The Home Care Services Consumer Protection Act

VERSION TWO

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Community Care Licensing Division
California Department of Social Services

Caregiver Background Check Bureau
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SUMMARY OF VERSION UPDATES

VERSION TWO UPDATES: Released December 2015

1. Section 90-022(a)(3)(A): amended cite reference from Section 90-021(c) subdivisions (1)-(5) to Section 90-021(c) subdivisions (4)-(5).
2. Section 90-028(c)(1)(A): moved this provision to Section 90-062(a)(2)(A).
3. Section 90-062(a)(2): renumbered to 90-062(a)(3).
4. Section 90-066(c)(6)(A): added section to allow TB results or other health related information to be contained in a separate confidential personnel file.
5. Section 90-067(a)(1)(B): amended from “entry level training” to “two-hour orientation training” is not transferable and shall be completed at each Home Care Organization to which the Affiliated Home Care Aide is associated.
6. Section 90-071(a)(1)(A): reworded “criminal background check” to “criminal record review”.
7. Section 90-071(a)(3)(A): reworded “criminal background check” to “criminal record review”.
8. Article V: added criminal record review sections 90-100 and 90-110.
9. Article VI: renumbered appendices from Article V.

ARTICLE I. THE HOME CARE SERVICES CONSUMER PROTECTION ACT

SECTION 1: PURPOSE

10. The purpose of the Home Care Services Consumer Protection Act is to promote consumer protection for elderly and disabled individuals who hire private aides to come into their homes and provide assistance with activities of daily living.

SECTION 2: AUTHORITY

(a) California Health and Safety Code section 1796 et seq. requires the California Department of Social Services to license Home Care Organizations and establish, maintain, and continuously update a public registry of registered Home Care Aides and Home Care Aide applicants. *(Added by Stats. 2013, Ch. 790, Sec. 1. Effective January 1, 2014. Provisions to be implemented on January 1, 2016, pursuant to Section 1796.61.)*

ARTICLE II. DIRECTIVES FOR HOME CARE ORGANIZATIONS

SECTION 1: GENERAL

(a) Written directives shall apply to all home care services specified in the Home Care Services Consumer Protection Act.

(b) Unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel records and administrative records in a hard copy format as set forth in these written directives.

SECTION 2: DEFINITIONS

90-000: DEFINITIONS

The following general definitions shall apply wherever the terms are used throughout the Written Directives, except where specifically noted otherwise.

(a)(1) "Administrator" means the licensee, or the adult designated by the licensee to act in his/her behalf in the overall management of the Home Care Organization.

(b)(1) "Bona-fide Offer" means a proposal by the buyer to purchase a Home Care Organization with definite terms, in writing, communicated to the seller and accompanied by a cash deposit.

(c)(1) "Confidential Client Information" includes clients' medical details, name, date of birth, age, address, sex, details of family contact, bank details, medical history or records, personal care issues, service records, progress notes, individual personal plans, assessments or reports, guardianship orders, Durable Power of Attorney for Health Care, incoming or outgoing personal correspondence, and all information relating to ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual lifestyle.

(2) "Common Address" means all components of the Home Care Organization are conducted at a single site and owned and operated by the same licensee, even if there are separate buildings or portions of the Home Care Organization on the site.

(3) "Conditional License" means a license which is temporary, nonrenewable and issued for a period not to exceed seven months. A conditional license is issued in accordance with the criteria specified in Section 90-0026.

(d)(1) "Deficiency" means any failure to comply with any provision of the Home Care Services Consumer Protection Act (Health and Safety Code section 1796 et seq.) and regulations or written directives adopted by the Department pursuant to the Home Care Services Consumer Protection Act. Deficiency shall have the same meaning as violation and can be used interchangeably.

(2) "Department Representative" means any duly authorized officer or agent of the Department.

(3) "Designee" means the licensee or the adult designated by the licensee to act on his or her behalf in the overall management of the Home Care Organization(s) or suboffice.

(e)(1) "Employee" means the same as staff of a Home Care Organization, but it does not mean an Affiliated Home Care Aide. Employee and staff may be used interchangeably.

(2) "Employee Dishonesty Bond" means Home Care Organization Surety Bond.

(3) "Exception" means a written authorization issued by the Department to use alternative means which meet the intent of a specific regulation(s) and which are based on the unique needs or circumstances of a specific client(s) or staff person(s). Exceptions are granted for particular client(s) or staff person(s) and are not transferable or applicable to other client(s), staff person(s), Home Care Organization(s) or licensees.

(f)(1) "Facility" means any facility licensed by the Department operating under a valid, unexpired license.

(h)(1) "Home Care Services Analyst" means any person who is a duly authorized officer, employee, or agent of the Department authorized by the Department to license Home Care Organizations.

(i)(1) "Investigation" means an inquiry by the Department based upon a complaint that may involve communication with the Licensee, Administrator, Home Care Organization staff, former or current Affiliated Home Care Aides or other necessary individuals or entities, which may occur over the phone, by letter or email, by in-person site visit or by other means necessary.

(2) "Inspection" means a site visit by a Department Representative to the Home Care Organization to ensure compliance with applicable laws.

(l)(1) "Licensing Program Analyst" means the same as Home Care Services Analyst. The terms may be used interchangeably.

(2) "Licensee" means the adult, firm, partnership, association, corporation, or other entity having the authority and responsibility for the operation of a licensed Home Care Organization.

(o)(1) "Organization" means the same as Home Care Organization. The terms may be used interchangeably.

(p)(1) "Pertinent Records" means all records required by the Department, including but not limited to, administrative, personnel, and training records.

(r)(1) "Registration number" means the Department's Personal Identification number (Per ID) for the Registered Home Care Aide.

(2) "Responsible Person" means any person or entity authorized by law to act on behalf of any client. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator, or a public placement agency.

(s)(1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the clients of a Home Care Organization.

(2) "Service Area" means a clearly delineated geographical area in which the Home Care Organization arranges for the provision of home care services.

(3) "Single Site" means all components of the Home Care Organization are conducted at one location and owned and operated by the same licensee, even if there are separate buildings or portions of the Home Care Organization at the location and all have a common mailing address.

(4) "Staff" means the same as employee of a Home Care Organization, but it does not mean an Affiliated Home Care Aide. Staff and employee may be used interchangeably.

(5) "Suboffice" means an office established and administered by a Home Care Organization, for the purpose of providing Home Care Aide training and recruitment and/or the exchange of Home Care Aide personnel documents.

(6) "Substantial Compliance" means the absence of any serious deficiencies.

(v)(1) "Violation" means any failure to comply with any provision of the Home Care Services Consumer Protection Act (Health and Safety Code section 1796 et seq.) or written directives adopted by the Department pursuant to the Act. Violation shall have the same meaning as deficiency and can be used interchangeably.

(w)(1) "Waiver" means a nontransferable written authorization issued by the Department to use alternative means which meet the intent of a specific regulation and which are based on a Home Care Organization-wide need or circumstance.

SECTION 3: LICENSE

90-006: PROVIDING UNLICENSED HOME CARE SERVICES

(a) If an individual or entity is alleged to be arranging unlicensed home care services in violation of Health and Safety Code section 1796.35, the Department shall conduct an investigation to determine if the individual or entity is operating without a license.

(b) If it is determined that unlicensed home care services are being arranged , the individual or entity shall either:

(1) Upon issuance of the Notice of Operation in Violation of Law, immediately cease

arranging unlicensed home care services; or

(2) Apply for a conditional license as set forth in Section 90-026.

90-007: LICENSING OF INTEGRAL HOME CARE ORGANIZATIONS

(a) Upon written application from the licensee, the Department shall have the authority to issue a single license for separate buildings which might otherwise require separate licenses provided that all of the following requirements are met:

(1) Separate buildings or portions of the Home Care Organization are integral components of a single Home Care Organization, and

(2) All components of the Home Care Organization are conducted at a single site with a common address and owned and operated by the same licensee.

(b) If (a) above does not apply, each separately licensed component of a single organization shall be capable of independently meeting the provisions of applicable written directives as determined by the Department.

90-008: POSTING OF INFORMATION

(a) Home Care Organization licensees shall post a license pursuant to Health and Safety Code section 1796.42 and Section 90-030.

(1) The posted Home Care Organization license shall be valid and unaltered.

(b) The posted business hours shall be in no less than 36 point type.

(c) Notification of sale of property, or business, or both shall be posted in no less than 12 point type and at least thirty (30) calendar days prior to the effective date.

90-009: CONTINUATION OF LICENSE FOR SALE OF PROPERTY AND BUSINESS

(a) The Home Care Organization license, and any waiver, and exceptions shall not be transferable.

(b) In the cases of a Home Care Organization licensee death, written notification of the date of death and the status of the Home Care Organization to the Department shall be as soon as possible. If a new owner is identified, this change in ownership shall comply with subsection (c) and (d).

(c) In the case of change of ownership, a new application for licensure shall be submitted by the Home Care Organization applicant.

(d) The Home Care Organization operations shall not be continued until the buyer or owner qualifies for a Home Care Organization license or conditional license.

(1) The seller shall notify, in writing, the prospective buyer of the necessity to obtain a Home Care Organization license, as required by this directive, if the buyer's intent is to continue operating the Home Care Organization as a Home Care Organization. The seller shall send a copy of this written notice to the Department within five (5) working days of notifying the buyer.

(2) The prospective buyer shall submit an application for a Home Care Organization license, as specified in Section 90-021 within five (5) working days of the

acceptance of the offer by the seller.

(3) No sale of the Home Care Organization shall be permitted until thirty (30) days have elapsed from the date upon which notice has been provided pursuant to paragraphs (1) and (2) of subdivision (d).

(4) The Department shall give priority to applications for licensure which are submitted pursuant to this section in order to ensure timely transfer of the property and business. The Department shall make a decision within sixty (60) days after a complete application is submitted on whether to issue a Home Care Organization license pursuant to Section 90-021.

(5) If the parties involved in the transfer of the property and business fully comply with this section then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed Home Care Organization while the Department makes final determination on the application for initial licensure.

(e) No license issued pursuant to the provisions of this directive shall have any property value for sale or exchange purposes and no person, including any owner, agent, or broker shall sell or exchange any license for any commercial purpose.

90-010: ADVERTISEMENTS AND LICENSE NUMBER

(a) Each Home Care Organization licensed under this directive shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients.

(b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) shall include, but are not limited to, those contained in the following:

(1) Print advertising.

(2) Consumer report.

(3) Announcement of intent to commence business.

(4) Professional or service directory.

(5) Website.

(6) Email.

(7) Social Media.

(c) Correspondences shall be considered a form of advertisement if the intent is to attract clients.

(d) A Home Care Organization licensee who operates more than one Home Care Organization and uses a common advertisement for these Home Care Organizations shall be required to list each Home Care Organization license.

SECTION 4: APPLICATION PROCEDURES

90-020: NONDISCRIMINATION

(a) Any individual, 18 years of age or older, shall be permitted to apply for a Home Care

Organization license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry.

90-021: APPLICATION FOR INITIAL LICENSE

(a) Any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity desiring to obtain a Home Care Organization license shall file with the Department an application, on forms furnished by the Department.

(b) The Home Care Organization applicant shall sign the application acknowledging he or she has read and understands the statutes and written directives which pertain to Home Care Organizations prior to the issuance of a license.

(c) The application package shall contain the following on forms furnished by the Department:

(1) Application for a Home Care Organization:

(A) Home Care Organization applicant name, mailing address and telephone number.

(B) Type of application action requested.

(C) Name of the individual or entity filing the application.

(D) Name, email address, and telephone number of the Home Care Organization.

(E) Physical address and county of the Home Care Organization.

(F) Alternate telephone number, if applicable.

(G) Mailing address of the Home Care Organization.

(H) Name and title of designee or person in charge of the Home Care Organization.

(I) Total number of aides as measured by the estimated number of Affiliated Home Care Aides to be employed, or if applying prior to January 1, 2016, the current number of individuals providing home care services.

(J) Business office hours of Home Care Organization.

(K) Property ownership status, and name, mailing address, and phone number of property owner if renting or leasing, if applicable.

(L) If the Home Care Organization was previously licensed, provide the previous name and license number.

(M) If currently operating any community care facility, residential care facility for the elderly, residential care facility for persons with chronic life-threatening illness, child day care facility, day care center, family day care home, employer-sponsored child care center, or Home Care Organization, provide the facility or Home Care Organization name and facility or Home Care Organization number.

(N) Home Care Organization applicant or Home Care Organization licensee signature, title, county where signed, and date.

1. If the Home Care Organization applicant is a partnership, the name, signature, and mailing address of each general partner shall be provided.
2. If a general partner is a corporation or other business organization, the chief executive officer, or equivalent shall sign the application.
    a. All general partners shall be on the license and sign the application.
3. If the member or managing member is a corporation or other business organization, the managing member or equivalent shall sign the application for a Home Care Organization.
4. If the Home Care Organization applicant is a corporation the application shall be signed by the chief executive officer or equivalent.

(O) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(2) Home Care Organization applicant information:

(A) Name and title within the Home Care Organization.

(B) Sex of Home Care Organization applicant or Home Care Organization licensee.

(C) Date of birth of the Home Care Organization applicant or Home Care Organization licensee.

(D) The Home Care Organization applicant's or Home Care Organization licensee's home mailing address and home telephone number.

(E) Other name(s) used by the Home Care Organization applicant or Home Care Organization licensee.

(F) If the Home Care Organization applicant or Home Care Organization licensee has ever held or currently holds beneficial ownership interest of ten (10) percent or more in a Home Care Organization or a facility set forth in Health and Safety Code section 1796.17(b)(8), the following shall be provided:

1. Name and address of facility(s) or Home Care Organizations.
2. Effective date(s) of licensure.
3. Facility type, if applicable.

