

ORDINANCE NO. 1406

**AN ORDINANCE OF THE NAPA COUNTY BOARD OF SUPERVISORS,
STATE OF CALIFORNIA, AMENDING NAPA COUNTY CODE
CHAPTER 5.60 (PERMITS FOR ELDER AND/OR DEPENDENT ADULT
CAREGIVERS) TO TRANSFER RESPONSIBILITY FOR REGULATION
OF CAREGIVER PERMIT BUSINESSES TO STATE DEPARTMENT OF
SOCIAL SERVICES PER ASSEMBLY BILL 1217; TO REQUIRE
INDIVIDUAL CAREGIVERS TO OBTAIN A TUBERCULOSIS TEST;
AND TO EXTEND THE PROTECTION OF ELDERS AND DEPENDENT
ADULTS BY REGULATING CAREGIVER REFERRAL AGENCIES**

WHEREAS, California State Assembly Bill AB 1217, the Home Care Services Protection Act (Act), will go into effect on January 1, 2016; and

WHEREAS, the Act will provide for the licensure and regulation of home care organizations and the registration of home care aides; and

WHEREAS, the Act will regulate and license elder and/or dependent adult home service businesses covered under existing Napa County Code Chapter 5.60 making the provisions in the Napa County Code unnecessary; and

WHEREAS, the Act will not regulate or license caregiver referral agencies continuing to leave our elder and/or dependent adults vulnerable; and

WHEREAS, the Act allows for individual caregivers to register as home care aides after successfully completing the application process which includes, but is not limited to, a live scan background check; however, the Act does not make it mandatory for individual caregivers; and

WHEREAS, the control and prevention of tuberculosis among the elderly and/or dependent adults must be addressed to protect these vulnerable populations in Napa County; therefore, requiring all caregivers to be free of tuberculosis prior to caring for our elderly and/or dependent adults is the best form of protection; and

WHEREAS, this ordinance is designed to amend Chapter 5.60 of the Napa County Code

- the Elder and/or Dependent Adult Caregiver ordinance, to address the Act and to strengthen the County's protection over elder and/or dependent adults.

The Napa County Board of Supervisors, State of California, ordains as follows:

SECTION 1. A Chapter 5.60 (Permits for Elder and/or Dependent Adult Caregivers) of the Napa County Code is hereby amended to read in full as follows:

Chapter 5.60

PERMITS FOR ELDER AND/OR DEPENDENT ADULT CAREGIVERS

Sections:

5.60.010	Definitions.
5.60.020	Permit-Required.
5.60.030	Permit-Application.
5.60.040	Permit-Fees.
5.60.050	Permit issuance or denial; grounds for denial.
5.60.060	Permit-Right to appeal.
5.60.070	Permit-Limited caregiver permit.
5.60.075	Permit-Validity.
5.60.080	Threatening, coercing, intimidating, or using undue influence-Prohibited.
5.60.085	Permit-Advertising.
5.60.090	Permit-Update and renewal.

5.60.010 Definitions.

“Advertise” includes, but is not limited to, the issuance of any card, sign, or device to any person, the causing, permitting, or allowing of any sign or marking on or in any building or structure, or in any newspaper, magazine, or by airwave or any electronic transmission, or in any directory under a listing as a caregiver providing in home services or a caregiver referral agency covered by this chapter.

“Caregiver” means any person that provides personal and/or domestic services for compensation or any form of consideration for an elder and/or dependent adult.

“Caregiver coordinator” means the county designated organization that accepts caregiver permit applications, forwards applications to the industry specialist for background checks, and notifies applicants and the county of applicant status.

“Caregiver permit” means a permit for an individual person to work for profit as an elder and/or dependent adult caregiver.

“Caregiver referral agency” means an individual, eighteen years or older, partnership, corporation, limited liability company, joint venture, association or other entity that offers and/or arranges caregivers for referral into the unlicensed homes of elders and/or dependent adults for the purpose of providing personal and/or domestic service and/or home services to the elder and/or dependent adult for compensation or any form of consideration.

“Dependent adult” has the same meaning as used in Penal Code Section 368 (any person between the ages of eighteen and sixty-four, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age. “Dependent Adult” includes any person between the ages of eighteen and sixty-four who is admitted as an inpatient to a twenty-four hour health facility).

