

AMENDED IN SENATE JUNE 25, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1387

Introduced by Assembly Member Chu

February 27, 2015

An act to amend Sections ~~1596.99~~ 1548, 1568.0822, 1569.35, 1569.49, 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~~. *penalties, deficiencies, and appeal procedures.*

~~Existing~~

(1) *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* centers, and family day care homes. Existing law authorizes ~~the~~ *any person to request an inspection of a residential care facility for the elderly by transmitting to the department notice of an alleged violation of applicable requirements prescribed by statutes or regulations, including, but not limited to, a denial of access of any person statutorily authorized to enter the facility. Under existing law, upon receipt of a complaint alleging denial of a statutory right of access to a residential facility for the elderly, the department is required to review the complaint and*

promptly notify the complainant of the department's proposed course of action.

This bill would instead authorize any person to request an investigation of a residential care facility for the elderly by making a complaint to the department alleging a violation of the applicable statutes or regulations. The bill would delete the department's above-described obligations relating to the denial of a statutory right of access and instead impose specified requirements on the department, including a pre-investigation interview, if a local long-term care ombudsman or the State Long-Term Care Ombudsman files a complaint alleging denial of a statutory right of access to a residential care facility for the elderly. The bill would impose other requirements on the department relating to investigations conducted pursuant to these provisions, including, among others, that within 10 days of completing the investigation of a complaint, the department notify the complainant in writing of the department's determination as a result of the investigation and of the complainant's right to appeal the findings. The bill would establish a process for a complainant to appeal the department's investigation, findings, or enforcement actions resulting from the investigation.

(2) Existing law authorizes the department to impose various civil penalties for a licensing violation under those the above-described provisions, as specified, and requires specified. Existing law generally authorizes the department to impose a larger civil penalty for a violation that the department determines resulted in the death of a resident of or a person receiving care at one of those facilities, and for a violation that the department determines constitutes physical abuse of, or results in serious bodily injury to, a resident of or a person receiving care at one of those facilities. Prior to the issuance of a citation imposing one of those death, physical abuse, or serious bodily injury civil penalties, existing law requires the approval of the Director of Social Services.

This bill would instead require the approval of the program administrator of the Community Care Licensing Division of the department prior to the issuance of a citation imposing one of the death, physical abuse, or serious bodily injury civil penalties described above.

(3) Existing law, beginning July 1, 2015, provides a licensee under the provisions described above the right to submit to the department a written request for a formal review of an assessment of the death, physical abuse, and serious bodily injury civil penalties described above by a regional manager of the Community Care Licensing Division of

the department. Existing law establishes a process to appeal that review to the program administrator of the Community Care Licensing Division of the department, to further appeal to the deputy director of the Community Care Licensing Division of the department, and, upon exhausting the deputy director review, to an administrative law judge.

This bill would revise the review process of an assessment of the death, physical abuse, and serious bodily injury civil penalties described above by, among other things, deleting the provisions relating to a regional manager of the Community Care Licensing Division of the department and the program administrator of the Community Care Licensing Division of the department. The bill would also establish a process to appeal any other civil penalty assessed pursuant to these provisions.

(4) Existing law requires the department to notify the facilities described above in writing of all deficiencies in their compliance with specified provisions of law, and requires those facilities, unless otherwise specified, to remedy the deficiencies within certain time periods. Existing law requires the department to adopt regulations setting forth the appeal procedures for deficiencies.

This bill would establish a process for a licensee to submit to the department a written request for a formal review of a finding of a deficiency, and to further appeal that review to the program administrator of the Community Care Licensing Division. The bill would also require a notification of a deficiency written by a representative of the department to include a factual description of the nature of the deficiency fully stating the manner in which the licensee failed to comply with the specified statute or regulation, and, if applicable, the particular place or area of the facility in which the deficiency occurred.

(5) Existing law requires moneys collected from the imposition of ~~those~~ the penalties described above relating to child day care centers and family day care homes 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.

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

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

1 SECTION 1. *It is the intent of the Legislature to enact*
2 *legislation that would clarify the complaint process for residential*
3 *care facilities for the elderly and revise the appeal procedures for*
4 *a deficiency issued against a care facility licensed by the State*
5 *Department of Social Services.*

6 SEC. 2. *Section 1548 of the Health and Safety Code, as added*
7 *by Section 2 of Chapter 813 of the Statutes of 2014, is amended*
8 *to read:*

9 1548. (a) In addition to the suspension, temporary suspension,
10 or revocation of a license issued under this chapter, the department
11 may levy a civil penalty.