(G) If the Home Care Organization applicant or Home Care Organization licensee worked in the home care services industry within five (5) years of the application filing date, and if the Home Care Organization applicant or Home Care Organization licensee owned, co-owned, or operated any business within the last three (3) years of the application filing date, the following shall be provided:

1. Name of business.
2. Number of employees.

3. Home Care Organization applicant's or Home Care Organization licensee's title.
4. Start and end date of ownership or operation.
5. Reason for leaving.

(H) All individuals, board members, officers, directors, each general partner in a partnership, and chief executive officer or authorized representative in a corporation shall provide Home Care Organization applicant information, signature, county where signed, and date of signature.

(I) If the Home Care Organization applicant or Home Care Organization licensee has prior or present service as an administrator, general partner, corporate officer, or director in a Home Care Organization or facilities set forth in Health and Safety Code section 1796.17(a)(8), the following shall be provided:

1. Name and address of facility(s) or Home Care Organization(s).
2. Effective date(s) of licensure.
3. Facility type.

(J) The Home Care Organization applicant or Home Care Organization licensee shall disclose any current or prior TrustLine registration to the Department.

(K) The Home Care Organization applicant or Home Care Organization licensee shall acknowledge any revocation, denial, exclusion, forfeiture or any other disciplinary action taken or in the process of being taken against a licensed clinic, health care facility, community care facility, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, child day care facility, day care center, family day care home, employer-sponsored child care center, or Home Care Organization with which they are or were affiliated and provide the following information:

1. Name and address of the facility, Home Care Organization, or licensed clinic.
2. Effective dates of licensure.
3. Facility type.
4. Explanation of action(s) taken and how the action was resolved.

(L) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(3) Designation of Home Care Organization responsibility:

(A) Date form was completed.

(B) Home Care Organization name, physical address, county, and telephone number.

(C) Name and signature of each designee, acknowledging understanding of his or her roles and responsibilities as a designee of the Home Care Organization, and the understanding that the Home Care Organization

operation is governed by statues and written directives that are enforced by the Department.

(D) Name and signature of the Home Care Organization applicant or Home Care Organization licensee, and title.

(E) Home Care Organization applicant or Home Care Organization licensee mailing address.

(F) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(4) Partnership, Corporation, Limited Liability Company, Organization Structure:

(A) Corporations and Limited Liability Companies shall provide the following information:

1. Home Care Organization name as filed with the California Office of the Secretary of State.
2. Name of chief executive officer or equivalent.
3. Incorporation or registration date.
4. Place of incorporation or registration.
5. Corporation or limited liability company number.
6. Supporting documents as set forth in (d)(1)(A), (d)(1)(B), and (d)(1)(E).
7. Home Care Organization principal office of business address and county.
8. Name, title, and telephone number of contact person.
9. Name and address of agent for service of process.
10. If Home Care Organization applicant is an out of state or foreign applicant the following information must be provided:
    a. Name, mailing address, and telephone number of California representative.
11. Name and addresses of all persons who hold a beneficial ownership of ten (10) percent or more interest in the corporation or Limited Liability Company.
    a. Percentage of the corporation or Limited Liability Company held.
    b. If ownership interest is indirectly held, provide a diagram showing a chain of ownership and the interests held at each level.
12. If a corporation:
    a. The number of directors, method of selection and if applicable, term of office, and frequency of meetings.
    b. Name, mailing address, telephone number, and term expiration date for each officer.

13. If a Limited Liability Company:
    a. The number of managers, managing members, method of selection and if applicable, term of office, and frequency of meetings.
    b. Name, mailing address, telephone number and term expiration date for each manager or managing member.
    c. Name, officer title, principal office of business address, telephone number and term expiration date of each officer, if applicable.

(B) Public agencies shall provide the following information:
1. Identify if the Home Care Organization is a public agency and identify the type of public agency.
2. Name, physical address, city, state, and zip code of the public agency.
3. Mailing address of the public agency.
4. District or area to be served by the public agency and, if necessary, attached map.

(C) Partnerships shall provide the following information:
1. Name, principal business address other than Home Care Organization address, telephone number, city, state, and zip code for each general partner.
2. Contact person name, title, and telephone number.

(D) Other associations shall provide the following information:
1. A list of persons legally responsible for the Home Care Organization, contact person, and appropriate legal documents which set forth legal responsibility of the Home Care Organization and accountability for operating the Home Care Organization.

(E) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(5) If the Home Care Organization applicant is an entity controlled by a board of directors, a board of directors statement including the following:
(A) Home Care Organization name and telephone number.
(B) Board member or prospective board members' name, home mailing address, city, state, zip code, and telephone number.
(C) Signed statement from each member or prospective member of the board of directors acknowledging that he or she understands his or her legal duties and obligations as a member of the board of directors and that the Home Care Organization's operation is governed by the laws and written directives enforced by the Department.
(D) Date of signature.

(6) Criminal record statement for each individual specified in Health and Safety Code

section 1796.33:

(A) Crime information for California, if applicable.

(B) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.

(C) Name of the individual.

(D) Address of the individual.

(E) Date of birth of the individual.

(F) Valid driver's license number of the individual, if applicable.

(G) Individual's signature and date.

(d) The application supporting documents shall contain the following:

(1) Partnership, Corporation, Limited Liability Company, Organization Structure documents shall include:

(A) A corporation shall provide a copy of articles of incorporation, constitution and bylaws and any amendments thereto.

(B) A Limited Liability Company shall provide a copy of its articles of organization and operating agreement and any amendments thereto.

(C) A partnership of any type shall provide a copy of its partnership agreement, any related governing documents, and any amendments thereto.

1. A partnership agreement is not required when the partners are husband and wife.

(D) Where applicable, a diagram showing all affiliated organizations, including parent, grandparent and other entities that can control the Home Care Organization applicant or Home Care Organization licensee through voting, or power of appointments.

(E) A copy of the resolution authorizing the filing of a Home Care Organization license application, if a corporation.

(F) Public agencies shall provide a copy of the resolution or legal document authorizing application for Home Care Organization licensure.

(G) If the Home Care Organization applicant or Home Care Organization licensee is a foreign corporation, Limited Liability Company, limited partnership or limited liability partnership they shall provide a copy of registration to do business in California from the Office of the Secretary of State.

(H) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(2) Job descriptions for staff, Affiliated Home Care Aides, and volunteers shall include:

(A) Duties and responsibilities for each classification.

(B) Minimum qualifications for each classification.

(C) Lines of supervision for each classification.

(D) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(3) Personnel policies shall include:

(A) Qualifications of employment.

(B) Abuse reporting procedures to include instruction outlined in Health and Safety Code section 1796.42(e).

(C) Hiring practices to include procedures informing employees that condition of employment includes fingerprint clearance, completion of statement of prior criminal convictions, and TB clearance.

(D) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(4) Affiliated Home Care Aide training plan shall include:

(A) Entry-level training:

1. Written description of objectives, title, duration, and instructor of each component for orientation training as specified in Health and Safety Code section 1796.44(b)(1).

2. Written description of objectives, title, duration, and instructor of each component for basic safety training as specified in Health and Safety Code section 1796.44(b)(2).

(B) Annual training

1. Written description of objectives, title, duration, and instructor of each core competency for annual training as specified in Health and Safety Code section 1796.44(c).

(C) Provide example of the verification log of training to include information as set forth in Section 90-067(b).

(D) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(5) Home Care Organization program description shall include:

(A) Business Hours.

(B) Description of basic and optional services to include but not be limited to transportation provided to clients by the Home Care Organization.

(C) Procedure for response to abuse reporting duties.

(D) A description of service counties or areas where clients are served.

(E) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(F) A pamphlet, brochure, or other documents provided all of the information is included.

(6) Bonding and Insurance verification shall include:

(A) Home Care Organization surety bond:

1. The original Home Care Organization surety bond shall be received by the Department and be in the amount specified in Health and Safety Code section 1796.37(a)(4). The Home Care Organization surety bond shall include the following:
    a. Home Care Organization applicant or Home Care Organization licensee name and mailing address.
    b. Surety company name, mailing address and telephone number.
    c. Local agent name and telephone number.
    d. Bond amount as specified in Health and Safety Code section 1796.37(a)(4).
    e. Home Care Organization name and address.
    f. Home Care Organization number, if applicable.
    g. Effective date of the bond.
    h. Attorney in Fact of Surety company name and signature, bond number, and date signed.
    i. Principal name and signature.

(B) Certificate(s) of insurance for general liability, professional liability, and workers compensation as set forth in Health and Safety Code section 1796.37(a)(2)-(3) shall include the following for each policy:
1. The policy number.
2. The effective and expiration dates of the policy.
3. The name and address of the carrier.
4. The name and address of the broker or agent.
5. The policy limits.

(C) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(e) The following items shall be filed with the application package:
(1) The application information on forms furnished by the Department and supporting documents.
(2) The fee for processing the application as set forth in Section 90-028.
(3) Any other information which may be required by the Department for the proper administration and enforcement of this directive.

(f) Unless otherwise specified, the Home Care Organization applicant or Home Care Organization licensee shall provide original documents to the Department.

90-022: SUBMISSION OF NEW APPLICATION FORMS

(a) A Home Care Organization licensee shall file new application forms and all other required forms and supporting documents as required by Section 90-021 for the

following reasons, which include, but are not limited to:

(1) A change in the location of the Home Care Organization.

(A) A Home Care Organization licensee shall provide information required by Section 90-021(c)(1) and (d) subdivision (1)(E)-(H) on forms provided by the Department.

(2) When the licensee is a corporation, any change of licensee including, but not limited to the following:

(A) Change in controlling interest including but not limited to change in majority stock holding, change in membership of a nonprofit, change in ownership of parent company or other affiliate.

(B) Separating from a parent company.

(C) Merger with another company.

(3) Any change within a corporation:

(A) Home Care Organization licensee shall provide information required by Section 90-021(c) subdivisions (4)-(5) on forms provided by the Department.

1. A change of owner will require a new application package.

(b) A new application package as required by Section 90-021 shall be filed whenever a Home Care Organization applicant or Home Care Organization licensee fails to complete a new application package within the time limit required by Section 90-023(a)(2).

(c) All application documents shall be signed.

(d) The Home Care Organization licensee shall provide original documents to the Department.

90-023: INITIAL APPLICATION REVIEW AND ISSUANCE OF LICENSE

(a) Within ninety (90) calendar days of receipt of the application package, the Department shall give written notice to the Home Care Organization applicant of one of the following:

(1) The application package is complete and the Department will begin its review.

(2) The application package is deficient, describing what documents are outstanding, inadequate, or both, and informing the Home Care Organization applicant the information must be submitted within thirty (30) calendar days of the date of the notice.

(A) If the Home Care Organization applicant does not submit the required information within the thirty (30) calendars days, the application may be denied unless the Department has received and approved a withdrawal request as set forth in Section 90-024.

(b) The application review shall not constitute approval of the application.

(c) Within ninety (90) calendar days of the date that a completed application package has been received and its review has been completed, the Department shall give written

notice to the Home Care Organization applicant or Home Care Organization licensee of one of the following:

(1) The application has been approved.

(A) Issuance of the license itself shall constitute written notification of license approval.

(2) The application has been denied.

(A) The notice of denial shall include the information specified in Section 90-040.

(B) The circumstances and conditions in which the Department may continue to review a previously denied application shall include, but are not limited to, the following:

1. A person with a criminal record, which was the basis for license denial, is no longer associated with the Home Care Organization.

(3) The Department has ceased review of the application package as one or more of the conditions specified in Health and Safety Code section 1796.40 has occurred.

(A) The Department shall provide written notice to the Home Care Organization applicant, indicating when the Home Care Organization applicant may reapply for licensure. It shall be the responsibility of the Home Care Organization applicant to submit a new application if a license is still desired. Cessation of review will not result in additional time added to the initial denial or revocation period as set forth in the Health and Safety Code section 1796.40.

90-024: WITHDRAWAL OF APPLICATION

(a) A Home Care Organization applicant shall have the right to request to withdraw an initial application.

(1) The withdrawal shall be in writing and the application fee shall be forfeited.

(A) A withdrawal request shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization applicant or Home Care Organization licensee upon any ground provided by law, unless it has consented in writing to such withdrawal.

(2) If the Department grants the withdrawal, no time shall be required to elapse before a new application may be submitted.

90-025: LICENSEE ORIENTATION

(a) The Home Care Organization applicant or Home Care Organization licensee shall attend an orientation approved by the Department prior to receiving a license.

(b) When applying for more than one license simultaneously or applying for an additional license, the Home Care Organization applicant or Home Care Organization licensee shall not be required to attend more than one orientation unless three (3) or more years

have elapsed from the date of the last orientation the Home Care Organization licensee successfully completed.

(1) The orientation shall cover, but not be limited to, the following areas:

(A) Scope of operation subject to regulation by the Department.

(B) Reporting requirements.

(C) Inspection process.

(2) Upon completion of the orientation, a quiz shall be administered to the Home Care Organization applicant or Home Care Organization licensee.

(3) An orientation certificate which verifies successful completion will be provided by the Department and shall be included in the personnel record as specified in Section 90-066.

(4) The orientation shall be attended and successfully completed within thirty (30) calendar days from the Department receiving payment for the orientation.

(5) Unless approved by the Department, the orientation fee is due prior to registration for an orientation.

(6) The orientation fee is nonrefundable and shall be paid by check or money order made payable to the Department and mailed to the address indicated in the orientation notice.

90-026: CONDITIONAL LICENSE

(a) The Department shall have the authority to issue a conditional license to an applicant, upon the filing of a Home Care Organization application for an conditional license, if it determines the following circumstances exist:

(1) The Home Care Organization applicant is in substantial compliance with applicable laws and written directives, and an urgent need for licensure exists, including but not limited to, the need to facilitate the sale of a Home Care Organization.

