

# 8a. DETAIL SHEETS/BILL REVIEW

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** AB 1715, as amended April 12, 2016. Holden. Healing arts: behavior analysis: licensing.

**ISSUE:** ABA licensing.

**SUMMARY:** This bill would enact the Behavior Analyst Act and would, until January 1, 2022, vest the board with the power to enforce the act.

**BACKGROUND/ANALYSIS:** Since 2012, state law (HSC Code § 1374.73 and INS 10144.51) mandates that private health plans cover behavioral health treatment for autism. This mandate has significantly increased the demand for applied behavior analysis (ABA) services. Given the increased demand for ABA services, it is necessary to regulate the behavior analysis profession, to ensure that children with autism, and others who can benefit from behavior analysis treatment, have access to safe and effective services from qualified professionals.

Research shows that early, intensive ABA treatment—designed and supervised by a qualified professional behavior analyst—can produce meaningful improvements in the overall functioning of young children with autism. Alternatively, studies have shown that early “behavioral” interventions by unqualified individuals produced no improvements in young children with autism.

Behavior analysts can be certified by the Behavior Analyst Certification Board, Inc. (BACB), which is nationally accredited, independent nonprofit organization. BACB certification requirements include degrees, coursework, supervised experiential training, and passage of an examination. However, BACB does not have the same legal authority as a state licensing board, and has limited enforcement power to protect vulnerable populations from individuals who falsely claim to be qualified to practice behavior analysis, but are not BACB certified or licensed by a state agency. The strongest sanction available to the BACB is revocation of BACB certification.

Without licensing for behavior analytic practitioners, the state does not have the authority to protect our most vulnerable populations from the unauthorized and unqualified practice of behavior analysis and from unprofessional, unethical or harmful conduct by providers.

Currently, twenty-four states require ABA practitioners to be licensed, certified, or registered by a state licensing body. Similar occupations are already licensed and regulated in California. As of January 25, 2016, there were 3,589 practitioners in California certified by the BACB. Of those practitioners certified by the BACB, 2,000 were members of CalABA, which represents California practitioners of applied behavior analysis.

AB 1715 creates a regulatory structure to license behavior analysis professionals under the existing Board of Psychology (Board), which will enforce that Behavior Analyst Act.

Given the increased demand for behavioral health treatment and payment for these services, AB 1715 will protect children with autism, and others who benefit from behavior analysis treatment, from people who are not qualified to practice. AB 1715 does this by:

- Beginning July 1, 2018, the board's membership will be increased to include a qualified practitioner of behavior analysis and an additional public member. Additionally, a Behavior Analyst Committee will be created to make recommendations to the board regarding the regulation of the practice of behavior analysis.
- Beginning July 1, 2019, applicants for licensure will have to meet specified education, experience, and certification requirements to be licensed as either a Behavior Analyst (LBA) or Assistant Behavior Analyst (LABA). Prior to that date, applicants who have passed a certification examination under previous education and experience requirements will be eligible for licensure.
- Requires behavior analyst technicians working under the supervision of licensed behavior analysts or psychologists to register with the Board of Psychology.
- Allows a behavior analyst intern, who is supervised in accordance with the Board's regulations by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis, to register with the Board.

(Source: Author's fact sheet).

**RECOMMENDATION:** None.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Varied.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati



AMENDED IN ASSEMBLY APRIL 12, 2016  
AMENDED IN ASSEMBLY MARCH 29, 2016  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1715**

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**Introduced by Assembly Member Holden**

January 26, 2016

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An act to amend Sections 27 and 2920 of, to amend, repeal, and add Sections 2922, 2923, and 2927 of, to add Chapter 6.7 (commencing with Section 2999.10) to Division 2 of, and to repeal Sections 2999.20, 2999.26, 2999.31, and 2999.33 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Holden. Healing arts: behavior analysis: licensing.

Existing law provides for the licensure and regulation of various healing arts licensees by various boards within the Department of Consumer Affairs, including the Board of Psychology. Under existing law, until January 1, 2017, the board is vested with the power to enforce the Psychology Licensing Law, and the board consists of 9 members, 4 of whom are public members and 5 of whom are licensed psychologists. Existing law specifies that a quorum of the board requires 5 members. Existing law requires the board to post information on its licensees, including the license status and address of record for a licensee, as specified.

This bill would enact the Behavior Analyst Act and would, until January 1, 2022, vest the board with the power to enforce the act.

This bill would, on and after July 1, 2018, increase the number of members that constitute a quorum of the board to 6 members, and would require the Governor to appoint 2 additional members to the board that meet certain requirements, including, but not limited to, that one member is licensed as a psychologist and is qualified to practice behavior analysis, as defined. The bill would also additionally require the board to post license information regarding behavior analysts, assistant behavior analysts, behavior analysis technicians, and behavior analyst interns.

This bill would require a person to apply for and obtain a license from the board prior to engaging in the practice of behavior analysis, as defined, either as a behavior analyst or an assistant behavior analyst. The bill would require these applicants to, among other things, meet certain educational and training requirements, and submit fingerprints for both a state and federal criminal background check. The bill would require an assistant behavior analyst applicant to provide proof to the board of ongoing supervision by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis, as specified. The bill would provide that those licenses expire 2 years after the date of issuance and would authorize the renewal of unexpired licenses if certain requirements are met, including the completion of specified continuing education. The bill would also require an applicant to certify, under penalty of perjury, that he or she is in compliance with that continuing education requirement. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would require the registration of a behavior analyst intern by the board and would require the intern to be supervised by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis. In order to be registered, the bill would require an intern applicant to meet certain educational requirements, submit fingerprints for a criminal background check, and pay an application fee, as provided. The bill would make these intern registrations subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would also require a behavior analysis technician, as defined, who practices under the direction and supervision of a licensed behavior analyst, a licensed assistant behavior analyst, or a licensed psychologist who is qualified to practice behavior analysis, to submit, among other things, an application subject to board approval, fingerprints for a state and federal criminal background check, and payment of an application

fee. The bill would make these approvals subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would, until January 1, 2022, create the Behavior Analyst Committee within the jurisdiction of the board, and would require the committee to be composed of 5 members who shall be appointed as specified. The bill would authorize the committee to make recommendations to the board regarding the regulation of the practice of behavior analysis.

This bill would require the board to conduct disciplinary hearings, as specified. The bill, on and after July 1, 2019, would make it unlawful to, among other things, practice behavior analysis without being licensed by the board, except as specified.

This bill would make a licensee or health care facility, as defined, that fails or refuses to comply with an authorized client request or court order for the medical records of a client subject to a specified civil penalty, except as specified. The bill would also make a licensee or health care facility with multiple violations of those court orders subject to a crime. By creating a new crime, the bill would impose a state-mandated local program.

This bill would make a violation of the act a misdemeanor punishable by 6 months in the county jail or a fine not to exceed \$2,500, or by both imprisonment and a fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 27 of the Business and Professions Code
- 2 is amended to read:
- 3 27. (a) Each entity specified in subdivisions (c), (d), and (e)
- 4 shall provide on the Internet information regarding the status of
- 5 every license issued by that entity in accordance with the California
- 6 Public Records Act (Chapter 3.5 (commencing with Section 6250)
- 7 of Division 7 of Title 1 of the Government Code) and the

1 Information Practices Act of 1977 (Chapter 1 (commencing with  
2 Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).  
3 The public information to be provided on the Internet shall include  
4 information on suspensions and revocations of licenses issued by  
5 the entity and other related enforcement action, including  
6 accusations filed pursuant to the Administrative Procedure Act  
7 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
8 Division 3 of Title 2 of the Government Code) taken by the entity  
9 relative to persons, businesses, or facilities subject to licensure or  
10 regulation by the entity. The information may not include personal  
11 information, including home telephone number, date of birth, or  
12 social security number. Each entity shall disclose a licensee's  
13 address of record. However, each entity shall allow a licensee to  
14 provide a post office box number or other alternate address, instead  
15 of his or her home address, as the address of record. This section  
16 shall not preclude an entity from also requiring a licensee, who  
17 has provided a post office box number or other alternative mailing  
18 address as his or her address of record, to provide a physical  
19 business address or residence address only for the entity's internal  
20 administrative use and not for disclosure as the licensee's address  
21 of record or disclosure on the Internet.

22 (b) In providing information on the Internet, each entity specified  
23 in subdivisions (c) and (d) shall comply with the Department of  
24 Consumer Affairs' guidelines for access to public records.

25 (c) Each of the following entities within the Department of  
26 Consumer Affairs shall comply with the requirements of this  
27 section:

28 (1) The Board for Professional Engineers, Land Surveyors, and  
29 Geologists shall disclose information on its registrants and  
30 licensees.

31 (2) The Bureau of Automotive Repair shall disclose information  
32 on its licensees, including auto repair dealers, smog stations, lamp  
33 and brake stations, smog check technicians, and smog inspection  
34 certification stations.

35 (3) The Bureau of Electronic and Appliance Repair, Home  
36 Furnishings, and Thermal Insulation shall disclose information on  
37 its licensees and registrants, including major appliance repair  
38 dealers, combination dealers (electronic and appliance), electronic  
39 repair dealers, service contract sellers, and service contract  
40 administrators.

- 1 (4) The Cemetery and Funeral Bureau shall disclose information  
2 on its licensees, including cemetery brokers, cemetery salespersons,  
3 cemetery managers, crematory managers, cemetery authorities,  
4 crematories, cremated remains disposers, embalmers, funeral  
5 establishments, and funeral directors.
- 6 (5) The Professional Fiduciaries Bureau shall disclose  
7 information on its licensees.
- 8 (6) The Contractors' State License Board shall disclose  
9 information on its licensees and registrants in accordance with  
10 Chapter 9 (commencing with Section 7000) of Division 3. In  
11 addition to information related to licenses as specified in  
12 subdivision (a), the board shall also disclose information provided  
13 to the board by the Labor Commissioner pursuant to Section 98.9  
14 of the Labor Code.
- 15 (7) The Bureau for Private Postsecondary Education shall  
16 disclose information on private postsecondary institutions under  
17 its jurisdiction, including disclosure of notices to comply issued  
18 pursuant to Section 94935 of the Education Code.
- 19 (8) The California Board of Accountancy shall disclose  
20 information on its licensees and registrants.
- 21 (9) The California Architects Board shall disclose information  
22 on its licensees, including architects and landscape architects.
- 23 (10) The State Athletic Commission shall disclose information  
24 on its licensees and registrants.
- 25 (11) The State Board of Barbering and Cosmetology shall  
26 disclose information on its licensees.
- 27 (12) The State Board of Guide Dogs for the Blind shall disclose  
28 information on its licensees and registrants.
- 29 (13) The Acupuncture Board shall disclose information on its  
30 licensees.
- 31 (14) The Board of Behavioral Sciences shall disclose  
32 information on its licensees, including licensed marriage and family  
33 therapists, licensed clinical social workers, licensed educational  
34 psychologists, and licensed professional clinical counselors.
- 35 (15) The Dental Board of California shall disclose information  
36 on its licensees.
- 37 (16) The State Board of Optometry shall disclose information  
38 regarding certificates of registration to practice optometry,  
39 statements of licensure, optometric corporation registrations, branch  
40 office licenses, and fictitious name permits of its licensees.

1 (17) The Board of Psychology shall disclose information on its  
2 licensees, including psychologists, psychological assistants,  
3 registered psychologists, behavior analysts, assistant behavior  
4 analysts, behavior analysis technicians, and behavior analyst  
5 interns.

6 (d) The State Board of Chiropractic Examiners shall disclose  
7 information on its licensees.

8 (e) The Structural Pest Control Board shall disclose information  
9 on its licensees, including applicators, field representatives, and  
10 operators in the areas of fumigation, general pest and wood  
11 destroying pests and organisms, and wood roof cleaning and  
12 treatment.

13 (f) The Bureau of Medical Marijuana Regulation shall disclose  
14 information on its licensees.

15 (g) "Internet" for the purposes of this section has the meaning  
16 set forth in paragraph (6) of subdivision (f) of Section 17538.

17 SEC. 2. Section 2920 of the Business and Professions Code is  
18 amended to read:

19 2920. (a) The Board of Psychology shall enforce and  
20 administer this chapter and Chapter 6.7 (commencing with Section  
21 2999.10). The board shall consist of nine members, four of whom  
22 shall be public members.

23 (b) On and after July 1, 2018, notwithstanding subdivision (a),  
24 the board shall consist of 11 members, five of whom shall be public  
25 members.

26 (c) This section shall remain in effect only until January 1, 2017,  
27 and as of that date is repealed.

28 (d) Notwithstanding any other law, the repeal of this section  
29 renders the board subject to review by the appropriate policy  
30 committees of the Legislature.

31 SEC. 3. Section 2922 of the Business and Professions Code is  
32 amended to read:

33 2922. (a) In appointing the members of the board, except the  
34 public members, the Governor shall use his or her judgment to  
35 select psychologists who represent, as widely as possible, the varied  
36 professional interests of psychologists in California.

37 (b) The Governor shall appoint two of the public members and  
38 the five licensed members of the board qualified as provided in  
39 Section 2923. The Senate Committee on Rules and the Speaker of  
40 the Assembly shall each appoint a public member.

1 (c) This section shall become inoperative on July 1, 2018, and,  
2 as of January 1, 2019, is repealed.

3 SEC. 4. Section 2922 is added to the Business and Professions  
4 Code, to read:

5 2922. (a) In appointing the licensed members of the board,  
6 the Governor shall use his or her judgment to select psychologists  
7 and behavior analysts who represent, as widely as possible, the  
8 varied professional interests of psychologists and behavior analysts  
9 in California.

10 (b) The Governor shall appoint three of the public members and  
11 the six licensed members of the board qualified as provided in  
12 Section 2923. The Senate Committee on Rules and the Speaker of  
13 the Assembly shall each appoint a public member.

14 (c) This section shall become operative on July 1, 2018.

15 SEC. 5. Section 2923 of the Business and Professions Code is  
16 amended to read:

17 2923. (a) Each member of the board shall have all of the  
18 following qualifications:

19 (1) He or she shall be a resident of this state.

20 (2) Each member appointed, except the public members, shall  
21 be a licensed psychologist.

22 (b) The public members shall not be licentiates of the board or  
23 of any board under this division or of any board referred to in the  
24 Chiropractic Act or the Osteopathic Act.

25 (c) This section shall become inoperative on July 1, 2018, and,  
26 as of January 1, 2019, is repealed.

27 SEC. 6. Section 2923 is added to the Business and Professions  
28 Code, to read:

29 2923. (a) Each member of the board shall be a resident of this  
30 state.

31 (b) Five members of the board shall be licensed as psychologists  
32 under this chapter.

33 (c) One member shall be licensed as a psychologist and qualified  
34 to practice behavior analysis, as defined in Section 2999.12, as  
35 follows:

36 (1) For the first appointment after the operative date of this  
37 section, the member shall hold a certificate as a certified behavior  
38 analyst from a certifying entity, as defined in Section 2999.12.

1 (2) For subsequent appointments, the member shall be licensed  
 2 as a behavior analyst under Chapter 6.7 (commencing with Section  
 3 2999.10).

4 (d) The public members shall not be licentiates of the board or  
 5 of any board under this division or of any board referred to in the  
 6 Chiropractic Act or the Osteopathic Act.

7 (e) This section shall become operative on July 1, 2018.

8 SEC. 7. Section 2927 of the Business and Professions Code is  
 9 amended to read:

10 2927. (a) Five members of the board shall at all times  
 11 constitute a quorum.

12 (b) This section shall become inoperative on July 1, 2018, and,  
 13 as of January 1, 2019, is repealed.

14 SEC. 8. Section 2927 is added to the Business and Professions  
 15 Code, to read:

16 2927. (a) Six members of the board shall at all times constitute  
 17 a quorum.

18 (b) This section shall become operative on July 1, 2018.

19 SEC. 9. Chapter 6.7 (commencing with Section 2999.10) is  
 20 added to Division 2 of the Business and Professions Code, to read:

21  
 22 CHAPTER 6.7. BEHAVIOR ANALYSTS

23  
 24 Article 1. General Provisions

25  
 26 2999.10. This chapter shall be known, and may be cited, as the  
 27 Behavior Analyst Act.

28 2999.11. (a) The Legislature finds and declares that the practice  
 29 of behavior analysis in California affects the public health, safety,  
 30 and welfare, and is subject to regulation to protect the public from  
 31 the unauthorized and unqualified practice of behavior analysis,  
 32 and unprofessional, unethical, or harmful conduct by persons  
 33 licensed to practice behavior analysis.

34 (b) It is the intent of the Legislature that the board begin  
 35 accepting applications for behavior analyst licensure, assistant  
 36 behavior analyst licensure, behavior analysis technician approval,  
 37 and behavior analyst intern registration no later than January 1,  
 38 2018, provided that the funds necessary to implement this chapter  
 39 have been appropriated by the Legislature as specified in Section  
 40 2999.98.

1 2999.12. For purposes of this chapter, the following terms have  
2 the following meanings:

3 (a) "Behavior analysis technician" means an individual who  
4 works directly with a client to implement applied behavior analysis  
5 services under the direction and supervision of a licensed behavior  
6 analyst, a licensed assistant behavior analyst, or a licensed  
7 psychologist who is qualified to practice behavior analysis, and  
8 has successfully completed the application requirements described  
9 in Section 2999.36.

10 (b) "Board" means the Board of Psychology.

11 (c) "Certifying entity" means the Behavior Analyst Certification  
12 Board or its successor, or another national credentialing  
13 organization with behavior analyst certification programs approved  
14 by the board and accredited by the National Commission for  
15 Certifying Agencies.

16 (d) "Committee" means the Behavior Analyst Committee.

17 (e) "Department" means the Department of Consumer Affairs.

18 (f) "Licensed assistant behavior analyst" means a person licensed  
19 under this chapter to practice behavior analysis under the  
20 supervision of a licensed behavior analyst or a licensed  
21 psychologist who is qualified to practice behavior analysis.

22 (g) "Behavior analyst intern" means a person registered under  
23 this chapter to practice behavior analysis under the supervision of  
24 a licensed behavior analyst or a licensed psychologist who is  
25 qualified to practice behavior analysis.

26 (h) "Licensed behavior analyst" means a person licensed under  
27 this chapter to practice behavior analysis.

