

November 8, 2013

VIA MESSENGER DELIVERY

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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICEAshley Johansson, Initiative Coordinator
Office of the Attorney General
1300 I Street
Sacramento, CA 95814**RE: Seniors Home Care Cost Accountability Act of 2014**

Dear Ms. Johansson:

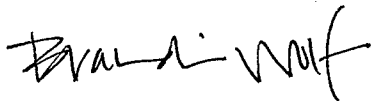
Pursuant to Elections Code section 9001, I am hereby submitting the enclosed initiative measure entitled the "Seniors Home Care Cost Accountability Act of 2014" and request the Attorney General to prepare a circulating title and summary for the measure.

A check for \$200 and the certification by the official proponent, as required by sections 9001(b) and 9608, is also enclosed.

Please direct all future communications to:

Lance H. Olson
OLSON, HAGEL & FISHBURN, LLP
555 Capitol Mall, Suite 1425
Sacramento, CA 95814
PH: 916/442-2952 / FX: 916/442/1280

Very truly yours,

Brandi Wolf
Proponent

Enclosures: as stated above

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, new provisions proposed to be added are printed in *italic* type to indicate that they are new.

SEC. 1. Name

This Act shall be known as the "Seniors Home Care Cost Accountability Act of 2014."

SEC. 2. Findings and Purposes

(a) The People of the State of California make the following findings:

- (1) Seniors and individuals with disabilities frequently find themselves in need of part-time to full-time assistance from a caregiver in order to live at home independently.
- (2) Home care aides assist consumers with a wide range of needs, including bathing, dressing, cooking, feeding, toileting, exercising, housekeeping, transportation, and companionship.
- (3) Seniors and individuals with disabilities in need of home care services and their families often must rely on home care organizations that employ and dispatch home care aides in exchange for substantial fees.
- (4) Consumers and their families often pay home care organizations substantial fees for such home care services, without knowing whether they are receiving good value for their money, or what portion of the fees is actually necessary to pay the caregivers and cover the costs of the home care services.
- (5) Home care organizations that spend a higher percentage of the fees they charge on direct home care service costs, instead of administrative overhead costs, are providing better value to consumers.
- (6) Home care organizations with high administrative costs typically pay home care aides low wages without benefits, causing high turnover and diminishing the quality of care consumers receive.
- (7) Home care providers are not regulated sufficiently to ensure quality care at affordable rates or to provide protection to consumers against fraud.
- (8) The high cost of home care forces many seniors and individuals with disabilities out of their homes and into nursing facilities, imposing a greater burden on taxpayers who support nursing facilities through the state Medi-Cal program.
- (9) Requiring home care organizations to spend a minimum percentage of revenues on direct home care service costs will help to ensure that consumers are receiving good value and improve the quality of home care services.
- (10) Permitting consumers to file complaints against unscrupulous home care providers and authorizing the California Department of Social Services to investigate complaints will protect seniors and individuals with disabilities.
- (11) Making available to the public information about home care organizations, including how much the organizations spend on administrative costs as compared to providing services and whether the organizations are complying

with the law, will allow consumers to make informed choices when seeking home care services.

- (12) Requiring home care organizations to file annual reports detailing how much they spend on administration as compared to providing services will help ensure compliance with the requirement that a minimum percentage of revenues be used to provide direct services.

(b) In enacting this measure, the People of the State of California intend to:

(1) Ensure that the money Californians are paying for private home care services to enable themselves or their loved ones to remain safe and healthy in their homes is actually being used to pay for those services, instead of being spent on wasteful overhead, by imposing limits on administrative costs and requiring home care organizations to file annual reports detailing how they spend money received for services.

(2) Protect seniors and people with disabilities against fraud by providing for a complaint process and state investigation of home care organizations.

(3) Improve consumer access to information when choosing home care.

