

AMENDED IN SENATE APRIL 28, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 411

Introduced by Senator Price
(Coauthors: Senators Alquist, DeSaulnier, Padilla, and Vargas)

February 16, 2011

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

LEGISLATIVE COUNSEL'S DIGEST

SB 411, as amended, Price. Home Care Services Act of 2011.

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

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

This bill would enact the Home Care Services Act of 2011, which would provide for the licensure and regulation of home care organizations, as defined, by the State Department of Public Health, *and the certification of home care aides*. The bill would exclude specified entities from the definition of a home care organization. The bill would impose various licensure requirements on a home care

organization 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, the extent to which payment may be expected from specified sources, and the availability of services provided by the State Long-Term Care Ombudsman. In addition, the home care organization would be required, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

~~This bill would require a home care organization to conduct background clearances on for home care aides, as specified, and to prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would establish the Home Care Organization and Home Care Aide Certification Fund, would authorize the department to impose various fees to be deposited in that fund, and would make a continuous appropriation from that fund, except as specified, to the department to carry out the provisions of the bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act.~~

Vote: majority. 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 elderly
- 4 frequently find themselves in need of part-time to full-time
- 5 assistance from a caregiver in order to live at home independently.

1 (b) Out of the 701,000 estimated home care aides working in
2 the country, more than 70,000 work in California.

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

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

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

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

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

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

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

32
33 CHAPTER 13. HOME CARE SERVICES

34
35 Article 1. General Provisions

36
37 1796.10. This chapter shall be known and may be cited as the
38 Home Care Services Act of 2011.

39 1796.11. The State Department of Public Health shall
40 administer and enforce this chapter.

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

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

(b) “Department” means the State Department of Public Health.

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

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

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

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

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

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

(D) A 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, without regard to whether the county provides these services as a public authority or through a nonprofit consortium established pursuant to Section 12301.6 of the Welfare and Institutions Code.

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

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

1796.13. (a) For purposes of this chapter, “home care services” means services provided by a home care aide to a client who, because of advanced age or physical or mental infirmity, cannot

1 perform these services for himself or herself. These services
2 include, but are not limited to, bathing, dressing, feeding,
3 exercising, personal hygiene and grooming, transferring,
4 ambulating, positioning, toileting and incontinence care, assisting
5 with medication that the client normally self-administers,
6 housekeeping, meal planning and preparation, laundry,
7 transportation, correspondence, making telephone calls, shopping
8 for personal care items or groceries, and companionship. This
9 subdivision shall not be construed to authorize a home care aide
10 to administer medication that would otherwise require
11 administration or oversight by a licensed healthcare professional.

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

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

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

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

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

22 (5) Services authorized to be provided by a licensed residential
23 care facility for the elderly pursuant to Chapter 3.2 (commencing
24 with Section 1569).

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

28 Article 2. Licensure

29
30
31 1796.20. (a) An individual, partnership, corporation, limited
32 liability company, joint venture, association, or other entity shall
33 not arrange for the provision of home care services by a home care
34 aide to a client in this state without first obtaining a license pursuant
35 to this chapter.

36 (b) An individual or entity that violates this chapter shall be
37 liable for a civil penalty not to exceed nine hundred dollars (\$900)
38 per day for each calendar day of each violation.

39 (c) Upon discovering that an individual or entity is in violation
40 of this chapter, the department shall send a written notice of

1 noncompliance to the individual or entity and to the Attorney
2 General or appropriate district attorney. Upon receiving this notice,
3 the Attorney General or district attorney shall do any or all of the
4 following:

5 (1) Issue a cease and desist order, which shall remain in effect
6 until the individual or entity has obtained a license pursuant to this
7 chapter. If the individual or entity fails to comply with the cease
8 and desist order within 20 calendar days, the Attorney General or
9 a district attorney shall apply for an injunction.

10 (2) Impose the civil penalty described in subdivision (b).

11 (3) Bring an action against the individual or entity under Chapter
12 5 (commencing with Section 17200) of Part 2 of Division 7 of the
13 Business and Professions Code.

