

---

**EVALUATOR MANUAL TRANSMITTAL SHEET**


---

<b><u>Distribution:</u></b>  <input type="checkbox"/> All Child Care Evaluator Manual Holders <input type="checkbox"/> All Residential Care Evaluator Manual Holders <input checked="" type="checkbox"/> All Evaluator Manual Holders	<b><u>Transmittal No.</u></b>  15APX-07
	<b><u>Date Issued</u></b>  September 2015

**Subject:**

Appendix A – 2014 Chaptered Legislation  
 Community Care Licensing Division, Children’s Residential Facilities

---

**Reason for Change:** This document transmits summaries of, and implementation procedures for, legislation chaptered in 2014 affecting the Community Care Licensing Division, Children’s Residential Facilities.

---

**Filing Instructions:** Please insert Appendix A – 2014 Chaptered Legislation, but do not remove similar documents from the previous years.

REMOVE: 15APX-03 Appendix A – 2014 Chaptered Legislation, Children’s Residential Facilities  
 INSERT: 15APX-07 Appendix A – 2014 Chaptered Legislation, Children’s Residential Facilities

**Approved:**

*Original signed by Seton Bunker*

*9/23/2015*

\_\_\_\_\_  
**SETON BUNKER, Acting Bureau Chief**  
 Policy Development Bureau  
 Community Care Licensing Division

\_\_\_\_\_  
 Date

---

Contact Person: **TERESA OWENSBY, Manager**

Phone Number: **(916) 651-5084**

---

**2014 CHAPTERED LEGISLATION**  
Summaries and Implementation Plans

**CHILDREN'S RESIDENTIAL FACILITIES**

**ACTION REQUIRED**

<b>BILL INFORMATION</b>	<b>SUBJECT</b>	<b>PAGE</b>
<a href="#"><u>Assembly Bill (AB) 388</u></a> (Chesbro), Chapter 760, Statutes of 2014	<b>Juveniles.</b> Amended Section 1536 of, and added Section 1538.7 to, the Health and Safety Code, and amended Sections 241.1, 635, 636, 730.6, 4096.5, and 11469 of the Welfare and Institutions Code among other code sections.	<a href="#"><u>1</u></a>
<a href="#"><u>Assembly Bill (AB) 2228</u></a> (Cooley), Chapter 735, Statutes of 2014	<b>Crisis Nurseries.</b> Amended Sections 1502, 1516, 1526.8 and 1596.792 of the Health and Safety Code relating to crisis nurseries.	<a href="#"><u>4</u></a>
<a href="#"><u>Assembly Bill (AB) 2236</u></a> (Maienschein), Chapter 813, Statutes of 2014	<b>Care facilities: civil penalties.</b> Amended Section 1548 of the Health and Safety Code, among other code sections.	<a href="#"><u>15</u></a>
<a href="#"><u>Assembly Bill 2386</u></a> (Mullin), Chapter 503, Statutes of 2014	<b>Care Facilities: Carbon Monoxide Detectors.</b> Amended Sections 1597.45 and 1597.46 of, and added Sections 1503.2, 1568.043, 1569.311, 1596.954, and 1597.543 to, the Health and Safety Code, relating to care facilities.	<a href="#"><u>27</u></a>
<a href="#"><u>Senate Bill (SB) 855</u></a> (Committee), Chapter 29, Statutes of 2014	<b>Committee on Budget and Fiscal Review.</b> <b>Human Services.</b> Made various statutory changes to implement the 2014-15 budget.	<a href="#"><u>28</u></a>
<a href="#"><u>Senate Bill (SB) 856</u></a> (Committee Budget/Fiscal Review), Chapter 30, Statutes of 2014	<b>Committee on Budget and Fiscal Review.</b> <b>Developmental Services 2014 Trailer Bill.</b> Added Sections 1502, 1567.61, 1567.62, 1567.63, 1567.64, 1567.65, 1567.66, 1567.67, 1567.68, 1567.69, and 1567.70, 1567.80, 1567.81, 1567.82, 1567.83, 1567.84, 1567.85, 1567.86, and 1567.87 to the Health and Safety Code as well as Welfare and Institutions Code, Division 4.5, Chapter 6, Article 3.6.	<a href="#"><u>31</u></a>

**Unless otherwise noted, all new legislation becomes effective on January 1, 2014. When conducting licensing visits, Licensing Program Analysts (LPAs) should, to the extent practical, make sure that providers are aware of any new requirements. However, regardless of whether this information is provided, it is the licensee's responsibility to be aware of any new requirements affecting their program.**

## ACTION REQUIRED

### **Assembly Bill 388 (Chesbro), Chapter 760, Statutes of 2014**

This became effective January 1, 2015.

**Affects:** Group Homes (GHs), Transitional Housing Placement (THP) Providers, Community Treatment Facilities (CTFs), Runaway and Homeless Youth Shelters (RHYSs)

**Subject:** Juveniles (Law Enforcement Contacts)

**Summary:** [Assembly Bill \(AB\) 388](#), among other things, enacted provisions related to calls made to law enforcement authorities by the staffs of group homes, THP providers, CTFs, and RHYSs (referred to herein collectively as “facilities”).

Specifically, this bill amended Section 1536 of, and added Section 1538.7 to, the Health and Safety Code, and amended Sections 241.1, 635, 636, 730.6, 4096.5, and 11469 of the Welfare and Institutions Code and, among other things, requires:

- Facilities to report to CDSS all incidents concerning a child in the facility involving contact with law enforcement and to provide CDSS with a follow report, as specified. ([HSC § 1538.7\(a\).](#))
- CDSS to conduct an case management inspection (in addition to any other required inspection) of any facility reporting an above-average number of law enforcement contacts due to specific alleged crimes committed by children residing in the facility, as specified. ([HSC § 1538.7\(b\).](#))
- CCLD to provide a report to the department’s Children and Family Services Division and to any other public agency that has certified the facility, if CCLD conducts a case management visit based upon a facility’s contact with law enforcement. ([HSC § 1538.7\(c\).](#))
- CDSS to report this information to the public annually, along with information on the number and outcomes of complaints against these facilities. ([HSC § 1536.](#))
- The Department of Health Care Services, upon notification by CDSS of any adverse licensing action taken against a group home that provides mental health treatment services, as specified, to review its certification of the group home to provide those services, as specified. ([WIC § 4096.5\(e\).](#))
- CDSS, by January 1, 2016, in consultation with specified stakeholders and the public, to develop additional performance standards and outcome measures that require group homes to implement programs and services to minimize law

enforcement contacts and delinquency petition filings arising from incidents of allegedly unlawful behavior by minors, as specified. ([WIC § 11469\(f\)](#).)

## EXISTING REPORTING REQUIREMENTS

Currently, upon the occurrence, facilities are required to report certain incidents to the Department within the next working day. In addition, a written report must be submitted within seven days following the occurrence of such event, as specified.

- Group Homes: 22 CCR §§ [80061](#) and [84061](#)
- THP: 22 CCR §§ [80061](#) and [86061](#)
- CTF: 22 CCR §§ [80061](#) and [84161](#)
- RHYS: 22 CCR §§ [80061](#), [84061](#), and [84561](#)<sup>1</sup>

Facilities may utilize the [LIC 624 Unusual Incident/Injury Report](#) form, or a similar form of their own choosing or design, to report incidents as required. The LIC 624 has a box to check if law enforcement has been notified of the incident.

## NEW AB 388 REQUIREMENTS

### Reporting Incidents Involving Law Enforcement

GHs, THP Providers, CTFs and RHYSs are now required to:

- Report to CCLD upon the occurrence of any incident concerning a child in the facility involving contact with law enforcement. ***\*Facilities are required to report all incidents involving law enforcement contact.*** ([HSC § 1538.7\(a\)](#))
- At least every six months, provide a follow-up report for each incident, including:
  - The type of incident.
  - Whether the incident involved an alleged violation of any crime described in Section 602 of the Welfare and Institutions Code by a child residing in the facility.
  - Whether staff, children, or both were involved.
  - The gender, race, ethnicity, and age of children involved.
  - The outcomes, including arrests, removals of children from placement, or termination or suspension of staff.([HSC § 1538.7\(a\)](#))

**NOTE:** Until new protocols are implemented by CCLD, facilities may utilize the [LIC 624 Unusual Incident/Injury Report](#) form, or their own form, to report incident involving

---

<sup>1</sup> RHYS – AB 346 Interim Licensing Standards

contact with law enforcement. When using the LIC 624 to provide a follow-up report on an incident, all information mandated pursuant to [HSC § 1538.7\(a\)](#), noted above, should be included.

