

AMENDED IN SENATE AUGUST 31, 2015

AMENDED IN SENATE JULY 16, 2015

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 1548, 1568.0822, 1569.35, 1569.49, 1596.842, 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, deficiencies, and appeal procedures.

(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, and family day care homes. Existing law authorizes 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~~ *require* ~~the department relating to investigations conducted pursuant to these provisions, including, among others, that~~ *department*, within 10 days of completing the investigation of a complaint, ~~the department~~ *complaint conducted pursuant to these provisions*, to 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 the above-described provisions, as 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. *The bill would authorize the department to implement and administer these provisions through all-county letters or similar written instructions until regulations are adopted pursuant to the Administrative Procedure Act, and would make conforming changes.*

(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 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~~ day care 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: 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. Except as otherwise
18 provided in this chapter, a civil penalty assessment shall not exceed
19 one hundred fifty dollars (\$150) per 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (h) Any facility that is assessed a civil penalty pursuant to
24 subdivision (g) that repeats the same violation of this chapter within
25 12 months of the violation subject to subdivision (g) is subject to
26 an immediate civil penalty of one hundred fifty dollars (\$150) for
27 each day the violation continues until the deficiency is corrected.

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

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

36 (j) (1) A licensee shall have the right to submit to the
37 department a written request for a formal review of a civil penalty
38 assessed pursuant to subdivisions (d) and (e) within ~~10~~ 15 business
39 days of receipt of the notice of a civil penalty assessment and shall
40 provide all *available* supporting documentation at that time. The

1 review shall be conducted by the deputy director of the Community
2 Care Licensing Division. *The licensee may submit additional*
3 *supporting documentation that was unavailable at the time of*
4 *submitting the request for review within the first 30 business days*
5 *after submitting the request for review.* If the department requires
6 additional information from the licensee, that information shall be
7 requested within the first 30 business days after receiving the
8 request for review. *The licensee shall provide this additional*
9 *information within 30 business days of receiving the request from*
10 *the department.* If the deputy director determines that the civil
11 penalty was not assessed, or the finding of the deficiency that
12 resulted in the assessment of the civil penalty was not made, in
13 accordance with applicable statutes or regulations of the
14 department, he or she may amend or dismiss the civil penalty or
15 finding of deficiency. The licensee shall be notified in writing of
16 the deputy director's decision within 60 business days of the
17 ~~request to review the assessment of the civil penalty.~~ *date when*
18 *all necessary information has been provided to the department by*
19 *the licensee.*

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

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

34 (k) (1) A licensee shall have the right to submit to the
35 department a written request for a formal review of any other civil
36 penalty or deficiency not described in subdivision (j) within ~~10~~ 15
37 business days of receipt of the notice of a civil penalty assessment
38 or a finding of a deficiency, and shall provide all *available*
39 supporting documentation at that time. The review shall be
40 conducted by a regional manager of the Community Care Licensing

1 Division. *The licensee may submit additional supporting*
2 *documentation that was unavailable at the time of submitting the*
3 *request for review within the first 30 business days after submitting*
4 *the request for review. If the department requires additional*
5 *information from the licensee, that information shall be requested*
6 *within the first 30 business days after receiving the request for*
7 *review. The licensee shall provide this additional information*
8 *within 30 business days of receiving the request from the*
9 *department. If the regional manager determines that the civil*
10 *penalty was not assessed, or the finding of the deficiency was not*
11 *made, in accordance with applicable statutes or regulations of the*
12 *department, he or she may amend or dismiss the civil penalty or*
13 *finding of deficiency. The licensee shall be notified in writing of*
14 *the regional manager's decision within 60 business days of the*
15 ~~*request to review the civil penalty or finding of deficiency. date*~~
16 ~~*when all necessary information has been provided to the*~~
17 ~~*department by the licensee.*~~

18 (2) Upon exhausting the review described in paragraph (1), the
19 licensee may further appeal that decision to the program
20 administrator of the Community Care Licensing Division within
21 ~~10~~ 15 business days of receipt of notice of the regional manager's
22 decision. *The licensee may submit additional supporting*
23 *documentation that was unavailable at the time of appeal to the*
24 *program administrator within the first 30 business days after*
25 *requesting that appeal. If the department requires additional*
26 *information from the licensee, that information shall be requested*
27 *within the first 30 business days after receiving the request for the*
28 *appeal. The licensee shall provide this additional information*
29 *within 30 business days of receiving the request from the*
30 *department. If the program administrator determines that the civil*
31 *penalty was not assessed, or the finding of the deficiency was not*
32 *made, in accordance with applicable statutes or regulations of the*
33 *department, he or she may amend or dismiss the civil penalty or*
34 *finding of deficiency. The licensee shall be notified in writing of*
35 *the program administrator's decision within 60 business days of*
36 ~~*the request to review the civil penalty or finding of deficiency.*~~
37 ~~*date when all necessary information has been provided to the*~~
38 ~~*department by the licensee. The program administrator's decision*~~
39 ~~*is considered final and concludes the licensee's administrative*~~

