

ACTION REQUIRED

Assembly Bill 1387 (Chu), Chapter 486, Statutes of 2015

Affects: Community Care Facilities (CCFs)
Children's Residential Facilities and Certified Family Homes
Residential Care Facilities for the Elderly (RCFEs)
Residential Care Facilities for the Chronically Ill (RCF-CIs)
Child Care Centers (CCCs) and Family Child Care Homes (FCCHs)

Subject: Care Facilities: Civil Penalties, Deficiencies and Appeal Procedures

Summary: [Assembly Bill \(AB\) 1387](#) amends sections [1548](#), [1568.0822](#), [1569.35](#), [1569.49](#), [1596.842](#), [1596.99](#) and [1597.58](#) of the Health and Safety Code to stipulate the procedures by which a departmental decision may be appealed by a licensee.

Effective January 1, 2016, amendments to statute include:

For violations that result in death, serious injury (for child care facilities), or serious bodily injury (for all other facilities), or that constitute physical abuse:

- Health and Safety Code sections [1548\(f\)](#), [1568.0822\(f\)](#), [1569.49\(f\)](#), [1596.99\(f\)](#), [1597.58\(f\)](#) are amended to require that any civil penalty for a violation resulting in death or serious bodily injury/serious injury, or that constitutes physical abuse of a client, must first be approved by the Program Administrator before being assessed. (Prior to [AB 1387](#) these assessments required approval by the Director of the Community Care Licensing Division.)
- Health and Safety Code sections [1548\(j\)](#), [1568.0822\(j\)](#), [1569.49\(j\)](#), [1596.99\(k\)](#), [1597.58\(k\)](#) amend the appeal process for civil penalties assessed for death, serious bodily injury/serious injury or physical abuse. Any appeal of penalties for these types of violations will now go to the Deputy Director. (Prior to [AB 1387](#) appeals first went to the Regional Manager and then the Program Administrator). A timeline for this appeal process is now stipulated in statute.
- Subsequent to the Deputy Director's decision, the law allows the licensee to further appeal the penalty to an Administrative Law Judge, following procedures set out in the Government Code.

For All Other Civil Penalties or Deficiencies:

- Health and Safety Code sections [1548\(k\)](#), [1568.0822\(k\)](#), [1569.49\(k\)](#), [1596.99\(l\)](#), and [1597.58\(l\)](#) are amended to require that the appeal of any other civil penalty or deficiency will now go to the Regional Manager. (Prior to [AB 1387](#) appeals first went

to the Licensing Program Manager). A timeline for this appeal process is now stipulated in statute.

- Subsequent to the Regional Manager's decision, the law allows the licensee to further appeal the penalty or deficiency to the Program Administrator. A timeline for this appeal process is also stipulated in statute. The Program Administrator's decision concludes the licensee's administrative appeal rights.

All Other Amendments:

- Health and Safety Code sections [1548\(i\)](#), [1568.0822\(i\)](#), [1569.49\(i\)](#), [1596.99\(j\)](#), [1597.58\(j\)](#) are amended to codify current regulations regarding the practice for writing notifications of deficiencies.
- Health and Safety Code sections [1548\(o\)](#), [1568.0822\(n\)](#), [1569.49\(n\)](#), [1596.99\(n\)](#), and [1597.58\(n\)](#) are added to allow the Department to implement and administer the changes made by this legislation through all-county letters or similar written instructions until regulations are adopted.

Child Care Only Amendments:

- Health and Safety Code section [1596.842](#) is amended to reference the appeal process in sections [1596.99](#) and [1597.58](#) of the Health and Safety Code to conform to the statutory appeal process.
- Health and Safety Code sections [1596.99\(i\)](#) and [1597.58\(i\)](#) are amended to remove the requirement that money deposited into the Child Health and Safety Fund be used to provide placement assistance to families with children who attend a family day care home or day care center whose license is revoked or temporarily suspended.

RCFE Only Amendments:

- Health and Safety Code section [1569.35\(c\)\(2\)](#) is amended to add that the Department will give priority, whenever possible, to complaints filed by local long-term care ombudsman or the State Long-Term Care Ombudsman and notify the Office of the State Long-Term Care Ombudsman that an investigation has been initiated.
- Health and Safety Code section [1569.35\(c\)\(3\)](#) adds the requirement asserting that the Department shall make a good faith effort to contact and interview the complainant prior to conducting an onsite investigation and inform them of the Department's proposed course of action.
- Health and Safety Code section [1569.35\(d\)](#) is added to mandate the Department to notify the complainant, in writing, of its decision within 10 business days of completing the investigation.