### **Case Management Inspection – Law Enforcement Contact**

CCLD is now required to conduct a case management inspection, at least once per year, of any facility reporting a higher-than-average number of law enforcement contacts due to incidents involving certain alleged crimes by children residing in the facility (i.e., excluding truancy reports and runaways). This determination must be made “based on the licensed capacity. ([HSC § 1538.7\(b\)](#))

Additionally, CCLD is required to provide a report to the department’s Children and Family Services Division and to any other public agency that has certified the facility’s program or any component of the facility’s program including, but not limited to, the State Department of Health Care Services, which certifies group homes pursuant to Section 4096.5 of the Welfare and Institutions Code, if CCLD conduct a case management visit based upon a facility’s contact with law enforcement. ([HSC § 1538.7\(c\)](#))

### **Publication of Information Annually**

Existing law requires CDSS to annually publish information pursuant to HSC §1536. AB 388 requires CDSS to publish additional information regarding complaints and law enforcement contacts, as specified. ([HSC § 1536\(a\)](#))

## **IMPLEMENTATION**

Until regulations are implemented, if a Licensing Program Analyst finds that a facility affected by this bill has failed to report an incident involving law enforcement or provide a follow-up report, as specified, the LPA should cite the facility for a violation of [HSC § 1538.7\(a\)](#).

If CCLD determines a facility affected by this bill has reported a higher-than-average number of law enforcement contacts for that reporting period, a LPA is required to conduct a case management inspection of the facility as required by [HSC § 1538.7\(b\)](#). The methodologies for determining the average number of law enforcement contacts per facility, and identifying facilities which require inspection, are currently being developed.

CCLD has received a number of inquiries from stakeholders and other interested parties expressing questions and concerns regarding the implementation of AB 388. To provide guidance to affected licensees on compliance with the bill’s requirements, CCLD is preparing an Information Release, which shall be sent to all relevant facilities in August of 2015. Additionally, in accordance with the requirements of AB 388, CCLD is convening a workgroup in September/October to develop the performance standards and outcome measures specified in the bill.

## ACTION REQUIRED

### Assembly Bill 2228 (Cooley), Chapter 735, Statutes of 2014

This bill became effective January 1, 2014.

**Affects:** Crisis Nurseries

**Subject:** Crisis Nurseries

**Summary:** [Assembly Bill \(AB\) 2228](#) amends sections 1502, 1516, 1526.8 and [1596.792](#) of the Health and Safety Code relating to crisis nurseries.

In summary, this bill:

- Amended the statutory definition of a “crisis nursery” and moved it to Health and Safety Code (HSC) section [1502](#), with the definitions of other facility types.
- Clarified that a crisis nursery may provide both a “crisis overnight residential program” and “crisis day services.” ([HSC 1516\(a\) and \(e\).](#))
- Amended Health and Safety Code section 1516 to change the manner in which a crisis nursery’s “crisis day services” capacity is calculated, require a crisis nursery to set forth in its plan of operation the hours during which it will provide crisis day services (not to exceed 14 hours per day), and limit the number of exceptions the department may grant a crisis nursery to extend the time a child may receive crisis day services.

**NOTE:** This bill retained the capacity limit of 14 children for a crisis nursery’s crisis overnight residential program.

- Amended Health and Safety Code section [1526.8](#), codifying requirements for CPR and first aid training, staff training, and lead caregiver qualifications; reducing the number of hours of training a volunteer must complete prior to assuming the duties of a crisis caregiver; reducing staff-to-child ratios for older children; and enacting provisions governing the storage and administration of both prescription and non-prescription medications.

Additionally, this bill established the following new requirements:

### **Capacity**

Previously, a crisis nursery’s maximum capacity was capped at 14 (except for older, grandfathered facilities). While a crisis nursery could provide child day care as well as 24-hour care, the total number of children in the facility was never allowed to exceed the

maximum capacity. Under AB 2228, a crisis nursery's capacity for child day care (now called "crisis day services") will be determined separately from the capacity for 24-hour care (which will not change). The capacity for crisis day services will be determined according to square footage of indoor and outdoor activity space, employing a methodology similar to that used for child care centers. (HSC § 1516(f))

### **Plan of Operation**

A crisis nursery must define in its plan of operation the time period during which it intends to provide crisis day services, which must not exceed 14 hours per day. The plan of operation must assure sleeping arrangements are available for children who are present after 7 p.m. (HSC § 1516(h)(1))

### **Staff Requirements**

*Volunteers:* Both initial and supplementary training requirements for volunteers have been revised.

- Required training hours prior to being counted in the facility's staff-to-child ratio have been reduced from eight to five, broken out as follows:
  - Two hours of crisis nursery job shadowing.
  - One hour of review of community care licensing regulations.
  - Two hours of review of the crisis nursery program, including the facility mission statement, goals and objectives, child guidance techniques, and special needs of the client population they serve.
- Training required to be completed within 90 days of being counted in the staff-to-child ratio has been revised:
  - The specific number of hours required for pediatric CPR and first aid training has been eliminated, in favor of simply requiring certification in pediatric CPR and first aid;
  - Training hours earmarked for other subjects have been increased from eight to eleven, and now include a wide range of subjects related to child care. (HSC § 1526.8(b)(4)-(6))

*Lead Caregivers:* Minimum training and qualification requirements for lead caregivers have been codified, with no changes or minimal changes to existing requirements set out in regulation.

- One year of experience in a supervisory position in a child care or group care facility may substitute for 16 of the 24 hours of training and orientation required before a lead caregiver may work with children.
- The lead caregiver must be required in the crisis nursery's written staff training plan to receive and document a minimum of 20, rather than 24, hours of annual training, and the training must be directly related to the functions of the lead caregiver's position.

- A lead caregiver must be on-site only when children are present, rather than at all times. (HSC § 1526.8(a)(1)-(4))

### **Staff-to-Child Ratios**

Previous staff-to-child ratios (one-to-four from 7 p.m. to 7 a.m. and one-to-three from 7 a.m. to 7 p.m.) continue to apply for groups of children under 18 months of age. For older children, however, a separate staff-to-child ratio of one-to-six is in effect at all times of the day or night. (HSC § 1526.8(c)(3))

### **Medications**

Current regulations governing the administration of medications (which were originally modeled after group home requirements) have been replaced by statutory requirements that are modeled upon current child care center regulations. The new statutory requirements governing prescription medications are substantially similar as existing regulatory requirements; however, the new requirements for nonprescription medication differ considerably from current regulation.

Nonprescription medication may be administered without approval or instructions from the child's physician if all of the following conditions are met:

- Medications are administered in accordance with the product label directions.
- For each nonprescription medication, the licensee shall obtain written approval and instructions from the child's authorized representative for administration of the medication to the child. This documentation shall be kept in the child's record.
- The licensee shall not administer nonprescription medication to a child in accordance with instructions from the child's authorized representative if those instructions conflict with the product label directions. (HSC § 1526.8(e))

### **Crisis Day Services**

*Length of Stay Limitation:* Previous law specified that a child could receive child day care services for no more than 30 days in any six-month period unless the department issued an exception. AB 2228 retains that limit, but allows it to be calculated either daily (30 calendar days at a maximum of 12 hours per day) or hourly (a total of 360 hours). This allows crisis nurseries to not have to count a drop-off of one or two hours as an entire day. (HSC § 1516(e)(1),(h)(1))

*Exceptions – Length of Stay Limitation:* A maximum of two exceptions may now be granted for a child in a given six-month period, either in seven-calendar day or 84-hour increments. Additionally, CDSS must now approve or deny an exception request it has received within five working days.  
(HSC § 1516(e)(2)-(3))

## IMPLEMENTATION

The Department will revise regulations to reflect new statutory requirements. Until regulations have been revised, Licensing Program Analysts should enforce the provisions of this bill as follows:

WHAT AB 2228 CHANGED	LPA INSTRUCTIONS
<b>DEFINITIONS</b>	
<p><b>Deleted the definition for “crisis nursery” from HSC 1516 and added a new definition for “crisis nursery” in HSC 1502(a)(17) to read: <i>“Crisis nursery” means a facility licensed by the department to operate a program pursuant to Section 1516 to provide short-term care and supervision for children under six years of age who are voluntarily placed for temporary care by a parent or legal guardian due to a family crisis or stressful situation.</i></b></p> <p><b>Added the following definitions in HSC 1516(h):</b> (1) <i>“Crisis day services” means temporary, nonmedical care and supervision for children under six years of age who are voluntarily placed by a parent or legal guardian due to a family crisis or stressful situation for less than 24 hours per day. Crisis day services shall be provided during a time period defined by the crisis nursery in its plan of operation, but not to exceed a period of 14 hours per day. The plan of operation shall assure sleeping arrangements are available for children there after 7 p.m. A child may not receive crisis day services at a crisis nursery for more than 30 calendar days, or a total of 360 hours, in a six-month period unless the department issues an exception.</i></p> <p>(2) <i>“Crisis residential overnight program” means short-term, 24-hour nonmedical residential care and supervision, including overnight, for children under six years of age who are voluntarily placed by a parent or legal</i></p>	<p>The definitions contained in <b>AB 2228</b> shall supersede the regulatory definitions contained in Title 22 CCR 86501.</p> <p><b>“Crisis nursery”</b> is defined pursuant to HSC 1502(a)(17).</p> <p><b>“Crisis day services”</b> is defined pursuant to HSC 1516(h)(1).</p> <p><b>“Crisis residential overnight program”</b> is defined pursuant to HSC 1516(h)(2).</p>

