

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 31, 2011

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, Lieu, 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.

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, including requiring a licensed home care organization to be accredited by an appropriate accrediting organization, as specified. The bill 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, this bill would require the home care organization, among other things, to distribute to the client its advance directive policy and provide a written notice to the client of certain rights. The bill would also prohibit a home care organization from hiring an individual as a home care aide unless that individual meets certain requirements, including, but not limited to, demonstrating that he or she has specified language skills and completing a minimum of 5 hours of training as specified.

This bill would require background clearances for home care aides, as prescribed, and would set forth specific duties of the home care organization, the department, and the Department of Justice in this regard. The bill would require home care aides to demonstrate they are free of active tuberculosis. The bill would also require a home care organization to conduct regular evaluations of its home care aides, as specified, and to ensure that home care aides demonstrate basic competency in certain areas. The bill would require the department to impose various fees to be deposited in the State Department of Public Health Licensing and Certification Program Fund. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act, and would authorize the department to implement the bill through all-facility letters or similar instructions, pending the adoption of regulations.

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

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

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:

1 (a) Seniors, individuals with disabilities, and the frail elderly
2 frequently find themselves in need of part-time to full-time
3 assistance from a caregiver in order to live at home independently.

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

6 (c) The Employment Development Department has identified
7 home care services as one of the fastest growing fields of
8 employment.

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

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

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

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

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

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

CHAPTER 13. HOME CARE SERVICES

Article 1. General Provisions

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

1796.11. The State Department of Public Health shall 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.

1 (E) *A home medical device retail facility licensed under Section*
2 *111656.*

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

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

8 1796.13. (a) For purposes of this chapter, “home care services”
9 means services provided by a home care aide to a client who,
10 because of advanced age or physical or mental infirmity, cannot
11 perform these services for himself or herself. These services
12 include, but are not limited to, bathing, dressing, feeding,
13 exercising, personal hygiene and grooming, transferring,
14 ambulating, positioning, toileting and incontinence care, assisting
15 with medication that the client normally self-administers,
16 housekeeping, meal planning and preparation, laundry,
17 transportation, correspondence, making telephone calls, shopping
18 for personal care items or groceries, and companionship. This
19 subdivision shall not be construed to authorize a home care aide
20 to administer medication that would otherwise require
21 administration or oversight by a licensed healthcare professional.

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

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

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

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

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

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

35 (6) *Services authorized to be provided pursuant to Section 2731*
36 *of the Business and Professions Code.*

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

Article 2. Licensure

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

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

(c) 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 the Attorney General or appropriate district attorney. Upon receiving this notice, the Attorney General or district attorney shall do any or all 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. If the individual or entity fails to comply with the cease and desist order within 20 calendar days, the Attorney General or a district attorney shall apply for an injunction.

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

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

1796.21. A home care organization that has its principal place of business in another state, in addition to the other requirements of this chapter, shall 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 an office in California.

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

1796.22. The enactment of this chapter is an exercise of the police power 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.

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

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

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

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

7 (d) Maintain a registry, on the department's Internet Web site,
8 of the certification status of all certified home care aides, the name
9 and location of the home care aide's employer, home care
10 organization, and the status of any proposed or completed
11 disciplinary action against the certified home care aide. The
12 department also may request and maintain additional employment
13 information for certified home care aides, as necessary, which
14 shall not be publicly available on the registry.

15 1796.24. (a) Notwithstanding any other provision of this
16 chapter, the department shall issue a home care organization license
17 to an entity that satisfies all of the following requirements:

18 (1) Is accredited as a home care agency by either the Joint
19 Commission on Accreditation of Healthcare Organizations
20 (JCAHO), the Community Health Accreditation Program (CHAP),
21 or any other nationally recognized accrediting organization that
22 has an accreditation program for home care organizations, and that
23 is approved by the department. The accrediting organization shall
24 forward to the department copies of all initial and subsequent
25 survey and other accreditation reports or findings.

