

West's Ann.Cal.Health & Safety Code D. 2, Ch. 3.4, Art. 3, Refs & Annos

West's Ann.Cal.Health & Safety Code § 1596.880

§ 1596.880. "Employee" and "Employer" defined

For the purposes of this article:

(a) "Employee" means employee of a licensee or employee of the agent of a licensee subject to this act.

(b) "Employer" means a licensee or agent of a licensee subject to this act.

West's Ann.Cal.Health & Safety Code § 1596.881

§ 1596.881. Employee enforcement of law or refusal to violate law; discharge, demotion, or suspension; prohibition; notification of rights

No employer shall discharge, demote, or suspend, or threaten to discharge, demote, or suspend, or in any manner discriminate against any employee who takes any of the following actions:

(a) Makes any good faith oral or written complaint of the violation of any licensing or other laws by the employer to the State Department of Social Services or other agency having statutory responsibility for enforcement of the law or to the employer or representative of the employer.

(b) Institutes, or causes to be instituted, any proceeding against the employer in relation to the violation of any licensing or other laws.

(c) Is, or will be, a witness or testify in a proceeding in relation to the violation of any licensing or other laws.

(d) Refuses to perform work in violation of a licensing law or regulation after notifying the employer of the violation.

Employees shall be notified in writing at the time of employment of their rights under this chapter, as evidenced by their signature on a notification form outlining actions protected by this section. Forms to be utilized for this purpose shall be kept on file at the facility. The department shall provide each facility with the notification forms, which shall include information regarding enforcement pursuant to relevant Labor Code sections.

Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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“Other laws” for the purposes of this section, includes, but is not limited to, laws relating to staff-child ratios, transportation of children, or child abuse.

West’s Ann.Cal.Health & Safety Code § 1596.882

§ 1596.882. Employee enforcement of law or refusal to violate law; disposition of claims

(a) A claim by the employee alleging the violation by the employer of Section 1596.881 shall be presented to the employer within 45 days after the action as to which complaint is made and presented to the Division of Labor Standards Enforcement not later than 90 days after the action as to which complaint is made.

(b) Upon receipt of the complaint, the Division of Labor Standards Enforcement shall cause whatever investigation to be made as it deems appropriate.

(c) If upon investigation the Division of Labor Standards Enforcement determines that the employer has violated Section 1596.881, it shall bring an action in any appropriate court against the employer.

(d) In any such action, the court shall have jurisdiction, for cause shown, to issue restraining orders and order all appropriate relief, including rehiring and reinstatement of the employee of his or her former position with backpay and benefits.

(e) Within 30 days of the receipt of a complaint pursuant to this section, the Division of Labor Standards Enforcement shall review the facts of the employee’s complaint and either set a hearing date or notify the employee and the employer of its decision. Where necessary, the Division of Labor Standards Enforcement shall begin the appropriate court action to enforce the decision.

(f) Except for any grievance procedure or arbitration or hearing that is available to the employee pursuant to a collective bargaining agreement, this section is the exclusive means for presenting claims under this article.

West’s Ann.Cal.Health & Safety Code § 1596.883

§ 1596.883. Refusal to rehire, promote, or restore eligible employee; misdemeanor

Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for the rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

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West's Ann.Cal.Health & Safety Code § 1596.885

§ 1596.885. Denial, suspension or revocation of licenses, registration, or special permits; grounds

The department may deny an application for or suspend or revoke any license, registration, or special permit issued under this act upon any of the following grounds and in the manner provided in this act:

(a) Violation by the licensee, registrant, or holder of a special permit of this act or of the rules and regulations promulgated under this act.

(b) Aiding, abetting, or permitting the violating of this act or of the rules and regulations promulgated under this act.

(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility or the people of this state.

(d) The conviction of a licensee, or other person specified in Section 1596.871, at any time before or during licensure, of a crime as defined in Section 1596.871.

(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

West's Ann.Cal.Health & Safety Code § 1596.886

§ 1596.886. Temporary suspension

The director may temporarily suspend any license, registration, or special permit prior to any hearing when, in the opinion of the director, the action is necessary to protect any child of a child day care facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation by the licensee, registrant, or holder of the special permit, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until such time as the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

West's Ann.Cal.Health & Safety Code § 1596.8865

§ 1596.8865. Death or serious injury due to abuse or willful neglect; notice by local child protective agency; temporary suspension of license; notice to involved persons; service of accusation; hearing; evidence

Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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Effective: January 1, 2007

(a) When a local child protective agency, as defined in Section 11165 of the Penal Code, has a reasonable suspicion, as defined in subdivision (a) of Section 11166 of the Penal Code, that the death or serious injury of a child occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the agency shall immediately notify the director.

