

AMENDED IN ASSEMBLY JUNE 21, 2011

AMENDED IN ASSEMBLY JUNE 15, 2011

AMENDED IN SENATE MAY 31, 2011

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AMENDED IN SENATE APRIL 7, 2011

SENATE BILL

No. 411

Introduced by Senator Price

**(Coauthors: Senators Alquist, DeSaulnier, Lieu, Padilla, and
Vargas)**

(Coauthors: Assembly Members Beall, Lara, and Bonnie Lowenthal)

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~~ a 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 Licensure 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:

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

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

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

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

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

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

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

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

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

SEC. 2. Chapter 13 (commencing with Section 1796.10) is 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) (1) “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.

(2) “Home care aide” does not include any person who is employed by, or contracts with, an organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental 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:

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

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

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

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

13 (E) A home medical device retail facility licensed under Section
14 111656.

15 (F) *An organization vendored or contracted through a regional*
16 *center or the State Department of Developmental Services pursuant*
17 *to the Lanterman Developmental Disabilities Services Act (Division*
18 *4.5 (commencing with Section 4500) of the Welfare and Institutions*
19 *Code) and the California Early Intervention Services Act (Title*
20 *14 (commencing with Section 95000) of the Government Code) to*
21 *provide services and support for persons with developmental*
22 *disabilities, as defined in Section 4512 of the Welfare and*
23 *Institutions Code, when funding for those services is provided*
24 *through the State Department of Developmental Services.*

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

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

30 1796.13. (a) For purposes of this chapter, “home care services”
31 means services provided by a home care aide to a client who,
32 because of advanced age or physical or mental infirmity, cannot
33 perform these services for himself or herself. These services
34 include, but are not limited to, bathing, dressing, feeding,
35 exercising, personal hygiene and grooming, transferring,
36 ambulating, positioning, toileting and incontinence care, assisting
37 with medication that the client normally self-administers,
38 housekeeping, meal planning and preparation, laundry,
39 transportation, correspondence, making telephone calls, shopping
40 for personal care items or groceries, and companionship. This

1 subdivision shall not be construed to authorize a home care aide
2 to administer medication that would otherwise require
3 administration or oversight by a licensed healthcare professional.

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

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

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

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

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

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

17 (6) Services authorized to be provided pursuant to Section 2731
18 of the Business and Professions Code.

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

22 Article 2. Licensure

23
24
25 1796.20. (a) An individual, partnership, corporation, limited
26 liability company, joint venture, association, or other entity shall
27 not arrange for the provision of home care services by a home care
28 aide to a client in this state without first obtaining a license pursuant
29 to this chapter.

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

33 (c) Upon discovering that an individual or entity is in violation
34 of this chapter, the department shall send a written notice of
35 noncompliance to the individual or entity and to the Attorney
36 General or appropriate district attorney. Upon receiving this notice,
37 the Attorney General or district attorney shall do any or all of the
38 following:

39 (1) Issue a cease and desist order, which shall remain in effect
40 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:

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

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

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

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

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

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

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

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

(4) 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.

(5) 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.

(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

1 are satisfied. This authority shall include the entire scope of
2 enforcement sanctions and options available under Section 1796.20.

3 1796.25. At least 30 days before the expiration of a license,
4 the department shall mail to the licensee, at the latest address
5 furnished by the licensee to the department, a notice stating the
6 amount of the renewal fee and the date on which it is due, and that
7 failure to pay that fee on or before the date due will result in the
8 expiration of the license.

9 1796.26. (a) In order to obtain a license, the following
10 individual or individuals shall consent to the background clearance
11 described in *subdivision (b) of* Section 1796.62:

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

14 (2) If the owner of a home care organization is a corporation,
15 limited liability company, joint venture, association, or other entity,
16 an individual having a 10-percent or greater interest in that entity.

17 (b) (1) If the background clearance conducted pursuant to
18 subdivision (a) discloses a conviction for a crime that is
19 substantially related to the qualifications, functions, or duties of
20 operating a home care organization, the application for a license
21 may be denied.

22 (2) Notwithstanding paragraph (1), a license shall not be denied
23 under this section if the applicant has obtained a certificate of
24 rehabilitation under 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 him or her has been dismissed pursuant to
27 Section 1203.4 of the Penal Code.

28 (c) In determining whether or not to deny the application for
29 licensure or renewal pursuant to subdivision (b), the department
30 shall take into consideration the following factors as evidence of
31 good character and rehabilitation:

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

35 (2) Activities since conviction, including employment or
36 participation in therapy or education, that would indicate changed
37 behavior.

