
EVALUATOR MANUAL TRANSMITTAL SHEET

Distribution:

- All Child Care Evaluator Manual Holders
 All Residential Care Evaluator Manual Holders
 All Evaluator Manual Holders

Transmittal No.

15APX-11

Date Issued

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Subject:

Appendix A-2014 Chaptered Legislation
Community Care Licensing, Child Care Centers and Family Child Care Homes

Reason for Change:

This document transmits summaries of, and implementation procedures for, legislation chaptered in 2014 affecting Community Care Licensing Division, Child Care Centers and Family Child Care Homes.

Filing Instructions:

REMOVE: 15APX-2 2014 Chaptered Legislation for Child Care Centers and Family Child Care Homes.

INSERT: 15APX-11 2014 Chaptered Legislation for Child Care Centers and Family Child Care Homes.

Approved:*Signed By Shanice Boyette***11/24/2015**

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2014 CHAPTERED LEGISLATION
Summaries and Implementation Plans

CHILD CARE CENTERS AND FAMILY CHILD CARE HOMES

“ACTION REQUIRED”		
BILL INFORMATION	SUBJECT	PAGE
Assembly Bill 1819 (Hall) Chapter 459 Statutes of 2014	Family Day Care Home: Smoking Prohibition. Amend Section 1596.795(a) of the Health and Safety Code.	1
Assembly Bill 2236 (Maienschein) Chapter 813 Statutes of 2014	Care Facilities: Civil Penalties Acts to amend, repeal, and add Sections 1596.99 and 1597.58 of the Health and Safety Code, relating to care facilities.	3
Assembly Bill 2386 (Mullin) Chapter 503 Statutes of 2014	Care Facilities: Carbon Monoxide Detectors Amend Sections 1597.45 and 1597.46 and add Sections 1503.2 , 1568.043 , 1569.311 , 1596.954 , and 1597.543 to the Health and Safety Code.	15
Assembly Bill 2621 (Garcia) Chapter 474 Statutes of 2014	Child Day Care Facilities: Licensing Information An act to add Section 1596.819 to the Health and Safety Code, relating to child day care.	17
Senate Bill 1405 (DeSaulnier) Chapter 848 Statutes of 2014	Pesticides: Schoolsites Amends Sections 17609 , 17610 , 17611 , and 17612 , and adds Sections 17611.5 and 17614 of the Education Code; add Section 8593.2 to the Business and Professions Code; amend the Food and Agricultural Code Sections 12996 , 12999.4 , 13181 , 13182 , 13183 , and 13187 ; and add Section 13186.5 , relating to pesticides under the Healthy Schools Act (HSA).	19

Unless otherwise noted, all new legislation becomes effective on January 1, 2015. 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 1819 (Hall), Chapter 459, Statutes of 2014

Affects: Family Child Care Homes

Subject: Family Child Care Homes: Smoking Prohibition

Summary: Prior law prohibited smoking tobacco in a private residence licensed as a family day care home specifically *during the hours of operation*, and in any areas where children are present. [Assembly Bill 1819](#) amends the Health and Safety Code, Section [1596.795\(a\)](#), to read, in relevant part:

OVERVIEW

“(a) The **smoking** of tobacco in a private residence that is licensed as a family day care home shall be prohibited *in the home and in those areas of the family day care home where children are present*. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to **smoking** in a family day care home if the ordinance is more stringent than this section.”

Additionally, AB 1819 makes a conforming amendment to the Labor Code, Section 6404.5 (prohibition on smoking tobacco products in the workplace): Generally private residences are excluded from Section 6404.5’s prohibition on smoking in the workplace, with the exception of Family Child Care Homes (FCCHs) *during the hours of operation*. This bill deletes the *hours of operation* language from Section 6404.5(d)(11) and adds a cross reference to Section 1596.795 of the Health and Safety Code.

AB 1819 creates an effective **24/7 ban on smoking tobacco in a home** that is licensed as a family day care home, **and** in those areas of the family day care home **where children are present**. This change in law was based on demonstrated negative health effects of second and “thirdhand” smoke on children. Thirdhand smoke generally refers to the residue from tobacco smoke that sticks to surfaces after the secondhand smoke has cleared.