14 1796.21. A home care organization that has its principal place
15 of business in another state, in addition to the other requirements
16 of this chapter, shall comply with both of the following
17 requirements before arranging for the provision of home care
18 services by a home care aide to a client in California:

19 (a) Have an office in California.

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

22 1796.22. The enactment of this chapter is an exercise of the
23 police power of the state for the protection of the public welfare,
24 prosperity, health, safety, and peace of its people. The civil
25 penalties provided by this chapter are in addition to any other
26 penalty provided by law.

27 1796.23. In order to carry out the provisions of this chapter,
28 the department shall do all of the following:

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

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

32 (c) Investigate complaints concerning misconduct by certified
33 home care aides. The department may take disciplinary action in
34 accordance with subdivision (b) of Section 1796.41.

35 (d) Maintain a registry, on the department's Internet Web site,
36 of the certification status of all certified home care aides, the name
37 and location of the home care aide's employer, home care
38 organization, and the status of any proposed or completed
39 disciplinary action against the certified home care aide. The
40 department also may request and maintain additional employment

1 information for certified home care aides, as necessary, which
2 shall not be publicly available on the registry.

3 1796.24. (a) The department shall issue a license to a home
4 care organization that meets all of the following requirements:

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

7 (2) Pays a licensure fee, as prescribed by the department
8 pursuant to Section 1796.71.

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

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

16 (5) Passes any background clearance, as required pursuant to
17 Section 1796.26.

18 (6) Provides the department with a list of all of its home care
19 aides and proof that each satisfies the requirements of Section
20 1796.60.

21 (7) Complies with the requirements of this chapter.

22 (b) The term of a license issued under this section is one year.

23 The license may be renewed upon application to the board and
24 payment of the renewal fee prescribed by the board pursuant to
25 Section 1796.71.

26 (c) Following the receipt of an application for a license or
27 renewal of a license under this section, the department shall
28 conduct an onsite inspection of the applicant to ensure compliance
29 with this chapter.

30 1796.25. At least 30 days before the expiration of a license,
31 the department shall mail to the licensee, at the latest address
32 furnished by the licensee to the department, a notice stating the
33 amount of the renewal fee and the date on which it is due, and that
34 failure to pay that fee on or before the date due will result in the
35 expiration of the license.

36 1796.26. (a) In order to obtain a license, the following
37 individual or individuals shall consent to the background clearance
38 described in subdivision (b) of Section 1796.62:

39 (1) The owner or owners of a home care organization if the
40 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 10-percent or greater interest in that entity.

(b) (1) The department shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all home care organization owners, as described in subdivision (a) for the purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(2) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the department.

(3) The Department of Justice shall provide a state and federal response to the department pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

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

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

~~(b)~~

(c) 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 be applied 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.

1796.27. A private or public organization, with the exception of a 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 not 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 advertising, 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 terms “home care organization,” “home care,” “in-home care,” or any combination of those terms, within its name.

Article 3. Complaints, Inspections, and Investigations

1796.30. (a) The department shall investigate complaints filed against home care organizations.

(b) The department shall verify through annual random, unannounced inspections that a home care organization meets the requirements of this chapter and the regulations adopted pursuant thereto.

(c) An investigation or inspection conducted by the department pursuant to this chapter may include, but is not limited to, 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. Home Care Organization Operating Requirements

1796.40. 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) Operate the organization in a commercial office space that complies with local zoning ordinances.

(c) Have plans, procedures, and policies in place, including all of the following:

(1) Plans and procedures to be followed in the event of emergencies or natural disasters that would result in the interruption of home care services.

(2) A documented backup staffing plan in the event that a home care aide scheduled to provide home care services becomes unavailable.

(3) A written policy regarding advance directives.

(4) 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 dishonesty bond, including third-party coverage, with a minimum limit of ten thousand dollars (\$10,000).