28 (i) "Practice of behavior analysis" or "to practice behavior  
29 analysis" means the design, implementation, and evaluation of  
30 instructional and environmental modifications to produce socially  
31 significant improvements in human behavior and includes the  
32 empirical identification of functional relations between behavior  
33 and environmental factors, known as functional assessment and  
34 analysis, interventions based on scientific research and the direct  
35 observation and measurement of behavior and the environment,  
36 and utilization of contextual factors, motivating operations,  
37 antecedent stimuli, positive reinforcement, and other consequences  
38 to help people develop new behaviors, increase or decrease existing  
39 behaviors, and emit behaviors under specific environmental  
40 conditions.

1 (1) The practice of behavior analysis does not include  
2 psychological testing and assessment, diagnosis of a mental or  
3 physical disorder, neuropsychology, psychotherapy, cognitive  
4 therapy, sex therapy, psychoanalysis, hypnotherapy, counseling,  
5 prescribing drugs, performing surgery, or administering  
6 electroconvulsive therapy.

7 (2) The Legislature recognizes that the scopes of practice of  
8 healing arts licensees regulated under this division sometimes  
9 contain similar practices. However, nothing herein shall be  
10 construed to allow a licensed behavior analyst or a licensed  
11 assistant behavior analyst to engage in those practices, including,  
12 but not limited to, assessments, other than specific to their scope  
13 of practice within behavior analysis as described herein. Any  
14 person practicing behavior analysis under this chapter who violates  
15 this provision is subject to disciplinary action by both the Board  
16 of Psychology and the board overseeing the relevant practice.  
17

## 18 Article 2. Administration 19

20 2999.20. (a) The Board of Psychology is vested with the power  
21 to administer the provisions and requirements of this chapter, and  
22 may make and enforce rules and regulations that are reasonably  
23 necessary to carry out its provisions.

24 (b) This section shall remain in effect only until January 1, 2022,  
25 and as of that date is repealed. Notwithstanding any other law, the  
26 repeal of this section renders the board subject to review by the  
27 appropriate policy committees of the Legislature.

28 2999.21. Protection of the public shall be the highest priority  
29 for the board in exercising its licensing, regulatory, and disciplinary  
30 functions pursuant to this chapter. Whenever the protection of the  
31 public is inconsistent with other interests sought to be promoted,  
32 the protection of the public shall be paramount.

33 2999.22. The board shall adopt, amend, and repeal regulations  
34 to implement the requirements of this chapter. All regulations  
35 adopted by the board shall comply with the provisions of Chapter  
36 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
37 Title 2 of the Government Code.

38 2999.23. The board shall adopt a program of consumer and  
39 professional education in matters relevant to the ethical practice  
40 of behavior analysis. The board shall establish standards of ethical

1 conduct relating to the practice of behavior analysis that are based  
2 on current standards published by a national credentialing  
3 organization with behavior analyst certification programs approved  
4 by the board and accredited by the National Commission for  
5 Certifying Agencies. These standards shall be applied by the board  
6 as the accepted standard of ethics in all law and ethics licensing  
7 examination development and in all board enforcement policies  
8 and disciplinary case evaluations involving the practice of behavior  
9 analysis.

10 2999.24. The board may employ, subject to civil service and  
11 other laws, employees as may be necessary to carry out the  
12 provisions of this chapter under the direction of the executive  
13 officer of the board.

14 2999.25. The board shall maintain, and make available to the  
15 public, a list of all licensees. The board shall make available on  
16 its Internet Web site information regarding the status of every  
17 license issued by the board under this chapter pursuant to Section  
18 27.

19 2999.26. (a) The Behavior Analyst Committee is hereby  
20 created within the jurisdiction of the board to make  
21 recommendations to the board regarding the regulation of the  
22 practice of behavior analysis in the state in order to protect the  
23 public from the unauthorized and unqualified practice of applied  
24 behavior analysis, and unprofessional, unethical, or harmful  
25 conduct by persons licensed to practice behavior analysis.

26 (b) The committee shall consist of five members. Two members  
27 shall be licensed behavior analysts, one of which shall also be a  
28 member of the board. One member shall be a psychologist licensed  
29 under Chapter 6.6 (commencing with Section 2900) and who holds  
30 a current certification from a certifying entity as a behavior analyst.  
31 One member shall be a licensed assistant behavior analyst. One  
32 member shall be a public member who is not licensed under this  
33 chapter, under any chapter within this division, or by any board  
34 referred to in the Chiropractic Act or the Osteopathic Act.

35 (c) The Governor shall appoint one licensed behavior analyst  
36 member, the licensed psychologist member, and the licensed  
37 assistant behavior analyst member. The Senate Committee on  
38 Rules shall appoint the public member, and the Speaker of the  
39 Assembly shall appoint one licensed behavior analyst member.

- 1 (d) Notwithstanding subdivisions (b) and (c), the initial  
2 appointed members of the committee shall be appointed as follows:
- 3 (1) The initial members appointed by the Governor shall be as  
4 follows:
- 5 (A) One member shall be currently certified by a certifying  
6 entity as a certified behavior analyst and shall serve an initial term  
7 of one year.
- 8 (B) One member shall be currently certified by a certifying  
9 entity as a certified assistant behavior analyst and shall serve an  
10 initial term of two years.
- 11 (C) One member shall be a licensed psychologist who is  
12 currently certified by a certifying entity as a certified behavior  
13 analyst and shall serve an initial term of three years.
- 14 (2) The initial member appointed by the Senate Committee on  
15 Rules shall serve a term of four years.
- 16 (3) The initial member appointed by the Speaker of the  
17 Assembly shall be currently certified by a certifying entity as a  
18 certified behavior analyst and shall serve an initial term of four  
19 years.
- 20 (e) Except as provided in subdivision (d), each member of the  
21 committee shall hold office for a term of four years, and shall serve  
22 until the appointment of his or her successor or until one year has  
23 elapsed since the expiration of the term for which he or she was  
24 appointed, whichever occurs first. Vacancies shall be filled by the  
25 appointing power for the unexpired portion of the terms in which  
26 they occur. A member shall not serve for more than two  
27 consecutive terms.
- 28 (f) All terms shall begin on July 1 and expire on June 30.
- 29 (g) Each member of the committee shall receive per diem and  
30 expenses as provided in Sections 103 and 113.
- 31 (h) Three members of the committee shall at all times constitute  
32 a quorum.
- 33 (i) This section shall become operative on July 1, 2018.
- 34 (j) This section shall remain in effect only until January 1, 2022,  
35 and as of that date is repealed.
- 36 2999.27. The committee shall do all of the following:
- 37 (a) Meet at least once per quarter. All meetings of the committee  
38 shall be public meetings. Notice of each regular meeting of the  
39 committee shall be given in accordance with the Bagley-Keene  
40 Open Meeting Act (Article 9 (commencing with Section 11120))

1 of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government  
2 Code).

3 (b) Committee meetings may be called upon reasonable notice  
4 at the discretion of the chair, and shall be called at any time upon  
5 reasonable notice by a written request of two committee members  
6 to the chair.

7 (c) The committee shall elect a chair and a vice chair from  
8 among its members at the first meeting held in each fiscal year.  
9 The chair shall preside at all meetings of the committee and shall  
10 work with the executive officer of the board to coordinate the  
11 committee's business. If the chair is unable to attend a meeting,  
12 the vice chair shall preside at the meeting.

13 2999.28. (a) The committee may make recommendations to  
14 the board regarding licensing and practice standards.

15 (b) The committee may make recommendations to the board  
16 regarding the adoption, amendment, and repeal of regulations to  
17 implement the requirements of this chapter including, but not  
18 limited to, the setting of fees and the establishment of disciplinary  
19 guidelines.

20

21

### Article 3. Licensing

22

23 2999.30. To qualify for licensure as a licensed behavior analyst  
24 or a licensed assistant behavior analyst, each applicant shall meet  
25 the board's requirements for behavior analyst or assistant behavior  
26 analyst licensure, as applicable, including all of the following:

27 (a) The applicant has not committed acts or crimes constituting  
28 grounds for denial of licensure under Section 480.

29 (b) The board shall not issue a license or registration to any  
30 person who has been convicted of a crime in this state, or another  
31 state, or in a territory of the United States that involves sexual  
32 abuse of a child, or who is required to register pursuant to Section  
33 290 of the Penal Code or the equivalent in another state or territory.

34 (c) The applicant has successfully passed a state and federal  
35 level criminal offender record information search conducted  
36 through the Department of Justice, as follows:

37 (1) The board shall request from the Department of Justice  
38 subsequent arrest notification service, pursuant to Section 11105.2  
39 of the Penal Code, for each person who submitted information  
40 pursuant to this subdivision.

- 1 (2) The Department of Justice shall charge a fee sufficient to  
2 cover the cost of processing the request described in this section.
- 3 2999.31. (a) In order to obtain a license as a behavior analyst,  
4 an individual shall submit an application on a form approved by  
5 the board accompanied by the fees required by the board as  
6 specified in Section 2999.93.
- 7 (b) An applicant shall include, with the application, verification  
8 from the certifying entity that the applicant meets both of the  
9 following requirements:
- 10 (1) Has passed the Board Certified Behavior Analyst  
11 examination or an equivalent examination administered by the  
12 certifying entity.
- 13 (2) Maintains an active status as a certified behavior analyst  
14 with the certifying entity.
- 15 (c) Each applicant shall obtain a passing score on a California  
16 law and ethics examination administered by the board.
- 17 (d) This section shall become inoperative on July 1, 2019. An  
18 applicant who submits his or her application prior to July 1, 2019,  
19 shall be required to meet the requirements of this section to be  
20 licensed by the board.
- 21 (e) This section shall remain in effect only until January 1, 2020,  
22 and as of that date is repealed.
- 23 2999.32. (a) In order to obtain a license as a behavior analyst,  
24 an individual shall submit an application on a form approved by  
25 the board accompanied by the fees required by the board as  
26 specified in Section 2999.93.
- 27 (b) An applicant shall include, with the application, verification  
28 from the certifying entity that the applicant meets both of the  
29 following requirements:
- 30 (1) Has passed the Board Certified Behavior Analyst  
31 examination or an equivalent examination administered by the  
32 certifying entity.
- 33 (2) Maintains an active status as a certified behavior analyst  
34 with the certifying entity.
- 35 (c) Each applicant shall obtain a passing score on a California  
36 law and ethics examination administered by the board.
- 37 (d) The applicant shall meet one of the following requirements:
- 38 (1) Possess a master's degree or higher level of education from  
39 an institution, which meets the requirements described in Section

1 2999.35, that was conferred in behavior analysis, psychology, or  
2 education.

3 (2) Possess a master's degree or higher level of education, which  
4 meets the requirements described in Section 2999.35, and  
5 completed a behavior analysis course sequence approved by the  
6 certifying entity.

7 (e) In addition to subdivisions (a) to (d), inclusive, an individual  
8 shall meet one of the following paragraphs in order to be licensed  
9 under this chapter:

10 (1) An individual shall have completed both of the following:

11 (A) Two hundred seventy hours of classroom graduate-level  
12 instruction in all of the following content areas:

13 (i) Ethical and professional conduct coursework consisting of  
14 45 hours. The content must be taught in one or more freestanding  
15 courses devoted to ethical and professional conduct of behavior  
16 analysts.

17 (ii) Concepts and principles of behavior analysis consisting of  
18 45 hours.

19 (iii) Research methods in behavior analysis, consisting of 25  
20 hours of measurement, including data analysis, and 20 hours of  
21 experimental design.

22 (iv) Applied behavior analysis, consisting of 45 hours of  
23 fundamental elements of behavior change and specific behavior  
24 change procedures, 30 hours of identification of the problem and  
25 assessment, 10 hours of intervention and behavior change  
26 considerations, 10 hours of behavior change systems, and 10 hours  
27 of implementation, management, and supervision.

28 (v) Elective coursework in behavior analysis consisting of 30  
29 hours.

30 (B) Supervised experiential training by any of the following:

31 (i) One thousand five hundred hours of independent field work  
32 in behavior analysis supervised in accordance with the requirements  
33 of the certifying entity.

34 (ii) One thousand hours of supervised practicum in behavior  
35 analysis within a university practicum approved by the certifying  
36 entity, taken for graduate academic credit, and completed with a  
37 passing grade.

38 (iii) Seven hundred fifty hours of supervised intensive practicum  
39 in behavior analysis within a university practicum approved by

- 1 the certifying entity, taken for graduate academic credit, and  
2 completed with a passing grade.
- 3 (iv) A combination of the supervised experience in clause (i),  
4 (ii), or (iii). Hours may be completed in any combination of the  
5 categories of supervised experience. Hours accrued through a  
6 combination of supervised experience shall be proportionately  
7 calculated.
- 8 (2) An individual shall meet all of the following requirements:
- 9 (A) Have a faculty appointment of at least three years,  
10 cumulatively, of full-time work as a faculty member at a fully  
11 accredited higher education institution within a five-year period.
- 12 (B) Taught at least five sections or iterations of behavior analysis  
13 coursework. An applicant shall have taught at least two behavior  
14 analysis content areas, which are concepts and principles of  
15 behavior, single-subject research methods, applied behavior  
16 analysis, and ethics in behavior analysis, in separate courses. Each  
17 course taught shall have been exclusively or primarily devoted to  
18 behavior analysis content, and shall have been taught at the  
19 graduate level. An applicant shall submit proof of completion of  
20 the faculty appointment and teaching requirements from a  
21 department head, including the syllabus for each course taught, to  
22 the board.
- 23 (C) Published one article with all of the following  
24 characteristics:
- 25 (i) Behavior analytic in nature.  
26 (ii) Includes at least one experimental evaluation.  
27 (iii) Published in a high-quality, peer reviewed journal.  
28 (iv) The applicant is the first, second, or corresponding author.  
29 (v) The article may have been published at any time during the  
30 applicant's career.
- 31 (D) Obtained supervised experiential training by any of the  
32 following:
- 33 (i) One thousand five hundred hours of independent field work  
34 in behavior analysis supervised in accordance with the requirements  
35 of the certifying entity.
- 36 (ii) One thousand hours of supervised practicum in behavior  
37 analysis within a university practicum approved by the certifying  
38 entity, taken for graduate academic credit, and completed with a  
39 passing grade.

- 1 (iii) Seven hundred fifty hours of supervised intensive practicum  
2 in behavior analysis within a university practicum approved by  
3 the certifying entity, taken for graduate credit, and completed with  
4 a passing grade.
- 5 (iv) A combination of the supervised experience in clause (i),  
6 (ii), or (iii). Hours may be completed in any combination of the  
7 categories of supervised experience. Hours accrued through a  
8 combination of supervised experience shall be proportionately  
9 calculated.
- 10 (3) An individual shall have completed all of the following:  
11 (A) A doctoral degree in behavior analysis, psychology, or  
12 education from an accredited higher education institution.  
13 (B) Ten years of postdoctoral experience practicing behavior  
14 analysis. The duration of practice shall be at least 10 years,  
15 cumulatively, of full-time practice. An applicant's practice shall  
16 have occurred under a relevant state professional credential or  
17 license.  
18 (C) At least 500 hours of supplemental supervised experiential  
19 training that meets current experience standards of the certifying  
20 entity, commencing after the 10 years of postdoctoral experience  
21 required in paragraph (b).
- 22 (f) This section shall become operative on July 1, 2019.
- 23 2999.33. (a) To obtain a license as an assistant behavior  
24 analyst, an individual shall submit an application on a form  
25 approved by the board accompanied by the fees required by the  
26 board as specified in Section 2999.93.
- 27 (b) An applicant shall include, with the application, verification  
28 from the certifying entity that the applicant meets all of the  
29 following requirements:
- 30 (1) Has passed the Board Certified Assistant Behavior Analyst  
31 examination or equivalent examination administered by the  
32 certifying entity.
- 33 (2) Maintains an active status as a certified assistant behavior  
34 analyst with the certifying entity.
- 35 (c) Each applicant shall obtain a passing score on a California  
36 law and ethics examination administered by the board.
- 37 (d) Each applicant shall provide proof to the board of ongoing  
38 supervision by a licensed behavior analyst or a licensed  
39 psychologist who is qualified to practice behavior analysis in a

1 manner consistent with the certifying entity's requirements for  
2 supervision of assistant behavior analysts.

3 (e) This section shall become inoperative on July 1, 2019. An  
4 applicant who submits his or her application prior to July 1, 2019,  
5 shall be required to meet the requirements of this section to be  
6 licensed by the board.

7 (f) This section shall remain in effect only until January 1, 2020,  
8 and as of that date is repealed.

9 2999.34. (a) In order for an individual to be licensed as an  
10 assistant behavior analyst under this chapter, he or she shall possess  
11 a baccalaureate degree or higher level of education from an  
12 institution that meets the requirements described in Section  
13 2999.35.

14 (b) An applicant shall include, with the application, verification  
15 from the certifying entity that the applicant meets both of the  
16 following requirements:

17 (1) Has passed the Board Certified Assistant Behavior Analyst  
18 examination or an equivalent examination administered by the  
19 certifying entity.

20 (2) Maintains an active status as a certified assistant behavior  
21 analyst with the certifying entity.

22 (c) Each applicant shall obtain a passing score on a California  
23 law and ethics examination administered by the board.

24 (d) Each applicant shall provide proof to the board of ongoing  
25 supervision by a licensed behavior analyst or a licensed  
26 psychologist who is qualified to practice behavior analysis in a  
27 manner consistent with the certifying entity's requirements for  
28 supervision of assistant behavior analysts.

29 (e) In addition to subdivisions (a) to (d), inclusive, an individual  
30 shall meet all of the following requirements in order to be licensed  
31 under this chapter:

32 (1) Completed a baccalaureate degree or higher level of  
33 education from an institution that meets the requirements in Section  
34 2999.35.

35 (2) An applicant shall meet both of the following:

36 (A) Completed 180 classroom hours of undergraduate or  
37 graduate level instruction in all of the following content areas:

38 (i) Ethical and professional conduct coursework of behavior  
39 analysis consisting of 15 hours.

