and locate a registered home care aide or home care aide*  
 8 *applicant, the registry shall enable home care referral agencies*  
 9 *to look up registration status by providing the registered home*  
 10 *care aide or home care aide applicant’s name, registration number,*  
 11 *registration status, and registration expiration date.*

12 ~~SEC. 2.~~

13 SEC. 6. Section 1796.33 of the Health and Safety Code is  
 14 amended to read:

15 1796.33. ~~Any~~ *An individual who has submitted an application*  
 16 *and who possesses any one of the following identification cards*  
 17 *may initiate a background examination to be a licensed home care*  
 18 *organization or a licensed home care referral agency:*

- 19 (a) A valid California driver’s license.
- 20 (b) A valid identification card issued by the Department of  
 21 Motor Vehicles.
- 22 (c) A valid Alien Registration Receipt Card or valid Permanent  
 23 Resident Card.
- 24 (d) In the case of a person living in a state other than California,  
 25 a valid numbered photo identification card issued by an agency of  
 26 the state other than California.

27 SEC. 7. *Section 1796.34 of the Health and Safety Code is*  
 28 *amended to read:*

29 1796.34. (a) In order to obtain a home care organization license  
 30 *or a home care referral agency license, the following individual*  
 31 *or individuals shall consent to the background examination*  
 32 *described in Section 1796.23:*

- 33 ~~(a)~~
- 34 (1) The owner or owners of the ~~home care organization~~  
 35 *applicant, if the owners are individuals.*
- 36 ~~(b)~~
- 37 (2) If the owner of a ~~home care organization~~ *the applicant* is a  
 38 corporation, limited liability company, joint venture, association,  
 39 or other entity, an individual having a 10-percent or greater interest  
 40 in that entity.

1 (b) A person who is a current licensee or employee in a facility  
2 licensed by the department, a certified foster parent, a certified  
3 administrator, or a registered TrustLine provider may transfer his  
4 or her current criminal record clearance or exemption for purposes  
5 of licensure as a home care referral agency pursuant to subdivision  
6 (h) of Section 1522. The person shall, instead, submit to the  
7 department, along with the person's application, a copy of his or  
8 her identification card, as required pursuant to Section 1796.33,  
9 and a signed declaration verifying the person's identity.

10 SEC. 8. Section 1796.35 of the Health and Safety Code is  
11 amended to read:

12 1796.35. (a) A person or a private or public organization, with  
13 the exception of a county providing in-home supportive services  
14 pursuant to Article 7 (commencing with Section 12300) of Chapter  
15 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and  
16 the exceptions provided for in subdivision ~~(b)~~ (c), shall not do any  
17 of the following, unless it is a licensed home care organization  
18 under this chapter:

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

25 (2) Use the terms "home care organization," "home care,"  
26 "in-home care," or any combination of those terms, within its  
27 name.

28 (b) A person or a private or public organization, with the  
29 exception of a county providing in-home supportive services  
30 pursuant to Article 7 (commencing with Section 12300) of Chapter  
31 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and  
32 the exceptions provided for in subdivision (c), shall not do any of  
33 the following, unless it is a licensed home care referral agency  
34 under this chapter:

35 (1) Represent himself, herself, or itself to be a home care referral  
36 agency by name, advertising, soliciting, or any other presentment  
37 to the public, or in the context of services within the scope of this  
38 chapter, imply that he, she, or it is licensed to provide those  
39 services or to make any reference to employment agency or  
40 bonding in relation to those services.

1 (2) Use the terms “home care referral agency,” “home care  
2 agency,” “home care,” “in-home care,” or any combination of  
3 those terms, within its name.

4 (b)

5 (c) (1) This section does not apply to either of the following:

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

9 ~~(2) An employment agency, as defined in Section 1812.5095~~  
10 ~~of the Civil Code, that procures, offers, refers, provides, or attempts~~  
11 ~~to provide an affiliated home care aide who provides home care~~  
12 ~~to clients.~~

13 (2) Subdivision (a) does not apply to a home care referral  
14 agency.

15 (3) Subdivision (b) does not apply to a home care organization.

16 SEC. 9. Section 1796.37 of the Health and Safety Code is  
17 amended to read:

18 1796.37. (a) A home care organization *or home care referral*  
19 *agency* that has its principal place of business in another state, in  
20 addition to the other requirements of this chapter, before arranging  
21 for home care services provided by ~~an affiliated~~ *a registered* home  
22 care aide to a client in the state, shall comply with all of the  
23 following:

24 (1) Have an office in California.