(4) Cover state government costs by imposing fees upon home care organizations subject to this Act and penalties upon home care organizations that violate the provisions of this Act by dedicating such fees and penalties to a trust fund to be used exclusively to enforce this Act.

(5) Ensure that affordable, quality home care is available in all of our communities.

(6) Make it easier and safer for seniors to continue living in their homes as they age.

SEC. 3. Chapter 14 (commencing with Section 1800) is added to Division 2 of the Health and Safety Code, to read:

Chapter 14. Home Care Service Costs

1800. Minimum Direct Home Care Service Cost Ratio

To help ensure that home care consumers receive high quality home care services and that the money consumers spend is used to pay for those services rather than unnecessary overhead, each year a home care organization shall expend at least 75% of its total annual home care service revenues on direct home care service costs assisting seniors and individuals with disabilities. The requirement set forth in this section shall be known as the "minimum direct home care service cost ratio."

1801. Home Care Consumer Fraud Protection; Complaints and Investigations

(a) Any person who has reason to believe that a home care organization has violated any requirement of this chapter may submit a complaint to the Department. The Department may investigate any such complaint.

(b)(1) Notwithstanding any other provision of law, any person, including but not limited to any member of the public, the Department or its authorized agents, the Attorney General, or

any district attorney, may bring an action in superior court pursuant to this section, or may intervene in such an action, and the court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of this chapter, regardless of whether a complaint has been filed pursuant to subdivision (a). Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the person shall not be required to allege facts necessary to show, or tending to show, lack of adequate remedy at law, or to show, or tending to show, irreparable damage or loss, or to show, or tending to show, unique or special individual injury or damages.

(2) In addition to the injunctive relief provided in paragraph (1), the court, after finding any person has violated this chapter, shall award to the plaintiffs and any intervenors reasonable attorney's fees and all reasonable costs, including but not limited to reasonable fees and costs incurred by the Department or other party in investigating and prosecuting the action as determined by the court.

(3) In addition to the injunctive relief provided in paragraph (1), the court may impose civil penalties, as set forth in subdivision (f) of Section 1806.

(4) This section shall not be construed to limit or alter the powers of the Department and its authorized agents to bring an action to enforce this chapter pursuant to any other provision of law. Nor shall this section be construed to limit any remedies otherwise available at law.

1802. Access to Consumer Information

(a) The Department shall make information regarding complaints, citations, findings of violations, assessments of penalties or fines, or other enforcement actions reasonably available to any member of the public upon request.

(b) The Department shall post on its internet website the name(s) and address(es) of any home care organization found to have violated any requirement of this chapter, and identify the date and nature of any violation(s).

(c) The Department shall establish a public registry of home care organizations. If the Department establishes such a registry pursuant to this Chapter or any other provision of law, the Department shall identify in that registry which home care organizations have been found to have violated any requirement of this chapter, and the date and nature of the violation(s).

(d) The Department shall make the Home Care Service Annual Cost Reports required by Section 1803 available to any member of the public upon request.

1803. Home Care Service Annual Cost Report

(a) To ensure compliance with this chapter and to provide home care consumers and their families with information they can use to evaluate whether a home care organization uses the fees it charges consumers to pay for the actual costs of providing home care service rather than unnecessary administrative overhead, each home care organization shall submit to the Department an annual cost report, called the Home Care Service Annual Cost Report, as specified below:

(1) The Report must be based upon actual, documented revenues and costs.

(2) The Report must be submitted annually, within six months of the end of the reporting period.

(A) The Report may be based on either the calendar year or the home care organization's fiscal year.

(B) Once a home care organization has elected to base its Report on a calendar or fiscal year, this election can be changed only upon written approval of the Department.

(3) The Report must specify the amounts of all home care service revenues, all direct home care service costs, and all administrative overhead costs. The Report must also specify the amounts of costs in each of the categories identified in subdivisions (d) and (e) of Section 1804, subject to additions or modifications by the Department consistent with the purposes of this chapter. All revenues and costs must be calculated in accordance with generally accepted accounting principles.