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

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

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

6 (6) Employment history and current employer recommendations.

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

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

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

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

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

25 (B) The department shall record the date the copy of the
26 response was provided to the individual ~~and the department~~.

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

30 (3) *An opportunity to correct inaccurate information on the*
31 *record by submitting certified court minute orders to the*
32 *department.*

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

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

5 1796.27. A private or public organization, with the exception
6 of a county providing in-home supportive services pursuant to
7 Article 7 (commencing with Section 12300) of Chapter 3 of Part
8 3 of Division 9 of the Welfare and Institutions Code, shall not do
9 any of the following, unless it is licensed under this chapter:

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

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

18 1796.28. (a) If one accrediting agency denies, revokes, or
19 suspends the accreditation of a home care organization licensed
20 under this chapter, that action shall apply to all other accrediting
21 agencies. A home care organization for which accreditation is
22 denied, revoked, or suspended may reapply for accreditation with
23 the same accrediting agency. The home care agency may also
24 apply for accreditation from another accrediting agency, but only
25 if it discloses the full accreditation report of the accrediting agency
26 that denied, revoked, or suspended accreditation. A home care
27 organization for which accreditation has been denied, revoked, or
28 suspended shall disclose the accreditation report to any other
29 accrediting agency to which it submits an application.

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

33 (1) Notify the department of the action.

34 (2) Send a notification letter to the home care organization of
35 the action. The notification letter shall state that the agency is no
36 longer allowed to provide home care services that require home
37 care agency accreditation.

38 (3) Require the home care organization to remove its
39 accreditation certification and to post the notification letter in a
40 conspicuous location that is accessible to public view.

1 Article 3. Complaints, Inspections, and Investigations

2
3 1796.30. (a) The department shall investigate complaints filed
4 against home care organizations.

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

9 (c) An investigation or inspection conducted by the department
10 pursuant to this chapter may include, but is not limited to, the
11 following:

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

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

19
20 Article 4. Home Care Organization Operating Requirements

21
22 1796.40. A home care organization shall do all of the following:

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

25 (b) Operate the organization in a commercial office space that
26 complies with local zoning ordinances.

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

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

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

35 (3) A written policy regarding advance directives.

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

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

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

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

5 1796.41. With respect to home care aides employed by a home
6 care organization, the organization shall consult the department's
7 registry before hiring an individual or placing him or her in direct
8 contact with patients. In addition, the organization shall do all of
9 the following:

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

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

16 (c) Evaluate home care aides as follows:

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

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

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

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

32 (1) The aide's name.

33 (2) A photograph of the aide.

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

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

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

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

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

4 (h) Prohibit home care aides from accepting money or property
5 from a client without written permission from the home care
6 organization.

7
8 Article 5. Client Rights
9

10 1796.50. With respect to clients, a home care organization shall
11 do all of the following:

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

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

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

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

20 (3) Inform the client of the types and hours of available home
21 care services.

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

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

30 (d) Have a written agreement with the client that includes, but
31 is not limited to, the cost of and the hours during which home care
32 services will be provided to the client and reference to the personal
33 attendant requirements, if applicable, as referenced in Wage Order
34 15-2001, issued by the Industrial Welfare Commission.

35 1796.51. (a) Home care clients are entitled to the following
36 rights:

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

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

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

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

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

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

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

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

18
19 Article 6. Home Care Aides
20

21 1796.60. (a) Beginning January 1, 2013, the department shall
22 require any person hired as a home care aide to be certified within
23 30 days from the date of being hired.

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

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

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

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

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

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

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

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

6 (e) The applicant shall consent to the background clearance
7 described in Section 1796.62.

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

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

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

15 1796.61. (a) On and after January 1, 2012, a home care
16 organization shall not hire an individual as a home care aide unless
17 the individual complies with all of the following requirements:

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

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

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

27 (b) A home care organization that hires an individual pursuant
28 to subdivision (a) shall ensure that the individual, within the first
29 30 days of employment, satisfactorily completes the home care
30 certification training in Section 1796.60.

31 1796.62. (a) A background clearance is required, unless the
32 individual holds a valid, unexpired license or registration in a
33 health-related field that requires a background check as a condition
34 of the license or registration.

35 (b) (1) ~~The home care organization~~ *applicant* shall electronically
36 submit to the Department of Justice fingerprint images and related
37 information required by the Department of Justice of all home care
38 aides, as defined under subdivision (c) of Section 1796.12, for the
39 purposes of obtaining information as to the existence and content
40 of a record of state convictions and state arrests, and also

1 information as to the existence and content of a record of state
2 arrests for which the Department of Justice establishes that the
3 person is free on bail or on his or her own recognizance pending
4 trial or appeal.