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

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

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

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

29 (ii) Initiated eviction proceedings.

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

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

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

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

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

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

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

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

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

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

22 (3) For a violation that the department determines resulted in
23 the death of a person receiving care at a therapeutic day services
24 facility, foster family agency, community treatment facility,
25 full-service adoption agency, noncustodial adoption agency,
26 transitional shelter care facility, transitional housing placement
27 provider, or group home, the civil penalty shall be assessed as
28 follows:

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

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

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

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

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

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

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

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

18 (C) For a violation that the department determines constitutes
19 physical abuse, as defined in paragraph (2), or resulted in serious
20 bodily injury, as defined in Section 243 of the Penal Code, to a
21 person receiving care at a therapeutic day services facility, foster
22 family agency, community treatment facility, full-service adoption
23 agency, noncustodial adoption agency, transitional shelter care
24 facility, transitional housing placement provider, or group home,
25 the civil penalty shall be assessed as follows:

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

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

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

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

1 (2) For purposes of subparagraphs (C) and (D), “physical abuse”
2 includes physical injury inflicted upon a child by another person
3 by other than accidental means, sexual abuse as defined in Section
4 11165.1 of the Penal Code, neglect as defined in Section 11165.2
5 of the Penal Code, or unlawful corporal punishment or injury as
6 defined in Section 11165.4 of the Penal Code when the person
7 responsible for the child’s welfare is a licensee, administrator, or
8 employee of any facility licensed to care for children.

9 (f) Prior to the issuance of a citation imposing a civil penalty
10 pursuant to subdivision (d) or (e), the decision shall be approved
11 by the ~~director~~ *program administrator of the Community Care*
12 *Licensing Division.*

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

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

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

25 (2) *A notification of a deficiency written by a representative of*
26 *the department shall include a factual description of the nature of*
27 *the deficiency fully stating the manner in which the licensee failed*
28 *to comply with the specified statute or regulation, and, if*
29 *applicable, the particular place or area of the facility in which the*
30 *deficiency occurred.*

31 (j) (1) A licensee shall have the right to submit to the department
32 a written request for a formal review of a civil penalty assessed
33 pursuant to subdivisions (d) and (e) within 10 *business* days of
34 receipt of the notice of a civil penalty assessment and shall provide
35 all supporting documentation at that time. The review shall be
36 conducted by ~~a regional manager~~ *the deputy director* of the
37 Community Care Licensing Division. If the ~~regional manager~~
38 *department requires additional information from the licensee, that*
39 *information shall be requested within the first 30 calendar days*
40 *after receiving the request for review. If the deputy director*

1 determines that the civil penalty was not ~~assessed~~ *assessed, or the*
2 *finding of the deficiency that resulted in the assessment of the civil*
3 *penalty was not made*, in accordance with applicable statutes or
4 regulations of the department, he or she may amend or dismiss the
5 ~~civil penalty.~~ *penalty or finding of deficiency.* The licensee shall
6 be notified in writing of the ~~regional manager's~~ *deputy director's*
7 decision within 60 *calendar* days of the request to review the
8 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)~~

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

38 ~~(6)~~

39 ~~(3) If, in addition to an assessment of civil penalties, the~~
40 ~~department elects to file an administrative action to suspend or~~

1 revoke the facility license that includes violations relating to the
2 assessment of the civil penalties, the department review of the
3 pending appeal shall cease and the assessment of the civil penalties
4 shall be heard as part of the administrative action process.

5 *(k) (1) A licensee shall have the right to submit to the*
6 *department a written request for a formal review of any other civil*
7 *penalty or deficiency not described in subdivision (j) within 10*
8 *business days of receipt of the notice of a civil penalty assessment*
9 *or a finding of a deficiency, and shall provide all supporting*
10 *documentation at that time. The review shall be conducted by a*
11 *regional manager of the Community Care Licensing Division. If*
12 *the department requires additional information from the licensee,*
13 *that information shall be requested within the first 30 calendar*
14 *days after receiving the request for review. If the regional manager*
15 *determines that the civil penalty was not assessed, or the finding*
16 *of the deficiency was not made, in accordance with applicable*
17 *statutes or regulations of the department, he or she may amend or*
18 *dismiss the civil penalty or finding of deficiency. The licensee shall*
19 *be notified in writing of the regional manager's decision within*
20 *60 calendar days of the request to review the civil penalty or*
21 *finding of deficiency.*