- 1 (ii) Concepts and principles of behavior analysis consisting of
- 2 45 hours.
- 3 (iii) Research methods in behavior analysis, consisting of 10
- 4 hours of measurement, including data analysis, and five hours of
- 5 experimental design.
- 6 (iv) Applied behavior analysis, consisting of 45 hours of
- 7 fundamental elements of behavior change and specific behavior
- 8 change procedures, 30 hours of identification of the problem and
- 9 assessment, five hours of intervention and behavior change
- 10 considerations, five hours of behavior change systems, and five
- 11 hours of implementation, management, and supervision.
- 12 (v) Elective coursework in behavior analysis consisting of 15
- 13 hours.
- 14 (B) Obtained supervised experiential training by any of the
- 15 following:
- 16 (i) One thousand hours of independent field work in behavior
- 17 analysis supervised in accordance with the requirements of the
- 18 certifying entity, taken for academic credit, and completed with a
- 19 passing grade.
- 20 (ii) Six hundred seventy hours of supervised practicum in
- 21 behavior analysis within a university practicum approved by the
- 22 certifying entity, taken for academic credit, and completed with a
- 23 passing grade.
- 24 (iii) Five hundred hours of supervised intensive practicum in
- 25 behavior analysis within a university practicum approved by the
- 26 certifying entity, taken for academic credit, and completed with a
- 27 passing grade.
- 28 (iv) A combination of the supervised experience in clause (i),
- 29 (ii), or (iii). Hours may be completed in any combination of the
- 30 categories of supervised experience. Hours accrued through a
- 31 combination of supervised experience shall be proportionately
- 32 calculated.
- 33 (f) This section shall become operative on July 1, 2019.
- 34 2999.35. The education required to obtain a behavior analyst
- 35 license or an assistant behavior analyst license shall be from any
- 36 of the following:
- 37 (a) A United States institution of higher education listed by the
- 38 Council for Higher Education Accreditation.

1 (b) A Canadian institution of higher education that is a member  
2 of the Association of Universities and Colleges of Canada or the  
3 Association of Canadian Community Colleges.

4 (c) An applicant for licensure trained in an educational  
5 institution outside the United States or Canada shall demonstrate  
6 to the satisfaction of the board that he or she possesses a degree  
7 in a relevant subject that is equivalent to a degree earned from a  
8 regionally accredited university in the United States or Canada.  
9 Such an applicant shall provide to the board a comprehensive  
10 evaluation of the degree performed by a foreign credential service  
11 that is a member of the National Association of Credential  
12 Evaluation Services (NACES), and any other documentation that  
13 the board deems necessary.

14 2999.35.5. (a) A person other than a licensed behavior analyst,  
15 licensed assistant behavior analyst, or approved behavior analysis  
16 technician may be registered as a behavior analyst intern by the  
17 board in order to prepare for licensure as a behavior analyst. The  
18 behavior analyst intern shall be supervised in accordance with the  
19 board's regulations by a licensed behavior analyst or a licensed  
20 psychologist who is qualified to practice behavior analysis in order  
21 to perform behavior analysis services provided that all of the  
22 following apply:

23 (1) The person's title is "behavior analyst intern."

24 (2) The person meets one of the following requirements:

25 (A) Is enrolled in a defined program of study, course, practicum,  
26 internship, or postdoctoral program that meets the requirements  
27 of subdivision (d) of Section 2999.32.

28 (B) Has completed a defined program of study, course, or  
29 postdoctoral traineeship that meets the requirements of subdivision  
30 (d) of Section 2999.32 and is currently completing supervised  
31 experiential training in accordance with this chapter.

32 (b) The behavior analyst intern's supervisor shall be responsible  
33 for ensuring that the extent, kind, and quality of the behavior  
34 analysis services the behavior analyst intern performs are consistent  
35 with his or her training and experience and shall be responsible  
36 for the behavior analyst intern's compliance with this chapter and  
37 regulations duly adopted hereunder, including those provisions set  
38 forth in Section 2999.62.

39 (c) The behavior analyst intern shall be registered by the board.  
40 In order to register as a behavior analyst intern an individual shall:

- 1 (1) Submit fingerprint images to the California Department of  
2 Justice for a state and federal criminal background report within  
3 14 days from the date of application.
- 4 (2) Pay an application fee, in an amount not to exceed a  
5 reasonable regulatory cost, to be determined by the board.
- 6 (3) Renew his or her application every two years by submitting  
7 to the board verification of continued practice, as specified in this  
8 section, and by paying to the board a renewal fee in an amount  
9 that is 50 percent of the application fee.
- 10 (4) An individual may only practice as a behavior analyst intern  
11 for up to six years from the date of initial registration.
- 12 (d) No licensed behavior analyst or licensed psychologist who  
13 is qualified to practice behavior analysis may supervise more than  
14 four behavior analyst interns at any given time unless specifically  
15 authorized to do so by the board. No behavior analyst intern may  
16 provide behavior analysis services to the public except as a  
17 supervisee of a licensed behavior analyst or licensed psychologist  
18 who is qualified to practice behavior analysis.
- 19 2999.36. (a) Behavior analysis technicians practicing in this  
20 state under the direction and supervision of an individual licensed  
21 under this chapter or a licensed psychologist who is qualified to  
22 practice behavior analysis shall satisfy all of the following  
23 requirements:
  - 24 (1) Be at least 18 years of age and possess a minimum of a high  
25 school diploma or its equivalent.
  - 26 (2) Submit an application on a form approved by the board.
  - 27 (3) Submit fingerprint images to the California Department of  
28 Justice for a state and federal criminal background report within  
29 14 days from the date of application.
  - 30 (4) Pay an application fee, in an amount not to exceed a  
31 reasonable regulatory cost, to be determined by the board.
  - 32 (5) Renew his or her application every two years by submitting  
33 to the board verification of continued practice as a behavior  
34 analysis technician and by paying to the board a renewal fee in an  
35 amount that is 50 percent of the application fee.
- 36 (b) The board may deny or revoke acceptance of an application  
37 or the renewal of an application under this section if it is  
38 determined to be in the best interest of public safety and welfare,  
39 as described in Section 2999.21.

- 1 2999.37. On and after July 1, 2019, it shall be unlawful for any  
2 person to engage in any of the following acts:
- 3 (a) Engage in the practice of behavior analysis, as defined in  
4 Section 2999.12, without first having complied with the provisions  
5 of this chapter and without holding a current, valid, and active  
6 license as required by this chapter.
- 7 (b) Represent himself or herself by using the title “licensed  
8 behavior analyst,” or “licensed assistant behavior analyst” without  
9 being duly licensed according to the provisions of this chapter.
- 10 (c) Make any use of any title, words, letters, or abbreviations  
11 that may reasonably be confused with a designation provided by  
12 this chapter to denote a standard of professional or occupational  
13 competence without being duly licensed.
- 14 (d) Materially refuse to furnish the board information or records  
15 required or requested pursuant to this chapter.
- 16 2999.38. This chapter does not apply to any of the following:
- 17 (a) An individual licensed to practice psychology in this state  
18 under Chapter 6.6 (commencing with Section 2900), if the practice  
19 of behavior analysis engaged in by the licensed psychologist is  
20 within the licensed psychologist’s training and competence.
- 21 (b) A speech-language pathologist or an audiologist licensed  
22 under Chapter 5.3 (commencing with Section 2530), an  
23 occupational therapist licensed under Chapter 5.6 (commencing  
24 with Section 2570), a physical therapist licensed under Chapter  
25 5.7 (commencing with Section 2600), a marriage and family  
26 therapist licensed under Chapter 13 (commencing with Section  
27 4980), an educational psychologist licensed under Chapter 13.5  
28 (commencing with Section 4989.10), a clinical social worker  
29 licensed under Chapter 14 (commencing with Section 4991), or a  
30 professional clinical counselor licensed under Chapter 16  
31 (commencing with Section 4999.10), if the services provided by  
32 any of those licensees are within his or her licensed scope of  
33 practice and within the scope of his or her training and competence,  
34 provided that he or she does not represent himself or herself as a  
35 licensed behavior analyst or licensed assistant behavior analyst.
- 36 (c) A parent or guardian, or his or her designee, of a recipient  
37 of behavior analysis services who acts under the direction of a  
38 licensed behavior analyst or an individual exempt pursuant to  
39 subdivision (a) or (b) for that recipient.

1 (d) An individual who teaches behavior analysis or conducts  
2 behavior analysis research, provided that such teaching or research  
3 does not involve the direct delivery of behavior analysis services.

4 (e) A behavior analyst licensed in another state or certified by  
5 the certifying entity to practice independently, and who temporarily  
6 provides behavior analysis services in California during a period  
7 of not more than 90 days in a calendar year.

8 ~~(f) An individual who is vendorized by one or more regional~~  
9 ~~centers of the State Department of Developmental Services while~~  
10 ~~practicing behavior analysis services authorized under that~~  
11 ~~vendorization. That individual shall not represent himself or herself~~  
12 ~~as a licensed behavior analyst or licensed assistant behavior analyst~~  
13 ~~unless he or she holds a license under this chapter, and shall not~~  
14 ~~offer behavior analysis services to any person or entity other than~~  
15 ~~the regional centers with which he or she is vendorized or accept~~  
16 ~~remuneration for providing behavior analysis services other than~~  
17 ~~the remuneration received from those regional centers unless he~~  
18 ~~or she holds a license under this chapter.~~

19 (g)  
20 (f) An individual employed or contracted by a local educational  
21 agency, or a nonpublic agency or school with a contract with a  
22 local educational agency, for the purpose of serving students with  
23 behavioral and developmental issues when in classroom and other  
24 school settings. This individual shall not represent himself or  
25 herself as a licensed behavior analyst or licensed assistant behavior  
26 analyst unless he or she holds a license under this chapter, and  
27 shall not offer behavior analysis services to any person or entity  
28 other than the local education agencies with which he or she has  
29 a contract or accept remuneration for providing behavior analysis  
30 services other than the remuneration received from those local  
31 education agencies unless he or she holds a license under this  
32 chapter.

33 2999.41. A licensee shall give written notice to the board of a  
34 name change within 30 days after each change, giving both the  
35 old and new names. A copy of the legal document authorizing the  
36 name change, such as a court order or marriage certificate, shall  
37 be submitted with the notice.

38 2999.44. (a) A license shall expire and become invalid two  
39 years after it is issued at 12 midnight on the last day of the month  
40 in which it was issued, if not renewed.

1 (b) To renew an unexpired license, the licensee shall, on or  
2 before the date on which it would otherwise expire, apply for  
3 renewal on a form provided by the board, accompanied by the  
4 renewal fee set by the board. The licensee shall include verification  
5 from the certifying entity that he or she maintains an active  
6 certification status with the renewal form.

7 (c) To renew an assistant behavior analyst license, in addition  
8 to the requirements in subdivision (b), the licensee shall submit  
9 proof of ongoing supervision by a licensed behavior analyst or a  
10 licensed psychologist who is qualified to practice behavior analysis  
11 in a manner consistent with the board's requirements for  
12 supervision of assistant behavior analysts.

13 2999.45. (a) A license that has expired may be renewed at any  
14 time within three years after its expiration by applying for renewal  
15 on a form provided by the board, payment of all accrued and unpaid  
16 renewal fees, and the delinquency fee specified in Section 2999.93.  
17 The licensee shall include verification from the certifying entity  
18 that he or she maintains an active certification status with the  
19 renewal form.

20 (b) Except as provided in Section 2999.47, a license that is not  
21 renewed within three years of its expiration shall not be renewed,  
22 restored, or reinstated, and the license shall be canceled  
23 immediately upon expiration of the three-year period.

24 2999.46. (a) The board shall not issue any renewal license, a  
25 new license after expiration of an expired license, or a reinstatement  
26 license unless the applicant submits proof that he or she has  
27 completed not less than 32 hours of approved continuing education  
28 in the preceding two-year licensure cycle for licensed behavior  
29 analysts and 20 hours of approved continuing education in the  
30 preceding two-year licensure cycle for licensed assistant behavior  
31 analysts.

32 (b) Each person renewing or reinstating his or her license or  
33 obtaining a new license after expiration of a prior license issued  
34 pursuant to this chapter shall submit proof of compliance with this  
35 section to the board.

36 (c) A person applying for renewal, a new license after expiration  
37 of a prior license, or reinstatement to an active license status shall  
38 certify under penalty of perjury that he or she is in compliance  
39 with this section.

1 (d) The board may recognize continuing education courses that  
2 have been approved by the certifying entity.

3 (e) The board shall adopt regulations as necessary for  
4 implementation of this section.

5 2999.47. (a) A suspended license is subject to expiration and  
6 shall be renewed as provided in this article, but such renewal does  
7 not entitle the licensee, while the license remains suspended, and  
8 until it is reinstated, to engage in the licensed activity or in any  
9 other activity or conduct in violation of the order or judgment by  
10 which the license was suspended.

11 (b) A license revoked on disciplinary grounds is subject to  
12 expiration as provided in this article, but it may not be renewed.  
13 If it is reinstated after its expiration, the licensee, as a condition  
14 of reinstatement, shall pay a reinstatement fee in an amount equal  
15 to the renewal fee, plus the delinquency fee, and any fees accrued  
16 at the time of its revocation.

17  
18 Article 4. Enforcement  
19

20 2999.60. The board may on its own, and shall, upon the receipt  
21 of a complaint from any person, investigate the actions of any  
22 licensee. The board shall review a licensee's alleged violation of  
23 statute, regulation, or any other law and any other complaint  
24 referred to it by the public, a public agency, or the department,  
25 and may upon a finding of a violation take disciplinary action  
26 under this article.

27 2999.61. A license issued under this chapter may be denied,  
28 revoked, or otherwise sanctioned upon demonstration of  
29 ineligibility for licensure, including, but not limited to, failure to  
30 maintain active certification by the certifying entity or falsification  
31 of documentation submitted to the board for licensure or submitted  
32 to the certifying authority for certification.

33 2999.62. The board may refuse to issue a registration or license,  
34 or may issue a registration or license with terms and conditions,  
35 or may suspend or revoke the registration or license of any  
36 registrant or licensee if the applicant, registrant, or licensee has  
37 been guilty of unprofessional conduct. Unprofessional conduct  
38 shall include, but not be limited to:

- 1 (a) Conviction of a crime substantially related to the  
2 qualifications, functions, or duties of a licensed behavior analyst  
3 or a licensed assistant behavior analyst.
- 4 (b) Use of any controlled substance as defined in Division 10  
5 (commencing with Section 11000) of the Health and Safety Code,  
6 dangerous drug, or any alcoholic beverage to an extent or in a  
7 manner dangerous to himself or herself, any other person, or the  
8 public, or to an extent that this use impairs his or her ability to  
9 safely perform the practice of behavior analysis.
- 10 (c) Fraudulently or neglectfully misrepresenting the type or  
11 status of a license actually held.
- 12 (d) Impersonating another person holding a license or allowing  
13 another person to use his or her license.
- 14 (e) Use of fraud or deception in applying for a license or in  
15 passing any examination required by this chapter.
- 16 (f) Paying, offering to pay, accepting, or soliciting any  
17 consideration, compensation, or remuneration, whether monetary  
18 or otherwise, for the referral of clients.
- 19 (g) Violating Section 17500.
- 20 (h) Willful, unauthorized communication of information  
21 received in professional confidence.
- 22 (i) Violating any rule of professional conduct promulgated by  
23 the board and set forth in regulations duly adopted under this  
24 chapter.
- 25 (j) Being grossly negligent in the practice of his or her  
26 profession.
- 27 (k) Violating any of the provisions of this chapter or regulations  
28 duly adopted thereunder.
- 29 (l) The aiding or abetting of any person to engage in the unlawful  
30 practice of behavior analysis.
- 31 (m) The suspension, revocation, or imposition of probationary  
32 conditions or other disciplinary action by another state or country  
33 of a license, certificate, or registration to practice behavior analysis  
34 issued by that state or country to a person also holding a license  
35 issued under this chapter if the act for which the disciplinary action  
36 was taken constitutes a violation of this section. A certified copy  
37 of the decision or judgment of the other state or country shall be  
38 conclusive evidence of that action.
- 39 (n) The commission of any dishonest, corrupt, or fraudulent act.

- 1 (o) Any act of sexual abuse or sexual relations with a patient,  
2 with a former patient, or with a patient's parent, guardian, or  
3 caregiver within two years following termination of therapy, or  
4 sexual misconduct that is related to the qualifications, functions,  
5 or duties of a licensed behavior analyst or a licensed assistant  
6 behavior analyst.
- 7 (p) Functioning outside of his or her particular field or fields of  
8 competence as established by his or her education, training, and  
9 experience.
- 10 (q) Willful failure to submit, on behalf of an applicant for  
11 licensure, verification of supervised experience to the board.
- 12 (r) Repeated acts of negligence.
- 13 (s) Failure to comply with all ethical and disciplinary standards  
14 published by the certifying entity.
- 15 2999.63. (a) Except as provided in subdivisions (b), (c), and  
16 (e), any accusation filed against a licensee pursuant to Section  
17 11503 of the Government Code shall be filed within three years  
18 from the date the board discovers the alleged act or omission that  
19 is the basis for disciplinary action, or within seven years from the  
20 date the alleged act or omission that is the basis for disciplinary  
21 action occurred, whichever occurs first.
- 22 (b) An accusation filed against a licensee pursuant to Section  
23 11503 of the Government Code alleging the procurement of a  
24 license by fraud or misrepresentation is not subject to the  
25 limitations set forth in subdivision (a).
- 26 (c) The limitation provided for by subdivision (a) shall be tolled  
27 for the length of time required to obtain compliance when a report  
28 required to be filed by the licensee or registrant with the board  
29 pursuant to Article 11 (commencing with Section 800) of Chapter  
30 1 is not filed in a timely fashion.
- 31 (d) If an alleged act or omission involves a minor, the seven-year  
32 limitations period provided for by subdivision (a) and the 10-year  
33 limitations period provided for by subdivision (e) shall be tolled  
34 until the minor reaches the age of majority.
- 35 (e) An accusation filed against a licensee pursuant to Section  
36 11503 of the Government Code alleging sexual misconduct shall  
37 be filed within three years after the board discovers the act or  
38 omission alleged as the ground for disciplinary action, or within  
39 10 years after the act or omission alleged as the ground for  
40 disciplinary action occurs, whichever occurs first.

1 (f) The limitations period provided by subdivision (a) shall be  
2 tolled during any period if material evidence necessary for  
3 prosecuting or determining whether a disciplinary action would  
4 be appropriate is unavailable to the board due to an ongoing  
5 criminal investigation.

