

ASSEMBLY BILL

No. 1454

Introduced by Assembly Member Ian Calderon

January 9, 2014

An act to amend Sections 1534, 1569.20, 1569.33, 1597.09, and 1597.55a of the Health and Safety Code, relating to public social services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1454, as introduced, Ian Calderon. Care facilities: regulatory visits.

Under existing law, the State Department of Social Services regulates the licensure and operation of community care facilities, residential care facilities for the elderly, child day care centers, and family day care homes. Existing law requires that these facilities be subject to unannounced visits by the department that occur at least once every 5 years. Existing law requires the department to conduct an annual unannounced visit under specified circumstances, including when a license is on probation, and to conduct annual unannounced visits to no less than 20% of the facilities not subject to an evaluation under those specified circumstances.

This bill would instead require these facilities to be subject to an annual unannounced visit by the department. The bill would require the department to conduct more frequent unannounced visits under specified circumstances. The bill would delete the provisions requiring the department to conduct annual unannounced visits to no less than 20% of the facilities and the provisions requiring an unannounced visit at least once every 5 years.

Existing law requires the department to immediately request a fire clearance and notify an applicant to arrange a time for the department to conduct a precicensure survey if an application for initial licensure is complete.

This bill would provide that the precicensure survey is optional at the discretion of the department if the department determines that an application is for licensure of a currently licensed facility, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1534 of the Health and Safety Code is
2 amended to read:
3 1534. (a) (1) Every licensed community care facility shall be
4 subject to *an annual* unannounced ~~visits~~ *visit* by the department.
5 The department shall visit these facilities as often as necessary to
6 ensure the quality of care provided.
7 (A) The department shall conduct ~~an annual unannounced visit~~
8 *more frequent unannounced visits* to a facility under any of the
9 following circumstances:
10 (i) When a license is on probation.
11 (ii) When the terms of agreement in a facility compliance plan
12 require ~~an annual evaluation.~~ *more frequent unannounced visits.*
13 (iii) When an accusation against a licensee is pending.
14 (iv) When a facility requires ~~an annual visit~~ *more frequent*
15 *unannounced visits* as a condition of receiving federal financial
16 participation.
17 (v) In order to verify that a person who has been ordered out of
18 a facility by the department is no longer at the facility.
19 ~~(B) (i) The department shall conduct annual unannounced visits~~
20 ~~to no less than 20 percent of facilities not subject to an evaluation~~
21 ~~under subparagraph (A). These unannounced visits shall be~~
22 ~~conducted based on a random sampling methodology developed~~
23 ~~by the department.~~
24 ~~(ii) If the total citations issued by the department exceed the~~
25 ~~previous year's total by 10 percent, the following year the~~
26 ~~department shall increase the random sample by an additional 10~~
27 ~~percent of the facilities not subject to an evaluation under~~

1 subparagraph (A). The department may request additional resources
2 to increase the random sample by 10 percent.

3 ~~(C) Under no circumstance shall the department visit a~~
4 ~~community care facility less often than once every five years.~~

5 ~~(D)~~

6 (B) In order to facilitate direct contact with group home clients,
7 the department may interview children who are clients of group
8 homes at any public agency or private agency at which the client
9 may be found, including, but not limited to, a juvenile hall,
10 recreation or vocational program, or a nonpublic school. The
11 department shall respect the rights of the child while conducting
12 the interview, including informing the child that he or she has the
13 right not to be interviewed and the right to have another adult
14 present during the interview.

15 (2) The department shall notify the community care facility in
16 writing of all deficiencies in its compliance with the provisions of
17 this chapter and the rules and regulations adopted pursuant to this
18 chapter, and shall set a reasonable length of time for compliance
19 by the facility.

20 (3) Reports on the results of each inspection, evaluation, or
21 consultation shall be kept on file in the department, and all
22 inspection reports, consultation reports, lists of deficiencies, and
23 plans of correction shall be open to public inspection.

24 (b) (1) Nothing in this section shall limit the authority of the
25 department to inspect or evaluate a licensed foster family agency,
26 a certified family home, or any aspect of a program where a
27 licensed community care facility is certifying compliance with
28 licensing requirements.

29 (2) Upon a finding of noncompliance by the department, the
30 department may require a foster family agency to deny or revoke
31 the certificate of approval of a certified family home, or take other
32 action the department may deem necessary for the protection of a
33 child placed with the family home. The family home shall be
34 afforded the due process provided pursuant to this chapter.

35 (3) If the department requires a foster family agency to deny or
36 revoke the certificate of approval, the department shall serve an
37 order of denial or revocation upon the certified or prospective
38 foster parent and foster family agency that shall notify the certified
39 or prospective foster parent of the basis of the department's action
40 and of the certified or prospective foster parent's right to a hearing.