(b) The Department shall have the authority to issue a conditional license for a maximum of four (4) months when it determines that full compliance with licensing laws will be achieved within that time period.

(c) The Department shall have the authority to extend a conditional license for an additional three (3) months when it determines that more than four (4) months is required to achieve full compliance with licensing laws due to circumstances beyond the control of the Home Care Organization applicant.

(d) Upon applying for a conditional license, the individual or entity shall no longer be considered an unlicensed Home Care Organization and the civil penalty for violation of Health and Safety Code section 1796.35 shall not accrue for the duration of the conditional license unless the application is withdrawn.

(e) If, during the conditional license period, the Department discovers any serious deficiencies, the Department shall have the authority to institute an administrative action and refer the case for criminal prosecution, if home care services continue.

(f) A conditional license shall not be renewable and shall terminate on the date specified on the license, or upon denial of the application, whichever is earlier.

(g) The civil penalty authorized in Health and Safety Code section 1796.35 shall be imposed if an unlicensed Home Care Organization is operated and the Home Care Organization applicant refuses to seek licensure or the Home Care Organization applicant seeks licensure and the license application is denied and the Home Care Organization applicant continues to operate the unlicensed Home Care Organization, unless other remedies available to the Department, including criminal prosecution, are deemed more effective by the Department.

(1) A Home Care Organization applicant may appeal the denial, pursuant to Section 90-056.1, or the assessment of civil penalties, pursuant to Section 90-056, or both to the director.

90-027: WAIVERS AND EXCEPTIONS

(a) Unless prior written Department approval is received as specified in (b) below, the Home Care Organization licensee shall maintain continuous compliance with the written directives.

(b) The Department shall have the authority to approve the use of alternate concepts, programs, services, procedures, techniques, personnel qualifications, or the contact of experimental or demonstration projects under the following circumstances:

(1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any Home Care Organization client, staff, volunteer, or Affiliated Home Care Aide.

(2) The Home Care Organization applicant or Home Care Organization licensee shall submit to the Department a written request for a waiver or exception, together with substantiating evidence supporting the request.

(c) Within thirty (30) calendar days of receipt of a request for a waiver or an exception, the Department shall notify the Home Care Organization applicant or Home Care Organization licensee, in writing, of one of the following:

(1) The request with substantiating evidence has been received and accepted for consideration.

(2) The request is deficient, describing additional information required for the request to be acceptable and a time frame for submitting this information.

(A) Failure of the Home Care Organization applicant or Home Care Organization licensee to comply within the time specified in (c)(2) above shall result in denial of the request.

(d) Ninety (90) calendar days following the acceptance of the request as specified in (c), the Department shall notify the Home Care Organization applicant or Home Care Organization licensee, in writing, whether the request has been approved or denied.

90-028: LICENSING FEES

(a) An application fee as specified in the Health and Safety Code section 1796.49 shall be charged by the Department. After initial licensure, a renewal fee shall be charged by the

Department every two years on the anniversary of the effective date of the license. The fees are necessary for enforcement and administration of the Health and Safety Code Division 2, Chapter 13.

Description	Initial Application	Annual	Late	Location Change	Probation	Change in Corporation
Home Care Organization	$5,165	N/A	N/A	$100	Same as Application	Half of Application

(b) In addition to fees set forth in subdivision (a), the Department shall charge the following fees:

(1) A fee of fifty dollars ($50) for attendance of a Department approved orientation session.

(2) A fee to cover any costs incurred by the Department for processing payments including, but not limited to, dishonored check charges, charges for credit and debit transactions, and postage due charges.

(c) In addition to fees set forth in subdivision (a) and (b), the Department may charge the following fees:

(1) A fee of one hundred dollars ($100) if an existing licensee moves the Home Care Organization to a new physical address.

(2) A fee that represents fifty (50) percent of the initial application fee if change occurs within a corporation as set forth in Section 90-022(a)(2) and (a)(3).

(3) A probation monitoring fee, if applicable, equal to the initial application fee as specified in Section 90-043.

(d) All fees shall be nonrefundable.

(e) A Home Care Organization shall use a check or money order to pay the initial application fee.

(f) If a business check has been dishonored, a business check will no longer be accepted and payment must be in the form of a cashier's check or money order only.

SECTION 5: SUBOFFICE LOCATIONS

90-030: ADMINISTRATION OF SUBOFFICE

(a) In addition to its address of licensure as provided in Section 90-021(c)(1)(D), a Home Care Organization licensee may operate a suboffice(s) for the purpose of Home Care Aide training and recruitment or exchange of Home Care Aide personnel documents.

(b) Prior to operation, a suboffice shall be approved by the Department.

(1) The request for a Home Care Organization suboffice shall contain the following information on a form furnished by the Department:

(A) Type of application action requested.

(B) Home Care Organization name, number, and mailing address.

(C) Name of the licensee and telephone number.

(D) Address of the suboffice.

(E) Operating days and operating hours of the suboffice.

(F) Name and title of designee(s) or person(s) in charge of the suboffice during operating hours.

(G) The primary purpose of the suboffice.

(H) How the Home Care Organization will ensure there is no full-time staff working at the suboffice or that no records for clients or Home Care Aides are permanently stored at the suboffice.

(c) The suboffice shall post a copy of the Home Care Organization license in a conspicuous location.

(d) A Home Care Organization licensee or designee shall be continuously present at the suboffice during operating hours pursuant to Section 90-063.

(e) The suboffice shall not provide in-person meetings with clients or potential clients.

(1) A suboffice may refer a client or potential client to the Home Care Organization address if an on-site meeting is requested by a client or potential client.

(f) The Home Care Organization shall submit a new request prior to a change of suboffice location pursuant to Section 90-030(b)(1).

(g) The Department shall have inspection authority over a Home Care Organization licensee's suboffice(s) pursuant to Section 90-048.

(1) The Department may take administrative action against a Home Care Organization licensee for the failure of a suboffice to comply with any provision of this written directive.

(h) The Home Care Organization shall ensure that the staffing, operation, and administration of the suboffice complies with the provisions of this written directive.

(i) Pursuant to Health and Safety Code section 1796.17(a), the Department may require a suboffice to become licensed as a separate Home Care Organization when it has determined that the volume and complexity of services provided are such that the suboffice no longer is within the parameters of the definition of a suboffice.

SECTION 6: ADMINISTRATIVE ACTIONS

90-040: DENIAL OF INITIAL LICENSE

(a) The Department shall deny an application for an initial Home Care Organization license if it determines that the Home Care Organization applicant is not in compliance with applicable laws and written directives.

(1) In addition to Health and Safety Code section 1796.38, an application may be denied for the following reasons:

(A) The Home Care Organization applicant has failed to pay any civil penalty assessments pursuant to Section 90-054 and in accordance with a final

judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the Department have been made.

(B) An application may be denied for failure to cooperate with the Department during the Home Care Organization application process.

(a) If the Home Care Organization applicant's initial application is denied, the Department shall mail the Home Care Organization applicant a written notice of denial.

(1) The notification shall inform the Home Care Organization applicant of the reasons for the denial, and shall advise the Home Care Organization applicant of the right to appeal as set forth in Section 90-056.1.

(b) Notwithstanding any appeal action, the Home Care Organization is unlicensed and shall not operate pending adoption by the Director of a decision on the denial action.

90-041: REVOCATION OR SUSPENSION OF LICENSE

(a) In addition to Health and Safety Code section 1796.38, the Department may revoke or suspend the Home Care Organization license for the following reasons:

(1) The failure to protect confidential client information.

(2) Any corporate licensee that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Health and Safety Code sections 1796.40 or 1796.41.

90-042: EXCLUSIONS

(a) The Department may prohibit any individual from serving as a member of the board of directors, an executive director, or an officer of a Home Care Organization licensee, or a Home Care Organization licensee from employing, continuing the employment of, or who has contact with clients, prospective clients, or confidential client information who has:

(1) Violated, or aided or permitted the violation by any other person of, any provisions of Health and Safety Code section 1796 et seq. or of any rules promulgated under this directive.

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the Home Care Organization, or the people of the State of California.

(3) Been denied a criminal record exemption to work or volunteer in a Home Care Organization, when that person has been convicted of a crime as defined in Health and Safety Code section 1522.

(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a Home Care Organization.

(b) The Department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or volunteer who has contact with clients, prospective clients, or

confidential client information from a Home Care Organization pending a final decision of the matter, when, in the opinion of the Director, the action is necessary to protect clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(1) If the Department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or volunteer who has contact with clients, prospective clients, or confidential client information from a Home Care Organization, the Department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the Department's action and of the excluded person's right to a hearing.

(2) The notice shall be served either by personal service or registered mail. Within fifteen (15) calendar days after the Department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the Department. The Department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The Department shall do the following upon receipt of a written appeal:

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

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

(3) An order of immediate exclusion of the excluded person from the Home Care Organization shall remain in effect until the hearing is completed and the Director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the Director fails to make a final determination on the merits within sixty (60) days after the original hearing has been completed.

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

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

(e) The Department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or volunteer upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's contact with clients or access to confidential client information or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the Home Care Organization.

(1) A licensee's failure to comply with the Department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Health and Safety Code section 1796.38.

(2) An individual can be prohibited from serving as a member of a board of directors, an executive director, or an officer of a licensee and can be excluded from employment or volunteering in a licensed Home Care Organization.

(f) In cases where the excluded person appealed the exclusion order, and the exclusion order was upheld through the administrative hearing process, the person shall be prohibited from working in any Home Care Organization or being licensed to operate any Home Care Organization licensed by the Department for the remainder of the excluded person's life, unless otherwise ordered by the Department.

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

(2) In cases where the Department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the excluded person shall be prohibited from working or volunteering in any Home Care Organization or being licensed to operate any Home Care Organization licensed by the Department for the remainder of the excluded person's life, unless otherwise ordered by the Department.

(3) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The Department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

90-043: PROBATION

(a) A probation fee shall be charged as set forth in Section 90-028(c)(3) for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(b) The Department may conduct unannounced inspections in order to determine compliance with a stipulation or decision and order.

90-044: RIGHT TO CHALLENGE MISAPPLICATION OR CAPRICIOUS ENFORCEMENT

(a) Each Home Care Organization applicant and Home Care Organization licensee shall have the right, without prejudice, to bring to the attention of the Department any alleged misapplication or capricious enforcement of written directives by the Department, or any differences in opinion between the Home Care Organization applicant or Home Care Organization licensee and the Department concerning the proper application of these written directives.

(b) Where applicable, a review of the complaint shall be conducted in accordance with

Section 90-056.

SECTION 7: ENFORCEMENT PROVISIONS

90-048: INSPECTION OR INVESTIGATION AUTHORITY OF THE DEPARTMENT

(a) A Department representative may, upon proper identification and upon stating the purpose of his or her visit, enter and inspect the premises of any place that arranges for the provision of home care services during business hours or suboffices during operating hours, with or without advance notice.

(b) If the Home Care Organization is not open to the public more than eight (8) consecutive hours per month Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., then the Home Care Organization shall be required to make itself available for inspection or investigation by the Department within two (2) hours' notice by the Department, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.

(1) Notice shall be giving by phone to the Home Care Organization licensee's last telephone number of record.

(2) If the Home Care Organization licensee, designee, or authorized representative fails to answer the phone, fails to make the Home Care Organization available within the appointed time, or otherwise fails to make the Home Care Organization available for inspection or investigation, the Home Care Organization licensee shall be cited pursuant to Health and Safety Code section 1796.52.

(c) The Home Care Organization licensee shall ensure that provisions are made for private interviews with staff, Affiliated Home Care Aides, or volunteers, and for the examination of all records relating to the operation of the Home Care Organization.

(d) The Department shall have the authority to inspect, audit, and copy Home Care Organization records upon demand during business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following:

(1) The Department representative shall not remove any current emergency and health-related information for current personnel unless the same information is otherwise readily available in another document or format.

(A) Prior to removing any records, a Department representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the designee; and,

(B) The Department representative shall return the records undamaged and in good order within three (3) working days following the date the records were removed.

(e) A Home Care Organization licensee's refusal to make records, books, or premises available shall constitute cause for revocation of the Home Care Organization license.

90-049: INSPECTIONS AND INVESTIGATIONS

(a) Reports on the results of each Home Care Organization inspection, lists of deficiencies, and plans of correction shall be kept on file with the Department.

(b) The Department shall have the authority to make any number of inspections to a Home Care Organization in order to determine compliance with applicable laws.

(c) A Home Care Organization licensee's refusal to make records, books, or premises available shall constitute cause for revocation of the Home Care Organization license.

90-050: DEFICIENCIES IN COMPLIANCE

(a) A Department representative shall make periodic inspections of each Home Care Organization as necessary but not less often than every two years. The Home Care Organization shall be responsible for correcting any deficiencies found during an inspection. Compliance with all applicable laws will be determined by the Department.

(b) When a licensing inspection is conducted and the Department representative determines that a deficiency exists, the Department representative shall issue a notice of deficiency, unless the deficiency is minor and corrected during the visit.

(c) The Home Care Organization shall make available to the Department representative records as set forth in Sections 90-065 and 90-066.

(d) There shall be office space available on the premises to allow the Department representative to conduct private interviews with staff, volunteers, Affiliated Home Care Aides and any person under the Home Care Organization's control, direction or supervision.

(e) Prior to completion of an inspection, investigation, or other licensing visit, the licensee or designee of the Home Care Organization shall meet with the Department representative to discuss any deficiencies noted, to jointly develop a plan for correcting each deficiency, and to acknowledge receipt of the notice of deficiency.

(f) The notice of deficiency shall be in writing and shall include the following:

(1) Citation of the statute or directive which has been violated.

(2) A description of the nature of the deficiency stating the manner in which the licensee failed to comply with a specified statute or regulation, and the particular place or area of the Home Care Organization in which it occurred.

(3) The plan developed, as specified in (e) above, for correcting each deficiency.