<i>guardian due to a family crisis or stressful situation for no more than 30 days.</i>	
---	--

<b>PLAN OF OPERATION</b>	
--------------------------	--

<p><b>Added HSC 1526.8(c)(3)(D):</b> <i>The crisis nursery’s plan of operation shall address how it will deal with unexpected circumstances related to staffing and ensure that additional caregivers are available when needed.</i></p> <p><b>Added HSC 1516(h)(1):</b> <i>Crisis day services shall be provided during a time period defined by the crisis nursery in its plan of operation, but not to exceed a period of 14 hours per day. The plan of operation shall assure sleeping arrangements are available for children there after 7 p.m.</i></p>	<p>The plan of operation for a crisis nursery providing crisis day services must address how it will deal with unexpected circumstances related to staffing and ensure that additional caregivers are available when needed. If the plan of operation does not contain this information, an LPA should cite as a violation of <b>HSC 1526.8(c)(3)(D)</b>.</p> <p><b>If a LPA determines that a crisis nursery is providing day care services outside of the hours specified in its plan of operation, or that sleeping arrangements are not available for a child who is present in the facility after 7 p.m., the LPA should cite the facility for not operating in accordance with its plan of operation under HSC 1516 (h)(1).</b></p>
---	---

<b>WAIVERS AND EXCEPTIONS</b>	
-------------------------------	--

<p><b>Amended the requirements governing exception requests related to crisis day services in HSC 1516 (e)(1)-(3):</b> <i>(e)... (1) A child may not receive child day care shall not receive crisis day services at a crisis nursery for more than 30 calendar days, maximum of 12 hours per day, or a total of 360 hours, in a six-month period unless the department issues an exception. <del>A child who is receiving child day care services shall be counted in the licensed capacity.</del> to allow a child to receive additional crisis day services in a six-month period.</i></p> <p><i>(2) The department, upon receipt of an exception request pursuant to paragraph (1) and supporting documentation as required by the department, shall respond within five working days to approve or deny the request.</i></p>	<p>The Department has only five working days to respond to an exception request by a crisis nursery for a child to receive crisis day services for more than 30 days in a six month period (as specified in HSC 1516(e).) This is significantly less time than the 30 days in which the Department has to approve or deny other exceptions set out in 86524(c) and (d).</p>
---	---

<p><i>(3) No more than two exceptions, in seven-calendar day or 84-hour increments, may be granted per child in a six-month period.</i></p>	
<b>CAPACITY DETERMINATION</b>	
<p><b>Deleted HSC 1516 (d)(1):</b> <del>(d) (1) Except as provided in paragraph (2), the maximum licensed capacity for a crisis nursery program shall be 14 children.</del></p> <p><b>Added HSC 1516(f):</b> <i>(f) A crisis nursery license shall be issued for a specific capacity determined by the department.</i></p> <p><i>(1) (A) The maximum licensed capacity for crisis day services shall be based on 35 square feet of indoor activity space per child. Bedrooms, bathrooms, halls, offices, isolation areas, food-preparation areas, and storage places shall not be included in the calculation of indoor activity space. Floor area under tables, desks, chairs, and other equipment intended for use as part of children’s activities shall be included in the calculation of indoor space.</i></p> <p><i>(B) There shall be at least 75 square feet per child of outdoor activity space based on the total licensed capacity. Swimming pools, adjacent pool decking, and natural or man-made hazards shall not be included in the calculation of outdoor activity space.</i></p> <p><i>(2) Except as provided in subdivision (c), the maximum licensed capacity for a crisis residential overnight program shall be 14 children.</i></p> <p><i>(3) A child who has been voluntarily placed in a crisis residential overnight program shall be included in the licensed capacity for crisis day services.</i></p>	<p>Crisis nurseries will now have separate capacities for overnight and day services (formerly called ‘crisis day care’), allowing facilities with sufficient space to serve more than 14 children during the hours it provides crisis day services. The maximum licensed capacity for a crisis residential overnight program remains 14.</p> <p>The capacity determination for crisis day services is based on square footage. Children in the crisis residential overnight program shall be included in the capacity count for the daytime (crisis day services) capacity. Previously, children receiving crisis day services were counted in the overall capacity.</p> <p>There shall also be at least 75 square feet per child of outdoor activity space based on the total licensed capacity.</p> <p><b>If a LPA finds that there are more children present in the facility than are allowed, the LPA should cite the facility for operating in excess of its licensed capacity under HSC 1516(f).</b></p>
<b>PERSONNEL REQUIREMENTS (LEAD CAREGIVERS)</b>	
<p><b>Added HSC 1526.8(a)(4):</b> <i>Lead caregivers shall have a minimum of 24 hours of training and orientation before working with children. One year</i></p>	<p>Lead caregivers are allowed to substitute a year of supervisory experience in a child care or group care facility for 16 hours of</p>

<p><i>experience in a supervisory position in a child care or group care facility may substitute for 16 hours of training and orientation. The written staff training plan shall require the lead caregiver to receive and document a minimum of 20 hours of annual training directly related to the functions of his or her position.</i></p>	<p>training/orientation.</p> <p>The crisis nursery’s written staff training plan shall require the lead caregiver to receive and document at least 20 (rather than 24 hours in 22 CCR 86565(s)) hours of annual training directly related to the functions of his or her position.</p> <p><b>If an LPA finds that a lead caregiver has been allowed to work with children without receiving the required training or experience, or that a lead caregiver has not completed 20 hours of annual training, the LPA should cite the facility for a violation of HSC 1526.8(a)(4).</b></p>
--	--

**PERSONNEL REQUIREMENTS (VOLUNTEERS)**

<p><b>Amended the requirements for volunteer training in HSC 1526.8(b)(4-6) as shown below:</b> <i>(4) Volunteers shall complete a minimum of 16 hours of training as specified in paragraphs (5) and (6).</i></p> <p><del>(4)</del> <i>(5)</i> Prior to assuming the duties and responsibilities of a crisis caregiver or being counted in the staff-to-child ratio, volunteers shall complete at least <del>eight</del> <i>five</i> hours of initial training divided as follows:</p> <p>(A) <del>Four</del> <i>Two</i> hours of crisis nursery job shadowing.</p> <p>(B) <del>Two hours</del> <i>One hour</i> of review of community care licensing regulations.</p> <p>(C) Two hours of review of the crisis nursery program, including the facility mission statement, goals and objectives, <i>child guidance techniques</i>, and special needs of the client population they serve.</p> <p><del>(5)</del> <i>(6)</i> Within 90 days, volunteers who are included in the staff-to-child ratios shall <del>complete at least 20 hours of training divided as follows:</del> <i>do both of the following:</i></p> <p>(A) <del>Twelve hours of</del> <i>Acquire a certification</i></p>	<p>The crisis nursery’s written staff training plan shall require volunteers to complete 16 hours of initial training, rather than the 28 hours currently required in 22 CCR 86565(w). This includes two, rather than four, hours of job shadowing and one, rather than two, hour of Title 22 regulation review.</p> <p>Within 90 days, volunteers included in the staff-to-child ratio shall be certified in pediatric first aid and CPR, rather than having to obtain 12 hours of training in the subject, and must also complete at least eleven, rather than eight, hours of training on health and safety issues.</p> <p><b>If an LPA finds that a volunteer has not met these minimum training requirements, the LPA should cite the facility for a violation of HSC 1526.8(b).</b></p>
--	---

<p><i>in</i> pediatric first aid and pediatric cardiopulmonary resuscitation.</p> <p>(B) <del>Eight</del> <i>Complete at least 11</i> hours of <i>training covering</i> child care health and safety <del>issues</del>, <i>trauma informed care, the importance of family and sibling relationships, temperaments of children, self-regulation skills and techniques, and program child guidance techniques.</i></p>	
--	--

