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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 8. Home Health Agencies [1725 - 1742] (*Chapter 8 added by Stats. 1966, 1st Ex. Sess., Ch. 79.*)

1725. (a) The purpose of this chapter is to require licensure of home health agencies in order to protect the health and safety of the people of California.

(b) All organizations that provide skilled nursing services to patients in the home shall obtain a home health agency license issued by the department.

(c) The department shall establish high standards of quality for home health agencies and ensure that unlicensed entities are not providing skilled nursing services in the home, except as set forth in Section 1726.

(d) The department shall require that the appropriate field staff be informed of the proper protocols and procedures to document, report, and investigate reported incidents of unlicensed facilities providing skilled nursing services in the home in order to protect public health and to facilitate statewide consistency in documenting and investigating those entities.

(Amended by Stats. 2005, Ch. 335, Sec. 1. Effective January 1, 2006.)

1726. (a) No private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other governmental agency within the state, shall provide, or arrange for the provision of, skilled nursing services in the home in this state without first obtaining a home health agency license.

(b) No private or public organization, including, but not limited to, any partnership, corporation, or political subdivision of the state, or other governmental agency within the state, shall do any of the following unless it is licensed under this chapter:

(1) Represent itself to be a home health agency by its name or advertisement, 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.

(2) Use the words "home health agency," "home health," "home-health," "homehealth," or "in-home health," or any combination of those terms, within its name.

(3) Use the words "skilled" or "nursing," or any combination of those terms within its name, to imply that it is licensed as a home health agency to provide those services.

(c) In implementing the system of licensing for home health agencies, the department shall distinguish between the functions of a home health agency and the functions of an employment agency or a licensed nurses' registry pursuant to Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code. An employment agency or a licensed nurses' registry performing its functions as specified in Title 2.91 (commencing with Section 1812.500) of Part 4 of Division 3 of the Civil Code is not required to secure a home health agency license under subdivision (a), unless it is performing the functions of a home health agency, as defined in this chapter. However, subdivision (b) shall apply to an employment agency or a licensed nurses' registry that is not licensed under this chapter.

(d) A hospice is not required to secure a home health agency license under subdivision (a). However, subdivision (b) shall apply to a hospice that is not licensed under this chapter.

(Amended by Stats. 2005, Ch. 335, Sec. 2. Effective January 1, 2006.)

1727. (a) "Home health agency" means a private or public organization, including, but not limited to, any partnership, corporation, political subdivision of the state, or other government agency within the state, which provides, or arranges for the provision of, skilled nursing services, to persons in their temporary or permanent place of residence.

(b) "Skilled nursing services" means services provided by a registered nurse or licensed vocational nurse.

(c) "Home Health Aide" means an aide who has successfully completed a state-approved training program, is employed by a home health agency or hospice program, and provides personal care services in the patient's home.

(d) "Home health aide services" means personal care services provided under a plan of treatment prescribed by the patient's physician and surgeon who is licensed to practice medicine in the state. Home health aide services shall be provided by a person certified by the state department as a home health aide pursuant to this chapter. Services which do not involve personal care services provided under a plan of treatment prescribed by a physician and surgeon may be provided by a person who is not a certified home health aide. Home health aide services shall not include 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.

(Amended by Stats. 1994, Ch. 1246, Sec. 9. Effective January 1, 1995.)

1727.1. A licensed home health agency may also provide, or arrange for the provision of, other therapeutic services to persons in their temporary or permanent place of residence. Therapeutic services include, but are not limited to, physical, speech, or occupational therapy, medical social services, and home health aide services.

(Added by Stats. 1989, Ch. 856, Sec. 6.)

1727.5. Each home health agency providing home health agency services shall do all of the following:

(a) Provide for a plan of treatment for patients receiving skilled nursing services.

(b) Maintain clinical records on all patients.

(c) Provide for the supervision of licensed and unlicensed personnel by a registered nurse or physical, speech, or occupational therapist when within the therapist's scope of practice.

(d) Maintain policies regarding the delivery and supervision of patient care that are reviewed annually by a group of professional personnel including a physician and surgeon and a registered nurse and revised as needed.

(e) Meet all applicable federal, state, and local requirements.

(f) Maintain, and revise as needed, and implement policies regarding the purchase, storage, furnishing, and transportation of legend devices that are reviewed annually by a group of professional personnel, including a physician and surgeon, pharmacist, and a registered nurse. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

(g) Meet other standards, rules, and regulations adopted by the state department in order to implement this chapter.

(Amended by Stats. 1992, Ch. 1104, Sec. 4. Effective September 29, 1992.)

1727.7. (a) The Legislature finds and declares the following:

(1) Thousands of patients receive home health care each year, thus preventing, postponing, and limiting the need for unnecessary institutionalization.

(2) The adoption of emergency home health agency licensing regulations is necessary in order to conform existing home health agency licensing regulations to state law and the current scope and practice of home health care.