(4) A date by which each deficiency shall be corrected.

(A) In determining the date for correcting a deficiency, the Department representative shall consider the following factors:

1. The potential hazard presented by the deficiency.

2. The availability of personnel necessary to correct the deficiency.

(B) The date for correcting a deficiency shall not be more than thirty (30) calendar days following service of the notice of deficiency, unless the Department representative determines that the deficiency cannot be completely corrected within thirty (30) calendar days.

(C) If the date for correcting the deficiency is more than thirty (30) calendar days following service of the notice of deficiency, the notice shall specify the corrective actions which must be taken within thirty (30) calendar days to begin correction.

(D) The Department representative shall require correction of the deficiency within 24 hours and shall specify on the notice the date by which the correction must be made whenever penalties are assessed pursuant to Sections 90-054(c), (d) and (e).

(5) The amount of civil penalty being assessed and the date the civil penalty begins.

(6) The address and telephone number of the Department.

(g) The Department representative shall provide the notice of deficiency to the licensee by one of the following means:

(1) Personal delivery to the licensee, at the completion of the inspection, investigation, or any other licensing visit.

(2) If the licensee is not at the Home Care Organization site, leaving the notice with the designee in charge of the Home Care Organization at the completion of the inspection, investigation, or any other licensing visit.

(A) Under such circumstances, a copy of the notice shall also be mailed to the licensee.

(3) If the licensee or the designee refuses to sign or accept the notice, a notation of the refusal shall be written on the notice and a copy left at the Home Care Organization.

(A) Under such circumstances, a copy of the notice shall also be mailed to the licensee.

(h) The licensee shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

(i) If a deficiency is not cited the licensee will receive a Home Care Organization Evaluation report which serves as a record of the visit.

90-051: FOLLOW-UP INSPECTION TO DETERMINE COMPLIANCE

(a) A follow-up inspection may be conducted to determine compliance with the plan of correction specified in the notice of deficiency.

(1) A follow-up inspection may be conducted within ten (10) working days following the dates of corrections specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required.

(b) If a follow-up inspection indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the Department representative shall issue a notice of civil penalty.

(c) A notice of civil penalty shall be in writing and shall include:

(1) The amount of civil penalty assessed, and the date the payment is due.

(2) The Department address for the purpose of collection of the civil penalty.

90-052: CIVIL PENALTIES

(a) A civil penalty of fifty dollars ($50) per day shall be assessed for each of the following violations, if not corrected by the date specified in the Home Care Organization notice of deficiency:

(1) Posting as set forth in Section 90-008.

(2) Administrative records as set forth in Section 90-065.

(3) Personnel record as set forth in Section 90-066(b).

(4) Abuse reporting acknowledgement as set forth in Sections 90-063(c) and 90-065(c).

(5) Orientation as set forth in Section 90-025.

(6) Training verification as set forth in Section 90-067(c).

(b) If the violation set forth in (a) is a second violation of the same subsection within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars ($150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of fifty dollars ($50) per day, per cited violation, shall be assessed until the violation is corrected.

(c) When a Home Care Organization that was cited for a violation and subject to the civil penalty assessment in (b) violates the same subsection within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars ($900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars ($100) per day, per cited violation, shall be assessed until the violation is corrected.

(d) A civil penalty of seventy-five dollars ($75) per day shall be assessed for each of the following violations, if not corrected by the date specified in the Home Care Organization notice of deficiency:

(1) Insurance verification as set forth in Section 90-021(d)(6).

(2) Waivers and exception verification as set forth in Section 90-027.

(3) Suspected abuse reports as set forth in Section 90-065(b)(1).

(e) If the violation set forth in (d) is a second violation of the same subsection within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars ($150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of seventy-five dollars ($75) per day, per cited violation, shall be assessed until the violation is corrected.

(f) When a Home Care Organization that was cited for a violation and subject to the civil penalty assessment in (e) violates the same subsection within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars ($900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars ($100) per day, per cited violation, shall be assessed until the violation is corrected.

(g) An immediate civil penalty of one hundred dollars ($100) per violation per day shall be assessed for the following deficiencies:

(1) Tuberculosis examination documents as set forth in Health and Safety Code section 1796.45.

(2) Criminal record clearance or criminal record exemption documents as set forth in Health and Safety Code sections 1796.23 and 1796.43.

(h) If the violation set forth in (g) is a second violation of the same subsection within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars ($150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of one hundred dollars ($100) per day, per cited violation, shall be assessed until the violation is corrected.

(i) When a Home Care Organization which was cited for a violation and subject to the civil penalty assessment in (h) violates the same subsection within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars ($900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars ($100) per day, per cited violation, shall be assessed until the violation is corrected.

(j) If a Home Care Organization licensee or designee reports to the Department that a violation has been corrected, the civil penalty shall cease as of the day the Department receives notification that the correction was made.

(1) If the Department later determines the violation has not been corrected on the day the Department received notification that the correction was made, civil penalties shall continue to accrue without interruption from the date of the initial civil penalty assessment from the original citation.

(2) If it can be verified that the correction was made prior to the date of notification, the civil penalty shall cease as of the earlier date.

(A) If necessary, an inspection shall be made to confirm a violation has been corrected.

(B) If an immediate civil penalty is assessed, and the violation is corrected on the same day, the civil penalty shall still be assessed for that day.

(k) Unless otherwise ordered by the Department, all civil penalties are due and payable upon receipt of notice for payment. Civil penalties shall be paid only by check or money order made payable to the Department and mailed to the address indicated in the notice.

(l) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay civil penalties as specified in (k).

90-053: EXEMPTION FROM CIVIL PENALTIES

(a) Civil penalties shall not be assessed against any governmental entity, including a state, or city, holding a Home Care Organization license.

90-054: UNLICENSED CIVIL PENALTIES

(a) A civil penalty of nine hundred dollars ($900) per day shall be assessed for the operation of an unlicensed Home Care Organization under either of the following conditions:

(1) The operator has not submitted a completed application for conditional licensure upon receipt of the Notice of Operation in Violation of Law pursuant to Section

90-006, and continues to operate.

(A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 90-026.

(B) The completed application shall be deemed to be submitted when received by the Department.

(2) Unlicensed operation continues after denial of the initial application.

(A) Notwithstanding any appeal action, Home Care Organization operation shall cease immediately upon receipt of the denial notice.

(b) If the unlicensed operator or his or her representative reports to the Department that unlicensed operation, as defined in Health and Safety Code section 1796.35, has ceased, the civil penalty shall cease as of the day the Department receives the notification.

(1) An investigation shall be made immediately or within five (5) working days to verify that the unlicensed Home Care Organization operation has ceased.

(2) If the unlicensed Home Care Organization operation has not ceased, penalties shall continue to accrue without interruption from the date of initial civil penalty assessment.

(c) All penalties shall be due and payable upon receipt of the notice for payment from the Department, and shall be paid by check or money order made payable to the Department and mailed to the address indicated in the notice.

(d) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (c) above.

(e) Payment of civil penalties or application for initial licensure in response to a citation under this section does not permit the operation of a Home Care Organization without a license.

90-055: UNLICENSED ADMINISTRATIVE APPEAL

(a) An unlicensed Home Care Organization operator or designee shall have the right to appeal the penalty assessment within ten (10) working days from the date of notice on the civil penalty assessment.

(1) If the unlicensed Home Care Organization operation has not ceased, the nine hundred dollars ($900) per day civil penalty shall continue to accrue during the appeal process.

(b) The appeal review shall be conducted by a higher level staff person than the Department representative who issued the civil penalty.

(c) If the reviewer of the appeal determines that the civil penalty assessment was not issued in accordance with applicable statutes and written directives of the Department, he or she shall have the authority to amend or dismiss the civil penalty assessment.

90-056: APPEAL PROCESS

(a) A Home Care Organization licensee shall have the right to submit to the Department a written request for a formal review of any other civil penalty or deficiency within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by the Bureau Chief of the Home Care Services Bureau. The Home Care Organization licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the Department requires additional information from the Home Care Organization licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the Bureau Chief determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty or finding of deficiency. The Home Care Organization licensee shall be notified in writing of the Bureau Chief's decision within 60 business days of the date when all necessary information has been provided to the Department by the Home Care Organization licensee.

(b) Upon exhausting the review described in subsection (a), the Home Care Organization licensee may further appeal that decision to the Branch Chief of the Continuing Care Branch within 15 business days of receipt of notice of the Bureau Chief's decision. The Home Care Organization licensee may submit additional supporting documentation that was unavailable at the time of appeal to the Branch Chief within the first 30 business days after requesting that appeal. If the Department requires additional information from the Home Care Organization licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The Home Care Organization licensee shall provide this additional information within 30 business days of receiving the request from the Department. If the Branch Chief determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty or finding of deficiency. The Home Care Organization licensee shall be notified in writing of the Branch Chief's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The Branch Chief's decision is considered final and concludes the Home Care Organization licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

90-056.1: APPEAL OF APPLICATION DENIAL

(a) A Home Care Organization applicant or Home Care Organization licensee may appeal the denial of the application by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the denial notice.

(b) The Department shall, upon receipt of the notice of appeal, advise the Home Care Organization applicant or Home Care Organization licensee in writing of the appeal procedure.

(c) The proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the

Government Code.

90-057: COMPLAINTS

(a) Any person may file a complaint against any Home Care Organization in accordance with this directive by reporting to the Department notice of an alleged violation of applicable requirements prescribed by statutes or written directives of this state, including but not limited to, a denial of access of any person authorized by law into the Home Care Organization. A complaint may be made either orally or in writing.

(b) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a Home Care Organization, the Department shall make a preliminary review and, unless the Department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall initiate an investigation within ten (10) calendar days after receiving the complaint, except where an investigation would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the Department's proposed course of action.

(c) The substance of the complaint shall be provided to the Home Care Organization licensee no earlier than at the time of the investigation. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the Home Care Organization licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint except the name of any Department Representative conducting the investigation or inspection pursuant to this directive.

(d) If the Department determines that the complaint is intended to harass, is without a reasonable basis, or the investigation determines the complaint is unfounded, then the complaint and any documents related to it shall be marked confidential and shall not be disclosed to the public.

SECTION 8: CONTINUING REQUIREMENTS

90-062: REPORTING REQUIREMENTS

(a) Each Home Care Organization applicant or Home Care Organization licensee shall furnish to the Department reports as required by the Department, including but not limited to, those specified in this section.

(1) The items below shall be reported in writing to the Department within ten (10) working days following the occurrence:

(A) The organizational changes specified in Section 90-022(a)(3).

(B) Any change in the Home Care Organization applicant or Home Care Organization licensee mailing address or telephone number.

(C) Information required by Section 90-021(c)(5).

(D) Any change in organization responsibility.

(E) Separation date of staff, volunteers, and Affiliated Home Care Aides if no

longer employed by the Home Care Organization.

(F) Any claim on the surety bond specified in Section 90-021(d)(6) which has been paid by the Home Care Organization or the surety company.

1. The report shall include:

a. The name of the individual accused of any property crime including but not limited to theft, larceny, embezzlement, misappropriation, and dishonest acts;

b. The registration number of the individual, if applicable;

c. Current address and telephone number of the individual;

d. The date of the alleged conduct;

e. The amount of the alleged damages;

f. Any evidence regarding the alleged conduct; and,

g. The name, address, and phone number of the victim.

(2) The items below shall be reported in writing to the Department thirty (30) working days prior to the occurrence:

(A) Any change in the location of the Home Care Organization specified in Section 90-22(a)(1).

(3) Upon receipt, the Home Care Organization applicant or Home Care Organization licensee shall send to the Department the original criminal record statements, as specified in Health and Safety Code sections 1796.23(a) and 1796.33, for any persons who hold a beneficial ownership interest of ten (10) percent or more, staff, volunteers, and Affiliated Home Care Aides who have declared criminal history information.

(A) Copies shall be kept in administrative or personnel records pursuant to Sections 90-065 and 90-066.

90-063: ADDITIONAL RESPONSIBILITIES

(a) A Home Care Organization applicant, Home Care Organization licensee, or designee shall be continuously present during business hours of a Home Care Organization. The Home Care Organization applicant or Home Care Organization licensee must provide written authorization for a designee(s) to perform administrative processes, which include but are not limited to: managing the Home Care Organization, responding to questions, providing documents to the Department, and receiving documents from the Department, including reports of inspections and consultations, accusations, and civil penalties.

(1) Home Care Organization applicants and Home Care Organization licensees that are corporations shall attach board resolutions authorizing this delegation in (a) if applicable.

(b) The Home Care Organization licensee, if applicable, shall provide evidence that every member and prospective member of the board of directors understands his or her legal duties and obligations as a member of the board of directors and that the Home Care Organization's operation is governed by the laws that are enforced by the Department.

(1) Within ten (10) calendar days the Home Care Organization applicant or Home Care Organization licensee shall update any changes to information required by Section 90-021(c)(5), on forms provided by the Department.

(c) The Home Care Organization licensee shall sign a statement acknowledging the requirement to report suspected abuse pursuant to Health and Safety Code section 1796.42(e).

(d) The Home Care Organization licensee shall require all staff, volunteers, and Affiliated Home Care Aides upon hire to sign a statement acknowledging the requirement to report suspected abuse pursuant to Health and Safety Code section 1796.42(e).

90-064: ACCOUNTABILITY OF LICENSEE GOVERNING BODY

(a) The licensee, whether an individual or other entity, is accountable for the general supervision over the affairs of the licensed Home Care Organization, and for the establishment of policies concerning its operation.

(1) If the licensee is a corporation or an association, the governing body shall be active and functioning in order to ensure such accountability.

90-065: OPERATING REQUIREMENTS AND ADMINISTRATIVE RECORDS

(a) The following information shall be maintained by the Home Care Organization and be complete and current:

(1) All documents required by Health and Safety Code section 1796.42(b)-(e).

