

AMENDED IN SENATE AUGUST 22, 2014
AMENDED IN ASSEMBLY APRIL 21, 2014
AMENDED IN ASSEMBLY MARCH 28, 2014
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2236

**Introduced by Assembly Members Maienschein and Stone
(Coauthor: Assembly Member Chávez)**

February 21, 2014

An act to amend, *repeal, and add* Sections ~~1569.48 and 1548, 1568.0822, 1569.49, 1596.99, and 1597.58~~ of the Health and Safety Code, relating to residential care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2236, as amended, Maienschein. ~~Residential care facilities for the elderly: Care facilities:~~ civil penalties.

Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, the licensing and administration of *community care facilities, residential care facilities for persons with chronic life-threatening illnesses, residential care facilities for the elderly, elderly, child day care centers, and family day care homes.*

Existing law authorizes the department to impose various civil penalties for licensing violations. ~~Existing law sets the minimum civil penalty at \$25 and the maximum penalty at \$150 per day per violation, and permits additional civil penalties for repeat violations within a 12-month period.~~

~~This bill would increase the civil penalties, including the penalties for repeat offenses, and would vary the minimum and maximum~~

~~penalties depending upon the seriousness of the harm to the resident. would, commencing July 1, 2015, increase the amount of civil penalties that may be imposed for a violation that the department determines results in the death of, or serious bodily injury or physical injury to, a resident or child at the care facility.~~

~~This bill would, in the case of citations imposing civil penalties for violations that caused death or serious bodily injury to the resident, those cases, require that the decision to issue the citation be reviewed by the department's legal office and be approved by the deputy director prior to the issuance of the citation.~~

~~This bill would require that the appeal procedure include notice to the complainant, affected residents, and, if possible, their legal representatives, and the opportunity to participate in the appeal, and an option for review by an administrative law judge.~~

~~This bill would, in cases involving death or serious bodily injury of a resident, require the department to prove that the violation was a direct proximate cause of the death or serious bodily injury, and that it resulted from an occurrence of a nature that the statute or regulation was designed to prevent. The bill would require dismissal of the citation if the licensee proves that the licensee did what might reasonably be expected of a residential care facility for the elderly licensee, acting under similar circumstances, to comply with the statute or regulation.~~

~~The bill would specify that, in an enforcement action pursuant to these provisions, a licensee is liable for the acts and omissions of its officers and employees.~~

~~Existing law authorizes the establishment of a fund and authorizes deposit of up to 50% of the revenue from these civil penalties into this fund, to be utilized, upon appropriation by the Legislature, for the purposes of relocation and care of residents when a facility's license is revoked or temporarily suspended.~~

~~This bill would, instead, establish the Emergency Resident Relocation Fund and would require deposit of 50% of the revenue from these civil penalties into the fund to be used for these purposes, upon appropriation by the Legislature.~~

~~*This bill would require the department to adopt regulations setting forth the appeal procedures for deficiencies. The bill would require that a licensee has the right to submit to the department a written request for a formal review of a civil penalty assessed for the death of, or serious bodily injury or physical injury to, a resident or child at the care facility within 10 days of receipt of the notice of the civil penalty assessment.*~~

The bill would require the first review to be conducted by a regional manager of the department’s Community Care Licensing Division (CCLD), who can uphold, amend, or dismiss the civil penalty and would require the licensee to be notified of the regional manager’s decision within 60 days of the licensee’s request. The licensee may further appeal to the CCLD’s program administrator and deputy director, and to an administrative law judge, as specified.

This bill would require the department, by January 1, 2016, to amend its regulations to ~~accommodate~~ *reflect the changes in these provisions to law* made by this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1548 of the Health and Safety Code is
2 amended to read:

3 1548. (a) In addition to the suspension, temporary suspension,
4 or revocation of a license issued under this chapter, the department
5 may levy a civil penalty.

6 (b) The amount of the civil penalty shall not be less than
7 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
8 for each violation of this chapter except where the nature or
9 seriousness of the violation or the frequency of the violation
10 warrants a higher penalty or an immediate civil penalty assessment,
11 or both, as determined by the department. In no event, shall a civil
12 penalty assessment exceed one hundred fifty dollars (\$150) per
13 day per violation.

14 (c) Notwithstanding Section 1534, the department shall assess
15 an immediate civil penalty of one hundred fifty dollars (\$150) per
16 day per violation for any of the following serious violations:

17 (1) (A) Fire clearance violations, including, but not limited to,
18 overcapacity, ambulatory status, inoperable smoke alarms, and
19 inoperable fire alarm systems. The civil penalty shall not be
20 assessed if the licensee has done either of the following:

21 (i) Requested the appropriate fire clearance based on ambulatory,
22 nonambulatory, or bedridden status, and the decision is pending.

23 (ii) Initiated eviction proceedings.

24 (B) A licensee denied a clearance for bedridden residents may
25 appeal to the fire authority, and, if that appeal is denied, may

1 subsequently appeal to the Office of the State Fire Marshal, and
2 shall not be assessed an immediate civil penalty until the final
3 appeal is decided, or after 60 days has passed from the date of the
4 citation, whichever is earlier.

5 (2) Absence of supervision, as required by statute or regulation.

6 (3) Accessible bodies of water when prohibited in this chapter
7 or regulations adopted pursuant to this chapter.

8 (4) Accessible firearms, ammunition, or both.

9 (5) Refused entry to a facility or any part of a facility in violation
10 of Section 1533, 1534, or 1538.

11 (6) The presence of an excluded person on the premises.

12 (d) Notwithstanding Section 1534, any facility that is cited for
13 repeating the same violation of this chapter within 12 months of
14 the first violation is subject to an immediate civil penalty of one
15 hundred fifty dollars (\$150) and fifty dollars (\$50) for each day
16 the violation continues until the deficiency is corrected.

17 (e) Any facility that is assessed a civil penalty pursuant to
18 subdivision (d) which repeats the same violation of this chapter
19 within 12 months of the violation subject to subdivision (d) is
20 subject to an immediate civil penalty of one hundred fifty dollars
21 (\$150) for each day the violation continues until the deficiency is
22 corrected.

23 (f) The department shall adopt regulations implementing this
24 section.

25 (g) As provided in Section 11466.31 of the Welfare and
26 Institutions Code, the department may offset civil penalties owed
27 by a group home against moneys to be paid by a county for the
28 care of minors after the group home has exhausted its appeal of
29 the civil penalty assessment. The department shall provide the
30 group home a reasonable opportunity to pay the civil penalty before
31 instituting the offset provision.

32 (h) *This section shall become inoperative on July 1, 2015, and,
33 as of January 1, 2016, is repealed, unless a later enacted statute,
34 that becomes operative on or before January 1, 2016, deletes or
35 extends the dates on which it becomes inoperative and is repealed.*

36 *SEC. 2. Section 1548 is added to the Health and Safety Code,
37 to read:*

38 *1548. (a) In addition to the suspension, temporary suspension,
39 or revocation of a license issued under this chapter, the department
40 may levy a civil penalty.*

1 (b) *The amount of the civil penalty shall not be less than*
2 *twenty-five dollars (\$25) or more than fifty dollars (\$50) per day*
3 *for each violation of this chapter except where the nature or*
4 *seriousness of the violation or the frequency of the violation*
5 *warrants a higher penalty or an immediate civil penalty*
6 *assessment, or both, as determined by the department. In no event,*
7 *shall a civil penalty assessment exceed one hundred fifty dollars*
8 *(\$150) per day per violation.*

9 (c) *Notwithstanding Section 1534, the department shall assess*
10 *an immediate civil penalty of one hundred fifty dollars (\$150) per*
11 *day per violation for any of the following serious violations:*

12 (1) (A) *Fire clearance violations, including, but not limited to,*
13 *overcapacity, ambulatory status, inoperable smoke alarms, and*
14 *inoperable fire alarm systems. The civil penalty shall not be*
15 *assessed if the licensee has done either of the following:*

16 (i) *Requested the appropriate fire clearance based on*
17 *ambulatory, nonambulatory, or bedridden status, and the decision*
18 *is pending.*