(3) The adoption of emergency home health agency regulations is necessary due to the increased provider and consumer demands for home care services and advances in health care technology.

(4) The adoption of emergency home health agency regulations is necessary due to the emerging influences of health care reform and changing expectations of managed care programs and insurance providers.

(b) The director shall adopt revised home health agency licensure regulations. These revised regulations shall be adopted on an emergency basis. Until January 1, 1996, the adoption of any emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this section shall be deemed to be an emergency by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(c) It is the intent of the Legislature that the adoption of home health agency licensure regulations pursuant to this chapter shall in no way prohibit interested parties from participating in review of the revised regulations. It is also the intent of the Legislature that the adoption of the revised regulations shall in no way narrow the existing scope of practice of registered nurses or licensed vocational nurses or lessen the quality of nurse supervision or care in the home health care setting.

(Added by Stats. 1994, Ch. 551, Sec. 1. Effective September 12, 1994.)

1728. Any person, organization, political subdivision of the state or governmental agency desiring a license under the provisions of this chapter or a hospital as defined in Section 1401 of this division which desires to establish, conduct, or maintain a home health agency shall file with the state department a verified application on a form prescribed, prepared and furnished by the state department, containing information as may be required by the state department for the proper administration and enforcement of this chapter.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1728.1. (a) To qualify for a home health agency license, the following requirements shall be met:

(1) Every applicant shall satisfy the following conditions:

(A) Be of good moral character. If the applicant is a firm, association, organization, partnership, business trust, corporation, or company, all principal managing members thereof, and the person in charge of the agency for which application for license is made, shall satisfy this requirement. If the applicant is a political subdivision of the state or other governmental agency, the person in charge of the agency for which application for license is made, shall satisfy this requirement.

(B) Possess and demonstrate the ability to comply with this chapter and the rules and regulations adopted under this chapter by the state department.

(C) File their application pursuant to and in full compliance with this chapter.

(2) (A) The following persons shall submit to the State Department of Public Health an application and shall submit electronic fingerprint images to the Department of Justice for the furnishing of the person's criminal record to the state department, at the person's expense as provided in subdivision (b), for the purpose of a criminal record review:

(i) The owner or owners of a private agency if the owners are individuals.

(ii) If the owner of a private agency is a corporation, partnership, or association, any person having a 10 percent or greater interest in that corporation, partnership, or association.

(iii) The administrator of a home health agency.

(B) When the conditions set forth in paragraph (3) of subdivision (a) of Section 1265.5, subparagraph (A) of paragraph (1) of subdivision (a) of Section 1338.5, and paragraph (1) of subdivision (a) of Section 1736.6 are met, the licensing and certification program shall issue an All Facilities Letter (AFL) informing facility licensees. After the AFL is issued, facilities must not allow newly hired administrators, program directors, and fiscal officers to have direct contact with clients or residents of the facility prior to completion of the criminal record clearance. A criminal record clearance shall be complete when the department has obtained the person's criminal offender record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required.

(3) The information required pursuant to this section shall be provided to the Licensing and Certification Program upon initial application for licensure. Unless otherwise specified, any change in the information that requires the licensee to submit a report of change or written notification to the Licensing and Certification Program shall be provided within 10 business days of the change along with any applicable fee according to subdivision (b) of Section 1266.

(b) The persons specified in paragraph (2) of subdivision (a) shall be responsible for any costs associated with transmitting the electronic fingerprint images. The fee to cover the processing costs of the Department of Justice, not including the costs associated with capturing or transmitting the fingerprint images and related information, shall not exceed thirty-two dollars (\$32) per submission.

(c) If the criminal record review conducted pursuant to paragraph (2) of subdivision (a) discloses a conviction for a felony or any crime that evidences an unfitness to provide home health services, the application for a license shall be denied or the person shall be prohibited from providing service in the home health agency applying for a license. This subdivision shall not apply to deny a license or prohibit the provision of service if the person presents evidence satisfactory to the state department that the person has been rehabilitated and presently is of such good character as to justify the issuance of the license or the provision of service in the home health agency.

(d) An applicant and any other person specified in this section, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of their knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal

background clearance process. Every applicant shall provide information on any prior administrative action taken against them by any federal, state, or local government agency and shall certify that, to the best of their knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of their application or exemption or revocation of any exemption previously granted.

(Amended by Stats. 2024, Ch. 40, Sec. 13. (SB 159) Effective June 29, 2024.)

1728.2. (a) If a home health agency or an applicant for a license has not been previously licensed, the state department may only issue a provisional license to the agency as provided in this section.

(b) A provisional license to operate a home health agency shall terminate six months from the date of issuance.

(c) Within 30 days prior to the termination of a provisional license, the state department shall give the agency a full and complete inspection, and, if the agency meets all applicable requirements for licensure, a regular license shall be issued. If the home health agency does not meet the requirements for licensure but has made substantial progress towards meeting the requirements, as determined by the state department, the initial provisional license shall be renewed for six months.