IMPLEMENTATION:

Licensing Program Analysts

Effective January 1, 2015, Licensing Program Analysts (LPAs) will enforce this new law through regular inspections and complaint inspections as set forth in the “Child Day Care Facilities Act” and the “California Code of Regulations, Title 22, Division 12.”

LPAs will cite based on physical evidence, for example an ashtray with cigarette butts, a pervasive smell of smoke in the home, or based on interviews and witnesses to the violation.

Until 22 CCR 102424 is amended, cite violations using Health and Safety Code Section 1596.795(a).

However, note that this new law does **not** provide authority for the Department to inspect areas of a FCCH that are designated as “off-limits.” Existing law maintains the inspection authority of the Department and Title 22 CCR 102391(c) states:

“The licensee shall permit the Department to inspect any part of the family child care home *in which family child care services are provided or to which children have access.*”

Based on this, the Department’s LPAs will not inspect any part of the FCCH not designated for care and to which children do *not* have access, to enforce this new law. The law does not prohibit smoking tobacco outside the home where the licensee has designated the area as “off limits” and there are no children present. LPAs will review the Facility Sketch (LIC 999), to determine “off limits” areas.

ACTION REQUIRED

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

This bill becomes effective July 1, 2015

Affects: Child Care Centers (CCCs) and Family Child Care Homes (FCCHs)

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 injury, or constitutes physical abuse of a child in care. The bill establishes an appeal procedure specific to these civil penalties.

The bill also expands the scope of the Child Health and Safety Fund in order to assist parents in securing alternative child care when a CCC or FCCH license has been suspended or revoked.

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

AB 2236 imposes new civil penalties for violations that result in death or serious injury, or that constitute physical abuse of a child in care. Specific civil penalty amounts have been set for each facility type affected. Civil penalties for violations resulting in death are higher than those for violations resulting in serious 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 CCC with a capacity of 25, a group home with a capacity of 15, and an Adult Day Program (ADP) 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 Injury / Physical Abuse
CCC	≤ 30	\$7,500	\$2,500
	31-100	\$10,000	\$5,000
	More than 100	\$15,000	\$10,000
Small FCCH	All sizes	\$5,000	\$1,000
Large FCCH	All sizes	\$7,500	\$2,000

This new statutory civil penalty amount for violations resulting in the death of a child 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.

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 injury” or physical abuse, as defined in statute (definitions are provided below).

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

“Serious Injury” for CCC and FCCH is defined in HSC §[1596.8865\(d\)](#):

“As used in this section, ‘serious 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 CCC and FCCH is defined in HSC §[1596.99\(e\)\(2\)](#) & [1597.58\(e\)\(2\)](#):

“...‘physical abuse’ includes physical injury inflicted upon a child by another person by other than accidental means or sexual abuse as defined in Penal Code Section [11165.1](#) or neglect as defined in Penal Code Section [11165.2](#) or unlawful corporal punishment or injury as defined in Penal Code Section [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, or an administrator or employee of a public or private school or other institution or agency.”

- **Requires Director's Approval:** All civil penalties assessed for death, serious 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 will be reviewed in conjunction with the action against the licensee. This provision applies to all facility types affected by the bill.

Expansion of Child Health and Safety Fund

Previously, this fund was available exclusively to provide technical assistance, orientation, training, and education to CCCs and FCCHs. AB 2236 also allows the fund to be used to assist parents in securing alternative child care when the license of a CCC or FCCH has been suspended or revoked.

IMPLEMENTATION

If a Licensing Program Analyst suspects that a violation may have resulted in death or serious 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 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 injury or physical abuse will not be assessed at the time of the facility inspection, as 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 injury or physical abuse, as opposed to other types of injury or sickness.

A civil penalty for a violation that resulted in death or serious injury, or that constitutes 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 Addendum B (in the case of serious 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 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 citation for the violation of death. 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 injury, or that constitutes 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 Addendum B (serious 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 violations resulting in death, serious injury or that constitute 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 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 specified serious violations; serious injury or physical abuse). The Regional Manager must provide the Deficiency/Penalty Review

(LIC 178) and include language from Addendum B for violations that were determined upon review to have not resulted in death, but that did result in serious injury or physical abuse.