**STAFF-TO-CHILD RATIOS**

<p><b>Added HSC 1526.8(a)(3):</b>  <i>(a)(3) The licensee shall designate at least one lead caregiver to be present at the crisis nursery at all times when children are present...</i></p> <p><b>Amended HSC 1526.8(c)(3)(A) and (B) to reduce staff-to-child ratios:</b>  (3) (A) There shall be at least one <del>paid caregiver</del> <i>employed staff person or volunteer caregiver for each group of six children, or fraction thereof, who are 18 months of age or older, and one employed staff person or volunteer caregiver for each group of three children, or fraction thereof, who are under 18 months of age</i> from 7 a.m. to 7 p.m.  (B) There shall be at least one <del>paid caregiver</del> <i>employed staff person or volunteer caregiver for each group of six children, or fraction thereof, who are 18 months of age or older, and one employed staff person or volunteer caregiver for each group of four children, or fraction thereof, who are under 18 months of age</i> from 7 p.m. to 7 a.m.</p>	<p>Crisis nurseries shall have a lead caregiver present whenever children are present, rather than on site at all times as currently required in 22 CCR 86565.5(a).</p> <p><b>If an LPA finds that a lead caregiver is not present while children are present at a facility, the LPA should cite the licensee for a violation of HSC 1526.8(a)(3).</b></p> <p>From 7 a.m. to 7 p.m., crisis nurseries must have 1 employed staff or volunteer caregiver for every 6 children 18 months or older, and one employed staff or volunteer caregiver for every three children under 18 months of age. Previously the ratio was 1 to 3 (of any age) during this time. From 7 p.m. to 7 a.m., crisis nurseries must have 1 employed staff or volunteer for every 6 children who are 18 months or older, and one employed staff or volunteer for every four children under 18 months of age. Previously the ratio was 1 to 4 (of any age) during this time.</p> <p>In order to determine the proper staffing ratio, a Licensing Program Analyst will need to first determine the number of children present in each age group, and then apply the appropriate ratios.</p> <p><b>If an LPA finds that a facility is not</b></p>
---	---

	<p><b>employing the correct staffing ratio between the hours of 7 a.m. and 7 p.m., the LPA should cite the licensee for a violation of HSC 1526.8(c)(3)(A). If an LPA finds that a facility is not employing the correct staffing ratio between the hours of 7 p.m. and 7 a.m., the LPA should cite the licensee for a violation of HSC 1526.8(c)(3)(B).</b></p>
--	--

**HEALTH RELATED SERVICES**

<p><b>Added HSC 1526.8(e) related to requirements for prescription and non-prescription medications and the disposal of unused medications:</b></p> <p><i>(e) (1) When a child has a health condition that requires prescription medication, the licensee shall ensure that the caregiver does all of the following:</i></p> <p><i>(A) Assists children with the taking of the medication as needed.</i></p> <p><i>(B) Ensures that instructions are followed as outlined by the appropriate medical professional.</i></p> <p><i>(C) Stores the medication in accordance with the label instructions in the original container with the original unaltered label in a locked and safe area that is not accessible to children.</i></p> <p><i>(D) Administers the medication as directed on the label and prescribed by the physician in writing.</i></p> <p><i>(i) The licensee shall obtain, in writing, approval and instructions from the child's authorized representative for administration of the prescription medication for the child. This documentation shall be kept in the child's record.</i></p> <p><i>(ii) The licensee shall not administer prescription medication to a child in accordance with instructions from the child's authorized representative if the authorized representative's instructions conflict with the physician's written instructions or the label directions as prescribed by the child's physician.</i></p>	<p>Licensees must obtain written approval and instructions from a child's authorized representative for the administration of prescription medication and keep this documentation in the child's record. Prescription medication must be administered as directed on the label and prescribed by the physician in writing. If the written instructions from the authorized representative conflict with the physician's orders or the directions on the label, the licensee shall not administer the prescription medication to the child.</p> <p><b>If an LPA finds that a licensee has administered prescription medication in conflict with the instructions of the child's authorized representative, the product label, or the physician's orders, the LPA should cite the licensee for a violation of HSC 1526.8(e)(1)(D).</b></p> <p>Nonprescription medications may now be administered without approval or instructions from the child's physician so long as the directions on the container(s) are followed and the licensee has obtained written approval and instructions for each nonprescription medication from the child's authorized representative and filed this documentation in the child's record. As with prescription medications, licensees shall not administer nonprescription</p>
---	--

*(2) Nonprescription medications may be administered without approval or instructions from the child's physician if all of the following conditions are met:*

*(A) Nonprescription medications shall be administered in accordance with the product label directions on the nonprescription medication container or containers.*

*(B) (i) For each nonprescription medication, the licensee shall obtain, in writing, approval and instructions from the child's authorized representative for administration of the nonprescription medication to the child. This documentation shall be kept in the child's record.*

*(ii) The licensee shall not administer nonprescription medication to a child in accordance with instructions from the child's authorized representative if the authorized representative's instructions conflict with the product label directions on the nonprescription medication container or containers.*

*(3) The licensee shall develop and implement a written plan to record the administration of the prescription and nonprescription medications and to inform the child's authorized representative daily, for crisis day services, and upon discharge for overnight care, when the medications have been given.*

*(4) When no longer needed by the child, or when the child is removed or discharged from the crisis nursery, all medications shall be returned to the child's authorized representative or disposed of after an attempt to reach the authorized representative.*

medications to a child if the written instructions received from the authorized representative conflict with the directions on the product label.

**If an LPA finds that a licensee has administered nonprescription medication to a child in conflict with the instructions on the medication's product label, the LPA should cite the licensee for a violation of HSC 1526.8(e)(2)(A). If an LPA finds a licensee has administered nonprescription medication to a child in conflict with, or in absence of, instructions provided by the child's authorized representative, the LPA should cite the licensee for a violation of HSC 1526.8(e)(2)(B).**

Licensees must develop a written plan to record the administration of all medications and to inform authorized representatives daily (for crisis day services) or upon discharge (for crisis overnight care) when medications have been given.

**If an LPA finds that a licensee is not recording the administration of medications in accordance with its plan, or not properly informing a child's authorized representative of the medications the child was administered, the LPA should cite the licensee for a violation of HSC 1526.8(e)(3)**

All medications shall be returned to the child's authorized representative or disposed after an attempt to reach the authorized representative.

When reviewing a crisis nursery's handling of medications, a Licensing Program Analyst should refer to both HSC § 1526.8(e) and 22 CCR 86575 to

	determine whether the facility's actions are in compliance.
<b>CRISIS DAY SERVICES</b>	
<p><b>Amended HSC 1516(e) to clarify the time limitations on receiving crisis nursery services.</b></p> <p><i>(e)Notwithstanding Section 1596.80, a crisis nursery may provide <del>child day care</del> crisis day services for children under <del>the</del> <del>age of six years of age</del> at the same site as <del>the crisis nursery that it is providing crisis residential overnight services.</del></i></p> <p><i>(1) <del>A child may not receive child day care</del> shall not receive crisis day services at a crisis nursery for more than 30 calendar days , maximum of 12 hours per day, or a total of 360 hours, in a six-month period unless the department issues an exception. <del>A child who is receiving child day care services shall be counted in the licensed capacity.</del> to allow a child to receive additional crisis day services in a six-month period.</i></p>	<p>Children may not receive crisis day services for more than 30 calendar days, maximum of 12 hours per day, or a total of 360 hours, in a six-month period, unless the department issues an exception as specified.</p> <p><b>If an LPA finds that a facility has provided crisis day services in excess of these time limitations without receiving an exception, the LPA should cite the licensee for a violation of HSC 1516(e).</b></p> <p>As explained in the Capacity Determination section above, children in the crisis residential overnight program shall be included in the licensed capacity for crisis day services.</p>

## ACTION REQUIRED

### Assembly Bill 2236 (Maienschein / Stone), Chapter 813, Statutes of 2014

**This bill becomes effective July 1, 2015**

**Affects:** All Children’s Residential Facilities except Foster Family Homes (FFHs), Certified Family Homes (CFHs), Small Family Homes (SFHs), and Crisis Nurseries (CNs).

**Subject:** Care facilities: civil penalties

**Summary:** [AB 2236](#) enacts new civil penalties in cases where the Department determines that a violation of licensing standards resulted in the death or serious bodily injury, or constitutes physical abuse, of a person in care. The bill establishes an appeal procedure specific to these civil penalties.

### Note on the Bill Language

AB 2236 enacted new sections of statute to become operative on July 1, 2015, and placed these new sections directly below the previous, identically-numbered sections. The old sections became inoperative on that date, and on January 1, 2016, the old sections will be removed from statute.

Until that time, it can be difficult to distinguish between the operative and inoperative sections. The words “Inoperative July 1, 2015” are located in the italicized statement below the inoperative section, whereas the current, operative section has the following statement below it: “(Repealed (in Sec. 1) and added by Stats. 2014, Ch. 813, Sec. 2. Effective January 1, 2015. Section operative July 1, 2015, by its own provisions.)”

### New Civil Penalties in Cases of Death, Serious Bodily Injury or Physical Abuse

AB 2236 imposes new civil penalties for a violation that results in death or serious bodily injury, or that constitutes physical abuse of a person in care. Specific civil penalty amounts have been set for each facility type affected. Civil penalties for a violation resulting in death are higher than those for a violation resulting in serious bodily injury or constituting physical abuse.