(d) If the state department determines that there has not been substantial progress towards meeting licensure requirements at the time of the first full inspection provided by this section, or, if the state department determines upon its inspection made within 30 days of the termination of a renewed provisional license that there is lack of full compliance with the requirements, no further license shall be issued.

(e) If an applicant for a provisional license to operate a home health agency has been denied provisional licensing by the state department, the applicant may contest the denial by filing a request for a hearing pursuant to Section 100171.

(f) The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

(Amended by Stats. 1997, Ch. 220, Sec. 22. Effective August 4, 1997.)

1728.3. Notwithstanding Sections 1728.1 and 1732, the state department may issue a provisional license to a home health agency if:

(a) The agency and the applicant for licensure substantially meet the standards specified by this chapter and regulations adopted pursuant to this chapter.

(b) No violation of this chapter or regulations adopted under this chapter exists in the agency which jeopardizes the health or safety of patients.

(c) The applicant has adopted a plan for correction of any existing violations which is satisfactory to the state department.

A provisional license issued under this section shall expire not later than six months after the date of issuance, or at an earlier time as determined by the state department at the time of issuance, and may not be renewed.

The department shall not apply less stringent criteria when granting a provisional license pursuant to this section than it applies when granting a permanent license.

(Amended by Stats. 1988, Ch. 160, Sec. 100.)

1728.7. (a) Notwithstanding any other provision of this chapter, the department shall issue a license to a home health agency that applies to the department for a home health agency license and meets all of the following requirements:

(1) Is accredited as a home health agency by an entity approved by the federal Centers for Medicare and Medicaid Services as a national accreditation organization, and the national accreditation organization forwards to the department copies of all initial and subsequent survey and other accreditation reports or findings.

(2) Files an application with fees pursuant to this chapter.

(3) Meets any other additional licensure requirements of, or regulations adopted pursuant to, this chapter that the department identifies, after consulting with the national accreditation organizations, as more stringent than the accreditation requirements of the national accreditation organizations.

(b) The department may conduct a survey of an accredited home health agency to ensure the accreditation requirements are met. These surveys shall be conducted using a selective sample basis.

(c) The department may conduct a survey of an accredited home health agency to investigate complaints against an accredited home health agency for substantial noncompliance, as determined by the department, with these accreditation standards.

(d) Notwithstanding subdivisions (a), (b), and (c), the department shall retain its full range of authority over accredited home health agencies to ensure the licensure and accreditation requirements are met. This authority shall include the entire scope of enforcement sanctions and options available for unaccredited home health agencies.

(Amended by Stats. 2018, Ch. 424, Sec. 2. (SB 1495) Effective January 1, 2019.)

1728.8. (a) It is the intent of the Legislature to ensure that the department licenses and certifies home health agencies in a reasonable and timely manner to ensure that Californians have access to critical home- and community-based services. Home health agencies have significant startup costs and regulatory requirements, which make home health agencies vulnerable to delays in licensing and certification surveys. Home health agencies help the state protect against the unnecessary institutionalization of individuals and are integral in ensuring the state's compliance with the United States Supreme Court decision in *Olmstead v. L.C.* (1999) 527 U.S. 581, which requires public agencies to provide services in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

(b) No later than 90 calendar days after the department receives an initial and complete parent, branch, or change of ownership home health agency application, the department shall make every effort to complete the application paperwork and conduct a licensure survey, if necessary, to inspect the agency and evaluate the agency's compliance with state requirements. The department shall forward its recommendation, if necessary, and all other information, to the federal Centers for Medicare and Medicaid Services within the same 90 calendar days.

(c) (1) For those applicants seeking to receive reimbursement under the Medicare or Medi-Cal programs, the department shall make every effort to complete the initial application paperwork and conduct an unannounced certification survey, if necessary, no later than 90 calendar days after the department conducts the licensure survey required by subdivision (a), or no later than 90 days after the department's receipt of a letter from the home health agency notifying the department of its readiness for the certification survey from a parent or branch agency.

(2) No later than 30 calendar days after the certification survey, the department shall forward the results of its licensure and certification surveys and all other information necessary for certification to the federal Centers for Medicare and Medicaid Services.

(d) This section shall apply to all licensing and certification entities, including a county that contracts with the state to provide licensing and certification services on behalf of the state.

(e) If the department is unable to meet the 90-day timelines for licensing or certification required pursuant to this section, the department shall notify the applicant in writing of the delay and the anticipated date of the survey.

(f) This section shall become operative on July 1, 2008.

(Amended by Stats. 2008, Ch. 179, Sec. 144. Effective January 1, 2009.)