22 *(2) Upon exhausting the review described in paragraph (1), the*
23 *licensee may further appeal that decision to the program*
24 *administrator of the Community Care Licensing Division within*
25 *10 business days of receipt of notice of the regional manager's*
26 *decision. If the program administrator determines that the civil*
27 *penalty was not assessed, or the finding of the deficiency was not*
28 *made, in accordance with applicable statutes or regulations of the*
29 *department, he or she may amend or dismiss the civil penalty or*
30 *finding of deficiency. The licensee shall be notified in writing of*
31 *the program administrator's decision within 60 calendar days of*
32 *the request to review the civil penalty or finding of deficiency.*

33 ~~(j)~~

34 *(l) The department shall adopt regulations implementing this*
35 *section.*

36 ~~(k)~~

37 *(m) The department shall, by January 1, 2016, amend its*
38 *regulations to reflect the changes to this section made by the act*
39 *that added this subdivision. Section 2 of Chapter 813 of the Statutes*
40 *of 2014.*

1 ~~(t)~~

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

9 ~~(m)~~

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

11 SEC. 3. *Section 1568.0822 of the Health and Safety Code, as*
12 *added by Section 4 of Chapter 813 of the Statutes of 2014, is*
13 *amended to read:*

14 1568.0822. (a) In addition to the suspension, temporary
15 suspension, or revocation of a license issued under this chapter,
16 the department may levy a civil penalty.

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

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

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

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

34 (ii) Initiated eviction proceedings.

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

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

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

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

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

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

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

11 (e) For a violation that the department determines constitutes
12 physical abuse, as defined in Section 15610.63 of the Welfare and
13 Institutions Code, or resulted in serious bodily injury, as defined
14 in Section 243 of the Penal Code, to a resident, the civil penalty
15 shall be ten thousand dollars (\$10,000).

16 (f) Prior to the issuance of a citation imposing a civil penalty
17 pursuant to subdivision (d) or (e), the decision shall be approved
18 by the ~~director~~ *program administrator of the Community Care*
19 *Licensing Division*.

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

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

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

35 (2) *A notification of a deficiency written by a representative of*
36 *the department shall include a factual description of the nature of*
37 *the deficiency fully stating the manner in which the licensee failed*
38 *to comply with the specified statute or regulation, and, if*
39 *applicable, the particular place or area of the facility in which the*
40 *deficiency occurred.*

1 (j) (1) A licensee shall have the right to submit to the department
2 a written request for a formal review of a civil penalty assessed
3 pursuant to subdivisions (d) and (e) within 10 *business* days of
4 receipt of the notice of a civil penalty assessment and shall provide
5 all supporting documentation at that time. The review shall be
6 conducted by ~~a regional manager~~ *the deputy director* of the
7 Community Care Licensing Division. If the ~~regional manager~~
8 *department requires additional information from the licensee, that*
9 *information shall be requested within the first 30 calendar days*
10 *after receiving the request for review. If the deputy director*
11 *determines that the civil penalty was not assessed assessed, or the*
12 *finding of deficiency that resulted in the assessment of the civil*
13 *penalty was not made, in accordance with applicable statutes or*
14 *regulations of the department, he or she may amend or dismiss the*
15 *civil penalty. penalty or finding of deficiency. The licensee shall*
16 *be notified in writing of the regional manager's deputy director's*
17 *decision within 60 calendar days of the request to review the*
18 *assessment of the civil penalty.*

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

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

38 ~~(5)~~

39 (2) Upon exhausting the ~~deputy director review, review~~
40 *described in paragraph (1), a licensee may further appeal a civil*

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

8 ~~(6)~~

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

15 (k) (1) *A licensee shall have the right to submit to the*
16 *department a written request for a formal review of any other civil*
17 *penalty or deficiency not described in subdivision (j) within 10*
18 *business days of receipt of the notice of a civil penalty assessment*
19 *or a finding of a deficiency, and shall provide all supporting*
20 *documentation at that time. The review shall be conducted by a*
21 *regional manager of the Community Care Licensing Division. If*
22 *the department requires additional information from the licensee,*
23 *that information shall be requested within the first 30 calendar*
24 *days after receiving the request for review. If the regional manager*
25 *determines that the civil penalty was not assessed, or the finding*
26 *of the deficiency was not made, in accordance with applicable*
27 *statutes or regulations of the department, he or she may amend or*
28 *dismiss the civil penalty or finding of deficiency. The licensee shall*
29 *be notified in writing of the regional manager's decision within*
30 *60 calendar days of the request to review the civil penalty or*
31 *finding of deficiency.*