6 2999.64. Notwithstanding Section 2999.62, any proposed  
7 decision or decisions issued under this chapter in accordance with  
8 the procedures set forth in Chapter 5 (commencing with Section  
9 11500) of Part 1 of Division 3 of Title 2 of the Government Code  
10 that contains any finding of fact that the licensee engaged in any  
11 act of sexual contact, as defined in Section 728, when that act is  
12 with a patient, with a former patient, or with a patient's parent,  
13 guardian, or caregiver within two years following termination of  
14 services, shall contain an order of revocation. The revocation shall  
15 not be stayed by the administrative law judge.

16 2999.66. The board may deny an application for, or issue  
17 subject to terms and conditions, or suspend or revoke, or impose  
18 probationary conditions upon, a license or registration after a  
19 hearing as provided in Section 2999.70.

20 2999.67. A plea or verdict of guilty or a conviction following  
21 a plea of nolo contendere made to a charge which is substantially  
22 related to the qualifications, functions, and duties of a licensed  
23 behavior analyst or licensed assistant behavior analyst is deemed  
24 to be a conviction within the meaning of this article. The board  
25 may order the license suspended or revoked, or may decline to  
26 issue a license when the time for appeal has elapsed, the judgment  
27 of conviction has been affirmed on appeal, or when an order  
28 granting probation is made suspending the imposition of sentence,  
29 irrespective of a subsequent order under Section 1203.4 of the  
30 Penal Code allowing the person to withdraw his or her plea of  
31 guilty and to enter a plea of not guilty, or setting aside the verdict  
32 of guilty, or dismissing the accusation, information, or indictment.

33 2999.68. Any person required to register as a sex offender  
34 pursuant to Section 290 of the Penal Code, is not eligible for  
35 licensure by the board.

36 2999.69. An administrative disciplinary decision that imposes  
37 terms of probation may include, among other things, a requirement  
38 that the licensee who is being placed on probation pay the monetary  
39 costs associated with monitoring the probation.

1 2999.70. The proceedings under this article shall be conducted  
2 by the board in accordance with Chapter 5 (commencing with  
3 Section 11500) of Part 1 of Division 3 of Title 2 of the Government  
4 Code.

5 2999.80. A person who violates any of the provisions of this  
6 chapter is guilty of a misdemeanor punishable by imprisonment  
7 in a county jail not exceeding six months or by a fine not exceeding  
8 two thousand five hundred dollars (\$2,500), or by both that fine  
9 and imprisonment.

10 2999.81. In addition to other proceedings provided in this  
11 chapter, whenever any person has engaged, or is about to engage,  
12 in any acts or practices that constitute, or will constitute, an offense  
13 against this chapter, the superior court in and for the county  
14 wherein the acts or practices take place, or are about to take place,  
15 may issue an injunction or other appropriate order restraining that  
16 conduct on application of the board, the Attorney General, or the  
17 district attorney of the county. Proceedings under this section shall  
18 be governed by Chapter 3 (commencing with Section 525) of Title  
19 7 of Part 2 of the Code of Civil Procedure, except that it shall be  
20 presumed that there is no adequate remedy at law and that  
21 irreparable damage will occur if the continued violation is not  
22 restrained or enjoined. On the written request of the board, or on  
23 its own motion, the board may commence an action in the superior  
24 court under this section.

25 2999.83. (a) (1) A licensee who fails or refuses to comply  
26 with a request for the medical records of a client, that is  
27 accompanied by that client's written authorization for release of  
28 those records to the board, within 15 days of receiving the request  
29 and authorization, shall pay to the board a civil penalty of one  
30 thousand dollars (\$1,000) per day for each day that the documents  
31 have not been produced after the 15th day, unless the licensee is  
32 unable to provide the documents within this time period for good  
33 cause.

34 (2) A health care facility shall comply with a request for the  
35 medical records of a client that is accompanied by that client's  
36 written authorization for release of records to the board together  
37 with a notice citing this section and describing the penalties for  
38 failure to comply with this section. Failure to provide the  
39 authorizing client's medical records to the board within 30 days  
40 of receiving the request, authorization, and notice shall subject the

1 health care facility to a civil penalty, payable to the board, of up  
2 to one thousand dollars (\$1,000) per day for each day that the  
3 documents have not been produced after the 30th day, up to ten  
4 thousand dollars (\$10,000), unless the health care facility is unable  
5 to provide the documents within this time period for good cause.  
6 This paragraph shall not require health care facilities to assist the  
7 board in obtaining the client's authorization. The board shall pay  
8 the reasonable costs of copying the medical records.

9 (b) (1) A licensee who fails or refuses to comply with a court  
10 order, issued in the enforcement of a subpoena, mandating the  
11 release of records to the board shall pay to the board a civil penalty  
12 of one thousand dollars (\$1,000) per day for each day that the  
13 documents have not been produced after the date by which the  
14 court order requires the documents to be produced, unless it is  
15 determined that the order is unlawful or invalid. Any statute of  
16 limitations applicable to the filing of an accusation by the board  
17 shall be tolled during the period the licensee is out of compliance  
18 with the court order and during any related appeals.

19 (2) Any licensee who fails or refuses to comply with a court  
20 order, issued in the enforcement of a subpoena, mandating the  
21 release of records to the board, shall be subject to a civil penalty,  
22 payable to the board, in an amount not to exceed five thousand  
23 dollars (\$5,000). The amount of the penalty shall be added to the  
24 licensee's renewal fee if it is not paid by the next succeeding  
25 renewal date. Any statute of limitations applicable to the filing of  
26 an accusation by the board shall be tolled during the period the  
27 licensee is out of compliance with the court order and during any  
28 related appeals.

29 (3) A health care facility that fails or refuses to comply with a  
30 court order, issued in the enforcement of a subpoena, mandating  
31 the release of client records to the board, that is accompanied by  
32 a notice citing this section and describing the penalties for failure  
33 to comply with this section, shall pay to the board a civil penalty  
34 of up to one thousand dollars (\$1,000) per day for each day that  
35 the documents have not been produced, up to ten thousand dollars  
36 (\$10,000), after the date by which the court order requires the  
37 documents to be produced, unless it is determined that the order  
38 is unlawful or invalid. Any statute of limitations applicable to the  
39 filing of an accusation by the board against a licensee shall be

1 tolled during the period the health care facility is out of compliance  
2 with the court order and during any related appeals.

3 (4) Any health care facility that fails or refuses to comply with  
4 a court order, issued in the enforcement of a subpoena, mandating  
5 the release of records to the board, shall be subject to a civil  
6 penalty, payable to the board, in an amount not to exceed five  
7 thousand dollars (\$5,000). Any statute of limitations applicable to  
8 the filing of an accusation by the board against a licensee shall be  
9 tolled during the period the health care facility is out of compliance  
10 with the court order and during any related appeals.

11 (c) Multiple acts by a licensee in violation of subdivision (b)  
12 shall be a misdemeanor punishable by a fine not to exceed five  
13 thousand dollars (\$5,000) or by imprisonment in a county jail not  
14 exceeding six months, or by both that fine and imprisonment.  
15 Multiple acts by a health care facility in violation of subdivision  
16 (b) shall be a misdemeanor punishable by a fine not to exceed five  
17 thousand dollars (\$5,000) and shall be reported to the State  
18 Department of Health Care Services and shall be considered as  
19 grounds for disciplinary action with respect to licensure, including  
20 suspension or revocation of the license or certificate.

21 (d) A failure or refusal of a licensee to comply with a court  
22 order, issued in the enforcement of a subpoena, mandating the  
23 release of records to the board constitutes unprofessional conduct  
24 and is grounds for suspension or revocation of his or her license.

25 (e) The imposition of the civil penalties authorized by this  
26 section shall be in accordance with the Administrative Procedure  
27 Act (Chapter 5 (commencing with Section 11500) of Part 1 of  
28 Division 3 of Title 2 of the Government Code).

29 (f) For purposes of this section, "health care facility" means a  
30 clinic or health facility licensed or exempt from licensure pursuant  
31 to Division 2 (commencing with Section 1200) of the Health and  
32 Safety Code.

33  
34 Article 5. Revenue

35  
36 2999.90. The board shall report each month to the Controller  
37 the amount and source of all revenue received pursuant to this  
38 chapter and at the same time deposit the entire amount thereof in  
39 the State Treasury for credit to the Psychology Fund established  
40 by Section 2980.

1 2999.91. (a) The moneys credited to the Psychology Fund  
2 under Section 2999.90 shall, upon appropriation by the Legislature,  
3 be used for the purposes of carrying out and enforcing the  
4 provisions of this chapter.

5 (b) The board shall keep records that will reasonably ensure  
6 that funds expended in the administration of each licensing  
7 category bear a reasonable relation to the revenue derived from  
8 each category, and shall so notify the department no later than  
9 May 31 of each year.

10 2999.93. The board shall establish fees for the application for  
11 and the issuance and renewal of licenses to cover, but not exceed,  
12 the reasonable regulatory costs of the board related to administering  
13 this chapter. The fees shall be fixed by the board in regulations  
14 that are duly adopted under this chapter. Fees assessed pursuant  
15 to this section shall not exceed the following:

16 (a) The delinquency fee shall be 50 percent of the biennial  
17 renewal fee.

18 (b) The fee for rescoring an examination shall be twenty dollars  
19 (\$20).

20 (c) The fee for issuance of a replacement license shall be twenty  
21 dollars (\$20).

22 (d) The fee for issuance of a certificate or letter of good standing  
23 shall be twenty-five dollars (\$25).

24 2999.94. (a) A person licensed under this chapter is exempt  
25 from the payment of the renewal fee in any one of the following  
26 instances:

27 (1) While engaged in full-time active service in the United States  
28 Army, Navy, Air Force, or Marine Corps.

29 (2) While in the United States Public Health Service.

30 (3) While a volunteer in the Peace Corps or AmeriCorps VISTA.

31 (b) Every person exempted from the payment of the renewal  
32 fee by this section shall not engage in any private practice and  
33 shall become liable for the fee for the current renewal period upon  
34 the completion of his or her period of full-time active service and  
35 shall have a period of 60 days after becoming liable within which  
36 to pay the fee before the delinquency fee becomes applicable. Any  
37 person who completes his or her period of full-time active service  
38 within 60 days of the end of a renewal period is exempt from the  
39 payment of the renewal fee for that period.

1 (c) The time spent in that full-time active service or full-time  
2 training and active service shall not be included in the computation  
3 of the three-year period for renewal of an expired license specified  
4 in Section 2999.45.

5 (d) The exemption provided by this section shall not be  
6 applicable if the person engages in any practice for compensation  
7 other than full-time service in the United States Army, Navy, Air  
8 Force, or Marine Corps, in the United States Public Health Service,  
9 or the Peace Corps or AmeriCorps VISTA.

10 2999.98. The licensing and regulatory program under this  
11 chapter shall be supported from fees assessed to applicants and  
12 licensees. Startup funds to implement this program shall be derived,  
13 as a loan, from the Psychology Fund, subject to an appropriation  
14 by the Legislature in the annual Budget Act. The board shall not  
15 implement this chapter until funds have been appropriated.

16 SEC. 10. No reimbursement is required by this act pursuant  
17 to Section 6 of Article XIII B of the California Constitution because  
18 the only costs that may be incurred by a local agency or school  
19 district will be incurred because this act creates a new crime or  
20 infraction, eliminates a crime or infraction, or changes the penalty  
21 for a crime or infraction, within the meaning of Section 17556 of  
22 the Government Code, or changes the definition of a crime within  
23 the meaning of Section 6 of Article XIII B of the California  
24 Constitution.

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** AB 1821, as introduced, Maienschein. Sex offenses: disabled victims.

**ISSUE:** People with intellectual and developmental disabilities are sexually assaulted at a higher rate than the general population.

**SUMMARY:** Enhances penalties for sex crimes against people with a mental disorder/developmental or physical disability.

**BACKGROUND/ISSUES/ANALYSIS:** Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, makes a defendant subject to imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified.

Existing law also makes a defendant subject to imprisonment in the state prison for 15 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope of their application or increase the punishment or penalties by a statute passed by a majority vote of each house of the Legislature.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable,

because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

Existing law makes a defendant subject to imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if certain circumstances were present, including, among other things, in the commission of that offense, any person kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

Existing law requires that a person who commits certain enumerated crimes, including rape, sodomy, oral copulation, and sexual penetration, against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under 14 years of age, receive a one-year sentence enhancement and requires that any person having a prior conviction for any of the enumerated offenses receive a 2-year sentence enhancement.

This bill would add to the enumerated list of crimes rape, sodomy, oral copulation, and sexual penetration, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

**DISCUSSION:** At the time this detail sheet was prepared, this bill was on suspense.

**RECOMMENDATION:** None.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Goal 4: Public Safety Outreach. The Council will maintain or develop collaborative relationships with local law enforcement agencies and others to improve the awareness and education of public safety personnel and the justice system on the unique needs of individuals with developmental disabilities.

**ATTACHMENTS:** "Crimes Against Persons With Disabilities", "The Invisible Hate Crime".

**PREPARED BY:** Bob Giovati



**ASSEMBLY BILL**

**No. 1821**

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**Introduced by Assembly Member Maienschein**

February 8, 2016

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An act to amend Sections 667.61 and 667.9 of the Penal Code, relating to sex offenses.

LEGISLATIVE COUNSEL'S DIGEST

AB 1821, as introduced, Maienschein. Sex offenses: disabled victims.

(1) Existing law, as amended by Proposition 83, the Sexual Predator Punishment and Control Act (Jessica's Law), approved by the voters at the November 7, 2006, statewide general election, makes a defendant subject to imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense, any person kidnapped the victim, tortured the victim, or committed the offense during the commission of a burglary, as specified. Existing law also makes a defendant subject to imprisonment in the state prison for 15 years to life if convicted of certain crimes, including rape, sexual penetration, sodomy, oral copulation, continuous sexual abuse of a child, or rape, spousal rape, or sexual penetration in concert, if certain circumstances were present, including, among other things, in the commission of that offense any person, except as specified in the provisions above, kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense. Proposition 83 provides that the Legislature may amend the provisions of the act to expand the scope

of their application or increase the punishment or penalties by a statute passed by a majority vote of each house of the Legislature.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(2) Existing law makes a defendant subject to imprisonment in the state prison for 25 years to life if convicted of certain crimes, including rape, spousal rape or sexual penetration in concert, sexual penetration, sodomy, or oral copulation if certain circumstances were present, including, among other things, in the commission of that offense, any person kidnapped the victim, committed the offense during the commission of a burglary, or used a dangerous or deadly weapon in the commission of the offense, or under other specified circumstances, and the crime was committed against a minor 14 years of age or older.

This bill would add the crimes of rape, sexual penetration, sodomy, and oral copulation, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, to the above provisions, if the victim is developmentally disabled, as defined. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(3) Existing law requires that a person who commits certain enumerated crimes, including rape, sodomy, oral copulation, and sexual penetration, against a person who is 65 years of age or older, or against a person who is blind, deaf, developmentally disabled, a paraplegic, or a quadriplegic, or against a person who is under 14 years of age, receive a one-year sentence enhancement and requires that any person having a prior conviction for any of the enumerated offenses receive a 2-year sentence enhancement.

This bill would add to the enumerated list of crimes rape, sodomy, oral copulation, and sexual penetration, perpetrated against a person who is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent. By applying the above enhancements to these crimes, this bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 667.61 of the Penal Code is amended to  
2 read:

3 667.61. (a) Except as provided in subdivision (j), (l), or (m),  
4 any person who is convicted of an offense specified in subdivision  
5 (c) under one or more of the circumstances specified in subdivision  
6 (d) or under two or more of the circumstances specified in  
7 subdivision (e) shall be punished by imprisonment in the state  
8 prison for 25 years to life.

9 (b) Except as provided in subdivision (a), (j), (l), or (m), any  
10 person who is convicted of an offense specified in subdivision (c)  
11 under one of the circumstances specified in subdivision (e) shall  
12 be punished by imprisonment in the state prison for 15 years to  
13 life.

14 (c) This section shall apply to any of the following offenses:

15 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
16 of Section 261.

17 (2) Spousal rape, in violation of paragraph (1) or (4) of  
18 subdivision (a) of Section 262.

19 (3) Rape, spousal rape, or sexual penetration, in concert, in  
20 violation of Section 264.1.

21 (4) Lewd or lascivious act, in violation of subdivision (b) of  
22 Section 288.

23 (5) Sexual penetration, in violation of subdivision (a) of Section  
24 289.

25 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision  
26 (c), or subdivision (d), of Section 286.

27 (7) Oral copulation, in violation of paragraph (2) or (3) of  
28 subdivision (c), or subdivision (d), of Section 288a.

29 (8) Lewd or lascivious act, in violation of subdivision (a) of  
30 Section 288.

1 (9) Continuous sexual abuse of a ~~child~~, *child* in violation of  
2 Section 288.5.

3 (10) Rape, in violation of paragraph (1) of subdivision (a) of  
4 Section 261, if the victim was "developmentally disabled," as  
5 defined in subdivision (d) of Section 667.9, and that fact is alleged  
6 in the accusatory pleading and either admitted by the defendant  
7 in open court or found to be true by the trier of fact.

8 (11) Sexual penetration, in violation of subdivision (b) of Section  
9 289, if the victim was "developmentally disabled," as defined in  
10 subdivision (d) of Section 667.9, and that fact is alleged in the  
11 accusatory pleading and either admitted by the defendant in open  
12 court or found to be true by the trier of fact.

13 (12) Sodomy, in violation of subdivision (g) of Section 286, if  
14 the victim was "developmentally disabled," as defined in  
15 subdivision (d) of Section 667.9, and that fact is alleged in the  
16 accusatory pleading and either admitted by the defendant in open  
17 court or found to be true by the trier of fact.

18 (13) Oral copulation, in violation of subdivision (g) of Section  
19 288a, if the victim was "developmentally disabled," as defined in  
20 subdivision (d) of Section 667.9, and that fact is alleged in the  
21 accusatory pleading and either admitted by the defendant in open  
22 court or found to be true by the trier of fact.

23 (d) The following circumstances shall apply to the offenses  
24 specified in subdivision (c):

25 (1) The defendant has been previously convicted of an offense  
26 specified in subdivision (c), including an offense committed in  
27 another jurisdiction that includes all of the elements of an offense  
28 specified in subdivision (c).

29 (2) The defendant kidnapped the victim of the present offense  
30 and the movement of the victim substantially increased the risk of  
31 harm to the victim over and above that level of risk necessarily  
32 inherent in the underlying offense in subdivision (c).