25 (2) Maintain all pertinent records of the operation in California  
26 at the California office. All records shall be available to review,  
27 copy, audit, and inspect by the licensing agency.

28 (b) If the home care organization *or home care referral agency*  
29 is a foreign corporation, foreign limited liability company, foreign  
30 limited partnership, foreign association, or a foreign limited liability  
31 partnership, as defined in Sections 170, 171, 171.03, 171.05, and  
32 16101 of the Corporations Code, before arranging for home care  
33 services provided by ~~an affiliated~~ *a registered* home care aide to  
34 a client in the state, the home care organization *or home care*  
35 *referral agency* shall have an office in California and shall comply  
36 with both of the following:

37 (1) Register with the Secretary of State to conduct intrastate  
38 business in California.

1 (2) Maintain all pertinent records of the operation in California  
2 at the California office. All records shall be available to review,  
3 copy, audit, and inspect by the licensing agency.

4 ~~SEC. 3.~~

5 *SEC. 10.* Section 1796.38 of the Health and Safety Code is  
6 amended to read:

7 1796.38. (a) The department ~~may~~ *shall* issue a home care  
8 organization license to an individual or other entity that satisfies  
9 all of the requirements set forth in this chapter, including all of the  
10 following:

11 ~~(a)~~

12 (1) Files a home care organization application, including the  
13 fees required pursuant to Section 1796.49.

14 ~~(b)~~

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

18 ~~(c)~~

19 (3) Submits proof of a valid workers' compensation policy  
20 covering its affiliated home care aides. The proof shall consist of  
21 the policy number, the effective and expiration dates of the policy,  
22 and the name and address of the policy carrier.

23 ~~(d)~~

24 (4) Provides the department, upon request, with a complete list  
25 of its affiliated home care aides, and proof that each satisfies the  
26 requirements of Section 1796.34.

27 ~~(e)~~

28 (5) The owner or owners of the home care organization pass a  
29 background examination, as required pursuant to Section 1796.34.

30 ~~(f)~~

31 (6) The applicant does not have any outstanding fees or civil  
32 penalties due to the department.

33 (b) *The department shall issue a home care referral agency*  
34 *license to a home care referral agency applicant that satisfies the*  
35 *requirements set forth in this chapter, including all of the*  
36 *following:*

37 (1) *Files a complete home care referral agency application,*  
38 *including the fees required pursuant to Section 1796.50.*

1 (2) 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 (3) Submits evidence of compliance with the bond requirements,  
5 in accordance with Section 1812.503 of the Civil Code.

6 (4) The owner or owners of the home care referral agency pass  
7 a background examination, as required pursuant to Section  
8 1796.34.

9 (5) The applicant does not have any outstanding fees or civil  
10 penalties due to the department.

11 SEC. 11. Section 1796.39 of the Health and Safety Code is  
12 amended to read:

13 1796.39. (a) A ~~home care organization~~ licensee shall renew  
14 the home care organization license or home care referral license  
15 every two years.

16 (b) Renewal shall be conditioned upon the licensee doing both  
17 of the following:

18 (1) Submitting a complete ~~home care organization~~ licensee  
19 renewal application form and payment of fees, both of which shall  
20 be postmarked on or before the expiration of the license.

21 (2) Continuing to satisfy the requirements set forth in this  
22 chapter, and cooperating with the department in the completion  
23 of the ~~home care organization~~ licenses renewal process.

24 (c) Failure of the ~~home care organization~~ licensee to cooperate  
25 may result in the withdrawal of the ~~home care organization~~ license  
26 renewal application. "Failure to cooperate" means that the  
27 information described in this chapter and in any rules and  
28 regulations promulgated under this chapter has not been provided,  
29 or not provided in the form requested by the department, or both.

30 SEC. 12. Section 1796.40 is added to the Health and Safety  
31 Code, immediately following Section 1796.39, to read:

32 1796.40. (a) A home care referral agency shall be separately  
33 licensed.

34 (b) Nothing in this chapter shall prevent a licensee from  
35 obtaining more than one home care referral agency license or  
36 obtaining a home care referral agency license in addition to other  
37 licenses issued by the department, or both.

38 SEC. 13. Section 1796.41 of the Health and Safety Code is  
39 amended to read:

1 1796.41. (a) A home care organization licensee *and a home*  
2 *care referral agency licensee* shall do ~~all~~ *both* of the following:

3 (a)

4 (1) Post its license and business hours in its place of business  
5 in a conspicuous location, visible both to clients and affiliated  
6 home care aides.