1729. Each application for a license under this chapter, except applications by the State of California or any state department, authority, bureau, commission, or officer, shall be accompanied by a Licensing and Certification Program fee for the headquarters or main office of the agency and for each additional branch office maintained and operated by the agency in the amount set in accordance with Section 1266. The department shall work with the home health agency industry association and providers to restructure home health agency licensing and certification program fees in a budget neutral capacity for the 2008–09 fiscal year.

(Amended by Stats. 2007, Ch. 620, Sec. 2. Effective January 1, 2008.)

1730. (a) Each license issued under this chapter shall expire 12 months from the date of its issuance. Application for renewal of license accompanied by the necessary fee shall be filed with the state department annually, not less than 30 days prior to expiration date. Failure to make a timely renewal shall result in expiration of the license.

(b) (1) At least 45 days prior to the expiration of a license issued pursuant to this chapter, the department shall mail an application for renewal to the licensee.

(2) Any application for a license renewal shall be submitted with the necessary fee in accordance with subdivision (a). A license shall be deemed renewed upon payment of the necessary fee, commencing from the license's expiration date. If the requirements of this section are met, the department shall issue a license to the agency and its branches by the expiration date of the license to ensure the provider remains in good standing. The agency's license shall be mailed within 30 calendar days after the date the department receives the renewal fee.

(Amended by Stats. 2007, Ch. 620, Sec. 3. Effective January 1, 2008.)

1731. No person, public or private organization, political subdivision of the state, or other governmental agency within the state, shall continue to operate, conduct, or maintain an existing home health agency after September 30, 1966, without having applied for

and obtained a license as provided in this chapter or in the case of a hospital as defined in Section 1401 of this division, having been approved by the state department to establish, conduct, or maintain a home health agency.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1732. Upon filing of the application for a license provided for in, and upon full compliance with, the provisions of this chapter and the rules and regulations promulgated under this chapter by the state department, the state department shall issue to the applicant the license applied for. However, any hospital, as defined in Section 1401 which is licensed under the provisions of Chapter 2.3 (commencing with Section 1400) is not required to obtain a license. In order for a hospital to establish, conduct, or maintain a home health agency, it shall comply with all the provisions of this chapter and be approved by the state department. The approval shall be deemed to be licensure and shall not extend past midnight on the 31st day of December of each calendar year. The fee set forth in Section 1729 shall be paid before approval is granted. Approval may be denied or withdrawn by the state department on the same grounds as provided for denial, suspension, or revocation of a home health agency license. The state department may take the same action against any approved hospital home health agency as it may against any licensed home health agency under this chapter.

(Amended by Stats. 1981, Ch. 714.)

1733. Every home health agency for which a license has been issued, except a facility that is certified to participate either in the Medicare program under Title XVIII (42 U.S.C. Sec. 1395 et seq.) of the federal Social Security Act, or the medicaid program under Title XIX (42 U.S.C. Sec. 1396 et seq.) of the federal Social Security Act, or both, shall be periodically inspected by a duly authorized representative of the state department no less than once a year. Reports of each such inspection shall be prepared by the representative conducting it upon forms prepared and furnished by the state department and filed with the state department. Such inspection shall be for the purpose of ensuring that the provisions of this chapter and the rules and regulations of the department are being followed. The state department is directed to ensure by such inspection that the home health agency is providing high quality care to its patients in accordance with the orders of the patient's physician.

(Amended by Stats. 1992, Ch. 709, Sec. 14. Effective September 15, 1992.)

1734. (a) The state department shall adopt, and may thereafter modify, amend, or rescind, reasonable rules and regulations to carry out the purposes of this chapter, including, the prohibition of specific conduct, determined by the state department to be inimical to the public health, morals, welfare or safety of the people of the State of California in the maintenance and operation of the home health agency for which a license is issued. In adopting, modifying, amending or rescinding the rules and regulations, the state department shall consult with, and receive recommendations from among other physicians and surgeons, pharmacists, public health nurses, and persons representing hospitals, nonprofit home health agencies, proprietary home health agencies and counties whose health department or hospital has a home health agency. The state department shall also comply with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The state department shall adopt rules and regulations regarding the purchase, storage, furnishing, and transportation of legend devices for a patient of a home health agency. As used in this subdivision, "legend devices" means any device that bears the label "Caution: federal law restricts this device to sale by or on the order of a ____" or words of similar meaning.

(Amended by Stats. 1992, Ch. 1104, Sec. 5. Effective September 29, 1992.)

1734.5. (a) The department may grant to entities contracting with the department under the PACE program, as defined in Chapter 8.75 (commencing with Section 14591) of Part 3 of Division 9 of the Welfare and Institutions Code, exemptions from the provisions contained in this chapter in accordance with the requirements of Section 100315.

(b) This section shall become inoperative if, and on the date that, subdivision (b) of Section 1738 becomes operative, and, as of January 1 immediately following that date, this section is repealed.

(Amended by Stats. 2019, Ch. 821, Sec. 6. (AB 1128) Effective January 1, 2020.)

