

AMENDED IN SENATE JULY 22, 1997

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, *and to amend Section 11462.06 of the Welfare and Institutions Code*, relating to community care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1542, as amended, Committee on Human Services. Community care facilities: *foster care*.

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.

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 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 delete the above limitations. The bill would require, instead, that the interim hearing provide to the licensee *and the department*, at a minimum, designated rights. The bill would require the administrative law judge to ~~grant—sustain~~ the ~~interim—order~~ *temporary suspension* upon a finding that there is a reasonable probability that the ~~petitioner—licensee~~ will *not* 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—sustaining~~ the order outweighs the likelihood of injury to the licensee in ~~issuing—sustaining~~ 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 delete this provision.

Existing law provides for the Aid to Families with Dependent Children-Foster Care (AFDC-FC) program, under which payments are made on behalf of low-income children placed in foster care. For purposes of these provisions, including the setting of group home rates, the reasonable costs of affiliated leases for shelter care for foster children are allowable costs. However, reimbursement of shelter costs is prohibited from exceeding 12% of the fair market value of owned, leased, or rented buildings, exclusive of idle capacity and capacity used for nongroup home programs and activities.

This bill would provide that "owned, leased, or rented buildings" as used in those provisions includes any structures, improvements, edifices, land, grounds, and other similar property that is owned, leased, or rented by the group home and that is used for group home programs and activities. The bill would specify that this provision confirms and is declarative of, rather than a change in, existing law and shall not be construed as a change in the meaning of those provisions as last enacted.

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



1 facility from physical or mental abuse, abandonment, or
2 any other substantial threat to health or safety. The
3 director shall serve the licensee with the temporary
4 suspension order, including affidavits and all other
5 information in support of the order, and the effective date
6 of the temporary suspension and at the same time shall
7 serve the licensee with an accusation.

8 (a) (1) The department shall notify the licensee,
9 upon service of an order of temporary license suspension,
10 of the licensee's right to an interim hearing on the order.
11 The department shall also provide the licensee with a
12 form and appropriate information for the licensee's use
13 in requesting an interim hearing. The department shall
14 also notify the licensee, upon service, of the licensee's
15 independent right to seek review of the order by the
16 superior court pursuant to Section 1085 of the Code of
17 Civil Procedure.

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

35 (B) Nothing in this section precludes a licensee from
36 proceeding directly to a full evidentiary hearing or from
37 seeking review of the order by the superior court.
38 Nothing in this section requires resolution of the interim
39 hearing request prior to review by the superior court.



1 (3) (A) An interim hearing shall be held before an
2 administrative law judge of the Office of Administrative
3 Hearings. The interim hearing shall be held at the
4 regional office of the Office of Administrative Hearings
5 having jurisdiction over the location of the facility.

6 (B) For purposes of the interim hearing conducted
7 pursuant to this section, the licensee *and department*
8 shall, at a minimum, have the following rights:

9 (i) To be represented by counsel.

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

13 (iii) To present written evidence in the form of
14 relevant declarations, affidavits, and documents. *No later*
15 *than five working days prior to the interim hearing, the*
16 *department shall provide the licensee with any additional*
17 *pertinent discovery that the department will present at*
18 *the hearing and that was not provided to the licensee at*
19 *the time the temporary suspension order was issued. The*
20 *additional discovery shall include, but not be limited to,*
21 *affidavits, declarations, and the names of witnesses who*
22 *will be presenting oral testimony. The discretion of the*
23 administrative law judge to permit testimony at the
24 hearing conducted pursuant to this section shall be
25 identical to the discretion of a superior court judge to
26 permit testimony at a hearing conducted pursuant to
27 Section 527 of the Code of Civil Procedure. *However,*
28 *there shall be no oral testimony from a minor in the*
29 *interim hearing, except at the discretion of the*
30 *administrative law judge.*

31 (iv) To present oral argument.