32 (2) *Upon exhausting the review described in paragraph (1), the*
33 *licensee may further appeal that decision to the program*
34 *administrator of the Community Care Licensing Division within*
35 *10 business days of receipt of notice of the regional manager's*
36 *decision. If the program administrator determines that the civil*
37 *penalty was not assessed, or the finding of the deficiency was not*
38 *made, in accordance with applicable statutes or regulations of the*
39 *department, he or she may amend or dismiss the civil penalty or*
40 *finding of deficiency. The licensee shall be notified in writing of*

1 *the program administrator’s decision within 60 calendar days of*
2 *the request to review the civil penalty or finding of deficiency.*

3 ~~(j)~~

4 (l) The department shall adopt regulations implementing this
5 section.

6 ~~(k)~~

7 (m) The department shall, by January 1, 2016, amend its
8 regulations to reflect the changes to this section made by the act
9 that added this subdivision. *Section 4 of Chapter 813 of the Statutes*
10 *of 2014.*

11 ~~(t)~~

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

13 *SEC. 4. Section 1569.35 of the Health and Safety Code is*
14 *amended to read:*

15 1569.35. (a) Any person may request an ~~inspection~~
16 *investigation* of ~~any~~ a residential care facility for the elderly in
17 accordance with this chapter by ~~transmitting~~ *making a complaint*
18 to the department ~~notice of an alleged~~ *alleging* a violation of
19 applicable requirements prescribed by statutes or regulations of
20 this state, including, but not limited to, a denial of access of any
21 person authorized to enter the facility pursuant to Section 9722 of
22 the Welfare and Institutions Code. A complaint may be made either
23 orally or in writing.

24 (b) The substance of the complaint shall be provided to the
25 licensee no earlier than at the time of the inspection. Unless the
26 complainant specifically requests otherwise, neither the substance
27 of the complaint provided the licensee nor any copy of the
28 complaint or any record published, released, or otherwise made
29 available to the licensee shall disclose the name of any person
30 mentioned in the complaint except the name of any duly authorized
31 officer, employee, or agent of the department conducting the
32 investigation or inspection pursuant to this chapter.

33 (c) (1) Upon receipt of a complaint, other than a complaint
34 alleging denial of a statutory right of access to a residential care
35 facility for the elderly, the department shall make a preliminary
36 review and, unless the department determines that the complaint
37 is willfully intended to harass a licensee or is without any
38 reasonable basis, it shall make an onsite inspection within 10 days
39 after receiving the complaint except where the visit would
40 adversely affect the licensing investigation or the investigation of

1 other agencies, including, but not limited to, law enforcement
2 agencies. In either event, the complainant shall be promptly
3 informed of the department's proposed course of action.

4 ~~(d) Upon receipt of a complaint alleging denial of a statutory
5 right of access to a residential facility for the elderly, the
6 department shall review the complaint. The complainant shall be
7 notified promptly of the department's proposed course of action.~~

8 *(2) If a local long-term care ombudsman or the State Long-Term
9 Care Ombudsman files a complaint alleging denial of a statutory
10 right of access to a residential care facility for the elderly under
11 Section 9722 of the Welfare and Institutions Code, the department
12 shall give priority to the complaint pursuant to Section 9721 of
13 the Welfare and Institutions Code and notify the Office of the State
14 Long-Term Care Ombudsman that an investigation has been
15 initiated pursuant to this section.*

16 *(3) Prior to conducting an onsite investigation pursuant to this
17 section, the department shall make a good faith effort, documented
18 in writing, to contact and interview the complainant and inform
19 the complainant of the department's proposed course of action
20 and the relevant deadline for the department to complete its
21 investigation. To the extent practicable, the officer, employee, or
22 agent of the department who will conduct the investigation shall
23 be the representative who interviews and makes contact with the
24 complainant.*

