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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 3.6. Family Day Care Homes [1597.30 - 1597.622] (*Heading of Chapter 3.6 amended by Stats. 1984, Ch. 1615, Sec. 10.5.*)

1597.30. The Legislature finds and declares all of the following:

- (a) The Legislature has a responsibility to ensure the health and safety of children in family homes that provide daycare.
- (b) There is an extreme shortage of regulated family daycare homes in California, and the number has decreased significantly since 2008.
- (c) There continues to be a growing need for child daycare facilities due to the increased number of working parents. Parents need childcare so they can work and attend school, and so their children can thrive.
- (d) Many parents prefer childcare located in their neighborhoods in family homes.
- (e) There should be a variety of childcare settings, including regulated family daycare homes, as suitable choices for parents.
- (f) The licensing program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family daycare homes, while not placing undue burdens on the providers.
- (g) The state should maintain an efficient program of regulating family daycare homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.
- (h) The state has a responsibility to promote the development and expansion of regulated family daycare homes to care for children in residential settings.

(Amended by Stats. 2019, Ch. 244, Sec. 4. (SB 234) Effective January 1, 2020.)

1597.36. The department shall provide written documentation to providers of the need for repairs, renovations, or additions when requested for an application for a loan guarantee pursuant to subdivision (d) of Section 10305.5 of the Welfare and Institutions Code whenever the repairs, renovations, or additions are required by the department in order for the licensee to maintain or obtain a license for more than six children.

(Amended by Stats. 2021, Ch. 116, Sec. 257. (AB 131) Effective July 23, 2021.)

1597.40. (a) It is the intent of the Legislature that family daycare homes for children should be situated in normal residential surroundings so as to give children the home environment that is conducive to healthy and safe development. It is the public policy of this state to provide children in a family daycare home the same home environment as provided in a traditional home setting.

(b) The Legislature declares this policy to be of statewide concern with the purpose of occupying the field. This act, the state building code, and the fire code, and regulations promulgated pursuant to those provisions, shall preempt local laws, regulations, and rules governing the use and occupancy of family daycare homes. Local laws, regulations, or rules shall not directly or indirectly prohibit or restrict the use of a facility as a family daycare home, including, but not limited to, precluding the operation of a family daycare home.

(Repealed and added by Stats. 2019, Ch. 244, Sec. 6. (SB 234) Effective January 1, 2020.)

1597.41. (a) Every provision in a written instrument relating to real property that purports to restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family daycare home is void, and every restriction in that written instrument as to the use or occupancy of the property as a family daycare home is void.

(b) An attempt to deny, restrict, or encumber the conveyance, leasing, or mortgaging of real property for use or occupancy as a family daycare home is void. A restriction related to the use or occupancy of the property as a family daycare home is void. A property owner or manager shall not refuse to sell or rent, or refuse to negotiate for the sale or rental of, or otherwise make

unavailable or deny, a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential use to a person because that person is a family daycare provider.

(c) Except as provided in subdivision (d), a restriction, whether by way of covenant, contract, condition upon use or occupancy, or by transfer of title to real property, that restricts directly or indirectly limits the acquisition, use, or occupancy of a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential use as a family daycare home is void.

(d) (1) A prospective family daycare home provider who resides in a rental property shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family daycare home.

(2) A family daycare home provider who has relocated an existing licensed family daycare home program to a rental property on or after January 1, 1997, may provide less than 30 days' written notice when the department approves the operation of the new location of the family daycare home in less than 30 days, or the home is licensed in less than 30 days, so that service to the children served in the former location not be interrupted.

(3) A family daycare home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other law, upon commencement of, or knowledge of, the operation of a family daycare home on an individual's property, the landlord or property owner may require the family daycare home provider to pay an increased security deposit for operation of the family daycare home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family daycare homes. The total security deposit charged shall not exceed the maximum allowable under existing law.

(5) Section 1596.890 does not apply to this subdivision.

