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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 6. Licensure of Home Care Organizations [1796.32 - 1796.41] (*Article 6 added by Stats. 2013, Ch. 790, Sec. 1.*)

1796.32. Any individual who has submitted an application and who possesses any one of the following identification cards may initiate a background examination to be a licensed home care organization:

- (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. 35. (AB 1096) Effective January 1, 2022.)

1796.33. In order to obtain a home care organization license, the following individual or individuals shall consent to the background examination described in Section 1796.23:

- (a) The owner of the home care organization, if the owner is an individual.
- (b) 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 ownership in that entity and the chief executive officer or other person serving in a similar capacity. The department shall not issue a provisional license or license to any corporate home care organization applicant that has a member of the board of directors, executive director, or officer who is not eligible for licensure pursuant to Sections 1796.40 and 1796.41.

(Added by renumbering Section 1796.34 by Stats. 2014, Ch. 29, Sec. 43. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.34. (a) A person or a private or public organization, with the exception of any person who performs in-home supportive 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 the Welfare and Institutions Code, or Section 14132.95, 14132.952, or 14132.956 of the Welfare and Institutions Code, and the exceptions provided for in subdivision (b), shall not do any of the following, unless he, she, or it is licensed pursuant to this chapter:

- (1) Own, manage, or represent himself, herself or itself to be a home care organization by name, advertising, solicitation, or any other presentments to the public, or in the context of services within the scope of this chapter, imply that he, she, or it is licensed to provide those services or to make any reference to employee bonding in relation to those services.
- (2) Use the terms "home care organization," "home care," "in-home care," or any combination of those terms, within its name.

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

- (1) Any person who performs in-home supportive 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.
- (2) 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 to clients.

1796.35. (a) Subject to the exceptions set forth in Section 1796.17, 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 registered home care aide to a client in this state before obtaining a license pursuant to this chapter. This shall be deemed "unlicensed home care services."

(b) Upon discovering 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 assess a civil penalty of 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 copy of the written notice of noncompliance to the individual or entity and to the Attorney General or appropriate district attorney or city attorney.

(d) Upon receiving this notice, the Attorney General, district attorney, or city attorney may 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, district attorney, or city attorney may apply for an injunction.

(2) 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.

(Added by renumbering Section 1796.36 by Stats. 2014, Ch. 29, Sec. 45. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.36. (a) A home care organization that has its principal place of business in another state, in addition to the other requirements of this chapter, before arranging for home care services provided by an affiliated home care aide to a client in the state, shall comply with all of the following:

(1) Have an office in California.

(2) Maintain all pertinent records of the operation in California at the California office. All records shall be available to review, copy, audit, and inspect by the department.

(b) If the home care organization is a foreign corporation, foreign limited liability company, foreign limited partnership, foreign association, or a foreign limited liability partnership, as defined in Sections 170, 171, 171.03, 171.05, and 16101 of the Corporations Code, before arranging for home care services provided by an affiliated home care aide to a client in the state, the home care organization shall have an office in California and shall comply with both of the following:

(1) Register with the Secretary of State to conduct intrastate business in California.

(2) Maintain all pertinent records of the operation in California at the California office. All records shall be available to review, copy, audit, and inspect by the department.

(Added by renumbering Section 1796.37 by Stats. 2014, Ch. 29, Sec. 46. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.37. (a) The department may issue a home care organization license to a home care organization applicant that satisfies the requirements set forth in this chapter, including all of the following:

(1) Files a complete home care organization application, including the fees required pursuant to Section 1796.49.

(2) 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.

(3) Submits proof of a valid workers' compensation policy covering its affiliated 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.

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

(5) Provides the department, upon request, with a complete list of its affiliated home care aides, and proof that each satisfies the requirements of Sections 1796.43, 1796.44, and 1796.45.

(6) Passes a background examination, as required pursuant to Section 1796.33.

(7) Completes a department orientation.

(8) Does not have any outstanding fees or civil penalties due to the department.

(9) Discloses prior or present service as an administrator, general partner, corporate officer, or director of, or discloses that the applicant has held or holds a beneficial ownership of 10 percent or more in, any of the following:

(A) A community care facility, as defined in Section 1502.

(B) A residential care facility, as defined in Section 1568.01.

(C) A residential care facility for the elderly, as defined in Section 1569.2.

(D) A child day care facility, as defined in Section 1596.750.

(E) A day care center, as described in Chapter 3.5 (commencing with Section 1596.90).

(F) A family day care home, as described in Chapter 3.6 (commencing with Section 1597.30).

(G) An employer-sponsored childcare center, as described in Chapter 3.65 (commencing with Section 1597.70).

(H) A home care organization licensed pursuant to this chapter.

(10) Discloses any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in paragraph (9).

(11) Provides evidence that every member of the board of directors, if applicable, understands their legal duties and obligations as a member of the board of directors and that the home care organization's operation is governed by laws and regulations that are enforced by the department.

(12) Provides any other information as may be required by the department for the proper administration and enforcement of this chapter.

