

AMENDED IN ASSEMBLY APRIL 28, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 899

Introduced by Assembly Member Yamada

February 17, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

AB 899, as amended, Yamada. The Home Care Services Act of 2011.

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

This bill would enact the Home Care Services Act of 2011 and would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services. The bill would impose various licensure requirements on a home care organization and would also impose a civil penalty on an individual or entity that operates a home care organization without a license. The bill would require a home care organization to ~~inform~~ *provide* a client ~~of certain things with specified information~~ before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services and the extent to which payment may be expected from specified sources. In addition, the home care organization would be required to, among other things, distribute to the client 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. The bill would require a home care organization to conduct background clearances on home care aides, as specified, and to require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would establish the Home Care Organization Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund to the department to carry out the provisions of the bill. The bill, in addition, would prescribe enforcement procedures and penalties for violations of the act.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Seniors, individuals with disabilities, and the frail frequently
- 4 find themselves in need of part-time to full-time assistance from
- 5 a caregiver in order to live at home independently.
- 6 (b) The Employment Development Department has identified
- 7 home care services as one of the fastest growing fields.
- 8 (c) In California, most individuals hiring a home care
- 9 organization believe that the home care aide entering their home
- 10 has been thoroughly screened and trained. However, a business
- 11 license is the only requirement needed to provide nonmedical home
- 12 care services in an individual's home.
- 13 (d) In view of the increasing number of home care aides entering
- 14 private homes, the number of incidents of abuse and neglect by
- 15 home care aides currently being reported in the media is alarming
- 16 and a matter of concern because, according to prosecutors, for
- 17 every reported incident of abuse or neglect, four others go
- 18 unreported.
- 19 (e) Discharge planners commonly keep lists of home care aides
- 20 and home care organizations for purposes of patient referral without

1 any information about the individuals or the organizations, thereby
2 placing the client and the referring organization at risk.

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

5
6 CHAPTER 13. HOME CARE SERVICES ACT OF 2011

7
8 Article 1. General Provisions

9
10 1796. This chapter shall be known and may be cited as the
11 Home Care Services Act of 2011.

12 1796.1. The State Department of Social Services shall
13 administer and enforce this chapter.

14 1796.2. For purposes of this chapter, the following definitions
15 shall apply:

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

18 (b) "Department" means the State Department of Social
19 Services.

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

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

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

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

39 (3) A health facility licensed under Chapter 2 (commencing
40 with Section 1250).

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

7 (e) (1) “Home care services” means services provided by a
8 home care aide to a client who, because of advanced age or physical
9 or mental infirmity, cannot care for the client’s own needs. These
10 services include, but are not limited to, bathing, dressing, feeding,
11 exercising, personal hygiene and grooming, transferring,
12 ambulating, positioning, toileting and incontinence care, assisting
13 with medication that the client normally self-administers,
14 housekeeping, meal planning and preparation, laundry,
15 transportation, making telephone calls, shopping for personal care
16 items or groceries, and companionship. Nothing in this subdivision
17 shall be construed to authorize a home care aide to administer
18 medication.

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

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

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

24 (C) Services authorized to be provided by a licensed health
25 facility pursuant to Chapter 2 (commencing with Section 1250) of
26 Division 2.

27 (D) In-home supportive services provided pursuant to Article
28 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
29 Division 9 of the Welfare and Institutions Code.

30 ~~(E) Organizations that provide only housekeeping.~~

31 *(E) Services provided by organizations that provide only*
32 *housekeeping services.*

33 *(F) Services authorized to be provided by a licensed residential*
34 *care facility for the elderly pursuant to Chapter 3.2 (commencing*
35 *with Section 1569).*

36 (f) “Residence” means a temporary or permanent location where
37 a client receives home care services.

38 1796.3. Nothing in this chapter shall be construed to prohibit
39 an individual from employing a home care aide without the
40 assistance of a home care organization.

Article 2. Licensure

1796.5. (a) No individual, partnership, corporation, limited liability company, joint venture, association, or other entity shall arrange for the provision of home care services by a home care aide to a client in the state without first obtaining a license pursuant to this chapter.

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

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

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

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

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

(a) Have a physical office with a physical address in California.

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

(c) Comply with Section 1796.21.

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

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

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

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

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

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

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

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

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

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

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

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

(4) Submits proof of a valid workers’ compensation policy 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 (5) Passes a background clearance pursuant to Section 1796.33.

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

5 (b) The term of a license issued under this section is one year.
6 The license may be renewed upon application to the department
7 and payment of the renewal fee prescribed by the department
8 pursuant to Section 1796.39.