1 *appeal rights regarding the appeal conducted pursuant to this*
 2 *paragraph.*

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

5 (m) The department shall, by January 1, 2016, amend its
 6 regulations to reflect the changes to this section made by Section
 7 2 of Chapter 813 of the Statutes of 2014.

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

15 (o) *Notwithstanding the Administrative Procedure Act (Chapter*
 16 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
 17 *Title 2 of the Government Code), the department may implement*
 18 *and administer the changes made by the act that added this*
 19 *subdivision through all-county letters or similar written*
 20 *instructions until regulations are adopted pursuant to the*
 21 *Administrative Procedure Act.*

22 ~~(p)~~

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

24 SEC. 3. Section 1568.0822 of the Health and Safety Code, as
 25 added by Section 4 of Chapter 813 of the Statutes of 2014, is
 26 amended to read:

27 1568.0822. (a) In addition to the suspension, temporary
 28 suspension, or revocation of a license issued under this chapter,
 29 the department may levy a civil penalty.

30 (b) The amount of the civil penalty shall not be less than
 31 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
 32 for each violation of this chapter, except where the nature or
 33 seriousness of the violation or the frequency of the violation
 34 warrants a higher penalty or an immediate civil penalty assessment,
 35 or both, as determined by the department. Except as otherwise
 36 provided in this chapter, a civil penalty assessment shall not exceed
 37 one hundred fifty dollars (\$150) per day per violation.

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

- 1 (1) (A) Fire clearance violations, including, but not limited to,
2 overcapacity, ambulatory status, inoperable smoke alarms, and
3 inoperable fire alarm systems. The civil penalty shall not be
4 assessed if the licensee has done either of the following:
- 5 (i) Requested the appropriate fire clearance based on ambulatory,
6 nonambulatory, or bedridden status, and the decision is pending.
 - 7 (ii) Initiated eviction proceedings.
- 8 (B) A licensee denied a clearance for bedridden residents may
9 appeal to the fire authority, and, if that appeal is denied, may
10 subsequently appeal to the Office of the State Fire Marshal, and
11 shall not be assessed an immediate civil penalty until the final
12 appeal is decided, or after 60 days has passed from the date of the
13 citation, whichever is earlier.
- 14 (2) Absence of supervision, as required by statute and regulation.
- 15 (3) Accessible bodies of water, when prohibited in this chapter
16 or regulations adopted pursuant to this chapter.
- 17 (4) Accessible firearms, ammunition, or both.
- 18 (5) Refused entry to a facility or any part of a facility in violation
19 of Section 1568.07 or 1568.071.
- 20 (6) The presence of an excluded person on the premises.
- 21 (d) For a violation that the department determines resulted in
22 the death of a resident, the civil penalty shall be fifteen thousand
23 dollars (\$15,000).
- 24 (e) For a violation that the department determines constitutes
25 physical abuse, as defined in Section 15610.63 of the Welfare and
26 Institutions Code, or resulted in serious bodily injury, as defined
27 in Section 243 of the Penal Code, to a resident, the civil penalty
28 shall be ten thousand dollars (\$10,000).
- 29 (f) Prior to the issuance of a citation imposing a civil penalty
30 pursuant to subdivision (d) or (e), the decision shall be approved
31 by the program administrator of the Community Care Licensing
32 Division.
- 33 (g) Notwithstanding Section 1568.07, any residential care
34 facility that is cited for repeating the same violation of this chapter
35 within 12 months of the first violation is subject to an immediate
36 civil penalty of one hundred fifty dollars (\$150) and fifty dollars
37 (\$50) for each day the violation continues until the deficiency is
38 corrected.
- 39 (h) Any residential care facility that is assessed a civil penalty
40 pursuant to subdivision (g) that repeats the same violation of this

1 chapter within 12 months of the violation subject to subdivision
2 (g) shall be assessed an immediate civil penalty of one thousand
3 dollars (\$1,000) and one hundred dollars (\$100) for each day the
4 violation continues until the deficiency is corrected, provided that
5 the violation is a serious violation.

