

ASSEMBLY BILL

No. 74

Introduced by Assembly Member Calderon

January 5, 2015

An act to amend Sections 1534, 1569.33, 1597.09, and 1597.55a of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 74, as introduced, Calderon. Care facilities: regulatory visits.

Under existing law, the State Department of Social Services regulates the licensure and operation of community care facilities, residential care facilities for the elderly, child day care centers, and family day care homes. Existing law provides that these facilities, except for foster family homes, are subject to unannounced visits by the department at least once every 5 years. Existing law requires the department to conduct an annual unannounced visit under specified circumstances, including when a license is on probation, and to conduct annual unannounced visits to no less than 20% of the facilities, other than foster family homes, that are not subject to an inspection under those specified circumstances.

This bill would instead make every facility of the types described above, except for, subject to an annual unannounced visit by the department on and after July 1, 2018. The bill would revise the provisions requiring the department to conduct annual unannounced visits to no less than 20% of the facilities by instead requiring the department to conduct annual unannounced visits to no less than 30% of facilities on or before July 1, 2016, and no less than 20% of those facilities on or before July 1, 2017. The bill would also delete the provisions requiring an unannounced visit at least once every 5 years.

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 1534 of the Health and Safety Code is
2 amended to read:
3 1534. (a) (1) (A) Except for foster family homes, every
4 licensed community care facility shall be subject to unannounced
5 inspections by the department.
6 (B) Foster family homes shall be subject to announced
7 inspections by the department, except that a foster family home
8 shall be subject to unannounced inspections in response to a
9 complaint, a plan of correction, or under any of the circumstances
10 set forth in subparagraph (B) of paragraph (2).
11 (2) (A) The department may inspect these facilities as often as
12 necessary to ensure the quality of care provided.
13 (B) The department shall conduct an annual unannounced
14 inspection of a facility under any of the following circumstances:
15 (i) When a license is on probation.
16 (ii) When the terms of agreement in a facility compliance plan
17 require an annual inspection.
18 (iii) When an accusation against a licensee is pending.
19 (iv) When a facility requires an annual inspection as a condition
20 of receiving federal financial participation.
21 (v) In order to verify that a person who has been ordered out of
22 a facility by the department is no longer at the facility.
23 ~~(C) (i) The department shall conduct annual unannounced~~
24 ~~inspections of no less than 20 percent of facilities, except for foster~~
25 ~~family homes, not subject to an inspection under subparagraph~~
26 ~~(B).~~
27 ~~(ii)~~
28 (C) The department shall conduct annual announced inspections
29 of no less than 20 percent of foster family homes not subject to an
30 inspection under subparagraph (B).
31 ~~(iii) These inspections shall be conducted based on a random~~
32 ~~sampling methodology developed by the department.~~
33 ~~(iv) If the total citations issued by the department to facilities~~
34 ~~exceed the previous year's total by 10 percent, the following year~~
35 ~~the department shall increase the random sample by an additional~~

1 ~~10 percent of the facilities not subject to an inspection under~~
2 ~~subparagraph (B). The department may request additional resources~~
3 ~~to increase the random sample by 10 percent.~~

4 ~~(v) The department shall not inspect a licensed community care~~
5 ~~facility less often than once every five years.~~

6 *(D) (1) On or before July 1, 2016, the department shall conduct*
7 *annual unannounced visits to no less than 30 percent of facilities*
8 *that are not subject to an evaluation pursuant to subparagraph*
9 *(B). These unannounced visits shall be conducted based on a*
10 *random sampling methodology developed by the department. Under*
11 *no circumstances shall the department visit a licensed community*
12 *care facility less often than once every three years.*

13 *(2) On or before July 1, 2017, the department shall conduct*
14 *annual unannounced visits to no less than 20 percent of facilities*
15 *that are not subject to an evaluation pursuant to subparagraph*
16 *(B). These unannounced visits shall be conducted based on a*
17 *random sampling methodology developed by the department. Under*
18 *no circumstances shall the department visit a licensed community*
19 *care facility less often than once every two years.*

20 *(E) On and after July 1, 2018, the department shall conduct at*
21 *least one annual unannounced visit to each licensed community*
22 *care facility.*

23 (3) In order to facilitate direct contact with group home clients,
24 the department may interview children who are clients of group
25 homes at any public agency or private agency at which the client
26 may be found, including, but not limited to, a juvenile hall,
27 recreation or vocational program, or a public or nonpublic school.
28 The department shall respect the rights of the child while
29 conducting the interview, including informing the child that he or
30 she has the right not to be interviewed and the right to have another
31 adult present during the interview.

