

**Senate Bill No. 411**

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Passed the Senate August 23, 2012

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*Secretary of the Senate*

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Passed the Assembly August 16, 2012

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2012, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

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, Price. Home Care Services Act of 2012.

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 2012, which would provide, on and after July 1, 2013, for the licensure and regulation of home care organizations, as defined, by the State Department of Social Services, 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. The bill would also impose a civil penalty on an individual or entity that operates a home care organization without a license, except as specified. 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 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 providing proof of certification as a home care aide as specified.

The bill would require certain employment agencies to maintain liability insurance, as specified, and ensure that any person it refers to provide home care services has been certified prior to the referral.

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. The bill would require the department to impose various fees to be deposited in the Home Care Organization and Home Care Aide Fund to be created by this bill. This bill, in addition, would prescribe enforcement procedures, fines, and penalties for violations of the act by a home care organization or a home care aide and violations of specified requirements by an employment agency, as defined.

*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 or an individual provider. In addition, there is currently no centralized list of home care organizations or individual providers 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 2012.

1796.11. The State Department of Social Services 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 Social Services.

(c) “Employment agency” means an employment agency that procures, offers, refers, provides, or attempts to provide but is not the employer of, a home care aide who provides home care services

to clients and consumers in accordance with Section 1812.5095 of the Civil Code, as long as the agency is not the employer of a home care aide or other worker who provides assistance with activities of daily living to the consumer.

(d) “Family member” means any person who is related to the person who receives home care services. This relationship shall be by blood, adoption, marriage, domestic partnership, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand” or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(e) (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 either of the following:

(A) A family member of the person who receives home care services.

(B) A 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 and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

(f) (1) “Home care organization” or “organization” means an individual, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for the

provision of home care services by a home care aide to a client in the client's residence and that is licensed pursuant to this chapter.

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

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

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

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

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

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

(F) 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 and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

(G) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide a home care aide or other worker who provides home care services or domestic services to clients and consumers pursuant to that section, as long as the agency is not the employer of the home care aide or other worker who provides to the clients or consumers assistance with activities of daily living, including, but not limited to, bathing, dressing, feeding, toileting, ambulation, and transferring.

(H) A residential care facility for the elderly licensed under Chapter 3.2 (commencing with Section 1569).

(g) “Priority one complaint” means a complaint of sexual abuse that involves penetration, a complaint of physical abuse that involves an act that results in great bodily injury, such as a broken bone, severe cut, head injury, or burn, or a complaint of suspicious circumstances regarding the death of a client.

(h) “Priority two complaint” means a complaint of sexual abuse that involves sexual behavior that does not include penetration, a complaint of physical abuse that involves an act that results in a minor injury or bruise, or a complaint of felony offenses, including, but not limited to, robbery, arson, grand theft, and chemical restraint.

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

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

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

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

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

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

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

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

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

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

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

## Article 2. Licensure

1796.20. (a) On and after July 1, 2013, subject to the exceptions set forth in paragraph (2) of subdivision (f) of Section 1796.12, 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 before obtaining a license pursuant to this chapter.

(b) An individual or entity that violates subdivision (a) 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 subdivision (a), 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.



(d) The requirements of this section shall not apply to an employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide a home care aide or other worker who provides home care services or domestic services to clients and consumers pursuant to that section, as long as the agency is not the employer of the home care aide or other worker who provides assistance with activities of daily living to the consumer.

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 may do any 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 priority one and priority two complaints by certified home care aides not employed by a home care organization. The department may take disciplinary action in accordance with subdivision (d) of Section 1796.30.

(d) (1) Maintain on the department's Internet Web site a registry of, with the capability to look up the certification status of, any certified home care aide, the name and location of the home care aide's employer, if there is one, or name and location of all employers if there are more than one, and any disciplinary action taken against the home care aide. In the case of a home care aide who is an independent contractor and not employed by an organization, the Internet Web site shall indicate that status. To expedite the ability of a consumer to search and locate an appropriate home care aide, the Internet Web site shall enable

consumers to look up the certification status, including any disciplinary action taken against the home care aide, by providing the home care aide's name, certificate number, and geographic location. The Internet Web site shall not provide any additional, individually identifiable information about a home care aide. The department also may request and maintain additional employment information for a certified home care aide, as necessary, which shall not be publicly available on the registry.

(2) The department shall update the Internet Web site upon receiving notification from a certified home care aide that he or she has left a home care organization or has changed home care organizations.

(e) Maintain a registry on the department's Internet Web site on the licensure status of all licensed home care organizations, along with the name, address, and telephone number of the home care organization, and the status of any proposed or completed disciplinary action against the licensed home care organization. The department also may request and maintain additional information for a licensed home care organization, as necessary, which shall not be publicly available on the registry.

1796.24. 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:

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

(b) 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.

(c) 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.

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

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

1796.25. (a) The term of a license issued pursuant to this chapter shall be two years.