1735. The state department may deny any application for, or suspend or revoke any license issued under the provisions of this chapter upon any of the following grounds and in the manner hereinafter provided:

(a) Violation by the licensee of any of the provisions of this chapter or of any other law of this state or of the rules and regulations promulgated under this chapter.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Misrepresentation of a material fact in the application for a license.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1736. Proceedings for the denial, suspension or revocation of licenses or denial or withdrawal of approval under this chapter shall be conducted in accordance with Section 100171.

The suspension, expiration, or forfeiture by operation of law of a license issued by the state department; its suspension, forfeiture, or cancellation by order of the state department or by order of a court of law; or its surrender without the written consent of the state department, shall not deprive the state department of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

(Amended by Stats. 1997, Ch. 220, Sec. 23. Effective August 4, 1997.)

1736.1. (a) An applicant for certification as a certified home health aide shall comply with each of the following requirements:

(1) Have successfully completed a training program with a minimum of 75 hours or an equivalent competency evaluation program approved by the department pursuant to applicable federal and state regulations.

(2) Obtain a criminal record clearance pursuant to Section 1736.6.

(b) (1) No later than July 1, 2019, the department shall require the applicant to provide either the individual taxpayer identification number or social security number for purposes of applying for a certificate or the renewal of a certificate.

(2) If the department utilizes a national examination to issue a certificate, and if a reciprocity agreement or comity exists between the State of California and the state requesting release of the individual taxpayer identification number or social security number, any deputy, agent, clerk, officer, or employee of the department may release an individual's taxpayer identification number or social security number to an examination or certifying entity, only for the purpose of verification of certification or examination status.

(3) The individual taxpayer identification or the social security number shall serve to establish the identification of persons affected by state tax laws and for purposes of establishing compliance with subsection (a) of Section 666 of Title 42 of the United States Code, Section 60.15 of Title 45 of the Code of Federal Regulations, Section 17520 of the Family Code, and Section 11105 of the Penal Code, and to that end, the information furnished pursuant to this section shall be used exclusively for those purposes.

(4) The department shall not do either of the following:

(A) Require an applicant to disclose citizenship status or immigration status for purposes of the application or renewal of a certificate.

(B) Deny licensure to an otherwise qualified and eligible applicant based solely on his or her citizenship status or immigration status.

(c) Any person who violates this article is guilty of a misdemeanor and, upon a conviction thereof, shall be punished by imprisonment in the county jail for not more than 180 days, or by a fine of not less than twenty dollars (\$20) nor more than one thousand dollars (\$1,000), or by both that fine and imprisonment.

(Amended by Stats. 2018, Ch. 838, Sec. 9. (SB 695) Effective January 1, 2019.)

1736.2. (a) Certificates issued for certified home health aides shall be renewed every two years and renewal shall be conditioned on the certificate holder obtaining a criminal record clearance pursuant to Section 1736.6.

(b) Certificates issued to certified home health aides shall expire on the certificate holder's birthday.

(c) To renew an unexpired certificate, the certificate holder shall, on or before the certificate expiration date, apply for renewal on a form provided by the state.

(d) The department shall give written notice to a certificate holder 90 days in advance of the renewal date and 90 days in advance of the expiration of the fourth year that an application has not been submitted, and shall give written notice informing the certificate holder in general terms of the provisions governing certificate renewal for certified home health aides. Nonreceipt of the renewal notice does not relieve the certificate holder of the obligation to make a timely renewal. Failure to make a timely renewal shall result in expiration of the certificate.

(e) Except as otherwise provided in this article, an expired certificate may be renewed at any time within four years after its expiration on the filing of an application for renewal on a form prescribed by the department.

Renewal under this article shall be effective on the date on which the application is filed. If renewed, the certificate shall continue in effect until the date provided for in this section, when it shall expire if it is not again renewed.

(f) If a certified home health aide applies for renewal more than 30 days after expiration but within four years after the expiration, and demonstrates in writing to the department's satisfaction why the renewal application was late, then the state department shall issue a renewal. A suspended certificate is subject to expiration and shall be renewed as provided in this article, but this renewal does not entitle the certificate holder, while the certificate remains suspended, and until it is reinstated, to engage in the certified activity, or in any other activity or conduct in violation of the order or judgment by which the certificate was suspended.

(g) A revoked certificate is subject to expiration as provided in this section, but it cannot be renewed.

(h) A certificate that is not renewed within four years after its expiration cannot be renewed, restored, reissued, or reinstated except upon completion of a certification training program unless deemed otherwise by the state department if both of the following conditions are met:

(1) No fact, circumstance, or condition exists that, if the certificate were issued, would justify its revocation or suspension.

(2) The person takes and passes any examination that may be required of an applicant for a new certificate at that time, that shall be given by an approved provider of a certification training program.

(i) Certificate holders shall notify the department within 60 days of any change of address. Any notice sent by the department shall be effective if mailed to the current address filed with the department.