- **Amended Violation (serious 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 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 specified serious violations). The Regional Manager must provide the Deficiency/Penalty Review form (LIC 178) to the licensee within 60 days of the licensee's initial request for review.
- **Deficiency Dismissed:** If upon review, the Regional Manager determines that there is not sufficient evidence to support the citation for a violation, the deficiency shall be dismissed. 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.

Amended assessments should include the licensee's appeal rights for that violation. 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. 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. In addition, 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 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 Child/Client/Resident

The following statement shall be included in all reports (LIC 809 of 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 child 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 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 injury of a child 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 injury of a child 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 injury or constitutes physical abuse of a child 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

Assembly Bill 2386 (Mullin), Chapter 503, Statutes of 2014

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 Ill (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.

OVERVIEW

Effective January 1, 2015, this law 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

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

INFORMATION ONLY - NO ACTION REQUIRED

Assembly Bill 2621 (Garcia), Chapter 474, Statutes of 2014

Affects: Child Care Centers (CCCs) and Family Child Care Homes (FCCHs)

Subject: Child Day Care Facilities: Licensing Information

Summary: [Assembly Bill 2621](#) added Section [1596.819](#) to the Health and Safety Code, to require the Department to post certain licensing information for CCCs and FCCHs on its public internet website.

OVERVIEW:

Effective January 1, 2015, except as otherwise prohibited by law, the Department shall post licensing information for Child Day Care Facilities, CCCs and FCCHs on its Internet Website to include:

- the name
- the address for each CCC only
- the status of the license
- the capacity of the license for each CCC only
- the number of facility inspections, including:
 - non-complaint inspections
 - substantiated and inconclusive complaint inspections
- the number of citations

For FCCHs, this information shall not include:

- the address of each FCCH, which for *small* FCCHs (but not *large* FCCHs) is specifically prohibited by Health and Safety Code, section 1596.86(b).
- the capacity of each FCCH, which is not required by this law

This licensing information is to be updated at least monthly on its website and will span the preceding five-year period.

IMPLEMENTATION:

This bill requires the Department to post licensed child day care facility information on its Internet Website as described. Recently, the Department's Transparency Project created a means for the public to access some licensing

information via the Internet for the preceding five years for *all* community care licensed facility types, including child day care facilities.

The information posted is the *number* of non-complaint inspections, and complaint inspections that were found to be either substantiated or inconclusive, and the *number* of citations; however, the Department will not post the number of *allegations* nor *unsubstantiated* complaints. This inspection posting will not include information that is otherwise confidential as provided by law. For example, the Department shall not post the name of any person mentioned in a complaint; and if the Department determines that a complaint is without a reasonable basis (unsubstantiated), then the complaint is confidential and shall not be disclosed to the public. Information contained within the body of a citation that is confidential as provided by law shall not be posted.

In order to comply with the specific mandates of this bill, the Department shall ensure the Transparency Project accurately defines its glossary of terms, including “visit” and “inspection” (when does the term also mean annual and random visits/ inspections), to ensure that the public understands the true *number of facility visits* that have occurred and can clearly determine whether the posted number includes, or is separate from, the number of substantiated and inconclusive complaint inspections, and non-complaint inspections.

Finally, the Department shall ensure that the day care information that is to be posted on the Internet Website is updated on at least a monthly basis.

INFORMATION ONLY – NO ACTION REQUIRED

Senate Bill 1405 (DeSaulnier), Chapter 848, Statutes of 2014

Affects: Child Care Centers

Subject: Pesticides: school sites

Summary: [Senate Bill 1405](#) amends the Education Code, Sections [17609](#), [17610](#), [17611](#), and [17612](#), and adds Sections [17611.5](#) and [17614](#); adds Section [8593.2](#) to the Business and Professions Code; amends the Food and Agricultural Code, Sections [12996](#), [12999.4](#), [13181](#), [13182](#), [13183](#), and [13187](#); and adds Section [13186.5](#), relating to pesticides under the Healthy Schools Act (HSA).