7 ~~(b) Maintain and abide by a valid workers' compensation policy~~  
8 ~~covering its affiliated home care aides.~~

9 ~~(c) Maintain and abide by an employee dishonesty bond,~~  
10 ~~including third-party coverage, with a minimum limit of ten~~  
11 ~~thousand dollars (\$10,000).~~

12 ~~(d)~~

13 (2) Report any suspected or known adult abuse as required by  
14 Section 15630 of the Welfare and Institutions Code and suspected  
15 or known child abuse as required by Sections 11164 to 11174.3,  
16 inclusive, of the Penal Code. A copy of each suspected abuse report  
17 shall be maintained and available for review by the department  
18 during normal business hours.

19 (b) *In addition to the requirements of subdivision (a), a home*  
20 *care organization licensee shall do both of the following:*

21 (1) *Maintain and abide by a valid workers' compensation policy*  
22 *covering its affiliated home care aides.*

23 (2) *Maintain and abide by an employee dishonesty bond,*  
24 *including third-party coverage, with a minimum limit of ten*  
25 *thousand dollars (\$10,000).*

26 (c) *In addition to the requirements of subdivision (a), a home*  
27 *care referral agency shall comply with the bond requirements*  
28 *included in Section 1812.503 of the Civil Code.*

29 SEC. 14. Section 1796.42 of the Health and Safety Code is  
30 amended to read:

31 1796.42. (a) Home care organizations that employ affiliated  
32 home care aides *and home care referral agencies that refer*  
33 *registered home care aides* shall ensure the ~~affiliated~~ home care  
34 aides are cleared on the home care aide registry before placing the  
35 individual in direct contact with clients. In addition, the home care  
36 organization *or home care referral agency* shall do all of the  
37 following:

38 (1) Ensure any staff person, volunteer, or employee ~~of a home~~  
39 ~~care organization~~ who has contact with clients, prospective clients,  
40 or confidential client information that may pose a risk to the clients'

1 health and safety has met the requirements of Section 1796.23  
2 before being hired.

3 (2) Require home care aides to demonstrate that they are free  
4 of active tuberculosis disease, pursuant to Section 1796.45.

5 (3) ~~Immediately~~ *A home care organization shall immediately*  
6 *notify the department when the home care organization no longer*  
7 *employs an individual as an affiliated home care aide.*

8 (b) This section shall not prevent a licensee from requiring a  
9 criminal record clearance of any individual exempt from the  
10 requirements of this section, provided that the individual has client  
11 contact.

12 *SEC. 15. Section 1796.44 of the Health and Safety Code is*  
13 *amended to read:*

14 1796.44. (a) A home care organization licensee shall ensure  
15 that, prior to providing home care services, an affiliated home care  
16 aide shall complete the training requirements specified in ~~this~~  
17 ~~section~~ *subdivisions (b) and (c). A home care referral agency shall*  
18 *ensure, prior to that person being referred to a client, that a*  
19 *registered home care aide demonstrate proficiency as provided in*  
20 *subdivision (d).*

21 (b) An affiliated home care aide shall complete a minimum of  
22 five hours of entry-level training prior to presence with a client,  
23 as follows:

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

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

28 (c) In addition to the requirements in subdivision (b), an  
29 affiliated home care aide shall complete a minimum of five hours  
30 of annual training. The annual training shall relate to core  
31 competencies and be population specific, which shall include, but  
32 not be limited to, the following areas:

33 (1) Clients' rights and safety.

34 (2) How to provide for and respond to a client's daily living  
35 needs.

36 (3) How to report, prevent, and detect abuse and neglect.

37 (4) How to assist a client with personal hygiene and other home  
38 care services.

39 (5) If transportation services are provided, how to safely  
40 transport a client.

1 (d) A registered home care aide who is being referred by a home  
2 care referral agency shall complete a proficiency exam that  
3 includes all of the following topics:

4 (1) Clients' rights and safety.

5 (2) Activities of daily living, including how to provide for and  
6 respond to a client's daily needs.

7 (3) How to detect, report, and prevent abuse and neglect.

8 (4) Assisting clients with personal hygiene.

9 (5) Safely transporting clients, if transportation services are  
10 provided by the registered home care aide.

11 (6) Infection control.

12 (7) Basic safety precautions.

13 ~~(8)~~

14 (e) The entry-level training and annual training on  
15 department-approved job-related topics described in subdivisions  
16 (b) and (c) may be completed through an online training program.

17 (f) The proficiency examination required pursuant to subdivision  
18 (d) may be administered by an online service or through a written  
19 examination administered by the home care referral agency.