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

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

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

37 (2) Upon exhausting the review described in paragraph (1), a
38 licensee may further appeal that decision to an administrative law
39 judge. Proceedings shall be conducted in accordance with Chapter
40 5 (commencing with Section 11500) of Part 1 of Division 3 of

1 Title 2 of the Government Code, and the department shall have all
2 the powers granted by those provisions. In all proceedings
3 conducted in accordance with this section, the standard of proof
4 shall be by a preponderance of the evidence.

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

11 (k) (1) A licensee shall have the right to submit to the
12 department a written request for a formal review of any other civil
13 penalty or deficiency not described in subdivision (j) within ~~10~~ 15
14 business days of receipt of the notice of a civil penalty assessment
15 or a finding of a deficiency, and shall provide all *available*
16 supporting documentation at that time. The review shall be
17 conducted by a regional manager of the Community Care Licensing
18 Division. *The licensee may submit additional supporting*
19 *documentation that was unavailable at the time of submitting the*
20 *request for review within the first 30 business days after submitting*
21 *the request for review.* If the department requires additional
22 information from the licensee, that information shall be requested
23 within the first 30 business days after receiving the request for
24 review. *The licensee shall provide this additional information*
25 *within 30 business days of receiving the request from the*
26 *department.* If the regional manager 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 regional manager's decision within 60 business days of the
32 ~~request to review the civil penalty or finding of deficiency.~~ *date*
33 *when all necessary information has been provided to the*
34 *department by the licensee.*

35 (2) Upon exhausting the review described in paragraph (1), the
36 licensee may further appeal that decision to the program
37 administrator of the Community Care Licensing Division within
38 ~~10~~ 15 business days of receipt of notice of the regional manager's
39 decision. *The licensee may submit additional supporting*
40 *documentation that was unavailable at the time of appeal to the*

1 *program administrator within the first 30 business days after*
 2 *requesting that appeal. If the department requires additional*
 3 *information from the licensee, that information shall be requested*
 4 *within the first 30 business days after receiving the request for the*
 5 *appeal. The licensee shall provide this additional information*
 6 *within 30 business days of receiving the request from the*
 7 *department. If the program administrator determines that the civil*
 8 *penalty was not assessed, or the finding of the deficiency was not*
 9 *made, in accordance with applicable statutes or regulations of the*
 10 *department, he or she may amend or dismiss the civil penalty or*
 11 *finding of deficiency. The licensee shall be notified in writing of*
 12 *the program administrator’s decision within 60 business days of*
 13 *the request to review the civil penalty or finding of deficiency.*
 14 *date when all necessary information has been provided to the*
 15 *department by the licensee. The program administrator’s decision*
 16 *is considered final and concludes the licensee’s administrative*
 17 *appeal rights regarding the appeal conducted pursuant to this*
 18 *paragraph.*

19 (l) The department shall adopt regulations implementing this
 20 section.

21 (m) The department shall, by January 1, 2016, amend its
 22 regulations to reflect the changes to this section made by Section
 23 4 of Chapter 813 of the Statutes of 2014.

24 (n) *Notwithstanding the Administrative Procedure Act (Chapter*
 25 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
 26 *Title 2 of the Government Code), the department may implement*
 27 *and administer the changes made by the act that added this*
 28 *subdivision through all-county letters or similar written*
 29 *instructions until regulations are adopted pursuant to the*
 30 *Administrative Procedure Act.*

31 ~~(n)~~

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

33 SEC. 4. Section 1569.35 of the Health and Safety Code is
 34 amended to read:

35 1569.35. (a) Any person may request an investigation of a
 36 residential care facility for the elderly in accordance with this
 37 chapter by making a complaint to the department alleging a
 38 violation of applicable requirements prescribed by statutes or
 39 regulations of this state, including, but not limited to, a denial of
 40 access of any person authorized to enter the facility pursuant to

1 Section 9722 of the Welfare and Institutions Code. A complaint
2 may be made either orally or in writing.

3 (b) The substance of the complaint shall be provided to the
4 licensee no earlier than at the time of the inspection. Unless the
5 complainant specifically requests otherwise, neither the substance
6 of the complaint provided the licensee nor any copy of the
7 complaint or any record published, released, or otherwise made
8 available to the licensee shall disclose the name of any person
9 mentioned in the complaint except the name of any duly authorized
10 officer, employee, or agent of the department conducting the
11 investigation or inspection pursuant to this chapter.