The amended HSA commences on *January 1, 2015*. These amendments are in addition to the current requirements. This section will require licensed child care centers and public schools to meet three new requirements. Pursuant to Education Code Section [17612\(g\)](#), this shall not apply to family day care homes or property owners of family day care homes or their agents who personally apply any pesticides.

Effect on existing licensed Child Care Centers:

Under the new law, if a licensee plans to apply pesticides that are not exempt from the HSA, they must do the following:

1. Develop an integrated pest management plan (IPM)

- Use the IPM template provided by the Department of Pesticide Regulation (DPR).
- If a child care center already has an IPM plan, they can send a copy of it to DPR for review. DPR will approve it if it includes *at least* the same information as would be provided in the template IPM Plan.
- Post IPM plan on the child care center Web site, or if no Web site exists, send out to all parents, guardians and staff with the annual pesticide notice.

2. Report Pesticide Use

- Send pesticide use reports annually to DPR for pesticides applied by center employees. Reports are due no later than January 30 for the previous calendar year's data and must be submitted on a form provided by DPR. Applications by professional contractors do not need to be reported by the center.

AFTER JULY 1, 2016, YOU MUST DO THE FOLLOWING IF YOU APPLY ANY PESTICIDE:

3. Receive IPM Training

- Complete DPR-approved training in school IPM and in the safe use of pesticides in relation to the unique nature of schoolsites and children's health before applying, any pesticide.
- Each child care centers IPM coordinator and all school or child care center employees who will be applying pesticides must receive this HSA training annually.
- The approved courses that meet this HSA requirement will be listed on the [DPR website](#).
- Professional contractors are required to receive DPR training before applying any pesticide at a school site/child care center.

Implementation:

This bill will be effective by the start of the 2015/2016 school year.

The purpose of the HSA is to facilitate the adoption of effective, least toxic pest management practices at school sites in order to reduce children's exposure to toxic pesticides. This also includes the voluntary adoption of IPM.

The California Department of Social Services (CDSS), Community Care Licensing Division is **NOT** responsible for enforcing the provisions listed above. However, CDSS shall serve as the liaison to these facilities as needed (Education Code Section [17609 \(e\)](#), and H&S Code Section [1596.794](#)).

The DPR has developed a [Healthy Schools Act Amendment Fact Sheet](#) that may be acquired on the DPR's website. Parents or licensees, who may call with questions regarding IPM, should be referred to the DPR website or email questions to cciplist@cdpr.ca.gov.

Enforcement:

DPR oversees the integrated pest management program for schools and licensed child care centers.

Pursuant to Food and Agriculture Code Section [12996](#), licensees who (or whose staff) will be responsible for applying pesticides (including disinfectants with/without bleach) and fail to complete the DPR-approved training in school IPM, will be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$500 and no more than \$5,000, or by imprisonment of not more than six months or by both the fine and imprisonment. More than one occurrence of this violation will double the fine. Intentional or negligent violation that creates or reasonably could have created a hazard

to human health or the environment, will increase the fine to no less than \$5,000 and no more than \$50,000 or increase time in jail to one year, or both the fine and imprisonment.

Pursuant to Food and Agriculture Code Section [12999.4](#), in lieu of civil prosecution by the Director of the Department of Pesticide Regulation, the Director may levy a civil penalty against a person who violated Sections [12115](#), [12116](#), [12671](#), [12992](#), [12993](#), Chapter 10 (commencing with Section [12400](#)) of Division 6, Article 4.5 (commencing with Section [12841](#)), Section [13186.5](#), Chapter 7.5 (commencing with Section [15300](#)), or the regulations adopted pursuant to those provisions, of not more than \$5000 for each violation.

However, before a civil penalty is levied, the person charged with the violation shall be given a written notice of the proposed action, including the nature of the violation and the amount of the proposed penalty, and shall have the right to request a hearing within 20 days after receiving notice of the proposed action. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. Prior to the hearing, the person shall be given an opportunity to review the Director's evidence. At the hearing the person shall be given the opportunity to present evidence on his/her behalf. If a hearing is not timely requested, the Director may take the action proposed without a hearing.