19 (ii) *Initiated eviction proceedings.*

20 (B) *A licensee denied a clearance for bedridden residents may*
21 *appeal to the fire authority, and, if that appeal is denied, may*
22 *subsequently appeal to the Office of the State Fire Marshal, and*
23 *shall not be assessed an immediate civil penalty until the final*
24 *appeal is decided, or after 60 days has passed from the date of the*
25 *citation, whichever is earlier.*

26 (2) *Absence of supervision, as required by statute or regulation.*

27 (3) *Accessible bodies of water when prohibited in this chapter*
28 *or regulations adopted pursuant to this chapter.*

29 (4) *Accessible firearms, ammunition, or both.*

30 (5) *Refused entry to a facility or any part of a facility in violation*
31 *of Section 1533, 1534, or 1538.*

32 (6) *The presence of an excluded person on the premises.*

33 (d) (1) *For a violation that the department determines resulted*
34 *in the death of a resident at an adult residential facility, social*
35 *rehabilitation facility, enhanced behavioral supports home, or*
36 *community crisis home, the civil penalty shall be fifteen thousand*
37 *dollars (\$15,000).*

38 (2) *For a violation that the department determines resulted in*
39 *the death of a person receiving care at an adult day program, the*
40 *civil penalty shall be assessed as follows:*

1 (A) Seven thousand five hundred dollars (\$7,500) for a licensee
 2 licensed, among all of the licensee’s facilities, to care for 50 or
 3 less persons.

4 (B) Ten thousand dollars (\$10,000) for a licensee licensed,
 5 among all of the licensee’s facilities, to care for more than 50
 6 persons.

7 (3) For a violation that the department determines resulted in
 8 the death of a person receiving care at a therapeutic day services
 9 facility, foster family agency, community treatment facility,
 10 full-service adoption agency, noncustodial adoption agency,
 11 transitional shelter care facility, transitional housing placement
 12 provider, or group home, the civil penalty shall be assessed as
 13 follows:

14 (A) Seven thousand five hundred dollars (\$7,500) for a licensee
 15 licensed, among all of the licensee’s facilities, to care for 40 or
 16 less children.

17 (B) Ten thousand dollars (\$10,000) for a licensee licensed,
 18 among all of the licensee’s facilities, to care for 41 to 100,
 19 inclusive, children.

20 (C) Fifteen thousand dollars (\$15,000) for a licensee licensed,
 21 among all of the licensee’s facilities, to care for more than 100
 22 children.

23 (4) For a violation that the department determines resulted in
 24 the death of a resident at a runaway and homeless youth shelter,
 25 the civil penalty shall be five thousand dollars (\$5,000).

26 (e) (1) (A) For a violation that the department determines
 27 constitutes physical abuse, as defined in Section 15610.63 of the
 28 Welfare and Institutions Code, or resulted in serious bodily injury,
 29 as defined in Section 243 of the Penal Code, to a resident at an
 30 adult residential facility, social rehabilitation facility, enhanced
 31 behavioral supports home, or community crisis home, the civil
 32 penalty shall be ten thousand dollars (\$10,000).

33 (B) For a violation that the department determines constitutes
 34 physical abuse, as defined in Section 15610.63 of the Welfare and
 35 Institutions Code, or resulted in serious bodily injury, as defined
 36 in Section 243 of the Penal Code, to a person receiving care at an
 37 adult day program, the civil penalty shall be assessed as follows:

38 (i) Two thousand five hundred dollars (\$2,500) for a licensee
 39 licensed, among all of the licensee’s facilities, to care for 50 or
 40 less persons.

1 (ii) Five thousand dollars (\$5,000) for a licensee licensed,
2 among all of the licensee’s facilities, to care for more than 50
3 persons.

4 (C) For a violation that the department determines constitutes
5 physical abuse, as defined in paragraph (2), or resulted in serious
6 bodily injury, as defined in Section 243 of the Penal Code, to a
7 person receiving care at a therapeutic day services facility, foster
8 family agency, community treatment facility, full-service adoption
9 agency, noncustodial adoption agency, transitional shelter care
10 facility, transitional housing placement provider, or group home,
11 the civil penalty shall be assessed as follows:

12 (i) Two thousand five hundred dollars (\$2,500) for a licensee
13 licensed, among all of the licensee’s facilities, to care for 40 or
14 less children.

15 (ii) Five thousand dollars (\$5,000) for a licensee licensed,
16 among all of the licensee’s facilities, to care for 41 to 100,
17 inclusive, children.

18 (iii) Ten thousand dollars (\$10,000) for a licensee licensed,
19 among all of the licensee’s facilities, to care for more than 100
20 children.

21 (D) For a violation that the department determines constitutes
22 physical abuse, as defined in paragraph (2), or resulted in serious
23 bodily injury, as defined in Section 243 of the Penal Code, to a
24 resident at a runaway and homeless youth shelter, the civil penalty
25 shall be one thousand dollars (\$1,000).

26 (2) For purposes of subparagraphs (C) and (D), “physical
27 abuse” includes physical injury inflicted upon a child by another
28 person by other than accidental means, sexual abuse as defined
29 in Section 11165.1 of the Penal Code, neglect as defined in Section
30 11165.2 of the Penal Code, or unlawful corporal punishment or
31 injury as defined in Section 11165.4 of the Penal Code when the
32 person responsible for the child’s welfare is a licensee,
33 administrator, or employee of any facility licensed to care for
34 children.

35 (f) Prior to the issuance of a citation imposing a civil penalty
36 pursuant to subdivision (d) or (e), the decision shall be approved
37 by the director.

38 (g) Notwithstanding Section 1534, any facility that is cited for
39 repeating the same violation of this chapter within 12 months of
40 the first violation is subject to an immediate civil penalty of one

1 hundred fifty dollars (\$150) and fifty dollars (\$50) for each day
2 the violation continues until the deficiency is corrected.

3 (h) Any facility that is assessed a civil penalty pursuant to
4 subdivision (g) that repeats the same violation of this chapter
5 within 12 months of the violation subject to subdivision (g) is
6 subject to an immediate civil penalty of one hundred fifty dollars
7 (\$150) for each day the violation continues until the deficiency is
8 corrected.

9 (i) (1) The department shall adopt regulations setting forth the
10 appeal procedures for deficiencies.

11 (2) A licensee shall have the right to submit to the department
12 a written request for a formal review of a civil penalty assessed
13 pursuant to subdivisions (d) and (e) within 10 days of receipt of
14 the notice of a civil penalty assessment and shall provide all
15 supporting documentation at that time. The review shall be
16 conducted by a regional manager of the Community Care Licensing
17 Division. If the regional manager determines that the civil penalty
18 was not assessed in accordance with applicable statutes or
19 regulations of the department, he or she may amend or dismiss
20 the civil penalty. The licensee shall be notified in writing of the
21 regional manager's decision within 60 days of the request to review
22 the assessment of the civil penalty.

23 (3) The licensee may further appeal to the program
24 administrator of the Community Care Licensing Division within
25 10 days of receipt of the notice of the regional manager's decision
26 and shall provide all supporting documentation at that time. If the
27 program administrator determines that the civil penalty was not
28 assessed in accordance with applicable statutes or regulations of
29 the department, he or she may amend or dismiss the civil penalty.
30 The licensee shall be notified in writing of the program
31 administrator's decision within 60 days of the request to review
32 the regional manager's decision.

33 (4) The licensee may further appeal to the deputy director of
34 the Community Care Licensing Division within 10 days of receipt
35 of the notice of the program director's decision and shall provide
36 all supporting documentation at that time. If the deputy director
37 determines that the civil penalty was not assessed in accordance
38 with applicable statutes or regulations of the department, he or
39 she may amend or dismiss the civil penalty. The licensee shall be

1 notified in writing of the deputy director's decision within 60 days
2 of the request to review the program administrator's decision.

3 (5) Upon exhausting the deputy director review, a licensee may
4 appeal a civil penalty assessed pursuant to subdivision (d) or (e)
5 to an administrative law judge. Proceedings shall be conducted
6 in accordance with Chapter 5 (commencing with Section 11500)
7 of Part 1 of Division 3 of Title 2 of the Government Code, and the
8 department shall have all the powers granted by those provisions.
9 In all proceedings conducted in accordance with this section, the
10 standard of proof shall be by a preponderance of the evidence.