12 (c) (1) Upon receipt of a complaint, other than a complaint
13 alleging denial of a statutory right of access to a residential care
14 facility for the elderly, the department shall make a preliminary
15 review and, unless the department determines that the complaint
16 is willfully intended to harass a licensee or is without any
17 reasonable basis, it shall make an onsite inspection within 10 days
18 after receiving the complaint except where the visit would
19 adversely affect the licensing investigation or the investigation of
20 other agencies, including, but not limited to, law enforcement
21 agencies. In either event, the complainant shall be promptly
22 informed of the department's proposed course of action.

23 (2) If a local long-term care ombudsman or the State Long-Term
24 Care Ombudsman files a complaint alleging denial of a statutory
25 right of access to a residential care facility for the elderly under
26 Section 9722 of the Welfare and Institutions Code, the department
27 shall give priority to the complaint pursuant to Section 9721 of
28 the Welfare and Institutions Code and notify the Office of the State
29 Long-Term Care Ombudsman that an investigation has been
30 initiated pursuant to this section.

31 (3) Prior to conducting an onsite investigation pursuant to this
32 section, the department shall make a good faith effort, documented
33 in writing, to contact and interview the complainant and inform
34 the complainant of the department's proposed course of action and
35 the relevant deadline for the department to complete its
36 investigation. To the extent practicable, the officer, employee, or
37 agent of the department who will conduct the investigation shall
38 be the representative who interviews and makes contact with the
39 complainant.

1 ~~(d) When conducting an investigation pursuant to this section,~~
2 ~~the department shall consult with and, to the extent practicable,~~
3 ~~coordinate its investigation of a residential care facility for the~~
4 ~~elderly with the investigation of the facility by other agencies,~~
5 ~~including, but not limited to, the Office of the State Long-Term~~
6 ~~Care Ombudsman and law enforcement agencies.~~

7 (e)

8 (d) Within 10 business days of completing the investigation of
9 a complaint under this section, the department shall notify the
10 complainant in writing of the department's determination as a
11 result of the investigation and of the complainant's right to appeal
12 the findings. The written notice shall describe the appeal process
13 provided for under subdivisions (f) and (g) and include a copy of
14 any reports and documents describing violations and enforcement
15 actions resulting from the investigation.

16 (f) A complainant who is dissatisfied with the department's
17 investigation, findings, or enforcement actions resulting from the
18 investigation may file an appeal by notifying the program manager
19 of the officer, employee, or agent of the department conducting
20 the investigation in writing within 15 business days after receiving
21 the notice described in subdivision (e). The program manager shall
22 schedule a meeting or teleconference with the complainant within
23 30 business days of receiving an appeal. The program manager
24 shall carefully review the concerns, information, and evidence
25 presented by the complainant to determine whether the
26 department's findings or actions should be modified or whether
27 further investigation is necessary. Within 10 business days after
28 conducting the meeting or teleconference with the complainant,
29 the program manager shall notify the complainant in writing of
30 the department's determinations and actions concerning the appeal
31 and of the appeal rights provided in subdivision (g).

32 (g) If a complainant is dissatisfied with the program manager's
33 determination on an appeal pursuant to subdivision (f), the
34 complainant may, within 15 business days after receipt of this
35 determination, file an appeal in writing with the Quality Assurance
36 Unit of the Community Care Licensing Division. Within 30
37 business days of receiving an appeal, a representative of the Quality
38 Assurance Unit shall interview the complainant, consider any
39 information presented or submitted by the complainant, and review
40 the complaint record to determine whether the department's

1 ~~findings or actions should be modified or whether further~~
2 ~~investigation is necessary. No later than 10 business days after~~
3 ~~completing this review, the deputy director of the Community Care~~
4 ~~Licensing Division shall notify the complainant in writing of the~~
5 ~~department's determinations and actions concerning the appeal.~~

6 ~~(h) A complainant may be assisted or represented by any person~~
7 ~~of his or her choice in the appeal processes described in this~~
8 ~~section.~~

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

12 1569.49. (a) In addition to the suspension, temporary
13 suspension, or revocation of a license issued under this chapter,
14 the department may levy a civil penalty.

15 (b) The amount of the civil penalty shall not be less than
16 twenty-five dollars (\$25) or more than fifty dollars (\$50) per day
17 for each violation of this chapter except where the nature or
18 seriousness of the violation or the frequency of the violation
19 warrants a higher penalty or an immediate civil penalty assessment,
20 or both, as determined by the department. Except as otherwise
21 provided in this chapter, a civil penalty assessment shall not exceed
22 one hundred fifty dollars (\$150) per day per violation.

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

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

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

32 (ii) Initiated eviction proceedings.