(e) During the license application process for a small or large family daycare home, the department shall notify the applicant that the remedies and procedures in Article 2 (commencing with Section 12980) of Chapter 7 of Part 2.8 of Division 3 of Title 2 of the Government Code relating to fair housing are available to family daycare home providers, family daycare home provider applicants, and individuals who claim that any of the protections provided by this section or Section 1597.40, 1597.42, 1597.43, 1597.45, 1597.455, or 1597.46 have been denied.

(f) For the purpose of this section, "restriction" means a restriction imposed orally, in writing, or by conduct and includes prohibition.

(g) This section does not alter the existing rights of landlords and tenants with respect to addressing and resolving issues related to noise, lease violations, nuisances, or conflicts between landlords and tenants.

(Added by Stats. 2019, Ch. 244, Sec. 7. (SB 234) Effective January 1, 2020.)

1597.42. The use of a home as a family daycare home, operated under the standards of state law, in a residentially zoned area shall be considered a residential use of property for the purposes of all local ordinances, regulations, and rules, and shall not fundamentally alter the nature of the underlying residential use.

(Added by Stats. 2019, Ch. 244, Sec. 8. (SB 234) Effective January 1, 2020.)

1597.43. The Legislature finds and declares all of the following:

(a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.

(b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a "congregate care facility" means a "residential facility," as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

(c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities.

(Added by Stats. 1996, Ch. 18, Sec. 3.5. Effective January 1, 1997.)

1597.44. A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- (b) No more than two infants are cared for during any time when more than six children are cared for.
- (c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

(Amended by Stats. 2003, Ch. 744, Sec. 1. Effective January 1, 2004.)

1597.45. (a) The use of a home as a small or large family daycare home shall be considered a residential use of property and a use by right for the purposes of all local ordinances, including, but not limited to, zoning ordinances.

(b) A local jurisdiction shall not impose a business license, fee, or tax for the privilege of operating a small or large family daycare home.

(c) Use of a home as a small or large family daycare home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small or large family daycare home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) The provisions of this chapter do not preclude a city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family daycare home, as long as those restrictions are identical to those applied to all other residences with the same zoning designation as the family daycare home. This chapter does not preclude a local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity, as long as the local ordinance is identical to those applied to all other residences with the same zoning designation as the family daycare home. This chapter also does not prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, the ordinance or nuisance abatement shall not distinguish family daycare homes from other homes with the same zoning designation, except as otherwise provided in this chapter.

(f) For purposes of this chapter, "small family daycare home or large family daycare home" includes a detached single-family dwelling, a townhouse, a dwelling unit within a dwelling, or a dwelling unit within a covered multifamily dwelling in which the underlying zoning allows for residential uses. A small family daycare home or large family daycare home is where the family daycare provider resides, and includes a dwelling or dwelling unit that is rented, leased, or owned.

(Amended by Stats. 2019, Ch. 244, Sec. 9. (SB 234) Effective January 1, 2020.)

1597.455. (a) A small family daycare home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2 of Division 12, except that a small family daycare home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

(b) A small family daycare home for children shall have one or more carbon monoxide detectors in the facility that meet the standards established in Chapter 8 (commencing with Section 13260) of Part 2 of Division 12. The department shall account for the presence of these detectors during inspections.

(Added by Stats. 2019, Ch. 244, Sec. 10. (SB 234) Effective January 1, 2020.)

1597.46. (a) A large family daycare home shall abide by all standards, in addition to the requirements of the State Uniform Building Standards Code, that are specifically designed to promote fire and life safety in large family daycare homes. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in family daycare homes, which shall be published in Title 24 of the California Code of Regulations. These standards shall apply uniformly throughout the state and shall include, but not be limited to, all of the following:

(1) The requirement that a large family daycare home contain a fire extinguisher or smoke detector device, or both, that meets childcare standards established by the State Fire Marshal.

(2) Specification as to the number of required exits from the home.

(3) Specification as to the floor or floors on which childcare may be provided and the number of required exits on each floor.

(b) A large family daycare home for children shall have one or more carbon monoxide detectors in the facility that meet the standards established in Chapter 8 (commencing with Section 13260) of Part 2 of Division 12. The department shall account for the presence of these detectors during inspections.

(c) Enforcement of this section shall be in accordance with Sections 13145 and 13146. A city, county, city and county, or district shall not adopt or enforce a building ordinance or local rule or regulation relating to the subject of fire and life safety in large family daycare homes that is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to all residences with the same zoning designation in which childcare is provided.