26 (2) Files an application, including the fees required pursuant to
27 Section 1796.70.

28 (3) Satisfies any other additional licensure requirements of, or
29 regulations adopted pursuant to, this chapter, that the department
30 identifies, after consulting with either the JCAHO or, the CHAP,
31 or other accreditation organization approved pursuant to paragraph
32 (1), as more stringent than the accreditation requirements of the
33 accreditation organization.

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

37 (5) Submits proof of a valid workers' compensation policy
38 covering its home care aides. The proof shall consist of the policy
39 number, the effective and expiration dates of the policy, and the
40 name and address of the policy carrier.

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

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

(b) At the request of the department, the accreditation organization shall conduct a survey of an accredited home care organization to ensure the accreditation requirements are satisfied. These surveys shall be conducted using a selective sample basis.

(c) The department may require a survey of an accredited home care organization to investigate complaints of substantial noncompliance, as determined by the department, with the accreditation standards.

(d) Notwithstanding subdivisions (a), (b), and (c), the department shall retain its full range of authority over accredited home care organizations to ensure the licensure and accreditation requirements are satisfied. This authority shall include the entire scope of enforcement sanctions and options available under Section 1796.20.

1796.25. At least 30 days before the expiration of a license, the department shall mail to the licensee, at the latest 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 will result in the expiration of the license.

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

(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 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~~

1 the person is free on bail or on his or her own recognizance pending
2 trial or appeal.

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

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

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

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

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

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

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

39 ~~(c) In determining whether or not to deny the application for~~
40 ~~licensure or renewal pursuant to subdivision (b), the department~~

1 shall take into consideration the following factors as evidence of
2 good character and rehabilitation:

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

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

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

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

15 (5) Any rehabilitation evidence, including character references,
16 submitted by the person.

17 (6) Employment history and current employer recommendations.

18 (7) Circumstances surrounding the commission of the offense
19 that would demonstrate the unlikelihood of repetition.

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

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

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

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

36 (B) The department shall record the date the copy of the
37 response was provided to the individual and the department.

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

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

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

13 1796.27. A private or public organization, with the exception
14 of a county providing in-home supportive services pursuant to
15 Article 7 (commencing with Section 12300) of Chapter 3 of Part
16 3 of Division 9 of the Welfare and Institutions Code, shall not do
17 any of the following, unless it is licensed under this chapter:

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

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

26 1796.28. (a) If one accrediting agency denies, revokes, or
27 suspends the accreditation of a home care organization licensed
28 under this chapter, that action shall apply to all other accrediting
29 agencies. A home care organization for which accreditation is
30 denied, revoked, or suspended may reapply for accreditation with
31 the same accrediting agency. The home care agency may also
32 apply for accreditation from another accrediting agency, but only
33 if it discloses the full accreditation report of the accrediting agency
34 that denied, revoked, or suspended accreditation. A home care
35 organization for which accreditation has been denied, revoked, or
36 suspended shall disclose the accreditation report to any other
37 accrediting agency to which it submits an application.

38 (b) An accreditation agency that denies, revokes, or suspends
39 a home care organization’s certification of accreditation, shall do
40 all of the following:

- 1 (1) Notify the department of the action.
- 2 (2) Send a notification letter to the home care organization of
- 3 the action. The notification letter shall state that the agency is no
- 4 longer allowed to provide home care services that require home
- 5 care agency accreditation.
- 6 (3) Require the home care organization to remove its
- 7 accreditation certification and to post the notification letter in a
- 8 conspicuous location that is accessible to public view.

9 Article 3. Complaints, Inspections, and Investigations

10 1796.30. (a) The department shall investigate complaints filed

11 against home care organizations.

12 (b) The department shall verify through annual random,

13 unannounced inspections that a home care organization meets the

14 requirements of this chapter and the regulations adopted pursuant

15 thereto.