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

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

- 1 (3) Accessible bodies of water, when prohibited in this chapter
2 or regulations adopted pursuant to this chapter.
- 3 (4) Accessible firearms, ammunition, or both.
- 4 (5) Refused entry to a facility or any part of a facility in violation
5 of Section 1569.32, 1569.33, or 1569.35.
- 6 (6) The presence of an excluded person on the premises.
- 7 (d) For a violation that the department determines resulted in
8 the death of a resident, the civil penalty shall be fifteen thousand
9 dollars (\$15,000).
- 10 (e) For a violation that the department determines constitutes
11 physical abuse, as defined in Section 15610.63 of the Welfare and
12 Institutions Code, or resulted in serious bodily injury, as defined
13 in Section 15610.67 of the Welfare and Institutions Code, to a
14 resident, the civil penalty shall be ten thousand dollars (\$10,000).
- 15 (f) Prior to the issuance of a citation imposing a civil penalty
16 pursuant to subdivision (d) or (e), the decision shall be approved
17 by the program administrator of the Community Care Licensing
18 Division.
- 19 (g) Notwithstanding Section 1569.33, any residential care
20 facility for the elderly that is cited for repeating the same violation
21 of this chapter within 12 months of the first violation is subject to
22 an immediate civil penalty of one hundred fifty dollars (\$150) and
23 fifty dollars (\$50) for each day the violation continues until the
24 deficiency is corrected.
- 25 (h) Any residential care facility for the elderly that is assessed
26 a civil penalty pursuant to subdivision (g) that repeats the same
27 violation of this chapter within 12 months of the violation subject
28 to subdivision (g) shall be assessed an immediate civil penalty of
29 one thousand dollars (\$1,000) and one hundred dollars (\$100) for
30 each day the violation continues until the deficiency is corrected.
- 31 (i) (1) The department shall adopt regulations setting forth the
32 appeal procedures for deficiencies.
- 33 (2) A notification of a deficiency written by a representative of
34 the department shall include a factual description of the nature of
35 the deficiency fully stating the manner in which the licensee failed
36 to comply with the specified statute or regulation, and, if
37 applicable, the particular place or area of the facility in which the
38 deficiency occurred.
- 39 (j) (1) A licensee shall have the right to submit to the
40 department a written request for a formal review of a civil penalty

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

23 (2) Upon exhausting the review described in paragraph (1), a
24 licensee may further appeal that decision to an administrative law
25 judge. Proceedings shall be conducted in accordance with Chapter
26 5 (commencing with Section 11500) of Part 1 of Division 3 of
27 Title 2 of the Government Code, and the department shall have all
28 the powers granted by those provisions. In all proceedings
29 conducted in accordance with this section, the standard of proof
30 shall be by a preponderance of the evidence.

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

37 (k) (1) A licensee shall have the right to submit to the
38 department a written request for a formal review of any other civil
39 penalty or deficiency not described in subdivision (j) within ~~10~~ 15
40 business days of receipt of the notice of a civil penalty assessment

1 or a finding of a deficiency, and shall provide all *available*
2 supporting documentation at that time. The review shall be
3 conducted by a regional manager of the Community Care Licensing
4 Division. *The licensee may submit additional supporting*
5 *documentation that was unavailable at the time of submitting the*
6 *request for review within the first 30 business days after submitting*
7 *the request for review.* If the department requires additional
8 information from the licensee, that information shall be requested
9 within the first 30 business days after receiving the request for
10 review. *The licensee shall provide this additional information*
11 *within 30 business days of receiving the request from the*
12 *department.* If the regional manager determines that the civil
13 penalty was not assessed, or the finding of the deficiency was not
14 made, in accordance with applicable statutes or regulations of the
15 department, he or she may amend or dismiss the civil penalty or
16 finding of deficiency. The licensee shall be notified in writing of
17 the regional manager's decision within 60 business days of the
18 ~~request to review the civil penalty or finding of deficiency.~~ *date*
19 *when all necessary information has been provided to the*
20 *department by the licensee.*