(4) The Report must specify the amounts of any revenues or costs that are excluded pursuant to subdivision (b) of this section, and the bases for those exclusions.

(5) The Report must be submitted on the form or in the format required by the Department.

(6) The accuracy of the Report must be attested to under penalty of perjury by an authorized representative of the home care organization.

(b) A home care organization that also provides any services that are excluded from the definition of "home care service" in subdivision (a) of Section 1804 must comply with all of the requirements in this chapter, provided that such a home care organization shall, for the purposes of complying with the requirements of this chapter, exclude revenues and costs attributable to services other than home care service. Where it is not reasonably possible to segregate revenues and costs attributable to services other than home care service, a proportionate amount of all such revenues and costs must be counted as home care service revenues and direct home care service costs. The determination of the proportionate amount of total revenues and costs that must be counted as home care service revenues and direct home care service costs shall be made in accordance with generally accepted accounting principles.

(c) Home care organizations must maintain financial records sufficient to substantiate all information attested to in a Home Care Service Annual Cost Report for a period of at least five calendar years from the date that the Report was submitted.

1804. Definitions

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

(a)(1) "Home care service" means service provided by a home care aide to a home care consumer who, because of advanced age or physical or mental disability, cannot perform these services for himself or herself. These services include, but are not limited to, bathing, dressing, feeding, exercising, personal hygiene and grooming, transferring, ambulating, positioning, toileting and incontinence care, assisting with medication that the consumer normally 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 be construed to authorize a home care aide to administer medication that would otherwise require administration or oversight by a licensed healthcare professional.

(2) "Home care service" does not include any of the following:

- (A) Home health aide services, as defined in subdivision (d) of Section 1727, provided by a licensed home health agency pursuant to Chapter 8 (commencing with Section 1725).
- (B) Bereavement services, inpatient care arrangements, preliminary services, skilled nursing services, and social services/counseling services, as defined in Section 1746, provided by a licensed hospice pursuant to Chapter 8.5 (commencing with Section 1745).
- (C) Services provided by a licensed health facility pursuant to Chapter 2 (commencing with Section 1250).
- (D) Services provided by a licensed residential care facility for the elderly pursuant to Chapter 3.2 (commencing with Section 1569).
- (E) In-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code, and Sections 14132.95, 14132.952, and 14132.956 of the Welfare and Institutions Code, including in-home supportive services provided through managed care health plans pursuant to Sections 12302.6 and 14186.35 of the Welfare and Institutions Code.
- (F) Services authorized to be provided pursuant to Section 2731 of the Business and Professions Code.

(3) "Home care service" includes, for purposes of this chapter, services commonly referred to as "custodial care," and services provided by individuals in positions commonly referred to as "caregivers," "personal care attendants," "homemakers," and "companions."

(b)(1) "Home care aide" means an individual who provides home care service to a consumer primarily in the consumer's residence. In addition, "home care aide" includes an individual who qualifies as a personal attendant, as defined in Industry Wage Order 15-2001, issued by the Industrial Welfare Commission, who provides home care service.

(2) "Home care aide" does not include a family member of the person who receives home care service, nor any individual who provides home care service to a consumer on a bona fide volunteer basis without any promise, expectation, or receipt of any compensation for work performed.

(c)(1) "Care manager" means an individual who primarily assists consumers of home care service (including elderly consumers and non-elderly consumers with disabilities) and consumers' family members with assessing the consumer's home care needs, obtaining the appropriate type and level of home care service, and monitoring the provision of home care service.

(2) Regardless of qualifications or job title, an individual who is primarily engaged as an executive, officer, manager, administrator, or supervisor of a home care organization shall not be treated as a care manager for the purposes of this chapter.