“Disqualifying crimes” means a list of criminal offenses that disqualifies an applicant from obtaining a caregiver permit. The list shall be adopted by resolution on the date this ordinance is passed and may be amended by adoption of subsequent resolutions.

“Elder” has the same meaning as used in Penal Code Section 368 (any person who is sixty-five years of age or older).

“Home care aide registry” means the California State Department of Social Services, Home Care Services, registry of registered home care aides and home care aide applicants.

“Home care organization” means an individual, eighteen years or older, firm, partnership, corporation, limited liability company, joint venture, association, or other entity that arranges for personal and domestic services by a home care aide to a client and is licensed by the State of California.

“Home services” or “in-home services” means providing personal and/or domestic services to an elder and/or dependent adult, or personal services and domestic services in the elder and/or dependent adult's temporary or permanent place of residence, which are intended to enable that individual to remain safely and comfortably in his or her own residence.

“Industry specialist” means a private company that enters into a contract with the caregiver coordinator to perform the background checks on individuals applying for a caregiver permit.

“Limited caregiver permit” means a permit to work for profit as a caregiver for a single elder and/or dependent adult only (rather than for multiple clients).

“Personal and/or domestic services” includes the following services for elders and/or dependent adults: domestic services performed on a regular basis more than one day a week such as housework, meal preparation, meal clean-up, laundry, grocery and other essential shopping, other errands, heavy house or yard cleaning; and/or personal services performed on a regular basis such as bathing, oral hygiene, grooming, dressing, feeding, assistance with ambulation and/or transfers, care and assistance with medical apparatus, taking an elder and/or dependent adult to and from medical appointments, or any other similar acts.

“Public authority” has the same meaning as used in Welfare and Institutions Code Section 12301.6.

“Registered home care aide” means an individual, eighteen years or older, who is listed on the home care aide registry.

“Undue influence” consists of any one or more of the following: (1) the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over that other, of such confidence or authority, for the purpose of obtaining an unfair advantage over the other; or, (2) taking an unfair advantage of another's weakness of mind; or, (3) taking a grossly oppressive or unfair advantage of another's necessities or distress. Whether from weakness on one side, or strength on the other, or a combination of the two, undue influence occurs whenever there results that kind of supremacy of one mind over another by which that other is prevented

from acting according to his or her own wish or judgment, and whereby the will of the other is overborne and he/she is induced to do an act that, if left to act freely, he/she would not do.

5.60.020 Permit-Required.

A. It is unlawful for any person to act as a caregiver without a valid caregiver permit. This section shall not apply to persons who are registered nurses, licensed vocational nurses, nurse practitioners, physician assistants, certified nursing assistants, physical therapists, certified home health aides, registered home care aides, or similar occupations for which the person already possesses a valid and current state license or state certificate and has passed a state and FBI background check.

B. It is unlawful for a caregiver referral agency to arrange, promote, advertise, and/or include on a list a caregiver for the purpose of providing personal and/or domestic services to an elder and/or dependent adult when the caregiver does not have a valid caregiver permit required pursuant to this chapter.

C. This section does not apply to the county Board of Supervisors, a public authority, or a non-profit consortium established to implement an In-Home Supportive Services Program as described in Welfare and Institution Code Sections 12301.6. et seq.

D. This section does not apply to a facility that is licensed and regulated by the State of California through a process that requires the facility's employees to be the subject of a background check prior to employment.

E. Violation of this ordinance is a misdemeanor or infraction, punishable by a fine, imprisonment in the county jail up to one year, or a combination of both.

5.60.030 Permit-Application.

Each application for an individual permit to act as a caregiver shall contain the following information and shall be submitted to the caregiver coordinator:

- A. The full true name and any other names ever used by the applicant;
- B. The current residential address and telephone number of the applicant;
- C. Each residential and business address of the applicant for the five years immediately preceding the date of the application, and the inclusive dates of each address;
- D. All fictitious business names used by the applicant and the respective addresses of those businesses;
- E. Written proof that the applicant possesses a valid social security number;
- F. Written proof that the applicant is at least eighteen years of age unless the particular business has a different age requirement pursuant to state or federal law, in which case proof of the applicable state or federal law requirement shall be provided;
- G. Applicant's height, weight, and color of eyes and hair;
- H. Submit two identification type photographs (one and one-half inches high by one inch wide);
- I. Applicant's business, occupation and employment history for the five years immediately preceding the date of application, including addresses and dates of employment;
- J. The name and business address of any employing individual elder and/or dependent adult or home care organization within the last five years;
- K. Whether the applicant has ever had any license or permit issued by any agency or board, or any city, county, state or federal agency revoked or suspended, or has had any

professional or vocational license or permit revoked or suspended within five years immediately preceding the application, and, if so, the reason for the suspension or revocation;