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

1796.41. With respect to home care aides employed by a home care organization, the organization shall consult the department's registry before hiring an individual or placing him or her in direct contact with patients. In addition, the organization shall do all of the following:

(a) Ensure that each of its home care aides meets the requirements of Section 1796.61.

(b) 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.

(c) Evaluate home care aides as follows:

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

(2) Every 62 days, supervise each home care aide providing home care services in the residence of a client, provided that client consent is obtained. The supervision required by this paragraph shall not be billed to the client.

(d) Ensure that a home care aide, when providing services to a client, has access at all times to a representative of the organization

1 who is in a supervisory capacity and who does not regularly render
2 home care services to that client.

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

6 (1) The aide's name.

7 (2) A photograph of the aide.

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

9 (4) The expiration date of the license of the home care
10 organization.

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

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

15 (g) Require home care aides to annually complete not less than
16 eight paid hours of paid department-approved training on
17 job-related topics.

18 (h) Prohibit home care aides from accepting money or property
19 from a client without written permission from the home care
20 organization.

21
22 Article 5. Client Rights

23
24 1796.50. With respect to clients, a home care organization shall
25 do all of the following:

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

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

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

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

34 (3) Inform the client of the types and hours of available home
35 care services.

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

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

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

10 (e) Inform the client, both orally and in writing, at the time of
11 arranging for the provision of home care services, of the availability
12 of services provided by the Office of State Long-Term Care
13 Ombudsman, including independent complaint resolution services,
14 and provide the client with written contact information for the
15 office.

16 1796.51. (a) Home care clients are entitled to the following
17 rights:

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

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

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

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

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

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

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

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

Article 6. Home Care Aides

1796.60. (a) Beginning January 1, 2013, the department ~~shall require any person hired as a long-term care worker for the elderly or persons with disabilities to be certified as a home care aide~~ *shall require any person hired as a home care aide to be certified* within 30 days from the date of being hired.

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

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

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

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

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

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

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

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

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

(f) The department shall set a fee for certification under this section that shall be paid for by the employer.

(g) An individual who wishes, independent of an employer-employee relationship, to obtain a certificate to provide home care aide services, shall pay for his or her own certification.

1796.61. (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 an individual interview, to the satisfaction of the organization.

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

(3) Demonstrates that he or she possesses sufficient language skills 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, satisfactorily completes the home care certification training in Section 1796.60.

1796.62. (a) A home care organization shall conduct and pay for a background clearance on an individual hired as a home care aide, unless the individual holds a valid, unexpired license or registration in a health-related field that requires a background check as a condition of the license or registration.

~~(b) The background clearance shall consist of a livescan criminal history record check conducted by the Department of Justice. Within five working days after receiving a criminal record or information from the Department of Justice, the licensee shall notify the department and the applicant of any criminal convictions reported.~~

(b) (1) The home care organization shall electronically submit to the Department of Justice fingerprint images and related information required by the Department of Justice of all home care aides, as defined under subdivision (c) of Section 1796.12, for the purposes of obtaining information as to the existence and content of a record of state convictions and state arrests, and also information as to the existence and content of a record of state arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

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

(3) The home care organization shall request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for persons described in paragraph (1).

1 (4) *The Department of Justice shall charge a fee not to exceed*
2 *the actual cost of processing the request described in this*
3 *subdivision.*

4 (c) If the background check required by subdivision (b) discloses
5 a conviction or incarceration for a conviction of any of the
6 following provisions of the Penal Code within 10 years, the
7 organization shall deny or terminate, as applicable, the employment
8 of that individual:

9 (1) Fraud against a government health care or supportive
10 services program, including Medicare, Medicaid, or services
11 provided under Title V, Title XX, or Title XXI of the federal Social
12 Security Act, or a violation of subdivision (a) of Section 273a of
13 the Penal Code, or Section 368 of the Penal Code, or similar
14 violations in another jurisdiction.

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

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

24 (4) A felony offense described in paragraph (2) of subdivision
25 (c) or paragraph (2) of subdivision (g) of Section 10980.