1 (4) Within 15 days after the department serves an order of denial
2 or revocation, the certified or prospective foster parent may file a
3 written appeal of the department’s decision with the department.
4 The department’s action shall be final if the certified or prospective
5 foster parent does not file a written appeal within 15 days after the
6 department serves the denial or revocation order.

7 (5) The department’s order of the denial or revocation of the
8 certificate of approval shall remain in effect until the hearing is
9 completed and the director has made a final determination on the
10 merits.

11 (6) A certified or prospective foster parent who files a written
12 appeal of the department’s order with the department pursuant to
13 this section shall, as part of the written request, provide his or her
14 current mailing address. The certified or prospective foster parent
15 shall subsequently notify the department in writing of any change
16 in mailing address, until the hearing process has been completed
17 or terminated.

18 (7) Hearings held pursuant to this section shall be conducted in
19 accordance with Chapter 5 (commencing with Section 11500) of
20 *Part 1 of Division 3 of Title 2 of the Government Code*. In all
21 proceedings conducted in accordance with this ~~section~~ *section*, the
22 standard of proof shall be by a preponderance of the evidence.

23 (8) The department may institute or continue a disciplinary
24 proceeding against a certified or prospective foster parent upon
25 any ground provided by this section, enter an order denying or
26 revoking the certificate of approval, or otherwise take disciplinary
27 action against the certified or prospective foster parent,
28 notwithstanding any resignation, withdrawal of application,
29 surrender of the certificate of approval, or denial or revocation of
30 the certificate of approval by the foster family agency.

31 (9) A foster family agency’s failure to comply with the
32 department’s order to deny or revoke the certificate of employment
33 by placing or retaining children in care shall be grounds for
34 disciplining the licensee pursuant to Section 1550.

35 SEC. 2. Section 1569.20 of the Health and Safety Code is
36 amended to read:

37 1569.20. Upon the filing of the application for issuance of an
38 initial license, the department shall, within five working days of
39 the filing, make a determination regarding the completeness of the
40 application. If the application is complete, the department shall

1 immediately request a fire clearance and notify the applicant to
2 arrange a time for the department to conduct a preclearance survey.
3 *If the department determines that an application is for licensure*
4 *of a currently licensed facility for which there will be no material*
5 *change to the management or operations of the facility, the*
6 *preclearance survey is optional at the discretion of the department.*
7 If the application is incomplete, the department shall notify the
8 applicant and request the necessary information. Within 60 days
9 of making a determination that the file is complete, the department
10 shall make a determination whether the application is in compliance
11 with this chapter and the rules and regulations of the department
12 and shall either immediately issue the license or notify the applicant
13 of the deficiencies. The notice shall specify whether the
14 deficiencies constitute denial of the application or whether further
15 corrections for compliance will likely result in approval of the
16 application.

17 SEC. 3. Section 1569.33 of the Health and Safety Code is
18 amended to read:

19 1569.33. (a) Every licensed residential care facility for the
20 elderly shall be subject to *an annual unannounced visit* by
21 the department. The department shall visit these facilities as often
22 as necessary to ensure the quality of care provided.

23 (b) The department shall conduct ~~an annual unannounced visit~~
24 *more frequent unannounced visits* of a facility under any of the
25 following circumstances:

- 26 (1) When a license is on probation.
- 27 (2) When the terms of agreement in a facility compliance plan
28 require ~~an annual evaluation~~ *more frequent unannounced visits*.
- 29 (3) When an accusation against a licensee is pending.
- 30 (4) When a facility requires ~~an annual visit~~ *more frequent*
31 *unannounced visits* as a condition of receiving federal financial
32 participation.
- 33 (5) In order to verify that a person who has been ordered out of
34 the facility for the elderly by the department is no longer at the
35 facility.

36 ~~(e) (1) The department shall conduct annual unannounced visits~~
37 ~~to no less than 20 percent of facilities not subject to an evaluation~~
38 ~~under subdivision (b). These unannounced visits shall be conducted~~
39 ~~based on a random sampling methodology developed by the~~
40 ~~department.~~

1 ~~(2) If the total citations issued by the department exceed the~~
 2 ~~previous year's total by 10 percent, the following year the~~
 3 ~~department shall increase the random sample by 10 percent of the~~
 4 ~~facilities not subject to an evaluation under subdivision (b). The~~
 5 ~~department may request additional resources to increase the random~~
 6 ~~sample by 10 percent.~~

7 ~~(d) Under no circumstance shall the department visit a residential~~
 8 ~~care facility for the elderly less often than once every five years.~~

9 ~~(e)~~
 10 ~~(c) The department shall notify the residential care facility for~~
 11 ~~the elderly in writing of all deficiencies in its compliance with the~~
 12 ~~provisions of this chapter and the rules and regulations adopted~~
 13 ~~pursuant to this chapter, and shall set a reasonable length of time~~
 14 ~~for compliance by the facility.~~