For some facility types, civil penalty amounts are scaled in relation to capacity. AB 2236 specifies “capacity” to be the total capacity of “all of the licensee’s facilities,” not merely the licensee’s facilities of that type. For example, if a licensee operated a Community Treatment Facility with a capacity of 25, a Group Home with a capacity of 15, and an Adult Day Program with a capacity of 20, this bill would measure the total capacity of all of the licensee’s facilities at 60 and require a civil penalty for a capacity within that specified range, regardless of which facility was issued the citation. Additional information will be provided in the future on how to make capacity

determinations in situations where there are co-licensees or corporations and for facility types where there is not a capacity.

The prescribed amounts are summarized in the table below.

Facility Type	Capacity	Civil Penalty for Death	Civil Penalty for Serious Bodily Injury / Physical Abuse
Adoption Agencies (AA), Community Treatment Facilities (CTF), Group Homes (GH), EBSH-GH, Therapeutic Day Services (TDS) Facilities, Foster Family Agencies (FFA), Transitional Housing Placement Providers (THP), Transitional Shelter Care Facilities	≤ 40	\$7,500	\$2,500
	41-100	\$10,000	\$5,000
	More than 100	\$15,000	\$10,000
Runaway and Homeless Youth Shelter (RHYS)	All sizes	\$5,000	\$1,000

This new statutory civil penalty amount for a violation resulting in the death of a person in care takes precedence over existing regulations or statute, as applicable, which established an immediate civil penalty of \$150 for these violations. Licensees shall only be assessed the amounts prescribed above, and shall not be assessed the \$150 in lieu of or in addition to this civil penalty (see exceptions below).

Existing regulations or statute that impose an immediate \$150 civil penalty for “injury” are still in effect – the Licensing Program Analyst, in consultation with the Enforcement Attorney, will have to determine whether a particular injury rises to the level of “serious bodily injury” or physical abuse, as defined in statute (definitions are provided below).

FFHs and CFHs are exempt from most civil penalties, including the ones contained in this bill. In addition, SFHs and CNs are not subject to the civil penalties enacted by AB 2236 for a violation resulting in death or serious bodily injury or that constitutes physical abuse. If the Community Care Licensing Division (CCLD) determines that a violation resulted in death or serious bodily injury, or physical abuse of a person in care at one of these facility types, the facility shall be cited the \$150 civil penalty for sickness, injury or death as specified in California Code of Regulations (CCR), Title 22 Division 6 section 86554 for CNs, and section 80054 for SFHs.

- **Definitions of “Serious Bodily Injury” and “Physical Abuse”:** This bill enacts specific definitions of these crucial terms, according to facility type.

**“Serious Bodily Injury” for Adoption Agency, CTF, Group Home, EBSH-GH, TDS, FFA, THP, Transitional Shelter Care, and RHYS is defined in PEN §243(f)(4):** “‘Serious bodily injury’ means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement.”

**“Physical Abuse” for Adoption Agency, CTF, Group Home (inclusive of EBSH-Group Homes), TDS, FFA, THP, Transitional Shelter Care, and RHYS is defined in HSC §1548(e)(2):** “...‘physical abuse’ includes physical injury inflicted upon a child by another person by other than accidental means” or sexual abuse as defined in PEN§11165.1 or neglect as defined in PEN §11165.2 or unlawful corporal punishment or injury as defined in PEN §11165.4 when the person responsible for the child’s welfare is a licensee, administrator, or employee of any facility licensed to care for children.”

- **Requires Director’s Approval:** All civil penalties assessed for death, serious bodily injury, or physical abuse must first be approved by the Director.
- **Appeal Process:** AB 2236 enacted a separate appeal process applicable only to those civil penalties assessed under its provisions. This process is identical for all facility types, consisting of four levels (three within CCLD). Those levels are: 1) Regional Manager; 2) Program Administrator; and 3) CCLD Deputy Director. Licensees may further appeal a civil penalty to an Administrative Law Judge.
- **Appeals of Civil Penalties to be Merged Into Administrative Actions:** The bill provides that if the Department takes an action to suspend or revoke a license due to the violation that triggered an AB 2236 civil penalty, any separate appeal of the civil penalty must be halted, and the civil penalty instead reviewed in conjunction with the action against the licensee. This provision applies to all facility types affected by the bill.

## **IMPLEMENTATION**

If a Licensing Program Analyst suspects that a violation may have resulted in death or serious bodily injury, or constitutes physical abuse, the Licensing Program Analyst should notify his or her Licensing Program Manager and Regional Manager. If the Licensing Program Analyst suspects that there is an immediate risk to the safety of a child, the Licensing Program Analyst should follow established procedures to ensure the child’s safety.

If additional information is necessary to determine the facts of the case, the

Investigations Branch may be asked to investigate. Please see the Evaluator Manual, Reference Material for Complaints, ([Section 3-2010](#)) regarding Priority I and II complaints, and the Evaluator Manual, Reference Material for Enforcement Actions ([Section 1-0620](#)) regarding referrals to the Investigations Branch.

The Licensing Program Analyst should cite violation(s) according to established procedures, and if necessary, should work with the licensee to develop a plan of correction. Notwithstanding civil penalties for violations that result in death, serious bodily injury or physical abuse, all other civil penalties are assessed according to established procedures. Civil penalties 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 CDSS Director or his or her designee. Instead, it should be noted on the licensing report that a civil penalty determination is pending.

The Licensing Program Analyst and his or her Licensing Program Manager and Regional Manager will together work with an enforcement attorney to discuss the circumstances of the violation. The enforcement attorney should assist in determining whether the violation meets the statutory definition of serious bodily injury or physical abuse, as opposed to other types of injury or sickness.

Once it has been tentatively established that a violation resulting in death, serious bodily injury or physical abuse occurred, the Regional Manager must notify the Assistant Program Administrator and Program Administrator, and request an approval of the assessment by the Director or the Director's Designee. The request must include a copy of all relevant documentation, including all licensing reports (Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), the complaint (when applicable), citation(s) and any supporting documentation regarding the investigation.

A civil penalty for a violation that resulted in death or serious bodily injury, or that constituted physical abuse, can be assessed only after it has been approved by the Director/Director's Designee. Once the Regional Office has tentatively established that such a violation occurred, the Regional Manager must notify the Assistant Program Administrator and Program Administrator, and request an approval of the assessment by the Director/Director's Designee. The request must include a copy of all relevant documentation, including all licensing reports (Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), the complaint (when applicable), citation(s) and any supporting documentation regarding the investigation.

If approved by the Director/Director's Designee, 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. The licensee should be notified using the interim civil penalty notice statement provided in Addendum A (in the case of death) or B (in the case of serious bodily injury or physical abuse), until the appropriate Civil Penalty Assessment form (LIC 421) series is developed. The penalty amount must be appropriate to the violation type, facility type

and (if applicable) the capacity of all the licensee's facilities. 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.

If a licensee is assessed a civil penalty for a violation for serious bodily injury or physical abuse and through later evidence the CCLD determines that the violation resulted in the death of a child, the CCLD may revoke the initial citation and issue a new one. When this occurs, the Licensing Program Analyst must obtain the approval outlined above and, once approved by the Director/Director's Designee, deliver an amended Facility Evaluation Report (LIC 809) or Complaint Investigation Report (LIC 9099) that includes the appropriate civil penalty notice statement (Addendum A) language to the licensee.

Until the Department has adopted regulations, developed forms and updated the Evaluator Manual, Licensing Program Analysts will, in applicable cases, follow statutory guidelines and utilize the interim forms (attached).

## **Appeals**

The licensee may appeal the assessment of a civil penalty for a violation that the CCLD determined resulted in death or serious bodily injury, or that constituted physical abuse. AB 2236 prescribes an appeals process specific to these types of civil penalties. Certain aspects of this process differ from the appeals process for other types of civil penalties. The specific appeal rights for these violations have been provided in Addendums A (death) and B (serious bodily injury/physical abuse).

The licensee must submit a request for a formal review in writing, within 10 days of receipt of the notice of the civil penalty assessment. All supporting documentation for the appeal must be submitted as part of the written request.

### **Level 1: Regional Manager**

When a Regional Manager receives an appeal for the assessment of a civil penalty, the Licensing Program Analyst must prepare the appropriate materials for the review. These materials include copies of the licensing reports (e.g., Facility Evaluation Report LIC 809, Complaint Investigation Report LIC 9099, Detail Supportive Information LIC 812, etc.), facility file, and any evidence or supporting documentation the Licensing Program Analyst may have gathered to support the initial violation determination.