(j) Certificate holders that have been certified as both nurse assistants pursuant to Article 9 (commencing with Section 1337) of Chapter 2 of Division 2 and home health aides pursuant to this chapter shall renew their certificates at the same time on one application.

(Amended by Stats. 2006, Ch. 74, Sec. 21. Effective July 12, 2006.)

1736.4. (a) The state department shall investigate complaints concerning misconduct by certified home health aides and may take disciplinary action pursuant to Section 1736.5.

(b) The department shall maintain a registry that includes the certification status of all certified home health aides, including the status of any proposed or completed disciplinary actions.

(c) Home health agencies, as defined in subdivision (a) of Section 1727, and hospice providers, as defined in subdivision (b) of Section 1745, that hire certified home health aides after July 1, 1997, shall consult the state department's registry prior to hiring these individuals or placing them in direct contact with patients.

(Added by Stats. 1994, Ch. 1246, Sec. 13. Effective January 1, 1995.)

1736.5. (a) The department shall deny a training application and deny, suspend, or revoke a certificate issued under this article if the applicant or certificate holder has been convicted of a violation or attempted violation of any of the following Penal Code provisions: Section 187, subdivision (a) of Section 192, Section 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245, 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a, 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 287 or former Section 288a, Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b, Sections 484d to 484j, inclusive, Section 487, subdivision (a) of Section 487a, or Section 488, 496, 503, 518, or 666, unless any of the following applies:

(1) The person was convicted of a felony and 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 and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 of the Penal Code.

(2) The person was convicted of a misdemeanor and the information or accusation against him or her has been dismissed pursuant to Section 1203.4 or 1203.4a of the Penal Code.

(3) The certificate holder was convicted of a felony or a misdemeanor, but has previously disclosed the fact of each conviction to the department, and the department has made a determination in accordance with law that the conviction does not disqualify the applicant from certification.

(b) An application or certificate shall be denied, suspended, or revoked upon conviction in another state of an offense that, if committed or attempted in this state, would have been punishable as one or more of the offenses set forth in subdivision (a), unless evidence of rehabilitation comparable to the certificate of rehabilitation or dismissal of a misdemeanor set forth in paragraph (1) or (2) of subdivision (a) is provided.

(c) (1) The department may deny an application or deny, suspend, or revoke a certificate issued under this article for any of the following:

(A) Unprofessional conduct, including, but not limited to, incompetence, gross negligence, physical, mental, or verbal abuse of patients, or misappropriation of property of patients or others.

(B) Conviction of a crime substantially related to the qualifications, functions, and duties of a home health aide, irrespective of a subsequent order under Section 1203.4, 1203.4a, or 4852.13 of the Penal Code, where the department determines that the applicant or certificate holder has not adequately demonstrated that he or she has been rehabilitated and will present a threat to the health, safety, or welfare of patients.

(C) Conviction for, or use of, any controlled substance as defined in Division 10 (commencing with Section 11000) of this code, or any dangerous drug, as defined in Section 4022 of the Business and Professions Code, or alcoholic beverages, to an extent or in a manner dangerous or injurious to the home health aide, any other person, or the public, to the extent that this use would impair the ability to conduct, with safety to the public, the practice authorized by a certificate.

(D) Procuring a home health aide certificate by fraud, misrepresentation, or mistake.

(E) Making or giving any false statement or information in conjunction with the application for issuance of a home health aide certificate or training and examination application.

(F) Impersonating any applicant, or acting as proxy for an applicant, in any examination required under this article for the issuance of a certificate.

(G) Impersonating another home health aide, a licensed vocational nurse, or a registered nurse, or permitting or allowing another person to use a certificate for the purpose of providing nursing services.

(H) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of, this article.

(2) In determining whether or not to deny an application or deny, suspend, or revoke a certificate issued under this article pursuant to this subdivision, the department shall take into consideration the following factors as evidence of good character and rehabilitation:

(A) The nature and seriousness of the offense under consideration and its relationship to the person's employment duties and responsibilities.

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

(C) The time that has elapsed since the commission of the conduct or offense referred to in subparagraph (A) or (B) and the number of offenses.

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

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

(F) Employment history and current employer recommendations.

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

(H) Granting by the Governor of a full and unconditional pardon.

(I) A certificate of rehabilitation from a superior court.

