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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 4. Registration [1796.21 - 1796.29] (Article 4 added by Stats. 2013, Ch. 790, Sec. 1.)

1796.21. A registered home care aide shall be 18 years of age or older.

(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.)

1796.22. Any individual who has submitted a home care aide application and who possesses any one of the following identification cards may initiate a background examination to be a registered home care aide:

- (a) A valid California driver's license.
- (b) A valid identification card issued by the Department of Motor Vehicles.
- (c) A valid Permanent Resident Card.
- (d) In the case of a person living in a state other than California, a valid numbered photo identification card issued by an agency of the state other than California.

(Amended by Stats. 2021, Ch. 296, Sec. 34. (AB 1096) Effective January 1, 2022.)

1796.23. (a) Each person initiating a background examination to be a registered home care aide shall submit their fingerprints to the Department of Justice by electronic transmission in a manner approved by the department, unless exempt under subdivision (d).

(b) A law enforcement agency or other local agency authorized to take fingerprints may charge a reasonable fee to offset the costs of fingerprinting for the purposes of this chapter. The fee revenues shall be deposited in the Fingerprint Fees Account.

(c) The Department of Justice shall use the fingerprints to search state and Federal Bureau of Investigation criminal offender record information pursuant to Section 1522.

(d) A person who is a current licensee or employee in a facility licensed by the department, a certified foster parent, a certified administrator, or a registered TrustLine provider need not submit fingerprints to the department, and may transfer their current criminal record clearance or exemption pursuant to paragraph (1) of subdivision (h) of Section 1522. The person shall instead submit to the department, along with the person's registration application, a copy of the person's identification card described in Section 1796.22 and sign a declaration verifying the person's identity.

(Amended by Stats. 2022, Ch. 581, Sec. 7. (AB 1720) Effective January 1, 2023.)

1796.24. (a) (1) The department shall establish a home care aide registry pursuant to this chapter and shall continuously update the registry information. Upon submission of the home care aide application and fingerprints or other identification documents pursuant to Section 1796.22, the department shall enter into the home care aide registry the person's name, identification number, and an indicator that the person has submitted a home care aide application and fingerprints or identification documentation. This person shall be known as a "home care aide applicant."

(2) A person shall not be entitled to apply to be a registered home care aide and shall have their registration application returned without the right to appeal if the person would not be eligible to obtain a license pursuant to Section 1796.40 or 1796.41.

(b) (1) Before approving an individual for registration, the department shall check the individual's criminal history pursuant to Section 1522. Upon completion of the searches of the state summary criminal offender record information and the records of the Federal Bureau of Investigation, the home care aide applicant shall be issued a criminal record clearance or granted a criminal record exemption if grounds do not exist for denial pursuant to Section 1522 or 1522.7. The department shall enter that finding in the

person's record in the home care aide registry and shall notify the person of the action. This person shall be known as a "registered home care aide." If, after approval, the department determines that the registrant has a criminal record, registration may be revoked pursuant to Section 1796.26.

(2) For purposes of compliance with this section, the department may permit an individual to request the transfer of a current criminal record clearance or exemption pursuant to subdivision (h) of Section 1522. The request shall be submitted to the department on a form provided by the department or submitted via the department's secure online portal. Upon the request of the applicant or licensee, who shall verify the individual's identity, the department shall verify whether the individual has a clearance or exemption that can be transferred pursuant to the requirements of this chapter.

(3) The department shall hold criminal record clearances and exemptions in its active files for a minimum of three years after the individual is no longer on the registry in order to facilitate a transfer request.

(Amended by Stats. 2022, Ch. 614, Sec. 5.5. (SB 1093) Effective January 1, 2023.)

1796.25. (a) (1) If the department finds that the home care aide applicant or the registered home care aide has been convicted of a crime, other than an infraction, the department shall deny the home care aide application, or revoke the registered home care aide's registration unless the department grants an exemption pursuant to subdivision (g) of Section 1522 or 1522.7.

(2) If the department finds that the home care aide applicant or registered home care aide has an arrest as described in subdivision (a) of Section 1522, the department may deny the registration application or registration renewal application, or revoke the registered home care aide's registration, if the home care aide or registered home care aide may pose a risk to the health and safety of any person who is or may become a client and the department complies with subdivision (e) of Section 1522.

(3) The department may deny the home care aide application or the renewal application of a registered home care aide, or revoke the home care aide registration, if the department discovers that the department or a county had previously revoked or rescinded a license or certificate to be a certified family home or resource family, a certified administrator, or a registered trustline provider held by the home care aide applicant or registered home care aide, or that the department had excluded the home care aide applicant or registered home care aide from a licensed facility, certified family home, or resource family home.

(4) The department may deny the home care aide application or registered home care aide registration renewal application for placement or retention upon the home care aide registry, or revoke the registered home care aide's registration, if the department discovers that the department or a county had previously denied the home care aide applicant's or registered home care aide's application for a license from the department or certificate to be a certified family home or resource family, a certified administrator, or a registered trustline provider.

(b) (1) If the department revokes or denies a home care aide application or registered home care aide's renewal application pursuant to subdivision (a), the department shall advise the home care aide applicant or registered home care aide, by written notification, of the right to appeal. The home care aide applicant or registered home care aide shall have 15 days from the date of the written notification to appeal the denial or revocation.

