

**ASSEMBLY BILL**

**No. 1542**

---

---

**Introduced by The Committee on Human Services (Aroner (Chair), Ashburn (Vice Chair), Bordonaro, Gallegos, Goldsmith, Kuehl, Ortiz, and Wright.)**

March 4, 1997

---

---

An act to amend Section 1550.5 of the Health and Safety Code, relating to community care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1542, as introduced, Committee on Human Services. Community care facilities.

Existing law provides for the licensure and regulation of community care facilities, as defined, by the State Department of Social Services. Existing law authorizes the department to suspend or revoke the license of a community care facility based on specified grounds, and pursuant to certain administrative hearing procedures. Existing law sets forth procedures under which the Director of Social Services is authorized to temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. Existing law grants the licensee a right to an interim hearing on an order of temporary license suspension and specifies that nothing in these provisions precludes a licensee from proceeding directly to a full evidentiary hearing.

This bill would specify that nothing in these provisions precludes a licensee from seeking review of the order of temporary license suspension by the superior court concurrent with a request for an interim hearing nor requires resolution of the interim hearing request prior to review by the superior court.

Under existing law, evidence at the interim hearing is limited to the department’s accusation and order of temporary license suspension.

This bill would authorize at the interim hearing the inclusion of evidence by the licensee to rebut the department’s allegations and evidence offered in support of the order.

Existing law provides that the department is deemed to have abused its discretion in issuing an order of temporary license suspension only if the department’s accusation and order of temporary license suspension fail to allege facts and conditions showing that issuance of the order is necessary as described above.

This bill would provide instead that the department is deemed to have abused its discretion under this provision only if the department’s accusation and order of temporary license suspension fail to produce evidence in the form of relevant affidavits and documents showing the issuance of the order is necessary as described above.

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

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

1 SECTION 1. Section 1550.5 of the Health and Safety  
2 Code is amended to read:  
3 1550.5. The director may temporarily suspend any  
4 license prior to any hearing when, in the opinion of the  
5 director, the action is necessary to protect residents or  
6 clients of the facility from physical or mental abuse,  
7 abandonment, or any other substantial threat to health or  
8 safety. The director shall serve the licensee with the  
9 temporary suspension and the effective date of the



1 temporary suspension and at the same time shall serve  
2 the licensee with an accusation.

3 (a) (1) The department shall notify the licensee,  
4 upon service of an order of temporary license suspension,  
5 of the licensee's right to an interim hearing on the order.  
6 The department shall also provide the licensee with a  
7 form and appropriate information for the licensee's use  
8 in requesting an interim hearing. The department shall  
9 also notify the licensee, upon service, of the licensee's  
10 independent right to seek review of the order by the  
11 superior court pursuant to Section 1085 of the Code of  
12 Civil Procedure on the issue of whether the department  
13 abused its discretion in issuing the order.

14 (2) (A) The licensee may request an interim hearing  
15 by mailing or delivering a written request to the Office  
16 of Administrative Hearings. The licensee shall mail or  
17 deliver the request to the address or location specified on  
18 the request form served with the order. The licensee shall  
19 mail or deliver the request within five days after service  
20 of the order. Upon receipt of a timely request for an  
21 interim hearing, the Office of Administrative Hearings  
22 shall set a hearing date and time which shall be within 10  
23 working days of the office's receipt of the request. The  
24 Office of Administrative Hearings shall promptly notify  
25 the licensee of the date, time, and place of the hearing.  
26 The Office of Administrative Hearings, upon setting the  
27 interim hearing, shall post a public notice of the hearing  
28 at its regional office having jurisdiction over the location  
29 of the facility. The licensee's request for an interim  
30 hearing shall not stay the operation of the order.

31 (B) Nothing in this section precludes a licensee from  
32 proceeding directly to a full evidentiary hearing *or from*  
33 *seeking review of the order by the superior court*  
34 *concurrent with the request for an interim hearing.*  
35 *Nothing in this section requires resolution of the interim*  
36 *hearing request prior to review by the superior court.*

37 (3) (A) An interim hearing shall be held before an  
38 administrative law judge of the Office of Administrative  
39 Hearings. The interim hearing shall be held at the



1 regional office of the Office of Administrative Hearings  
2 having jurisdiction over the location of the facility.

3 (B) The interim hearing on the order shall be limited  
4 to the issue of whether the department abused its  
5 discretion under this section in issuing the order.  
6 Evidence at the interim hearing shall be limited to the  
7 department's accusation and order of temporary license  
8 suspension *and to evidence provided by the licensee to*  
9 *rebut the department's allegations and evidence offered*  
10 *in support of the order.* The interim hearing shall be  
11 reported or recorded pursuant to subdivision (d) of  
12 Section 11512 of the Government Code.

13 (4) The administrative law judge shall issue a verbal  
14 interim decision at the conclusion of the interim hearing  
15 which sustains or vacates the order. The administrative  
16 law judge shall issue a written interim decision within one  
17 working day following the conclusion of the interim  
18 hearing. The written interim decision shall be limited in  
19 scope to sustaining or vacating the order.

20 (5) The interim decision shall be subject to review  
21 only pursuant to Section 1094.5 of the Code of Civil  
22 Procedure. The department or the licensee may file a  
23 petition for that review. A petition for review under  
24 Section 1094.5 of the Code of Civil Procedure shall be  
25 heard by the court within 10 days of its filing and the court  
26 shall issue its judgment on the petition within 10 days of  
27 the conclusion of the hearing. The hearing on the interim  
28 decision shall be limited to the issue of whether the  
29 department abused its discretion under this section in  
30 issuing the order of temporary license suspension.

31 (6) The department may proceed with the accusation  
32 as otherwise provided by this section and Section 1551  
33 notwithstanding an interim decision by the  
34 administrative law judge which vacates the order of  
35 temporary license suspension.

36 (7) The department shall be deemed to have abused  
37 its discretion in issuing an order of temporary license  
38 suspension only if the department's accusation and order  
39 of temporary license suspension fail to ~~allege facts and~~  
40 ~~conditions~~ *produce evidence in the form of relevant*



1 *affidavits and documents* showing that issuance of the  
2 order is necessary to protect residents or clients of the  
3 facility from physical or mental abuse, abandonment, or  
4 any other substantial threat to health or safety.

5 (b) Upon receipt of a notice of defense to the  
6 accusation by the licensee, the director shall, within 15  
7 days, set the matter for a full evidentiary hearing, and the  
8 hearing shall be held as soon as possible but not later than  
9 30 days after receipt of the notice. The temporary  
10 suspension shall remain in effect until the time the  
11 hearing is completed and the director has made a final  
12 determination on the merits, unless it is earlier vacated by  
13 interim decision of the administrative law judge.  
14 However, the temporary suspension shall be deemed  
15 vacated if the director fails to make a final determination  
16 on the merits within 30 days after the original hearing has  
17 been completed.