(Repealed and added by Stats. 2019, Ch. 244, Sec. 12. (SB 234) Effective January 1, 2020.)

1597.465. A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least one child is enrolled in and attending kindergarten or elementary school and a second child is at least six years of age.
- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
- (c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

(Amended by Stats. 2003, Ch. 744, Sec. 2. Effective January 1, 2004.)

1597.467. (a) Whenever any licensee under this chapter has reasonable cause to believe that a child in his or her care has suffered any injury or has been subjected to any act of violence while under the licensee's care, the licensee shall, as soon as possible, report that injury or act of violence to the parent, parents, or guardian of that child.

(b) (1) A report shall be made to the department by telephone or fax during the department's normal business hours before the close of the next working day following the occurrence during the operation of a family day care home of any of the following events:

- (A) Death of any child from any cause.
- (B) Any injury to any child that requires medical treatment.
- (C) Any unusual incident or child absence that threatens the physical or emotional health or safety of any child.

(2) In addition to the report required pursuant to paragraph (1), a written report shall be submitted to the department within seven days following the occurrence of any events specified in paragraph (1). The report shall contain all of the following information:

- (A) Child's name, age, sex, and date of admission.
- (B) Date and nature of the event.
- (C) Attending physician's name and findings and treatment, if any.
- (D) Disposition of the case.

(c) The department may develop the report form to be used for reporting purposes pursuant to this section, and shall maintain all reports filed under this section in a manner that allows the department to report the data to the Legislature.

(d) The failure of a licensee to report, as prescribed by this section, any injury of, or act of violence to, a child under the licensee's care may be grounds for the suspension of his or her license pursuant to this chapter, but shall not constitute a misdemeanor.

(e) Nothing in this section shall relieve any licensee of any obligation imposed by other law including, but not limited to, laws relating to seeking medical attention for a child or reporting suspected child abuse.

(Added by Stats. 2001, Ch. 679, Sec. 1. Effective January 1, 2002.)

1597.52. (a) Licensing reviews of a family day care home for children shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training programs of the facility.

(b) No home shall be licensed or registered as a large family day care home after January 1, 1984, unless the provider has at least one year's experience as a regulated small family day care home operator or as an administrator of a licensed day care center. The director may waive this requirement upon a finding that the applicant has sufficient qualifying experience.

(Amended by Stats. 1985, Ch. 1064, Sec. 30.)

1597.53. No family day care home for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter and Chapter 3.4 (commencing with Section 1596.70) which shall

apply to family day care homes.

(Amended by Stats. 1984, Ch. 1615, Sec. 14.)

1597.531. (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.

(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Sections 4080 and 4100 of the Civil Code.

(Amended by Stats. 2012, Ch. 181, Sec. 62. (AB 806) Effective January 1, 2013. Operative January 1, 2014, by Sec. 86 of Ch. 181.)

1597.54. (a) All family daycare homes for children, shall apply for a license under this chapter, except that any home that, on June 28, 1981, had a valid and unexpired license to operate as a family daycare home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license, at which time a new license may be issued upon fulfilling the requirements of this chapter.

(b) An applicant for licensure as a family daycare home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(1) A brief statement confirming that the applicant is financially secure to operate a family daycare home for children. The department shall not require any other specific or detailed financial disclosure.

(2) (A) Evidence that the small family daycare home contains a fire extinguisher or smoke detector device, or both, that meets standards established by the State Fire Marshal under Section 1597.455, or evidence that the large family daycare home meets the standards established by the State Fire Marshal under subdivision (a) of Section 1597.46.

(B) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(3) The fingerprints of any applicant of a family daycare home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(4) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care. This requirement may be satisfied by a current certificate, as defined in subdivision (f) of Section 121525, that indicates freedom from infectious tuberculosis as set forth in Section 121525.

(5) Commencing September 1, 2016, evidence of current immunity or exemption from immunity, as described in Section 1597.622, for the applicant and any other person who provides care and supervision to the children.

(6) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.

(7) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(8) Other information as required by the department for the proper administration and enforcement of the act.

