

AMENDED IN ASSEMBLY MAY 8, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

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 amended, 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

This bill would revise the procedures under which the department is authorized to temporarily suspend any license to require the director, when serving the licensee with the



temporary suspension, to include affidavits and all other information in support of the order.

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, the interim hearing on the order is limited to the issue of whether the department abused its discretion under these provisions in issuing the order and the 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~~ delete the above limitations. The bill would require, instead, that the interim hearing provide to the licensee, at a minimum, designated rights. The bill would require the administrative law judge to grant the interim order upon a finding that there is a reasonable probability that the petitioner will prevail in the underlying action and the likelihood of physical or mental abuse, abandonment, or other substantial threat to health or safety of residents or clients in not issuing the order outweighs the likelihood of injury to the licensee in issuing the order.

Existing law requires the administrative law judge to issue a verbal interim decision at the conclusion of the interim hearing and issue a written interim decision within one working day following the conclusion of the hearing, limited in scope to sustaining or vacating the order.

This bill would require, instead, the written interim decision within 15 working days following the hearing, delete the above limitation in the scope of the decision, and require that the decision include findings of fact and a conclusion



articulating the connection between the evidence produced at the hearing and the decision reached.

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 delete this provision.~~

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, *based upon affidavits in support of the order*, the
6 action is necessary to protect residents or clients of the
7 facility from physical or mental abuse, abandonment, or
8 any other substantial threat to health or safety. The
9 director shall serve the licensee with the temporary
10 suspension *order, including affidavits and all other*
11 *information in support of the order*, and the effective date
12 of the temporary suspension and at the same time shall
13 serve the licensee with an accusation.
14 (a) (1) The department shall notify the licensee,
15 upon service of an order of temporary license suspension,
16 of the licensee's right to an interim hearing on the order.
17 The department shall also provide the licensee with a
18 form and appropriate information for the licensee's use
19 in requesting an interim hearing. The department shall
20 also notify the licensee, upon service, of the licensee's
21 independent right to seek review of the order by the



1 superior court pursuant to Section 1085 of the Code of
2 ~~Civil Procedure on the issue of whether the department~~
3 ~~abused its discretion in issuing the order. Civil Procedure.~~

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

21 (B) Nothing in this section precludes a licensee from
22 proceeding directly to a full evidentiary hearing or from
23 seeking review of the order by the superior court
24 ~~concurrent with the request for an interim hearing.~~
25 Nothing in this section requires resolution of the interim
26 hearing request prior to review by the superior court.

27 (3) (A) An interim hearing shall be held before an
28 administrative law judge of the Office of Administrative
29 Hearings. The interim hearing shall be held at the
30 regional office of the Office of Administrative Hearings
31 having jurisdiction over the location of the facility.

32 ~~(B) The interim hearing on the order shall be limited~~
33 ~~to the issue of whether the department abused its~~
34 ~~discretion under this section in issuing the order.~~
35 ~~Evidence at the interim hearing shall be limited to the~~
36 ~~department's accusation and order of temporary license~~
37 ~~suspension and to evidence provided by the licensee to~~
38 ~~rebut the department's allegations and evidence offered~~
39 ~~in support of the order. The~~



1 (B) For purposes of the interim hearing conducted
2 pursuant to this section, the licensee shall, at a minimum,
3 have the following rights:

4 (i) To be represented by counsel.

5 (ii) To have a record made of the proceedings, copies
6 of which may be obtained by the licensee upon payment
7 of reasonable charges associated with the record.

8 (iii) To present written evidence in the form of
9 relevant declarations, affidavits, and documents. The
10 discretion of the administrative law judge to permit
11 testimony at the hearing conducted pursuant to this
12 section shall be identical to the discretion of a superior
13 court judge to permit testimony at a hearing conducted
14 pursuant to Section 527 of the Code of Civil Procedure.

15 (iv) To present oral argument.

16 (C) Consistent with the standards of proof applicable
17 to a preliminary injunction entered under Section 527 of
18 the Code of Civil Procedure, the administrative law judge
19 shall grant the interim order where, in the exercise of
20 discretion, the administrative law judge concludes both
21 of the following:

22 (i) There is a reasonable probability that the petitioner
23 will prevail in the underlying action.

24 (ii) The likelihood of physical or mental abuse,
25 abandonment, or other substantial threat to health or
26 safety of residents or clients in not issuing the order
27 outweighs the likelihood of injury to the licensee in
28 issuing the order.

29 (D) The interim hearing shall be reported or recorded
30 pursuant to subdivision (d) of Section 11512 of the
31 Government Code.

32 (4) The administrative law judge shall issue a verbal
33 interim decision at the conclusion of the interim hearing
34 which sustains or vacates the order. The administrative
35 law judge shall issue a written interim decision within ~~one~~
36 ~~working day~~ 15 working days following the conclusion of
37 the interim hearing. The written interim decision shall be
38 ~~limited in scope to sustaining or vacating the order.~~
39 include findings of fact and a conclusion articulating the



1 *connection between the evidence produced at the*
2 *hearing and the decision reached.*

3 (5) The interim decision shall be subject to review
4 only pursuant to Section 1094.5 of the Code of Civil
5 Procedure. The department or the licensee may file a
6 petition for that review. A petition for review under
7 Section 1094.5 of the Code of Civil Procedure shall be
8 heard by the court within 10 days of its filing and the court
9 shall issue its judgment on the petition within 10 days of
10 the conclusion of the hearing. The hearing on the interim
11 decision shall be limited to the issue of whether the
12 department abused its discretion under this section in
13 issuing the order of temporary license suspension.

14 (6) The department may proceed with the accusation
15 as otherwise provided by this section and Section 1551
16 notwithstanding an interim decision by the
17 administrative law judge which vacates the order of
18 temporary license suspension.

19 ~~(7) The department shall be deemed to have abused~~
20 ~~its discretion in issuing an order of temporary license~~
21 ~~suspension only if the department's accusation and order~~
22 ~~of temporary license suspension fail to produce evidence~~
23 ~~in the form of relevant affidavits and documents showing~~
24 ~~that issuance of the order is necessary to protect residents~~
25 ~~or clients of the facility from physical or mental abuse,~~
26 ~~abandonment, or any other substantial threat to health or~~
27 ~~safety.~~

28 (b) Upon receipt of a notice of defense to the
29 accusation by the licensee, the director shall, within 15
30 days, set the matter for a full evidentiary hearing, and the
31 hearing shall be held as soon as possible but not later than
32 30 days after receipt of the notice. The temporary
33 suspension shall remain in effect until the time the
34 hearing is completed and the director has made a final
35 determination on the merits, unless it is earlier vacated by
36 interim decision of the administrative law judge *or a*
37 *superior court judge.* However, the temporary
38 suspension shall be deemed vacated if the director fails to



- 1 make a final determination on the merits within 30 days
- 2 after the original hearing has been completed.

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