IMPLEMENTATION:

This bill becomes effective January 1, 2016.

There are two appeal processes mentioned in the bill: one for penalties assessed for a violation determined to have resulted in death or serious bodily injury/serious injury, or that constitutes physical abuse; and another appeal process for all other penalties and deficiencies. This law restructured both appeal processes by reducing the number of levels of appeal of each type and providing a timeline for each appeal. In addition, it requires that any civil penalty assessed for a violation that results in death or serious bodily injury, or that constitutes physical abuse of a client, first be approved by the Program Administrator. This bill did not address the unlicensed appeal process, which remains unchanged.

For violations that result in death or serious bodily injury/serious injury, or that constitute physical abuse:

1st Level: Deputy Director, Community Care Licensing Division

2nd Level: Administrative Law Judge

For All Other Civil Penalties or Deficiencies:

1st Level: Regional Manager

2nd Level: Program Administrator

For appeals reviewed by the Deputy Director, Regional Manager or Program Administrator, the procedure is as follows:

- A licensee may file an appeal, in writing, within 15 business days from the date of receiving the penalty assessment. All available supporting documentation must be submitted with the request for review.
- Within 30 business days of the request for review, the licensee may submit any additional supporting documentation that was unavailable at the time of the initial request.
- If the Department requires additional information from the licensee in order to make its determination, that information shall be requested within 30 business days of receiving the initial request. The licensee shall provide this additional information within 30 business days of receiving the request.
- Upon review of the appeal and additional information, the Department may amend any portion of the action taken, or may dismiss the violation entirely. The licensee shall be notified in writing of the Department's decision within 60 business days of the date when all necessary information has been provided to the Department by the licensee.

- Upon exhausting this review, the licensee may further appeal the decision to the next level of review, as outlined above. For appeals of any other civil penalty or deficiency besides death, serious bodily injury or physical abuse, the Program Administrator’s decision is considered final, and concludes the licensee’s administrative appeal rights.

Interim Procedure for the Civil Penalty Review Form

LIC 178 Penalty Review:

1. Open the Print Only Forms database and the applicable civil penalty form.
2. Complete the selected LIC form as required.
3. Print two copies for signature by the Reviewer.
4. Provide one copy to Licensee and add the other copy to facility file at Regional Office.

For appeals reviewed by an Administrative Law Judge:

Appeals will be conducted in accordance with Chapter 5 (commencing with Section [11500](#)) of Part 1 of Division 3 of Title 2 of the Government Code.

Interim Civil Penalty Assessment Procedure:

The following LIC forms will be temporarily disabled from being connected to a specific facility file in FAS effective January 1, 2016:

- LIC 421 CIVIL PENALTY ASSESSMENT
- LIC 421B CIVIL PENALTY ASSESSMENT – IMMEDIATE
- LIC 421C CIVIL PENALTY ASSESSMENT – IMMEDIATE \$150
- LIC 9058 APPLICANT/LICENSEE RIGHTS

These LIC forms will be temporarily unavailable in the FAS drop-down menu for “Additional Forms”.

While FAS is being programmed to incorporate the new and amended forms, all of the civil penalty forms will be available only in the FAS “CCLD Print Only Forms” menu. In contrast to the forms available in the “Additional Forms” drop-down menu, the forms below cannot be electronically attached to a facility report.

Amended Civil Penalty Forms

- [LIC 421 CIVIL PENALTY ASSESSMENT](#); appeals process revised
- [LIC 421B CIVIL PENALTY ASSESSMENT – BACKGROUND CHECK / CHILD CARE](#); title changed and appeals process revised
- [LIC 421C CIVIL PENALTY ASSESSMENT – IMMEDIATE \\$150](#); appeals process revised. In addition, facility-specific civil penalty information for sickness, injury, and death have been amended

- [LIC 9058 APPLICANT/LICENSEE RIGHTS](#); appeals process revised

Note: The [LIC 421A CIVIL PENALTY ASSESSMENT \(Unlicensed Facility\)](#) has not been revised, as the statutory amendments do not impact this form.