(c) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(Amended by Stats. 2019, Ch. 244, Sec. 14. (SB 234) Effective January 1, 2020.)

1597.541. (a) The department shall adopt regulations regarding age-appropriate immunization requirements for enrolled children for family day care homes.

(b) All family day care homes for children shall maintain evidence that enrolled children have met the age-appropriate immunization requirements adopted pursuant to this section.

(Added by Stats. 1992, Ch. 1316, Sec. 9. Effective January 1, 1993.)

1597.542. (a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

(Amended by Stats. 1993, Ch. 726, Sec. 9. Effective October 4, 1993.)

1597.543. (a) The State Fire Marshal shall update the building and fire standards necessary to implement the sections of this chapter relating to life and fire safety, including, but not limited to, Sections 1597.455 and 1597.46, and shall publish the updates in the California Code of Regulations (CCR) in the next Title 19 and Title 24 CCR adoption cycle.

(b) Prior to the publication of the updates required by subdivision (a), but not later than January 1, 2021, the State Fire Marshal shall issue guidance on implementing the sections listed in subdivision (a).

(c) The State Fire Marshal shall update the regulations at least every three years to conform to changes in this chapter. The State Fire Marshal may issue guidance on implementing this chapter annually in the years in which the regulations are not updated in Title 19 and Title 24 of the CCR.

(Repealed and added by Stats. 2019, Ch. 244, Sec. 16. (SB 234) Effective January 1, 2020.)

1597.55a. (a) Every family day care home shall be subject to unannounced inspections by the department, as provided in this section. The department shall inspect these facilities as often as necessary to ensure the quality of care provided.

(b) The department shall conduct an announced site inspection prior to the initial licensing of the applicant.

(c) The department shall conduct an annual unannounced inspection of a facility under any of the following circumstances:

(1) When a license is on probation.

(2) When the terms of agreement in a facility compliance plan require an annual inspection.

(3) When an accusation against a licensee is pending.

(4) In order to verify that a person who has been ordered out of a family day care home by the department is no longer at the facility.

(d) (1) The department shall conduct annual unannounced inspections of no less than 30 percent of facilities not subject to an inspection under subdivision (c).

(2) These unannounced inspections shall be conducted based on a random sampling methodology developed by the department.

- (e) The department shall inspect a licensed family day care home at least once every three years.
 - (f) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.
 - (g) The department or licensing agency shall make an unannounced site inspection on the basis of a complaint and a followup inspection, as provided in Section 1596.853.
 - (h) An unannounced site inspection shall adhere to both of the following conditions:
 - (1) The inspection shall take place only during the facility's normal business hours or at any time family day care services are being provided.
 - (2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.
 - (i) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.
 - (j) It is the intent of the Legislature to achieve annual inspections for licensed family day care homes and facilities governed by this section on or before July 1, 2021.
- (Amended by Stats. 2019, Ch. 27, Sec. 14. (SB 80) Effective June 27, 2019.)*

1597.55b. No site visits, unannounced visits, or spot checks, shall be made under this chapter except as provided in this section.

- (a) An announced site visit shall be required prior to the licensing of the applicant.
 - (b) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.
 - (c) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance.
 - (d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.
 - (e) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b) and (c).
 - (f) An unannounced site visit shall comply with both of the following conditions:
 - (1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.
 - (2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.
 - (g) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.
- (Amended by Stats. 2003, Ch. 225, Sec. 18. Effective August 11, 2003.)*

- 1597.56.** (a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home. Upon a finding of noncompliance with a plan of correction, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.
- (b) In developing a plan of correction, both the licensee and the department shall give due consideration to the following factors:
 - (1) The gravity of the violation.
 - (2) The history of previous violations.
 - (3) The possibility of a threat to the health or safety of any child in the facility.
 - (4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) The department shall ensure that the licensee's plan of correction is verifiable and measurable. The plan of correction shall specify what evidence is acceptable to establish that a deficiency has been corrected. This evidence shall be included in the department's facility file.

(d) The department shall adopt regulations establishing procedures for the imposition of civil penalties under this section.