32 (4) The department shall notify the community care facility in
33 writing of all deficiencies in its compliance with the provisions of
34 this chapter and the rules and regulations adopted pursuant to this
35 chapter, and shall set a reasonable length of time for compliance
36 by the facility.

37 (5) Reports on the results of each inspection, evaluation, or
38 consultation shall be kept on file in the department, and all
39 inspection reports, consultation reports, lists of deficiencies, and
40 plans of correction shall be open to public inspection.

1 (b) (1) This section does not limit the authority of the
2 department to inspect or evaluate a licensed foster family agency,
3 a certified family home, or any aspect of a program in which a
4 licensed community care facility is certifying compliance with
5 licensing requirements.

6 (2) (A) A foster family agency shall conduct an announced
7 inspection of a certified family home during the annual
8 recertification described in Section 1506 in order to ensure that
9 the certified family home meets all applicable licensing standards.
10 A foster family agency may inspect a certified family home as
11 often as necessary to ensure the quality of care provided.

12 (B) In addition to the inspections required pursuant to
13 subparagraph (A), a foster family agency shall conduct an
14 unannounced inspection of a certified family home under any of
15 the following circumstances:

16 (i) When a certified family home is on probation.

17 (ii) When the terms of the agreement in a facility compliance
18 plan require an annual inspection.

19 (iii) When an accusation against a certified family home is
20 pending.

21 (iv) When a certified family home requires an annual inspection
22 as a condition of receiving federal financial participation.

23 (v) In order to verify that a person who has been ordered out of
24 a certified family home by the department is no longer at the home.

25 (3) Upon a finding of noncompliance by the department, the
26 department may require a foster family agency to deny or revoke
27 the certificate of approval of a certified family home, or take other
28 action the department may deem necessary for the protection of a
29 child placed with the certified family home. The certified parent
30 or prospective foster parent shall be afforded the due process
31 provided pursuant to this chapter.

32 (4) If the department requires a foster family agency to deny or
33 revoke the certificate of approval, the department shall serve an
34 order of denial or revocation upon the certified or prospective
35 foster parent and foster family agency that shall notify the certified
36 or prospective foster parent of the basis of the department's action
37 and of the certified or prospective foster parent's right to a hearing.

38 (5) Within 15 days after the department serves an order of denial
39 or revocation, the certified or prospective foster parent may file a
40 written appeal of the department's decision with the department.

1 The department's action shall be final if the certified or prospective
2 foster parent does not file a written appeal within 15 days after the
3 department serves the denial or revocation order.

4 (6) The department's order of the denial or revocation of the
5 certificate of approval shall remain in effect until the hearing is
6 completed and the director has made a final determination on the
7 merits.

8 (7) A certified or prospective foster parent who files a written
9 appeal of the department's order with the department pursuant to
10 this section shall, as part of the written request, provide his or her
11 current mailing address. The certified or prospective foster parent
12 shall subsequently notify the department in writing of any change
13 in mailing address, until the hearing process has been completed
14 or terminated.

15 (8) Hearings held pursuant to this section shall be conducted in
16 accordance with Chapter 5 (commencing with Section 11500) of
17 Part 1 of Division 3 of Title 2 of the Government Code. In all
18 proceedings conducted in accordance with this section the standard
19 of proof shall be by a preponderance of the evidence.

20 (9) The department may institute or continue a disciplinary
21 proceeding against a certified or prospective foster parent upon
22 any ground provided by this section or Section 1550, enter an order
23 denying or revoking the certificate of approval, or otherwise take
24 disciplinary action against the certified or prospective foster parent,
25 notwithstanding any resignation, withdrawal of application,
26 surrender of the certificate of approval, or denial or revocation of
27 the certificate of approval by the foster family agency.

28 (10) A foster family agency's failure to comply with the
29 department's order to deny or revoke the certificate of approval
30 by placing or retaining children in care shall be grounds for
31 disciplining the licensee pursuant to Section 1550.