If the Regional Manager determines that the civil penalty was assessed correctly, the Regional Manager must notify the licensee in writing of this determination within 60 days of the request to review the assessment of the civil penalty. Please use the attached letter in Addendum C for this purpose, which includes information on the licensee's right to further appeal, until the appropriate Civil Penalty Assessment form (LIC 421) series and the Applicant/Licensee Rights form (LIC 9058) are revised to include the specific appeal rights for licensees for a violation resulting in death, serious

bodily injury or that constitutes physical abuse.

If the Regional Manager determines that the civil penalty was assessed incorrectly, then the Regional Manager may do one of the following using the Deficiency/Penalty Review form (LIC 178). Amended assessments should include the licensee's appeal rights for that violation.

- **Amended Violation (death):** If a violation occurred but it was determined upon review by the Regional Manager that the violation did not result in the death of a child, the civil penalty can be amended for the amount appropriate for the violation (e.g., failure to correct the violation by the plan of correction date; immediate civil penalty for a specified serious violation; serious bodily injury or physical abuse). The Regional Manager must provide the Deficiency/Penalty Review (LIC 178) and include language from Addendum B for a violation that was determined upon review to have not resulted in death, but that did result in serious bodily injury or physical abuse.
- **Amended Violation (serious bodily injury or physical abuse):** If a violation occurred but it was determined upon review by the Regional Manager that the violation did not result in the serious bodily injury or physical abuse of a child, the civil penalty can be amended for the amount appropriate for the violation (e.g., failure to correct a violation by the plan of correction date, or an immediate civil penalty for a specified serious violation). The Regional Manager must provide the Deficiency/Penalty Review form (LIC 178) to the licensee within 60 days of the licensee's request for review.
- **Deficiency Dismissed:** Upon review the Regional Manager determines that there is not sufficient evidence to support the citation for a violation. This information is noted on the Deficiency/Penalty Review form (LIC 178) and provided to the licensee within 60 days of request for review by the licensee.

A copy of both the amended licensing report and the amended civil penalty notice statement should be forwarded to the Civil Penalty Coordinator for invoicing and collection.

### **Level 2: Program Administrator**

When a Program Administrator receives an appeal for the assessment of a civil penalty, he or she should request all relevant material from the Regional Manager and be briefed by the Regional Manager who handled the initial appeal. The licensee shall be notified in writing of the program administrator's decision within 60 days of the request for review. Upon a final determination of the appeal, the Regional Manager must follow the procedure outlined above regarding the response to the licensee.

### **Level 3: Deputy Director**

When the Deputy Director receives an appeal for the assessment of a civil penalty, the Regional Manager must prepare information as described above. Upon a final determination of the appeal, the Regional Manager must follow the procedure outlined

above regarding the response to the licensee. The licensee shall be notified in writing of the deputy director's decision within 60 days of the request for review. If the decision is upheld, the licensee must be provided information on how to request an Administrative Law Judge review. Please see Addendum C for information to be provided to the licensee. Licensees should be directed to submit the request for an Administrative Law Judge review to the Regional Office with jurisdiction over the facility.

#### **Level 4: Administrative Law Judge**

Upon receipt of the licensee's request for an Administrative Law Judge to the Regional Office, the Licensing Program Analyst will be tasked with preparing a Statement of Facts. The completed Statement of Facts packet is then given to the Licensing Program Manager to review, initial, and forward to the Regional Manager for approval. Following approval by the Regional Manager, the Statement of Facts will be sent to the Assistant Program Administrator for review and approval. After final approval by the Assistant Program Administrator, the original Statement of Facts (including exhibits) is submitted to the Legal Division.

If, in addition to an assessment of civil penalties, the CCLD files an administrative action to temporarily suspend or revoke the facility license that includes violations relating to the assessment of the civil penalties described above, the CCLD review of the pending appeal shall cease and the assessment of civil penalties shall be heard as part of the administrative action process.

CCLD is required to amend regulations to reflect these changes by January 1, 2016. The Department will adopt regulations to conform to new civil penalty and appeal requirements, and will update the Evaluator Manual to account for these new civil penalties and for new statutory definitions of "serious bodily injury" and "physical abuse." The CCLD will also develop forms specific to the new civil penalties enacted.

**For legislative information related to this law, see:**

**[Bill Text – AB-2236 Care facilities: civil penalties](#)**

**ADDENDUM A**  
ASSEMBLY BILL 2236 INTERIM CIVIL PENALTY NOTICE  
“Noticing Requirements”

**Death of a Client/Child/Resident**

The following statement shall be included in all reports (LIC 809 or LIC 9099) in which a civil penalty is being assessed for a violation that resulted in the death of a person receiving care and supervision by a licensee, in specified facilities licensed by the Community Care Licensing Division, pursuant to Health and Safety Code Sections 1548, 1568.0822, 1569.49, 1596.99, or 1597.58, until the appropriate Civil Penalty Assessment (LIC 421) form series is developed.

Civil penalties shall be assessed against any licensee cited for a violation that resulted in the death of a person receiving care and supervision from a licensee. Per Health and Safety Code section \_\_\_\_\_, you are hereby notified that a \$ \_\_\_\_\_ civil penalty has been assessed.

You will receive an invoice in the mail. Payment is due when billed. Payment must be made by a personal, business or cashier’s check or money order made payable to the “California Department of Social Services”. Please write the facility number and invoice number on your check and include a copy of your invoice with payment. You will find the invoice number on the invoice. **DO NOT SEND CASH.**

**APPEAL RIGHTS**

The licensee has a right without prejudice to discuss any disagreement concerning the proper application of licensing laws and regulations with the licensing agency. When civil penalties are involved, the licensee may request a formal review by the licensing agency to amend, extend the due date, or to dismiss the penalty. Requests for civil penalty appeals must be in writing and must be postmarked within 10 days of receipt of this form providing notice of the civil penalty assessment. The request must be addressed to the Regional Manager of the licensing office with jurisdiction over the facility. The licensing agency review of the appeal may be conducted based upon information provided in writing by the licensee. The licensee may request an office interview to provide additional information. If the Regional Manager determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Regional Manager’s decision within 60 days of the request to review the assessment of the civil penalty.

The licensee may further appeal to the Program Administrator of the Community Care Licensing Division within 10 days of receipt of the notice of the Regional Manager’s decision and shall provide all supporting documentation at that time. If the Program Administrator determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the

Program Administrator's decision within 60 days of the request to review the Regional Manager's decision.

The licensee may further appeal to the Deputy Director of the Community Care Licensing Division within 10 days of receipt of the notice of the Program Administrator's decision and shall provide all supporting documentation at that time. If the Deputy Director determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Deputy Director's decision within 60 days of the request to review the Program Administrator's decision.

Upon exhausting the Deputy Director review, a licensee may appeal to an Administrative Law Judge. The licensee must submit a written request for this review to the Regional Manager at the licensing office with jurisdiction over the facility. 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.

**ADDENDUM B**  
ASSEMBLY BILL 2236 INTERIM CIVIL PENALTY NOTICE  
“Noticing Requirements”

**Physical Abuse or Serious Bodily Injury**

The following statement shall be included in all reports (LIC 809 or LIC 9099) in which a civil penalty is being assessed for a violation that constitutes physical abuse or resulted in serious bodily injury of a person receiving care and supervision by a licensee of specified facilities licensed by the Community Care Licensing Division pursuant to Health and Safety Code Sections 1548, 1568.0822, 1569.49, 1596.99, or 1597.58, until the appropriate Civil Penalty Assessment (LIC 421) form series is developed.

Civil penalties shall be assessed against any licensee cited for a violation that constitutes physical abuse or resulted in serious bodily injury of a person receiving care and supervision from a licensee. Per Health and Safety Code section \_\_\_\_\_, you are hereby notified that a \$ \_\_\_\_\_ civil penalty has been assessed.

You will receive an invoice in the mail. Payment is due when billed. Payment must be made by a personal, business or cashier’s check or money order made payable to the “California Department of Social Services”. Please write the facility number and invoice number on your check and include a copy of your invoice with payment. You will find the invoice number on the invoice. **DO NOT SEND CASH.**

**APPEAL RIGHTS**

The licensee has a right without prejudice to discuss any disagreement concerning the proper application of licensing laws and regulations with the licensing agency. When civil penalties are involved, the licensee may request a formal review by the licensing agency to amend, extend the due date, or to dismiss the penalty. Requests for civil penalty appeals must be in writing and must be postmarked within 10 days of receipt of this form providing notice of the civil penalty assessment. The request must be addressed to the Regional Manager of the licensing office with jurisdiction over the facility. The licensing agency review of the appeal may be conducted based upon information provided in writing by the licensee. The licensee may request an office interview to provide additional information. If the Regional Manager determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Regional Manager’s decision within 60 days of the request to review the assessment of the civil penalty.

The licensee may further appeal to the Program Administrator of the Community Care Licensing Division within 10 days of receipt of the notice of the Regional Manager’s decision and shall provide all supporting documentation at that time. If the Program Administrator determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may

amend or dismiss the civil penalty. The licensee shall be notified in writing of the Program Administrator's decision within 60 days of the request to review the Regional Manager's decision.