16 (c) An investigation or inspection conducted by the department

17 pursuant to this chapter may include, but is not limited to, the

18 following:

19 (1) Inspection of the books, records, and premises of a home

20 care organization. An organization's refusal to make those records,

21 books, or premises available shall constitute cause for the

22 revocation of the organization's license.

23 (2) Direct observation of the provision of home care services

24 to a client in the client's residence, if the client's consent is

25 obtained.

26 Article 4. Home Care Organization Operating Requirements

27 1796.40. A home care organization shall do all of the following:

28 (a) Post its license in its place of business in a conspicuous

29 location, visible both to clients and to its home care aides.

30 (b) Operate the organization in a commercial office space that

31 complies with local zoning ordinances.

32 (c) Have plans, procedures, and policies in place, including all

33 of the following:

34 (1) Plans and procedures to be followed in the event of

35 emergencies or natural disasters that would result in the interruption

36 of home care services.

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

4 (3) A written policy regarding advance directives.

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

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

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

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

13 1796.41. With respect to home care aides employed by a home
14 care organization, the organization shall consult the department's
15 registry before hiring an individual or placing him or her in direct
16 contact with patients. In addition, the organization shall do all of
17 the following:

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

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

24 (c) Evaluate home care aides as follows:

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

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

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

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

40 (1) The aide's name.

1 (2) A photograph of the aide.

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

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

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

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

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

12 (h) Prohibit home care aides from accepting money or property
13 from a client without written permission from the home care
14 organization.

15
16 Article 5. Client Rights
17

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 Article 6. Home Care Aides
28

29 1796.60. (a) Beginning January 1, 2013, the department shall
30 require any person hired as a home care aide to be certified within
31 30 days from the date of being hired.

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

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

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

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

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

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

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

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

14 (e) *The applicant shall consent to the background clearance*
15 *described in Section 1796.62.*

16 ~~(e)~~

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

19 ~~(f)~~

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

22 ~~(g)~~

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

26 1796.61. (a) On and after January 1, 2012, a home care
27 organization shall not hire an individual as a home care aide unless
28 the individual complies with all of the following requirements:

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

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

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

38 (b) A home care organization that hires an individual pursuant
39 to subdivision (a) shall ensure that the individual, within the first

1 30 days of employment, satisfactorily completes the home care
2 certification training in Section 1796.60.

3 ~~1796.62. (a) A home care organization shall conduct and pay~~
4 ~~for a background clearance on an individual hired as a home care~~
5 ~~aide *background clearance is required*, unless the individual holds~~
6 a valid, unexpired license or registration in a health-related field
7 that requires a background check as a condition of the license or
8 registration.

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

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

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

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

29 (c) If the background check required by subdivision (b) discloses
30 a conviction or incarceration for a conviction of any of the
31 following provisions of the Penal Code within 10 years, the
32 organization shall deny or terminate, as applicable, the employment
33 of that individual:

34 ~~(1) Fraud against a government health care or supportive~~
35 ~~services program, including Medicare, Medicaid, or services~~
36 ~~provided under Title V, Title XX, or Title XXI of the federal Social~~
37 ~~Security Act, or a~~

38 (1) A violation of subdivision (a) of Section 273a of the Penal
39 Code, or Section 368 of the Penal Code, or similar violations in
40 another jurisdiction.

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

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

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

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

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

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

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

(2) A hearing under this subdivision shall be conducted by a hearing officer or administrative law judge designated by the

1 *director. A written decision shall be sent by certified mail to the*
2 *applicant.*

3 (e)

4 (h) The organization shall complete and pay for the background
5 clearance specified in subdivision (b) on home care aides whose
6 employment began before January 1, 2012, within 180 days of the
7 effective date of this section.