25 *(d) When conducting an investigation pursuant to this section,
26 the department shall consult with and, to the extent practicable,
27 coordinate its investigation of a residential care facility for the
28 elderly with the investigation of the facility by other agencies,
29 including, but not limited to, the Office of the State Long-Term
30 Care Ombudsman and law enforcement agencies.*

31 *(e) Within 10 business days of completing the investigation of
32 a complaint under this section, the department shall notify the
33 complainant in writing of the department's determination as a
34 result of the investigation and of the complainant's right to appeal
35 the findings. The written notice shall describe the appeal process
36 provided for under subdivisions (f) and (g) and include a copy of
37 any reports and documents describing violations and enforcement
38 actions resulting from the investigation.*

39 *(f) A complainant who is dissatisfied with the department's
40 investigation, findings, or enforcement actions resulting from the*

1 investigation may file an appeal by notifying the program manager
 2 of the officer, employee, or agent of the department conducting
 3 the investigation in writing within 15 business days after receiving
 4 the notice described in subdivision (e). The program manager
 5 shall schedule a meeting or teleconference with the complainant
 6 within 30 business days of receiving an appeal. The program
 7 manager shall carefully review the concerns, information, and
 8 evidence presented by the complainant to determine whether the
 9 department’s findings or actions should be modified or whether
 10 further investigation is necessary. Within 10 business days after
 11 conducting the meeting or teleconference with the complainant,
 12 the program manager shall notify the complainant in writing of
 13 the department’s determinations and actions concerning the appeal
 14 and of the appeal rights provided in subdivision (g).

15 (g) If a complainant is dissatisfied with the program manager’s
 16 determination on an appeal pursuant to subdivision (f), the
 17 complainant may, within 15 business days after receipt of this
 18 determination, file an appeal in writing with the Quality Assurance
 19 Unit of the Community Care Licensing Division. Within 30 business
 20 days of receiving an appeal, a representative of the Quality
 21 Assurance Unit shall interview the complainant, consider any
 22 information presented or submitted by the complainant, and review
 23 the complaint record to determine whether the department’s
 24 findings or actions should be modified or whether further
 25 investigation is necessary. No later than 10 business days after
 26 completing this review, the deputy director of the Community Care
 27 Licensing Division shall notify the complainant in writing of the
 28 department’s determinations and actions concerning the appeal.

29 (h) A complainant may be assisted or represented by any person
 30 of his or her choice in the appeal processes described in this
 31 section.

32 SEC. 5. Section 1569.49 of the Health and Safety Code, as
 33 added by Section 6 of Chapter 813 of the Statutes of 2014, is
 34 amended to read:

35 1569.49. (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) or 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 Section 1569.33, the department shall assess
7 an immediate civil penalty of one hundred fifty dollars (\$150) per
8 day per violation for any of the following serious violations:

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

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

15 (ii) Initiated eviction proceedings.

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

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

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

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

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

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

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

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

37 (f) Prior to the issuance of a citation imposing a civil penalty
38 pursuant to subdivision (d) or (e), the decision shall be approved
39 by the ~~director~~ *program administrator of the Community Care*
40 *Licensing Division*.

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

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

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

15 (2) *A notification of a deficiency written by a representative of*
16 *the department shall include a factual description of the nature of*
17 *the deficiency fully stating the manner in which the licensee failed*
18 *to comply with the specified statute or regulation, and, if*
19 *applicable, the particular place or area of the facility in which the*
20 *deficiency occurred.*

21 (j) (1) A licensee shall have the right to submit to the department
22 a written request for a formal review of a civil penalty assessed
23 pursuant to subdivisions (d) and (e) within 10 *business* days of
24 receipt of the notice of a civil penalty assessment and shall provide
25 all supporting documentation at that time. The review shall be
26 conducted by ~~a regional manager~~ *the deputy director* of the
27 Community Care Licensing Division. ~~If the regional manager~~
28 *department requires additional information from the licensee, that*
29 *information shall be requested within the first 30 calendar days*
30 *after receiving the request for review. If the deputy director*
31 *determines that the civil penalty was not assessed assessed, or the*
32 *finding of the deficiency that resulted in the assessment of the civil*
33 *penalty was not made, in accordance with applicable statutes or*
34 *regulations of the department, he or she may amend or dismiss the*
35 *civil penalty. penalty or finding of deficiency.* The licensee shall
36 be notified in writing of the ~~regional manager's~~ *deputy director's*
37 decision within 60 *calendar* days of the request to review the
38 assessment of the civil penalty.