(d) "Direct home care service costs" means all amounts actually paid and all accounts payable, as calculated in accordance with generally accepted accounting principles, that are within the following categories:

(1) Wages and benefits; state, federal, and local payroll taxes; workers' compensation and unemployment insurance premiums; and recruiting, training, orientation, and background checks for home care aides and care managers.

(2) Any medical equipment or assistive technology sold to consumers by the home care organization.

(3) Any substantially similar expenses that are directly related to the provision of home care service.

(e) "Administrative overhead costs" means all costs other than direct home care service costs, including all amounts actually paid and all accounts payable, as calculated in accordance with generally accepted accounting principles, including but not limited to the cost of the following:

(1) Compensation and benefits; federal, state, and local payroll taxes; workers' compensation and unemployment insurance premiums; and recruiting, training, orientation, and background checks for all executives, officers, agents, or employees not listed in subdivision (d)(1).

(2) Consultants and professional services (including but not limited to accounting and legal services).

(3) Any distributions to shareholders.

(4) Advertising costs.

(5) Conference, convention, or meeting costs.

(6) Facility and office equipment costs (including but not limited to rent, lease, and mortgage payments).

(7) All other taxes.

(8) Any transfers to a corporate parent or franchisor, including, but not limited to, franchise fees, fees for copyright or trademark usage, fees for advertising material, royalty fees, or conference fees.

(9) Other general operating and overhead costs.

(f)(1) "Home care organization" means an individual, partnership, corporation, limited liability company, joint venture, association, public benefit corporation, or other entity that arranges for the provision of home care service by a home care aide to a consumer primarily in the consumer's residence. An entity that meets this definition is a "home care organization" for the purposes of this chapter even if it also provides home health services pursuant to Chapter 8 (starting with Section 1725), if it is an employment referral agency as defined in subdivision (a) of Section 1812.5095 of the Civil Code that procures, offers, refers, provides, or attempts to provide a home care aide or other worker who provides home care service to consumers pursuant to that section, or if it is 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) or the California Early Intervention Services Act (Title 14 (commencing with Section 95000) of the Government Code) to provide services and support for persons with developmental disabilities, as defined in Section 4512 of the Welfare and Institutions Code.

(2) "Home care organization" does not include any of the following:

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

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

(C) A county, public authority, or nonprofit consortium that provides or arranges only in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code.

(D) The California In-Home Supportive Services Authority, created pursuant to Section 6531.5 of the Government Code.

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

(F) An agency that employs workers who provide domestic services or child care services but not home care services, so long as the agency does not use the term "home care" or "home care aide" or any equivalent terms (including but not limited to "custodial care," "caregiver," "personal care attendant," "homemaker," and "companion") in its business name, advertising, or promotional materials, or otherwise represent itself to be an agency that provides home care services or home care aides.

(G) A residential care facility for the elderly licensed under Chapter 3.2 (commencing with Section 1569).

(H) An individual home care aide who contracts directly with consumers to provide home care service.

(g) "Home care service revenues" means all revenues received from any source, including but not limited to consumers, third-party payers, governmental entities, and insurers, as payment or reimbursement for the provision of home care service, medical equipment, or other assistive technology.

(h) "Revenues received" means all amounts actually received and all accounts receivable, except that accounts receivable may be discounted in accordance with a good faith reasonable estimate of bad debt. Revenues received shall be calculated in accordance with generally accepted accounting principles.

(i) "Expend" means to pay any amount or to accrue any account payable, as calculated in accordance with generally accepted accounting principles.

(i) "Department" means the Department of Social Services.

(j) "Director" means the Director of the Department of Social Services.

(k) "Year" means, and "annual" refers to, either calendar year or the home care organization's fiscal year, depending on the election of the home care organization under paragraph (2) of subdivision (a) of Section 1803.

(l) "Family member" means any spouse, by marriage or otherwise, child or stepchild, by natural birth or by adoption, 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.

1805. Application for Adjustment of Minimum Direct Home Care Service Cost Ratio

(a) A home care organization may submit to the Department an application for an adjustment to the minimum direct home care service cost ratio specified in Section 1800. The adjustment request may be prospective or retroactive.