New Civil Penalty Forms

- [LIC 421D CIVIL PENALTY ASSESSMENT – DEATH](#); this form specifies the new civil penalty amount for a violation which resulted in the death of a resident/client for each facility type
- [LIC 421E CIVIL PENALTY ASSESSMENT – SERIOUS BODILY INJURY/PHYSICAL ABUSE](#); this form specifies the new civil penalty amount for a violation that constitutes physical abuse or resulted in serious bodily injury/serious injury

Interim instructions for amended civil penalty “Print Only Forms” in FAS

The FAS Print Only LIC forms are fillable PDF forms. Starting January 1, 2016, the LPA shall follow the steps below in using these forms:

1. On the LIC [809](#) or LIC [9099](#), indicate the civil penalty being assessed, including the authority for the citation (regulation or statute) and amount assessed
2. Write the following on the LIC [809](#):
“The licensee was provided a copy of their appeal rights (LIC [9058](#) 12/15) and their signature on this form acknowledges receipt of these rights.”
3. Open the Print Only Forms database
 - A. Open the applicable civil penalty form
 - i. Complete the selected LIC form as required
 - ii. Print two copies for signatures by LPA and Licensee
 - iii. Provide one copy to Licensee and add the other copy to facility file at the Regional Office
 - B. In Print Only Forms database, open the LIC [9058](#) (12/15)
 - i. Print one copy
 - ii. Provide the copy to the Licensee

Interim instructions for LIC [421D – Death](#), and for LIC [421E – Serious Bodily Injury/Physical Abuse](#)

A civil penalty for a violation suspected of resulting in death, serious bodily injury or physical abuse will not be assessed at the time of the site inspection because the final determination on these types of violations can only be made by the Program Administrator. Instead, it should be noted on the licensing report that a civil penalty determination is pending. The underlying violation that resulted in the death, serious bodily injury or physical abuse of a client shall be cited following normal procedures (see above).

If approved by the Program Administrator, a signed LIC [421D](#) or LIC [421E](#) form will be provided to the Regional Office. The Licensing Program Analyst shall conduct a subsequent visit to the facility to issue the civil penalty, or if the Regional Office determines it is appropriate, a non-compliance conference may be held. At the time of assessment, the Licensing Program Analyst should inform the licensee of his or her appeal rights specific to this type of civil penalty. A copy of both the licensing report and the civil penalty notice statement should be forwarded to the Civil Penalty Coordinator for invoicing and collection.

The LPA should consult with his or her Licensing Program Manager for specific questions on the new and amended LIC civil penalty forms.

Updated information will be provided once the civil penalty forms have been reprogrammed into FAS and the LPA is able to access them from within the facility file in FAS.

Contact with Complainants (RCFE only)

This law requires the Department to make a good faith effort to contact and interview the complainant, and to notify the complainant in writing of its decision regarding the RCFE complaint within 10 business days of completing the investigation. This contact must be documented on page 2 of the LIC [802 "Complaint Report."](#) This contact usually takes the form of a phone call. If there is an address but no available phone number for the complainant, the LPA may mail the complainant the second page of the LIC [856 "Complaint Response Letter,"](#) specifically, the "Report of Findings" section, which describes the result of the LPA's investigation.

In addition, the Department must give priority to a complaint filed by a local long-term care ombudsman or the State Long-Term Care Ombudsman that alleges denial of a statutory right of access to an RCFE. Further, it requires the Department to notify the Office of the State Long-Term Care Ombudsman that such an investigation has been initiated.

Under a [Memorandum of Understanding](#) with the Office of the Long-Term Care Ombudsman, each Regional Office is responsible for notifying the local Ombudsman Program of substantiated complaints against Residential Care Facilities for the Elderly and Adult Residential Facilities. The Regional Offices must also provide the local Ombudsman, in a timely manner, with legible copies of all LIC [809s "Facility Evaluation Report"](#) and LIC [9099s "Complaint Investigation Report"](#) for all Residential Care Facilities for the Elderly and Adult Residential Facilities in the Regional Office's local planning and service area. ([EM Section 3-2650](#))

Any civil penalties or deficiencies assessed prior to January 1, 2016, must be appealed according to the previously established procedure.