33 (3) The defendant inflicted aggravated mayhem or torture on  
34 the victim or another person in the commission of the present  
35 offense in violation of Section 205 or 206.

36 (4) The defendant committed the present offense during the  
37 commission of a burglary of the first degree, as defined in  
38 subdivision (a) of Section 460, with intent to commit an offense  
39 specified in subdivision (c).

1 (5) The defendant committed the present offense in violation  
2 of Section 264.1, subdivision (d) of Section 286, or subdivision  
3 (d) of Section 288a, and, in the commission of that offense, any  
4 person committed any act described in paragraph (2), (3), or (4)  
5 of this subdivision.

6 (6) The defendant personally inflicted great bodily injury on  
7 the victim or another person in the commission of the present  
8 offense in violation of Section 12022.53, 12022.7, or 12022.8.

9 (7) The defendant personally inflicted bodily harm on the victim  
10 who was under 14 years of age.

11 (e) The following circumstances shall apply to the offenses  
12 specified in subdivision (c):

13 (1) Except as provided in paragraph (2) of subdivision (d), the  
14 defendant kidnapped the victim of the present offense in violation  
15 of Section 207, 209, or 209.5.

16 (2) Except as provided in paragraph (4) of subdivision (d), the  
17 defendant committed the present offense during the commission  
18 of a burglary in violation of Section 459.

19 (3) The defendant personally used a dangerous or deadly weapon  
20 or a firearm in the commission of the present offense in violation  
21 of Section 12022, 12022.3, 12022.5, or 12022.53.

22 (4) The defendant has been convicted in the present case or  
23 cases of committing an offense specified in subdivision (c) against  
24 more than one victim.

25 (5) The defendant engaged in the tying or binding of the victim  
26 or another person in the commission of the present offense.

27 (6) The defendant administered a controlled substance to the  
28 victim in the commission of the present offense in violation of  
29 Section 12022.75.

30 (7) The defendant committed the present offense in violation  
31 of Section 264.1, subdivision (d) of Section 286, or subdivision  
32 (d) of Section 288a, and, in the commission of that offense, any  
33 person committed any act described in paragraph (1), (2), (3), (5),  
34 or (6) of this subdivision or paragraph (6) of subdivision (d).

35 (f) If only the minimum number of circumstances specified in  
36 subdivision (d) or (e) that are required for the punishment provided  
37 in subdivision (a), (b), (j), (l), or (m) to apply have been pled and  
38 proved, that circumstance or those circumstances shall be used as  
39 the basis for imposing the term provided in subdivision (a), (b),  
40 (j), (l), or (m) whichever is greater, rather than being used to impose

1 the punishment authorized under any other provision of law, unless  
2 another provision of law provides for a greater penalty or the  
3 punishment under another provision of law can be imposed in  
4 addition to the punishment provided by this section. However, if  
5 any additional circumstance or circumstances specified in  
6 subdivision (d) or (e) have been pled and proved, the minimum  
7 number of circumstances shall be used as the basis for imposing  
8 the term provided in subdivision (a), (j), or (l) and any other  
9 additional circumstance or circumstances shall be used to impose  
10 any punishment or enhancement authorized under any other  
11 provision of law.

12 (g) Notwithstanding Section 1385 or any other provision of law,  
13 the court shall not strike any allegation, admission, or finding of  
14 any of the circumstances specified in subdivision (d) or (e) for any  
15 person who is subject to punishment under this section.

16 (h) Notwithstanding any other provision of law, probation shall  
17 not be granted to, nor shall the execution or imposition of sentence  
18 be suspended for, any person who is subject to punishment under  
19 this section.

20 (i) For any offense specified in paragraphs (1) to (7), inclusive,  
21 of subdivision (c), or in paragraphs (1) to (6), inclusive, of  
22 subdivision (n), the court shall impose a consecutive sentence for  
23 each offense that results in a conviction under this section if the  
24 crimes involve separate victims or involve the same victim on  
25 separate occasions, as defined in subdivision (d) of Section 667.6.

26 (j) (1) Any person who is convicted of an offense specified in  
27 subdivision (c), with the exception of a violation of subdivision  
28 (a) of Section 288, upon a victim who is a child under 14 years of  
29 age under one or more of the circumstances specified in subdivision  
30 (d) or under two or more of the circumstances specified in  
31 subdivision (e), shall be punished by imprisonment in the state  
32 prison for life without the possibility of parole. Where the person  
33 was under 18 years of age at the time of the offense, the person  
34 shall be punished by imprisonment in the state prison for 25 years  
35 to life.

36 (2) Any person who is convicted of an offense specified in  
37 subdivision (c) under one of the circumstances specified in  
38 subdivision (e), upon a victim who is a child under 14 years of  
39 age, shall be punished by imprisonment in the state prison for 25  
40 years to life.

- 1 (k) As used in this section, "bodily harm" means any substantial  
2 physical injury resulting from the use of force that is more than  
3 the force necessary to commit an offense specified in subdivision  
4 (c).
- 5 (l) Any person who is convicted of an offense specified in  
6 subdivision (n) under one or more of the circumstances specified  
7 in subdivision (d) or under two or more of the circumstances  
8 specified in subdivision (e), upon a victim who is a ~~minor~~ *minor*,  
9 14 years of age or ~~older~~ *older*, shall be punished by imprisonment  
10 in the state prison for life without the possibility of parole. If the  
11 person who was convicted was under 18 years of age at the time  
12 of the offense, he or she shall be punished by imprisonment in the  
13 state prison for 25 years to life.
- 14 (m) Any person who is convicted of an offense specified in  
15 subdivision (n) under one of the circumstances specified in  
16 subdivision (e) against a ~~minor~~ *minor*, 14 years of age or ~~older~~  
17 *older*, shall be punished by imprisonment in the state prison for  
18 25 years to life.
- 19 (n) Subdivisions (l) and (m) shall apply to any of the following  
20 offenses:
- 21 (1) Rape, in violation of paragraph (2) of subdivision (a) of  
22 Section 261.
- 23 (2) Spousal rape, in violation of paragraph (1) of subdivision  
24 (a) of Section 262.
- 25 (3) Rape, spousal rape, or sexual penetration, in concert, in  
26 violation of Section 264.1.
- 27 (4) Sexual penetration, in violation of paragraph (1) of  
28 subdivision (a) of Section 289.
- 29 (5) Sodomy, in violation of paragraph (2) of subdivision (c) of  
30 Section 286, or in violation of subdivision (d) of Section 286.
- 31 (6) Oral copulation, in violation of paragraph (2) of subdivision  
32 (c) of Section 288a, or in violation of subdivision (d) of Section  
33 288a.
- 34 (7) *Rape, in violation of paragraph (1) of subdivision (a) of*  
35 *Section 261, if the victim was "developmentally disabled," as*  
36 *defined in subdivision (d) of Section 667.9, and that fact is alleged*  
37 *in the accusatory pleading and either admitted by the defendant*  
38 *in open court or found to be true by the trier of fact.*
- 39 (8) *Sexual penetration, in violation of subdivision (b) of Section*  
40 *289, if the victim was "developmentally disabled," as defined in*

1 subdivision (d) of Section 667.9, and that fact is alleged in the  
2 accusatory pleading and either admitted by the defendant in open  
3 court or found to be true by the trier of fact.

4 (9) Sodomy, in violation of subdivision (g) of Section 286, if the  
5 victim was "developmentally disabled," as defined in subdivision  
6 (d) of Section 667.9, and that fact is alleged in the accusatory  
7 pleading and either admitted by the defendant in open court or  
8 found to be true by the trier of fact.

9 (10) Oral copulation, in violation of subdivision (g) of Section  
10 288a, if the victim was "developmentally disabled," as defined in  
11 subdivision (d) of Section 667.9, and that fact is alleged in the  
12 accusatory pleading and either admitted by the defendant in open  
13 court or found to be true by the trier of fact.

14 (o) The penalties provided in this section shall apply only if the  
15 existence of any circumstance specified in subdivision (d) or (e)  
16 is alleged in the accusatory pleading pursuant to this section, and  
17 is either admitted by the defendant in open court or found to be  
18 true by the trier of fact.

19 SEC. 2. Section 667.9 of the Penal Code is amended to read:

20 667.9. (a) Any person who commits one or more of the crimes  
21 specified in subdivision (c) against a person who is 65 years of  
22 age or older, or against a person who is blind, deaf,  
23 developmentally disabled, a paraplegic, or a quadriplegic, or  
24 against a person who is under the age of 14 years, and that  
25 disability or condition is known or reasonably should be known  
26 to the person committing the crime, shall receive a one-year  
27 enhancement for each violation.

28 (b) Any person who commits a violation of subdivision (a) and  
29 who has a prior conviction for any of the offenses specified in  
30 subdivision (c), shall receive a two-year enhancement for each  
31 violation in addition to the sentence provided under Section 667.

32 (c) Subdivisions (a) and (b) apply to the following crimes:

33 (1) Mayhem, in violation of Section 203 or 205.

34 (2) Kidnapping, in violation of Section 207, 209, or 209.5.

35 (3) Robbery, in violation of Section 211.

36 (4) Carjacking, in violation of Section 215.

37 (5) Rape, in violation of paragraph ~~(2)~~ (1), (2), or (6) of  
38 subdivision (a) of Section 261.

39 (6) Spousal rape, in violation of paragraph (1) or (4) of  
40 subdivision (a) of Section 262.

1 (7) Rape, spousal rape, or sexual penetration in concert, in  
2 violation of Section 264.1.

3 (8) Sodomy, in violation of paragraph (2) or (3) of subdivision  
4 (c), or subdivision ~~(d)~~; (d) or (g), of Section 286.

5 (9) Oral copulation, in violation of paragraph (2) or (3) of  
6 subdivision (c), or subdivision ~~(d)~~; (d) or (g), of Section 288a.

7 (10) Sexual penetration, in violation of subdivision (a) or (b)  
8 of Section 289.

9 (11) Burglary of the first degree, as defined in Section 460, in  
10 violation of Section 459.

11 (d) As used in this section, “developmentally disabled” means  
12 a severe, chronic disability of a person, which is all of the  
13 following:

14 (1) Attributable to a mental or physical impairment or a  
15 combination of mental and physical impairments.

16 (2) Likely to continue indefinitely.

17 (3) Results in substantial functional limitation in three or more  
18 of the following areas of life activity:

19 (A) Self-care.

20 (B) Receptive and expressive language.

21 (C) Learning.

22 (D) Mobility.

23 (E) Self-direction.

24 (F) Capacity for independent living.

25 (G) Economic self-sufficiency.

26 SEC. 3. No reimbursement is required by this act pursuant to  
27 Section 6 of Article XIII B of the California Constitution because  
28 the only costs that may be incurred by a local agency or school  
29 district will be incurred because this act creates a new crime or  
30 infraction, eliminates a crime or infraction, or changes the penalty  
31 for a crime or infraction, within the meaning of Section 17556 of  
32 the Government Code, or changes the definition of a crime within  
33 the meaning of Section 6 of Article XIII B of the California  
34 Constitution.

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** AB 1824, as introduced, Chang. Guide, Signal, or Service Dogs: Injury or Death.

**ISSUE:** Should we provide added protections for service animals and their owners?

**SUMMARY:** AB 1824 will modify state law to make victims eligible for compensation through the victim's compensation fund when their guide, service or signal dog is attacked, whether or not that dog is in discharge of its duties or if the dog is in training. Additionally, this will specify that victims are eligible to receive compensation for incurred medical expenses and lost income.

**BACKGROUND/ISSUES/ANALYSIS:** In 2014, the legislature approved AB 2264 (Levine) which amended Penal Codes 600.2 and 600.5 relating to guide dogs. AB 2264 expanded eligibility for access to the victim's compensation fund for the owners of guide/service dogs when their dog is injured or killed.

Current law under Penal Code 600.2 states that they are eligible for reimbursement when their guide/service dog is killed or injured by another dog while Penal Code 600.5 applies to when the guide/service dog is intentionally killed or injured. Both code sections however stipulate that the guide/service dog must be in discharge of its duties for the victim to be eligible for reimbursement.

Under current law, victims are eligible for reimbursement for veterinary bills, replacement costs if the dog is disabled or killed, or other costs as deemed appropriate by the court.

Since the adoption of these regulations, members of the disabled community have developed concerns that they and their dogs may not be fully protected or properly compensated.

**DISCUSSION:** AB 1824 will eliminate the requirement that guide/service dogs be performing their duties when attacked in order for these laws to apply.

Throughout the day, a guide/service dog may be out in public but not performing its duties. It could even be within the boundaries of its own home when an attacking animal finds its way in. Regardless of whether or not a guide/service dog is actively performing its duties, the value and importance of the animal does not diminish. Members of the disabled community rely on these dogs to get through day to day tasks and every day without them has a major impact.

In addition to the above changes, AB 1824 will expand upon areas in which a victim may collect from the Victim's Compensation Fund. In addition to veterinary and replacement costs, AB 1824 will include medical expenses in the event that the dog owner is injured and lost income for the time they are without the services of the dog.

Finally, AB 1824 will extend these protections to include dogs that are in the process of being trained to be guide/service dogs. This will help to protect the significant investment of time and money that goes into these animals before they begin assisting the disabled. (Source: Author's fact sheet).

**RECOMMENDATION:** None.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Goal 13: Generic Services: Individuals with developmental disabilities and their families have access to community based services and supports available to the general population (such as recreation, transportation, childcare, etc.) that enable them to live productive and inclusive lives.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati.

**ASSEMBLY BILL**

**No. 1824**

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**Introduced by Assembly Member Chang**

February 8, 2016

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An act to amend Sections 600.2 and 600.5 of the Penal Code, relating to guide, signal, or service dogs, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1824, as introduced, Chang. Guide, signal, or service dogs: injury or death.

Under existing law, it is an infraction or a misdemeanor for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, as defined, while the guide, signal, or service dog is in discharge of its duties. Existing law makes any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined, while the dog is in discharge of its duties, guilty of a misdemeanor.

This bill would delete, from both crimes, the requirement that the guide, signal, or service dog be in discharge of its duties when the injury or death occurs and would make these crimes applicable to the injury or death of dogs that are enrolled in a training school or program for guide, signal, or service dogs, as specified.

Under existing law, if a defendant is convicted of either of these crimes, the defendant is required to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court.

This bill would require the defendant, convicted of either crime, to also make restitution to the person for medical or medical-related

expenses, or for loss of wages or income, incurred by the person as a direct result of the crime.

Because this bill would expand the scope and penalties of existing crimes, it would impose a state-mandated local program.

Existing law provides for the compensation of victims and derivative victims of certain crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law authorizes the person with a disability in either of the above crimes to apply for compensation by the board in an amount not to exceed \$10,000.

By expanding the authorization for the use of moneys in the continuously appropriated Restitution Fund, this bill would make an appropriation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

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

- 1 SECTION 1. Section 600.2 of the Penal Code is amended to  
2 read:  
3 600.2. (a) It is a crime for any person to permit any dog which  
4 is owned, harbored, or controlled by him or her to cause injury to,  
5 or the death of, any guide, signal, or service dog, as defined by  
6 Section 54.1 of the Civil Code, while the guide, signal, or service  
7 dog is in discharge of its duties. Code.  
8 (b) A violation of this section is an infraction punishable by a  
9 fine not to exceed two hundred fifty dollars (\$250) if the injury or  
10 death to any guide, signal, or service dog is caused by the person's  
11 failure to exercise ordinary care in the control of his or her dog.  
12 (c) A violation of this section is a misdemeanor if the injury or  
13 death to any guide, signal, or service dog is caused by the person's  
14 reckless disregard in the exercise of control over his or her dog,  
15 under circumstances that constitute such a departure from the  
16 conduct of a reasonable person as to be incompatible with a proper

1 regard for the safety and life of any guide, signal, or service dog.  
2 A violation of this subdivision shall be punishable by imprisonment  
3 in a county jail not exceeding one year, or by a fine of not less  
4 than two thousand five hundred dollars (\$2,500) nor more than  
5 five thousand dollars (\$5,000), or both. The court shall consider  
6 the costs ordered pursuant to subdivision (d) when determining  
7 the amount of any fines.

8 ~~(d) In any case in which a~~ defendant *who* is convicted of a  
9 violation of this ~~section, the defendant~~ *section* shall be ordered to  
10 make restitution to the person with a disability who has custody  
11 or ownership of the guide, signal, or service dog for any veterinary  
12 bills and replacement costs of the dog if it is disabled or killed,  
13 *medical or medical-related expenses incurred by the person with*  
14 *a disability as a direct result of a violation of this section, loss of*  
15 *wages or income incurred by the person with a disability as a*  
16 *direct result of a violation of this section, or other reasonable costs*  
17 *deemed appropriate by the court. The costs ordered pursuant to*  
18 *this subdivision shall be paid prior to any fines. The person with*  
19 *the disability may apply for compensation by the California Victim*  
20 *Compensation and Government Claims Board pursuant to Chapter*  
21 *5 (commencing with Section 13950) of Part 4 of Division 3 of*  
22 *Title 2 of the Government Code, in an amount not to exceed ten*  
23 *thousand dollars (\$10,000).*

24 *(e) For the purpose of this section, a "guide, signal, or service*  
25 *dog" also includes a dog enrolled in a training school or program,*  
26 *located in this state, for guide, signal, or service dogs.*

27 SEC. 2. Section 600.5 of the Penal Code is amended to read:

28 600.5. (a) Any person who intentionally causes injury to, or  
29 the death of, any guide, signal, or service dog, as defined by Section  
30 54.1 of the Civil Code, ~~while the dog is in discharge of its duties,~~  
31 *Code, is guilty of a misdemeanor, punishable by imprisonment in*  
32 *a county jail not exceeding one year, or by a fine not exceeding*  
33 *ten thousand dollars (\$10,000), or by both a fine and imprisonment.*  
34 *The court shall consider the costs ordered pursuant to subdivision*  
35 *(b) when determining the amount of any fines.*

36 ~~(b) In any case in which a~~ defendant *who* is convicted of a  
37 violation of this ~~section, the defendant~~ *section* shall be ordered to  
38 make restitution to the person with a disability who has custody  
39 or ownership of the dog for any veterinary bills and replacement  
40 costs of the dog if it is disabled or killed, *medical or*

1 *medical-related expenses incurred by the person with a disability*  
2 *as a direct result of a violation of this section, loss of wages or*  
3 *income incurred by the person with a disability as a direct result*  
4 *of a violation of this section, or other reasonable costs deemed*  
5 *appropriate by the court. The costs ordered pursuant to this*  
6 *subdivision shall be paid prior to any fines. The person with the*  
7 *disability may apply for compensation by the California Victim*  
8 *Compensation and Government Claims Board pursuant to Chapter*  
9 *5 (commencing with Section 13950) of Part 4 of Division 3 of*  
10 *Title 2 of the Government Code, in an amount not to exceed ten*  
11 *thousand dollars (\$10,000).*

12 *(c) For the purpose of this section, a "guide, signal, or service*  
13 *dog" also includes a dog enrolled in a training school or program,*  
14 *located in this state, for guide, signal, or service dogs.*

15 SEC. 3. No reimbursement is required by this act pursuant to  
16 Section 6 of Article XIII B of the California Constitution because  
17 the only costs that may be incurred by a local agency or school  
18 district will be incurred because this act creates a new crime or  
19 infraction, eliminates a crime or infraction, or changes the penalty  
20 for a crime or infraction, within the meaning of Section 17556 of  
21 the Government Code, or changes the definition of a crime within  
22 the meaning of Section 6 of Article XIII B of the California  
23 Constitution.