(2) Program Description as set forth in Section 90-021(d)(5).

(3) A copy of each waiver and exception filed with the Department and the Department's response to each request.

(4) Application documents as specified in Section 90-021.

(5) All signed statements regarding criminal record history as required by Health and Safety Code sections 1796.23(a) and 1796.33.

(b) All staff, volunteers, and Affiliated Home Care Aides shall report any suspected or known dependent adult or elder abuse as required by Section 15630 of the Welfare and Institutions Code and suspected or known child abuse as required by Sections 11164 to 11174.3, inclusive, of the Penal Code.

(1) A copy of each suspected abuse report shall be maintained in the Home Care Organization's administrative records and available for review by the Department for three (3) years from the date the report is made.

(A) Verification that the abuse report was filed shall be maintained in the Home Care Organization administrative records and shall include, but are not limited to, those contained in the following:

1. Fax transmittal sheet with date and time stamp.

2. Registered or certified mail proof of delivery confirmation.

3. Copy of email with date and time stamp.

(c) All administrative records shall be maintained in a secure location at the Home Care

Organization's address of licensure as provided in Section 90-021(c)(1)(D).

90-066: PERSONNEL RECORDS

(a) The Home Care Organization licensee shall ensure that personnel records are maintained and current for the licensee, staff, volunteers, and Affiliated Home Care Aides.

(b) Each Affiliated Home Care Aide's personnel record shall contain the following on forms furnished by the Department:

(1) Affiliated Home Care Aide's full name.

(2) Indicate if ever employed under a different name.

(A) List all names used for employment.

(3) Telephone number.

(4) Date of last Tuberculosis examination.

(5) Results of last Tuberculosis examination.

(6) Valid driver's license number if the Affiliated Home Care Aide is to transport clients.

(7) Date(s) of employment.

(8) Position title.

(9) Position time base.

(10) A statement signed by the employee that he or she is at least 18 years of age.

(11) Mailing address.

(12) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.

(13) Separation date if no longer employed by the Home Care Organization.

(c) Each Affiliated Home Care Aide's personnel record shall also include the following:

(1) Documentation of a criminal record clearance, criminal record exemption, or transfer as required.

(2) All communication received from the Caregiver Background Check Bureau by the Home Care Organization licensee, including but not limited to, criminal record exemption needed requests, approvals, denials, closures, and rescissions.

(A) Nothing in this subsection shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.

(3) Verification of training hours as specified in Section 90-067.

(4) A signed statement acknowledging the requirement to report suspected abuse pursuant to Health and Safety Code section 1796.42(e).

(5) All communication received pertaining to the Affiliated Home Care Aide's

registration on the Home Care Aide Registry including but not limited to, approvals, denials, revocations, and forfeitures.

(6) Each Affiliated Home Care Aide's personnel record shall contain Tuberculosis examination documentation as set forth in Health and Safety Code section 1796.45.

(A) This documentation may be contained in a separate confidential file designated for health or medical information.

(7) A signed statement regarding their criminal record history as required by Health and Safety Code sections 1796.23(a) and 1796.33.

(A) For Home Care Aide applicants who apply for Home Care Aide registration online a signed statement on a form furnished by the Department must be included in the personnel file.

(d) Each staff and volunteer personnel record shall contain the following information on forms furnished by the department:

(1) Staff or volunteer's full name.

(2) Indicate if ever employed under a different name.

(A) List all names used for employment.

(3) Telephone number.

(4) Valid driver's license number if the staff or volunteer is to transport clients.

(5) Date(s) of employment.

(6) Position title.

(7) Position time base.

(8) A statement signed by the staff member that he or she is at least 18 years of age.

(9) Mailing address.

(10) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.

(11) Separation date if no longer employed or volunteering for the Home Care Organization.

(e) Each staff and volunteer personnel record shall also include the following:

(1) Documentation of a criminal record clearance, criminal record exemption, or transfer as required.

(2) All communication received from the Caregiver Background Check Bureau by the Home Care Organization licensee including criminal record exemption needed requests, approvals, denials, closures, and rescissions.

(A) Nothing in this subsection shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.

(3) A signed statement acknowledging the requirement to report suspected abuse pursuant to Health and Safety Code section 1796.42(e).

(4) For staff and volunteers who are required to be fingerprinted pursuant to Health and Safety Code section 1796.43, a signed statement regarding their criminal record history as required by Health and Safety Code sections 1796.23(a) and 1796.33.

(f) Each Home Care Organization licensee personnel record shall contain the following information on forms furnished by the Department:

(1) Home Care Organization licensee's full name.

(2) Indicate if ever employed under a different name.

(A) List all names used for employment.

(3) Telephone number.

(4) Valid driver's license number if the employee is to transport clients.

(5) Date(s) of employment.

(6) Position title.

(7) Position time base.

(8) A statement signed by the licensee that he or she is at least 18 years of age.

(9) Mailing address.

(10) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.

(11) Separation date if no longer licensee for the Home Care Organization.

(g) Each Home Care Organization licensee personnel record shall also include the following:

(1) Documentation of a criminal record clearance, criminal record exemption, or transfer as required.

(2) All communication received from the Caregiver Background Check Bureau by the Home Care Organization licensee including criminal record exemption needed requests, approvals, denials, closures, and rescissions.

(A) Nothing in this subsection shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.

(3) A signed statement acknowledging the requirement to report suspected abuse of pursuant to Health and Safety Code section 1796.42(e).

(4) Home Care Organization applicant or Home Care Organization licensee certificate of completion of the Department orientation.

(5) A signed statement regarding their criminal record history as required by Health and Safety Code sections 1796.23(a) and 1796.33.

(h) All Affiliated Home Care Aides, staff, volunteer and licensee personnel records shall be retained for at least three (3) years following separation of employment or separation of association as a volunteer.

(i) All personnel records shall be maintained in a secure location at the Home Care

Organization's address of licensure as provided in Section 90-021(c)(1)(D),

90-067: AFFILIATED HOME CARE AIDE TRAINING REQUIREMENTS

(a) The additional five (5) hours of annual training as set forth in Health and Safety Code section 1796.44(c) shall be completed within the first year of an Affiliated Home Care Aide's registration date and every subsequent year the Affiliated Home Care Aide remains an Affiliated Home Care Aide.

(1) An Affiliated Home Care Aide who transfers employment from one Home Care Organization to another shall be deemed to meet the requirements of subsection (a) if the Affiliated Home Care Aide can produce written documentation.

(A) For purposes of this section, written documentation means successful completion of training and shall include title and date of training, instructor name and signature, and Affiliated Home Care Aide name.

(B) The two-hour orientation training is not transferable and shall be completed at each Home Care Organization to which the Affiliated Home Care Aide is associated.

(b) The emergency procedures training topic included in the required three (3) hours of safety training as set forth in Health and Safety Code section 1796.44(b)(2) may include but are not limited to the following:

(1) Natural disasters.

(2) Evacuation of client from home.

(3) Contacting emergency services.

(4) Household emergencies.

(c) A Home Care Organization licensee must maintain a verification log of training for each Affiliated Home Care Aide.

(1) The verification log shall at minimum include the following information:

(A) Affiliated Home Care Aide name.

(B) Affiliated Home Care Aide hire date.

(C) Position title.

(D) Registration date.

(E) Training title.

(F) Brief description of content covered.

(G) Month, day, year training was completed.

(H) Training hours received.

(I) First and last name of instructor.

(J) Organization delivering training.

(K) Location of training.

(2) Written documentation shall be included with the log.

ARTICLE III. DIRECTIVES FOR HOME CARE AIDE REGISTRY

SECTION 1: HOME CARE AIDE REGISTRY

90-070: HOME CARE AIDE REGISTRY

(a) The Department will update the Home Care Aide Registry to remove a Home Care Aide's association with a Home Care Organization upon receiving written notification as specified in Section 90-062(a)(1)(E).

(b) When a Registered Home Care Aide has no affiliations with Home Care Organizations, the Home Care Aide Registry will reflect the Registered Home Care Aide as an Independent Home Care Aide.

90-071: REGISTRATION STATUS

(a) A Home Care Aide's registration status on the Home Care Aide Registry is reflected by one of the following:

(1) A pending registration status is displayed when one of the following occurs:

(A) A Home Care Aide applicant submits a completed registration application as specified in Section 90-081 and the criminal record review is in process.

(B) The Department has issued an immediate exclusion order prohibiting the Affiliated Home Care Aide from employment pending administrative action proceedings.

(C) The Department has received a subsequent notice of felony or violent misdemeanor conviction for a Registered Home Care Aide that requires a criminal record exemption.

1. The registration status will remain pending until the Department grants a criminal record exemption or denies the criminal record exemption and revokes the registration.

(2) A cleared registration status is displayed when one of the following occurs:

(A) A Home Care Aide applicant has received a criminal record clearance or criminal record exemption.

(B) The Department has received a subsequent notice of non-violent conviction for a registered home care aide, and the Department has determined that the person shall be allowed to remain on the Home Care Aide Registry until a decision on a criminal record exemption is rendered.

(1) The Home Care Aide's registration status will remain cleared until final action of the criminal record exemption process.

(3) A closed registration status is displayed when one of the following occurs:

(A) A Home Care Aide applicant fails to submit fingerprints for a criminal record review;

(B) A Home Care Aide applicant fails to pay the application fee;

(C) A Home Care Aide applicant fails to provide all required application information within the required timeframe as specified in Section 90-081;

(D) A Home Care Aide applicant is found to be awaiting trial for a crime; or

(E) A Home Care Aide applicant requests termination of criminal record exemption process or withdraws the initial Home Care Aide Registry application.

(4) A denied registration status is displayed for any of the reasons set forth in Section 90-090(a)(1).

(5) A forfeited registration status is displayed for any of the reasons set forth in Health and Safety Code section 1796.26(b).

(6) A revoked registration status is displayed for any of the reasons set forth in Section 90-091(a)(1).

ARTICLE IV: DIRECTIVES FOR APPLICATION FOR HOME CARE AIDE REGISTRATION

SECTION 1: HOME CARE AIDE REGISTRATION APPLICATION

90-080: NONDISCRIMINATION

(a) Any individual, 18 years of age or older, shall be permitted to apply for Home Care Aide registration regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry.

90-081: APPLICATION FOR INITIAL REGISTRATION

(a) Any individual seeking to obtain Home Care Aide registration shall file with the Department an application by one of the following means:

(1) A Home Care Aide Registry application mailed to the Department with non-refundable application fee, as specified in 90-084, paid by check or money order.

(2) A Home Care Aide Registry application submitted online with non-refundable application fee, as specified in 90-084, paid by credit card.

(b) The application package mailed to the Department shall contain the following on forms furnished by the Department:

(1) Home Care Aide Registry Application:

(A) Name of the Home Care Aide applicant filing the application.

(B) Other names used by the Home Care Aide applicant.

(C) Residence and mailing address of the Home Care Aide applicant.

(D) Email address of the Home Care Aide applicant, if applicable.

(E) Date of birth of the Home Care Aide applicant.

(F) Sex of the Home Care Aide applicant.

(G) Valid driver's license, identification number, permanent resident identification number or out of state identification of the Home Care Aide applicant.

(H) Day and evening telephone numbers.

(I) Transfer information, if applicable.

(J) Home Care Organization name and Home Care Organization to which the Home Care Aide applicant is affiliated, if applicable.

(K) Home Care Aide applicant signature and date.

(2) Criminal Record Statement:

(A) Crime information for California, if applicable.

(B) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.

(C) Name and number of the Home Care Organization to which the Home Care Aide applicant is affiliated, if applicable.

(D) Name of the Home Care Aide applicant.

(E) Address of the Home Care Aide applicant.

(F) Date of birth of the Home Care Aide applicant.

(G) Valid driver's license number of the Home Care Aide applicant, if applicable.

(H) Home Care Aide applicant signature and date.

(c) The application submitted online to the Department shall contain the following:

(1) Name of the Home Care Aide applicant filing the application.

(2) Other names used by the Home Care Aide applicant.

(3) Residence and mailing address of the Home Care Aide applicant.

(4) Email address of the Home Care Aide applicant, if applicable.

(5) Date of birth of the Home Care Aide applicant.

(6) Sex of the Home Care Aide applicant.

(7) Valid driver's license, identification number, permanent resident identification number or out of state identification of the Home Care Aide applicant.

(8) Day and evening telephone numbers.

(9) Transfer information, if applicable.

(10) Home Care Organization name and Home Care Organization to which the Home

Care Aide applicant is affiliated, if applicable.

(11) Crime information for California, if applicable.

(12) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.

90-082: INITIAL APPLICATION REVIEW AND ISSUANCE OF REGISTRATION

(a) Within thirty (30) calendar days of receipt of the application package, the Department shall give written notice if the application package is deficient, describing what items are outstanding, inadequate, or both, and that the information must be submitted within fifteen (15) calendar days of the date of the notice.

(1) Written notice shall be given to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.

(2) An incomplete application means insufficient or no payment has been received, fingerprints were never submitted to Department of Justice, or all required application information was not provided to the Department.

(b) If the applicant does not submit missing information as requested, the Department shall cease processing of the application, and the application will be considered withdrawn, provided that the Department has not denied or taken action to deny the application.

(1) The Department shall provide written notice of the application withdrawal to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.

(2) It shall be the responsibility of the Home Care Aide applicant to submit a new application including application fees if registration is still desired.

(c) If the Home Care Aide applicant receives a criminal record clearance or the Department grants a criminal record clearance or criminal record exemption, the Department shall give written notice of the registration approval to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.

90-083: WITHDRAWAL OF APPLICATION

(a) A Home Care Aide applicant shall have the right to request to withdraw an initial Home Care Aide Registry application.

(1) The withdrawal shall be in writing and the application fee shall be forfeited.