11 (6) If, in addition to an assessment of civil penalties, the
12 department elects to file an administrative action to suspend or
13 revoke the facility license that includes violations relating to the
14 assessment of the civil penalties, the department review of the
15 pending appeal shall cease and the assessment of the civil penalties
16 shall be heard as part of the administrative action process.

17 (j) The department shall adopt regulations implementing this
18 section.

19 (k) The department shall, by January 1, 2016, amend its
20 regulations to reflect the changes to this section made by the act
21 that added this subdivision.

22 (l) As provided in Section 11466.31 of the Welfare and
23 Institutions Code, the department may offset civil penalties owed
24 by a group home against moneys to be paid by a county for the
25 care of minors after the group home has exhausted its appeal of
26 the civil penalty assessment. The department shall provide the
27 group home a reasonable opportunity to pay the civil penalty
28 before instituting the offset provision.

29 (m) This section shall become operative on July 1, 2015.

30 SEC. 3. Section 1568.0822 of the Health and Safety Code is
31 amended to read:

32 1568.0822. (a) In addition to the suspension, temporary
33 suspension, or revocation of a license issued under this chapter,
34 the department may levy a civil penalty. The department shall
35 adopt regulations setting forth the appeal procedures for
36 deficiencies.

37 (b) The amount of the civil penalty shall not be less than
38 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
39 for each violation of this chapter, except where the nature or
40 seriousness of the violation or the frequency of the violation

1 warrants a higher penalty or an immediate civil penalty assessment,
 2 or both, as determined by the department. In no event shall a civil
 3 penalty assessment exceed one hundred fifty dollars (\$150) per
 4 day per violation.

5 (c) Notwithstanding Section 1568.07, the department shall assess
 6 an immediate civil penalty of one hundred fifty dollars (\$150) per
 7 day per violation for any of the following serious violations:

8 (1) (A) Fire clearance violations, including, but not limited to,
 9 overcapacity, ambulatory status, inoperable smoke alarms, and
 10 inoperable fire alarm systems. The civil penalty shall not be
 11 assessed if the licensee has done either of the following:

12 (i) Requested the appropriate fire clearance based on ambulatory,
 13 nonambulatory, or bedridden status, and the decision is pending.
 14 (ii) Initiated eviction proceedings.

15 (B) A licensee denied a clearance for bedridden residents may
 16 appeal to the fire authority, and, if that appeal is denied, may
 17 subsequently appeal to the Office of the State Fire Marshal, and
 18 shall not be assessed an immediate civil penalty until the final
 19 appeal is decided, or after 60 days has passed from the date of the
 20 citation, whichever is earlier.

21 (2) Absence of supervision, as required by statute and regulation.

22 (3) Accessible bodies of water, when prohibited in this chapter
 23 or regulations adopted pursuant to this chapter.

24 (4) Accessible firearms, ammunition, or both.

25 (5) Refused entry to a facility or any part of a facility in violation
 26 of Section 1568.07 or 1568.071.

27 (6) The presence of an excluded person on the premises.

28 (d) Notwithstanding Section 1568.07, any residential care
 29 facility that is cited for repeating the same violation of this chapter
 30 within 12 months of the first violation is subject to an immediate
 31 civil penalty of one hundred fifty dollars (\$150) and fifty dollars
 32 (\$50) for each day the violation continues until the deficiency is
 33 corrected.

34 (e) Any residential care facility that is assessed a civil penalty
 35 pursuant to subdivision (d) which repeats the same violation of
 36 this chapter within 12 months of the violation subject to subdivision
 37 (d) shall be assessed an immediate civil penalty of one thousand
 38 dollars (\$1,000) and one hundred dollars (\$100) for each day the
 39 violation continues until the deficiency is corrected, provided that
 40 the violation is a serious violation.

1 (f) The department shall adopt regulations implementing this
2 section.

3 (g) *This section shall become inoperative on July 1, 2015, and,*
4 *as of January 1, 2016, is repealed, unless a later enacted statute,*
5 *that becomes operative on or before January 1, 2016, deletes or*
6 *extends the dates on which it becomes inoperative and is repealed.*

7 SEC. 4. Section 1568.0822 is added to the Health and Safety
8 Code, to read:

9 1568.0822. (a) *In addition to the suspension, temporary*
10 *suspension, or revocation of a license issued under this chapter,*
11 *the department may levy a civil penalty.*

12 (b) *The amount of the civil penalty shall not be less than*
13 *twenty-five dollars (\$25) or more than fifty dollars (\$50) per day*
14 *for each violation of this chapter, except where the nature or*
15 *seriousness of the violation or the frequency of the violation*
16 *warrants a higher penalty or an immediate civil penalty*
17 *assessment, or both, as determined by the department. In no event*
18 *shall a civil penalty assessment exceed one hundred fifty dollars*
19 *(\$150) per day per violation.*

20 (c) *Notwithstanding Section 1568.07, the department shall assess*
21 *an immediate civil penalty of one hundred fifty dollars (\$150) per*
22 *day per violation for any of the following serious violations:*

23 (1) (A) *Fire clearance violations, including, but not limited to,*
24 *overcapacity, ambulatory status, inoperable smoke alarms, and*
25 *inoperable fire alarm systems. The civil penalty shall not be*
26 *assessed if the licensee has done either of the following:*

27 (i) *Requested the appropriate fire clearance based on*
28 *ambulatory, nonambulatory, or bedridden status, and the decision*
29 *is pending.*

30 (ii) *Initiated eviction proceedings.*

31 (B) *A licensee denied a clearance for bedridden residents may*
32 *appeal to the fire authority, and, if that appeal is denied, may*
33 *subsequently appeal to the Office of the State Fire Marshal, and*
34 *shall not be assessed an immediate civil penalty until the final*
35 *appeal is decided, or after 60 days has passed from the date of the*
36 *citation, whichever is earlier.*

37 (2) *Absence of supervision, as required by statute and*
38 *regulation.*

39 (3) *Accessible bodies of water, when prohibited in this chapter*
40 *or regulations adopted pursuant to this chapter.*

- 1 (4) Accessible firearms, ammunition, or both.
- 2 (5) Refused entry to a facility or any part of a facility in violation
- 3 of Section 1568.07 or 1568.071.
- 4 (6) The presence of an excluded person on the premises.
- 5 (d) For a violation that the department determines resulted in
- 6 the death of a resident, the civil penalty shall be fifteen thousand
- 7 dollars (\$15,000).
- 8 (e) For a violation that the department determines constitutes
- 9 physical abuse, as defined in Section 15610.63 of the Welfare and
- 10 Institutions Code, or resulted in serious bodily injury, as defined
- 11 in Section 243 of the Penal Code, to a resident, the civil penalty
- 12 shall be ten thousand dollars (\$10,000).
- 13 (f) Prior to the issuance of a citation imposing a civil penalty
- 14 pursuant to subdivision (d) or (e), the decision shall be approved
- 15 by the director.
- 16 (g) Notwithstanding Section 1568.07, any residential care
- 17 facility that is cited for repeating the same violation of this chapter
- 18 within 12 months of the first violation is subject to an immediate
- 19 civil penalty of one hundred fifty dollars (\$150) and fifty dollars
- 20 (\$50) for each day the violation continues until the deficiency is
- 21 corrected.
- 22 (h) Any residential care facility that is assessed a civil penalty
- 23 pursuant to subdivision (g) that repeats the same violation of this
- 24 chapter within 12 months of the violation subject to subdivision
- 25 (g) shall be assessed an immediate civil penalty of one thousand
- 26 dollars (\$1,000) and one hundred dollars (\$100) for each day the
- 27 violation continues until the deficiency is corrected, provided that
- 28 the violation is a serious violation.
- 29 (i) (1) The department shall adopt regulations setting forth the
- 30 appeal procedures for deficiencies.
- 31 (2) A licensee shall have the right to submit to the department
- 32 a written request for a formal review of a civil penalty assessed
- 33 pursuant to subdivisions (d) and (e) within 10 days of receipt of
- 34 the notice of a civil penalty assessment and shall provide all
- 35 supporting documentation at that time. The review shall be
- 36 conducted by a regional manager of the Community Care Licensing
- 37 Division. If the regional manager determines that the civil penalty
- 38 was not assessed in accordance with applicable statutes or
- 39 regulations of the department, he or she may amend or dismiss
- 40 the civil penalty. The licensee shall be notified in writing of the

1 regional manager's decision within 60 days of the request to review
2 the assessment of the civil penalty.