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** AB 2212, as amended March 30, 2016 Harper. Pupils: suspensions and expulsions: bullying. Electronic acts: video.

**ISSUE:** School bullying.

**SUMMARY:** This bill will allow the superintendent or principal of a secondary school to recommend suspension or expulsion if a student posts a harassing video amongst students on the internet.

**BACKGROUND/ISSUES/ANALYSIS:** Social media is a huge platform for society in America. In fact, over eighty percent of teens use a cell phone regularly, making it the most common medium for cyberbullying (NoBullying.com). Information and gossip have become so accessible through internet outlets, to the point where cyberbullying has become a large problem for youth. According to NoBullying.com, seventy percent of students report seeing frequent bullying online.

**DISCUSSION:** Problems Created by Regulatory Disparities: Currently, California's Education Code defines "bullying" as a severe or pervasive physical or verbal act, which is made by communications in writing or by means of an electronic act. For example, this can be a message, text, sound, or image, originated on or off the school site by means of telephone, wireless devices, computers, etc. These actions may constitute a suspension or expulsion. However, California has not included the posting of a video into the Education Code and thus students may still post on the internet without punishment. In 2015, Assembly Bill 881 (Garcia) was signed into law by Governor Brown. This bill redefined "bullying" to include an electronic act on or off a school campus. Unfortunately, posting a video was not included under the electronic act of bullying. (Source: Author's fact sheet).

SCDD supported AB 881 (Garcia) in 2015.

**RECOMMENDATION:** Support AB 2212 (Harper).

**COUNCIL STRATEGIC PLAN OBJECTIVE:** N/A.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati



AMENDED IN ASSEMBLY MARCH 30, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2212**

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**Introduced by Assembly Member Harper  
(Coauthor: Assembly Member Lackey)**

February 18, 2016

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An act to amend Section 48900 of the Education Code, relating to pupils.

LEGISLATIVE COUNSEL'S DIGEST

AB 2212, as amended, Harper. Pupils: suspensions and expulsions: *bullying: electronic acts: acts: video.*

Existing law prohibits the suspension, or recommendation for expulsion, of a pupil from school unless the superintendent of the school district or the principal of the school determines that the pupil has committed any of various specified acts, including, but not limited to, engaging in an act of bullying by means of an electronic act. Existing law defines "electronic act" as the creation or transmission originated on or off the schoolsite, by means of an electronic device, including, but not limited to, a telephone, wireless telephone, or other wireless communication device, computer, or pager, of a communication, including, but not limited to, a message, text, sound, or image, or a post on a social network ~~internet~~ *Internet* Web site.

This bill would expressly include a ~~video, including, but not limited to, a video or image of two or more pupils fighting that is posted to the Internet,~~ *video* within the definition of what constitutes an electronic act.

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

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

1 SECTION 1. Section 48900 of the Education Code is amended  
2 to read:

3 48900. A pupil shall not be suspended from school or  
4 recommended for expulsion, unless the superintendent of the school  
5 district or the principal of the school in which the pupil is enrolled  
6 determines that the pupil has committed an act as defined pursuant  
7 to any of subdivisions (a) to (r), inclusive:

8 (a) (1) Caused, attempted to cause, or threatened to cause  
9 physical injury to another person.

10 (2) Willfully used force or violence upon the person of another,  
11 except in self-defense.

12 (b) Possessed, sold, or otherwise furnished a firearm, knife,  
13 explosive, or other dangerous object, unless, in the case of  
14 possession of an object of this type, the pupil had obtained written  
15 permission to possess the item from a certificated school employee,  
16 which is concurred in by the principal or the designee of the  
17 principal.

18 (c) Unlawfully possessed, used, sold, or otherwise furnished,  
19 or been under the influence of, a controlled substance listed in  
20 Chapter 2 (commencing with Section 11053) of Division 10 of the  
21 Health and Safety Code, an alcoholic beverage, or an intoxicant  
22 of any kind.

23 (d) Unlawfully offered, arranged, or negotiated to sell a  
24 controlled substance listed in Chapter 2 (commencing with Section  
25 11053) of Division 10 of the Health and Safety Code, an alcoholic  
26 beverage, or an intoxicant of any kind, and either sold, delivered,  
27 or otherwise furnished to a person another liquid, substance, or  
28 material and represented the liquid, substance, or material as a  
29 controlled substance, alcoholic beverage, or intoxicant.

30 (e) Committed or attempted to commit robbery or extortion.

31 (f) Caused or attempted to cause damage to school property or  
32 private property.

33 (g) Stole or attempted to steal school property or private  
34 property.

35 (h) Possessed or used tobacco, or products containing tobacco  
36 or nicotine products, including, but not limited to, cigarettes, cigars,  
37 miniature cigars, clove cigarettes, smokeless tobacco, snuff, chew

1 packets, and betel. However, this section does not prohibit the use  
2 or possession by a pupil of his or her own prescription products.

3 (i) Committed an obscene act or engaged in habitual profanity  
4 or vulgarity.

5 (j) Unlawfully possessed or unlawfully offered, arranged, or  
6 negotiated to sell drug paraphernalia, as defined in Section 11014.5  
7 of the Health and Safety Code.

8 (k) (1) Disrupted school activities or otherwise willfully defied  
9 the valid authority of supervisors, teachers, administrators, school  
10 officials, or other school personnel engaged in the performance of  
11 their duties.

12 (2) Except as provided in Section 48910, a pupil enrolled in  
13 kindergarten or any of grades 1 to 3, inclusive, shall not be  
14 suspended for any of the acts enumerated in this subdivision, and  
15 this subdivision shall not constitute grounds for a pupil enrolled  
16 in kindergarten or any of grades 1 to 12, inclusive, to be  
17 recommended for expulsion. This paragraph shall become  
18 inoperative on July 1, 2018, unless a later enacted statute that  
19 becomes operative before July 1, 2018, deletes or extends that  
20 date.

21 (l) Knowingly received stolen school property or private  
22 property.

23 (m) Possessed an imitation firearm. As used in this section,  
24 "imitation firearm" means a replica of a firearm that is so  
25 substantially similar in physical properties to an existing firearm  
26 as to lead a reasonable person to conclude that the replica is a  
27 firearm.

28 (n) Committed or attempted to commit a sexual assault as  
29 defined in Section 261, 266c, 286, 288, 288a, or 289 of the Penal  
30 Code or committed a sexual battery as defined in Section 243.4  
31 of the Penal Code.

32 (o) Harassed, threatened, or intimidated a pupil who is a  
33 complaining witness or a witness in a school disciplinary  
34 proceeding for purposes of either preventing that pupil from being  
35 a witness or retaliating against that pupil for being a witness, or  
36 both.

37 (p) Unlawfully offered, arranged to sell, negotiated to sell, or  
38 sold the prescription drug Soma.

39 (q) Engaged in, or attempted to engage in, hazing. For purposes  
40 of this subdivision, "hazing" means a method of initiation or

1 preinitiation into a pupil organization or body, whether or not the  
2 organization or body is officially recognized by an educational  
3 institution, that is likely to cause serious bodily injury or personal  
4 degradation or disgrace resulting in physical or mental harm to a  
5 former, current, or prospective pupil. For purposes of this  
6 subdivision, "hazing" does not include athletic events or  
7 school-sanctioned events.

8 (r) Engaged in an act of bullying. For purposes of this  
9 subdivision, the following terms have the following meanings:

10 (1) "Bullying" means any severe or pervasive physical or verbal  
11 act or conduct, including communications made in writing or by  
12 means of an electronic act, and including one or more acts  
13 committed by a pupil or group of pupils as defined in Section  
14 48900.2, 48900.3, or 48900.4, directed toward one or more pupils  
15 that has or can be reasonably predicted to have the effect of one  
16 or more of the following:

17 (A) Placing a reasonable pupil or pupils in fear of harm to that  
18 pupil's or those pupils' person or property.

19 (B) Causing a reasonable pupil to experience a substantially  
20 detrimental effect on his or her physical or mental health.

21 (C) Causing a reasonable pupil to experience substantial  
22 interference with his or her academic performance.

23 (D) Causing a reasonable pupil to experience substantial  
24 interference with his or her ability to participate in or benefit from  
25 the services, activities, or privileges provided by a school.

26 (2) (A) "Electronic act" means the creation or transmission  
27 originated on or off the schoolsite, by means of an electronic  
28 device, including, but not limited to, a telephone, wireless  
29 telephone, or other wireless communication device, computer, or  
30 pager, of a communication, including, but not limited to, any of  
31 the following:

32 (i) A message, text, sound, video, or image, including, but not  
33 limited to, a video or image of two or more pupils fighting that is  
34 posted to the Internet. *image*.

35 (ii) A post on a social network Internet Web site, including, but  
36 not limited to:

37 (I) Posting to or creating a burn page. "Burn page" means an  
38 Internet Web site created for the purpose of having one or more  
39 of the effects listed in paragraph (1).

- 1 (II) Creating a credible impersonation of another actual pupil  
2 for the purpose of having one or more of the effects listed in  
3 paragraph (1). "Credible impersonation" means to knowingly and  
4 without consent impersonate a pupil for the purpose of bullying  
5 the pupil and such that another pupil would reasonably believe, or  
6 has reasonably believed, that the pupil was or is the pupil who was  
7 impersonated.
- 8 (III) Creating a false profile for the purpose of having one or  
9 more of the effects listed in paragraph (1). "False profile" means  
10 a profile of a fictitious pupil or a profile using the likeness or  
11 attributes of an actual pupil other than the pupil who created the  
12 false profile.
- 13 (B) Notwithstanding paragraph (1) and subparagraph (A), an  
14 electronic act shall not constitute pervasive conduct solely on the  
15 basis that it has been transmitted on the Internet or is currently  
16 posted on the Internet.
- 17 (3) "Reasonable pupil" means a pupil, including, but not limited  
18 to, an exceptional needs pupil, who exercises average care, skill,  
19 and judgment in conduct for a person of his or her age, or for a  
20 person of his or her age with his or her exceptional needs.
- 21 (s) A pupil shall not be suspended or expelled for any of the  
22 acts enumerated in this section unless the act is related to a school  
23 activity or school attendance occurring within a school under the  
24 jurisdiction of the superintendent of the school district or principal  
25 or occurring within any other school district. A pupil may be  
26 suspended or expelled for acts that are enumerated in this section  
27 and related to a school activity or school attendance that occur at  
28 any time, including, but not limited to, any of the following:
- 29 (1) While on school grounds.
  - 30 (2) While going to or coming from school.
  - 31 (3) During the lunch period whether on or off the campus.
  - 32 (4) During, or while going to or coming from, a  
33 school-sponsored activity.
- 34 (t) A pupil who aids or abets, as defined in Section 31 of the  
35 Penal Code, the infliction or attempted infliction of physical injury  
36 to another person may be subject to suspension, but not expulsion,  
37 pursuant to this section, except that a pupil who has been adjudged  
38 by a juvenile court to have committed, as an aider and abettor, a  
39 crime of physical violence in which the victim suffered great bodily

1 injury or serious bodily injury shall be subject to discipline pursuant  
2 to subdivision (a).

3 (u) As used in this section, "school property" includes, but is  
4 not limited to, electronic files and databases.

5 (v) For a pupil subject to discipline under this section, a  
6 superintendent of the school district or principal may use his or  
7 her discretion to provide alternatives to suspension or expulsion  
8 that are age appropriate and designed to address and correct the  
9 pupil's specific misbehavior as specified in Section 48900.5.

10 (w) It is the intent of the Legislature that alternatives to  
11 suspension or expulsion be imposed against a pupil who is truant,  
12 tardy, or otherwise absent from school activities.

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** AB 2231, as amended April 6, 2016. Calderon. Care facilities: civil penalties.

**ISSUE:** Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, the licensure and regulation of community care facilities, residential care facilities for persons with chronic life-threatening illnesses, residential care facilities for the elderly, day care centers, and family day care homes. Existing law authorizes the department to impose various civil penalties for a licensing violation under those provisions, as specified, and requires moneys collected from the imposition of those penalties to be expended for certain purposes.

**SUMMARY:** In 1985 the California Residential Care Facilities for the Elderly Act established a civil penalty structure for violations in facilities. In 2014, Governor Brown signed into law AB 2236 (Maienschein), which, among other things, increased civil penalties for RCFEs to \$15,000 for incidents that were determined to have resulted in death, and up to \$10,000 for incidents that were determined to have resulted in serious bodily injury, or constituted physical abuse. However, the increased civil penalties provided for in AB 2236 did not extend to less serious violations.

**BACKGROUND/ISSUES/ANALYSIS:** AB 2231 does the following: Increases penalties for "less serious" violations in care facilities in line with reforms in recent years. It adopts a penalty structure for repeat violations in care facilities This bill will maintain the civil penalties provided for in AB 2236 to ensure that the severity of a crime is met with appropriate penalties, and will ensure that the concerns of small facilities are addressed in order to preserve availability for those in need of care. This bill is sponsored by the California Department of Social Services. (Source: Author's fact sheet).

**RECOMMENDATION:** None.

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Goal 4: Public Safety Outreach. The Council will maintain or develop collaborative relationships with local law enforcement agencies and others to improve the awareness

and education of public safety personnel and the justice system on the unique needs of individuals with developmental disabilities.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2231**

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**Introduced by Assembly Member Calderon**

February 18, 2016

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An act to amend Sections 1548, 1568.0822, 1569.49, 1596.8595, 1596.99, and 1597.58 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 2231, as amended, Calderon. Care facilities: civil penalties.

Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, the licensure and regulation of community care facilities, residential care facilities for persons with chronic life-threatening illnesses, residential care facilities for the elderly, day care centers, and family day care homes. Existing law authorizes the department to impose various civil penalties for a licensing violation under those provisions, as specified, and requires moneys collected from the imposition of those penalties to be expended for certain purposes. Existing law establishes a process for the appeal of a citation under these provisions.

This bill would increase the amount of civil penalties to be imposed for a licensing violation under those provisions, and would impose civil penalties for a repeat violation of those provisions, as specified. The bill would delete the provisions that authorize the department to impose those civil penalties, and instead require the imposition of those civil penalties under those provisions. The bill would also delete a requirement that moneys collected from the imposition of certain penalties be used for assisting families with the identification,

transportation, and enrollment of children in another day care or family day care home upon the revocation or suspension of the license of a day care or family day care home. The bill would also delete obsolete provisions.

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 1548 of the Health and Safety Code is  
2 amended to read:  
3 1548. (a) In addition to the suspension, temporary suspension,  
4 or revocation of a license issued under this chapter, the department  
5 shall levy civil penalties as follows:  
6 (b) (1) The amount of the civil penalty shall be one hundred  
7 dollars (\$100) per day for each violation of this chapter if an agency  
8 or facility fails to correct a deficiency after being provided a  
9 specified length of time to correct that deficiency. ~~If the nature or~~  
10 ~~seriousness of the violation or the frequency of the violation~~  
11 ~~warrants a higher penalty or an immediate civil penalty assessment,~~  
12 ~~or both, as provided in this chapter, a correction of the deficiency~~  
13 ~~shall not impact the imposition of a civil penalty.~~  
14 (A) *If a licensee or a licensee's representative submits evidence*  
15 *to the department that the licensee has corrected a deficiency, and*  
16 *the department, after reviewing that evidence, has determined that*  
17 *the deficiency has been corrected, the civil penalty shall cease as*  
18 *of the day the department received that evidence.*  
19 (B) *If the department deems it necessary, the department shall*  
20 *inspect the facility within five working days after the department*  
21 *receives evidence pursuant to subparagraph (A) to confirm that*  
22 *the deficiency has been corrected.*  
23 (C) *If the department determines that the deficiency has not*  
24 *been corrected, the civil penalties shall continue to accrue from*  
25 *the date of the original citation.*  
26 (D) *If the department is able to verify that the deficiency was*  
27 *corrected prior to the date on which the department received the*  
28 *evidence pursuant to subparagraph (A), the civil penalty shall*  
29 *cease as of that earlier date.*  
30 (2) ~~Any~~(A) *If the department issues a notification of deficiency*  
31 *to an agency or facility that repeats for a repeat violation of a*

- 1 violation specified in paragraph (1) within 12 months of a prior  
2 violation having a similar factual description of the deficiency as  
3 stated in the notification of deficiency, is subject to (1), the  
4 department shall assess an immediate civil penalty of two hundred  
5 fifty dollars (\$250) per repeat violation and one hundred dollars  
6 (\$100) for each day the repeat violation continues after citation.
- 7 (B) For purposes of this section, "repeat violation" means the  
8 violation within 12 months of a prior violation of a statutory or  
9 regulatory provision designated by the same combination of letters  
10 or numerals, or both letters and numerals.
- 11 (3) If the nature or seriousness of the violation or the frequency  
12 of the violation warrants a higher penalty or an immediate civil  
13 penalty assessment, or both, as provided in this chapter, a  
14 correction of the deficiency shall not impact the imposition of a  
15 civil penalty.
- 16 (c) The department shall assess an immediate civil penalty of  
17 five hundred dollars (\$500) per violation and one hundred dollars  
18 (\$100) for each day the violation continues after citation for any  
19 of the following serious violations:
- 20 (1) Any violation that the department determines resulted in the  
21 injury or illness of a person in care.
- 22 (2) (A) Fire clearance violations, including, but not limited to,  
23 overcapacity, ambulatory status, inoperable smoke alarms, and  
24 inoperable fire alarm systems. The civil penalty shall not be  
25 assessed if the licensee has done either of the following:
- 26 (i) Requested the appropriate fire clearance based on ambulatory,  
27 nonambulatory, or bedridden status, and the decision is pending.  
28 (ii) Initiated eviction proceedings.
- 29 (B) A licensee denied a clearance for bedridden residents may  
30 appeal to the fire authority, and, if that appeal is denied, may  
31 subsequently appeal to the Office of the State Fire Marshal, and  
32 shall not be assessed an immediate civil penalty until the final  
33 appeal is decided, or after 60 days has passed from the date of the  
34 citation, whichever is earlier.
- 35 (3) Absence of supervision, as required by statute or regulation.
- 36 (4) Accessible bodies of water when prohibited in this chapter  
37 or regulations adopted pursuant to this chapter.
- 38 (5) Accessible firearms, ammunition, or both.
- 39 (6) Refused entry to a facility or any part of a facility in violation  
40 of Section 1533, 1534, or 1538.