(d) When the department determines that a certificate shall be suspended, the department shall specify the period of actual suspension. The department may determine that the suspension shall be stayed, placing the certificate holder on probation with specified conditions for a period not to exceed two years. When the department determines that probation is the appropriate action, the certificate holder shall be notified that in lieu of the department proceeding with a formal action to suspend the certification and in lieu of an appeal pursuant to subdivision (g), the certificate holder may request to enter into a diversion program agreement. A diversion program agreement shall specify terms and conditions related to matters including, but not limited to, work performance, rehabilitation, training, counseling, progress reports, and treatment programs. If a certificate holder successfully completes a diversion program, no action shall be taken upon the allegations that were the basis for the diversion agreement. Upon failure of the certificate holder to comply with the terms and conditions of an agreement, the department may proceed with a formal action to suspend or revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the applicant or certificate holder in writing by certified mail of both of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the department within 20 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, that is convenient to the applicant or certificate holder. The hearing shall be audio or video recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with subdivision (f). If the certificate holder requests an administrative hearing pursuant to subdivision (g), the department shall hold the administrative hearing as soon as possible but not later than 30 calendar days from receipt of the request for a hearing. A written hearing decision upholding or setting aside the action shall be sent by certified mail to the certificate holder within 30 calendar days of the hearing.

(i) Upon the expiration of the term of suspension, the certificate holder shall be reinstated by the department and shall be entitled to resume practice unless it is established to the satisfaction of the department that the person has practiced as a home health aide in California during the term of suspension. In this event, the department shall revoke the person's certificate.

(j) Upon a determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the employer of the applicant or certificate holder in writing of that determination, and whether the determination is final, or whether a hearing is pending relating to this determination. If a licensee or facility is required to deny employment or terminate employment of the employee based upon notice from the state that the employee is determined to be unsuitable for employment under this section, the licensee or facility shall not incur criminal, civil, unemployment insurance, workers' compensation, or administrative liability as a result of that denial or termination.

(Amended by Stats. 2018, Ch. 423, Sec. 34. (SB 1494) Effective January 1, 2019.)

1736.6. (a) (1) A criminal record clearance shall be conducted by the department for all home health aides by electronically submitting fingerprint images and related information to the Department of Justice. The Licensing and Certification Program shall issue an All Facilities Letter (AFL) to facility licensees when it determines that both of the following criteria have been met for a period of 30 days:

(A) The program receives, within three business days, 95 percent of its total responses indicating no evidence of recorded criminal information from the Department of Justice.

(B) The program processes 95 percent of its total responses requiring disqualification with notices mailed to the individual in accordance with subdivision (a) of Section 1736.5, no later than 45 days after the date that the report is received from the Department of Justice.

(2) After the AFL is issued, facilities must not allow newly hired administrators, program directors, and fiscal officers to have direct contact with clients or residents of the facility prior to completion of the criminal record clearance. A criminal record clearance shall be complete when the department has obtained the person's criminal offender record information search response from the Department of Justice and has determined that the person is not disqualified from engaging in the activity for which clearance is required. Applicants shall be responsible for any costs associated with capturing or transmitting the fingerprint images and related information. The fee to cover the processing costs of the Department of Justice, not including the costs associated with capturing or transmitting the fingerprint images and related information, shall not exceed thirty-two dollars (\$32) per submission.

(3) An applicant or certificate holder who may be disqualified on the basis of a criminal conviction shall provide the department with a certified copy of the judgment of each conviction. In addition, the individual may, during a period of two years after the department receives the criminal record report, provide the department with evidence of good character and rehabilitation in accordance with subdivision (a) of Section 1736.5. Upon receipt of a new application for certification of the individual, the

department may receive and consider the evidence during the two-year period without requiring additional fingerprint imaging to clear the individual.

(4) The department's Licensing and Certification Program shall explore and implement methods for maximizing its efficiency in processing criminal record clearances within the requirements of law, including a streamlined clearance process for persons that have been disqualified in the basis of criminal convictions that do not require automatic denial pursuant to subdivision (a) of Section 1736.5.

(b) Upon enrollment in a training program for home health aide certification, and prior to direct contact with residents, a candidate for training shall submit a training and examination application to the department and submit electronic fingerprint images and related information to receive a criminal record review through the Department of Justice. This criminal record clearance shall be completed prior to direct contact with residents. Submission of the fingerprint images to the Federal Bureau of Investigation, through the Department of Justice, shall be at the discretion of the state department.

(c) A criminal record clearance, consistent with this section shall be implemented for home health aide applicants beginning July 1, 1998, and phased in for all certified home health aides by June 30, 2000.

(d) The department shall develop procedures to ensure that any licensee, direct care staff, or certificate holder for whom a criminal record has been obtained pursuant to this section or Section 1265.6 or 1338.5 shall not be required to obtain multiple criminal record clearances.

(e) An applicant and any other person specified in this subdivision, as part of the background clearance process, shall provide information as to whether or not the person has any prior criminal convictions, has had any arrests within the past 12-month period, or has any active arrests, and shall certify that, to the best of his or her knowledge, the information provided is true. This requirement is not intended to duplicate existing requirements for individuals who are required to submit fingerprint images as part of a criminal background clearance process. Every applicant shall provide information on any prior administrative action taken against him or her by any federal, state, or local government agency and shall certify that, to the best of his or her knowledge, the information provided is true. An applicant or other person required to provide information pursuant to this section that knowingly or willfully makes false statements, representations, or omissions may be subject to administrative action, including, but not limited to, denial of his or her application or exemption or revocation of any exemption previously granted.