(b) Within two working days of receipt of the evidence that the death or serious injury occurred at a child day care facility because of abuse or willful neglect by the personnel of the child day care facility, the department shall temporarily suspend the license, registration, or special permit of the facility, and shall immediately notify the licensee, registrant, or holder of the special permit of the temporary suspension and the effective date thereof and at the same time serve the provider with an accusation. The hearing shall be set and conducted in the manner provided in Section 1596.886, and the temporary suspension shall have the same effect and duration as provided in Section 1596.886.

(c) The director shall request that the city police, county sheriff, or other law enforcement agencies, and any other county agencies, investigating the death or serious injury of the child shall expedite and coordinate evidence gathering in the case, and, to the extent that providing the evidence will not adversely affect any criminal prosecution, make that evidence available as soon as possible for the purposes of the hearing on the temporary suspension.

(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.

West's Ann.Cal.Health & Safety Code § 1596.8866

§ 1596.8866. Reopening investigation into licensed child day care facility; receipt of court record indicating judicial determination that injury to child may have been inflicted while in care and custody of day care provider

Effective: January 1, 2003

The State Department of Social Services shall reopen an investigation into a licensed child day care facility when any person provides the department with a certified copy of a court record in which a judicial officer has determined that an injury to a child may have been inflicted while in the care and custody of a day care provider.

West's Ann.Cal.Health & Safety Code § 1596.8867

§ 1596.8867. Unannounced visit following temporary suspension or revocation of license; verification that facility is nonoperational

Effective: September 25, 2008

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(a) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a temporary suspension of a license, in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

(b) The department shall conduct an unannounced visit to a facility within 30 days after the effective date of a revocation of a license in order to ensure that the facility is nonoperational, unless the department has previously verified that the facility is nonoperational.

West's Ann.Cal.Health & Safety Code § 1596.887

§ 1596.887. Proceedings for suspension, revocation, or denial of license, registration, or special permit; law governing; standard of proof; hearings; continuances

(a) Proceedings for the suspension, revocation, or denial of a license, registration, or special permit under this chapter 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 that chapter. In the event of conflict between the provisions of this chapter and those provisions of the Government Code, the provisions of the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license is not temporarily suspended pursuant to Section 1596.8865, the hearing shall be held within 90 days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing, only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing, only upon finding the existence of one or more of the following:

(1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.

(2) Lack of notice of hearing as provided in Section 11509 of the Government Code.

(3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.

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(4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.

(5) The substitution of the representative or attorney of a party upon showing that the substitution is required.

(6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.

(7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.

(8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

West's Ann.Cal.Health & Safety Code § 1596.8871

§ 1596.8871. Hearing; testimony of child or similarly vulnerable witness outside of presence of respondent; conditions; closed-circuit television; clearing of hearing room

(a) The administrative law judge conducting a hearing under this article may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled, to be taken outside the presence of the respondent or respondents if all of the following conditions exist:

(1) The administrative law judge determines that taking the witness's testimony outside the presence of the respondent or respondents is necessary to ensure truthful testimony.

(2) The witness is likely to be intimidated by the presence of the respondent or respondents.

(3) The witness is afraid to testify in front of the respondent or respondents.

(b) If the testimony of the witness is taken outside of the presence of the respondent or respondents, the department shall provide for the use of one-way closed-circuit television so the respondent or respondents can observe the testimony of the witness. Nothing in this section shall limit a respondent's right of cross-examination.

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(c) The administrative law judge conducting a hearing under this section may clear the hearing room of any persons who are not a party to the action in order to protect any witness from intimidation or other harm, taking into account the rights of all persons.

West's Ann.Cal.Health & Safety Code § 1596.8872

§ 1596.8872. Witnesses under age 12; hearsay testimony

Effective: January 1, 2003

(a)(1) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing conducted pursuant to this article. The out-of-court statement may be used to support a finding of fact unless an objection is timely made and the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. However, the out-of-court statement may not be the sole basis for the finding of fact, unless the adjudicator finds that the time, content, and circumstances of the statement provide sufficient indicia of reliability.