32 SEC. 2. Section 1569.33 of the Health and Safety Code is
33 amended to read:

34 1569.33. (a) Every licensed residential care facility for the
35 elderly shall be subject to unannounced visits by the department.
36 The department shall visit these facilities as often as necessary to
37 ensure the quality of care provided.

38 (b) The department shall conduct an annual unannounced visit
39 of a facility under any of the following circumstances:

40 (1) When a license is on probation.

1 (2) When the terms of agreement in a facility compliance plan
 2 require an annual evaluation.

3 (3) When an accusation against a licensee is pending.

4 (4) When a facility requires an annual visit as a condition of
 5 receiving federal financial participation.

6 (5) In order to verify that a person who has been ordered out of
 7 the facility for the elderly by the department is no longer at the
 8 facility.

9 (c) (1) ~~The~~ *On or before July 1, 2016, the department shall*
 10 *conduct annual unannounced visits to no less than 20 30 percent*
 11 *of facilities that are not subject to an evaluation under pursuant*
 12 *to subdivision (b). These unannounced visits shall be conducted*
 13 *based on a random sampling methodology developed by the*
 14 *department. Under no circumstances shall the department visit a*
 15 *licensed residential care facility for the elderly less often than once*
 16 *every three years.*

17 (2) If the total citations issued by the department exceed the
 18 previous year's total by 10 percent, the following year the
 19 department shall increase the random sample by 10 percent of the
 20 facilities not subject to an evaluation under subdivision (b). The
 21 department may request additional resources to increase the random
 22 sample by 10 percent.

23 ~~(d) Under no circumstance shall the department visit a residential~~
 24 ~~care facility for the elderly less often than once every five years.~~

25 (3) *On or before July 1, 2017, the department shall conduct*
 26 *annual unannounced visits to no less than 20 percent of facilities*
 27 *that are not subject to an evaluation pursuant to subdivision (b).*
 28 *These unannounced visits shall be conducted based on a random*
 29 *sampling methodology developed by the department. Under no*
 30 *circumstance shall the department visit a licensed residential care*
 31 *facility for the elderly less often than once every two years.*

32 (4) *On and after July 1, 2018, the department shall conduct at*
 33 *least one annual unannounced visit to each licensed residential*
 34 *care facility for the elderly.*

35 (e)

36 (d) (1) The department shall notify the residential care facility
 37 for the elderly in writing of all deficiencies in its compliance with
 38 the provisions of this chapter and the rules and regulations adopted
 39 pursuant to this chapter.

1 (2) Unless otherwise specified in the plan of correction, the
2 residential care facility for the elderly shall remedy the deficiencies
3 within 10 days of the notification.

4 ~~(f)~~

5 (e) (1) Reports on the results of each inspection, evaluation, or
6 consultation shall be kept on file in the department, and all
7 inspection reports, consultation reports, lists of deficiencies, and
8 plans of correction shall be open to public inspection.

9 (2) (A) The department shall post on its Internet Web site
10 information on how to obtain an inspection report.

11 (B) It is the intent of the Legislature that the department shall
12 make inspection reports available on its Internet Web site by
13 January 1, 2020.

14 ~~(g)~~

15 (f) As a part of the department's evaluation process, the
16 department shall review the plan of operation, training logs, and
17 marketing materials of any residential care facility for the elderly
18 that advertises or promotes special care, special programming, or
19 a special environment for persons with dementia to monitor
20 compliance with Sections 1569.626 and 1569.627.

21 ~~(h)~~

22 (g) (1) The department shall design, or cause to be designed,
23 a poster that contains information on the appropriate reporting
24 agency in case of a complaint or emergency.

25 (2) Each residential care facility for the elderly shall post this
26 poster in the main entryway of its facility.

27 SEC. 3. Section 1597.09 of the Health and Safety Code is
28 amended to read:

29 1597.09. (a) Each licensed child day care center shall be
30 subject to unannounced visits by the department. The department
31 shall visit these facilities as often as necessary to ensure the quality
32 of care provided.

33 (b) The department shall conduct an annual unannounced visit
34 to a licensed child day care center under any of the following
35 circumstances:

36 (1) When a license is on probation.

37 (2) When the terms of agreement in a facility compliance plan
38 require an annual evaluation.

39 (3) When an accusation against a licensee is pending.

1 (4) In order to verify that a person who has been ordered out of
2 a child day care center by the department is no longer at the facility.