8 (f)

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

12 1796.63. (a) An individual hired as a home care aide on or
13 after January 1, 2012, shall be terminated from employment unless
14 the individual submitted to an examination within six months prior
15 to employment or submits to an examination within 14 days after
16 employment to determine that the individual is free of active
17 tuberculosis. For purposes of this section, "examination" consists
18 of a tuberculin skin test and, if that test is positive, an X-ray of the
19 lungs.

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

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

29 (d) After the examination, a home care aide shall submit, and
30 the organization shall keep on file, a certificate from the examining
31 practitioner showing that the home care aide was examined and
32 found free from active tuberculosis.

33 (e) The examination is a condition of initial and continuing
34 employment with the home care organization. The home care aide
35 shall pay the cost of the examination.

36 (f) A home care aide who transfers employment from one
37 organization to another shall be deemed to meet the requirements
38 of subdivision (a) or (b) if that individual can produce a certificate
39 showing that he or she submitted to the examination within the
40 past two years and was found to be free of communicable

1 tuberculosis, or if it is verified by the organization previously
2 employing him or her that it has a certificate on file which contains
3 that showing.

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

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

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

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

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

13 (B) Chronic fatigue or listlessness for a period exceeding two
14 weeks.

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

16 (D) Night sweats.

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

18 Article 7. Revenues

19
20
21 1796.70. (a) The department shall assess licensure, renewal,
22 background check, and other fees for each location of a home care
23 organization in amounts sufficient to cover the costs of
24 administering this chapter. The department shall also assess from
25 the employer of each home care aid a fee in an amount sufficient
26 to pay the cost of providing certification of home care aides.

27 (b) In the first year of licensure for home care organizations,
28 the licensure fee shall be equivalent to the licensure fee for home
29 health agencies for the 2011–12 fiscal year, as set by the
30 department pursuant to paragraph (2) of subdivision (e) of Section
31 1266. Thereafter, the Licensing and Certification Division of the
32 department shall comply with subdivisions (c) and (d) of Section
33 1266 with respect to home health agencies in establishing licensure
34 fees for home care organizations.

35 (c) All licensure, renewal, background check, and other fees
36 shall be deposited in the State Department of Public Health
37 Licensing and Certification Program Fund established pursuant to
38 Section 1266.9.

Article 8. Enforcement and Penalties

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

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

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

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

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

(3) Any previous violation committed by the licensee.

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

(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.

1796.81. Any penalties collected pursuant to this chapter shall be deposited into the Home Care Organization and Home Care

1 Aide Penalties Subaccount, which is hereby created within the
2 State Health Facilities Citation Penalties Account, which is within
3 the Special Deposit Fund created within the State Treasury,
4 pursuant to Section 1417.2. Moneys in this subaccount shall, upon
5 appropriation by the Legislature, be made available to the
6 department for purposes of enforcing this chapter.

7 1796.82. (a) Notwithstanding the rulemaking provisions of
8 the Administrative Procedure Act (Chapter 3.5 (commencing with
9 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
10 Code), the department may implement and administer this chapter
11 through all-facility letters or similar instructions from the
12 department until regulations are adopted. The department shall
13 adopt emergency regulations implementing this chapter no later
14 than January 1, 2013. The department may readopt any emergency
15 regulation authorized by this section that is the same as or
16 substantially equivalent to an emergency regulation previously
17 adopted under this section.

18 (b) The initial adoption of emergency regulations implementing
19 this chapter and the one readoption of emergency regulations
20 authorized by this subdivision shall be deemed an emergency and
21 necessary for the immediate preservation of the public peace,
22 health, safety, or general welfare. Initial emergency regulations
23 and the one readoption of emergency regulations authorized by
24 this section shall be exempt from review by the Office of
25 Administrative Law. The initial emergency regulations and the
26 one readoption of emergency regulations authorized by this section
27 shall be submitted to the Office of Administrative Law for filing
28 with the Secretary of State, and each emergency regulation shall
29 remain in effect for no more than 180 days, by which time final
30 regulations may be adopted.