The licensee may further appeal to the Deputy Director of the Community Care Licensing Division within 10 days of receipt of the notice of the Program Administrator's decision and shall provide all supporting documentation at that time. If the Deputy Director determines that the civil penalty was not assessed in accordance with applicable statutes or regulations of the Department, he or she may amend or dismiss the civil penalty. The licensee shall be notified in writing of the Deputy Director's decision within 60 days of the request to review the Program Administrator's decision.

Upon exhausting the Deputy Director review, a licensee may appeal to an Administrative Law Judge. The licensee must submit a written request for this review to the Regional Manager at the licensing office with jurisdiction over the facility. 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.

**ADDENDUM C**  
**SAMPLE LETTER**  
**CIVIL PENALTY DETERMINATION UPHELD**

[Date]

[Facility Name]  
[Facility Address]

**Re: REQUEST FOR REVIEW OF CIVIL PENALTY**

In response to your request for a formal review of a civil penalty that was assessed pursuant to Health and Safety Code section \_\_\_\_\_ for a violation determined to have resulted in the death or serious bodily injury or constitutes physical abuse of a person receiving care and supervision, **you are hereby notified that the initial civil penalty determination has been upheld.**

Any outstanding civil penalties are due at this time.

As provided by statute, you have the right to appeal this penalty. Within the Community Care Licensing Division (CCLD), you have the right to request a formal review of the penalty by a Regional Manager, then by a Program Administrator, and then by the Deputy Director of the CCLD. Any request for review within CCLD must be made within 10 days from your receipt of this notice. Upon exhausting the appeals process within CCLD, you may appeal this civil penalty to an Administrative Law Judge by submitting a request in writing to the Regional Manager of the Community Care Licensing Division licensing office with jurisdiction over the facility.

If you wish to pursue a further appeal of this civil penalty, please submit a written request, along with all supporting documentation and the invoice number of the initial penalty, to:

\_\_\_\_\_  
[Name of next potential reviewer; title]

\_\_\_\_\_  
[Contact information]

\_\_\_\_\_  
[Contact information]

Sincerely,

[Name, position]  
[Office # and Name]  
[Contact information]  
Community Care Licensing Division

## ACTION REQUIRED

### **AB 2386 (Mullin), Chapter 503, Statutes of 2014**

This bill was effective January 1, 2015.

**Affects:** Community Care Facilities (CCFs)  
Children's Residential Facilities and Certified Family Homes  
Residential Care Facilities for the Elderly (RCFE)  
Residential Care Facilities for the Chronically III (RCF-CI)  
Child Care Centers (CCCs) and Family Child Care Homes (FCCHs)

**Subject:** Care facilities: carbon monoxide detectors

**Summary:** [Assembly Bill 2386](#) amended Sections [1597.45](#) and [1597.46](#) and added Sections [1503.2](#), [1568.043](#), [1569.311](#), [1596.954](#), and [1597.543](#) to the Health and Safety Code, establishing carbon monoxide detector requirements for all licensed facilities and certified family homes.

AB 2386 requires all licensed facilities and certified family homes, as specified, to have one or more carbon monoxide (CO) detectors in the facility that meet specific standards, and requires the Department to account for their presence during inspections.

### **IMPLEMENTATION**

During inspections, the Licensing Program Analyst (LPA) will ensure the presence of one or more State Fire Marshal approved CO detectors and shall ensure that the power/alarm light indicator is on.

In California, the marketing, distribution, or sale of CO devices is prohibited unless they are approved and listed by the State Fire Marshal (SFM), who is required to develop a certification and decertification process to list CO devices and to disapprove and remove previously approved devices from the list, if necessary. A current online list of approved CO detectors from the California State Fire Marshal is available at: [http://osfm.fire.ca.gov/strucfireengineer/strucfireengineer\\_bml.php](http://osfm.fire.ca.gov/strucfireengineer/strucfireengineer_bml.php) (**Note: This list is annually or periodically updated.**) The LPA, using the most *current* list found online, will ensure the CO detector(s) in the facility has been approved for use by the SFM.

Until regulations are updated, LPAs will cite the following statutes for noncompliance, based on the type of facility or home:

- HSC Section [1503.2](#) for CCFs including Children's Residential Facilities and Certified Family Homes
- HSC Section [1596.954](#) for CCCs
- HSC Section [1597.543](#) for FCCHs
- HSC Section [1568.043](#) for RCF-CI
- HSC Section [1569.311](#) for RCFE

## ACTION REQUIRED

### **Senate Bill 855 (Committee), Chapter 29, Statutes of 2014**

This bill became effective June 20, 2014.

**Affects:** All Children's Residential Facilities

**NOTE:** This bill also affects Adult Residential Facilities, Adult Residential Facilities for Persons with Special Health Care Needs, Child Day Care Facilities, Residential Care Facilities for the Chronically Ill, Residential Care Facilities for the Elderly (RCFCI), and Social Rehabilitation Facilities.

**Subject:** Human Services

**Summary:** [Senate Bill \(SB\) 855](#), made various statutory changes to implement the 2014-15 budget.

Among other things, this bill:

### **Licensing Fees**

Amended [Health and Safety Code \(HSC\) section 1523.1](#) to:

- Increase the fee schedules for community care facilities.
- Provide that all revenues generated by fees for licenses are not subject to Article XIII B of the California Constitution.
- Require CDSS to adjust fees collected to ensure they do not exceed the costs described in those sections.
- Require CDSS, at least every five years, to analyze the initial application and annual fees to ensure appropriate amounts are charged, and to recommend to the Legislature about necessary fee adjustments.

\*For more information about the Increased Fee Schedule, please refer to [Senate Bill \(SB\) 855](#) or to [CCLD's website](#).

### **Technical Assistance Fund**

Amended [HSC § 1523.2\(c\)](#) to provide CDSS flexibility in using the Technical Assistance Fund.

Amended [HSC § 1546](#) to establish an emergency client contingency account within the Technical Assistance Fund to which no more than 50% of each civil penalty assessed is deposited for use for the Community Care Licensing Division for the care and relocation of clients when a facility's license is revoked or temporarily suspended.

## **Inspections**

Amended [HSC § 1534](#) to:

- Allow CDSS the option, instead of the pre-existing mandate, to inspect licensed community care facilities as often as necessary.
- Make technical changes by replacing “visit” with “inspection.”

## **Foster Family Agencies**

Amended [HSC § 1534](#) to:

- Require FFAs to conduct an announced inspection of every CFH prior to annual recertification.
- Authorize FFAs to conduct unannounced inspections under the same conditions which trigger more frequent unannounced inspections of other licensed facilities.

Amended [HSC §§ 1506.5](#), [1520.3](#), [1522](#), [1550](#), and [1558](#) to:

- Clarify that the statutory provisions are applicable to CFHs. **\*SB 855 does not change existing practice.**

## **Foster Family Homes (FFHs)**

Amended [HSC §§ 1533](#) and [1534](#) to:

- Clarify conditions under which announced and unannounced inspections of FFHs could take place. FFHs are considered private residences for the purposes of Health and Safety Code section 1530.5 and shall not be subject to inspection by CDSS or its officers without advance notice, except in response to a complaint, a plan of correction, or as set forth in Health and Safety Code section 1534.

**NOTE:** SB 855 does not change existing practice.

## **Group Homes (GHs)**

Amended [HSC § 1562](#) to:

- Require persons employed as facility managers and group home staff who provide direct care and supervision to children and youth residing in group homes on or after October 1, 2014, to be at least 21 years of age.

**NOTE:** \*This does not apply to facility managers or staff members employed prior to October 1, 2014. \*\* This does not apply to runaway and homeless youth shelters, as defined in HSC § 1502(a)(14).

## IMPLEMENTATION

Until regulations are revised to implement the provisions of SB 855, Licensing Program Analysts (LPAs) should cite violations of the bill's provisions in the following manner:

### Foster Family Agencies

If an LPA determines that an FFA has failed to fulfill one of the requirements enacted by this bill, the LPA should cite the FFA licensee for the violation by referencing the Health and Safety Code section corresponding to the relevant action or omission, as follows:

VIOLATION	CITE
Failure to cease consideration of an application for certification after finding that the applicant was previously excluded from a CFH or licensed facility.	<a href="#">HSC §§ 1506.5 (e)(3)</a>
Failure to keep on file a copy of the current certification of a certified nurse assistant or home health aide who is providing services in a CFH.	<a href="#">HSC §1522(b)(1)(C)</a>
Failure to conduct an announced inspection of a CFH prior to annual recertification, and as often as necessary to ensure the quality of care.	<a href="#">HSC §1534(b)(2)(A)</a>
Failure to conduct an unannounced inspection of a CFH when circumstances specified in statute require an unannounced inspection.	<a href="#">HSC §1534(b)(2)(B)</a>

### Group Homes

If an LPA determines that a group home facility manager or staff member who provides direct care and supervision to children was hired on or after October 1, 2014, and was under the age of 21 at the time of hiring, the LPA should cite the group home licensee for a violation of HSC § 1562(c)(1).