3 (3) The licensee may further appeal to the program
4 administrator of the Community Care Licensing Division within
5 10 days of receipt of the notice of the regional manager's decision
6 and shall provide all supporting documentation at that time. If the
7 program administrator determines that the civil penalty was not
8 assessed in accordance with applicable statutes or regulations of
9 the department, he or she may amend or dismiss the civil penalty.
10 The licensee shall be notified in writing of the program
11 administrator's decision within 60 days of the request to review
12 the regional manager's decision.

13 (4) The licensee may further appeal to the deputy director of
14 the Community Care Licensing Division within 10 days of receipt
15 of the notice of the program director's decision and shall provide
16 all supporting documentation at that time. If the deputy director
17 determines that the civil penalty was not assessed in accordance
18 with applicable statutes or regulations of the department, he or
19 she may amend or dismiss the civil penalty. The licensee shall be
20 notified in writing of the deputy director's decision within 60 days
21 of the request to review the program administrator's decision.

22 (5) Upon exhausting the deputy director review, a licensee may
23 appeal a civil penalty assessed pursuant to subdivision (d) or (e)
24 to an administrative law judge. Proceedings shall be conducted
25 in accordance with Chapter 5 (commencing with Section 11500)
26 of Part 1 of Division 3 of Title 2 of the Government Code, and the
27 department shall have all the powers granted by those provisions.
28 In all proceedings conducted in accordance with this section, the
29 standard of proof shall be by a preponderance of the evidence.

30 (6) If, in addition to an assessment of civil penalties, the
31 department elects to file an administrative action to suspend or
32 revoke the facility license that includes violations relating to the
33 assessment of the civil penalties, the department review of the
34 pending appeal shall cease and the assessment of the civil penalties
35 shall be heard as part of the administrative action process.

36 (j) The department shall adopt regulations implementing this
37 section.

38 (k) The department shall, by January 1, 2016, amend its
39 regulations to reflect the changes to this section made by the act
40 that added this subdivision.

1 (l) This section shall become operative on July 1, 2015.

2 SEC. 5. Section 1569.49 of the Health and Safety Code is
3 amended to read:

4 1569.49. (a) In addition to the suspension, temporary
5 suspension, or revocation of a license issued under this chapter,
6 the department may levy a civil penalty. The department shall
7 adopt regulations setting forth the appeal procedures for
8 deficiencies.

9 (b) The amount of the civil penalty shall not be less than
10 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
11 for each violation of this chapter except where the nature or
12 seriousness of the violation or the frequency of the violation
13 warrants a higher penalty or an immediate civil penalty assessment,
14 or both, as determined by the department. In no event, shall a civil
15 penalty assessment exceed one hundred fifty dollars (\$150) per
16 day per violation.

17 (c) Notwithstanding Section 1569.33, the department shall assess
18 an immediate civil penalty of one hundred fifty dollars (\$150) per
19 day per violation for any of the following serious violations:

20 (1) (A) Fire clearance violations, including, but not limited to,
21 overcapacity, ambulatory status, inoperable smoke alarms, and
22 inoperable fire alarm systems. The civil penalty shall not be
23 assessed if the licensee has done either of the following:

24 (i) Requested the appropriate fire clearance based on ambulatory,
25 nonambulatory, or bedridden status, and the decision is pending.

26 (ii) Initiated eviction proceedings.

27 (B) A licensee denied a clearance for bedridden residents may
28 appeal to the fire authority, and, if that appeal is denied, may
29 subsequently appeal to the Office of the State Fire Marshal, and
30 shall not be assessed an immediate civil penalty until the final
31 appeal is decided, or after 60 days has passed from the date of the
32 citation, whichever is earlier.

33 (2) Absence of supervision as required by statute or regulation.

34 (3) Accessible bodies of water, when prohibited in this chapter
35 or regulations adopted pursuant to this chapter.

36 (4) Accessible firearms, ammunition, or both.

37 (5) Refused entry to a facility or any part of a facility in violation
38 of Section 1569.32, 1569.33, or 1569.35.

39 (6) The presence of an excluded person on the premises.

1 (d) Notwithstanding Section 1569.33, any residential care
2 facility for the elderly that is cited for repeating the same violation
3 of this chapter within 12 months of the first violation is subject to
4 an immediate civil penalty of one hundred fifty dollars (\$150) and
5 fifty dollars (\$50) for each day the violation continues until the
6 deficiency is corrected.

7 (e) Any residential care facility for the elderly that is assessed
8 a civil penalty pursuant to subdivision (d) which repeats the same
9 violation of this chapter within 12 months of the violation subject
10 to subdivision (d) shall be assessed an immediate civil penalty of
11 one thousand dollars (\$1,000) and one hundred dollars (\$100) for
12 each day the violation continues until the deficiency is corrected.

13 (f) The department shall adopt regulations implementing this
14 section.

15 (g) *This section shall become inoperative on July 1, 2015, and,
16 as of January 1, 2016, is repealed, unless a later enacted statute,
17 that becomes operative on or before January 1, 2016, deletes or
18 extends the dates on which it becomes inoperative and is repealed.*

19 *SEC. 6. Section 1569.49 is added to the Health and Safety
20 Code, to read:*

21 *1569.49. (a) In addition to the suspension, temporary
22 suspension, or revocation of a license issued under this chapter,
23 the department may levy a civil penalty.*

24 *(b) The amount of the civil penalty shall not be less than
25 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
26 for each violation of this chapter except where the nature or
27 seriousness of the violation or the frequency of the violation
28 warrants a higher penalty or an immediate civil penalty
29 assessment, or both, as determined by the department. In no event,
30 shall a civil penalty assessment exceed one hundred fifty dollars
31 (\$150) per day per violation.*

32 *(c) Notwithstanding Section 1569.33, the department shall assess
33 an immediate civil penalty of one hundred fifty dollars (\$150) per
34 day per violation for any of the following serious violations:*

35 *(1) (A) Fire clearance violations, including, but not limited to,
36 overcapacity, ambulatory status, inoperable smoke alarms, and
37 inoperable fire alarm systems. The civil penalty shall not be
38 assessed if the licensee has done either of the following:*

- 1 (i) Requested the appropriate fire clearance based on
2 ambulatory, nonambulatory, or bedridden status, and the decision
3 is pending.
- 4 (ii) Initiated eviction proceedings.
- 5 (B) A licensee denied a clearance for bedridden residents may
6 appeal to the fire authority, and, if that appeal is denied, may
7 subsequently appeal to the Office of the State Fire Marshal, and
8 shall not be assessed an immediate civil penalty until the final
9 appeal is decided, or after 60 days has passed from the date of the
10 citation, whichever is earlier.
- 11 (2) Absence of supervision as required by statute or regulation.
- 12 (3) Accessible bodies of water, when prohibited in this chapter
13 or regulations adopted pursuant to this chapter.
- 14 (4) Accessible firearms, ammunition, or both.
- 15 (5) Refused entry to a facility or any part of a facility in violation
16 of Section 1569.32, 1569.33, or 1569.35.
- 17 (6) The presence of an excluded person on the premises.
- 18 (d) For a violation that the department determines resulted in
19 the death of a resident, the civil penalty shall be fifteen thousand
20 dollars (\$15,000).
- 21 (e) For a violation that the department determines constitutes
22 physical abuse, as defined in Section 15610.63 of the Welfare and
23 Institutions Code, or resulted in serious bodily injury, as defined
24 in Section 15610.67 of the Welfare and Institutions Code, to a
25 resident, the civil penalty shall be ten thousand dollars (\$10,000).
- 26 (f) Prior to the issuance of a citation imposing a civil penalty
27 pursuant to subdivision (d) or (e), the decision shall be approved
28 by the director.
- 29 (g) Notwithstanding Section 1569.33, any residential care
30 facility for the elderly that is cited for repeating the same violation
31 of this chapter within 12 months of the first violation is subject to
32 an immediate civil penalty of one hundred fifty dollars (\$150) and
33 fifty dollars (\$50) for each day the violation continues until the
34 deficiency is corrected.
- 35 (h) Any residential care facility for the elderly that is assessed
36 a civil penalty pursuant to subdivision (g) that repeats the same
37 violation of this chapter within 12 months of the violation subject
38 to subdivision (g) shall be assessed an immediate civil penalty of
39 one thousand dollars (\$1,000) and one hundred dollars (\$100) for
40 each day the violation continues until the deficiency is corrected.

