

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1387**

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**Introduced by Assembly Member Chu**

February 27, 2015

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*An act to amend Sections 1596.99 and 1597.58 of the Health and Safety Code, relating to care facilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1387, as amended, Chu. Care facilities: civil ~~penalties: appeals: 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 day care centers and family day care homes. Existing law authorizes the department to impose various civil penalties for a licensing violation under those provisions, as specified, and requires moneys collected from the imposition of those penalties to be deposited in the Child Health and Safety Fund and expended for certain purposes, including technical assistance, orientation, training, and education of licensed daycare centers.*

*This bill would delete the requirement that moneys collected from the imposition of certain penalties and deposited in the Child Health and Safety Fund be used for assisting families with the identification, transportation, and enrollment of children in another day care center or family day care home upon the revocation or suspension of the license of a day care center or family day care home.*

*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.~~

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

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

1     SECTION 1. Section 1596.99 of the Health and Safety Code,  
2     as added by Section 8 of Chapter 813 of the Statutes of 2014, is  
3     amended to read:

4     1596.99. (a) In addition to the suspension, temporary  
5     suspension, or revocation of a license issued under this chapter or  
6     Chapter 3.4 (commencing with Section 1596.70), the department  
7     may levy a civil penalty.

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

16    (c) Notwithstanding Sections 1596.893a, 1596.893b, and  
17    1596.98, the department shall assess an immediate civil penalty  
18    of one hundred fifty *dollars* (\$150) per day per violation for any  
19    of the following serious violations:

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

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

26    (3) Accessible bodies of water.

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

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

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

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

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

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

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

10 (e) (1) For a violation that the department determines constitutes  
11 physical abuse or resulted in serious injury, as defined in Section  
12 1596.8865, to a child, the civil penalty shall be assessed as follows:

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

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

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

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

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

35 (g) Notwithstanding Sections 1596.893a, 1596.893b, and  
36 1596.98, any day care center that is cited for repeating the same  
37 violation of this chapter or Chapter 3.4 (commencing with Section  
38 1596.70); within 12 months of the first violation is subject to an  
39 immediate civil penalty of one hundred fifty dollars (\$150) for  
40 each day the violation continues until the deficiency is corrected.

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

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

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

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

35 (3) The licensee may further appeal to the program administrator  
36 of the Community Care Licensing Division within 10 days of  
37 receipt of the notice of the regional manager's decision and shall  
38 provide all supporting documentation at that time. If the program  
39 administrator determines that the civil penalty was not assessed  
40 in accordance with applicable statutes or regulations of the

1 department, he or she may amend or dismiss the civil penalty. The  
2 licensee shall be notified in writing of the program administrator's  
3 decision within 60 days of the request to review the regional  
4 manager's decision.

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

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

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

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

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

32 *SEC. 2. Section 1597.58 of the Health and Safety Code, as*  
33 *added by Section 10 of Chapter 813 of the Statutes of 2014, is*  
34 *amended to read:*

35 1597.58. (a) In addition to the suspension, temporary  
36 suspension, or revocation of a license issued under this chapter,  
37 the department may levy a civil penalty.

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

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

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

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

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

15 (3) Accessible bodies of water.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) A licensee shall have the right to submit to the department  
38 a written request for a formal review of a civil penalty assessed  
39 pursuant to subdivisions (d) and (e) within 10 days of receipt of  
40 the notice of a civil penalty assessment and shall provide all

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

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

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

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

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



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

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

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

7 ~~SECTION 1. It is the intent of the Legislature to enact~~  
8 ~~legislation that would revise the appeal procedures for a deficiency~~  
9 ~~of a care facility licensed by the State Department of Social~~  
10 ~~Services.~~