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AB-426 Unlicensed residential foster care facilities: temporary placement management. (2023-2024)

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Assembly Bill No. 426

CHAPTER 438

An act to amend Section 1547 of the Health and Safety Code, and to amend Section 10605 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 426, Jackson. Unlicensed residential foster care facilities: temporary placement management.

Existing law prohibits an unlicensed community care facility, as defined, from operating in the state, and prohibits a person, firm, partnership, association, or corporation within the state, or state or local public agency, from operating, establishing, managing, conducting, or maintaining a community care facility in this state, without a current, valid community care facility license. Existing law authorizes the department to assess an immediate civil penalty in the amount of \$200 per day for a violation of either or both of those prohibitions, as specified.

This bill would additionally authorize the department to assess an immediate civil penalty in the amount of \$1,000 for each day of the violation on a person, as defined, who provides residential care to children.

Existing law requires the Director of Social Services to follow specified procedures if the director believes that a county is substantially failing to comply with specified provisions of law or any regulation pertaining to any program administered by the department, including, among other things, taking formal action to secure compliance and providing counties with written notice of that action and a minimum of 30 days to correct its failure to comply.

This bill would additionally apply these procedures when a county has failed to comply with the California Community Care Facilities Act. The bill would additionally require the director to inform the county welfare director and the board of supervisors by written notice if the director is informed a county is failing to comply with any provision of law or regulation pertaining to any program administered by the department.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1547 of the Health and Safety Code is amended to read:

1547. (a) (1) Notwithstanding any other provision of this chapter, any person who violates Section 1503.5 or 1508, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars (\$200) per day of the violation, unless the conditions described in paragraph (2) apply.

(2) A person who violates Section 1503.5 or 1508 and provides residential care to children may be assessed an immediate civil penalty in the amount of one thousand dollars (\$1,000) per day of the violation.

(b) The civil penalty authorized in subdivision (a) shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the operator seeks licensure and the licensure application is denied and the operator continues to operate the unlicensed facility, unless other remedies available to the department, including criminal prosecution, are deemed more effective by the department.

(c) An operator may appeal the assessment to the director. The department shall adopt regulations setting forth the appeal procedure.

(d) For purposes of this section, "person" means an individual, firm, association, organization, partnership, business trust, corporation, limited liability company, company, or political subdivision of the state.

SEC. 2. Section 10605 of the Welfare and Institutions Code is amended to read:

10605. (a) If the director believes that a county is substantially failing to comply with any provision of this code or Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or any regulation pertaining to any program administered by the department, and the director determines that formal action may be necessary to secure compliance, the director shall inform the county welfare director and the board of supervisors of that failure. The notice to the county welfare director and board of supervisors shall be in writing and shall allow the county a specified period of time, not less than 30 days, to correct its failure to comply with the law or regulations. If within the specified period the county does not comply or provide reasonable assurances in writing that it will comply within the additional time as the director may allow, the director may take one or both of the following actions:

(1) (A) Bring an action for injunctive relief to secure immediate compliance.

(B) A county that is found to be failing to substantially comply with the law or regulations pertaining to any program administered by the department may be enjoined by any court of competent jurisdiction. The court may make orders or judgments as may be necessary to secure county compliance.

(2) Order the county to appear at a hearing before the director to show cause why the director should not take administrative action to secure compliance. The county shall be given at least 30 days' notice of the hearing. The director shall consider the case on the record established at the hearing and, within 30 days, shall render proposed findings and a proposed decision on the issues. The proposed findings and decisions shall be submitted to the county, and the county shall have the opportunity to appear within 10 days, at a time and place as may be determined by the director, for the purpose of presenting oral arguments respecting the proposed findings and decisions. Thereupon, the director shall make final findings and issue a final administrative decision.

(b) If the director determines, based on the record established at the hearing pursuant to paragraph (2) of subdivision (a), that the county is failing to comply with laws or regulations pertaining to any program administered by the department, or if the Department of Human Resources certifies to the director that a county is not in conformity with established merit system standards under Part 2.5 (commencing with Section 19800) of Division 5 of Title 2 of the Government Code, and that administrative sanctions are necessary to secure compliance, the director may invoke either of the following sanctions, except that the sanctions shall not be invoked concurrently:

(1) Except for child welfare services programs, withhold all or part of state and federal funds from the county until the county demonstrates to the director that it has complied.

(2) (A) Assume, temporarily, direct responsibility for the administration of all or part of any or all programs administered by the department in the county until the time as the county provides reasonable written assurances to the director of its intention and ability to comply. During the period of direct state administrative responsibility, the director or their authorized representative shall have all of the powers and responsibilities of the county director, except that the authorized representative shall not be subject to the authority of the board of supervisors.