1 (7) The presence of a person subject to a department Order of  
2 Exclusion on the premises.

3 (d) ~~Any~~ If the department cites an agency or facility that repeats  
4 a for a repeat violation specified in subdivision (c) within 12  
5 months of a prior violation having a similar factual description of  
6 the deficiency as stated in the notification of deficiency; (c), the  
7 department shall be subject to assess an immediate civil penalty  
8 of one thousand dollars (\$1,000) per repeat violation and one  
9 hundred dollars (\$100) for each day the repeat violation continues  
10 after citation.

11 (e) (1) For a violation that the department determines resulted  
12 in the death of a resident at an adult residential facility, social  
13 rehabilitation facility, enhanced behavioral supports home licensed  
14 as an adult residential facility, adult residential facility for persons  
15 with special health care needs, or community crisis home, the civil  
16 penalty shall be fifteen thousand dollars (\$15,000).

17 (2) For a violation that the department determines resulted in  
18 the death of a person receiving care at an adult day program, the  
19 civil penalty shall be assessed as follows:

20 (A) Seven thousand five hundred dollars (\$7,500) for a facility  
21 licensed to care for 50 or fewer persons.

22 (B) Ten thousand dollars (\$10,000) for a facility licensed to  
23 care for 51 or more persons.

24 (3) For a violation that the department determines resulted in  
25 the death of a person receiving care at a therapeutic day services  
26 facility, community treatment facility, transitional shelter care  
27 facility, transitional housing placement provider, small family  
28 home, crisis nursery, group home, enhanced behavioral supports  
29 home licensed as a group home, or short-term residential treatment  
30 center, the civil penalty shall be assessed as follows:

31 (A) Seven thousand five hundred dollars (\$7,500) for a facility  
32 licensed to care for 40 or fewer children.

33 (B) Ten thousand dollars (\$10,000) for a facility licensed to  
34 care for 41 to 100, inclusive, children.

35 (C) Fifteen thousand dollars (\$15,000) for a facility licensed to  
36 care for more than 100 children.

37 (4) For a violation that the department determines resulted in  
38 the death of a youth receiving care at a runaway and homeless  
39 youth shelter licensed as a group home, the civil penalty shall be  
40 five thousand dollars (\$5,000).

1 (5) For a violation that the department determines resulted in  
2 the death of a child receiving care through a foster family agency,  
3 the civil penalty shall be seven thousand five hundred dollars  
4 (\$7,500).

5 (6) For a violation that the department determines resulted in  
6 the death of an individual receiving care or services through a  
7 full-service or noncustodial adoption agency, the civil penalty shall  
8 be seven thousand five hundred dollars (\$7,500).

9 (f) (1) (A) For a violation that the department determines  
10 constitutes physical abuse, as defined in Section 15610.63 of the  
11 Welfare and Institutions Code, or resulted in serious bodily injury,  
12 as defined in Section 243 of the Penal Code, to a resident at an  
13 adult residential facility, social rehabilitation facility, enhanced  
14 behavioral supports home licensed as an adult residential facility,  
15 adult residential facility for persons with special health care needs,  
16 or community crisis home, the civil penalty shall be ten thousand  
17 dollars (\$10,000).

18 (B) For a violation that the department determines constitutes  
19 physical abuse, as defined in Section 15610.63 of the Welfare and  
20 Institutions Code, or resulted in serious bodily injury, as defined  
21 in Section 243 of the Penal Code, to a person receiving care at an  
22 adult day program, the civil penalty shall be assessed as follows:

23 (i) Two thousand five hundred dollars (\$2,500) for a facility  
24 licensed to care for 50 or fewer persons.

25 (ii) Five thousand dollars (\$5,000) for a facility licensed to care  
26 for 51 or more persons.

27 (C) For a violation that the department determines constitutes  
28 physical abuse, as defined in paragraph (2), or resulted in serious  
29 bodily injury, as defined in Section 243 of the Penal Code, to a  
30 person receiving care at a therapeutic day services facility,  
31 community treatment facility, transitional shelter care facility,  
32 transitional housing placement provider, small family home, crisis  
33 nursery, group home, enhanced behavioral supports home licensed  
34 as a group home, or short-term residential treatment center, the  
35 civil penalty shall be assessed as follows:

36 (i) Two thousand five hundred dollars (\$2,500) for a facility  
37 licensed to care for 40 or fewer children.

38 (ii) Five thousand dollars (\$5,000) for a facility licensed to care  
39 for 41 to 100, inclusive, children.

1 (iii) Ten thousand dollars (\$10,000) for a facility licensed to  
2 care for more than 100 children.

3 (D) For a violation that the department determines constitutes  
4 physical abuse, as defined in paragraph (2), or resulted in serious  
5 bodily injury, as defined in Section 243 of the Penal Code, to a  
6 youth receiving care at a runaway and homeless youth shelter  
7 licensed as a group home, the civil penalty shall be one thousand  
8 dollars (\$1,000).

9 (E) For a violation that the department determines constitutes  
10 physical abuse, as defined in paragraph (2), or resulted in serious  
11 bodily injury, as defined in Section 243 of the Penal Code, to a  
12 child receiving care through a foster family agency, the civil  
13 penalty shall be two thousand five hundred dollars (\$2,500).

14 (F) For a violation that the department determines constitutes  
15 physical abuse, as defined in paragraph (2), or resulted in serious  
16 bodily injury, as defined in Section 243 of the Penal Code, to an  
17 individual receiving care or services through a full-service or  
18 noncustodial adoption agency, the civil penalty shall be two  
19 thousand five hundred dollars (\$2,500).

20 (2) For purposes of subparagraphs (C), (D), (E), and (F) of  
21 paragraph (1), "physical abuse" includes physical injury inflicted  
22 upon a child by another person by other than accidental means,  
23 sexual abuse as defined in Section 11165.1 of the Penal Code,  
24 neglect as defined in Section 11165.2 of the Penal Code, or  
25 unlawful corporal punishment or injury as defined in Section  
26 11165.4 of the Penal Code when the person responsible for the  
27 child's welfare is a licensee, administrator, or employee of any  
28 facility licensed to care for children.

29 (g) (1) Before the assessment of a civil penalty pursuant to  
30 subdivision (e) or (f), the decision shall be approved by the program  
31 administrator of the Community Care Licensing Division.

32 ~~(2) If the (A) The department assesses a shall reduce the~~  
33 ~~amount of a civil penalty due pursuant to subdivision (e) or (f),~~  
34 ~~that (f) by the amount of the civil penalty shall prevail and the civil~~  
35 ~~penalty already assessed for the underlying violation shall be~~  
36 ~~waived. violation.~~

37 ~~(h) A citation of a violation issued by the department shall be~~  
38 ~~classified according to the nature of the violation and shall indicate~~  
39 ~~the classification on its face.~~

1 ~~(1) A Type AA violation is a violation that the department~~  
2 ~~determines resulted in the death or serious bodily injury of, or that~~  
3 ~~constitutes physical abuse of, a client, pursuant to subdivision (e)~~  
4 ~~or (f).~~

5 ~~(2) A Type A violation is a violation that the department~~  
6 ~~determines poses a direct and immediate risk to the health or safety~~  
7 ~~of a person in care.~~

8 ~~(3) A Type B violation is a violation that does not meet the~~  
9 ~~standards of a Type AA or A violation, but that the department~~  
10 ~~determines poses a potential risk to the health or safety of a person~~  
11 ~~in care.~~

12 ~~(4) A Type C violation is a violation that does not meet the~~  
13 ~~standards of a Type AA, A, or B violation.~~

14 *(B) If the amount of the civil penalty that the department has*  
15 *already assessed for the underlying violation exceeds the amount*  
16 *of the penalty pursuant to subdivision (e) or (f), the larger amount*  
17 *shall prevail and be due and payable as already assessed by the*  
18 *department.*

19 ~~(i)~~

20 *(h) (1) A notification of a deficiency written by a representative*  
21 *of the department shall include a factual description of the nature*  
22 *of the deficiency fully stating the manner in which the licensee*  
23 *failed to comply with the specified statute or regulation, and, if*  
24 *applicable, the particular place or area of the facility in which the*  
25 *deficiency occurred. The department shall make a good faith effort*  
26 *to work with the licensee to determine the cause of the deficiency*  
27 *and ways to prevent any repeat violations.*

28 *(2) The department shall adopt regulations setting forth the*  
29 *appeal procedures for deficiencies.*

30 ~~(j)~~

31 *(i) (1) A licensee shall have the right to submit to the*  
32 *department a written request for a formal review of a civil penalty*  
33 *assessed pursuant to subdivisions (e) or (f) within 15 business days*  
34 *of receipt of the notice of a civil penalty assessment and shall*  
35 *provide all available supporting documentation at that time. The*  
36 *review shall be conducted by the deputy director of the Community*  
37 *Care Licensing Division. The licensee may submit additional*  
38 *supporting documentation that was unavailable at the time of*  
39 *submitting the request for review within the first 30 business days*  
40 *after submitting the request for review. If the department requires*

1 additional information from the licensee, that information shall be  
2 requested within the first 30 business days after receiving the  
3 request for review. The licensee shall provide this additional  
4 information within 30 business days of receiving the request from  
5 the department. If the deputy director determines that the civil  
6 penalty was not assessed, or the finding of deficiency was not  
7 made, in accordance with applicable statutes or regulations of the  
8 department, he or she may amend or dismiss the civil penalty or  
9 finding of deficiency. The licensee shall be notified in writing of  
10 the deputy director's decision within 60 business days of the date  
11 when all necessary information has been provided to the  
12 department by the licensee.

13 (2) (A) Upon exhausting the review described in paragraph  
14 (1), a licensee may further appeal that decision to an administrative  
15 law judge. Proceedings shall be conducted in accordance with  
16 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
17 3 of Title 2 of the Government Code, and the department shall  
18 have all the powers granted by those provisions. In all proceedings  
19 conducted in accordance with this section, the standard of proof  
20 shall be by a preponderance of the evidence.

21 (B) *Notwithstanding any other law, if a licensee prevails in an*  
22 *appeal pursuant to subparagraph (A), the department shall refund*  
23 *to the licensee the amount of any civil penalty that the licensee*  
24 *had paid in connection with the citation within 10 business days*  
25 *of a final determination by the administrative law judge.*

26 (3) If, in addition to an assessment of civil penalties, the  
27 department elects to file an administrative action to suspend or  
28 revoke the facility license that includes violations relating to the  
29 assessment of the civil penalties, the department review of the  
30 pending appeal shall cease and the assessment of the civil penalties  
31 shall be heard as part of the administrative action process.

32 (~~k~~)

33 (j) (1) A licensee shall have the right to submit to the  
34 department a written request for a formal review of any other civil  
35 penalty or deficiency not described in subdivision-~~(j)~~ (i) within 15  
36 business days of receipt of the notice of a civil penalty assessment  
37 or a finding of a deficiency, and shall provide all available  
38 supporting documentation at that time. The review shall be  
39 conducted by a regional manager of the Community Care Licensing  
40 Division. The licensee may submit additional supporting

1 documentation that was unavailable at the time of submitting the  
2 request for review within the first 30 business days after submitting  
3 the request for review. If the department requires additional  
4 information from the licensee, that information shall be requested  
5 within the first 30 business days after receiving the request for  
6 review. The licensee shall provide this additional information  
7 within 30 business days of receiving the request from the  
8 department. If the regional manager determines that the civil  
9 penalty was not assessed, or the finding of the deficiency was not  
10 made, in accordance with applicable statutes or regulations of the  
11 department, he or she may amend or dismiss the civil penalty or  
12 finding of deficiency. The licensee shall be notified in writing of  
13 the regional manager's decision within 60 business days of the  
14 date when all necessary information has been provided to the  
15 department by the licensee.

16 (2) (A) Upon exhausting the review described in paragraph  
17 (1), the licensee may further appeal that decision to the program  
18 administrator of the Community Care Licensing Division within  
19 15 business days of receipt of notice of the regional manager's  
20 decision. The licensee may submit additional supporting  
21 documentation that was unavailable at the time of appeal to the  
22 program administrator within the first 30 business days after  
23 requesting that appeal. If the department requires additional  
24 information from the licensee, that information shall be requested  
25 within the first 30 business days after receiving the request for the  
26 appeal. The licensee shall provide this additional information  
27 within 30 business days of receiving the request from the  
28 department. If the program administrator determines that the civil  
29 penalty was not assessed, or the finding of the deficiency was not  
30 made, in accordance with applicable statutes or regulations of the  
31 department, he or she may amend or dismiss the civil penalty or  
32 finding of deficiency. The licensee shall be notified in writing of  
33 the program administrator's decision within 60 business days of  
34 the date when all necessary information has been provided to the  
35 department by the licensee. The program administrator's decision  
36 is considered final and concludes the licensee's administrative  
37 appeal rights regarding the appeal conducted pursuant to this  
38 paragraph.

39 (B) *Notwithstanding any other law, if a licensee prevails in an*  
40 *appeal pursuant to subparagraph (A), the department shall refund*

1 to the licensee the amount of any civil penalty that the licensee  
 2 had paid in connection with the citation within 10 business days  
 3 of a final determination by the administrator of the Community  
 4 Care Licensing Division.

5 ~~(f)~~

6 (k) The department shall adopt regulations implementing this  
 7 section.

8 ~~(m)~~

9 (l) The department shall, by January 1, 2016, amend its  
 10 regulations to reflect the changes to this section made by Section  
 11 2 of Chapter 813 of the Statutes of 2014.

12 ~~(n)~~

13 (m) As provided in Section 11466.31 of the Welfare and  
 14 Institutions Code, the department may offset civil penalties owed  
 15 by a group home or short-term residential treatment center against  
 16 moneys to be paid by a county for the care of minors after the  
 17 group home or short-term residential treatment center has exhausted  
 18 its appeal of the civil penalty assessment. The department shall  
 19 provide the group home or short-term residential treatment center  
 20 a reasonable opportunity to pay the civil penalty before instituting  
 21 the offset provision.

22 ~~(o)~~

23 (n) Notwithstanding the Administrative Procedure Act (Chapter  
 24 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 25 Title 2 of the Government Code), the department may implement  
 26 and administer the changes made by the act that added this  
 27 subdivision through all-county letters or similar written instructions  
 28 until regulations are adopted pursuant to the Administrative  
 29 Procedure Act.

30 SEC. 2. Section 1568.0822 of the Health and Safety Code is  
 31 amended to read:

32 1568.0822. (a) In addition to the suspension, temporary  
 33 suspension, or revocation of a license issued under this chapter,  
 34 the department shall levy civil penalties as follows:

35 (b) (1) The amount of the civil penalty shall be one hundred  
 36 dollars (\$100) per day for each violation of this chapter if an agency  
 37 or facility fails to correct a deficiency after being provided a  
 38 specified length of time to correct that deficiency. ~~If the nature or~~  
 39 ~~seriousness of the violation or the frequency of the violation~~  
 40 ~~warrants a higher penalty or an immediate civil penalty assessment,~~

1 ~~or both, as provided in this chapter, a correction of the deficiency~~  
2 ~~shall not impact the imposition of a civil penalty.~~

3 (A) *If a licensee or a licensee's representative submits evidence*  
4 *to the department that the licensee has corrected a deficiency, and*  
5 *the department, after reviewing that evidence, has determined that*  
6 *the deficiency has been corrected, the civil penalty shall cease as*  
7 *of the day the department received that evidence.*

8 (B) *If the department deems it necessary, the department shall*  
9 *inspect the facility within five working days after the department*  
10 *receives evidence pursuant to subparagraph (A) to confirm that*  
11 *the deficiency has been corrected.*

12 (C) *If the department determines that the deficiency has not*  
13 *been corrected, the civil penalties shall continue to accrue from*  
14 *the date of the original citation.*

15 (D) *If the department is able to verify that the deficiency was*  
16 *corrected prior to the date on which the department received the*  
17 *evidence pursuant to subparagraph (A), the civil penalty shall*  
18 *cease as of that earlier date.*

19 (2) (A) ~~Any~~ *If the department issues a notification of deficiency*  
20 *to an agency or facility that repeats for a repeat violation of a*  
21 *violation specified in paragraph (1) within 12 months of a prior*  
22 *violation, having a similar factual description of the deficiency as*  
23 *stated in the notification of deficiency, (1), the department shall*  
24 *be subject to assess an immediate civil penalty of two hundred*  
25 *fifty dollars (\$250) per repeat violation and one hundred dollars*  
26 *(\$100) for each day the repeat violation continues after citation.*

27 (B) *For purposes of this section, "repeat violation" means the*  
28 *violation within 12 months of a prior violation of a statutory or*  
29 *regulatory provision designated by the same combination of letters*  
30 *or numerals, or both letters and numerals.*

31 (3) *If the nature or seriousness of the violation or the frequency*  
32 *of the violation warrants a higher penalty or an immediate civil*  
33 *penalty assessment, or both, as provided in this chapter, a*  
34 *correction of the deficiency shall not impact the imposition of a*  
35 *civil penalty.*

36 (c) *Notwithstanding Section 1568.07, the department shall assess*  
37 *an immediate civil penalty of five hundred dollars (\$500) per*  
38 *violation and one hundred dollars (\$100) for each day the violation*  
39 *continues after citation for any of the following serious violations:*

- 1 (1) Any violation that the department determines resulted in the  
2 injury or illness of a resident.
- 3 (2) (A) Fire clearance violations, including, but not limited to,  
4 overcapacity, ambulatory status, inoperable smoke alarms, and  
5 inoperable fire alarm systems. The civil penalty shall not be  
6 assessed if the licensee has done either of the following:
- 7 (i) Requested the appropriate fire clearance based on ambulatory,  
8 nonambulatory, or bedridden status, and the decision is pending.
- 9 (ii) Initiated eviction proceedings.
- 10 (B) A licensee denied a clearance for bedridden residents may  
11 appeal to the fire authority, and, if that appeal is denied, may  
12 subsequently appeal to the Office of the State Fire Marshal, and  
13 shall not be assessed an immediate civil penalty until the final  
14 appeal is decided, or after 60 days has passed from the date of the  
15 citation, whichever is earlier.
- 16 (3) Absence of supervision, as required by statute and regulation.
- 17 (4) Accessible bodies of water, when prohibited in this chapter  
18 or regulations adopted pursuant to this chapter.
- 19 (5) Accessible firearms, ammunition, or both.
- 20 (6) Refused entry to a facility or any part of a facility in violation  
21 of Section 1568.07 or 1568.071.
- 22 (7) The presence of a person subject to a department Order of  
23 Exclusion on the premises.
- 24 (d) ~~Any~~ *If the department issues a notification of deficiency to*  
25 *a facility that repeats a for a repeat violation of a violation*  
26 *specified in subdivision (e) within 12 months of a prior violation*  
27 *having a similar factual description of the deficiency as stated in*  
28 *the notice of deficiency, (c), the department shall be subject to*  
29 *assess an immediate civil penalty of one thousand dollars (\$1,000)*  
30 *per repeat violation and one hundred dollars (\$100) for each day*  
31 *the repeat violation continues after citation.*
- 32 (e) For a violation that the department determines resulted in  
33 the death of a resident, the civil penalty shall be fifteen thousand  
34 dollars (\$15,000).
- 35 (f) For a violation that the department determines constitutes  
36 physical abuse, as defined in Section 15610.63 of the Welfare and  
37 Institutions Code, or resulted in serious bodily injury, as defined  
38 in Section 243 of the Penal Code, to a resident, the civil penalty  
39 shall be ten thousand dollars (\$10,000).