3 (c) (1) ~~The~~ *On or before July 1, 2016, the department shall*
4 *conduct an annual unannounced visit to no less than 20 30 percent*
5 *of facilities not subject to an evaluation—under pursuant to*
6 *subdivision (b). These unannounced visits shall be conducted based*
7 *on a random sampling methodology developed by the department.*
8 *Under no circumstance shall the department visit a licensed child*
9 *day care center less often than once every three years.*

10 (2) If the total citations issued by the department exceed the
11 previous year's total by 10 percent, the following year the
12 department shall increase the random sample by 10 percent of
13 facilities not subject to an evaluation under subdivision (b). The
14 department may request additional resources to increase the random
15 sample by 10 percent.

16 ~~(d) Under no circumstance shall the department visit a licensed~~
17 ~~child day care center less often than once every five years.~~

18 (3) *On or before July 1, 2017, the department shall conduct*
19 *annual unannounced visits to no less than 20 percent of the*
20 *licensed child day care centers that are not subject to an evaluation*
21 *pursuant to subdivision (b). These unannounced visits shall be*
22 *conducted based on a random sampling methodology developed*
23 *by the department. Under no circumstance shall the department*
24 *visit a licensed child day care center less often than once every*
25 *two years.*

26 (d) *On and after July 1, 2018, the department shall conduct at*
27 *least one annual unannounced visit to each licensed child day care*
28 *center.*

29 SEC. 4. Section 1597.55a of the Health and Safety Code is
30 amended to read:

31 1597.55a. Every *licensed* family day care home shall be subject
32 to unannounced visits by the department as provided in this section.
33 The department shall visit these facilities as often as necessary to
34 ensure the quality of care provided.

35 (a) The department shall conduct an announced site visit prior
36 to the initial licensing of the applicant.

37 (b) The department shall conduct an annual unannounced visit
38 to a facility under any of the following circumstances:

39 (1) When a license is on probation.

1 (2) When the terms of agreement in a facility compliance plan
2 require an annual evaluation.

3 (3) When an accusation against a licensee is pending.

4 (4) In order to verify that a person who has been ordered out of
5 a family day care home by the department is no longer at the
6 facility.

7 ~~(c) (1) The department—~~*On or before July 1, 2016, the*
8 *department shall conduct annual unannounced visits to no less*
9 *than 20 30 percent of facilities that are not subject to an evaluation*
10 ~~*under pursuant to*~~ *subdivision (b). These unannounced visits shall*
11 *be conducted based on a random sampling methodology developed*
12 *by the department. Under no circumstance shall the department*
13 *visit a licensed family day care home less often than once every*
14 *three years.*

15 (2) If the total citations issued by the department exceed the
16 previous year's total by 10 percent, the following year the
17 department shall increase the random sample by 10 percent of the
18 facilities not subject to an evaluation under subdivision (b). The
19 department may request additional resources to increase the random
20 sample by 10 percent.

21 ~~(d) Under no circumstance shall the department visit a licensed~~
22 ~~family day care home less often than once every five years.~~

23 (3) *On or before July 1, 2017, the department shall conduct*
24 *annual unannounced visits to no less than 20 percent of the*
25 *licensed family day care homes that are not subject to an*
26 *evaluation pursuant to subdivision (b). These unannounced visits*
27 *shall be conducted based on a random sampling methodology*
28 *developed by the department. Under no circumstance shall the*
29 *department visit a licensed family day care home less often than*
30 *once every two years.*

31 (d) *On and after July 1, 2018, the department shall conduct at*
32 *least one annual unannounced visit to each licensed family day*
33 *care home.*

34 (e) A public agency under contract with the department may
35 make spot checks if it does not result in any cost to the state.
36 However, spot checks shall not be required by the department.

37 (f) The department or licensing agency shall make an
38 unannounced site visit on the basis of a complaint and a followup
39 visit as provided in Section 1596.853.

1 (g) An unannounced site visit shall adhere to both of the
2 following conditions:

3 (1) The visit shall take place only during the facility's normal
4 business hours or at any time family day care services are being
5 provided.

6 (2) The inspection of the facility shall be limited to those parts
7 of the facility in which family day care services are provided or
8 to which the children have access.

9 (h) The department shall implement this section during periods
10 that Section 1597.55b is not being implemented in accordance
11 with Section 18285.5 of the Welfare and Institutions Code.

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