(2) Upon receipt by the department of the appeal, the appeal shall be set for hearing. The hearing shall be conducted in accordance with Section 1551.

(c) If the home care aide application or registered home care aide renewal application is denied, the home care aide applicant or registered home care aide shall not reapply until they meet the timeframe set forth in Sections 1796.40 and 1796.41.

(Amended by Stats. 2022, Ch. 581, Sec. 9. (AB 1720) Effective January 1, 2023.)

1796.26. (a) (1) The department may revoke or deny a registered home care aide's registration or request for registration renewal if any of the following apply to the registered home care aide:

(A) The individual procured or attempted to procure their registered home care aide registration or renewal by fraud or misrepresentation.

(B) The individual has a criminal conviction, other than an infraction, unless an exemption is granted pursuant to Section 1522 or 1522.7.

(C) The individual engages or has engaged in conduct that is inimical to the health, morals, welfare, or safety of the people of the State of California or an individual receiving or seeking to receive home care services.

(2) An individual whose registration has been revoked shall not reapply until they meet the timeframe as set forth in Section 1796.40 or 1796.41.

(3) An individual whose criminal record exemption has been denied shall not reapply for two years from the date of the exemption denial.

(4) The hearing to revoke or deny the registered home care aide registration or registration renewal request shall be conducted in accordance with Section 1551.

(b) (1) The registered home care aide's registration shall be considered forfeited under the following conditions:

(A) The registered home care aide has had a license or certificate of approval revoked, suspended, or denied as authorized under Section 1534, 1550, 1568.082, 1569.50, 1596.608, or 1596.885.

(B) The registered home care aide has been denied employment, residence, or presence in a facility or client's home based on action resulting from an administrative hearing pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897.

(C) The registered home care aide fails to maintain a current mailing address with the department.

(D) The registered home care aide's registration is not renewed.

(E) The registered home care aide surrenders their registration to the department.

(F) The registered home care aide dies.

(2) An individual whose registered home care aide registration has been forfeited shall not reapply until they meet the timeframe set forth by the department in Sections 1796.40 and 1796.41.

(c) A registered home care aide's registration shall not be transferred or sold to another individual or entity.

(Amended by Stats. 2022, Ch. 581, Sec. 10. (AB 1720) Effective January 1, 2023.)

1796.28. (a) The Department of Justice shall maintain and continually update pertinent criminal offender record information of registered home care aides and shall inform the department of subsequent reports received pursuant to Section 11105.2 of the Penal Code. The department shall continually update the home care aide registry pursuant to the actions required in this chapter.

(1) Registered home care aides and home care aide applicants shall maintain a current mailing address with the department.

(2) Registered home care aides and home care aide applicants shall inform the department of any new mailing address in writing within 10 days of a change in address.

(b) Notwithstanding any other law, including Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, state officers or employees shall not be liable for any damages caused by their conduct pursuant to this chapter except for intentional acts or gross negligence.

(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.)

1796.29. The department shall do all of the following in the administration of the home care aide registry:

(a) Establish and maintain on the department's Internet Web site the registry of registered home care aides and home care aide applicants.

(1) To expedite the ability of a consumer to determine if a registered home care aide or home care aide applicant has passed a background examination, pursuant to Section 1796.23, the Internet Web site shall enable consumers to look up the registration status by providing the registered home care aide's or home care aide applicant's name and registration number. The Internet Web site shall provide the registration status, the registration expiration date, and, if applicable, the home care organization with which the affiliated home care aide is associated.

(2) The Internet Web site shall not provide any additional, individually identifiable information about a registered home care aide or home care aide applicant. The department may request and may maintain additional information for registered home care aides or home care aide applicants, as necessary for the administration of this chapter, that shall not be publicly available on the home care aide registry.

(b) Update the home care aide registry upon receiving notification from a home care organization that an affiliated home care aide is no longer employed by the home care organization.

(c) Notwithstanding any other provision of this chapter to the contrary, information regarding a registered home care aide or registered home care aide applicant is not subject to public disclosure pursuant to this chapter, except as provided in subdivision (d).

(d) (1) For any new registration or renewal of registration occurring on and after July 1, 2019, the department shall provide an electronic copy of a registered home care aide's name, telephone number, and cellular telephone number on file with the department, upon its request, to a labor organization in which a provider of in-home supportive services, as described in Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, or a registered home care aide, already participates and which exists for the purpose, in whole or in part, of dealing with employers of home care aides concerning access to training, grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work. The labor organization shall not use this information for any purpose other than employee organizing, representation, and assistance activities. The labor organization shall not disclose this information to any other party.

(2) The department shall establish a simple opt-out procedure by which a registered home care aide or registered home care aide applicant may request that his or her contact information on file with the department not be disclosed in response to a request described in paragraph (1).

(e) At the time of any registration or renewal of registration occurring on and after July 1, 2019, the department shall do both of the following:

(1) Provide a written notice to the registering or registered home care aide that his or her information may be shared with a labor organization, as described in paragraph (1) of subdivision (d).

(2) Provide written instructions on how to utilize the simple opt-out procedure described in paragraph (2) of subdivision (d).

(f) This section applies solely to an individual who provides services as a home care aide under this chapter.

(Amended by Stats. 2018, Ch. 917, Sec. 2. (AB 2455) Effective January 1, 2019.)