

Assembly Bill No. 2236

Passed the Assembly August 28, 2014

Chief Clerk of the Assembly

Passed the Senate August 28, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2236, Maienschein. 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, child day care centers, and family day care homes.

Existing law authorizes the department to impose various civil penalties for licensing violations.

This bill 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 those cases, require that the decision to issue the citation be approved by the director prior to the issuance of the citation.

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 reflect the changes to law made by this bill.

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

(3) For a violation that the department determines resulted in the death of a person receiving care at a therapeutic day services facility, foster family agency, community treatment facility,

full-service adoption agency, noncustodial adoption agency, transitional shelter care facility, transitional housing placement provider, or group home, the civil penalty shall be assessed as follows:

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

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

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

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

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

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

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

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

(C) For a violation that the department determines constitutes physical abuse, as defined in paragraph (2), or resulted in serious bodily injury, as defined in Section 243 of the Penal Code, to a person receiving care at a therapeutic day services facility, foster family agency, community treatment facility, full-service adoption agency, noncustodial adoption agency, transitional shelter care

facility, transitional housing placement provider, or group home, the civil penalty shall be assessed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (A) Fire clearance violations, including, but not limited to, overcapacity, ambulatory status, inoperable smoke alarms, and

inoperable fire alarm systems. The civil penalty shall not be assessed if the licensee has done either of the following:

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

(d) For a violation that the department determines resulted in the death of a resident, the civil penalty shall be fifteen thousand dollars (\$15,000).

(e) For a violation that the department determines constitutes physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, or resulted in serious bodily injury, as defined

in Section 243 of the Penal Code, to a resident, the civil penalty shall be ten thousand dollars (\$10,000).

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

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

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

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

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

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

decision within 60 days of the request to review the regional manager's decision.

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

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

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

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

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

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

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

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

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

(e) Any residential care facility for the elderly that is assessed a civil penalty pursuant to subdivision (d) which repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of

one thousand dollars (\$1,000) and one hundred dollars (\$100) for each day the violation continues until the deficiency is corrected.

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

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

(d) For a violation that the department determines resulted in the death of a resident, the civil penalty shall be fifteen thousand dollars (\$15,000).

(e) For a violation that the department determines constitutes physical abuse, as defined in Section 15610.63 of the Welfare and Institutions Code, or resulted in serious bodily injury, as defined in Section 15610.67 of the Welfare and Institutions Code, to a resident, the civil penalty shall be ten thousand dollars (\$10,000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

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

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

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

(e) Any day care center that is assessed a civil penalty under subdivision (d) and that repeats the same violation of this chapter within 12 months of the violation subject to subdivision (d) shall be assessed an immediate civil penalty of one hundred fifty dollars

(\$150) for each day the violation continues until the deficiency is corrected.

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

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

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

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

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

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

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

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

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

(2) For purposes of this subdivision, "physical abuse" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1 of the Penal Code, neglect as defined in Section 11165.2 of the Penal Code, or unlawful corporal punishment or injury as defined in Section 11165.4 of the Penal Code when the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or

employee of a public or private school or other institution or agency.

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

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

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

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

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

(2) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 10 days of receipt of the notice of a civil penalty assessment and shall provide all supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. If the regional manager determines that the civil penalty

was not assessed in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the regional manager's decision within 60 days of the request to review the assessment of the civil penalty.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

(g) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56, and 1597.62, any family day care home that is cited for repeating the same violation of this chapter or Chapter 3.4 (commencing with Section 1596.70), within 12 months of the first violation is

subject to an immediate civil penalty assessment of up to one hundred fifty dollars (\$150) and may be assessed up to fifty dollars (\$50) for each day the violation continues until the deficiency is corrected.

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

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

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

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

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

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

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

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

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

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

Approved _____, 2014

Governor