9 1796.15. At least 60 days before the expiration of a license,
10 the department shall provide the licensee, through electronic mail
11 or other means, at the latest contact address furnished by the
12 licensee to the department, a notice stating the amount of the
13 renewal fee and the date on which it is due, and that failure to pay
14 that fee on or before the date due shall result in the expiration of
15 the license.

16 1796.17. (a) In order to obtain a license, the following
17 individual or individuals shall consent to the background clearance
18 described in subdivision (b) of Section 1796.33:

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

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

24 (b) If the background clearance conducted pursuant to
25 subdivision (a) discloses a conviction for a felony or a crime that
26 evidences an unfitness to operate a home care organization, the
27 application for a license shall be denied. This subdivision shall not
28 apply to deny a license if the individual or individuals, as
29 applicable, present evidence satisfactory to the department that
30 the individual or individuals, as applicable, have been rehabilitated
31 and presently are of good character so as to justify the issuance of
32 a license.

33 Article 3. Complaints, Inspections, and Investigations

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36 1796.19. (a) The department shall review and, if it determines
37 necessary, investigate complaints filed against a home care
38 organization.

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

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

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

Article 4. Organization Operating Requirements

1796.21. A home care organization shall do all of the following:

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

(b) Maintain a physical address.

(c) Have both of the following policies in place:

(1) A written policy regarding advance directives.

(2) A receipt and disbursement policy for expenditures made on behalf of a client to ensure that financial abuse does not occur.

(d) Maintain a valid workers' compensation policy covering its home care aides.

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

(f) Comply with the regulations adopted by the department pursuant to this chapter.

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

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

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

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

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

1 Alternatively, the organization may require the home care aide,
2 while providing services to a client, to wear a badge that includes
3 all of the following information in 14-point type or larger:

- 4 (1) The aide's name.
- 5 (2) A photograph of the aide.
- 6 (3) The name and phone number of the home care organization.
- 7 (e) Require home care aides to demonstrate that they are free
8 of active tuberculosis pursuant to Section 1796.35.
- 9 (f) Require home care aides to annually complete not less than
10 two hours of training on job-related topics.
- 11 (g) Prohibit home care aides from accepting money or property
12 from a client without written permission from the home care
13 organization.
- 14 (h) Oversee the care of the client, including supervisory visits
15 and updates to the plan of care as necessary.

16
17 Article 5. Client Rights
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19 1796.25. With respect to clients, a home care organization shall
20 do all the following:

- 21 (a) Advise a client of any change in the client's plan for home
22 care services.
- 23 (b) Before arranging for the provision of home care services to
24 a client, do all of the following:
 - 25 (1) Advise the client of its policy regarding the disclosure of
26 client records.
 - 27 (2) Inform the client of the types and hours of available home
28 care services.
 - 29 (3) 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) Have a written agreement with the client that includes, but
34 is not limited to, the cost of and the hours during which home care
35 services will be provided to the client and reference to the personal
36 attendant requirements, if applicable, as referenced in Wage Order
37 15-2001, issued by the Industrial Welfare Commission.

38 1796.27. (a) Home care clients are entitled to the following
39 rights:

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

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

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

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

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

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

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

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

Article 6. Home Care Aides

1796.29. (a) On and after January 1, 2012, a home care organization shall not hire an individual as a home care aide unless the individual complies with all of the following requirements:

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

(2) Provides not less than two work or school related references or, for an individual with no previous work experience, not less than two character references from nonrelatives. The organization shall verify the references before hiring the individual.

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

(b) A home care organization that hires an individual pursuant to subdivision (a) shall ensure that the individual, within the first 30 days of employment, demonstrates basic competency in all of the following areas:

1 (1) Universal health precautions, including, but not limited to,
2 infection control.

3 (2) Client rights.

4 (3) Client safety.

5 (4) The home care organization's emergency procedures.

6 (5) How to observe, report, and document changes in a client's
7 daily living skills.

8 (6) How to report, prevent, and detect abuse and neglect.

9 (7) How to assist a client with personal hygiene and other home
10 care services.

11 (8) If the home care organization provides transportation
12 services, how to safely transport a client.

13 1796.31. A home organization shall, by January 1, 2013, ensure
14 that home care aides who were hired before January 1, 2012, meet
15 both of the following requirements:

16 (a) Demonstrate the language skills specified in paragraph (3)
17 of subdivision (a) of Section 1796.29.

18 (b) Demonstrate basic competency in the areas specified in
19 subdivision (b) of Section 1796.29.