39 (3) ~~The licensee may further appeal to the program administrator~~
40 ~~of the Community Care Licensing Division within 10 days of~~

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

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

18 (5)

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

28 (6)

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

35 (k) (1) *A licensee shall have the right to submit to the*
36 *department a written request for a formal review of any other civil*
37 *penalty or deficiency not described in subdivision (j) within 10*
38 *business days of receipt of the notice of a civil penalty assessment*
39 *or a finding of a deficiency, and shall provide all supporting*
40 *documentation at that time. The review shall be conducted by a*

1 regional manager of the Community Care Licensing Division. If
 2 the department requires additional information from the licensee,
 3 that information shall be requested within the first 30 calendar
 4 days after receiving the request for review. If the regional manager
 5 determines that the civil penalty was not assessed, or the finding
 6 of the deficiency was not made, in accordance with applicable
 7 statutes or regulations of the department, he or she may amend or
 8 dismiss the civil penalty or finding of deficiency. The licensee shall
 9 be notified in writing of the regional manager's decision within
 10 60 calendar days of the request to review the civil penalty or
 11 finding of deficiency.

12 (2) Upon exhausting the review described in paragraph (1), the
 13 licensee may further appeal that decision to the program
 14 administrator of the Community Care Licensing Division within
 15 10 business days of receipt of notice of the regional manager's
 16 decision. If the program administrator determines that the civil
 17 penalty was not assessed, or the finding of the deficiency was not
 18 made, in accordance with applicable statutes or regulations of the
 19 department, he or she may amend or dismiss the civil penalty or
 20 finding of deficiency. The licensee shall be notified in writing of
 21 the program administrator's decision within 60 calendar days of
 22 the request to review the civil penalty or finding of deficiency.

23 (j)

24 (l) The department shall adopt regulations implementing this
 25 section.

26 (k)

27 (m) The department shall, by January 1, 2016, amend its
 28 regulations to reflect the changes to this section made by the act
 29 that added this subdivision. Section 6 of Chapter 813 of the Statutes
 30 of 2014.

31 (t)

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

33 **SECTION 4.**

34 SEC. 6. Section 1596.99 of the Health and Safety Code, as
 35 added by Section 8 of Chapter 813 of the Statutes of 2014, is
 36 amended to read:

37 1596.99. (a) In addition to the suspension, temporary
 38 suspension, or revocation of a license issued under this chapter or
 39 Chapter 3.4 (commencing with Section 1596.70), the department
 40 may levy a civil penalty.

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

9 (c) Notwithstanding Sections 1596.893a, 1596.893b, and
10 1596.98, the department shall assess an immediate civil penalty
11 of one hundred fifty dollars (\$150) per day per violation for any
12 of the following serious violations:

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

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

19 (3) Accessible bodies of water.

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

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

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

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

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

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

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

35 (e) (1) For a violation that the department determines constitutes
36 physical abuse or resulted in serious injury, as defined in Section
37 1596.8865, to a child, the civil penalty shall be assessed as follows:

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

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

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

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

17 (f) Before the issuance of a citation imposing a civil penalty
18 pursuant to subdivision (d) or (e), the decision shall be approved
19 by the ~~director~~ *program administrator of the Community Care*
20 *Licensing Division*.

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

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

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

1 the Welfare and Institutions Code exclusively for the technical
2 assistance, orientation, training, and education of licensed day care
3 center providers.

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

6 (2) *A notification of a deficiency written by a representative of*
7 *the department shall include a factual description of the nature of*
8 *the deficiency fully stating the manner in which the licensee failed*
9 *to comply with the specified statute or regulation, and, if*
10 *applicable, the particular place or area of the facility in which the*
11 *deficiency occurred.*

12 (k) (1) A licensee shall have the right to submit to the
13 department a written request for a formal review of a civil penalty
14 assessed pursuant to subdivisions (d) and (e) within 10 *business*
15 days of receipt of the notice of a civil penalty assessment and shall
16 provide all supporting documentation at that time. The review shall
17 be conducted by ~~a regional manager~~ *the deputy director* of the
18 Community Care Licensing Division. If the ~~regional manager~~
19 *department requires additional information from the licensee, that*
20 *information shall be requested within the first 30 calendar days*
21 *after receiving the request for review. If the deputy director*
22 *determines that the civil penalty was not assessed assessed, or the*
23 *finding of the deficiency that resulted in the assessment of the civil*
24 *penalty was not made, in accordance with applicable statutes or*
25 *regulations of the department, he or she may amend or dismiss the*
26 *civil penalty. penalty or finding of deficiency.* The licensee shall
27 be notified in writing of the ~~regional manager's~~ *deputy director's*
28 decision within 60 *calendar* days of the request to review the
29 assessment of the civil penalty.