20 (g) A registered home care aide who possessed a valid  
21 certification from the State Department of Public Health as a  
22 Certified Nurse Assistant or Certified Home Health Aide is exempt  
23 from the examination requirement of subdivision (d).

24 SEC. 16. Section 1796.45 of the Health and Safety Code is  
25 amended to read:

26 1796.45. (a) An individual hired to be an affiliated home care  
27 aide on or after January 1, 2015, or a registered home care aide  
28 entering into an agreement with a home care referral agency after  
29 January 1, 2016, shall be submitted to an examination 90 days  
30 prior to employment or the effective date of the agreement or within  
31 seven days after employment or the effective date of the agreement  
32 to determine that the individual is free of active tuberculosis  
33 disease.

34 (b) For purposes of this section, "examination" means a test for  
35 tuberculosis infection that is recommended by the federal Centers  
36 for Disease Control and Prevention (CDC) and that is licensed by  
37 the federal Food and Drug Administration (FDA) and, if that test  
38 is positive, an X-ray of the lungs. The aide shall not work as ~~an~~ a  
39 registered or affiliated home care aide unless he or she obtains

1 documentation from a licensed medical professional that there is  
2 no risk of spreading the disease.

3 (c) An affiliated home care aide whose employment with a home  
4 care organization began before January 1, 2015, shall submit to  
5 the examination described in subdivision (a) before July 1, 2015.

6 (d) After submitting to an examination, ~~an~~ *a registered or*  
7 *affiliated home care aide* whose test for tuberculosis infection is  
8 negative shall be required to undergo an examination at least once  
9 every two years. Once ~~an~~ *a registered or* affiliated home care aide  
10 has a documented positive test for tuberculosis infection that has  
11 been followed by an X-ray, the examination is no longer required.

12 (e) After the examination, ~~an~~ *a registered or* affiliated home  
13 care aide shall submit, and the home care organization *or home*  
14 *care referral agency* shall keep on file, a certificate from the  
15 examining practitioner showing that the *registered or* affiliated  
16 home care aide was examined and found free from active  
17 tuberculosis disease.

18 (f) The examination is a condition of initial and continuing  
19 employment with the home care organization. *The examination is*  
20 *also a condition of a registered home care aide's initial and*  
21 *continuing agreement with a home care referral agency.* The  
22 *registered or* affiliated home care aide shall pay the cost of the  
23 examination.

24 (g) ~~An~~ *A registered or* affiliated home care aide who transfers  
25 employment from one home care organization to another *or a*  
26 *registered home care aide entering into an agreement with a home*  
27 *care referral agency* shall be deemed to meet the requirements of  
28 subdivision (a) or (c) if the *registered or* affiliated home care aide  
29 can produce a certificate showing that he or she submitted to the  
30 examination within the past two years and was found to be free of  
31 active tuberculosis disease, or if it is verified by the home care  
32 organization previously employing him or her *or by the home care*  
33 *referral agency that previously had an agreement with him or her*  
34 *that it the home care organization or home care referral agency*  
35 has a certificate on file that contains that showing.

36 *SEC. 17. Section 1796.50 is added to the Health and Safety*  
37 *Code, to read:*

38 *1796.50. (a) A home care referral agency licensee shall pay*  
39 *the following fees:*

1 (1) A 24-month initial license fee, as prescribed by the  
2 department in an amount sufficient to cover the reasonable costs  
3 of administering the program, for a new home care referral agency  
4 licensee not currently licensed to provide home care services in  
5 the state.

6 (2) A two-year renewal fee, as determined by the department  
7 in an amount sufficient to cover the reasonable costs of  
8 administering the program, based on the number of office locations  
9 operated by the licensee providing registered home care aides to  
10 clients.

11 (3) Other reasonable fees as prescribed by the department  
12 necessary for the administration of this chapter.

13 (b) The fees collected shall be deposited into the Home Care  
14 Fund pursuant to subdivision (b) of Section 1796.47.

15 SEC. 18. Section 1796.51 of the Health and Safety Code is  
16 amended to read:

17 1796.51. In order to carry out the provisions of this chapter,  
18 the department may establish procedures for the receipt,  
19 investigation, and resolution of complaints against home care  
20 organizations and home care referral agencies.

21 SEC. 19. Section 1796.52 of the Health and Safety Code is  
22 amended to read:

23 1796.52. (a) The department may review and, if it determines  
24 necessary, investigate complaints filed against home care  
25 organizations or home care referral agencies regarding violations  
26 of this chapter or any rules or regulations promulgated under this  
27 chapter.

