



CDSS

WILL LIGHTBOURNE
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES



EDMUND G. BROWN JR.
GOVERNOR

January 17, 2017

PIN 17-02-CCLD

TO: All Community Care Licensees

Original signed by Pamela Dickfoss

FROM: PAMELA DICKFOSS
Deputy Director
Community Care Licensing Division

SUBJECT: AB 2231 CARE FACILITIES: CIVIL PENALTIES

Provider Information Notice (PIN) Summary

PIN 17-02-CCLD summarizes changes to statute as the result of Assembly Bill (AB) 2231 (Chapter 823, Statutes of 2016). This bill amended Health and Safety Code Sections 1566.7, 1569.335, 1596.819, and 1596.859; and amended, repealed, and added Sections 1548, 1568.0822, 1569.49, 1596.8595, 1596.99, and 1597.58.

On September 29, 2016, Governor Brown signed [Assembly Bill \(AB\) 2231](#), enacting new laws for facilities licensed by the Community Care Licensing Division (CCLD). AB 2231:

- increases civil penalties for specified facility categories for violations of licensing requirements
- defines “repeat violations”
- changes repeat violation penalty amounts
- requires the Department to assist licensees with prevention of repeat violations
- changes how the Department categorizes complaint investigation findings.

The following provisions are effective beginning January 1, 2017:

Increased civil penalties for violations that result in death, serious bodily injury and physical abuse

Small Family Homes (SFH), Crisis Nurseries (CN), and Adult Residential Care Facilities for Persons with Special Health Care Needs (ARFPSHN), are now subject to higher civil penalties for violations which result in death or serious bodily injury, or constitute physical abuse.

FACILITY TYPE	Death		Serious Bodily Injury / Physical Abuse	
	Current	Effective 1/1/17	Current	Effective 1/1/17
CHILDREN'S RESIDENTIAL				
SFH, CN (Capacity 40 or fewer)	\$150	\$7,500	\$150	\$2,500
SFH, CN (Capacity 41 - 100)	\$150	\$10,000	\$150	\$5,000
SFH, CN (Capacity more than 100)	\$150	\$15,000	\$150	\$10,000
ADULT				
ARFPSHN (any capacity)	\$150	\$15,000	\$150	\$10,000

- Civil penalties tied to “capacity” are now calculated based on the number of clients for which that particular facility is licensed.
- Facility capacity is no longer used to determine the civil penalty amount for violations at Foster Family Agencies or Adoption Agencies.

Complaints

- The Child Day Care Act statutes were amended to replace the reference to “inconclusive” investigation findings with the term “unsubstantiated.”
- The use of “unsubstantiated” instead of “inconclusive” will be consistently applied across all licensed community care facilities and reflected on the CCLD’s transparency website. The Department will continue to use “unfounded” for its findings as applicable.

Beginning July 1, 2017 the following provisions are effective:

Failure to Correct Civil Penalty

- The civil penalty for violations that are not corrected, after being provided a specified length of time to correct, is increased to \$100 per violation per day.

Repeat Violations

- A “repeat violation” is defined as a violation within 12 months of a prior violation of a statutory or regulatory provision designated by the same combination of letters and numerals.
- The civil penalty for a repeat of the type of violation that is provided a specified length of time to correct before a penalty is assessed, has increased to \$250 per violation for the first day, and then \$100 per violation each day until corrected.
- Any time a facility repeats the exact same statutory or regulatory provision within 12 months of a prior violation, the same repeat civil penalty amount shall apply. There are no longer increasing (“progressive” or “tiered”) penalties for subsequent repeat violations.
- The Department shall make a good faith effort to work with the licensee to determine the cause of any deficiency and ways to prevent repeat violations.

- The notice of deficiency shall state the manner in which the deficiency constitutes a repeat of the previous violation.
- The notice of deficiency for repeat violations shall be submitted to a supervisor for review and approval.

Immediate Civil Penalty Violations

- Issuance of an immediate civil penalty of \$500 per violation, and then \$100 per violation for each day the violation continues after the citation, for any of the following violations:
 - Any violation the Department determines resulted in the injury or illness of a client
 - Fire clearance violations
 - Absence of supervision, as required by statute and regulations
 - Accessible bodies of water, when prohibited by statute and regulations
 - Accessible firearms, ammunition, or both
 - Refusal of entry to a facility or any part of a facility of any duly authorized officer, employee, or agent of the State Department of Social Services
 - The presence of a person subject to a Department Order of Exclusion on the premises
- A repeat of the same violation within 12 months of the prior violation will result in an immediate civil penalty of \$1,000 per violation, and then \$100 for each day the violation continues after the citation.

Death or Serious Bodily Injury Civil Penalty with Underlying Violation Penalty

- The civil penalty amount for a violation that results in death or serious bodily injury will be reduced by the amount of the civil penalty already assessed for the underlying violation such that the sum of the civil penalty amounts will equal the larger civil penalty amount stipulated in statute.
 - Example: A \$500 civil penalty is assessed for a violation at an RCFE. Later, the Department determines that the underlying violation resulted in serious bodily injury to a resident, resulting in the assessment of a \$10,000 civil penalty. The \$10,000 civil penalty will be reduced by the already-assessed civil penalty amount of \$500. The licensee will be responsible for paying the original \$500 penalty and the enhanced penalty of \$9,500, for a total of \$10,000 in civil penalties.
- If the amount of the civil penalty that the Department has already assessed for the underlying violation exceeds the amount of the penalty for a violation that results in death or serious bodily, the larger amount will prevail and be due and payable as already assessed by the Department.
 - Example: A repeat fire clearance violation at a Small Family Home with 40 or fewer children goes uncorrected for a certain period of time, resulting in the assessment of a \$3,000 civil penalty. Later, the Department

determines that this same violation subsequently resulted in serious bodily injury to a client, which, since the facility capacity was 40 clients or less, resulted in the assessment of a \$2,500 civil penalty. The \$3,000 civil penalty for the underlying violation prevails over the \$2,500 serious bodily injury civil penalty.

Payment of Civil Penalties

- A civil penalty will be due and payable after administrative appeals have been exhausted. A civil penalty not paid within 30 days shall be subject to late fees.
- Until regulations regarding late fees are developed, late fees will not be imposed.

The Department will adopt and amend regulations as applicable to conform to the new civil penalty requirements and will update the Evaluator Manual and relevant forms. In the interim, statute is controlling and supersedes conflicting regulations and other Evaluator Manual documents.

The information in this PIN is a brief summary of the provisions of AB 2231. Licensees are responsible for following all applicable laws. The California Department of Social Services' failure to expressly notify licensees of statutory or regulatory requirements does not relieve licensees of their responsibility to follow all laws and regulations. Licensees should refer to the full text of all applicable sections of the Health and Safety Code.

For legislative information related to this law, see:

[Bill Text – AB 2231 Care facilities: civil penalties](#)