(f) If, at any time, the department determines that it does not meet the standards specified in subparagraphs (A) and (B) of paragraph (1) of subdivision (a) for a period of 90 consecutive days, the requirements in subdivision (a) shall be inoperative until the department determines that that it has met those standards for a period of 90 consecutive days.

(g) During any period of time in which the requirements of subdivision (a) are inoperative, home health agencies may allow newly hired home health aides to have direct contact with patients after those persons have submitted live-scan fingerprint images to the Department of Justice, and the department shall issue an AFL advising facilities of this change in the statutory requirement.

(h) Notwithstanding any other provision of law, the department may provide an individual with a copy of his or her state or federal level criminal offender record information search response as provided to that department by the Department of Justice if the department has denied a criminal background clearance based on this information and the individual makes a written request to the department for a copy specifying an address to which it is to be sent. The state or federal level criminal offender record information search response shall not be modified or altered from its form or content as provided by the Department of Justice and shall be provided to the address specified by the individual in his or her written request. The department shall retain a copy of the individual's written request and the response and date provided.

(Amended by Stats. 2006, Ch. 902, Sec. 15. Effective January 1, 2007.)

1736.7. (a) The state department may request and maintain employment information for home health aides.

(b) Within five working days of receipt of a criminal record or information from the Department of Justice pursuant to Section 1736.6, the state department shall notify the licensee and applicant of any criminal convictions.

(c) The state department shall conduct a feasibility study to assess the additional technology requirements necessary to include previous and current employment information on its registry and to make that information available to potential employers. The state department shall report to the Legislature by July 1, 2000, as to the results of the study.

(Added by Stats. 1998, Ch. 716, Sec. 2. Effective January 1, 1999.)

1737. Any license revoked pursuant to this chapter may be reinstated pursuant to the provisions of Section 11522 of the Government Code.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1737.5. Any licensee may, with the approval of the state department, surrender his license for suspension or cancellation by the state department. Any license suspended or canceled pursuant to this section may be reinstated by the state department on receipt

of an application showing compliance with the requirements of Section 1728.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1738. This chapter does not apply to either of the following:

(a) A home health agency conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(b) A home health agency that is part of a Program of All-Inclusive Care for the Elderly (PACE) organization, as defined in Section 460.6 of Title 42 of the Code of Federal Regulations and approved by the State Department of Health Care Services pursuant to Section 14592 of the Welfare and Institutions Code, that exclusively serves PACE participants, as defined in Section 460.6 of Title 42 of the Code of Federal Regulations.

(1) A home health agency approved by the State Department of Health Care Services pursuant to Section 14592 of the Welfare and Institutions Code to operate exclusively as part of a PACE organization may provide services to individuals who are being assessed for eligibility to enroll in the PACE program for not more than 60 calendar days after an individual submits an application for enrollment.

(2) If the State Department of Health Care Services determines that a home health agency approved to operate exclusively as part of a PACE organization has provided services to individuals other than those enrolled in the PACE program, or who are being assessed for eligibility pursuant to paragraph (1), the home health agency shall apply for licensure with the State Department of Public Health. A home health agency required to obtain licensure from the State Department of Public Health pursuant to this paragraph shall apply for the license not later than 60 calendar days following the determination by the State Department of Health Care Services described in this paragraph. The home health agency shall not accept any new participants in the PACE program until licensure is obtained.

(3) This subdivision shall become operative only if the Director of Health Care Services determines, and communicates that determination in writing to the State Department of Public Health, that operating standards compliance programs consistent with subdivisions (d) and (e) of Section 14592 of the Welfare and Institutions Code have been established. A home health agency described in subdivision (c) of Section 14592 of the Welfare and Institutions Code shall remain under the oversight and regulatory authority of the State Department of Public Health until the Director of Health Care Services communicates their written determination to the State Department of Public Health.

(Amended by Stats. 2019, Ch. 821, Sec. 7. (AB 1128) Effective January 1, 2020.)

1739. Any person who violates any of the provisions of this chapter or of the rules and regulations promulgated under this chapter is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days or by both such fine and imprisonment.

(Amended by Stats. 1983, Ch. 1092, Sec. 149. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

1740. The director may bring an action to enjoin the violation or threatened violation of Section 1726 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under the provisions of this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or to show or tending to show irreparable damage or loss.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1741. Any officer, employee, or agent of the state department may enter and inspect any building, premises, record or file of a licensee at any reasonable time to secure compliance with, or to prevent a violation of, any provision of this chapter.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)

1742. The district attorney of every county shall, upon application by the state department or its authorized representative, institute and conduct the prosecution of any action for violation within his county or any provisions of this chapter.

(Added by Stats. 1966, 1st Ex. Sess., Ch. 79.)