(b) A license may be renewed upon application to the department and the payment of a renewal fee prescribed by the department.

(c) At least 90 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 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) If the background clearance conducted pursuant to subdivision (a) discloses a conviction for a crime that is substantially related to the qualifications, functions, or duties of operating a home care organization, the application for a license may be denied.

(2) Notwithstanding paragraph (1), a license 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.

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

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

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

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

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

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

(6) Employment history and current employer recommendations.

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

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

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

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

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

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

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

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

(e) (1) Upon written notification that the department has determined that a license 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 director. A written decision shall be sent by certified mail to the applicant.

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

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

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

(c) This section does not apply to either of the following:

(1) 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.

(2) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide a home care aide or other worker who provides home care services or domestic services to clients and consumers pursuant to that section, as long as the agency is not the employer of a home care aide or other worker who provides domestic services.

### Article 3. Complaints, Inspections, and Investigations

1796.30. (a) The department may review and, if it determines necessary, investigate complaints filed against home care organizations or home care aides not employed by a home care organization that meet the specified definition of a priority one or priority two complaint.

(b) The department shall verify through random, unannounced inspections at least once every five years that a home care

organization meets the requirements of this chapter and the regulations adopted pursuant thereto.

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

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

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

(d) If the department determines that a home care aide is in violation of this chapter or any rules promulgated hereunder, a notice of violation shall be served upon the individual. 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 individual of any action the department may take under this chapter, including an action to suspend, revoke, or deny renewal of the certificate. The director or his or her designee shall also inform the individual of his or her rights to a hearing under this chapter.

#### Article 4. Home Care Organization Operating Requirements

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

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

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

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

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

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

(3) A written policy regarding advance directives.

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

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

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

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

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

(a) (1) Ensure that each of its home care aides employed before January 1, 2014, meets the requirements of Section 1796.61 no later than July 1, 2014.

(2) Ensure that all individuals hired on or after January 1, 2014, have met the requirements of Section 1796.61 before being hired as a home care aide.

(b) (1) Investigate complaints made by a client, or a client's family member or guardian, against home care aides regarding a service that is or fails to be furnished. The organization shall document both the existence and the resolution of those complaints.

(2) If the home care organization completes an investigation of a complaint against a home care aide pursuant to paragraph (1) and finds that, in its opinion, the home care aide is in violation of this chapter, the home care organization shall immediately notify the department in order for the department to take the appropriate steps, which may include revoking the home care aide's certificate.

(c) Evaluate home care aides as follows:

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

(2) Every 90 days, supervise each home care aide providing home care services in the residence of a client, provided that client consent is obtained. The supervision required by this paragraph shall not be billed to the client.

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

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

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

- (1) The aide's name.
- (2) A photograph of the aide.
- (3) The name of the home care organization.
- (4) The expiration date of the license of the home care organization.
- (5) The home care aide's certificate number as issued by the department.

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

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

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

(i) Immediately notify the department when the home care organization no longer employs an individual as a home care aide in order for the department to update its Internet Web site.

#### Article 4.5. Employment Agency Insurance

1796.45. (a) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide a home care aide who provides home care services or other worker who provides assistance with activities of daily living to the client or consumer pursuant to that section, shall, at all times, maintain 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.

(b) An employment agency shall submit to the department proof of insurance required pursuant to subdivision (a) no later than July 1, 2013, and annually thereafter.

(c) The department may assess a civil penalty not to exceed nine hundred dollars (\$900) a day for violation of this section.



Article 5. Client Rights

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Before arranging for the provision of home care services to a client, a home care organization shall provide a written notice

to the client stating that the client has all of the rights enumerated in subdivision (a).

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

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

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

#### Article 6. Home Care Aides

1796.60. (a) (1) Beginning January 1, 2014, the department shall require any person hired as a home care aide on or after January 1, 2014, to be certified before being hired and shall require that any home care aide or person providing assistance with activities of daily living to the client or consumer referred by an employment agency, as defined in Section 1812.5095 of the Civil Code, be certified prior to any referral.

(2) The term of a certificate issued pursuant to this chapter shall be two years. The certificate may be renewed upon application to the department and payment of the renewal fee prescribed by the department pursuant to this chapter.

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

(c) (1) A prospective home care aide shall complete a minimum of five hours of entry-level training, as follows:

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

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

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

(2) If the department determines that the training required by paragraph (1) is unavailable in an applicant's county, the department shall issue a temporary home care aide certificate to that individual that will be valid until the date that proper training is made available in that county. Upon completion of the required training, the department shall replace the temporary home care aide certificate and issue a permanent home care aide certificate.

(3) The entry-level training, and annual training on department-approved job-related topics, may be completed through an online training program.

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

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

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

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

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

(g) The department shall set a fee for certification under this section that shall be paid for by the home care aide.

(h) The applicant shall submit to an examination, as defined in Section 1796.63, to determine if he or she is free of active tuberculosis.