1 (i) (1) *The department shall adopt regulations setting forth the*
2 *appeal procedures for deficiencies.*

3 (2) *A licensee shall have the right to submit to the department*
4 *a written request for a formal review of a civil penalty assessed*
5 *pursuant to subdivisions (d) and (e) within 10 days of receipt of*
6 *the notice of a civil penalty assessment and shall provide all*
7 *supporting documentation at that time. The review shall be*
8 *conducted by a regional manager of the Community Care Licensing*
9 *Division. If the regional manager determines that the civil penalty*
10 *was not assessed in accordance with applicable statutes or*
11 *regulations of the department, he or she may amend or dismiss*
12 *the civil penalty. The licensee shall be notified in writing of the*
13 *regional manager’s decision within 60 days of the request to review*
14 *the assessment of the civil penalty.*

15 (3) *The licensee may further appeal to the program*
16 *administrator of the Community Care Licensing Division within*
17 *10 days of receipt of the notice of the regional manager’s decision*
18 *and shall provide all supporting documentation at that time. If the*
19 *program administrator determines that the civil penalty was not*
20 *assessed in accordance with applicable statutes or regulations of*
21 *the department, he or she may amend or dismiss the civil penalty.*
22 *The licensee shall be notified in writing of the program*
23 *administrator’s decision within 60 days of the request to review*
24 *the regional manager’s decision.*

25 (4) *The licensee may further appeal to the deputy director of*
26 *the Community Care Licensing Division within 10 days of receipt*
27 *of the notice of the program director’s decision and shall provide*
28 *all supporting documentation at that time. If the deputy director*
29 *determines that the civil penalty was not assessed in accordance*
30 *with applicable statutes or regulations of the department, he or*
31 *she may amend or dismiss the civil penalty. The licensee shall be*
32 *notified in writing of the deputy director’s decision within 60 days*
33 *of the request to review the program administrator’s decision.*

34 (5) *Upon exhausting the deputy director review, a licensee may*
35 *appeal a civil penalty assessed pursuant to subdivision (d) or (e)*
36 *to an administrative law judge. Proceedings shall be conducted*
37 *in accordance with Chapter 5 (commencing with Section 11500)*
38 *of Part 1 of Division 3 of Title 2 of the Government Code, and the*
39 *department shall have all the powers granted by those provisions.*

1 *In all proceedings conducted in accordance with this section, the*
2 *standard of proof shall be by a preponderance of the evidence.*

3 *(6) If, in addition to an assessment of civil penalties, the*
4 *department elects to file an administrative action to suspend or*
5 *revoke the facility license that includes violations relating to the*
6 *assessment of the civil penalties, the department review of the*
7 *pending appeal shall cease and the assessment of the civil penalties*
8 *shall be heard as part of the administrative action process.*

9 *(j) The department shall adopt regulations implementing this*
10 *section.*

11 *(k) The department shall, by January 1, 2016, amend its*
12 *regulations to reflect the changes to this section made by the act*
13 *that added this subdivision.*

14 *(l) This section shall become operative on July 1, 2015.*

15 *SEC. 7. Section 1596.99 of the Health and Safety Code is*
16 *amended to read:*

17 1596.99. (a) In addition to the suspension, temporary
18 suspension, or revocation of a license issued under this chapter or
19 Chapter 3.4 (commencing with Section 1596.70), the department
20 may levy a civil penalty.

21 (b) The amount of the civil penalty shall not be less than
22 twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day
23 for each violation of this chapter except where the nature or
24 seriousness of the violation or the frequency of the violation
25 warrants a higher penalty or an immediate civil penalty assessment,
26 or both, as determined by the department. In no event shall a civil
27 penalty assessment exceed one hundred fifty dollars (\$150) per
28 day per violation.

29 (c) Notwithstanding Sections 1596.893a, 1596.893b, and
30 1596.98, the department shall assess an immediate civil penalty
31 of one hundred fifty (\$150) per day per violation for any of the
32 following serious violations:

33 (1) Fire clearance violations, including, but not limited to,
34 overcapacity, inoperable smoke alarms, and inoperable fire alarm
35 systems.

36 (2) Absence of supervision, including, but not limited to, a child
37 left unattended, supervision of a child by a person under 18 years
38 of age, and lack of supervision resulting in a child wandering away.

39 (3) Accessible bodies of water.

40 (4) Accessible firearms, ammunition, or both.

1 (5) Refused entry to a facility or any part of a facility in violation
2 of Section 1596.852, 1596.853, or 1597.09.

3 (6) The presence of an excluded person on the premises.

4 (d) Notwithstanding Sections 1596.893a, 1596.893b, and
5 1596.98, any day care center that is cited for repeating the same
6 violation of this chapter or Chapter 3.4 (commencing with Section
7 1596.70), within 12 months of the first violation is subject to an
8 immediate civil penalty of one hundred fifty dollars (\$150) for
9 each day the violation continues until the deficiency is corrected.

10 (e) Any day care center that is assessed a civil penalty under
11 subdivision (d) and that repeats the same violation of this chapter
12 within 12 months of the violation subject to subdivision (d) shall
13 be assessed an immediate civil penalty of one hundred fifty dollars
14 (\$150) for each day the violation continues until the deficiency is
15 corrected.

16 (f) Notwithstanding any other ~~provision~~ of law, revenues
17 received by the state from the payment of civil penalties imposed
18 on licensed child care centers pursuant to this chapter or Chapter
19 3.4 (commencing with Section 1596.70), shall be deposited in the
20 Child Health and Safety Fund, created pursuant to Chapter 4.6
21 (commencing with Section 18285) of Part 6 of Division 9 of the
22 Welfare and Institutions Code, and shall be expended, upon
23 appropriation by the Legislature, pursuant to subdivision (f) of
24 Section 18285 of the Welfare and Institutions Code exclusively
25 for the technical assistance, orientation, training, and education of
26 licensed day care center providers.

27 (g) *This section shall become inoperative on July 1, 2015, and,*
28 *as of January 1, 2016, is repealed, unless a later enacted statute,*
29 *that becomes operative on or before January 1, 2016, deletes or*
30 *extends the dates on which it becomes inoperative and is repealed.*

31 *SEC. 8. Section 1596.99 is added to the Health and Safety*
32 *Code, to read:*

33 *1596.99. (a) In addition to the suspension, temporary*
34 *suspension, or revocation of a license issued under this chapter*
35 *or Chapter 3.4 (commencing with Section 1596.70), the department*
36 *may levy a civil penalty.*

37 *(b) The amount of the civil penalty shall not be less than*
38 *twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day*
39 *for each violation of this chapter except where the nature or*
40 *seriousness of the violation or the frequency of the violation*

1 warrants a higher penalty or an immediate civil penalty
2 assessment, or both, as determined by the department. In no event
3 shall a civil penalty assessment exceed one hundred fifty dollars
4 (\$150) per day per violation.

5 (c) Notwithstanding Sections 1596.893a, 1596.893b, and
6 1596.98, the department shall assess an immediate civil penalty
7 of one hundred fifty (\$150) per day per violation for any of the
8 following serious violations:

9 (1) Fire clearance violations, including, but not limited to,
10 overcapacity, inoperable smoke alarms, and inoperable fire alarm
11 systems.

12 (2) Absence of supervision, including, but not limited to, a child
13 left unattended, supervision of a child by a person under 18 years
14 of age, and lack of supervision resulting in a child wandering
15 away.