21 (2) Upon exhausting the review described in paragraph (1), the
22 licensee may further appeal that decision to the program
23 administrator of the Community Care Licensing Division within
24 ~~10~~ 15 business days of receipt of notice of the regional manager's
25 decision. *The licensee may submit additional supporting*
26 *documentation that was unavailable at the time of appeal to the*
27 *program administrator within the first 30 business days after*
28 *requesting that appeal.* If the department requires additional
29 information from the licensee, that information shall be requested
30 within the first 30 business days after receiving the request for the
31 appeal. *The licensee shall provide this additional information*
32 *within 30 business days of receiving the request from the*
33 *department.* If the program administrator determines that the civil
34 penalty was not assessed, or the finding of the deficiency was not
35 made, in accordance with applicable statutes or regulations of the
36 department, he or she may amend or dismiss the civil penalty or
37 finding of deficiency. The licensee shall be notified in writing of
38 the program administrator's decision within 60 business days of
39 ~~the request to review the civil penalty or finding of deficiency.~~
40 *date when all necessary information has been provided to the*

1 *department by the licensee. The program administrator's decision*
2 *is considered final and concludes the licensee's administrative*
3 *appeal rights regarding the appeal conducted pursuant to this*
4 *paragraph.*

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

7 (m) The department shall, by January 1, 2016, amend its
8 regulations to reflect the changes to this section made by Section
9 6 of Chapter 813 of the Statutes of 2014.

10 (n) *Notwithstanding the Administrative Procedure Act (Chapter*
11 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
12 *Title 2 of the Government Code), the department may implement*
13 *and administer the changes made by the act that added this*
14 *subdivision through all-county letters or similar written*
15 *instructions until regulations are adopted pursuant to the*
16 *Administrative Procedure Act.*

17 ~~(n)~~

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

19 SEC. 6. *Section 1596.842 of the Health and Safety Code is*
20 *amended to read:*

21 1596.842. Following approval by the department of a list of
22 provider rights, the Community Care Licensing Division shall
23 print and distribute in person, to individuals or to groups, and by
24 other appropriate methods of distribution, a list of provider rights
25 which shall include, but not be limited to, the following:

26 (a) Site visit rights:

27 (1) The right to require licensing field staff to identify
28 themselves.

29 (2) The right to be advised of the type of the visit, whether
30 complaint, plan of correction, prelicensing, or some other type.
31 When a site visit is made to investigate a complaint, the site visit
32 rights described in paragraphs (4) and (9) shall be applicable at
33 the completion of the investigation.

34 (3) The right to be treated as a professional and with dignity
35 and respect.

36 (4) The right to receive an accurate report of the evaluator's
37 findings listing each observed deficiency. Each deficiency shall
38 be separately numbered, so as to clearly indicate the number of
39 deficiencies, shall be accompanied by a number that corresponds
40 to a section of law or licensing regulation, and shall include a

1 description of the evaluator's observation that led to the finding
2 of a deficiency. The description of the evaluator's observation
3 shall include a clear explanation of why the existing condition
4 constitutes a deficiency, unless the description of the observation
5 provides the explanation.

6 (5) The right to review licensing laws, regulations, and policy.

7 (6) The right to an impartial investigation of all complaints.

8 (7) The right, at the time of the visit, to determine and develop
9 a plan of correction for deficiencies cited.

10 (8) The right to use the licensing report (LIC 809) as a means
11 to agree or disagree with cited deficiencies.

12 (9) The right to an exit interview upon completion of the visit
13 and to receive a signed copy of the LIC 809.

14 (10) The right to be informed on the LIC 809 of the evaluator's
15 supervisor and his or her telephone number.

16 (11) The right of access to the public file on any facility and
17 the right to purchase a copy at a reasonable cost.

18 (b) Initial appeal rights:

19 (1) The right, without prejudice, to appeal any decision, any
20 failure to act according to law or regulation, or any failure to act
21 within any specified timeline, through the licensing agency ~~up to~~
22 ~~the deputy director.~~ *as specified in Sections 1596.99 and 1597.58.*

23 (2) The right to request a meeting with district office
24 administrators to discuss any licensing issue and with notice to
25 bring any person to the meeting.

26 (3) The right to due process and the option of bringing a
27 representative to any administrative action.

28 (c) The right to file a formal complaint, and receive a written
29 response to that complaint within 30 days, for any licensing issue
30 not covered by subdivision (b), including, but not limited to,
31 inappropriate behavior of department employees.

32 (d) The department shall, by June 30, 1992, mail to all licensees
33 a copy of this section and a full and complete copy of the appeals
34 procedure developed to implement subdivision (b).

35 (e) The department shall, on all forms it requires or recommends
36 that providers use, all notices of regulations or departmental policy,
37 and all notices to implement this section, clearly label the
38 department as the source of the material, including the name of
39 the department, the name of the division responsible for
40 implementing this chapter, and the address of that division.