32 (C) Consistent with the standards of proof applicable
33 to a preliminary injunction entered under Section 527 of
34 the Code of Civil Procedure, the administrative law judge
35 shall ~~grant the interim~~ *sustain the temporary suspension*
36 *order where, in the exercise of discretion, the*
37 administrative law judge concludes both of the following:

38 (i) There is a reasonable probability that the ~~petitioner~~
39 ~~will licensee~~ *will not prevail in the underlying action.*



1 (ii) The likelihood of physical or mental abuse,
2 abandonment, or other substantial threat to health or
3 safety of residents or clients in not ~~issuing~~ *sustaining* the
4 order outweighs the likelihood of injury to the licensee in
5 ~~issuing~~ *sustaining* the order.

6 (D) The interim hearing shall be reported or recorded
7 pursuant to subdivision (d) of Section 11512 of the
8 Government Code.

9 (4) The administrative law judge shall issue a verbal
10 interim decision at the conclusion of the interim hearing
11 which sustains or vacates the order. The administrative
12 law judge shall issue a written interim decision within 15
13 working days following the conclusion of the interim
14 hearing. The written interim decision shall include
15 findings of fact and a conclusion articulating the
16 connection between the evidence produced at the
17 hearing and the decision reached.

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

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

34 (b) Upon receipt of a notice of defense to the
35 accusation by the licensee, the director shall, within 15
36 days, set the matter for a full evidentiary hearing, and the
37 hearing shall be held as soon as possible but not later than
38 30 days after receipt of the notice. The temporary
39 suspension shall remain in effect until the time the
40 hearing is completed and the director has made a final



1 determination on the merits, unless it is earlier vacated by
2 interim decision of the administrative law judge or a
3 superior court judge. However, the temporary
4 suspension shall be deemed vacated if the director fails to
5 make a final determination on the merits within 30 days
6 after the original hearing has been completed.

7 *SEC. 2. Section 11462.06 of the Welfare and*
8 *Institutions Code is amended to read:*

9 11462.06. (a) For purposes of the administration of
10 this article, including the setting of group home rates, the
11 department shall deem the reasonable costs of affiliated
12 leases for shelter care for foster children to be allowable
13 costs. Reimbursement of shelter costs shall not exceed 12
14 percent of the fair market value of owned, leased, or
15 rented buildings, exclusive of idle capacity and capacity
16 used for nongroup home programs and activities. Shelter
17 costs shall be considered reasonable in relation to the fair
18 market value limit as described in subdivision (c).
19 Allowable costs of affiliated leases shall be subject to a
20 review by the Charitable Trust Section of the
21 Department of Justice as specified by Chapter 15
22 (commencing with Section 999) of Division 1 of Title 11
23 of the California Code of Regulations.

24 (b) Effective July 1, 1998, an approval letter from the
25 Charitable Trust Section of the Department of Justice
26 shall be required for approval of shelter costs that result
27 from self-dealing transactions, as defined in Section 5233
28 of the Corporations Code.

29 (c) For purposes of this section, fair market value of
30 leased property shall be determined by either of the
31 following methods, as chosen by the provider:

32 (1) The market value shown on the last tax bill for the
33 cost reporting period.

34 (2) The market value determined by an independent
35 appraisal. The appraisal shall be performed by a qualified,
36 professional appraiser who, at a minimum, meets
37 standards for appraisers as specified in Chapter 6.5
38 (commencing with Section 3500) of Title 10 of the
39 California Code of Regulations. The appraisal shall not be
40 deemed independent if performed under a



1 less-than-arms-length agreement, or if performed by a
2 person or persons employed by, or under contract with,
3 the group home for purposes other than performing
4 appraisals, or by a person having a material interest in any
5 group home which receives foster care payments. If the
6 department believes an appraisal does not meet these
7 standards, the department shall give its reasons in writing
8 to the provider and provide an opportunity for appeal.

9 *(d) As used in subdivision (a), "owned, leased, or*
10 *rented buildings" includes any structures,*
11 *improvements, edifices, land, grounds, and other similar*
12 *property that is owned, leased, or rented by the group*
13 *home and that is used for group home programs and*
14 *activities.*

15 *(e) Subdivision (d) confirms and is declarative of,*
16 *rather than a change in, existing law and regulations and*
17 *shall not be construed as a change in the meaning of this*
18 *section as enacted by Chapter 1015 of the Statutes of 1996.*