(Amended by Stats. 2008, Ch. 291, Sec. 24. Effective September 25, 2008.)

1597.57. The department shall do all of the following:

(a) Develop and utilize one application form for all family day care homes for children requesting a new license.

(b) Establish for parents a consumer education program annually on the law and regulations governing family day care homes for children under this chapter and the role of the state and other public entities and local associations in relation to family day care homes for children. In planning this program, the department shall seek the assistance of other public entities and local associations.

(c) Administer an orientation program for new operators of family day care homes for children that may be conducted directly by the department or by contract with local governments or family day care home associations.

(Amended by Stats. 1992, Ch. 1315, Sec. 34. Effective January 1, 1993.)

1597.58. (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department shall levy a civil penalty.

(b) (1) The amount of the civil penalty shall be one hundred dollars (\$100) per day for each violation of this chapter if a facility fails to correct a deficiency after being provided a specified length of time to correct that deficiency.

(A) If a licensee or a licensee's representative submits evidence to the department that the licensee has corrected a deficiency, and the department, after reviewing that evidence, has determined that the deficiency has been corrected, the civil penalty shall cease as of the day the department received that evidence.

(B) If the department deems it necessary, the department shall inspect the facility within five working days after the department receives evidence pursuant to subparagraph (A) to confirm that the deficiency has been corrected.

(C) If the department determines that the deficiency has not been corrected, the civil penalty shall continue to accrue from the date of the original citation.

(D) If the department is able to verify that the deficiency was corrected prior to the date on which the department received the evidence pursuant to subparagraph (A), the civil penalty shall cease as of that earlier date.

(2) (A) If the department issues a notification of deficiency to a facility for a repeat violation of a violation specified in paragraph (1), the department shall assess an immediate civil penalty of two hundred fifty dollars (\$250) per repeat violation and one hundred dollars (\$100) for each day the repeat violation continues after citation. The notification of deficiency shall state the manner in which the deficiency constitutes a repeat violation and shall be submitted to a supervisor for review and approval.

(B) For purposes of this section, "repeat violation" means a violation within 12 months of a prior violation of a statutory or regulatory provision designated by the same combination of letters or numerals, or both letters and numerals.

(C) Notwithstanding subparagraphs (A) and (B), the department, in its sole discretion, may reduce the civil penalty for the cited repeat violation to the level of the underlying violation, as applicable, if it determines that the cited repeat violation is not substantially similar to the original violation.

(3) If the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as provided in this chapter, a correction of the deficiency shall not impact the imposition of a civil penalty.

(c) The department shall assess an immediate civil penalty of five hundred dollars (\$500) per violation and one hundred dollars (\$100) for each day the violation continues after citation, for any of the following serious violations:

(1) Any violation that the department determines resulted in the injury or illness of a child.

(2) Absence of supervision, including, but not limited to, a child left unattended and a child left alone with a person under 18 years of age.

(3) Accessible bodies of water, when prohibited by this chapter or regulations adopted pursuant to this chapter.

(4) Accessible firearms, ammunition, or both.

(5) Refused entry to a facility or any part of a facility in violation of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.

(6) The presence of a person subject to a department Order of Exclusion on the premises.

(d) If the department issues a notification of deficiency to a facility for a repeat violation of a violation specified in subdivision (c), the department shall assess an immediate civil penalty of one thousand dollars (\$1,000) per repeat violation and one hundred dollars (\$100) for each day the repeat violation continues after citation. The notification of deficiency shall state the manner in which the deficiency constitutes a repeat violation and shall be submitted to a supervisor for review and approval.

(e) For a violation that the department determines resulted in the death of a child, the civil penalty shall be assessed as follows:

(1) Five thousand dollars (\$5,000) for a small family day care home, as described in Section 1597.44.

(2) Seven thousand five hundred dollars (\$7,500) for a large family day care home, as described in Section 1597.465.

(f) (1) For a violation that the department determines constitutes physical abuse or resulted in serious injury, as defined in Section 1596.8865, to a child, the civil penalty shall be assessed as follows:

(A) One thousand dollars (\$1,000) for a small family day care home, as described in Section 1597.44.

(B) Two thousand dollars (\$2,000) for a large family day care home, as described in Section 1597.465.

