

AMENDED IN ASSEMBLY MAY 11, 2011

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
(Coauthor: Senator Evans)

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 establish home care organizations as being recognized in the health care industry.* 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 provide a client with specified information before arranging for the provision of home care services, as defined, to that client, including, but not limited to, the types and hours of available home care services and the extent to which payment may be expected from specified sources. In

addition, the home care organization would be required to, among other things, distribute to the client 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 act. The bill, in addition, would prescribe enforcement procedures and penalties for violations of the act.

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

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Seniors, individuals with disabilities, and the frail frequently
- 4 find themselves in need of part-time to full-time assistance from
- 5 a caregiver in order to live at home independently.
- 6 (b) The Employment Development Department has identified
- 7 home care services as one of the fastest growing fields.
- 8 (c) In California, most individuals hiring a home care
- 9 organization believe that the home care aide entering their home
- 10 has been thoroughly screened and trained. However, a business
- 11 license is the only requirement needed to provide nonmedical home
- 12 care services in an individual's home.
- 13 (d) In view of the increasing number of home care aides entering
- 14 private homes, the number of incidents of abuse and neglect by
- 15 home care aides currently being reported in the media is alarming
- 16 and a matter of concern because, according to prosecutors, for

1 every reported incident of abuse or neglect, four others go
2 unreported.

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

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

9
10 CHAPTER 13. HOME CARE SERVICES ACT OF 2011

11
12 Article 1. General Provisions

13
14 1796. This chapter shall be known and may be cited as the
15 Home Care Services Act of 2011.

16 1796.1. The State Department of Social Services shall
17 administer and enforce this chapter.

18 1796.2. For purposes of this chapter, the following definitions
19 shall apply:

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

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

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

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

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

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

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

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

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

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

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

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

28 (C) Services authorized to be provided by a licensed health
29 facility pursuant to Chapter 2 (commencing with Section 1250) of
30 Division 2.

31 (D) In-home supportive services provided pursuant to Article
32 7 (commencing with Section 12300) of Chapter 3 of Part 3 of
33 Division 9 of the Welfare and Institutions Code.

34 (E) Services provided by organizations that provide only
35 housekeeping services.

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

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

1 1796.3. Nothing in this chapter shall be construed to prohibit
2 an individual from employing a home care aide without the
3 assistance of a home care organization.

4 1796.4. *This chapter shall establish home care organizations*
5 *as being recognized in the health care industry.*

6
7 Article 2. Licensure
8

9 1796.5. (a) No individual, partnership, corporation, limited
10 liability company, joint venture, association, or other entity shall
11 arrange for the provision of home care services by a home care
12 aide to a client in the state without first obtaining a license pursuant
13 to this chapter.

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

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

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

36 (3) Bring an action against the individual or entity under Chapter
37 5 (commencing with Section 17200) of Part 2 of Division 7.

38 1796.7. A home care organization that has its principal place
39 of business in another state shall, in addition to the other
40 requirements of this chapter, comply with both of the following

1 requirements before arranging for the provision of home care
2 services by a home care aide to a client in California:

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

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

6 (c) Comply with Section 1796.21.

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

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

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

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

25 1796.11. In order to administer this chapter, the department
26 shall do all of the following:

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

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

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

35 1796.13. (a) The department shall issue a license to a home
36 care organization that meets all of the following requirements:

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

39 (2) Pays a licensure fee, as prescribed by the department
40 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 number, the effective and expiration dates of the policy, and the name and address of the policy carrier.

~~(5) Passes a background clearance pursuant to Section 1796.33.~~

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

(6) Complies with the requirements of this chapter.

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

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

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

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

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

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

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

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

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

18 (2) A copy of the individual's criminal offender record
19 information search response. The department shall provide this
20 information in a manner that protects the confidentiality and
21 privacy of the criminal offender record information search
22 response.