16 (3) Accessible bodies of water.

17 (4) Accessible firearms, ammunition, or both.

18 (5) Refused entry to a facility or any part of a facility in violation
19 of Section 1596.852, 1596.853, or 1597.09.

20 (6) The presence of an excluded person on the premises.

21 (d) For a violation that the department determines resulted in
22 the death of a child, the civil penalty shall be assessed as follows:

23 (1) Seven thousand five hundred dollars (\$7,500) for a licensee
24 licensed, among all of the licensee's facilities, to care for 30 or
25 less children.

26 (2) Ten thousand dollars (\$10,000) for a licensee licensed,
27 among all of the licensee's facilities, to care for 31 to 100,
28 inclusive, children.

29 (3) Fifteen thousand dollars (\$15,000) for a licensee licensed,
30 among all of the licensee's facilities, to care for more than 100
31 children.

32 (e) (1) For a violation that the department determines
33 constitutes physical abuse or resulted in serious injury, as defined
34 in Section 1596.8865, to a child, the civil penalty shall be assessed
35 as follows:

36 (A) Two thousand five hundred dollars (\$2,500) for a licensee
37 licensed, among all of the licensee's facilities, to care for 30 or
38 less children.

1 (B) Five thousand dollars (\$5,000) for a licensee licensed,
2 among all of the licensee’s facilities, to care for 31 to 100,
3 inclusive, children.

4 (C) Ten thousand dollars (\$10,000) for a licensee licensed,
5 among all of the licensee’s facilities, to care for more than 100
6 children.

7 (2) For purposes of this subdivision, “physical abuse” includes
8 physical injury inflicted upon a child by another person by other
9 than accidental means, sexual abuse as defined in Section 11165.1
10 of the Penal Code, neglect as defined in Section 11165.2 of the
11 Penal Code, or unlawful corporal punishment or injury as defined
12 in Section 11165.4 of the Penal Code when the person responsible
13 for the child’s welfare is a licensee, administrator, or employee
14 of any facility licensed to care for children, or an administrator
15 or employee of a public or private school or other institution or
16 agency.

17 (f) Prior to the issuance of a citation imposing a civil penalty
18 pursuant to subdivision (d) or (e), the decision shall be approved
19 by the director.

20 (g) Notwithstanding Sections 1596.893a, 1596.893b, and
21 1596.98, any day care center that is cited for repeating the same
22 violation of this chapter or Chapter 3.4 (commencing with Section
23 1596.70), within 12 months of the first violation is subject to an
24 immediate civil penalty of one hundred fifty dollars (\$150) for
25 each day the violation continues until the deficiency is corrected.

26 (h) Any day care center that is assessed a civil penalty under
27 subdivision (g) and that repeats the same violation of this chapter
28 within 12 months of the violation subject to subdivision (g) shall
29 be assessed an immediate civil penalty of one hundred fifty dollars
30 (\$150) for each day the violation continues until the deficiency is
31 corrected.

32 (i) Notwithstanding any other law, revenues received by the
33 state from the payment of civil penalties imposed on licensed child
34 care centers pursuant to this chapter or Chapter 3.4 (commencing
35 with Section 1596.70), shall be deposited in the Child Health and
36 Safety Fund, created pursuant to Chapter 4.6 (commencing with
37 Section 18285) of Part 6 of Division 9 of the Welfare and
38 Institutions Code, and shall be expended, upon appropriation by
39 the Legislature, pursuant to subdivision (f) of Section 18285 of the
40 Welfare and Institutions Code exclusively for the technical

1 assistance, orientation, training, and education of licensed day
2 care center providers, and to assist families with the identification,
3 transportation, and enrollment of children to another day care
4 center when a family's day care center's license is revoked or
5 temporarily suspended.

6 (j) (1) The department shall adopt regulations setting forth the
7 appeal procedures for deficiencies.

8 (2) A licensee shall have the right to submit to the department
9 a written request for a formal review of a civil penalty assessed
10 pursuant to subdivisions (d) and (e) within 10 days of receipt of
11 the notice of a civil penalty assessment and shall provide all
12 supporting documentation at that time. The review shall be
13 conducted by a regional manager of the Community Care Licensing
14 Division. If the regional manager determines that the civil penalty
15 was not assessed in accordance with applicable statutes or
16 regulations of the department, he or she may amend or dismiss
17 the civil penalty. The licensee shall be notified in writing of the
18 regional manager's decision within 60 days of the request to review
19 the assessment of the civil penalty.

20 (3) The licensee may further appeal to the program
21 administrator of the Community Care Licensing Division within
22 10 days of receipt of the notice of the regional manager's decision
23 and shall provide all supporting documentation at that time. If the
24 program administrator determines that the civil penalty was not
25 assessed in accordance with applicable statutes or regulations of
26 the department, he or she may amend or dismiss the civil penalty.
27 The licensee shall be notified in writing of the program
28 administrator's decision within 60 days of the request to review
29 the regional manager's decision.

30 (4) The licensee may further appeal to the deputy director of
31 the Community Care Licensing Division within 10 days of receipt
32 of the notice of the program director's decision and shall provide
33 all supporting documentation at that time. If the deputy director
34 determines that the civil penalty was not assessed in accordance
35 with applicable statutes or regulations of the department, he or
36 she may amend or dismiss the civil penalty. The licensee shall be
37 notified in writing of the deputy director's decision within 60 days
38 of the request to review the program administrator's decision.

39 (5) Upon exhausting the deputy director review, a licensee may
40 appeal a civil penalty assessed pursuant to subdivision (d) or (e)

1 to an administrative law judge. Proceedings shall be conducted
2 in accordance with Chapter 5 (commencing with Section 11500)
3 of Part 1 of Division 3 of Title 2 of the Government Code, and the
4 department shall have all the powers granted by those provisions.
5 In all proceedings conducted in accordance with this section, the
6 standard of proof shall be by a preponderance of the evidence.

7 (6) If, in addition to an assessment of civil penalties, the
8 department elects to file an administrative action to suspend or
9 revoke the facility license that includes violations relating to the
10 assessment of the civil penalties, the department review of the
11 pending appeal shall cease and the assessment of the civil penalties
12 shall be heard as part of the administrative action process.

13 (k) The department shall, by January 1, 2016, amend its
14 regulations to reflect the changes to this section made by the act
15 that added this subdivision.

16 (l) This section shall become operative on July 1, 2015.

17 SEC. 9. Section 1597.58 of the Health and Safety Code is
18 amended to read:

19 1597.58. (a) In addition to the suspension, temporary
20 suspension, or revocation of a license issued under this chapter,
21 the department may levy a civil penalty.

22 (b) The amount of the civil penalty shall not be less than
23 twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day
24 for each violation of this chapter except where the nature or
25 seriousness of the violation or the frequency of the violation
26 warrants a higher penalty or an immediate civil penalty assessment
27 or both, as determined by the department. In no event shall a civil
28 penalty assessment exceed one hundred fifty dollars (\$150) per
29 day per violation.

30 (c) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56,
31 and 1597.62 the department shall assess an immediate civil penalty
32 of one hundred fifty dollars (\$150) per day per violation for any
33 of the following serious violations:

34 (1) Any violation that results in the injury, illness, or death of
35 a child.

36 (2) Absence of supervision, including, but not limited to, a child
37 left unattended, a child left alone with a person under 18 years of
38 age, and lack of supervision resulting in a child wandering away.

39 (3) Accessible bodies of water.

40 (4) Accessible firearms, ammunition, or both.

1 (5) Refused entry to a facility or any part of a facility in violation
2 of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.

3 (6) The presence of an excluded person on the premises.

4 (d) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56
5 and 1597.62, any family day care home that is cited for repeating
6 the same violation of this chapter or Chapter 3.4 (commencing
7 with Section 1596.70), within 12 months of the first violation is
8 subject to an immediate civil penalty assessment of up to one
9 hundred fifty dollars (\$150) and may be assessed up to fifty dollars
10 (\$50) for each day the violation continues until the deficiency is
11 corrected.