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

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

10 (5)

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

20 (6)

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

27 (l) (1) *A licensee shall have the right to submit to the*
28 *department a written request for a formal review of any other civil*
29 *penalty or deficiency not described in subdivision (k) within 10*
30 *business days of receipt of the notice of a civil penalty assessment*
31 *or a finding of a deficiency, and shall provide all supporting*
32 *documentation at that time. The review shall be conducted by a*
33 *regional manager of the Community Care Licensing Division. If*
34 *the department requires additional information from the licensee,*
35 *that information shall be requested within the first 30 calendar*
36 *days after receiving the request for review. If the regional manager*
37 *determines that the civil penalty was not assessed, or the finding*
38 *of the deficiency was not made, in accordance with applicable*
39 *statutes or regulations of the department, he or she may amend or*
40 *dismiss the civil penalty or finding of deficiency. The licensee shall*

1 *be notified in writing of the regional manager's decision within*
2 *60 calendar days of the request to review the civil penalty or*
3 *finding of deficiency.*

4 *(2) Upon exhausting the review described in paragraph (1), the*
5 *licensee may further appeal that decision to the program*
6 *administrator of the Community Care Licensing Division within*
7 *10 business days of receipt of notice of the regional manager's*
8 *decision. If the program administrator determines that the civil*
9 *penalty was not assessed, or the finding of the deficiency was not*
10 *made, in accordance with applicable statutes or regulations of the*
11 *department, he or she may amend or dismiss the civil penalty or*
12 *finding of deficiency. The licensee shall be notified in writing of*
13 *the program administrator's decision within 60 calendar days of*
14 *the request to review the civil penalty or finding of deficiency.*

15 ~~(k)~~

16 *(m) The department shall, by January 1, 2016, amend its*
17 *regulations to reflect the changes to this section made by the act*
18 ~~*that added this subdivision. Section 8 of Chapter 813 of the Statutes*~~
19 ~~*of 2014.*~~

20 ~~(t)~~

21 *(n) This section shall become operative on July 1, 2015.*

22 ~~SEC. 2.~~

23 *SEC. 7. Section 1597.58 of the Health and Safety Code, as*
24 *added by Section 10 of Chapter 813 of the Statutes of 2014, is*
25 *amended to read:*

26 *1597.58. (a) In addition to the suspension, temporary*
27 *suspension, or revocation of a license issued under this chapter,*
28 *the department may levy a civil penalty.*

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

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

- 1 (1) Any violation that results in the injury, illness, or death of
2 a child.
- 3 (2) Absence of supervision, including, but not limited to, a child
4 left unattended, a child left alone with a person under 18 years of
5 age, and lack of supervision resulting in a child wandering away.
- 6 (3) Accessible bodies of water.
- 7 (4) Accessible firearms, ammunition, or both.
- 8 (5) Refused entry to a facility or any part of a facility in violation
9 of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.
- 10 (6) The presence of an excluded person on the premises.
- 11 (d) For a violation that the department determines resulted in
12 the death of a child, the civil penalty shall be assessed as follows:
- 13 (1) Five thousand dollars (\$5,000) for a small family day care
14 home, as described in Section 1597.44.
- 15 (2) Seven thousand five hundred dollars (\$7,500) for a large
16 family day care home, as described in Section 1597.465.
- 17 (e) (1) For a violation that the department determines constitutes
18 physical abuse or resulted in serious injury, as defined in Section
19 1596.8865, to a child, the civil penalty shall be assessed as follows:
- 20 (A) One thousand dollars (\$1,000) for a small family day care
21 home, as described in Section 1597.44.
- 22 (B) Two thousand dollars (\$2,000) for a large family day care
23 home, as described in Section 1597.465.
- 24 (2) For purposes of this subdivision, “physical abuse” includes
25 physical injury inflicted upon a child by another person by other
26 than accidental means, sexual abuse as defined in Section 11165.1
27 of the Penal Code, neglect as defined in Section 11165.2 of the
28 Penal Code, or unlawful corporal punishment or injury as defined
29 in Section 11165.4 of the Penal Code when the person responsible
30 for the child’s welfare is a licensee, administrator, or employee of
31 any facility licensed to care for children, or an administrator or
32 employee of a public or private school or other institution or
33 agency.
- 34 (f) Before the issuance of a citation imposing a civil penalty
35 pursuant to subdivision (d) or (e), the decision shall be approved
36 by the ~~director~~ *program administrator of the Community Care*
37 *Licensing Division*.
- 38 (g) Notwithstanding Sections 1596.893a, 1596.893b, 1597.56,
39 and 1597.62, any family day care home that is cited for repeating
40 the same violation of this chapter or Chapter 3.4 (commencing