(b) The Department shall grant an adjustment in the minimum direct home care service cost ratio for a defined period of time of up to but no more than two years, if a home care organization establishes by substantial evidence that an adjustment is necessary to permit the home care organization to continue operations and maintain its financial integrity. The amount and duration of the adjustment actually granted shall be no more than reasonably necessary to permit the home care organization to continue operations and maintain its financial integrity. In

determining whether to grant an adjustment to the minimum direct home care service cost ratio, and the amount of any such adjustment, the Department may consider the following factors:

(1) Whether the home care organization has incurred unusual or unexpected administrative overhead costs, and whether those costs were incurred for reasons beyond the control of the home care organization;

(2) Whether the home care organization is a new entity incurring start-up costs and how long the home care organization has been in operation;

(3) Whether the home care organization's administrative overhead costs are unusually high relative to other home care organizations, due to factors beyond the organization's control, such as geographic location; and

(4) Whether the adjustment would be consistent with the purposes of this Act.

(c)(1) The Department shall, within twelve months of enactment of this section, establish the procedure through which a home care organization may apply for an adjustment, which may include any number of the following, without limitation: application procedures and fees, requirements for submissions of relevant documentation, in person hearings, inspections, or audits.

(2) The Department's application for adjustment procedures shall provide for prompt determination of such applications, and in all cases the Department shall issue its adjustment determination within six months of the date that the applicant home care organization submitted an appropriate and complete application in accordance with the Department's guidelines and application requirements, except in cases involving exceptional circumstances or lack of cooperation from the applicant.

(3) The Department may, if necessary, grant a preliminary adjustment to the minimum home care service cost ratio to a home care organization while its application for an adjustment is pending. If a home care organization is granted a preliminary adjustment but then fails to promptly and fully respond to any requests by the Department for information or assistance necessary to process the application, the preliminary adjustment shall be revoked, and the home care organization may be deemed to have violated the minimum home care service cost ratio set forth in Section 1800.

(d) The adjustment determination made by the Department or its designee shall be the final decision of the Department, and no hearing shall be held on the determination. A home care organization shall not submit a new adjustment application to the Department or seek Departmental reconsideration of a prior adjustment application decision unless or until the home care organization can show a significant change in circumstances from the time of the original request.

(e) A home care organization may apply for a renewal or extension of an adjustment, subject to the same conditions set forth in subdivisions (b) and (c) of this section.

1806. Administration and Enforcement

(a) The Department shall administer and enforce this chapter.

(1) The Department may adopt any rules, regulations, or emergency regulations necessary to implement the provisions of this chapter. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section, but may readopt each such emergency regulation no more than one time. The initial adoption of emergency regulations

implementing this section and the one-time readoption of emergency regulations authorized by this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The initial emergency regulation and the one-time readoption of an emergency regulation authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulation and the one-time readoption of an emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

(2) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Department may, without taking any further regulatory action, implement this section by means of all-county letters, provider bulletins, facility letters, or other forms of written directives.

(b) The Department is authorized to establish and assess fees to be paid by home care organizations to cover the costs of implementing and enforcing this chapter, and each activity authorized or required by this chapter.

(c) The Department is authorized to use appropriate means to enforce this chapter, including but not limited investigations, inspections, and audits.

(1) The Department may verify through unannounced inspections that a home care organization meets the requirements of this chapter and any regulations adopted pursuant thereto. An investigation or inspection conducted by the Department pursuant to this chapter may include, but is not limited to, the inspection of the books, records, and premises of a home care organization. A home care organization's refusal to make its records, books, or premises available pursuant to this section shall constitute a violation of this chapter.