(A) A withdrawal request shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Aide applicant upon any ground provided by law, unless it has consented in writing to such withdrawal.

(2) If the Department grants the withdrawal, no time shall be required to elapse before a new application can be submitted.

(b) In addition to 90-082(b), the Department may cease processing of the application and the application will be considered withdrawn if any of the following apply:

(1) The Home Care Aide applicant requires a criminal record exemption and the Home Care Aide applicant requests the Department to cease processing of their criminal record exemption.

(2) The Home Care Aide applicant is awaiting trial for a crime other than a minor traffic violation.

(3) The Home Care Aide applicant has a warrant or pending court action for a crime other than a minor traffic violation.

(c) The Department shall provide written notice of the application withdrawal to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.

(d) It shall be the responsibility of the Home Care Aide applicant to submit a new application if registration is still desired.

90-084: APPLICATION FEES

(a) A Home Care Aide Registry application fee of twenty-five dollars ($25) shall be charged by the Department. The fee is necessary for enforcement and administration of the Health and Safety Code, Division 2, Chapter 13.

(b) All fees shall be nonrefundable.

(c) Application fees pursuant to Section 90-081(a)(1) shall be paid by check or money order.

(1) If a check has been dishonored, a check is no longer accepted and payment must be in the form of a money order only.

(d) Application fees pursuant to Section 90-081(a)(2) must be paid by credit card.

SECTION 2: ADMINISTRATIVE ACTIONS

90-090: DENIAL OF INITIAL REGISTRATION

(a) The Department shall deny an application for an initial registration if it is determined that the Home Care Aide applicant is not in compliance with applicable laws.

(1) In addition to the reasons set forth in Health and Safety Code sections 1796.25 and 1796.26, an application shall be denied if the Home Care Aide applicant requires a criminal record exemption and the Home Care Aide applicant does not respond to or fails to cooperate with the criminal record exemption process.

(b) If the Home Care Aide applicant's initial Home Care Aide Registry application is denied, the Department shall give written notice of the registration denial to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.

(1) The notification shall inform the Home Care Aide applicant of the reasons for the denial, and shall advise the Home Care Aide applicant of the right to appeal as set forth in Section 90-092.

(c) An individual shall not reapply for Home Care Aide registration until one (1) year has elapsed from the date of the application denial.

90-091: REVOCATION OF REGISTRATION

(a) The Department shall revoke a Home Care Aide registration if it is determined that the Registered Home Care Aide is not in compliance with applicable laws.

(1) In addition to the reasons set forth in Health and Safety Code sections 1796.25 and 1796.26, a registration shall be revoked if the Registered Home Care Aide requires a criminal record exemption and the Registered Home Care Aide does not respond to or fails to cooperate with the criminal record exemption process.

(b) If the Registered Home Care Aide registration has been revoked, the Department shall give written notice of the revocation to the Registered Home Care Aide and all Home Care Organizations to which the Registered Home Care Aide is affiliated.

(1) The notification shall inform the Registered Home Care Aide of the reasons for the revocation, and shall advise the Registered Home Care Aide of the right to appeal as set forth in Section 90-092.

(c) An individual shall not reapply for Home Care Aide registration until two (2) years has elapsed from the date of the revocation.

90-092: APPEAL PROCESS

(a) A Home Care Aide applicant may appeal the denial of the Home Care Aide Registry application by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the denial notice.

(b) A Registered Home Care Aide may appeal the Home Care Aide Registry revocation by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the revocation notice.

(c) The Department shall, upon receipt of the notice of appeal, advise the Home Care Aide applicant or Registered Home Care Aide in writing of the appeal procedure.

(d) Proceedings for the denial or revocation of a registration under this directive shall be conducted in accordance with the provisions of Chapter 5 commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code.

90-093: RIGHT TO CHALLENGE MISAPPLICATION OR CAPRICIOUS ENFORCEMENT

(a) Each Home Care Aide Applicant and Registered Home Care Aide shall have the right, without prejudice, to bring to the attention of the Department any alleged misapplication or capricious enforcement of written directives by the Department, or any differences in opinion between the Home Care Aide Applicant or Registered Home Care Aide and the Department concerning the proper application of these written directives.

(b) Where applicable, a review of the complaint shall be conducted in accordance with Section 90-092.

ARTICLE V. CRIMINAL RECORD REVIEW

SECTION 1: CRIMINAL RECORD CLEARANCES

90-100: CRIMINAL RECORD CLEARANCE

(a) The Department shall conduct a criminal record review of all individuals specified in subdivision (b) and shall have the authority to approve or deny a Home Care Organization license, Home Care Aide registration, or Home Care Organization employment or volunteer work, based upon the results of such review.

(b) The following individuals are subject to a criminal record review:

(1) The owner of a Home Care Organization, if the owner is an individual.

(2) If the owner of a Home Care Organization is a corporation, Limited Liability Company, joint venture, association, or other entity, any individual having a 10-percent or greater controlling ownership interest in that entity, as well as the chief executive officer or other person serving in a similar capacity.

(3) Any staff person, volunteer, or employee of a Home Care Organization who has contact with clients, prospective clients, or access to confidential client information that may pose a risk to the clients' health and safety.

(4) An Affiliated Home Care Aide who is employed by a Home Care Organization to provide home care services to a client.

(5) An Independent Home Care Aide who has submitted an application to become a Registered Home Care Aide.

(c) The following individuals are exempt from the requirement to submit fingerprints:

(1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:

(A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(B) The individual is providing time-limited specialized clinical care or services.

(C) The individual is providing care or services within the individual's scope of practice.

(D) The individual is not a Home Care Organization licensee or an employee of the Home Care Organization.

(2) A third-party repair person, or similar retained contractor, if all of the following apply:

(A) The individual is hired for a defined, time-limited job.

(B) The individual is not left alone with clients or, prospective clients, and does not have access to confidential client information.

(C) When a client, prospective client, or confidential client information is accessible to the repair person or contractor, a staff person who has a criminal record clearance or criminal record exemption is also present.

(3) Nothing in this paragraph shall prevent a Home Care Organization applicant or Home Care Organization licensee from requiring a criminal record clearance of any individual associated with the Home Care Organization who is exempt from the requirements of this section, provided that the individual has contact with clients, prospective clients, or access to confidential client information.

(d) Prior to and as applicable subsequent to the Department issuing a Home Care Organization license, the Home Care Organization applicant or Home Care Organization licensee and any other person specified in subsection (b)(2) shall obtain a criminal record clearance or criminal record exemption as specified in Health and Safety Code section 1522.

(e) Prior to a Home Care Aide becoming registered on the Home Care Aide Registry the individual shall obtain a criminal record clearance or criminal record exemption as specified in Health and Safety Code section 1522.

(f) All individuals subject to criminal record review shall be fingerprinted with LiveScan technology or as otherwise approved by the California Department of Justice and sign a Criminal Record Statement (LIC 508 [Rev. 07/15]) under penalty of perjury.

(1) A person signing the Criminal Record Statement (LIC 508 [Rev. 07/15]) must:

(A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in subsection (l) regardless of whether the individual was granted a pardon for the conviction, received a dismissal pursuant to Penal Code 1203.4 or 1203.4a, or the individual's record was sealed as a result of a court order.

1. Marijuana-related offenses covered by the marijuana reform legislation codified at Health and Safety Code sections 11361.5 and 11361.7 need not be disclosed.

(B) If convicted of a crime other than a minor traffic violation, provide information regarding the conviction.

(2) Fingerprints shall be submitted by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Justice.

(g) All individuals subject to a criminal record review shall prior to having contact with clients, prospective clients, or having access to confidential client information:

(1) Obtain a criminal record clearance or criminal record exemption as required by the Department, or

(2) Request for a transfer of a criminal record clearance as specified in subsection (h), or

(3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 90-110(q).

(h) A Home Care Organization licensee or any other person specified in subsection (b) may request the transfer of a criminal record clearance that was issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, or for administrator certification by providing the following documents to the Department:

(1) A signed Criminal Background Clearance Transfer Request (LIC 9182 [Rev. 10/15]).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid Permanent Resident Card, or

(C) Valid identification card issued by the Department of Motor Vehicles, or

(D) Valid photo identification issued by another state or the United States government if the individual is not a California resident.

(3) Any other documentation required by the Department.

(i) The Department shall hold criminal record clearances in its active files for a minimum of three years after an individual is no longer employed by a Home Care Organization or on the Home Care Aide Registry in order to facilitate a transfer request.

(j) If the criminal record information of any individuals specified in subsection (b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than $300, and an exemption pursuant to Health and Safety Code section 1522 has not been granted, the Department shall take the following actions:

(1) For initial Home Care Organization applicants or Home Care Aide applicants, denial of the application.

(2) For current Home Care Organization licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.

(3) For Registered Home Care Aides, the Department may institute an administrative action, including, but not limited, revocation of the registration.

(4) For current staff persons, volunteers, or employees of a Home Care Organization exclude the affected individual pursuant to Health and Safety Code Section 1558.

(k) The Home Care Organization licensee shall maintain documentation of criminal record clearances or criminal record exemptions of all staff persons, volunteers, employees, and Registered Home Care Aides in the individual's personnel file as required in Section 90-066.

(1) Documentation shall be available for inspection by the Department.

(l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

(1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

(m) If the Department determines that any individual specified in Health and Safety Code sections 1796.23, 1796.33, 1796.43 has been arrested for any crime specified in subdivision (c) of Section 290 of the Penal Code, for violating sections 243, 273ab, or 273.5, subdivision (b) of Section 273a, or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the Department is prohibited from granting an criminal record exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions:

(1) For initial Home Care Organization applicants and Home Care Aide applicants, the Department may notify the applicant in writing that a background investigation will be conducted based on criminal record information received from the California Department of Justice. Applicants may not provide home care services and cannot have access to any confidential client information of a licensed Home Care Organization pending the investigation.

(2) For current Home Care Organization licensees or Registered Home Care Aides, the Department may notify the individual in writing that a background investigation will be conducted based on criminal record information received from the California Department of Justice.

(3) The investigation will be conducted by the Department and the individual will be notified in writing once a determination is made. For initial Home Care Organization applicants or Home Care Aide applicants, the Department may approve or deny the application. For Registered Home Care Aides, the Department may allow the Registered Home Care Aide to remain on the Home Care Aide Registry or the Department may revoke the registration.

SECTION 2: CRIMINAL RECORD EXEMPTIONS

90-110: CRIMINAL RECORD EXEMPTION

(a) The Department will notify a Home Care Organization licensee to act immediately to remove or bar any person specified in Section 90-100(b) and described in Sections 90-110(a)(1) through (5) below, from providing home care services for the Home Care Organization or from having contact with clients, prospective clients or access to confidential client information while the Department considers granting or denying an criminal record exemption. Upon notification, the Home Care Organization licensee shall comply with the notice.

(1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;

(2) Any person who has been convicted of a felony;

(3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273ab, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code section 1522(c)(3);

(4) Any person who has been convicted of any crime specified below:

(A) Battery

(B) Shooting at Inhabited Dwelling

(C) Corporal Injury on Spouse/Cohabitant

(D) Discharging Firearm with Gross Negligence

(E) Exhibiting Weapon/Firearm

(F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

(G) Criminal Threat to Harm or Injure Another Person

(H) Cruelty to Animals

(I) Willful Harm or Injury to Child; or

(5) Any other person ordered to be removed by the Department.

(b) After a review of the criminal record information, the Department may grant an criminal record exemption if:

(1) The Home Care Organization applicant or Home Care Organization licensee, requests an criminal record exemption in writing for himself or herself, or

(2) The Home Care Organization applicant or Home Care Organization licensee requests an criminal record exemption in writing for an individual specified in Sections
90-100(b)(3) and (b)(4) associated with the Home Care Organization, or

(3) The affected individual is applying as an Independent Home Care Aide or is a Registered Home Care Aide who intends to provide home care services as an Independent Home Care Aide, or

(4) The Home Care Organization applicant or Home Care Organization licensee chooses not to seek an criminal record exemption for an individual specified in Sections 90-100(b)(3) or (b)(4), and the affected individual requests an criminal record exemption in writing on their own behalf, and

(5) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character pursuant to Health and Safety Code section 1522 as to justify registration on the Home Care Aide Registry, being issued or maintaining a Home Care Organization license, or employment or volunteer work with a licensed Home Care Organization.

(c) The Department will notify the Home Care Organization applicant or Home Care Organization licensee and the affected individual, in concurrent, separate notices, that the affected individual has criminal conviction(s) and needs to obtain a criminal record exemption. To request a criminal record exemption, a Home Care Organization applicant or a Home Care Organization licensee, a Home Care Aide applicant, or Registered Home Care Aide must submit information that indicates that the individual seeking an criminal record exemption meets the requirements of Section 90-110(b)(5).

(1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an criminal record exemption request.

(A) The notice shall also include any other criminal record information provided to the Department by the California Department of Justice as a result of the fingerprint submission.

(2) The notice will list the information that must be submitted to request a criminal record exemption.

(3) The information must be submitted to the Department within forty-five (45) days of the date of the Department's notice.

(A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the criminal record exemption request, pursuant to Section 90-110(d).

(B) If the individual for whom the criminal record exemption is requested is a staff person, volunteer, or employee and the Home Care Organization applicant or Home Care Organization licensee does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department may cease processing the criminal record exemption request and close the case.

(C) If the individual for whom the criminal record exemption is requested is a Home Care Organization applicant or Home Care Aide applicant, and the applicant does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department may deny the criminal record exemption request.

(D) Individuals may request a criminal record exemption on their own behalf if the Home Care Organization applicant or Home Care Organization licensee chooses not to request the criminal record exemption after notification of the need for a criminal record exemption.

(E) Individuals may request a criminal record exemption on their own behalf if the individual is operating as an Independent Home Care Aide or is a Registered Home Care Aide who intends to provide home care services as an Independent Home Care Aide.