1 with Section 1596.70), within 12 months of the first violation is
2 subject to an immediate civil penalty assessment of up to one
3 hundred fifty dollars (\$150) and may be assessed up to fifty dollars
4 (\$50) for each day the violation continues until the deficiency is
5 corrected.

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

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

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

26 (2) *A notification of a deficiency written by a representative of*
27 *the department shall include a factual description of the nature of*
28 *the deficiency fully stating the manner in which the licensee failed*
29 *to comply with the specified statute or regulation, and, if*
30 *applicable, the particular place or area of the facility in which the*
31 *deficiency occurred.*

32 (k) (1) A licensee shall have the right to submit to the
33 department a written request for a formal review of a civil penalty
34 assessed pursuant to subdivisions (d) and (e) within 10 *business*
35 days of receipt of the notice of a civil penalty assessment and shall
36 provide all supporting documentation at that time. The review shall
37 be conducted by ~~a regional manager~~ *the deputy director* of the
38 Community Care Licensing Division. If the ~~regional manager~~
39 *department requires additional information from the licensee, that*
40 *information shall be requested within the first 30 calendar days*

1 *after receiving the request for review. If the deputy director*
2 *determines that the civil penalty was not assessed assessed, or the*
3 *finding of the deficiency that resulted in the assessment of the civil*
4 *penalty was not made, in accordance with applicable statutes or*
5 *regulations of the department, he or she may amend or dismiss the*
6 *civil-penalty. penalty or finding of deficiency. The licensee shall*
7 *be notified in writing of the-regional manager's deputy director's*
8 *decision within 60 calendar days of the request to review the*
9 *assessment of the civil penalty.*

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

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

29 ~~(5)~~

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

39 ~~(6)~~

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

7 (l) (1) A licensee shall have the right to submit to the
8 department a written request for a formal review of any other civil
9 penalty or deficiency not described in subdivision (k) within 10
10 business days of receipt of the notice of a civil penalty assessment
11 or a finding of a deficiency, and shall provide all supporting
12 documentation at that time. The review shall be conducted by a
13 regional manager of the Community Care Licensing Division. If
14 the department requires additional information from the licensee,
15 that information shall be requested within the first 30 calendar
16 days after receiving the request for review. If the regional manager
17 determines that the civil penalty was not assessed, or the finding
18 of the deficiency was not made, in accordance with applicable
19 statutes or regulations of the department, he or she may amend or
20 dismiss the civil penalty or finding of deficiency. The licensee shall
21 be notified in writing of the regional manager's decision within
22 60 calendar days of the request to review the civil penalty or
23 finding of deficiency.

24 (2) Upon exhausting the review described in paragraph (1), the
25 licensee may further appeal that decision to the program
26 administrator of the Community Care Licensing Division within
27 10 business days of receipt of notice of the regional manager's
28 decision. If the program administrator determines that the civil
29 penalty was not assessed, or the finding of the deficiency was not
30 made, in accordance with applicable statutes or regulations of the
31 department, he or she may amend or dismiss the civil penalty or
32 finding of deficiency. The licensee shall be notified in writing of
33 the program administrator's decision within 60 calendar days of
34 the request to review the civil penalty or finding of deficiency.

35 ~~(k)~~

36 (m) The department shall, by January 1, 2016, amend its
37 regulations to reflect the changes to this section made by the act
38 that added this subdivision. Section 10 of Chapter 813 of the
39 Statutes of 2014.

40 ~~(t)~~

- 1 *(n)* This section shall become operative on July 1, 2015.

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