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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (Division 2 enacted by Stats. 1939, Ch. 60.)

CHAPTER 13. Home Care Services [1796.10 - 1796.70] (Chapter 13 added by Stats. 2013, Ch. 790, Sec. 1.)

ARTICLE 10. Complaints, Inspections, and Investigations [1796.51 - 1796.54] (Article 10 added by Stats. 2013, Ch. 790, Sec. 1.)

1796.51. In order to carry out the provisions of this chapter, the department may establish procedures for the receipt, investigation, and resolution of complaints against home care organizations.

(Added by Stats. 2013, Ch. 790, Sec. 1. (AB 1217) Effective January 1, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.52. (a) The department may review and, if it determines necessary, investigate complaints filed against home care organizations regarding violations of this chapter or any rules or regulations promulgated pursuant to this chapter.

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

(c) An investigation or inspection conducted by the department pursuant to this chapter may include, but is not limited to, inspection of the books, records, or premises of a home care organization. A home care organization's refusal to make records, books, or premises available shall constitute cause for the revocation of the home care organization's license.

(d) Other than maintaining the home care registry, the department shall have no oversight responsibility regarding registered home care aides.

(e) Upon receipt of a report of suspected or known abuse, as set forth in subdivision (e) of Section 1796.42, the department shall cross-report the suspected or known abuse to local law enforcement and Adult Protective Services if the alleged victim is 18 years of age or older, or local law enforcement and Child Protective Services if the alleged victim is under 18 years of age. Other than the cross-reporting required by this subdivision, the department shall not be required to investigate suspected or known abuse or have other responsibilities related to the suspected or known abuse. This subdivision shall not supersede the existing duty of home health aides and home health agencies as mandated reporters to report directly to local law enforcement or county adult protective services pursuant to Section 15630.

(Amended by Stats. 2014, Ch. 29, Sec. 59. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.53. A duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter a home care organization during posted business hours, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter or any provision promulgated under this chapter.

(Added by Stats. 2013, Ch. 790, Sec. 1. (AB 1217) Effective January 1, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.54. (a) (1) The department may prohibit an individual from serving as a member of the board of directors or governing body, an executive director, an officer, or being a licensee of a home care organization, if the individual has done any of the following:

(A) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or implementing regulations.

(B) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from a home care organization, or the people of the State of California.

(C) Been denied a criminal record exemption by the department when that person has been convicted of a crime specified in Section 1522.

(D) Engaged in any other conduct that would constitute a basis for disciplining a licensee of a home care organization.

(E) Engaged in acts of financial malfeasance concerning the operation of a home care organization.

(2) The department also may prohibit a licensee from employing or continuing to employ an individual, or allowing an individual to volunteer at a home care organization if there is contact with clients, prospective clients, or confidential client information, if the individual has engaged in any conduct described in subparagraphs (A) to (E), inclusive, of paragraph (1).

(b) (1) The department may require the immediate removal of an individual listed in subdivision (a) from contact with clients, prospective clients, or confidential client information of a home care organization, pending a final decision of the matter, when the action is necessary to protect clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of an individual listed in subdivision (a), the department shall serve an order of immediate exclusion upon the excluded person, which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) The notice shall be served either by personal service or registered mail. Within 15 calendar days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department.

(4) The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do both of the following upon receipt of a written appeal:

(A) Within 30 calendar days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 calendar days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, begin a hearing on the accusation.

(5) An order of immediate exclusion may exclude an individual listed in subdivision (a) from a home care organization, the home care aide registry, or both, and shall remain in effect until the hearing is completed and the director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed to be vacated if the director fails to make a final determination on the merits within 60 calendar days after the proposed decision is issued.

(c) An excluded person who files a written appeal with the department pursuant to this section shall, as part of the written request, provide their current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, within 48 hours of the change, until the hearing process has been completed or terminated.

(d) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(e) (1) The department may institute or continue a disciplinary proceeding against an individual listed in subdivision (a) upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors or governing body, an executive director, an officer, a licensee, or from contact with clients, prospective clients, or access to confidential client information of the home care organization or otherwise take disciplinary action against the excluded person, notwithstanding any withdrawal of home care organization application, withdrawal of registry application, resignation, withdrawal of employment application, surrender of registration, surrender of home care organization license, forfeiture, change of duties, discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients of the home care organization.

(2) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1796.38.

(f) If the excluded person appealed the exclusion order, and the exclusion order was upheld through the administrative hearing process, the person shall be prohibited for the remainder of the excluded person's life, unless otherwise ordered by the department, from doing any of the following:

(1) Serving as a member of the board of directors or governing body, an executive director, an officer, or a licensee of a home care organization.

(2) Being employed at, continuing employment, or volunteering at a home care organization if the individual has contact with clients, prospective clients, or confidential client information of a home care organization.

(3) Becoming, or continuing to be, a registered home care aide.

(4) Having contact with clients, prospective clients, or access to confidential client information of a home care organization.

(g) If the department informed the excluded person of their right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the excluded person shall be prohibited by the department from engaging in the activities set forth in paragraphs (1) to (4), inclusive, of subdivision (f) for the remainder of the excluded person's life, unless otherwise ordered by the department.

(h) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(Added by Stats. 2023, Ch. 43, Sec. 28. (AB 120) Effective July 10, 2023.)