12 (e) Any family day care home that is assessed a civil penalty
13 under subdivision (d) that repeats the same violation of this chapter
14 within 12 months of the violation subject to subdivision (d) shall
15 be assessed an immediate assessment of up to one hundred fifty
16 dollars (\$150) and may be assessed up to one hundred fifty dollars
17 (\$150) for each day the violation continues until the deficiency is
18 corrected.

19 (f) Notwithstanding any other ~~provision~~ of law, revenues
20 received by the state from the payment of civil penalties imposed
21 on licensed family day care homes pursuant to this chapter or
22 Chapter 3.4 (commencing with Section 1596.70), shall be deposited
23 in the Child Health and Safety Fund, created pursuant to Chapter
24 4.6 (commencing with Section 18285) of Part 6 of Division 9 of
25 the Welfare and Institutions Code, and shall be expended, upon
26 appropriation by the Legislature, pursuant to subdivision (f) of
27 Section 18285 of the Welfare and Institutions Code exclusively
28 for the technical assistance, orientation, training, and education of
29 licensed family day care home providers.

30 (g) *This section shall become inoperative on July 1, 2015, and,*
31 *as of January 1, 2016, is repealed, unless a later enacted statute,*
32 *that becomes operative on or before January 1, 2016, deletes or*
33 *extends the dates on which it becomes inoperative and is repealed.*

34 SEC. 10. *Section 1597.58 is added to the Health and Safety*
35 *Code, to read:*

36 1597.58. (a) *In addition to the suspension, temporary*
37 *suspension, or revocation of a license issued under this chapter,*
38 *the department may levy a civil penalty.*

39 (b) *The amount of the civil penalty shall not be less than*
40 *twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day*

1 for each violation of this chapter except where the nature or
2 seriousness of the violation or the frequency of the violation
3 warrants a higher penalty or an immediate civil penalty assessment
4 or both, as determined by the department. In no event shall a civil
5 penalty assessment exceed one hundred fifty dollars (\$150) per
6 day per violation.

7 (c) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56,
8 and 1597.62 the department shall assess an immediate civil penalty
9 of one hundred fifty dollars (\$150) per day per violation for any
10 of the following serious violations:

11 (1) Any violation that results in the injury, illness, or death of
12 a child.

13 (2) Absence of supervision, including, but not limited to, a child
14 left unattended, a child left alone with a person under 18 years of
15 age, and lack of supervision resulting in a child wandering away.

16 (3) Accessible bodies of water.

17 (4) Accessible firearms, ammunition, or both.

18 (5) Refused entry to a facility or any part of a facility in violation
19 of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.

20 (6) The presence of an excluded person on the premises.

21 (d) For a violation that the department determines resulted in
22 the death of a child, the civil penalty shall be assessed as follows:

23 (1) Five thousand dollars (\$5,000) for a small family day care
24 home, as described in Section 1597.44.

25 (2) Seven thousand five hundred dollars (\$7,500) for a large
26 family day care home, as described in Section 1597.465.

27 (e) (1) For a violation that the department determines
28 constitutes physical abuse or resulted in serious injury, as defined
29 in Section 1596.8865, to a child, the civil penalty shall be assessed
30 as follows:

31 (A) One thousand dollars (\$1,000) for a small family day care
32 home, as described in Section 1597.44.

33 (B) Two thousand dollars (\$2,000) for a large family day care
34 home, as described in Section 1597.465.

35 (2) For purposes of this subdivision, “physical abuse” includes
36 physical injury inflicted upon a child by another person by other
37 than accidental means, sexual abuse as defined in Section 11165.1
38 of the Penal Code, neglect as defined in Section 11165.2 of the
39 Penal Code, or unlawful corporal punishment or injury as defined
40 in Section 11165.4 of the Penal Code when the person responsible

1 *for the child's welfare is a licensee, administrator, or employee*
2 *of any facility licensed to care for children, or an administrator*
3 *or employee of a public or private school or other institution or*
4 *agency.*

5 *(f) Prior to the issuance of a citation imposing a civil penalty*
6 *pursuant to subdivision (d) or (e), the decision shall be approved*
7 *by the director.*

8 *(g) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56,*
9 *and 1597.62, any family day care home that is cited for repeating*
10 *the same violation of this chapter or Chapter 3.4 (commencing*
11 *with Section 1596.70), within 12 months of the first violation is*
12 *subject to an immediate civil penalty assessment of up to one*
13 *hundred fifty dollars (\$150) and may be assessed up to fifty dollars*
14 *(\$50) for each day the violation continues until the deficiency is*
15 *corrected.*

16 *(h) Any family day care home that is assessed a civil penalty*
17 *under subdivision (g) that repeats the same violation of this chapter*
18 *within 12 months of the violation subject to subdivision (g) shall*
19 *be assessed an immediate assessment of up to one hundred fifty*
20 *dollars (\$150) and may be assessed up to one hundred fifty dollars*
21 *(\$150) for each day the violation continues until the deficiency is*
22 *corrected.*

23 *(i) Notwithstanding any other law, revenues received by the*
24 *state from the payment of civil penalties imposed on licensed family*
25 *day care homes pursuant to this chapter or Chapter 3.4*
26 *(commencing with Section 1596.70), shall be deposited in the Child*
27 *Health and Safety Fund, created pursuant to Chapter 4.6*
28 *(commencing with Section 18285) of Part 6 of Division 9 of the*
29 *Welfare and Institutions Code, and shall be expended, upon*
30 *appropriation by the Legislature, pursuant to subdivision (f) of*
31 *Section 18285 of the Welfare and Institutions Code exclusively for*
32 *the technical assistance, orientation, training, and education of*
33 *licensed family day care home providers, and to assist families*
34 *with the identification, transportation, and enrollment of children*
35 *to another family day care home when a family's family day care*
36 *home's license is revoked or temporarily suspended.*

37 *(j) (1) The department shall adopt regulations setting forth the*
38 *appeal procedures for deficiencies.*

39 *(2) A licensee shall have the right to submit to the department*
40 *a written request for a formal review of a civil penalty assessed*

1 pursuant to subdivisions (d) and (e) within 10 days of receipt of
2 the notice of a civil penalty assessment and shall provide all
3 supporting documentation at that time. The review shall be
4 conducted by a regional manager of the Community Care Licensing
5 Division. If the regional manager determines that the civil penalty
6 was not assessed in accordance with applicable statutes or
7 regulations of the department, he or she may amend or dismiss
8 the civil penalty. The licensee shall be notified in writing of the
9 regional manager's decision within 60 days of the request to review
10 the assessment of the civil penalty.

11 (3) The licensee may further appeal to the program
12 administrator of the Community Care Licensing Division within
13 10 days of receipt of the notice of the regional manager's decision
14 and shall provide all supporting documentation at that time. If the
15 program administrator determines that the civil penalty was not
16 assessed in accordance with applicable statutes or regulations of
17 the department, he or she may amend or dismiss the civil penalty.
18 The licensee shall be notified in writing of the program
19 administrator's decision within 60 days of the request to review
20 the regional manager's decision.

21 (4) The licensee may further appeal to the deputy director of
22 the Community Care Licensing Division within 10 days of receipt
23 of the notice of the program director's decision and shall provide
24 all supporting documentation at that time. If the deputy director
25 determines that the civil penalty was not assessed in accordance
26 with applicable statutes or regulations of the department, he or
27 she may amend or dismiss the civil penalty. The licensee shall be
28 notified in writing of the deputy director's decision within 60 days
29 of the request to review the program administrator's decision.

30 (5) Upon exhausting the deputy director review, a licensee may
31 appeal a civil penalty assessed pursuant to subdivision (d) or (e)
32 to an administrative law judge. Proceedings shall be conducted
33 in accordance with Chapter 5 (commencing with Section 11500)
34 of Part 1 of Division 3 of Title 2 of the Government Code, and the
35 department shall have all the powers granted by those provisions.
36 In all proceedings conducted in accordance with this section, the
37 standard of proof shall be by a preponderance of the evidence.