L. All criminal convictions of the applicant, including those dismissed pursuant to Penal Code Section 1203.4, except traffic, and a statement of the dates and places of such convictions;

M. Written proof that the applicant is free of active tuberculosis diseases; and

N. Such other identification and information as may be required to substantiate the matters required to be set forth in the application.

5.60.040 Permit-Fees.

A. An application fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of application and upon annual renewal thereafter.

B. A permit fee in the amount adopted by resolution of the board shall be paid by each applicant at the time of issuance of the permit and upon annual renewal thereafter.

5.60.050 Permit issuance or denial; grounds for denial.

A. Upon submittal of a complete application, the caregiver coordinator shall forward the application to the industry specialist who shall conduct a background investigation to determine an applicant's fitness to conduct the occupation of caregiver.

B. Except as otherwise provided in this code, upon completion of the investigation of an individual applicant, the county shall issue a permit unless:

1. The applicant has any misdemeanor or felony conviction for violation of the Penal Code Sections included on the list of disqualifying crimes;

2. The applicant has knowingly made a false or misleading statement of a material fact or omission of a material fact in the application;

3. The applicant has had a similar type of registration, license, permit, or certificate previously denied, suspended for a total of six months, or revoked, within five years immediately preceding the date of the filing of the application, and the applicant can show no material changes in circumstances since such denial, suspension, or revocation;

4. The applicant is on informal or formal probation in any jurisdiction;

5. The applicant has had a felony conviction within ten years immediately preceding the date of the application; or

6. After request by the caregiver coordinator, the applicant fails to provide proof of any application requirement set forth in Section 5.60.30.

5.60.060 Permit-Right to appeal.

Any applicant denied a caregiver permit shall be afforded an appeal as follows:

A. For a denial under subsections (B)(2), (3), (6) of Section 5.60.050, an appeal as prescribed by the Chapter 2.88.

B. For a denial pursuant to a disqualifying crime, an appeal as prescribed by the industry specialist.

5.60.070 Permit-Limited caregiver permit.

A. A person who would otherwise qualify as an applicant for a caregiver permit but cannot do so because of a disqualifying conviction may request a limited caregiver permit that

will authorize the applicant to perform home services for a single employing elder or dependent adult. An individual may possess only a single limited caregiver permit at any one time.

B. A limited caregiver permit may be issued if the following conditions have been satisfied:

1. Together with the application and payment of fees required for a permit under Sections 5.60.30 and 5.60.040, the applicant shall submit a notarized and/or witnessed declaration from the employing elder and/or dependent adult acknowledging:

a. That he or she is aware that the elder and/or caregiver applicant is not eligible for an elder and/or dependent adult caregiver permit;

b. That he or she has been provided, reviewed, and is aware of the criminal exemptions that prevent an applicant from passing the background check and he or she understands the applicant has a disqualifying conviction;

c. That he or she desires to employ the applicant as an elder and/or dependent adult caregiver notwithstanding the applicant's ineligibility to obtain a non-limited permit due to previous criminal convictions;

d. That he or she has knowingly, intelligently, and voluntarily chosen the applicant to be their caregiver;

e. That he or she understands the possible danger and potential risk involved with hiring a caregiver who was unable to pass the background check and agrees to accept any and all risks associated with the decision to hire the applicant;

f. That he or she, to the full extent permitted by law, shall hold harmless, defend at his or her own expense, and indemnify the county, the caregiver coordinator and the officers, agents, employees, and volunteers of the county and the caregiver coordinator, from any and all liability, claims, losses, damages or expenses, including reasonable attorney fees, for personal injury (including death) or damage to property, arising from all acts or omissions of the applicant.