(d) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:

(1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.

(2) Period of time since the crime was committed and the number of offenses.

(3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.

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

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

(6) Character references.

(A) All character references shall be on a Reference Request (LIC 301E Exemptions [Rev. 7/03]).

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

(8) Evidence of honesty and truthfulness as revealed in criminal record exemption application documents.

(A) Documents include, but are not limited to:

1. A Criminal Record Statement (LIC 508, [Rev. 07/15]) and

2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

(9) Evidence of honesty and truthfulness as revealed in criminal record exemption application interviews and conversations with the Department.

(e) The Department shall also consider the following factors in evaluating a request for a criminal record exemption:

(1) The type of clients who are to be provided services.

(2) The individual's age at the time the crime was committed.

(f) The Department may deny an criminal record exemption request if:

(1) The Home Care Organization applicant or Home Care Organization licensee and/or the affected individual fails to provide documents requested by the Department, or

(2) The Home Care Organization applicant or Home Care Organization licensee and/or the affected individual fails to cooperate with the Department in the criminal record exemption process.

(g) The reasons for any criminal record exemption approval or denial shall be in writing and kept by the Department.

(1) Criminal record exemption denial notices to the Home Care Organization applicant, the Home Care Organization licensee, and the affected individual shall specify the reason the criminal record exemption was denied.

(h) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, employment, or volunteer work in a licensed Home Care Organization.

(i) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an criminal record exemption if the individual:

(1) Makes a knowingly false or misleading statement regarding:

(A) Material relevant to their application for a criminal record clearance or criminal record exemption,

(B) His or her criminal record clearance, criminal record exemption, or registry status to obtain employment or permission to be present in any facility licensed by the Department or to provide home care services as a Registered Home Care Aide, or

(C) His or her criminal record clearance or criminal record exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional criminal record exemption; or

(2) Is on formal, supervised probation or parole.

(A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding subsection (i)(2).

(j) The Department shall consider granting a criminal record exemption if the individual's criminal record meets all of the applicable criteria specified in subsections (j)(1)-(6) and the individual provides the Department with substantial and convincing evidence of present good character as specified in subsection (b)(5). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

(1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.

(2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

(6) The individual has not been convicted of a violent felony.

(7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in subsections (j)(1)-(5) above shall begin from the last date of conviction(s).

(k) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of a criminal record exemption if the individual fails to meet the requirements specified in subsections 90-110(j)(1)-(6).

(l) The Department shall not grant a criminal record exemption if the individual has a conviction for any offense specified in Health and Safety code section 1522(g)(1)(A) or (B).

(m) The Department shall consider granting a simplified criminal record exemption only if the individual has the criminal history profile outlined below:

(1) The individual does not have a demonstrated pattern of criminal activity;

(2) The individual has no more than one conviction;

(3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

(4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

(n) At the Department's discretion, an individual who is otherwise eligible for a simplified criminal record exemption may be required to go through the standard criminal record exemption process if the Department determines such action will help to protect the health and safety of clients.

(o) If the Department denies or cannot grant a criminal record exemption the Department shall:

(1) For initial Home Care Organization applicants, deny the application and exclude the affected individual pursuant to subsection (p) and Health and Safety Code section 1558.

(2) For initial Home Care Aide registry applicants, deny the application.

(3) For current Home Care Organization licensees or registered Home Care Aides, the Department may institute an administrative action, including, but not limited to, revocation of the license or registration.

(4) For current staff persons, volunteers, or employees, rescind the previously granted criminal record clearance or criminal record exemption and exclude the affected individual pursuant to subsection (p) and Health and Safety Code section 1558.

(p) If a request for a criminal record exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no criminal record exemption may be granted pursuant to subsection (l). If a request for a criminal record exemption has been denied based on a conviction of a crime for which no criminal record exemption may be granted, the individual shall be excluded for the remainder of the individual's life.

(1) If the Department determines during the review of an criminal record exemption request, that the individual was denied an criminal record exemption for a conviction of a crime for which an criminal record exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on a criminal record exemption denial, the Department shall cease review of the request for a criminal record exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code section 11522 that was denied, the Department shall cease review of the request for an criminal record exemption until two years from the effective date of the decision and order of the Department denying the petition unless a subsequent petition has been granted.

(2) An exclusion order based solely upon a denied criminal record exemption shall remain in effect and the individual shall not be licensed as a Home Care Organization, registered as a Home Care Aide, or employed or provide volunteer work for a licensed Home Care Organization, or have contact with clients, prospective clients or access to confidential client information of a Home Care Organization unless either a petition or a criminal record exemption is granted.

(3) If an individual who has previously been denied an criminal record exemption re-applies after the relevant time period described in subsection (p)(1), the

Department may, according to the provisions in this section, grant or deny the subsequent request for an criminal record exemption.

(4) If an individual submits a petition pursuant to Government Code section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to be licensed as a Home Care Organization, registered as a Home Care Aide, or employed or provide volunteer work for a licensed Home Care Organization, along with all information required of an individual requesting a criminal record exemption as provided in this section. If it is determined, based upon information provided by the California Department of Justice, that the individual has been convicted of a crime for which no criminal record exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

(q) A Home Care Organization applicant, Home Care Organization licensee, or any other person specified in 90-100(b) may request a transfer of a criminal record exemption that was issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, or for administrator certification by providing the following documents to the Department:

(1) A signed Criminal Record Exemption Transfer Request (LIC 9188 [Rev. 10/15]).

(2) A copy of the individual's:

(A) Driver's license, or

(B) Valid identification card issued by the Department of Motor Vehicles,

(C) Valid Permanent Resident Card, or

(D) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.

(3) Any other documentation required by the Department.

(r) The Department may consider factors including, but not limited to, the following in determining whether or not to approve a criminal record exemption transfer:

(1) The basis on which the Department granted the criminal record exemption;

(2) The nature and frequency of client contact in the new position;

(3) The category of facility where the individual wishes to transfer;

(4) The type of clients served by the Home Care Organization where the individual wishes to transfer;

(5) Whether the criminal record exemption was appropriately evaluated and granted in accordance with existing criminal record exemption laws or regulations; or

(6) Whether the criminal record exemption meets current criminal record exemption laws or regulations.

(s) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the Home Care Organization applicant

and Home Care Organization licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.

(t) At the Department's discretion, a criminal record exemption may be rescinded if it is determined that:

(1) The criminal record exemption was granted in error, or

(2) The criminal record exemption does not meet current criminal record exemption laws or regulations, or

(3) The conviction for which a criminal record exemption was granted subsequently becomes non-exemptible by law.

(u) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct that is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:

(1) Violations of licensing laws or regulations;

(2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;

(3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the criminal record exemption was issued; or

(4) The individual is convicted of a subsequent crime.

(v) If the Department rescinds a criminal record exemption the Department shall:

(1) Notify the Home Care Organization licensee if the individual is an affiliated, registered Home Care Aide, staff person, employee, or volunteer and the affected individual in writing; and

(2) Initiate an administrative action.

(w) If the Department learns that an individual with a criminal record clearance or criminal record exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

ARTICLE VI: APPENDICES

APPENDIX A: Implementing Statute

California Health and Safety Code, Division 2. Licensing Provisions, Chapter 13. Home Care Services

ARTICLE 1: General Provisions

Health and Safety Code § 1796.10

This chapter shall be known, and may be cited, as the Home Care Services Consumer Protection Act.

Health and Safety Code § 1796.11

The State Department of Social Services shall administer and enforce this chapter.

Health and Safety Code § 1796.12

For purposes of this chapter, the following definitions shall apply:

(a) “Affiliated home care aide” means an individual, 18 years of age or older, who is employed by a home care organization to provide home care services to a client and is listed on the home care aide registry.

(b) “Child” or “children” means an individual or individuals under 18 years of age.

(c) “Client” means an individual who receives home care services from a registered home care aide.

(d) “Department” means the State Department of Social Services.

(e) “Director” means the Director of Social Services.

(f) “Family member” means any spouse, by marriage or otherwise, domestic partner, child or stepchild, by natural birth or by adoption, parent, brother, sister, half-brother, half-sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons, even if the marriage has been terminated by death or dissolution.

(g) “Home care aide applicant” means an individual, 18 years of age or older, who is requesting to become a registered home care aide and the department has received and is processing the individual’s complete home care aide application and nonrefundable application fee.

(h) “Home care aide application” means the official form, designated by the department, to request to become a registered home care aide.

(i) “Home care aide registry” means a department-established and department-maintained Internet Web site of registered home care aides and home care aide applicants, which includes all of the following: the individual’s name, registration number, registration status, registration expiration date, and, if applicable, the home care organization to which the affiliated home care aide or affiliated home care aide applicant is associated.

(j) “Home care organization” means an individual, 18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for home care services by an affiliated home care aide to a client, and is licensed pursuant to this chapter.

(k) “Home care organization applicant” means an individual, 18 years of age or older, or a firm, partnership, corporation, limited liability company, joint venture, association, or other entity where the individual or individuals applying for the license are 18 years of age or older and are requesting to become a home care organization licensee and the department has received and

is processing the complete home care organization application and nonrefundable application fee.

(l) “Home care organization application” means the official form, designated by the department, to request to become a licensed home care organization.

(m) “Home care organization licensee” means an individual, 18 years of age or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity having the authority and responsibility for the operation or management of a licensed home care organization.

(n) “Home care services” means nonmedical services and assistance provided by a registered home care aide to a client who, because of advanced age or physical or mental disability, cannot perform these services. These services enable the client to remain in his or her residence and include, but are not limited to, assistance with the following: bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the client self-administers, housekeeping, meal planning and preparation, laundry, transportation, correspondence, making telephone calls, shopping for personal care items or groceries, and companionship. This subdivision shall not authorize a registered home care aide to assist with medication that the client self-administers that would otherwise require administration or oversight by a licensed health care professional.

(o) “Registered home care aide” means an affiliated home care aide or independent home care aide, 18 years of age or older, who is listed on the home care aide registry.

(p) “Independent home care aide” means an individual, 18 years of age or older, who is not employed by a home care organization, but who is listed on the home care aide registry and is providing home care services through a direct agreement with a client.

ARTICLE 2: Registry and Exemptions

Health and Safety Code § 1796.14

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

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

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

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

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

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

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

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

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

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

(H) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Chapter 1 (commencing with Section 4500) of Division 4.5 of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and supports for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

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

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

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

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

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

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

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

Health and Safety Code § 1796.15

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

Health and Safety Code § 1796.16

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

1596.90), Chapter 3.6 (commencing with Section 1597.30), and Chapter 3.65 (commencing with Section 1597.70).

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

Health and Safety Code § 1796.17

(a) Each home care organization shall be separately licensed. Nothing in this chapter shall prevent a licensee from obtaining more than one home care organization license or obtaining a home care organization license in addition to other licenses issued by the department, or both.

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

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

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

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

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

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

(6) An organization vendored or contracted through a regional center or the State Department of Developmental Services pursuant to the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code) and the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and supports for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code, when funding for those services is provided through the State Department of Developmental Services and more than 50 percent of the recipients of the home care services provided by the organization are persons with developmental disabilities.

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 3: Home Care Aide Applicants

Health and Safety Code § 1796.19

(a) The department shall consider, but is not limited to, the following when determining whether to approve a registration application:

(1) Evidence satisfactory to the department of the ability of the home care aide applicant to comply with this chapter and the rules and regulations promulgated under this chapter by the department.

(2) Evidence satisfactory to the department that the home care aide applicant is of reputable and responsible character. The evidence shall include, but is not limited to, a review of the independent home care aide applicant's criminal offender record information pursuant to Section 1522.

(3) Any revocation or other disciplinary action taken, or in the process of being taken, related to the care of individuals against the home care aide applicant.

(4) Any other information that may be required by the department for the proper administration and enforcement of this chapter.

(b) Failure of the home care aide applicant to cooperate with the department in the completion of the Home Care Aide application shall result in the withdrawal of the registration application. "Failure to cooperate" means that the information described in this chapter and by any rules and regulations promulgated under this chapter has not been provided, or has not been provided in the form requested by the department, or both.

ARTICLE 4: Registration

Health and Safety Code § 1796.21

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

Health and Safety Code § 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 Alien Registration 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.

Health and Safety Code § 1796.23

(a) Each person initiating a background examination to be a registered home care aide shall submit his or her fingerprints to the Department of Justice by electronic transmission in a manner approved by the department, unless exempt under subdivision (d). Each person initiating a background examination to be a registered home care aide shall also submit to the department a signed declaration under penalty of perjury regarding any prior criminal convictions pursuant to Section 1522 and a completed home care aide application.

(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 the 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 his or her 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.

Health and Safety Code § 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 his or her 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. 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 the home care aide applicant meets all of the conditions for registration, except receipt of the Federal Bureau of Investigation's criminal offender record information search response, the department may issue a clearance if the home care aide applicant has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a minor traffic violation. 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 a home care organization applicant or a home care organization licensee to request the transfer of a home care aide's current criminal record clearance or exemption for a licensed care facility issued by the department. A signed criminal record clearance or exemption transfer request shall be submitted to the department and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee or home care aide applicant, 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.

Health and Safety Code § 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 a minor traffic violation, the department shall deny the home care aide application, or revoke the registered home care aide's registration unless the director grants an exemption pursuant to subdivision (g) of Section 1522.

(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 it had previously revoked a license or certificate of approval to be a certified family home, a certified administrator, or a registered TrustLine provider held by the home care aide applicant or registered home care aide, or that it had excluded the home care aide applicant or registered home care aide from a licensed facility.

(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 it had previously denied the home care aide applicant's or registered home care aide's application for a license from the department or certificate of approval to be a certified family home, 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 has been denied, the home care aide applicant or registered home care aide shall not reapply until he or she meets the timeframe set forth in Sections 1796.40 and 1796.41.

