

Assembly Bill No. 1387

CHAPTER 486

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.

[Approved by Governor October 4, 2015. Filed with
Secretary of State October 4, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1387, 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 require the department, within 10 days of completing the investigation of a complaint conducted pursuant to these provisions, to notify the complainant in writing of the department's determination as a result of 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 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.

(6) This bill would incorporate changes to Section 1548 of the Health and Safety Code proposed by both this bill and AB 403, which would become operative only if both bills are enacted and become effective on or before January 1, 2016, and this bill is chaptered last.

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

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate

civil penalty until the final appeal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

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

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

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

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (j) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the

department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

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

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

SEC. 2.5. Section 1548 of the Health and Safety Code, as added by Section 2 of Chapter 813 of the Statutes of 2014, is amended to read:

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

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

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

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

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

(ii) Initiated eviction proceedings.

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

housing placement provider, group home, or short-term residential treatment center, the civil penalty shall be assessed as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) For purposes of subparagraphs (C) and (D), “physical abuse” includes physical injury inflicted upon a child by another person by other than

accidental means, sexual abuse as defined in Section 11165.1 of the Penal Code, neglect as defined in Section 11165.2 of the Penal Code, or unlawful corporal punishment or injury as defined in Section 11165.4 of the Penal Code when the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children.

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

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

(j) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), a licensee may further appeal that decision to an administrative law judge. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section

11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In all proceedings conducted in accordance with this section, the standard of proof shall be by a preponderance of the evidence.

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

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (j) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's

administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

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

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

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to the Office of the State Fire Marshal, and shall not be assessed an immediate

civil penalty until the final appeal is decided, or after 60 days has passed from the date of the citation, whichever is earlier.

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

(j) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee

shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of deficiency that resulted in the assessment of the civil penalty was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

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

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

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (j) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after

requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

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

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

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

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

(c) (1) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a residential care facility for the elderly, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection

within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

(2) 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 under Section 9722 of the Welfare and Institutions Code, the department shall give priority to the complaint pursuant to Section 9721 of the Welfare and Institutions Code and notify the Office of the State Long-Term Care Ombudsman that an investigation has been initiated pursuant to this section.

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

(d) Within 10 business days of completing the investigation of a complaint under this section, the department shall notify the complainant in writing of the department's determination as a result of the investigation.

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

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

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

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

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

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

(ii) Initiated eviction proceedings.

(B) A licensee denied a clearance for bedridden residents may appeal to the fire authority, and, if that appeal is denied, may subsequently appeal to

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

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

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

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

(j) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional

information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of the deficiency that resulted in the assessment of the civil penalty was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

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

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

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (j) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit

additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

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

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

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

(a) Site visit rights:

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

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

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

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

observation shall include a clear explanation of why the existing condition constitutes a deficiency, unless the description of the observation provides the explanation.

- (5) The right to review licensing laws, regulations, and policy.
- (6) The right to an impartial investigation of all complaints.
- (7) The right, at the time of the visit, to determine and develop a plan of correction for deficiencies cited.
- (8) The right to use the licensing report (LIC 809) as a means to agree or disagree with cited deficiencies.
- (9) The right to an exit interview upon completion of the visit and to receive a signed copy of the LIC 809.
- (10) The right to be informed on the LIC 809 of the evaluator's supervisor and his or her telephone number.
- (11) The right of access to the public file on any facility and the right to purchase a copy at a reasonable cost.

(b) Initial appeal rights:

(1) The right, without prejudice, to appeal any decision, any failure to act according to law or regulation, or any failure to act within any specified timeline, through the licensing agency as specified in Sections 1596.99 and 1597.58.

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

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

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

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

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

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

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

(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) nor more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil

penalty assessment, or both, as determined by the department. Except as otherwise provided in this chapter, a civil penalty assessment shall not exceed one hundred fifty dollars (\$150) per day per violation.

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

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

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

(3) Accessible bodies of water.

(4) Accessible firearms, ammunition, or both.

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

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

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

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

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

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

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

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

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

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

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

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

(g) Notwithstanding Sections 1596.893a, 1596.893b, and 1596.98, any day care center that is cited for repeating the same violation of this chapter

or Chapter 3.4 (commencing with Section 1596.70) within 12 months of the first violation is subject to an immediate civil penalty of one hundred fifty dollars (\$150) for each day the violation continues until the deficiency is corrected.

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of the deficiency that resulted in the assessment of the civil penalty was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), a licensee may further appeal that decision to an administrative law judge. Proceedings

shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In all proceedings conducted in accordance with this section, the standard of proof shall be by a preponderance of the evidence.

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

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

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program

administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

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

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

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

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

- (1) Any violation that results in the injury, illness, or death of a child.
- (2) Absence of supervision, including, but not limited to, a child left unattended, a child left alone with a person under 18 years of age, and lack of supervision resulting in a child wandering away.
- (3) Accessible bodies of water.
- (4) Accessible firearms, ammunition, or both.
- (5) Refused entry to a facility or any part of a facility in violation of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.
- (6) The presence of an excluded person on the premises.

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

- (1) Five thousand dollars (\$5,000) for a small family day care home, as described in Section 1597.44.
- (2) Seven thousand five hundred dollars (\$7,500) for a large family day care home, as described in Section 1597.465.

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

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

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

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

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

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

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

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

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

(2) A notification of a deficiency written by a representative of the department shall 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.

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to

subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of the deficiency that resulted in the assessment of the civil penalty was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

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

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

(l) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (k) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee

shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

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

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

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

SEC. 9. Section 2.5 of this bill incorporates amendments to Section 1548 of the Health and Safety Code proposed by both this bill and Assembly Bill 403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2016, (2) each bill amends Section 1548 of the Health and Safety Code, and (3) this bill is enacted after Assembly Bill 403, in which case Section 2 of this bill shall not become operative.