1 ~~SEC. 6.~~

2 *SEC. 7.* Section 1596.99 of the Health and Safety Code, as
3 added by Section 8 of Chapter 813 of the Statutes of 2014, is
4 amended to read:

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

9 (b) The amount of the civil penalty shall not be less than
10 twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day
11 for each violation of this chapter except where the nature or
12 seriousness of the violation or the frequency of the violation
13 warrants a higher penalty or an immediate civil penalty assessment,
14 or both, as determined by the department. Except as otherwise
15 provided in this chapter, a civil penalty assessment shall not exceed
16 one hundred fifty dollars (\$150) per day per violation.

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

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

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

27 (3) Accessible bodies of water.

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

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

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

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

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

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

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

4 (e) (1) For a violation that the department determines constitutes
5 physical abuse or resulted in serious injury, as defined in Section
6 1596.8865, to a child, the civil penalty shall be assessed as follows:

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

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

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

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

26 (f) Before the issuance of a citation imposing a civil penalty
27 pursuant to subdivision (d) or (e), the decision shall be approved
28 by the program administrator of the Community Care Licensing
29 Division.

30 (g) Notwithstanding Sections 1596.893a, 1596.893b, and
31 1596.98, any day care center that is cited for repeating the same
32 violation of this chapter or Chapter 3.4 (commencing with Section
33 1596.70) within 12 months of the first violation is subject to an
34 immediate civil penalty of one hundred fifty dollars (\$150) for
35 each day the violation continues until the deficiency is corrected.

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

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

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

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

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

22 (k) (1) A licensee shall have the right to submit to the
23 department a written request for a formal review of a civil penalty
24 assessed pursuant to subdivisions (d) and (e) within ~~10~~ 15 business
25 days of receipt of the notice of a civil penalty assessment and shall
26 provide all *available* supporting documentation at that time. The
27 review shall be conducted by the deputy director of the Community
28 Care Licensing Division. *The licensee may submit additional*
29 *supporting documentation that was unavailable at the time of*
30 *submitting the request for review within the first 30 business days*
31 *after submitting the request for review.* If the department requires
32 additional information from the licensee, that information shall be
33 requested within the first 30 business days after receiving the
34 request for review. *The licensee shall provide this additional*
35 *information within 30 business days of receiving the request from*
36 *the department.* If the deputy director determines that the civil
37 penalty was not assessed, or the finding of the deficiency that
38 resulted in the assessment of the civil penalty was not made, in
39 accordance with applicable statutes or regulations of the
40 department, he or she may amend or dismiss the civil penalty or

1 finding of deficiency. The licensee shall be notified in writing of
2 the deputy director's decision within 60 business days of the
3 ~~request to review the assessment of the civil penalty.~~ *date when*
4 *all necessary information has been provided to the department by*
5 *the licensee.*

6 (2) Upon exhausting the review described in paragraph (1), a
7 licensee may further appeal that decision to an administrative law
8 judge. Proceedings shall be conducted in accordance with Chapter
9 5 (commencing with Section 11500) of Part 1 of Division 3 of
10 Title 2 of the Government Code, and the department shall have all
11 the powers granted by those provisions. In all proceedings
12 conducted in accordance with this section, the standard of proof
13 shall be by a preponderance of the evidence.

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

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

1 ~~request to review the civil penalty or finding of deficiency. date~~
2 ~~when all necessary information has been provided to the~~
3 ~~department by the licensee.~~

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~~ 15 business days of receipt of notice of the regional manager's
8 decision. *The licensee may submit additional supporting*
9 *documentation that was unavailable at the time of appeal to the*
10 *program administrator within the first 30 business days after*
11 *requesting that appeal. If the department requires additional*
12 *information from the licensee, that information shall be requested*
13 *within the first 30 business days after receiving the request for the*
14 *appeal. The licensee shall provide this additional information*
15 *within 30 business days of receiving the request from the*
16 *department. 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 business days of*
22 ~~the request to review the civil penalty or finding of deficiency.~~
23 ~~date when all necessary information has been provided to the~~
24 ~~department by the licensee. The program administrator's decision~~
25 ~~is considered final and concludes the licensee's administrative~~
26 ~~appeal rights regarding the appeal conducted pursuant to this~~
27 ~~paragraph.~~

28 (m) The department shall, by January 1, 2016, amend its
29 regulations to reflect the changes to this section made by Section
30 8 of Chapter 813 of the Statutes of 2014.