C. A limited caregiver permit provided under this section shall be subject to any regulatory and/or criminal action as if it were a permit issued under Chapter 5.60.

5.60.075 Permit-Validity.

A. Upon issuance of the letter from the caregiver coordinator approving the application, the applicant shall have thirty days to submit the approval letter to the recorder-county clerk. After thirty days, the approval letter will become null and void.

B. The caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional one year periods by submittal of a renewal application and payment of the applicable fees.

C. A limited caregiver permit shall be valid for a period of one year. Thereafter, it may be renewed for additional one year periods by submittal of an application, a current notarized and/or witnessed declaration and payment of the applicable fee. A limited caregiver permit shall not be issued to anyone that has previously had such a permit suspended or revoked.

5.60.080 Threatening, coercing, intimidating, or using undue influence-Prohibited.

It is unlawful for any person to threaten, coerce, intimidate, or use undue influence upon an elder and/or dependent adult in order to obtain a statement required under Section 5.60.070. Any person found to have threatened, coerced, intimidated, or unduly influenced an elder and/or

dependent adult may be the subject of criminal prosecution as provided in subsection (E) of Section 5.60.020 above.

5.60.085 Permit-Advertising.

A. It is unlawful for any person to advertise as a caregiver covered by this chapter unless that person holds a valid permit under this chapter which is listed in the classification so advertised.

B. It is unlawful for any referral agency to advertise for a caregiver covered by this chapter unless that caregiver holds a valid permit under this chapter which is listed in the classification so advertised.

C. Any person or caregiver referral agency who advertises or puts out any sign or card or other device that would indicate to the public that he or she is a caregiver, or who causes his or her name or business name to be included in a classified advertisement or directory under a classification for caregivers covered by this chapter, is required to include their permit identification number in the advertisement.

5.60.090 Permit-Update and renewal.

Each individual permit holder shall apply for renewal of his or her permit prior to the expiration of said permit within one year of the issuance date. Renewal applications shall include any new information not contained in the original application.

SECTION 2. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The Napa County Board of Supervisors hereby declares it would have passed and adopted this ordinance and each and all provisions hereof irrespective of the fact that any one or more of said provisions be declared invalid.

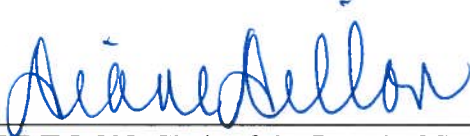
SECTION 3. This ordinance shall become effective on **January 1, 2016.**

SECTION 4. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in the Napa Valley Register, a newspaper of general circulation published in Napa County, together with the names of members voting for and against the same.


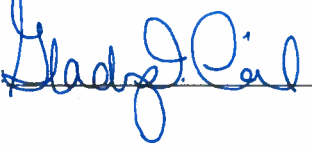
The foregoing ordinance was introduced and read at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 3rd day of November, 2015, and

passed at a regular meeting of the Napa County Board of Supervisors, State of California, held on the 24th day of November, 2015, by the following vote:

AYES: SUPERVISORS CALDWELL, PEDROZA, WAGENKNECHT, LUCE and DILLON
 NOES: SUPERVISORS NONE
 ABSTAIN: SUPERVISORS NONE
 ABSENT: SUPERVISORS NONE



 DIANE DILLON, Chair of the Board of Supervisors

<p>APPROVED AS TO FORM Office of County Counsel</p> <p>By: <u>Carrie R. Gallagher</u> Deputy County Counsel</p> <p>By: <u>Sue Ingalls</u> County Code Services</p> <p>Date: <u>10/20/15</u></p>	<p>APPROVED BY THE NAPA COUNTY BOARD OF SUPERVISORS</p> <p>Date: November 24, 2015</p> <p>Processed By:  _____ Deputy Clerk of the Board</p>	<p>ATTEST: GLADYS I. COIL Clerk of the Board of Supervisors</p> <p>By: </p>
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I HEREBY CERTIFY THAT THE ORDINANCE ABOVE WAS POSTED IN THE OFFICE OF THE CLERK OF THE BOARD IN THE ADMINISTRATIVE BUILDING, 1195 THIRD STREET ROOM 310, NAPA, CALIFORNIA ON November 30, 2015.


 _____, DEPUTY *for*
 GLADYS I. COIL, CLERK OF THE BOARD