(2) For purposes of this subdivision, "physical abuse" includes physical injury inflicted upon a child by another person by other than accidental means, sexual abuse as defined in Section 11165.1 of the Penal Code, neglect as defined in Section 11165.2 of the Penal Code, or unlawful corporal punishment or injury as defined in Section 11165.4 of the Penal Code when the person responsible for the child's welfare is a licensee, administrator, or employee of any facility licensed to care for children, or an administrator or employee of a public or private school or other institution or agency.

(g) (1) Before the assessment of a civil penalty pursuant to subdivision (e) or (f), the decision shall be approved by the program administrator of the Community Care Licensing Division.

(2) (A) The department shall reduce the amount of a civil penalty due pursuant to subdivision (e) or (f) by the amount of the civil penalty already assessed for the underlying violation.

(B) If the amount of the civil penalty that the department has already assessed for the underlying violation exceeds the amount of the penalty pursuant to subdivision (e) or (f), the larger amount shall prevail and be due and payable as already assessed by the department.

(h) Notwithstanding any other law, revenues received by the state from the payment of civil penalties imposed on licensed family day care homes pursuant to this chapter or Chapter 3.4 (commencing with Section 1596.70), shall be deposited in the Child Health and Safety Fund, created pursuant to Chapter 4.6 (commencing with Section 18285) of Part 6 of Division 9 of the Welfare and Institutions Code, and shall be expended, upon appropriation by the Legislature, pursuant to subdivision (f) of Section 18285 of the Welfare and Institutions Code exclusively for the technical assistance, orientation, training, and education of licensed family day care home providers.

(i) (1) A notification of a deficiency written by a representative of the department shall include a factual description of the nature of the deficiency fully stating the manner in which the licensee failed to comply with the specified statute or regulation, and, if applicable, the particular place or area in which the deficiency occurred. The department shall make a good faith effort to work with the licensee to determine the cause of the deficiency and ways to prevent any repeat violations.

(2) The department shall adopt regulations setting forth appeal procedures for deficiencies.

(j) (1) A licensee shall have the right to submit to the department a written request for a formal review of a civil penalty assessed pursuant to subdivisions (d) and (e) within 15 business days of receipt of the notice of a civil penalty assessment and shall provide all available supporting documentation at that time. The review shall be conducted by the deputy director of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the deputy director determines that the civil penalty was not assessed, or the finding of the deficiency that resulted in the assessment of the civil penalty was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the deputy director's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), a licensee may further appeal that decision to an administrative law judge. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In all proceedings conducted in accordance with this section, the standard of proof shall be by a preponderance of the evidence.

(3) If, in addition to an assessment of civil penalties, the department elects to file an administrative action to suspend or revoke the facility license that includes violations relating to the assessment of the civil penalties, the department review of the pending appeal shall cease and the assessment of the civil penalties shall be heard as part of the administrative action process.

(4) Civil penalties shall be due and payable when administrative appeals have been exhausted. Unless payment arrangements have been made that are acceptable to the department, a civil penalty not paid within 30 days shall be subject to late fees, as specified by the department in regulation.

(k) (1) A licensee shall have the right to submit to the department a written request for a formal review of any other civil penalty or deficiency not described in subdivision (j) within 15 business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by a regional manager of the Community Care Licensing Division. The licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within the first 30 business days after submitting the request for review. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for review. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the regional manager determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the regional manager's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee.

(2) Upon exhausting the review described in paragraph (1), the licensee may further appeal that decision to the program administrator of the Community Care Licensing Division within 15 business days of receipt of notice of the regional manager's decision. The licensee may submit additional supporting documentation that was unavailable at the time of appeal to the program administrator within the first 30 business days after requesting that appeal. If the department requires additional information from the licensee, that information shall be requested within the first 30 business days after receiving the request for the appeal. The licensee shall provide this additional information within 30 business days of receiving the request from the department. If the program administrator determines that the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the department, he or she may amend or dismiss the civil penalty or finding of deficiency. The licensee shall be notified in writing of the program administrator's decision within 60 business days of the date when all necessary information has been provided to the department by the licensee. The program administrator's decision is considered final and concludes the licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

(3) Civil penalties shall be due and payable when administrative appeals have been exhausted. Unless payment arrangements have been made that are acceptable to the department, a civil penalty not paid within 30 days shall be subject to late fees, as specified by the department in regulation.