(2) The proponent of the statement shall give reasonable notice to all parties of the intended introduction of the statement at the hearing.

(3) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed out-of-court statement and it gives the proponent of the evidence a reasonable period of time to prepare a response to the objection prior to the hearing.

(b) This section shall not be construed to limit the right of any party to the administrative hearing to subpoena a witness whose statement is admitted as evidence or to introduce admissible evidence relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

West's Ann.Cal.Health & Safety Code § 1596.8875

§ 1596.8875. Witness fees and mileage; payment of expenses

In addition to the witness fees and mileage provided by Section 11450.40 of the Government Code, the department may pay actual, necessary, and reasonable expenses in an amount not to exceed the per diem allowance payable to a nonrepresented state employee on travel status. The department may pay witness expenses pursuant to this section in advance of the hearing.

West's Ann.Cal.Health & Safety Code § 1596.888

§ 1596.888. Reinstatement

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Any license, registration, or special permit suspended pursuant to this chapter, and any special permit revoked pursuant to this chapter, may be reinstated pursuant to Section 11522 of the Government Code.

West's Ann.Cal.Health & Safety Code § 1596.889

§ 1596.889. Evidence; standard of proof

In all proceedings conducted in accordance with Section 1596.887, the preponderance of the evidence standard shall apply.

West's Ann.Cal.Health & Safety Code § 1596.8895

§ 1596.8895. Notice of suspension of license to parent or legal guardian

Effective: January 1, 2007

(a) Whenever the director temporarily suspends the license, registration, or special permit of a child day care facility pursuant to Section 1596.886, the director or the local licensing agency shall send written notification to the parent or legal guardian of each child receiving services in the facility. The department or the local licensing agency, if there is one, shall also post a written notice of the temporary suspension at the facility in a place readily visible and accessible to the parents or guardians of children receiving services at the facility. Removal of the posted notice while the temporary suspension is in effect is a violation of this chapter punishable by a fine of five hundred dollars (\$500).

(b) If a temporary suspension order is not effected within 30 days of the filing of an accusation, the director or the local licensing agency shall send written notification that the accusation has been filed to the parent or legal guardian of each child receiving services in the facility.

(c)(1) Upon receipt of an accusation indicating the department's intent to revoke a facility's license, the licensee shall provide copies of a summary of the accusation to the parent or legal guardian of each child receiving services in the facility until that accusation is either dismissed or resolved through the administrative hearing process or stipulated agreement.

(2) Upon enrollment of a new child in a facility, the licensee shall provide to the parents or legal guardians of the newly enrolling child copies of a summary of any accusation that the licensee has received during the prior 12-month period that indicates the department's intent to revoke the facility's license.

(3) The licensee shall require each recipient of the summary of the accusation to sign a statement indicating that he or she has received the document and the date it was received.

(4) The licensee shall keep verification of receipt in each child's file.

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(5) The department shall prepare and provide to the licensee the summary of the accusation.

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West's Ann.Cal.Health & Safety Code § 1596.8897

§ 1596.8897. Prohibited positions or employment; grounds; notice; removal; appeal; petition for reinstatement

Effective: January 1, 2007

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

(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

(2) Engaged in conduct that is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1596.871.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee.

(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients.

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

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

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

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

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

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

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

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

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

(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section. The department may enter an order prohibiting any person from being a member of the board of directors, the executive director, or an officer of a licensee prohibiting the excluded person's employment or presence in the facility, or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application, or change of duties by the excluded person, Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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or any discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

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

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

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

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

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

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§ 1596.8898. Grounds for exclusion of certain persons from designated facilities

(a)(1) If the department determines that a person was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.2 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to the chapter.

(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove the person from the position of a member of the Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

(b) If the department determines that the person had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall exclude the person from, and remove the person from the position of a member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter and as follows:

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

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

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

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

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

(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1598.8897 or any other law.

(e) The department may determine not to exclude a person from, or remove him or her from the position of, a Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

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member of the board of directors, the executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence.