20 1796.33. (a) A home care organization shall conduct a
21 background clearance on an individual hired as a home care aide,
22 unless the individual holds a valid, unexpired license or registration
23 in a health-related field that requires a background check as a
24 condition of the license or registration.

25 (b) The background clearance shall consist of either of the
26 following:

27 (1) A criminal history record check conducted by the California
28 Department of Justice and the Federal Bureau of Investigation and
29 administered by the Community Care Licensing Division within
30 the State Department of Social Services, so that a home care aide
31 may also be allowed to provide services within a residential care
32 facility for the elderly.

33 (2) A background check conducted by an investigative consumer
34 reporting agency, as defined in Section 1786.2 of the Civil Code.
35 This background check shall include, but shall not be limited to,
36 all of the following:

37 (A) A social security number trace that provides the individual's
38 residential history and prior names.

39 (B) A criminal history search in all counties and federal districts
40 in which, as disclosed by the individual and according to the results

1 of the trace specified in subparagraph (A), the individual has
2 resided, worked, or attended school within the past seven years.

3 (C) A search of a commercial criminal record database using
4 both the current and any previous names of the individual, as
5 disclosed by the individual and according to the results of the trace
6 specified in subparagraph (A).

7 (c) If the background clearance conducted pursuant to
8 subdivision (b) discloses a conviction for a violation of any of the
9 following provisions of the Penal Code, the organization shall
10 deny or terminate, as applicable, the employment of that individual:

11 (1) Section 187, 203, 205, 206, 207, 209, 210, 210.5, 211, 220,
12 222, 243.4, 245, 261, 262, 264.1, 265, 266, 267, 273.5, 285, 288,
13 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, 484b, 484d, 484e,
14 484f, 484g, 484h, 484i, 484j, 487, 488, 496, 503, 518, or 666.

15 (2) Subdivision (a) of Section 192.

16 (3) Subdivision (a) or (d) of Section 273.

17 (4) Subdivision (c), (d), (f), or (g) of Section 286.

18 (5) Subdivision (c), (d), (f), or (g) of Section 288a.

19 (d) The organization shall complete the background clearance
20 specified in subdivision (b) on home care aides whose employment
21 began before January 1, 2012, within 180 days of the effective
22 date of this section.

23 (e) A home care aide hired on or after January 1, 2012, shall
24 not be permitted to provide home care services until he or she
25 passes the background clearance pursuant to this section.

26 1796.35. (a) An individual hired as a home care aide on or
27 after January 1, 2012, shall be terminated from employment unless
28 the individual submitted to an examination within six months prior
29 to employment or submits to an examination within 14 days after
30 employment to determine that the individual is free of active
31 tuberculosis. For purposes of this section, "examination" consists
32 of a tuberculin skin test and, if that test is positive, an X-ray of the
33 lungs.

34 (b) A ~~health~~ home care aide whose employment with a home
35 care organization began before January 1, 2012, shall, within 60
36 days of the effective date of this section, submit to the examination
37 described in subdivision (a).

38 (c) After submitting to an examination, a home care aide who
39 is skin test negative shall be required to undergo an examination
40 at least once every two years. Once a home care aide has a

1 documented positive skin test that has been followed by an X-ray,
2 the examination is no longer required.

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

7 (e) The examination shall be a condition of initial and continuing
8 employment with the home care organization. The home care aide
9 shall pay the cost of the examination.

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

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

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

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

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

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

27 (B) Chronic fatigue or listlessness for a period exceeding two
28 weeks.

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

30 (D) Night sweats.

31 (E) Unexplained weight loss.

32 Article 7. Revenues

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34 1796.37. There is in the State Treasury the Home Care
35 Organization Fund. Notwithstanding Section 13340 of the
36 Government Code, all money in the fund is continuously
37 appropriated to the department for the purpose of carrying out and
38 enforcing this chapter.
39

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

Article 8. Enforcement and Penalties

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

(b) When the department determines that a home care organization is in violation of this chapter or any regulations adopted hereunder, 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 regulation 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 an administrative fine of up to four hundred dollars (\$400) per day commencing on the date the violation was identified and ending on the date the 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 violations committed by the licensee.

- 1 (4) The financial benefit to the home care organization of
- 2 committing or continuing the violation.
- 3 (e) The department shall adopt regulations establishing
- 4 procedures for notices, correction plans, appeals, and hearings. In
- 5 developing the procedures, the department shall convene and
- 6 consult with a working group of affected stakeholders.

O