28 (b) The department shall verify through random, unannounced  
29 inspections that a home care organization or home care referral  
30 agency meets the requirements of this chapter and the rules and  
31 regulations promulgated under this chapter.

32 (c) An investigation or inspection conducted by the department  
33 pursuant to this chapter may include, but is not limited to,  
34 inspection of the books, records, or premises of a home care  
35 organization or home care referral agency. A home care  
36 organization's organization or home care referral agency's refusal  
37 to make records, books, or premises available shall constitute cause  
38 for the revocation of the home care organization's organization  
39 or home care referral agency's license.

1 (d) Other than maintaining the home care registry, the  
2 department shall have no oversight responsibility regarding  
3 registered home care aides.

4 *SEC. 20. Section 1796.53 of the Health and Safety Code is*  
5 *amended to read:*

6 1796.53. A duly authorized officer, employee, or agent of the  
7 department may, upon presentation of proper identification, enter  
8 a home care organization *or home care referral agency* during  
9 posted business hours, with or without advance notice, to secure  
10 compliance with, or to prevent a violation of, any provision of this  
11 chapter or any provision promulgated under this chapter.

12 *SEC. 21. Section 1796.55 of the Health and Safety Code is*  
13 *amended to read:*

14 1796.55. (a) A home care organization *or home care referral*  
15 *agency* that operates in violation of any requirement or obligation  
16 imposed by this chapter or any rule or regulation promulgated  
17 under this chapter may be subject to the fines levied or licensure  
18 action taken by the department as specified in this chapter.

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

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

36 (d) The department shall adopt regulations establishing  
37 procedures for notices, correction plans, appeals, and hearings.

38 *SEC. 22. Section 1796.61 of the Health and Safety Code is*  
39 *amended to read:*

1 1796.61. ~~This~~(a) *The provisions of this chapter that apply to*  
2 *registered and affiliated home care aides and to home care*  
3 *organizations shall become operative on January 1, 2015.*

4 (b) (1) *The provisions of this chapter that apply to home care*  
5 *referral agencies shall become operative on January 1, 2016.*

6 (2) *A home care referral agency applicant that submits an*  
7 *application prior to January 1, 2016, shall be authorized to provide*  
8 *registered home care aides to clients without meeting the*  
9 *requirements of Section 1796.45 until July 1, 2016.*

10 (3) *The applicant described in paragraph (2) shall meet all the*  
11 *requirements of this chapter no later than July 1, 2016.*

12 ~~SEC. 4.~~

13 SEC. 23. Section 1796.63 of the Health and Safety Code is  
14 amended to read:

15 1796.63. The department shall adopt, amend, or repeal, in  
16 accordance with Chapter 3.5 (commencing with Section 11340)  
17 of the Government Code, any reasonable rules, regulations, and  
18 standards as may be necessary or proper to carry out the purpose  
19 and intent of this chapter and to enable the department to exercise  
20 the powers and perform the duties conferred upon it by this chapter,  
21 not inconsistent with any of the provisions of any statute of this  
22 state. Notwithstanding the rulemaking provisions of the  
23 Administrative Procedure Act (Chapter 3.5 (commencing with  
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
25 Code), the department may implement and administer this chapter  
26 through written directives, without taking regulatory action, subject  
27 to the limitations provided in subdivision (b).

28 (a) The department shall post any proposed rules promulgated  
29 under this section on its public Internet Web site no later than 90  
30 calendar days prior to the effective date of the proposed rule, which  
31 shall also include notification to the public regarding how members  
32 of the public may comment, including the date on which those  
33 comment must be received in order to be considered by the  
34 department.

35 (b) The department's authority to implement and administer  
36 this section through written directives shall expire no later than 12  
37 months after the written directives are promulgated and posted on  
38 a public Internet Web site, or upon the effective date of regulations  
39 promulgated in accordance with the Administrative Procedure Act  
40 (Chapter 3.5 (commencing with Section 11340) of Part 1 of

1 Division 3 of Title 2 of the Government Code), whichever occurs  
2 sooner.

3 *SEC. 24. No reimbursement is required by this act pursuant*  
4 *to Section 6 of Article XIII B of the California Constitution because*  
5 *the only costs that may be incurred by a local agency or school*  
6 *district will be incurred because this act creates a new crime or*  
7 *infraction, eliminates a crime or infraction, or changes the penalty*  
8 *for a crime or infraction, within the meaning of Section 17556 of*  
9 *the Government Code, or changes the definition of a crime within*  
10 *the meaning of Section 6 of Article XIII B of the California*  
11 *Constitution.*