(2) The Department may require a home care organization to engage an independent certified public accounting firm to verify the information or data submitted to the Department by the home care organization if the Department is in possession of evidence to suggest the information or data submitted is inaccurate, incomplete, or fraudulent. This audit will be performed at the home care organization's expense. If the home care organization has an audit from an independent certified public accounting firm, covering the relevant time period, the Department may, at its discretion, accept that audit in lieu of requiring a new audit.

(3) In any year, the Department may investigate a home care organization's compliance with this chapter for preceding years, up to a period of five years (excluding years beginning before the effective compliance date established pursuant to subdivision (b) of Section 1807 of this chapter).

(d) When the Department determines that a home care organization is in violation of any requirement of this chapter or any regulations or rules promulgated hereunder, the Department shall prepare a written notice of violation, which shall specify the nature of the violation(s). The notice shall inform the home care organization of any action the Department may take under this chapter, including but not limited to the requirement of a plan of correction and assessment of a penalty. The Director or his or her designee shall also inform the home care organization of its rights to a hearing under this chapter.

(e) Upon written notification that the Department has determined that a home care organization has violated this chapter, the home care organization may request an administrative hearing by submitting a written request to the department within fifteen business days of receipt

of the written notification. After receiving a timely written request for hearing, the Department shall hold an administrative hearing consistent with the procedures specified in Health and Safety Code Section 100171, except where those procedures are inconsistent with this section.

(f) Each violation of this chapter is subject to a minimum civil penalty of \$1000, up to a maximum civil penalty of \$10,000. An additional civil penalty may be assessed for each year in which a violation of this chapter has occurred. In determining the penalty amount(s) to assess or other corrective actions, the Director shall consider factors including, but not limited to, the following:

(1) The gravity of the violation, including the extent to which the provisions of the applicable statutes or regulations were violated.

(2) The reasonable diligence exercised by the home care organization in its efforts to correct violations.

(3) Any previous violation(s) committed by the home care organization.

(g) The Department may adopt regulations establishing civil penalty amounts and criteria and procedures for notices, correction plans, appeals, and hearings.

(h) The Department shall consult with a working group of affected stakeholders in determining how to administer and enforce this chapter, including in the process of developing any regulations.

1806.1. Home Care Enforcement Fund

A special fund to be known as the "Home Care Enforcement Fund" is created within the State Treasury. Notwithstanding Section 13340 of the Government Code, funds in the Home Care Enforcement Fund are continuously appropriated to the Department for the purposes of implementing and enforcing this chapter, and no funds in the Home Care Enforcement Fund may be encumbered by the Legislature. Any fees, fines, and penalties collected pursuant to this chapter shall be deposited into the Home Care Enforcement Fund and shall be used by the Department for the purpose of implementing and enforcing this chapter. If the funds in the Home Care Enforcement Fund exceed the costs of implementing and enforcing this chapter, the Department may use remaining funds to further other Department purposes. Funds transferred to the Home Care Enforcement Fund are not subject to annual appropriation by the Legislature and may be used without a time limit. Nothing in this section precludes additional appropriations by the Legislature to the Home Care Enforcement Fund. Nothing in this section shall be interpreted or construed to allow any entity to use funds from the Home Care Enforcement Fund to supplant funds from any existing fund source or mechanism currently used to further the purposes of the Department.

1807. Effective Dates

(a) This initiative shall become effective upon enactment pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

(b) Notwithstanding subdivision (a) of this section, home care organizations shall not be required to comply with the requirements of Section 1800 and Section 1803 of this chapter until January 1, 2016. The Department may, if necessary, extend this implementation date by up to one calendar year.

1808. Construction with Other Laws

This Act shall be construed to supplement, not supersede, the requirements of any federal, California, or local laws that provide for additional or more stringent regulations of home care organizations or home care services.

SEC. 4. Amendment

This Act may be amended by a statute passed by a majority vote in each house of the Legislature, but only to further this Act's intents and purposes.

SEC. 5. Severability

It is the intent of the People that the provisions of this Act are severable and that if any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.