(13) Cooperates with the department in the completion of the home care organization license application process. Failure of the home care organization licensee to cooperate may result in the withdrawal of the home care organization license application. For purposes of this section, "failure to cooperate" means that the information described in this chapter and in any rules and regulations promulgated pursuant to this chapter has not been provided, or not provided in the form requested by the department, or both.

(b) A home care organization licensee shall renew the home care organization license every two years. The department may renew a home care organization license if the licensee satisfies the requirements set forth in this chapter, including the following:

(1) Submits the nonrefundable fees required pursuant to Section 1796.49, which shall be postmarked on or before the expiration of the license. A home care organization license that is not renewed shall expire two years after the date of issuance.

(2) Does not have any outstanding fees or civil penalties due to the department.

(3) Provides any other information as may be required by the department for the proper administration and enforcement of this chapter.

(4) Cooperates with the department in the completion of the home care organization license renewal process. Failure of the home care organization licensee to cooperate may result in the expiration of the home care organization license or a denial of the home care organization license renewal. For purposes of this section, "failure to cooperate" means that the information described in this chapter and in any rules and regulations promulgated pursuant to this chapter has not been provided, or not provided in the form requested by the department, or both.

(c) (1) The department shall notify a licensed home care organization in writing of its renewal fee.

(2) Written notification pursuant to this subdivision shall be mailed to the licensed home care organization's mailing address of record at least 60 days before the effective renewal date of the license.

(Amended by Stats. 2023, Ch. 43, Sec. 25. (AB 120) Effective July 10, 2023.)

1796.38. The department may deny an application for licensure or suspend or revoke any license issued pursuant to this chapter, pursuant to Sections 1550.5 and 1551 and in the manner provided in this chapter on any of the following grounds:

- (a) Violation by the licensee of this chapter or of the rules and regulations promulgated under this chapter.
- (b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.
- (c) Conduct that is inimical to the health, morals, welfare, or safety of either an individual receiving home care services or the people of the State of California.
- (d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime described in Section 1522.
- (e) Engaging in acts of financial malfeasance concerning the operation of a home care organization.

(Amended by Stats. 2015, Ch. 303, Sec. 294. (AB 731) Effective January 1, 2016.)

1796.40. (a) (1) If an application for a home care organization license indicates, or the department determines during the application review process, that the home care organization applicant was previously issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), Chapter 3.6 (commencing with Section 1597.30), or Chapter 3.65 (commencing with Section 1597.70), and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation. All home care organizations are exempt from the health planning requirements contained in Part 2 (commencing with Section 127125) of Division 107.

(2) If an application for a license indicates, or the department determines during the application review process, that the home care organization applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years have elapsed from the date of the revocation.

(3) If an application for a license indicates, or the department determines during the application review process, that the home care organization applicant was excluded from a facility licensed by the department pursuant to Section 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

(b) If an application for a license indicates, or the department determines during the application review process, that the home care organization applicant had previously applied for a license pursuant to any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application until one year has elapsed from the date of the denial letter. In those circumstances in which denials are appealed and upheld at an administrative hearing, review of the application shall cease for one year from the date of the decision and order of the department.

(c) If an application for a license indicates, or the department determines during the application review process, that the home care organization applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:

(1) In cases where the home care organization applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding the denial.

(2) In cases where the department informed the home care organization applicant of his or her right to petition for a hearing and the home care organization applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.

(d) Cessation of review pursuant to this section does not constitute a denial of the application.

(Added by Stats. 2014, Ch. 29, Sec. 50. (SB 855) Effective June 20, 2014. Provisions implemented as of January 1, 2016, pursuant to Section 1796.61.)

1796.41. (a) (1) If the department determines that a person was issued a license pursuant to this chapter or Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), Chapter 3.6 (commencing with Section 1597.30), or Chapter 3.65 (commencing with Section 1597.70), and the prior license was revoked within the preceding two years, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the

board of directors, an executive director, or an officer of a licensee of any home care organizations licensed by the department pursuant to this chapter.

(2) If the department determines that a person was previously issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of any home care organizations licensed by the department pursuant to this chapter as follows:

(1) In cases in which the home care organization applicant petitioned for a hearing, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases in which the department informed the home care organization applicant of his or her right to petition for a hearing and the home care organization applicant did not petition for a hearing, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter and as follows:

(1) In cases in which the home care organization applicant petitioned for a hearing, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases in which the department informed the home care organization applicant of his or her right to petition for a hearing and the home care organization applicant did not petition for a hearing, the department shall exclude the person from acting as, and require the home care organization to remove him or her from his or her position as, a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1796.25 or any other law.

(e) The department may determine not to exclude a person from acting, or require that he or she be removed from his or her position, as a member of the board of directors, an executive director, or an officer of a licensee of, any home care organizations licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

(Amended by Stats. 2015, Ch. 303, Sec. 295. (AB 731) Effective January 1, 2016.)