**For legislative information related to this law, see: [SB 855](#).**

## ACTION REQUIRED

### **Senate Bill 856 (Committee Budget/Fiscal Review), Chapter 30, Statutes of 2014**

**Affects:** Enhanced Behavioral Supports Homes (EBSHs) pilot program. EBSHs are a subcategory of Group Homes.

*[EBSHs may also be a subcategory of Adult Residential Facilities. Please refer to the SB 856 Implementation Plan for [Adult Residential Facilities](#)]*

**Subject:** Enhanced Behavioral Supports Homes (EBSHs) pilot program

**Summary:** [Senate Bill \(SB\) 856](#), effective June 20, 2014, was the 2014 Developmental Services Trailer Bill and added Sections [1502\(a\)\(16\)](#), [1567.61\(a\)-\(c\)](#), [1567.62\(a\)-\(g\)](#), [1567.63](#), [1567.64](#), [1567.65](#), [1567.66](#), [1567.67\(a\)-\(b\)](#), [1567.68\(a\)-\(c\)](#), [1567.69](#), and [1567.70](#), [1567.80\(a\)-\(b\)](#), [1567.81\(a\)-\(e\)](#), [1567.82\(a\)-\(b\)](#), [1567.83\(a\)-\(b\)](#), [1567.84](#), [1567.85](#), [1567.86\(a\)-\(b\)](#), and [1567.87\(a\)-\(c\)](#) to the Health and Safety Code as well as Welfare and Institutions Code (WIC), Division 4.5, Chapter 6, Article 3.6.

Among other things, it created the EBSHs pilot program. EBSHs are to be certified by the California Department of Developmental Services (DDS) and licensed by the California Department of Social Services (CDSS).

### **OVERVIEW OF NEW GROUP HOME SUB-CATEGORY**

#### **An Enhanced Behavioral Supports Homes Pilot Program licensed by CDSS as a group home subcategory.**

- DDS certification is required.
- CDSS licensure is contingent on continued DDS certification.
- Only six EBSHs shall be approved per fiscal year.
- No more than two EBSHs using delayed egress devices in combination with secured perimeters may be certified by the DDS during the first fiscal year of the pilot program. No more than one additional home using delayed egress devices in combination with a secured perimeter may be certified by the DDS in each subsequent year of the pilot program.
- Maximum capacity of four clients per EBSH.
- Clients are individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting.

- Regulations for the CCH category shall be developed in both Title 17 and Title 22 by the DDS and CDSS.
- The EBSH pilot program shall be repealed on January 1<sup>st</sup>, 2020.

***This bill establishes the following requirements:***

<b>Enhanced Behavioral Supports Homes Pilot Program</b> <u><a href="#">Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.5</a></u>	
<b>HSC Code</b>	<b>Requirement</b>
<b>1502(a)(15)</b> <i>Definition of EBSH</i>	Means a facility certified by the DDS and licensed by the CDSS as an adult residential facility or a group home that provides 24-hour nonmedical care to individuals with developmental disabilities who require enhanced behavioral supports, staffing, and supervision in a homelike setting. An EBSH shall have a maximum capacity of four consumers.
<b>1567.61(a)</b> <i>Definition of “consumer” or “client”</i>	“Consumer” or “client” means an individual who has been determined by a regional center to meet the eligibility criteria of Section 4512 of the Welfare and Institutions Code and applicable regulations and for whom the regional center has accepted responsibility.
<b>1567.61(b)</b> <i>Definition of “individual behavior supports plan”</i>	“Individual behavior supports plan” means the plan that identifies and documents the behavior and intensive support and service needs of a consumer and details the strategies to be employed and services to be provided to address those needs, and includes the entity responsible for providing those services and timelines for when each identified individual behavior support will commence.
<b>1567.61(c)</b> <i>Definition of “individual behavior supports team”</i>	“Individual behavior supports team” means those individuals who develop, monitor, and revise the individual behavior supports plan for consumers residing in an EBSH.
<b>1567.62(a)-(g)</b> <i>Licensure and responsibilities</i>	Each EBSH shall be licensed as an ARF or a group home and certified by the State Department of Developmental Services. A certificate of program approval issued by the DDS shall be a condition of licensure. An EBSH shall not be licensed by the

**Enhanced Behavioral Supports Homes Pilot Program**  
[Health and Safety Code \(HSC\), Division 2, Chapter 3, Article 9.5](#)

<b>HSC Code</b>	<b>Requirement</b>
	<p>CDSS until the certificate of program approval has been received. The CDSS shall not be responsible for any of the following: developing and approving a consumer’s individual behavior supports plan; oversight of any services that may be provided by a licensed health professional or licensed mental health professional to a consumer. This does not limit the CDSS’ ability to enforce this chapter and applicable regulations.</p> <p>Placements of dual agency clients into EBSHs that are licensed as group homes shall be subject to the limitations on the duration of the placement set forth in Sections 319.2 and 319.3 of, and subparagraph (A) of paragraph (8) and subparagraph (A) of paragraph (9) of subdivision (e) of Section 361.2 of, the WIC. Dual agency clients are foster children in temporary custody of the child welfare agency or under the jurisdiction of the juvenile court who are also either a consumer of regional center services, or who are receiving services under the California Early Intervention Services but who are under three years of age and have not yet been determined to have a developmental disability.</p>
<p><b>1567.63</b> <i>Plan of operation</i></p>	<p>The license applicant shall submit a facility program plan to the DDS for approval and submit the approved plan to the DSS as part of the facility plan of operation. The plan of operation shall be approved by the CDSS Services prior to licensure.</p>
<p><b>1567.64</b> <i>Regulation development</i></p>	<p>The CDSS shall adopt regulations to address, at a minimum, staffing structure, staff qualifications, and training. Training requirements shall include a minimum of 16 hours of emergency intervention training.</p>
<p><b>1567.65</b> <i>Interdepartmental communication</i></p>	<p>When the CDSS determines that urgent action is necessary to protect CCH from physical or mental abuse, abandonment, or any other substantial threat to their health and safety, the CDSS shall notify the DDS.</p>
<p><b>1567.66</b> <i>Plan of operation</i></p>	<p>An EBSH employing secured perimeters shall comply with HSC Section 1531.15 and applicable regulations.</p>

<b>Enhanced Behavioral Supports Homes Pilot Program</b> <i><a href="#">Health and Safety Code (HSC), Division 2, Chapter 3, Article 9.5</a></i>	
<b>HSC Code</b>	<b>Requirement</b>
<b>1567.67(a)-(b)</b> <i>Interdepartmental communication</i>	The CDSS shall revoke the CCH's license when the DDS has rescinded certification. The DDS and regional centers shall provide the CDSS all available documentation and evidentiary support necessary for the licensing and administration of CCHs and enforcement of this article and the applicable regulations.
<b>1567.68</b> <i>No license until Title 17 regulations published</i>	A license shall not be issued pursuant to this article before regulations for this article filed by the DDS have been published.
<b>1567.69</b> <i>Administrative action</i>	Nothing in this article shall interfere with the authority of the State Department of Social Services to temporarily suspend or revoke the license of an EBSH.
<b>1567.70</b> <i>End of pilot program</i>	This article shall remain in effect only until January 1, 2020.

[Welfare and Institutions Code \(WIC\), Division 4.5, Chapter 6, Article 3.6:](#)  
**Enhanced Behavioral Supports Homes**

This WIC article mirrors much of the same provisions established in Article 3.6 of the HSC and is the source for the Title 17 regulations that are projected to be published in 2015 by the DDS. This article gives the DDS the authority to implement this pilot program and establishes the number of EBSHs and how many of those EBSHs may utilize secured perimeters. Further instruction on rate structures and regional center responsibilities for CCHs is addressed in this WIC article and will be described by the Title 17 regulations that are under development by the DDS.

**IMPLEMENTATION**

The CDSS will promulgate Title 22 regulations for the EBSH pilot program to include, but not be limited to: staffing structure, staff qualifications, and training; training requirements shall include a minimum of 16 hours of emergency intervention training. The CDSS will provide training and relevant documents necessary for the operationalization of licensure, oversight and regulatory enforcement.

Until regulations are promulgated, if an application is received for an EBSH (or a Group Home application is received that appears to closely align with the program operations

of an EBSH), a Licensing Program Analyst should immediately notify a Licensing Program Manager for assistance in processing the application. This bill does not prohibit the CDSS from any of the pre-licensure activities.

**NOTE:** An EBSH cannot be licensed until the DDS certification is received.