(B) (i) In the event that the director invokes sanctions pursuant to this section, the county shall be responsible for providing any funds as may be necessary for the continued operation of all programs administered by the department in the county. If a county fails or refuses to provide these funds, including a sufficient amount to reimburse any and all costs incurred by the department in directly administering any program in the county, the Controller may deduct an amount certified by the director as necessary for the continued operation of these programs by the department from any state or federal funds payable to the county for any purpose.

(ii) In the event of a state-imposed sanction, the amount of the sanction shall be no greater than the amount of county funds that the county would be required to contribute to fully match the state General Fund allocation for the particular

program or programs for which the county is being sanctioned for those programs that are not Public Safety Programs realigned pursuant to 2011 realignment legislation.

(iii) In the event of a state-imposed sanction pursuant to this paragraph for the Public Safety Programs realigned pursuant to 2011 realignment legislation that are administered by the Department of Social Services, the amount of the sanction shall be no greater than the amount of funding originally provided to the county in the 2011–12 fiscal year for the particular program from the Protective Services Subaccount within the Support Services Account of the Local Revenue Fund 2011, as adjusted by the county's share of the additional incremental funding provided pursuant to paragraph (2) of subdivision (f) of Section 30027.5 of, paragraph (2) of subdivision (f) of Section 30027.6 of, paragraph (2) of subdivision (f) of Section 30027.7 of, and paragraph (2) of subdivision (f) of Section 30027.8 of, the Government Code, the estimated growth funding for the program from the Support Services Growth Subaccount within the Sales and Use Tax Growth Account, and any adjustment to the county allocation pursuant to subdivisions (a) and (b) of Section 30029.5 of the Government Code.

(c) (1) The department is authorized to conduct or have conducted audits and reviews in order to meet its obligations for child welfare programs and to ensure the protection of children and families.

(2) Except when there is a risk of immediate harm to a minor, the department shall provide the county with at least 30-calendar days' notice of the department's intent to perform an audit or review. This notice shall include the intended purpose, scope, and timing of the audit or review.

(3) The county shall have an opportunity to respond to the audit or review and may request an extension of up to 30 calendar days, that shall be granted by the director if there is good cause and unless there is a risk of immediate harm to a minor. The request for extension shall be submitted to the department within 10 business days of receipt of the audit or review notice. The department, in consultation with the California State Association of Counties, shall develop a definition of good cause for the purposes of this section.

(4) The notice required by paragraph (2) does not limit the authority of the department under federal or state law to examine other information or records should that become prudent or necessary during the course of the audit or review.

(5) The county shall be presented with the audit or review findings at the conclusion of the audit or review. The county shall have 10 business days to provide a written response to the audit or review findings. The department shall have 10 business days thereafter to issue a final response to the county's written response. Both the county response and the department's written response shall be published as part of the audit or review and made final.

(6) The audit or review shall not result in a fiscal sanction to the county, as defined in subdivision (b).

(7) The department may impose a fiscal disallowance if there is a finding of misappropriation of funding, and the county shall be afforded due process as specified in subdivision (d).

(d) (1) If the audit or review specified in subdivision (c) results in a fiscal disallowance, the county may request a hearing within 30 calendar days of the notice of sanction or finalized audit or review. The hearing request shall be in writing and shall be known as the Statement of Disputed Issues, which shall set forth the issues in dispute, and the county's contentions as to those issues, including any documentation to support the county's contentions. The hearing shall take place before a hearing officer designated by the director to examine any disputed audit or review finding.

(A) Following the hearing, the hearing officer shall submit the proposed final audit or review of the findings to the director. The director may take any of the following actions:

(i) Adopt the proposed findings with or without reading the record. The findings shall be final upon adoption by the director.

(ii) Reject the proposed findings and have findings prepared based upon the documentation presented at the hearing.

(iii) Refer the matter back to the hearing officer to receive additional information and prepare new findings.

(B) The final audit or review of the findings shall include the county's Statement of Disputed Issues, including its accompanying documentation. The final audit or review of the findings shall be subject to judicial review.

(e) If the director is informed that a county is failing to comply with any provision of law or regulation pertaining to a program administered by the department, and the director determines that formal action, as described in subdivision (a), is not yet warranted but that county action is necessary to correct the reported failure, the director shall inform the county welfare director and the board of supervisors by written notice. The written notice shall, at a minimum, identify the legal compliance issues and provide a minimum of 10 days for county response.

(f) Nothing in this section shall be construed as preventing the department from bringing an action for writ of mandamus or any other action in court as may be appropriate to ensure no interruption in the provision of benefits to any person eligible therefore under federal law, the provisions of this code or the regulations of the department.

(g) (1) Nothing in this section shall be construed as relieving the board of supervisors of the responsibility to provide funds necessary for the continued services required by law.

(2) Nothing contained in this section shall be construed as preventing a county from seeking judicial review of action taken by the director pursuant to this section under Section 1094.5 of the Code of Civil Procedure or, except in cases arising under Sections 10962 and 10963, from seeking injunctive relief when deemed appropriate.