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

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

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

15 (c) If the background check required by subdivision (b) discloses
16 a conviction or incarceration for a conviction of any of the
17 following provisions of the Penal Code within 10 years, the
18 organization shall deny or terminate, as applicable, the employment
19 of that individual:

20 (1) A violation of subdivision (a) of Section 273a of the Penal
21 Code, or Section 368 of the Penal Code, or similar violations in
22 another jurisdiction.

23 (2) A violent or serious felony, as specified in subdivision (c)
24 of Section 667.5 of the Penal Code and subdivision (c) of Section
25 1192.7 of the Penal Code.

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

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

38 (e) Upon determination to deny an application, if the denial of
39 a certificate is due at least in part to the applicant's state criminal
40 history record, the department shall notify the applicant of this

1 determination by either personal service or registered mail, and
2 the notification shall include the same information as required in
3 subdivision (d) of Section 1796.26.

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

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

18 (2) A hearing under this subdivision shall be conducted by a
19 hearing officer or administrative law judge designated by the
20 director. A written decision shall be sent by certified mail to the
21 applicant.

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

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

29 1796.63. (a) An individual hired as a home care aide on or
30 after January 1, 2012, shall be terminated from employment unless
31 the individual submitted to an examination within six months prior
32 to employment or submits to an examination within 14 days after
33 employment to determine that the individual is free of active
34 tuberculosis. For purposes of this section, "examination" consists
35 of a tuberculin skin test and, if that test is positive, an X-ray of the
36 lungs.

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

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

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

10 (e) The examination is a condition of initial and continuing
11 employment with the home care organization. The home care aide
12 shall pay the cost of the examination.

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

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

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

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

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

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

30 (B) Chronic fatigue or listlessness for a period exceeding two
31 weeks.

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

33 (D) Night sweats.

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

35
36 Article 7. Revenues
37

38 1796.70. (a) The department shall assess licensure, renewal,
39 background check, and other fees for each location of a home care
40 organization in amounts sufficient to cover the costs of

1 administering this chapter. The department shall also assess from
2 the employer of each home care aid a fee in an amount sufficient
3 to pay the cost of providing certification of home care aides.

4 (b) In the first year of licensure for home care organizations,
5 the licensure fee shall be equivalent to the licensure fee for home
6 health agencies for the 2011–12 fiscal year, as set by the
7 department pursuant to paragraph (2) of subdivision (e) of Section
8 1266. Thereafter, the Licensing and Certification Division of the
9 department shall comply with subdivisions (c) and (d) of Section
10 1266 with respect to home health agencies in establishing licensure
11 fees for home care organizations.

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

16 Article 8. Enforcement and Penalties

17
18
19 1796.80. (a) A home care organization operating in violation
20 of this chapter or any rule adopted hereunder may be subject to
21 the penalties or fines levied or licensure action taken by the
22 department as specified in this section.

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

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

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

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

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

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

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

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

15 1796.81. Any penalties collected pursuant to this chapter shall
16 be deposited into the Home Care Organization and Home Care
17 Aide Penalties Subaccount, which is hereby created within the
18 State Health Facilities Citation Penalties Account, which is within
19 the Special Deposit Fund created within the State Treasury,
20 pursuant to Section 1417.2. Moneys in this subaccount shall, upon
21 appropriation by the Legislature, be made available to the
22 department for purposes of enforcing this chapter.

23 1796.82. (a) Notwithstanding the rulemaking provisions of
24 the Administrative Procedure Act (Chapter 3.5 (commencing with
25 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
26 Code), the department may implement and administer this chapter
27 through all-facility letters or similar instructions from the
28 department until regulations are adopted. The department shall
29 adopt emergency regulations implementing this chapter no later
30 than January 1, 2013. The department may readopt any emergency
31 regulation authorized by this section that is the same as or
32 substantially equivalent to an emergency regulation previously
33 adopted under this section.

34 (b) The initial adoption of emergency regulations implementing
35 this chapter and the one readoption of emergency regulations
36 authorized by this subdivision shall be deemed an emergency and
37 necessary for the immediate preservation of the public peace,
38 health, safety, or general welfare. Initial emergency regulations
39 and the one readoption of emergency regulations authorized by
40 this section shall be exempt from review by the Office of

1 Administrative Law. The initial emergency regulations and the
2 one readoption of emergency regulations authorized by this section
3 shall be submitted to the Office of Administrative Law for filing
4 with the Secretary of State, and each emergency regulation shall
5 remain in effect for no more than 180 days, by which time final
6 regulations may be adopted.