38 (6) If, in addition to an assessment of civil penalties, the
39 department elects to file an administrative action to suspend or
40 revoke the facility license that includes violations relating to the

1 *assessment of the civil penalties, the department review of the*
2 *pending appeal shall cease and the assessment of the civil penalties*
3 *shall be heard as part of the administrative action process.*

4 *(k) The department shall, by January 1, 2016, amend its*
5 *regulations to reflect the changes to this section made by the act*
6 *that added this subdivision.*

7 *(l) This section shall become operative on July 1, 2015.*

8 ~~SECTION 1. Section 1569.48 of the Health and Safety Code~~
9 ~~is amended to read:~~

10 ~~1569.48. The Emergency Resident Relocation Fund is hereby~~
11 ~~established within the State Treasury. The department shall deposit~~
12 ~~into the fund 50 percent of each penalty assessed pursuant to~~
13 ~~Section 1569.49. Upon appropriation by the Legislature, moneys~~
14 ~~in the fund shall be used by the Community Care Licensing~~
15 ~~Division of the department to fund emergency resident relocation~~
16 ~~and care of residents when a facility's license is revoked or~~
17 ~~temporarily suspended. The money in the fund shall cover costs,~~
18 ~~including, but not limited to, transportation expenses, expenses~~
19 ~~incurred in notifying family members, and any other costs directly~~
20 ~~associated with providing continuous care to the residents. The~~
21 ~~department shall seek the advice of providers in developing a state~~
22 ~~plan for emergency resident relocation.~~

23 ~~SEC. 2. Section 1569.49 of the Health and Safety Code is~~
24 ~~amended to read:~~

25 ~~1569.49. (a) In addition to the suspension, temporary~~
26 ~~suspension, or revocation of a license issued under this chapter,~~
27 ~~the department may levy a civil penalty. The department shall~~
28 ~~adopt regulations setting forth the appeal procedures for~~
29 ~~deficiencies. The appeal procedure shall include notice to the~~
30 ~~complainant, affected residents, and, if possible, their legal~~
31 ~~representatives, and the opportunity to participate in the appeal.~~
32 ~~The appeal procedure shall include an option for review by an~~
33 ~~administrative law judge.~~

34 ~~(b) The amount of the civil penalty shall not be less than one~~
35 ~~hundred dollars (\$100) or more than two hundred fifty dollars~~
36 ~~(\$250) per day for each violation of this chapter, or of any~~
37 ~~regulations adopted by the department pursuant to this chapter.~~
38 ~~When assessed, the per-day civil penalty shall end once the licensee~~
39 ~~submits documentation of correction, if the correction is verified~~
40 ~~by the department.~~

1 ~~(e) Notwithstanding Section 1569.33, the department shall assess~~
2 ~~an immediate civil penalty of one thousand dollars (\$1,000) per~~
3 ~~day per violation for any of the following serious violations:~~
4 ~~(1) (A) Fire clearance violations, including, but not limited to,~~
5 ~~overcapacity, ambulatory status, inoperable smoke alarms, and~~
6 ~~inoperable fire alarm systems. The civil penalty shall not be~~
7 ~~assessed if the licensee has done either of the following:~~
8 ~~(i) Requested the appropriate fire clearance based on ambulatory,~~
9 ~~nonambulatory, or bedridden status, and the decision is pending.~~
10 ~~(ii) Initiated eviction proceedings.~~
11 ~~(B) A licensee denied a clearance for bedridden residents may~~
12 ~~appeal to the fire authority, and, if that appeal is denied, may~~
13 ~~subsequently appeal to the Office of the State Fire Marshal, and~~
14 ~~shall not be assessed an immediate civil penalty until the final~~
15 ~~appeal is decided, or after 60 days has passed from the date of the~~
16 ~~citation, whichever is earlier.~~
17 ~~(2) Absence of supervision as required by statute or regulation.~~
18 ~~(3) Accessible bodies of water, when prohibited in this chapter~~
19 ~~or regulations adopted pursuant to this chapter.~~
20 ~~(4) Accessible firearms, ammunition, or both.~~
21 ~~(5) Refused entry to a facility or any part of a facility in violation~~
22 ~~of Section 1569.32, 1569.33, or 1569.35.~~
23 ~~(6) The presence of an excluded person on the premises.~~
24 ~~(d) For a violation that the department determines was the direct~~
25 ~~proximate cause of death to a resident, the minimum civil penalty~~
26 ~~shall be five thousand dollars (\$5,000) and the maximum civil~~
27 ~~penalty shall be fifteen thousand dollars (\$15,000).~~
28 ~~(e) For a violation that the department determines was the direct~~
29 ~~proximate cause of “serious bodily injury” as defined in Section~~
30 ~~15610.67 of the Welfare and Institutions Code, the minimum civil~~
31 ~~penalty shall be one thousand dollars (\$1,000) and the maximum~~
32 ~~civil penalty shall be ten thousand dollars (\$10,000).~~
33 ~~(f) For a violation that the department determines constitutes~~
34 ~~“physical abuse” as defined in Section 15610.63 of the Welfare~~
35 ~~and Institutions Code, but does not result in “serious bodily injury”~~
36 ~~as defined in Section 15610.67 of the Welfare and Institutions~~
37 ~~Code, and it is determined by the department that the abuse was~~
38 ~~committed by the licensee or an employee of the licensee, the~~
39 ~~minimum civil penalty shall be five hundred dollars (\$500) and~~

1 the maximum civil penalty shall be two thousand five hundred
 2 dollars (\$2,500).
 3 (g) (1) In any action to enforce a citation issued under
 4 subdivision (d) or (e), the department shall have the burden of
 5 proving both of the following:
 6 (A) The violation was a direct proximate cause of the death or
 7 serious bodily injury of a resident.
 8 (B) The death or serious bodily injury resulted from an
 9 occurrence of a nature that the statute or regulation was designed
 10 to prevent.
 11 (2) If the department meets its burden of proof, the licensee
 12 shall have the burden of proving that the licensee did what might
 13 reasonably be expected of a residential care facility for the elderly
 14 licensee, acting under similar circumstances, to comply with the
 15 statute or regulation. If the licensee sustains this burden, then the
 16 citation shall be dismissed.
 17 (h) Prior to the issuance of a citation imposing a civil penalty
 18 under subdivision (d) or (e), the decision shall be reviewed by the
 19 department's legal division and approved by the deputy director.
 20 (i) Notwithstanding Section 1569.33, any residential care facility
 21 for the elderly that is cited for repeating the same violation of this
 22 chapter within 12 months of the first violation is subject to an
 23 immediate civil penalty of one thousand dollars (\$1,000) and,
 24 thereafter, an ongoing civil penalty of two hundred dollars (\$200)
 25 for each day the violation continues until the licensee submits
 26 documentation demonstrating that the deficiency is corrected, if
 27 the correction is verified by the department.
 28 (j) Any residential care facility for the elderly that is assessed
 29 a civil penalty pursuant to subdivision (i) that repeats the same
 30 violation of this chapter within 12 months of the violation subject
 31 to subdivision (i) shall be assessed an immediate civil penalty of
 32 two thousand dollars (\$2,000) and, thereafter, an ongoing civil
 33 penalty of two hundred dollars (\$200) for each day the violation
 34 continues until the licensee submits documentation demonstrating
 35 that the deficiency is corrected, if the correction is verified by the
 36 department.
 37 (k) In assessing a civil penalty for a violation under this section,
 38 the department shall consider all relevant information, including,
 39 but not limited to, both of the following:

- 1 ~~(1) The probability and severity of the risk of harm that the~~
2 ~~violation presents to the residents' mental and physical condition.~~
3 ~~(2) The good faith efforts of the facility to prevent the violation~~
4 ~~from occurring.~~
5 ~~(l) In any enforcement action taken by the department, the~~
6 ~~licensee shall be liable for the acts and omissions of its officers~~
7 ~~and employees.~~
8 ~~(m) The department shall adopt regulations implementing this~~
9 ~~section.~~
10 ~~(n) The department shall, by January 1, 2016, adopt amendments~~
11 ~~to its regulations adopted pursuant to this section in order to~~
12 ~~incorporate changes necessary to accommodate amendments to~~
13 ~~this section made by the act that added this subdivision. The~~
14 ~~regulations adopted or amended by the department pursuant to~~
15 ~~subdivision (m) shall remain in effect until amended by the~~
16 ~~department pursuant to this subdivision.~~