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

26 (B) The department shall record the date the response was
27 provided by the Department of Justice and the date the department
28 provided the copy of the response to the individual.

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

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

38 (2) The department shall hold an administrative hearing upon
39 receipt of the written request from the individual pursuant to
40 paragraph (1). The administrative hearing shall be consistent with

1 *the procedures specified in Section 100171 of the Health and Safety*
2 *Code, except where those procedures are inconsistent with this*
3 *section. The administrative hearing shall be conducted by a hearing*
4 *officer or administrative law judge designated by the director.*

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

8
9 Article 3. Complaints, Inspections, and Investigations

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

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

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

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

23
24 Article 4. Organization Operating Requirements

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

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

29 (b) Maintain a physical address.

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

31 (1) A written policy regarding advance directives.

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

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

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

38 (f) Comply with the regulations adopted by the department
39 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. Alternatively, the organization may require the home care aide, while providing services to a client, to wear a badge that includes all of the following information in 14-point type or larger:

(1) The aide's name.

(2) A photograph of the aide.

(3) The name and phone number of the home care organization.

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

(f) Require home care aides to annually complete not less than two hours of training on job-related topics.

(g) Prohibit home care aides from accepting money or property from a client without written permission from the home care organization.

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

Article 5. Client Rights

1796.25. With respect to clients, a home care organization shall do all the following:

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

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

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

3 (2) Inform the client of the types and hours of available home
4 care services.

5 (3) Inform the client, orally and in writing, of the home care
6 services that are or are not covered by Medi-Cal or Medicare, as
7 applicable, and the extent to which payment may be expected from
8 the client, from Medicare or Medi-Cal, and from any other source.

9 (c) Have a written agreement with the client that includes, but
10 is not limited to, the cost of and the hours during which home care
11 services will be provided to the client and reference to the personal
12 attendant requirements, if applicable, as referenced in Wage Order
13 15-2001, issued by the Industrial Welfare Commission.

14 1796.27. (a) Home care clients are entitled to the following
15 rights:

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

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

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

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

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

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

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

35 (e) A home care organization shall protect, and promote the
36 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) Universal health precautions, including, but not limited to, infection control.

(2) Client rights.

(3) Client safety.

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

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

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

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

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

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

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

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

1796.33. (a) A home care organization shall conduct a background clearance on an individual hired as a home care aide, unless the individual holds a valid, unexpired license or registration

1 in a health-related field that ~~requires a background check~~ *requires,*
 2 as a condition of the license or registration, *a background check*
 3 *or a criminal history record check as specified in subdivision (b).*

4 (b) The background clearance shall consist of ~~either of the~~
 5 ~~following:~~

6 (1) ~~A criminal history record check conducted by the California~~
 7 ~~Department of Justice and the Federal Bureau of Investigation and~~
 8 ~~administered by the Community Care Licensing Division within~~
 9 ~~the State Department of Social Services, so that a home care aide~~
 10 ~~may also be allowed to provide services within a residential care~~
 11 ~~facility for the elderly.~~

12 (2) ~~A background check conducted by an investigative consumer~~
 13 ~~reporting agency, as defined in Section 1786.2 of the Civil Code.~~
 14 ~~This background check shall include, but shall not be limited to,~~
 15 ~~all of the following:~~

16 (A) ~~A social security number trace that provides the individual's~~
 17 ~~residential history and prior names.~~

18 (B) ~~A criminal history search in all counties and federal districts~~
 19 ~~in which, as disclosed by the individual and according to the results~~
 20 ~~of the trace specified in subparagraph (A), the individual has~~
 21 ~~resided, worked, or attended school within the past seven years.~~

22 (C) ~~A search of a commercial criminal record database using~~
 23 ~~both the current and any previous names of the individual, as~~
 24 ~~disclosed by the individual and according to the results of the trace~~
 25 ~~specified in subparagraph (A).~~