West's Ann.Cal.Health & Safety Code § 1596.8899

§ 1596.8899. Unannounced visit following order of immediate removal or exclusion

Effective: September 25, 2008

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

West's Ann.Cal.Health & Safety Code D. 2, Ch. 3.4, Art. 5, Refs & Annos

West's Ann.Cal.Health & Safety Code § 1596.89

§ 1596.89. Action to enjoin violations

The director may bring an action to enjoin the violation or threatened violation of Section 1596.80 or 1596.805 in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. Upon a finding by the director that the violation threatens the health or safety of any child in, or served by, a child day care facility, the department or agency contracted with may bring an action to enjoin the violation, threatened violation, or continued violation by any child day care facility which is located in an area for which it is responsible pursuant to the terms of the contract.

With respect to any and all actions brought pursuant to this section alleging actual violation of Section 1596.80 or 1596.805, the court shall, if it finds such allegations to be true, issue its order enjoining the child day care facility from continuance of the violation.

This section applies to family day care homes when the provider has failed to comply with Section 1596.80 or 1596.805 within 30 days of notice by the director of noncompliance, or at any time when a threat to the health and safety of children exists.

West's Ann.Cal.Health & Safety Code § 1596.890

§ 1596.890. Violations; punishment

Effective: January 1, 2000

California Codes _Health and Safety Code _Division 2. Licensing Provisions _Chapter 3.4. California Child Day Care Act _Article 3. Remedies for Employer Discrimination

(a) Any person who willfully or repeatedly violates any provision of this chapter, or any rule or regulation promulgated under this chapter is guilty of a misdemeanor. Upon conviction thereof, such a person shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment in the county jail for a period not to exceed 180 days, or by both the fine and imprisonment. The operation of a child day care facility without a license issued pursuant to this chapter shall make the owner or operator, or both, subject to a summons to appear in court.

(b) Notwithstanding subdivision (a) or any other provision of law, the sole sanction for failure of a resources and referral agency or an alternative payment program to comply with paragraph (2) of subdivision (a) of Section 1596.859 shall be set forth in the "Funding Terms and Conditions" agreement between the affected agency or program and the State Department of Education.

West's Ann.Cal.Health & Safety Code § 1596.891

§ 1596.891. Violation of § 1596.80; civil penalties for refusal to seek licensure or operation after denial of licensure; appeal; exemption

(a) A person who violates Section 1596.80 may be liable for an immediate assessment of civil penalties in the amount of two hundred dollars (\$200) per day.

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

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

(d) The operator shall be exempt from the civil penalty specified in subdivision (a) if a lack of liability insurance is the sole reason for nonlicensure and the reason for operating without liability insurance is not due to any fault on the part of the operator.

West's Ann.Cal.Health & Safety Code § 1596.8915

§ 1596.8915. Informing facility of unannounced site visit; misdemeanor

Any person who, without lawful authorization from a duly authorized officer, employee, or agent of the department, informs an owner, operator, employee, or agent of a child day care facility of an impending and unannounced site visit to that facility by personnel of the department, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed one thousand dollars (\$1,000), by imprisonment in the county jail for a period not to exceed 180 days, or by both a fine and imprisonment.

West's Ann.Cal.Health & Safety Code § 1596.892

Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

California Codes _Health and Safety Code _Division 2. Licensing Provisions _Chapter 3.4. California Child Day Care Act _Article 3. Remedies for Employer Discrimination

§ 1596.892. Civil, criminal, and administrative remedies under this article not exclusive

The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive, and may be sought and employed in any combination deemed advisable by the department to enforce the provisions of this chapter.

West's Ann.Cal.Health & Safety Code § 1596.893

§ 1596.893. Renumbered § 1596.893b and amended by Stats.1993, c. 726 (A.B.1486), § 5, eff. Oct. 4, 1993

West's Ann.Cal.Health & Safety Code § 1596.893a

§ 1596.893a. Citations to violating facilities; penalties; review; implementation

(a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail.

(b) The licensing agency shall give due consideration to the appropriateness of the penalty to the alleged violation, considering each of the following factors:

- (1) The gravity of the violation.
- (2) The history of previous violations.
- (3) The possibility of a threat to the health or safety of any child in the facility.
- (4) The number of children affected by the violation.
- (5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

(c) If the facility desires to contest a citation or the proposed assessment of a civil penalty, the facility shall, within 10 business days after service of the citation, notify the licensing agency in writing of a request for an informal conference. The licensing agency shall hold, within 30 days from the receipt of the request, an informal conference.

Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

California Codes _Health and Safety Code _Division 2. Licensing Provisions _Chapter 3.4. California Child Day Care Act _Article 3. Remedies for Employer Discrimination

At the conclusion of the conference, the licensing agency may affirm, modify, or dismiss the citation or proposed penalty. The agency shall state in writing the reasons for any action taken in the informal conference.

(d) If the penalty contained in the citation is affirmed in the informal conference, the licensing agency shall pursue enforcement of the penalty, and the facility may pursue any appeal mechanisms otherwise contained in law.

(e) The department shall implement this section during periods that Section 1596.893b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

West's Ann.Cal.Health & Safety Code § 1596.893b

§ 1596.893b. Citations to violating facilities; penalties; regulations; implementations

(a) When the licensing agency has reason to believe that an unlicensed day care facility is operating or that a day care facility is in violation of the California Child Day Care Facilities Act or of the rules and regulations promulgated under the California Child Day Care Facilities Act, the agency may issue a citation to, or impose penalties on, the facility. Each citation shall be in writing and shall describe with particularity the nature of the violation and the action proposed by the licensing agency. If the citation has been developed pursuant to an evaluator visit, the citation shall include the plan developed by the operator and evaluator to correct each deficiency. The citation shall be served upon the facility operator personally or through registered mail. Citations and penalties of licensed child care facilities shall be applied for the sole purpose of ensuring compliance with established statutes or regulations. The department shall distinguish between all of the following:

(1) Violations that present an immediate risk to the health, safety, or personal rights of the children in care.

(2) Violations that have the potential of becoming an immediate risk to the health, safety, or personal rights of the children in care.

(3) Violations that do not present an immediate or potential risk to the health, safety, or personal rights of the children in care.

(b) Civil penalties shall be imposed in accordance with Sections 1596.99 and 1597.62 only after the day care licensee fails to correct the violation in the time period specified in the plan developed pursuant to Section 1596.98 or 1597.56 and the evaluator makes a finding that the violation presents risks identified in paragraph (1) or (2) of subdivision (a). Civil penalties shall begin to accrue on the day the evaluator revisits the site and verifies that the violation was not corrected, even if the evaluator's visit is after the time period specified in the plan.

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

California Codes _Health and Safety Code _Division 2. Licensing Provisions _Chapter 3.4. California Child Day Care Act _Article 3. Remedies for Employer Discrimination

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

West's Ann.Cal.Health & Safety Code § 1596.894

§ 1596.894. Abatement of action against unlicensed facility; ownership change

Any action brought by the department against an unlicensed child day care facility shall not abate by reason of sale or other transfer of ownership of the child day care facility which is a party to the action except with the written consent of the licensing agency.

West's Ann.Cal.Health & Safety Code § 1596.895

§ 1596.895. Notification of priority one violations; implementation

(a) The department shall notify resource and referral agencies funded pursuant to Section 8210 of the Education Code of any priority one violation or any allegation of a priority one violation affecting the health and safety of children that is within the geographic area served by the agency. Resource and referral agencies shall use this information when deciding whether to make a referral to the licensee and shall maintain the confidentiality of information provided to them pursuant to this section.

(b) The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 30 days. The Child Care Regulation Section shall notify these resource and referral agencies of the department's actions regarding these allegations of priority one violations within 10 days after the allegations have been substantiated by the department.

(c) "Priority one violation" is defined to include sexual assault, physical abuse, ritualistic abuse, or suspicious deaths, if any of the following apply:

(1) The victim is a child in care and the suspect is the facility operator, the licensee, an employee of the facility, or is yet to be identified as any of the individuals specified in this paragraph.

(2) The facility is operating and the suspect has access to the victim or potential victim.

(3) The complaint is against an unlicensed facility and either a temporary suspension order is in effect or the license has been revoked.

(d) "Allegation of a priority one violation" is defined to include any complaints of priority one violations pursuant to subdivision (c).

Current with urgency legislation through Ch. 25, also including Chs. 39 and 41 of 2014 Reg.Sess., Res. Ch. 1 of 2013-2014 2nd Ex.Sess., and all propositions on the 6/3/2014 ballot

California Codes _Health and Safety Code _Division 2. Licensing Provisions _Chapter 3.4. California Child Day Care Act _Article 3. Remedies for Employer Discrimination

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