(l) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer the changes made by the act that added this subdivision through all-county letters or similar written instructions until regulations are adopted pursuant to the Administrative Procedure Act.

(m) This section shall become operative on July 1, 2017.

(Repealed (in Sec. 15) and added by Stats. 2016, Ch. 823, Sec. 16. (AB 2231) Effective January 1, 2017. Section operative July 1, 2017, by its own provisions.)

1597.59. The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision (b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency.

The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

(Amended by Stats. 1997, Ch. 606, Sec. 11. Effective October 3, 1997.)

1597.61. (a) When the department determines that a family day care home for children is operating without a license and notifies the unlicensed provider of the requirement for the license, the licensing agency may issue a cease and desist order only if it finds

and documents that continued operation of the facility will be dangerous to the health and safety of the children or if a license held by the facility has been revoked by the department within two years preceding the determination of unlicensed operation. In all other cases where the licensing agency determines such a facility is operating without a license and notifies the unlicensed provider of the requirements for the license, the licensing agency may issue a cease and desist order only if the unlicensed provider does not apply for a license within a reasonable time after the notice.

(b) If an unlicensed family day care home fails to respond to a cease and desist order issued pursuant to subdivision (a), or if the department determines it necessary to protect the immediate health and safety of the children, the licensing agency may bring an action to enjoin such a home from continuing to operate pursuant to Section 1596.89.

(c) The district attorney of a county shall, upon application by the department, institute and conduct the prosecution of any action brought by the licensing agency against an unlicensed family day care home located in that county.

(Amended by Stats. 1988, Ch. 1098, Sec. 4.)

1597.62. (a) The department may impose civil penalties of not less than twenty-five dollars (\$25) and not more than fifty dollars (\$50) per day per violation for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Sections 1596.893b and 1597.56.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

(Amended by Stats. 2008, Ch. 291, Sec. 25.2. Effective September 25, 2008.)

1597.621. Family day care homes that, on December 31, 1983, have a valid unexpired registration to operate as a family day care home for children pursuant to Section 1597.62 in one of the pilot counties shall be deemed to be issued a family day care license effective January 1, 1984. Licensure pursuant to this section shall not require a visit pursuant to the requirement set forth in subdivision (a) of Section 1597.55. However, all other requirements of licensing shall continue to be met. Complaint and revocation procedures may be enforced.

(Amended by Stats. 1992, Ch. 1315, Sec. 37. Effective January 1, 1993.)

1597.622. (a) (1) Commencing September 1, 2016, a person shall not be employed or volunteer at a family day care home if he or she has not been immunized against influenza, pertussis, and measles. Each employee and volunteer shall receive an influenza vaccination between August 1 and December 1 of each year.

(2) If a person meets all other requirements for employment or volunteering, as applicable, but needs additional time to obtain and provide his or her immunization records, the person may be employed or volunteer conditionally for a maximum of 30 days upon signing and submitting a written statement attesting that he or she has been immunized as required.

(b) A person is exempt from the requirements of this section only under any of the following circumstances:

(1) The person submits a written statement from a licensed physician declaring that because of the person's physical condition or medical circumstances, immunization is not safe.

(2) The person submits a written statement by a licensed physician providing that the person has evidence of current immunity to the diseases described in subdivision (a).

(3) The person submits a written declaration that he or she has declined the influenza vaccination. This exemption applies only to the influenza vaccine.

(4) The person was hired after December 1 of the previous year and before August 1 of the current year. This exemption applies only to the influenza vaccine during the first year of employment or volunteering.

(c) The family day care home shall maintain documentation of the required immunizations or exemptions from immunization, as set forth in this section, in the person's personnel record that is maintained by the family day care home.

(d) For purposes of this section, "volunteer" means any nonemployee who provides care and supervision to children in care.

(Added by Stats. 2015, Ch. 807, Sec. 4. (SB 792) Effective January 1, 2016.)