26 (d) Notwithstanding subdivision (c), a certification shall not be
27 denied under this section if the applicant has obtained a certificate
28 of rehabilitation under Chapter 3.5 (commencing with Section
29 4852.01) of Title 6 of Part 3 of the Penal Code or the information
30 or accusation against him or her has been dismissed pursuant to
31 Section 1203.4 of the Penal Code.

32 (e) The organization shall complete and pay for the background
33 clearance specified in subdivision (b) on home care aides whose
34 employment began before January 1, 2012, within 180 days of the
35 effective date of this section.

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

39 1796.63. (a) An individual hired as a home care aide on or
40 after January 1, 2012, shall be terminated from employment unless

1 the individual submitted to an examination within six months prior
2 to employment or submits to an examination within 14 days after
3 employment to determine that the individual is free of active
4 tuberculosis. For purposes of this section, “examination” consists
5 of a tuberculin skin test and, if that test is positive, an X-ray of the
6 lungs.

7 (b) A home care aide whose employment with a home care
8 organization began before January 1, 2012, within 14 days of the
9 effective date of this section, shall submit to the examination
10 described in subdivision (a).

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

16 (d) After the examination, a home care aide shall submit, and
17 the organization shall keep on file, a certificate from the examining
18 practitioner showing that the home care aide was examined and
19 found free from active tuberculosis.

20 (e) The examination is a condition of initial and continuing
21 employment with the home care organization. The home care aide
22 shall pay the cost of the examination.

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

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

34 (1) The individual’s name, address, and telephone number.

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

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

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

1 (B) Chronic fatigue or listlessness for a period exceeding two
2 weeks.

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

4 (D) Night sweats.

5 (E) Unexplained weight loss of eight pounds or more.

6
7 Article 7. Revenues

8
9 1796.70. (a) There is in the State Treasury the Home Care
10 Organization and Home Care Aide Certification Fund.
11 Notwithstanding Section 13340 of the Government Code, and
12 ~~except as provided~~ *except for money in the fines and penalties*
13 *account as set forth* in subdivision (b), all money in the fund is
14 continuously appropriated to the department for the purpose of
15 carrying out and enforcing this chapter.

16 (b) Fines and penalties collected pursuant to this chapter shall
17 be deposited into a separable penalty account in the fund and shall
18 be expended, upon appropriation by the Legislature, for the purpose
19 of carrying out and enforcing this chapter.

20 1796.71. (a) The department shall assess licensure, renewal,
21 background check, and other fees for each location of a home care
22 organization in amounts sufficient to cover the costs of
23 administering this chapter. The department shall also assess from
24 the employer of each home care aid a fee in an amount sufficient
25 to pay the cost of providing certification of home care aides.

26 (b) The department may periodically adjust these fees for
27 inflation. The fees collected pursuant to this chapter shall be
28 deposited in the fund.

29
30 Article 8. Enforcement and Penalties

31
32 1796.80. (a) A home care organization operating in violation
33 of this chapter or any rule adopted hereunder may be subject to
34 the penalties or fines levied or licensure action taken by the
35 department as specified in this section.

36 (b) When the department determines that a home care
37 organization is in violation of this chapter or any rules promulgated
38 hereunder, a notice of violation shall be served upon the licensee.
39 Each notice of violation shall be prepared in writing and shall
40 specify the nature of the violation and the statutory provision or

1 rule alleged to have been violated. The notice shall inform the
2 licensee of any action the department may take under this chapter,
3 including the requirement of an agency plan of correction,
4 assessment of a penalty, or action to suspend, revoke, or deny
5 renewal of the license. The director or his or her designee shall
6 also inform the licensee of rights to a hearing under this chapter.

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

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

14 (1) The gravity of the violation, including the probability that
15 death or serious physical or mental harm to a client will result or
16 has resulted, the severity of the actual or potential harm, and the
17 extent to which the provisions of the applicable statutes or
18 regulations were violated.

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

21 (3) Any previous violation committed by the licensee.

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

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