15 ~~(f)~~
 16 ~~(d) Reports on the results of each inspection, evaluation, or~~
 17 ~~consultation shall be kept on file in the department, and all~~
 18 ~~inspection reports, consultation reports, lists of deficiencies, and~~
 19 ~~plans of correction shall be open to public inspection.~~

20 ~~(g)~~
 21 ~~(e) As a part of the department's evaluation process, the~~
 22 ~~department shall review the plan of operation, training logs, and~~
 23 ~~marketing materials of any residential care facility for the elderly~~
 24 ~~that advertises or promotes special care, special programming, or~~
 25 ~~a special environment for persons with dementia to monitor~~
 26 ~~compliance with Sections 1569.626 and 1569.627.~~

27 SEC. 4. Section 1597.09 of the Health and Safety Code is
 28 amended to read:

29 1597.09. (a) Each licensed child day care center shall be
 30 subject to *an annual unannounced visit* ~~visits~~ *visit* by the department.
 31 The department shall visit these facilities as often as necessary to
 32 ensure the quality of care provided.

33 (b) The department shall conduct ~~an annual unannounced visit~~
 34 *more frequent unannounced visits* to a licensed child day care
 35 center under any of the following circumstances:

- 36 (1) When a license is on probation.
- 37 (2) When the terms of agreement in a facility compliance plan
 38 require ~~an annual evaluation.~~ *more frequent unannounced visits.*
- 39 (3) When an accusation against a licensee is pending.

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

3 ~~(e) (1) The department shall conduct an annual unannounced~~
4 ~~visit to no less than 20 percent of facilities not subject to an~~
5 ~~evaluation under subdivision (b). These unannounced visits shall~~
6 ~~be conducted based on a random sampling methodology developed~~
7 ~~by the department.~~

8 ~~(2) If the total citations issued by the department exceed the~~
9 ~~previous year's total by 10 percent, the following year the~~
10 ~~department shall increase the random sample by 10 percent of~~
11 ~~facilities not subject to an evaluation under subdivision (b). The~~
12 ~~department may request additional resources to increase the random~~
13 ~~sample by 10 percent.~~

14 ~~(d) Under no circumstance shall the department visit a licensed~~
15 ~~child day care center less often than once every five years.~~

16 SEC. 5. Section 1597.55a of the Health and Safety Code is
17 amended to read:

18 1597.55a. Every family day care home shall be subject to *an*
19 *annual unannounced visit* by the department as provided in
20 this section. The department shall visit these facilities as often as
21 necessary to ensure the quality of care provided.

22 (a) The department shall conduct an announced site visit prior
23 to the initial licensing of the applicant.

24 (b) The department shall conduct ~~an annual unannounced visit~~
25 *more frequent unannounced visits* to a facility under any of the
26 following circumstances:

27 (1) When a license is on probation.

28 (2) When the terms of agreement in a facility compliance plan
29 require ~~an annual evaluation.~~ *more frequent unannounced visits.*

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

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

34 ~~(e) (1) The department shall conduct annual unannounced visits~~
35 ~~to no less than 20 percent of facilities not subject to an evaluation~~
36 ~~under subdivision (b). These unannounced visits shall be conducted~~
37 ~~based on a random sampling methodology developed by the~~
38 ~~department.~~

39 ~~(2) If the total citations issued by the department exceed the~~
40 ~~previous year's total by 10 percent, the following year the~~

1 ~~department shall increase the random sample by 10 percent of the~~
2 ~~facilities not subject to an evaluation under subdivision (b). The~~
3 ~~department may request additional resources to increase the random~~
4 ~~sample by 10 percent.~~
5 ~~(d) Under no circumstance shall the department visit a licensed~~
6 ~~family day care home less often than once every five years.~~
7 ~~(e)~~
8 (c) A public agency under contract with the department may
9 make spot checks if it does not result in any cost to the state.
10 However, spot checks shall not be required by the department.
11 ~~(f)~~
12 (d) The department or licensing agency shall make an
13 unannounced site visit on the basis of a complaint and a followup
14 visit as provided in Section 1596.853.
15 ~~(g)~~
16 (e) An unannounced site visit shall adhere to both of the
17 following conditions:
18 (1) The visit shall take place only during the facility’s normal
19 business hours or at any time family day care services are being
20 provided.
21 (2) The inspection of the facility shall be limited to those parts
22 of the facility in which family day care services are provided or
23 to which the children have access.
24 ~~(h)~~
25 (f) The department shall implement this section during periods
26 that Section 1597.55b is not being implemented in accordance
27 with Section 18285.5 of the Welfare and Institutions Code.