1796.61. (a) On and after January 1, 2014, a home care organization shall not hire an individual as a home care aide unless the individual complies with all of the following requirements:

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

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

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

(4) Provides proof of certification as a home care aide, pursuant to Section 1796.60.

(b) For home care aides employed by a home care organization before January 1, 2014, a certificate pursuant to this chapter shall be obtained by July 1, 2014, in order for both the home care aide and the home care organization to be in compliance with this chapter.

(c) (1) Notwithstanding any other provision of law, an employment agency, as defined in Section 1812.5095 of the Civil Code, shall ensure that any home care aide it refers to provide home care services, or person it refers who provides assistance with activities of daily living to the client or consumer, has been certified under Section 1796.60 prior to the referral.

(2) The department may investigate complaints against an employment agency, as defined in Section 1812.5095 of the Civil Code, including, but not limited to, complaints made by a client or a client's family member or guardian if the employment agency fails to comply with the provisions of this section. An employment agency that violates this subdivision shall be liable for a civil penalty not to exceed nine hundred dollars (\$900) per day for each calendar day of each violation.

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

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

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

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

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

(c) If the background check required by subdivision (b) discloses a conviction or incarceration for a conviction of any of the following provisions of the Penal Code within 10 years, the department shall deny the home care aide certification to that individual:

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

(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 director. A written decision shall be sent by certified mail to the applicant.

(h) The applicant shall complete and pay for the background clearance specified in subdivision (b).

(i) A home care aide employed on or after January 1, 2014, shall not be permitted to provide home care services until he or she passes the background clearance pursuant to this section.

1796.63. (a) An individual hired as a home care aide on or after January 1, 2014, shall be terminated from employment unless the individual submitted to an examination within six months prior to employment to determine that the individual is free of active tuberculosis. For purposes of this section, “examination” consists of a tuberculin skin test and, if that test is positive, an X-ray of the lungs.

(b) A home care aide whose employment with a home care organization began before January 1, 2014, shall submit to the examination described in subdivision (a) before July 1, 2014.

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

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

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

(f) A home care aide who transfers employment from one organization to another shall be deemed to meet the requirements of subdivision (a) or (b) if that individual can produce a certificate

showing that he or she submitted to the examination within the past two years and was found to be free of communicable tuberculosis, or if it is verified by the organization previously employing him or her that it has a certificate on file which contains that showing.

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

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

#### Article 7. Revenues

1796.70. (a) The department shall assess licensure and certification fees in amounts sufficient to support the costs of each activity authorized by this chapter. Except for General Fund moneys that are otherwise transferred or appropriated for the initial costs of administering this chapter, or penalties collected pursuant to this chapter that are appropriated by the Legislature for the purposes of this chapter, no General Fund moneys shall be used for any purpose under this chapter.

(b) The Home Care Organization and Home Care Aide Fund is hereby created within the State Treasury for the purpose of this chapter. All licensure and certification fees authorized by this chapter shall be deposited into the Home Care Organization and Home Care Aide Fund. Moneys in this fund shall, upon appropriation by the Legislature, be made available to the department for purposes of administering this chapter.

(c) The licensure fee shall be equivalent to the cost of administering the licensure program, as defined by the department.

(d) The certification fee shall be equivalent to the cost of administering the certification program, as defined by the department.

(e) Commencing February 1, 2014, and every February 1 thereafter, the department shall publish the fees estimated pursuant to this section. The calculation of estimated fees and the publication of estimated fees shall not be subject to the rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. By February 1 of each year, the department shall make the fee estimates available to the public by submitting them to the Legislature and posting them on the department's Internet Web site.

(f) (1) The department shall prepare a report of all costs for home care licensure and home care aide certification activities. At a minimum, this report shall include a narrative of all baseline adjustments and their calculations, descriptions of assumptions used in any calculations, and shall recommend home care organization licensure fees and home care aide certification fees sufficient to support projected costs.

(2) The department shall make a copy of the report available to the public on the department's Internet Web site and provide a copy to the Legislature. A report to the Legislature shall be submitted in compliance with Section 9795 of the Government Code.

#### Article 8. Enforcement and Penalties

1796.80. (a) A home care organization or employment agency, as defined in Section 1812.5095 of the Civil Code, providing certified home care aides, that operates in violation of any requirement or obligation imposed by this chapter or any implementing rule or regulation, may be subject to the 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 or that an employment agency is in violation of Section 1796.45 or subdivision (a) of Section 1796.60, 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 fines and penalties collected pursuant to this chapter shall be deposited into the Home Care Organization and Home Care Aide Penalties Subaccount, which is hereby created within the Home Care Organization and Home Care Aide Fund created pursuant to Section 1796.70. Moneys in this account shall, upon appropriation by the Legislature, be made available to the department for purposes of enforcing this chapter.













Approved \_\_\_\_\_, 2012

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*Governor*