Health and Safety Code § 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) He or she procured or attempted to procure his or her registered home care aide registration or renewal by fraud or misrepresentation.

(B) He or she has a criminal conviction, other than a minor traffic violation, unless an exemption is granted pursuant to Section 1522.

(C) He or she engages or has engaged in conduct which 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 he or she meets 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 his or her 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 he or she meets 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.

Health and Safety Code § 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.

Health and Safety Code § 1796.29

The department shall do both 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 search and locate a registered home care aide or home care aide applicant, 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, registration number, registration status, 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, which shall not be publicly available on the home care aide registry.

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

ARTICLE 5: Renewal

Health and Safety Code § 1796.31

(a) To remain on the home care aide registry, a registered home care aide shall renew his or her registration every two years.

(1) A registered home care aide's registration shall expire every two years, on the anniversary date of the initial registration date. If the registration is not renewed on or prior to its expiration date, the registration shall be forfeited pursuant to subdivision (b) of Section 1796.26.

(2) To renew a registration, the registered home care aide shall, on or before the registration expiration date, request renewal by submitting to the department the registration renewal application form and paying the nonrefundable registration renewal application fee in the amount determined by the department.

(b) Renewal of a registered home care aide's registration is conditioned on compliance with all of the following:

(1) Submitting a complete registration renewal application form and payment of the nonrefundable renewal fee, both of which shall be postmarked on or before the expiration of the registration.

(2) Continuing to satisfy the requirements set forth in this chapter.

(3) Cooperating with the department in the completion of the renewal process. Failure of the registered home care aide to cooperate shall result in the withdrawal of the registration renewal application by the department. For purposes of this section, "failure to cooperate" means that the information described in this chapter and in any rules and regulations promulgated under this chapter has not been provided, or has not been provided in the form requested by the department, or both.

(c) (1) The department shall notify a registered home care aide in writing of his or her registration expiration date and the process of renewal.

(2) Written notification pursuant to this subdivision shall be mailed to the registered home care aide's mailing address of record at least 60 days before the registration expiration date.

ARTICLE 6: Licensure of Home Care Organizations

Health and Safety Code § 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 Alien Registration 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.

Health and Safety Code § 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.

Health and Safety Code § 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 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, soliciting, 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.

Health and Safety Code § 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.

Health and Safety Code § 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.

Health and Safety Code § 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). This proof shall be submitted at each subsequent renewal.

(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 he or she 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 child care 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 his or her 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. "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 all of the following:

(1) Files a complete home care organization license renewal application, including the nonrefundable fees required pursuant to Section 1796.49, both of which shall be postmarked on or before the expiration of the license.

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

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

(7) 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 withdrawal of the home care organization license renewal application. "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 registration expiration date and the process of renewal.

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

Health and Safety Code § 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 which 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 as defined in Section 1522.

(e) Engaging in acts of financial malfeasance concerning the operation of a home care organization.

Health and Safety Code § 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.

Health and Safety Code § 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 where 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 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 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 where 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 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 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 as 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.

ARTICLE 7: Home Care Organization Operating Requirements

Health and Safety Code § 1796.42

A home care organization licensee shall do all of the following:

(a) Post its license, business hours, and any other information required by the department in its place of business in a conspicuous location, visible both to clients and affiliated home care aides.

(b) Maintain and abide by a valid workers' compensation policy covering its affiliated home care aides.

(c) Maintain and abide by an employee dishonesty bond, including third-party coverage, with a minimum limit of ten thousand dollars ($10,000).

(d) Maintain 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.

(e) Report any suspected or known dependent adult or elder abuse as required by Section 15630 of the Welfare and Institutions Code and suspected or known child abuse as required by Sections 11164 to 11174.3, inclusive, of the Penal Code. A copy of each suspected abuse report shall be maintained and available for review by the department during normal business hours.

Health and Safety Code § 1796.43

(a) Home care organizations that employ affiliated home care aides shall ensure the affiliated home care aides are cleared on the home care aide registry before placing the individual in direct contact with clients. In addition, the home care organization shall do all of the following:

(1) Ensure any staff person, volunteer, or employee of a home care organization who has contact with clients, prospective clients, or confidential client information that may pose a risk to the clients' health and safety has met the requirements of Sections 1796.23, 1796.24, 1796.25, 1796.26, and 1796.28 before there is contact with clients or prospective clients or access to confidential client information.

(2) Require home care aides to demonstrate that they are free of active tuberculosis disease, pursuant to Section 1796.45.

(3) Immediately notify the department when the home care organization no longer employs an individual as an affiliated home care aide.

(b) This section shall not prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

ARTICLE 8: Affiliated Home Care Aides

Health and Safety Code § 1796.44

(a) A licensee shall ensure that prior to providing home care services, an affiliated home care aide shall complete the training requirements specified in this section.

(b) An affiliated home care aide shall complete a minimum of five hours of entry-level training prior to presence with a client, as follows:

(1) Two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment.

(2) Three hours of safety training, including basic safety precautions, emergency procedures, and infection control.

(c) In addition to the requirements in subdivision (b), an affiliated home care aide shall complete a minimum of five hours of annual training. The annual training shall relate to core competencies and be population specific, which shall include, but not be limited to, the following areas:

(1) Clients' rights and safety.

(2) How to provide for and respond to a client's daily living needs.

(3) How to report, prevent, and detect abuse and neglect.

(4) How to assist a client with personal hygiene and other home care services.

(5) If transportation services are provided, how to safely transport a client.

(d) The entry-level training and annual training described in subdivisions (b) and (c) may be completed through an online training program.

Health and Safety Code § 1796.45

(a) Affiliated home care aides hired on or after January 1, 2016, shall submit to an examination 90 days prior to employment or within seven days after employment to determine that the individual is free of active tuberculosis disease.

(b) For purposes of this section, “examination” means a test for tuberculosis infection that is recommended by the federal Centers for Disease Control and Prevention (CDC) and that is licensed by the federal Food and Drug Administration (FDA) and, if that test is positive, an X-ray of the lungs. The aide shall not work as an affiliated home care aide unless the licensee obtains documentation from a licensed medical professional that there is no risk of spreading the disease.

(c) After submitting to an examination, an affiliated home care aide whose test for tuberculosis infection is negative shall be required to undergo an examination at least once every two years. Once an affiliated home care aide has a documented positive test for tuberculosis infection that has been followed by an X-ray, the examination is no longer required.

(d) After each examination, an affiliated home care aide shall submit, and the home care organization shall keep on file, a certificate from the examining practitioner showing that the affiliated home care aide was examined and found free from active tuberculosis disease.

(e) The examination is a condition of initial and continuing employment with the home care organization.

(f) An affiliated home care aide who transfers employment from one home care organization to another shall be deemed to meet the requirements of subdivision (a) or (c) if the affiliated home care aide can produce a certificate showing that he or she submitted to the examination within the past two years and was found to be free of active tuberculosis disease, or if it is verified by the home care organization previously employing him or her that it has a certificate on file that contains that showing and a copy of the certificate is provided to the new home care organization prior to the affiliated home care aide beginning employment.

ARTICLE 9: Revenues

Health and Safety Code § 1796.47

(a) (1) Administration of this program shall be fully supported by fees and not civil penalties. Initial costs to implement this chapter may be provided through a General Fund loan that is to be repaid in accordance with a schedule provided by the Department of Finance. The department shall assess fees for home care organization licensure, and home care aide registration related to activities authorized by this chapter. The department may adjust fees as necessary to fully support the administration of this chapter. Except for General Fund moneys that are otherwise transferred or appropriated for the initial costs of administering this chapter, or penalties collected pursuant to this chapter that are appropriated by the Legislature for the

purposes of this chapter, no General Fund moneys shall be used for any purpose under this chapter.

(2) A portion of moneys collected in the administration of this chapter, as designated by the department, may be used for community outreach consistent with this chapter.

(b) The Home Care Fund is hereby created within the State Treasury for the purpose of this chapter. All licensure and registration fees authorized by this chapter shall be deposited into the Home Care Fund, except the fingerprint fees collected pursuant to Section 1796.23, which shall be deposited into the Fingerprint Fees Account. Moneys in this fund shall, upon appropriation by the Legislature, be made available to the department for purposes of administering this chapter.

(c) Any fines and penalties collected pursuant to this chapter shall be deposited into the Home Care Technical Assistance Fund, which is hereby created as a subaccount within the Home Care Fund. Moneys in the Home Care Technical Assistance Fund shall, upon appropriation by the Legislature, be available to the department for the purposes of providing technical assistance, training, and education pursuant to this chapter.

Health and Safety Code § 1796.48

(a) The department may charge a nonrefundable application and nonrefundable renewal fee to become a registered home care aide and to renew a registered home care aide's registration.

(b) The maximum fee shall not exceed the total actual costs, which include, but are not limited to, of all of the following:

(1) The searches for criminal offender records performed by the Department of Justice.

(2) The cost incurred by the Department of Justice for the searches of the records of the Federal Bureau of Investigation.

(3) The cost to the department to process the applications and maintain the home care aide registry and perform the duties required by this chapter and any rules and regulations promulgated pursuant to this chapter.

(c) The fees collected shall be deposited into the Home Care Fund pursuant to subdivision (b) of Section 1796.47, except the fingerprint fees collected pursuant to Section 1796.23, which shall be deposited into the Fingerprint Fees Account.

Health and Safety Code § 1796.49

(a) A licensee shall pay the following fees:

(1) A nonrefundable 24-month initial license fee, as prescribed by the department, for a licensee not currently licensed to provide home care services in the state.

(2) A two-year nonrefundable renewal fee, as determined by the department, based on the number of full-time equivalents (FTEs), including paid personnel or contractors needed to oversee the enforcement of this chapter.

(3) Other reasonable fees as prescribed by the department necessary for the administration of this chapter.

(b) The fees collected shall be deposited into the Home Care Fund pursuant to subdivision (b) of Section 1796.47, except the fingerprint fees collected pursuant to Section 1796.23, which shall be deposited into the Fingerprint Fees Account.

ARTICLE 10: Complaints, Inspections, and Investigations

Health and Safety Code § 1796.51

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

Health and Safety Code § 1796.52

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

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

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

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

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

Health and Safety Code § 1796.53

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

ARTICLE 11: Enforcement

Health and Safety Code § 1796.55

(a) A home care organization that operates in violation of any requirement or obligation imposed by this chapter or any rule or regulation promulgated pursuant to this chapter may be subject to the fines levied or licensure action taken by the department as specified in this chapter.

(b) When the department determines that a home care organization is in violation of this chapter or any rules or regulations promulgated pursuant to this chapter, a notice of violation shall be

served upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation and the statutory provision, rule, or regulation alleged to have been violated. The notice shall inform the licensee of any action the department may take pursuant to this chapter, including the requirement of a plan of correction, assessment of a penalty, or action to suspend, revoke, or deny renewal of the license. The director or his or her designee shall also inform the licensee of rights to a hearing pursuant to this chapter.

(c) The department may impose a fine of up to nine hundred dollars ($900) per violation per day commencing on the date the violation was identified and ending on the date each violation is corrected.

(d) The department shall adopt regulations establishing procedures for notices, correction plans, appeals, and hearings.

Health and Safety Code § 1796.57

It is a misdemeanor for a person to falsely represent or present himself or herself as a home care aide applicant or registered home care aide.

Health and Safety Code § 1796.58

Any person who violates this chapter, or who willfully or repeatedly violates a rule or regulation 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 a county jail for a period not to exceed 180 days, or by both that fine and imprisonment.

Health and Safety Code § 1796.59

(a) Notwithstanding any other provision of this chapter, the district attorney of every county, and city attorneys in cities that have city attorneys who have jurisdiction to prosecute misdemeanors pursuant to Section 72193 of the Government Code, may, upon their own initiative or upon application by the department or its authorized representative, institute and conduct the prosecution of any action for violation within their county of this chapter or a rule or regulation promulgated under this chapter.

(b) The civil, criminal, and administrative remedies available to the department pursuant to this chapter are not exclusive, and may be sought and employed in any combination as determined by the department to enforce this chapter or a rule or regulation promulgated under this chapter.

ARTICLE 12: Operation

Health and Safety Code § 1796.61

(a) This chapter shall be implemented on January 1, 2016.

(b) Home care organization applicants and home care aide applicants who submit applications prior to January 1, 2016, shall be authorized to provide home care services without meeting the requirements of Section 1796.45, provided the requirements of that section are met no later than July 1, 2016.

(c) The applicants described in subdivision (b) shall meet all the requirements of this chapter no later than July 1, 2016, in order to continue to provide home care services.

Health and Safety Code § 1796.62

This chapter and any rules and regulations promulgated pursuant to this chapter shall only be implemented to the extent that funds are made available through an appropriation in the annual Budget Act.

Health and Safety Code § 1796.63

(a) The department shall adopt, amend, or repeal, in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, any reasonable rules, regulations, and standards as may be necessary or proper to carry out the purpose and intent of this chapter and to enable the department to exercise the powers and perform the duties conferred upon it by this chapter, not inconsistent with any of the provisions of any statute of this state. Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this chapter through written directives, without taking regulatory action, subject to the limitations provided in subdivision (b).

(b) The department's authority to implement and administer this chapter through written directives shall expire no later than January 1, 2018, or upon the effective date of regulations promulgated in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), whichever occurs sooner.

(c) The department may adopt emergency regulations to implement and administer the provisions of this chapter. The department may readopt any emergency regulations that are the same as, or substantially equivalent to, any emergency regulations previously adopted. The initial adoption and readoption of emergency regulations for the implementation and administration of this chapter pursuant to this subdivision shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial and readopted emergency regulations shall be exempt from review by the Office of Administrative Law. The initial and readopted emergency regulations shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each adoption or readoption shall remain in effect for no more than 180 days.