31 (n) *Notwithstanding the Administrative Procedure Act (Chapter*
32 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
33 *Title 2 of the Government Code), the department may implement*
34 *and administer the changes made by the act that added this*
35 *subdivision through all-county letters or similar written*
36 *instructions until regulations are adopted pursuant to the*
37 *Administrative Procedure Act.*

38 ~~(n)~~

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

1 ~~SEC. 7.~~

2 *SEC. 8.* Section 1597.58 of the Health and Safety Code, as
3 added by Section 10 of Chapter 813 of the Statutes of 2014, is
4 amended to read:

5 1597.58. (a) In addition to the suspension, temporary
6 suspension, or revocation of a license issued under this chapter,
7 the department 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. Except as otherwise
14 provided in this chapter, a civil penalty assessment shall not exceed
15 one hundred fifty dollars (\$150) per day per violation.

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

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

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

25 (3) Accessible bodies of water.

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

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

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

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

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

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

36 (e) (1) For a violation that the department determines constitutes
37 physical abuse or resulted in serious injury, as defined in Section
38 1596.8865, to a child, the civil penalty shall be assessed as follows:

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

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

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

13 (f) Before the issuance of a citation imposing a civil penalty
14 pursuant to subdivision (d) or (e), the decision shall be approved
15 by the program administrator of the Community Care Licensing
16 Division.

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

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

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

1 for the technical assistance, orientation, training, and education of
2 licensed family day care home providers.

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

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

11 (k) (1) A licensee shall have the right to submit to the
12 department a written request for a formal review of a civil penalty
13 assessed pursuant to subdivisions (d) and (e) within ~~10~~ 15 business
14 days of receipt of the notice of a civil penalty assessment and shall
15 provide all *available* supporting documentation at that time. The
16 review shall be conducted by the deputy director of the Community
17 Care Licensing Division. *The licensee may submit additional*
18 *supporting documentation that was unavailable at the time of*
19 *submitting the request for review within the first 30 business days*
20 *after submitting the request for review.* If the department requires
21 additional information from the licensee, that information shall be
22 requested within the first 30 business days after receiving the
23 request for review. *The licensee shall provide this additional*
24 *information within 30 business days of receiving the request from*
25 *the department.* If the deputy director determines that the civil
26 penalty was not assessed, or the finding of the deficiency that
27 resulted in the assessment of the civil penalty was not made, in
28 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 deputy director's decision within 60 business days of the
32 ~~request to review the assessment of the civil penalty.~~ *date when*
33 *all necessary information has been provided to the department by*
34 *the licensee.*

35 (2) Upon exhausting the review described in paragraph (1), a
36 licensee may further appeal that decision to an administrative law
37 judge. Proceedings shall be conducted in accordance with Chapter
38 5 (commencing with Section 11500) of Part 1 of Division 3 of
39 Title 2 of the Government Code, and the department shall have all
40 the powers granted by those provisions. In all proceedings

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

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

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

33 (2) Upon exhausting the review described in paragraph (1), the
34 licensee may further appeal that decision to the program
35 administrator of the Community Care Licensing Division within
36 ~~10~~ 15 business days of receipt of notice of the regional manager's
37 decision. *The licensee may submit additional supporting*
38 *documentation that was unavailable at the time of appeal to the*
39 *program administrator within the first 30 business days after*
40 *requesting that appeal. If the department requires additional*

1 *information from the licensee, that information shall be requested*
 2 *within the first 30 business days after receiving the request for the*
 3 *appeal. The licensee shall provide this additional information*
 4 *within 30 business days of receiving the request from the*
 5 *department. If the program administrator determines that the civil*
 6 *penalty was not assessed, or the finding of the deficiency was not*
 7 *made, in accordance with applicable statutes or regulations of the*
 8 *department, he or she may amend or dismiss the civil penalty or*
 9 *finding of deficiency. The licensee shall be notified in writing of*
 10 *the program administrator’s decision within 60 business days of*
 11 *the request to review the civil penalty or finding of deficiency.*
 12 *date when all necessary information has been provided to the*
 13 *department by the licensee. The program administrator’s decision*
 14 *is considered final and concludes the licensee’s administrative*
 15 *appeal rights regarding the appeal conducted pursuant to this*
 16 *paragraph.*

17 (m) The department shall, by January 1, 2016, amend its
 18 regulations to reflect the changes to this section made by Section
 19 10 of Chapter 813 of the Statutes of 2014.

20 (n) *Notwithstanding the Administrative Procedure Act (Chapter*
 21 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*
 22 *Title 2 of the Government Code), the department may implement*
 23 *and administer the changes made by the act that added this*
 24 *subdivision through all-county letters or similar written*
 25 *instructions until regulations are adopted pursuant to the*
 26 *Administrative Procedure Act.*

27 ~~(n)~~

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