26 (c) ~~If the background clearance conducted pursuant to~~
 27 ~~subdivision (b) discloses a conviction for a violation of any of the~~
 28 ~~following provisions of the Penal Code, the organization shall~~
 29 ~~deny or terminate, as applicable, the employment of that individual:~~

30 (1) ~~Section 187, 203, 205, 206, 207, 209, 210, 210.5, 211, 220,~~
 31 ~~222, 243.4, 245, 261, 262, 264.1, 265, 266, 267, 273.5, 285, 288,~~
 32 ~~288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, 484b, 484d, 484e,~~
 33 ~~484f, 484g, 484h, 484i, 484j, 487, 488, 496, 503, 518, or 666.~~

34 (2) ~~Subdivision (a) of Section 192.~~

35 (3) ~~Subdivision (a) or (d) of Section 273.~~

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

37 (5) ~~Subdivision (c), (d), (f), or (g) of Section 288a.~~ *a criminal*
 38 *history record check conducted by the Department of Justice and*
 39 *administered by the State Department of Social Services.*

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

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

12 (2) A violent or serious felony, as specified in subdivision (c)
13 of Section 667.5 of the Penal Code or subdivision (c) of Section
14 1192.7 of the Penal Code.

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

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

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

34 (1) The nature and seriousness of the conviction under
35 consideration and its relationship to the individual's employment
36 duties and responsibilities.

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

1 (3) *The time that has elapsed since the commission of the crime*
2 *and the number of offenses.*

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

6 (5) *Any rehabilitation evidence submitted by the individual,*
7 *including, but not limited to, character references.*

8 (6) *Employment history and current employer recommendations.*

9 (7) *Circumstances surrounding the commission of the crime*
10 *that would demonstrate the unlikelihood of repetition.*

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

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

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

24 (A) *The state criminal history record shall not be modified or*
25 *altered from its form or content as provided by the Department of*
26 *Justice.*

27 (B) *The department shall record the date the response was*
28 *provided by the Department of Justice and the date the department*
29 *provided the copy of the response to the individual.*

30 (C) *The criminal offender record information search response*
31 *shall not be made available by the department to any individual*
32 *other than the applicant.*

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

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

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

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

7 ~~(d)~~

8 (h) *The organization shall complete the background clearance*
9 *specified in subdivision (b) on home care aides whose employment*
10 *began before January 1, 2012, within 180 days of the effective*
11 *date of this section.*

12 ~~(e)~~

13 (i) *A home care aide hired on or after January 1, 2012, shall not*
14 *be permitted to provide home care services until he or she passes*
15 *the background clearance or has been granted a general exception*
16 *by the department pursuant to this section.*

17 1796.35. (a) *An individual hired as a home care aide on or*
18 *after January 1, 2012, shall be terminated from employment unless*
19 *the individual submitted to an examination within six months prior*
20 *to employment or submits to an examination within 14 days after*
21 *employment to determine that the individual is free of active*
22 *tuberculosis. For purposes of this section, "examination" consists*
23 *of a tuberculin skin test and, if that test is positive, an X-ray of the*
24 *lungs.*

25 (b) *A home care aide whose employment with a home care*
26 *organization began before January 1, 2012, shall, within 60 days*
27 *of the effective date of this section, submit to the examination*
28 *described in subdivision (a).*

29 (c) *After submitting to an examination, a home care aide who*
30 *is skin test negative shall be required to undergo an examination*
31 *at least once every two years. Once a home care aide has a*
32 *documented positive skin test that has been followed by an X-ray,*
33 *the examination is no longer required.*

34 (d) *After the examination, a home care aide shall submit, and*
35 *the organization shall keep on file, a certificate from the examining*
36 *practitioner showing that the home care aide was examined and*
37 *found free from active tuberculosis.*

38 (e) *The examination shall be a condition of initial and continuing*
39 *employment with the home care organization. The home care aide*
40 *shall pay the cost of the examination.*

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

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

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

Article 7. Revenues

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

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.

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

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

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