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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 2. Registry and Exemptions [1796.14 - 1796.18] (*Article 2 added by Stats. 2013, Ch. 790, Sec. 1.*)

1796.14. (a) Individuals who are not employed by a home care organization but who provide home care services to a client may be listed on the home care aide registry.

(b) An affiliated home care aide shall be listed on the home care aide registry prior to providing home care services to a client.

(c) (1) Home care aides shall not include individuals who are providing home care services as part of their job duties through one of the following entities:

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

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

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

(D) In-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Section 14132.95, 14132.952, or 14132.956 of, the Welfare and Institutions Code.

(E) A community care facility licensed pursuant to Chapter 3 (commencing with Section 1500), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), or a facility licensed pursuant to the California Child Day Care Facilities Act, (Chapter 3.4 (commencing with Section 1596.70)), which includes day care centers, as described in Chapter 3.5 (commencing with Section 1596.90), family day care homes, as described in Chapter 3.6 (commencing with Section 1597.30), and employer-sponsored child care centers, as described in Chapter 3.65 (commencing with Section 1597.70).

(F) A clinic licensed pursuant to Section 1204 or 1204.1.

(G) A home medical device retail facility licensed pursuant to Section 111656.

(H) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Chapter 1 (commencing with Section 4500) of Division 4.5 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 supports 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.

(I) An alcoholism or drug abuse recovery or treatment facility as defined in Section 11834.02.

(J) A facility in which only Indian children who are eligible under the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) are placed and is either of the following:

(i) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(ii) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(2) Home care aides shall not include individuals providing services authorized to be provided pursuant to Section 2731 of the Business and Professions Code.

(d) Home care aides shall not include a nonrelative extended family member, as defined in Section 362.7 of the Welfare and Institutions Code.

(e) In the event of a conflict between this chapter and a provision listed in subdivision (b), (c), or (d), the provision in subdivision (b), (c), or (d) shall control.

(Amended by Stats. 2014, Ch. 29, Sec. 31. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.15. This chapter shall not prohibit an individual from employing an individual not listed on the home care aide registry to provide home care services. The department shall have responsibility only for the maintenance of the home care aide registry regarding registered home care aides.

(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.)

1796.16. (a) A registered home care aide may provide home care services to more than one child for a family, but may not provide home care services for a child or children from more than one family at the same time. This chapter shall not preclude a registered home care aide from providing home care services for a child or children of multiple families at different times. This chapter shall not override provisions of the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)), which includes Chapter 3.5 (commencing with Section 1596.90), Chapter 3.6 (commencing with Section 1597.30), and Chapter 3.65 (commencing with Section 1597.70).

(b) This chapter does not override provisions of the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), Residential Care Facilities for Persons With Chronic Life-Threatening Illness Act (Chapter 3.01 (commencing with Section 1568.01)), or the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)).

(Amended by Stats. 2014, Ch. 29, Sec. 32. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.17. (a) Each home care organization shall be separately licensed. This chapter does not prevent a licensee from obtaining more than one home care organization license or obtaining a home care organization license in addition to other licenses issued by the department, or both.

(b) A home care organization does not include the following:

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

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

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

(4) A person who performs services through the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of, or Section 14132.95, 14132.952, or 14132.956 of, the Welfare and Institutions Code.

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

(6) 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 supports 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.

(7) An employment agency, as defined in Section 1812.5095 of the Civil Code, that procures, offers, refers, provides, or attempts to provide an independent home care aide who provides home care services to clients.

(8) A community care facility licensed pursuant to Chapter 3 (commencing with Section 1500), a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01), a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569), or a facility licensed pursuant to the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)), which includes day care centers, as described in Chapter 3.5 (commencing with Section 1596.90), family day care homes, as described in Chapter 3.6 (commencing with Section 1597.30), and employer-sponsored child care centers, as described in Chapter 3.65 (commencing with Section 1597.70).

(9) An alcoholism or drug abuse recovery or treatment facility as defined in Section 11834.02.

(10) A person providing services authorized pursuant to Section 2731 of the Business and Professions Code.

(11) A clinic licensed pursuant to Section 1204 or 1204.1.

(12) A nonrelative extended family member, as defined in Section 362.7 of the Welfare and Institutions Code.

(13) A facility providing home care services in which only Indian children who are eligible under the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) are placed and which satisfies either of the following:

(A) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(B) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(14) Any other individual or entity providing services similar to those described in this chapter, as determined by the director.

(c) In the event of a conflict between this chapter and a provision listed in subdivision (b), the provision in subdivision (b) controls.

(Amended by Stats. 2015, Ch. 303, Sec. 287. (AB 731) Effective January 1, 2016.)

1796.18. (a) The department may prohibit an individual from becoming a registered home care aide, or remaining registered on the home care aide registry, if the individual has done any of the following:

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

(2) 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.

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

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

(5) Engaged in acts of financial malfeasance.

(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, and the home care aide registry shall reflect this action pending a final decision on the matter, when it is necessary to protect a client 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. The department shall provide copies of this order to all home care organizations to which the registered home care aide is affiliated.

(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. 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, the department shall begin a hearing on the accusation.

(4) 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 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 registry application, withdrawal of home care organization application, resignation, withdrawal of employment application, surrender of registration, surrender of home care organization license, forfeiture, change of duties, discharge, failure to hire, 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 of, 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. 24. (AB 120) Effective July 10, 2023.)