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HEALTH AND SAFETY CODE - HSC

DIVISION 2. LICENSING PROVISIONS [1200 - 1796.70] (*Division 2 enacted by Stats. 1939, Ch. 60.*)

CHAPTER 3.4. California Child Day Care Act [1596.70 - 1596.895] (*Chapter 3.4 added by Stats. 1984, Ch. 1615, Sec. 9.*)

ARTICLE 4.5. Employee Actions [1596.8897 - 1596.8899] (*Article 4.5 added by Stats. 1989, Ch. 825, Sec. 3.*)

1596.8897. (a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

- (1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.
- (2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.
- (3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.
- (4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.
- (5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

(c) (1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the department, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

(2) If the department requires the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person that shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

(3) Within 15 days after the department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the department. The department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The department shall do the following upon receipt of a written appeal:

(A) Within 30 days of receipt of the appeal, serve an accusation upon the excluded person.

(B) Within 60 days of receipt of a notice of defense by the employee or prospective employee pursuant to Section 11506 of the Government Code, conduct a hearing on the accusation.

(4) An order of immediate exclusion of the excluded person from the facility shall remain in effect until the hearing is completed and the department has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the department fails to make a final determination on the merits within 60 days after the original hearing has been completed.

(d) An excluded person who files a written appeal of the exclusion order with the department pursuant to this section shall, as part of the written request, provide their current mailing address. The excluded person shall subsequently notify the department in writing of any change in mailing address, until the hearing process has been completed or terminated.

(e) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department.

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, the executive director, or an officer of a licensee prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(h) (1) (A) In cases in which the excluded person appealed the exclusion order and there is a decision and order upholding the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or from being a certified foster parent or resource family for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the department upholding the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.

(2) (A) In cases in which the department informed the excluded person of their right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the person shall be prohibited from working in any facility or being licensed to operate any facility licensed by the department or a certified foster parent or resource family for the remainder of the excluded person's life, unless otherwise ordered by the department.

(B) The excluded individual may petition for reinstatement after one year has elapsed from the date of the notification of the exclusion order pursuant to Section 11522 of the Government Code. The department shall provide the excluded person with a copy of Section 11522 of the Government Code with the exclusion order.

(i) For purposes of this section, exclusion, as specified in subdivision (a), shall include exclusion from the home of a resource family, as defined in Section 1517 of this code and Section 16519.5 of the Welfare and Institutions Code.

(Amended by Stats. 2019, Ch. 777, Sec. 16. (AB 819) Effective January 1, 2020.)

1596.8898. (a) (1) If the department determines that a person was issued a license under this chapter, Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.3 (commencing with Section 1570), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), or that the applicant previously was approved as a resource family under Article 2 (commencing with Section 16519.5) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code, and the prior license was revoked or prior approval was rescinded within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency that was revoked or rescinded by the department pursuant to subdivision (d) of Section 1517 or subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3 (commencing with Section 1500), Chapter

3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.3 (commencing with Section 1570), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30), or that the person previously applied for resource family approval under Article 2 (commencing with Section 16519.5) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code, and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases in which the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases in which the department or county informed the applicant of the right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(c) If the department determines that the person had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (d) of Section 1517 or subdivision (b) of Section 1534, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

(1) In cases in which the applicant petitioned for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

(2) In cases in which the department informed the applicant of the right to petition for a hearing and the applicant did not petition for a hearing, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 of this code, Section 16519.6 of the Welfare and Institutions Code, or any other law.

(e) The department may determine not to exclude a person from, or remove the person from the position of, a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval, or the denial or rescission of resource family approval, were due to circumstances or conditions that either have been corrected or are no longer in existence.

(f) For purposes of this section, exclusion from a licensed facility shall include exclusion from a resource family, as defined in Section 1517 of this code and Section 16519.5 of the Welfare and Institutions Code. The exclusion of a resource family or an applicant for resource family approval pursuant to this section shall only be imposed as set forth in the written directives or regulations adopted pursuant to Section 16519.5 of the Welfare and Institutions Code.

(Amended by Stats. 2020, Ch. 104, Sec. 14. (AB 2944) Effective September 18, 2020.)

1596.8899. The department shall conduct an unannounced visit to a facility within 30 days after the department serves an order of immediate exclusion from the facility upon the licensee or a person subject to immediate removal or exclusion from the facility pursuant to paragraph (2) of subdivision (c) of Section 1596.871 or subdivision (c) of Section 1596.8897 in order to ensure that the excluded person is not within the facility, unless the department previously has verified that the excluded person is not within the facility.

(Added by Stats. 2008, Ch. 291, Sec. 21. Effective September 25, 2008.)