- 1 (g) (1) Before the assessment of a civil penalty pursuant to
- 2 subdivision (e) or (f), the decision shall be approved by the program
- 3 administrator of the Community Care Licensing Division.
- 4 (2) ~~If the (A) The department issues a citation shall reduce the~~
- 5 ~~amount of a civil penalty due pursuant to subdivision (e) or (f);~~
- 6 ~~that (f) by the amount of the civil penalty shall prevail and the civil~~
- 7 ~~penalty already assessed for the underlying violation shall be~~
- 8 ~~waived. violation.~~
- 9 (h) ~~A citation of a violation issued by the department shall be~~
- 10 ~~classified according to the nature of the violation and shall indicate~~
- 11 ~~the classification on its face.~~
- 12 (1) ~~A Type AA violation is a violation that the department~~
- 13 ~~determines resulted in the death or serious bodily injury of, or that~~
- 14 ~~constitutes physical abuse of, a client, pursuant to subdivision (e)~~
- 15 ~~or (f).~~
- 16 (2) ~~A Type A violation is a violation that the department~~
- 17 ~~determines poses a direct and immediate risk to the health or safety~~
- 18 ~~of a person in care.~~
- 19 (3) ~~A Type B violation is a violation that does not meet the~~
- 20 ~~standards of a Type AA or A violation, but that the department~~
- 21 ~~determines poses a potential risk to the health or safety of a person~~
- 22 ~~in care.~~
- 23 (4) ~~A Type C violation is a violation that does not meet the~~
- 24 ~~standards of a Type AA, A, or B violation.~~
- 25 (B) ~~If the amount of the civil penalty that the department has~~
- 26 ~~already assessed for the underlying violation exceeds the amount~~
- 27 ~~of the penalty pursuant to subdivision (e) or (f), the larger amount~~
- 28 ~~shall prevail and be due and payable as already assessed by the~~
- 29 ~~department.~~
- 30 (i)
- 31 (h) (1) A notification of a deficiency written by a representative
- 32 of the department shall include a factual description of the nature
- 33 of the deficiency fully stating the manner in which the licensee
- 34 failed to comply with the specified statute or regulation, and, if
- 35 applicable, the particular place or area in which the deficiency
- 36 occurred. The department shall make a good faith effort to work
- 37 with the licensee to determine the cause of the deficiency and ways
- 38 to prevent any repeat violations.
- 39 (2) The department shall adopt regulations setting forth appeal
- 40 procedures for deficiencies.

1 (j)

2 (i) (1) A licensee shall have the right to submit to the  
3 department a written request for a formal review of a civil penalty  
4 assessed pursuant to subdivision (e) or (f) within 15 business days  
5 of receipt of the notice of a civil penalty assessment and shall  
6 provide all available supporting documentation at that time. The  
7 review shall be conducted by the deputy director of the Community  
8 Care Licensing Division. The licensee may submit additional  
9 supporting documentation that was unavailable at the time of  
10 submitting the request for review within the first 30 business days  
11 after submitting the request for review. If the department requires  
12 additional information from the licensee, that information shall be  
13 requested within the first 30 business days after receiving the  
14 request for review. The licensee shall provide this additional  
15 information within 30 business days of receiving the request from  
16 the department. If the deputy director determines that the civil  
17 penalty was not assessed, or the finding of deficiency that resulted  
18 in the assessment of the civil penalty was not made, in accordance  
19 with applicable statutes or regulations of the department, he or she  
20 may amend or dismiss the civil penalty or finding of deficiency.  
21 The licensee shall be notified in writing of the deputy director's  
22 decision within 60 business days of the date when all necessary  
23 information has been provided to the department by the licensee.

24 (2) (A) Upon exhausting the review described in paragraph  
25 (1), a licensee may further appeal that decision to an administrative  
26 law judge. Proceedings shall be conducted in accordance with  
27 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
28 3 of Title 2 of the Government Code, and the department shall  
29 have all the powers granted by those provisions. In all proceedings  
30 conducted in accordance with this section, the standard of proof  
31 shall be by a preponderance of the evidence.

32 (B) *Notwithstanding any other law, if a licensee prevails in an*  
33 *appeal pursuant to subparagraph (A), the department shall refund*  
34 *to the licensee the amount of any civil penalty that the licensee*  
35 *had paid in connection with the citation within 10 business days*  
36 *of a final determination by the administrative law judge.*

37 (3) If, in addition to an assessment of civil penalties, the  
38 department elects to file an administrative action to suspend or  
39 revoke the facility license that includes violations relating to the  
40 assessment of the civil penalties, the department review of the

1 pending appeal shall cease and the assessment of the civil penalties  
2 shall be heard as part of the administrative action process.

3 (~~k~~)

4 (*j*) (1) A licensee shall have the right to submit to the  
5 department a written request for a formal review of any other civil  
6 penalty or deficiency not described in subdivision-~~(j)~~ (*i*) within 15  
7 business days of receipt of the notice of a civil penalty assessment  
8 or a finding of a deficiency, and shall provide all available  
9 supporting documentation at that time. The review shall be  
10 conducted by a regional manager of the Community Care Licensing  
11 Division. The licensee may submit additional supporting  
12 documentation that was unavailable at the time of submitting the  
13 request for review within the first 30 business days after submitting  
14 the request for review. If the department requires additional  
15 information from the licensee, that information shall be requested  
16 within the first 30 business days after receiving the request for  
17 review. The licensee shall provide this additional information  
18 within 30 business days of receiving the request from the  
19 department. If the regional manager determines that the civil  
20 penalty was not assessed, or the finding of the deficiency was not  
21 made, in accordance with applicable statutes or regulations of the  
22 department, he or she may amend or dismiss the civil penalty or  
23 finding of deficiency. The licensee shall be notified in writing of  
24 the regional manager's decision within 60 business days of the  
25 date when all necessary information has been provided to the  
26 department by the licensee.

27 (2) (*A*) Upon exhausting the review described in paragraph  
28 (1), the licensee may further appeal that decision to the program  
29 administrator of the Community Care Licensing Division within  
30 15 business days of receipt of notice of the regional manager's  
31 decision. The licensee may submit additional supporting  
32 documentation that was unavailable at the time of appeal to the  
33 program administrator within the first 30 business days after  
34 requesting that appeal. If the department requires additional  
35 information from the licensee, that information shall be requested  
36 within the first 30 business days after receiving the request for the  
37 appeal. The licensee shall provide this additional information  
38 within 30 business days of receiving the request from the  
39 department. If the program administrator determines that the civil  
40 penalty was not assessed, or the finding of the deficiency was not

1 made, in accordance with applicable statutes or regulations of the  
 2 department, he or she may amend or dismiss the civil penalty or  
 3 finding of deficiency. The licensee shall be notified in writing of  
 4 the program administrator's decision within 60 business days of  
 5 the date when all necessary information has been provided to the  
 6 department by the licensee. The program administrator's decision  
 7 is considered final and concludes the licensee's administrative  
 8 appeal rights regarding the appeal conducted pursuant to this  
 9 paragraph.

10 *(B) Notwithstanding any other law, if a licensee prevails in an*  
 11 *appeal pursuant to subparagraph (A), the department shall refund*  
 12 *to the licensee the amount of any civil penalty that the licensee*  
 13 *had paid in connection with the citation within 10 business days*  
 14 *of a final determination by the administrator of the Community*  
 15 *Care Licensing Division.*

16 ~~(j)~~

17 *(k)* The department shall adopt regulations implementing this  
 18 section.

19 ~~(m)~~

20 *(l)* The department shall, by January 1, 2016, amend its  
 21 regulations to reflect the changes to this section made by Section  
 22 4 of Chapter 813 of the Statutes of 2014.

23 ~~(n)~~

24 *(m)* Notwithstanding the Administrative Procedure Act (Chapter  
 25 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 26 Title 2 of the Government Code), the department may implement  
 27 and administer the changes made by the act that added this  
 28 subdivision through all-county letters or similar written instructions  
 29 until regulations are adopted pursuant to the Administrative  
 30 Procedure Act.

31 SEC. 3. Section 1569.49 of the Health and Safety Code is  
 32 amended to read:

33 1569.49. (a) In addition to the suspension, temporary  
 34 suspension, or revocation of a license issued under this chapter,  
 35 the department shall levy civil penalties as follows:

36 (b) (1) The amount of the civil penalty shall be one hundred  
 37 dollars (\$100) per day for each violation of this chapter if the  
 38 agency or facility failed to correct a deficiency after being provided  
 39 a specified length of time to correct that deficiency. ~~If the nature~~  
 40 ~~or seriousness of the violation or the frequency of the violation~~

1 warrants a higher penalty or an immediate civil penalty assessment,  
2 or both, as provided in this chapter, a correction of the deficiency  
3 shall not impact the imposition of a civil penalty.

4 (A) If a licensee or a licensee's representative submits evidence  
5 to the department that the licensee has corrected a deficiency, and  
6 the department, after reviewing that evidence, has determined that  
7 the deficiency has been corrected, the civil penalty shall cease as  
8 of the day the department received that evidence.

9 (B) If the department deems it necessary, the department shall  
10 inspect the facility within five working days after the department  
11 receives evidence pursuant to subparagraph (A) to confirm that  
12 the deficiency has been corrected.

13 (C) If the department determines that the deficiency has not  
14 been corrected, the civil penalties shall continue to accrue from  
15 the date of the original citation.

16 (D) If the department is able to verify that the deficiency was  
17 corrected prior to the date on which the department received the  
18 evidence pursuant to subparagraph (A), the civil penalty shall  
19 cease as of that earlier date.

20 (2) (A) ~~Any~~ If the department issues a notification of deficiency  
21 to an agency or facility that repeats for a repeat violation of a  
22 violation specified in paragraph (1) within 12 months of a prior  
23 violation having a similar factual description of the deficiency as  
24 stated on the notification of deficiency, (1), the department shall  
25 be subject to assess an immediate civil penalty of two hundred  
26 fifty dollars (\$250) per repeat violation and one hundred dollars  
27 (\$100) for each day the repeat violation continues after citation.

28 (B) For purposes of this section, "repeat violation" means the  
29 violation within 12 months of a prior violation of a statutory or  
30 regulatory provision designated by the same combination of letters  
31 or numerals or, both letters and numerals.

32 (3) If the nature or seriousness of the violation or the frequency  
33 of the violation warrants a higher penalty or an immediate civil  
34 penalty assessment, or both, as provided in this chapter, a  
35 correction of the deficiency shall not impact the imposition of a  
36 civil penalty.

37 (c) The department shall assess an immediate civil penalty of  
38 five hundred dollars (\$500) per violation and one hundred dollars  
39 (\$100) for each day the violation continues after citation for any  
40 of the following serious violations:

- 1 (1) Any violation that results in the injury or illness of a resident.  
2 (2) (A) Fire clearance violations, including, but not limited to,  
3 overcapacity, ambulatory status, inoperable smoke alarms, and  
4 inoperable fire alarm systems. The civil penalty shall not be  
5 assessed if the licensee has done either of the following:  
6 (i) Requested the appropriate fire clearance based on ambulatory,  
7 nonambulatory, or bedridden status, and the decision is pending.  
8 (ii) Initiated eviction proceedings.  
9 (B) A licensee denied a clearance for bedridden residents may  
10 appeal to the fire authority, and, if that appeal is denied, may  
11 subsequently appeal to the Office of the State Fire Marshal, and  
12 shall not be assessed an immediate civil penalty until the final  
13 appeal is decided, or after 60 days has passed from the date of the  
14 citation, whichever is earlier.  
15 (3) Absence of supervision as required by statute or regulation.  
16 (4) Accessible bodies of water, when prohibited in this chapter  
17 or regulations adopted pursuant to this chapter.  
18 (5) Accessible firearms, ammunition, or both.  
19 (6) Refused entry to a facility or any part of a facility in violation  
20 of Section 1569.32, 1569.33, or 1569.35.  
21 (7) The presence of a person subject to a department Order of  
22 Exclusion on the premises.  
23 (d) ~~Any~~ *If the department issues a notification of deficiency to*  
24 *a facility that repeats a for a repeat violation of a violation*  
25 *specified in subdivision (e) within 12 months of a prior violation,*  
26 *having a similar factual description of the deficiency as stated on*  
27 *the notification of deficiency, (c), the department shall be subject*  
28 *to assess an immediate civil penalty of one thousand dollars*  
29 *(\$1,000) per repeat violation and one hundred dollars (\$100) for*  
30 *each day the repeat violation continues after citation.*  
31 (e) For a violation that the department determines resulted in  
32 the death of a resident, the civil penalty shall be fifteen thousand  
33 dollars (\$15,000).  
34 (f) For a violation that the department determines constitutes  
35 physical abuse, as defined in Section 15610.63 of the Welfare and  
36 Institutions Code, or resulted in serious bodily injury, as defined  
37 in Section 15610.67 of the Welfare and Institutions Code, to a  
38 resident, the civil penalty shall be ten thousand dollars (\$10,000).

- 1 (g) (1) Before the assessment of a civil penalty pursuant to  
2 subdivision (e) or (f), the decision shall be approved by the program  
3 administrator of the Community Care Licensing Division.
- 4 (2) ~~If the (A) The department assesses a shall reduce the amount~~  
5 ~~of a civil penalty pursuant to subdivision (e) or (f), that (f) by the~~  
6 ~~amount of the civil penalty shall prevail and the civil penalty~~  
7 ~~already assessed for the underlying violation shall be waived.~~  
8 ~~violation.~~
- 9 ~~(h) A violation cited by the department shall be classified~~  
10 ~~according to the nature of the violation and shall indicate the~~  
11 ~~classification on its face.~~
- 12 ~~(1) A Type AA violation is a violation that the department~~  
13 ~~determines resulted in the death or serious bodily injury of, or that~~  
14 ~~constitutes physical abuse of, a client, pursuant to subdivision (e)~~  
15 ~~or (f).~~
- 16 ~~(2) A Type A violation is a violation that the department~~  
17 ~~determines poses a direct and immediate risk to the health or safety~~  
18 ~~of a person in care.~~
- 19 ~~(3) A Type B violation is a violation that does not meet the~~  
20 ~~standards of a Type AA or A violation, but that the department~~  
21 ~~determines poses a potential risk to the health or safety of a person~~  
22 ~~in care.~~
- 23 ~~(4) A Type C violation is a violation that does not meet the~~  
24 ~~standards of a Type AA, A, or B violation.~~
- 25 ~~(B) If the amount of the civil penalty that the department has~~  
26 ~~already assessed for the underlying violation exceeds the amount~~  
27 ~~of the penalty pursuant to subdivision (e) or (f), the larger amount~~  
28 ~~shall prevail and be due and payable as already assessed by the~~  
29 ~~department.~~
- 30 ~~(i)~~
- 31 (h) (1) A notification of a deficiency written by a representative  
32 of the department shall include a factual description of the nature  
33 of the deficiency fully stating the manner in which the licensee  
34 failed to comply with the specified statute or regulation, and, if  
35 applicable, the particular place or area of the facility in which the  
36 deficiency occurred. The department shall make a good faith effort  
37 to work with the licensee to determine the cause of the deficiency  
38 and ways to prevent any repeat violations.
- 39 (2) The department shall adopt regulations setting forth the  
40 appeal procedures for deficiencies.

1 (j)

2 (i) (1) A licensee shall have the right to submit to the  
3 department a written request for a formal review of a civil penalty  
4 assessed pursuant to subdivisions (d) and (e) within 15 business  
5 days of receipt of the notice of a civil penalty assessment and shall  
6 provide all available supporting documentation at that time. The  
7 review shall be conducted by the deputy director of the Community  
8 Care Licensing Division. The licensee may submit additional  
9 supporting documentation that was unavailable at the time of  
10 submitting the request for review within the first 30 business days  
11 after submitting the request for review. If the department requires  
12 additional information from the licensee, that information shall be  
13 requested within the first 30 business days after receiving the  
14 request for review. The licensee shall provide this additional  
15 information within 30 business days of receiving the request from  
16 the department. If the deputy director determines that the civil  
17 penalty was not assessed, or the finding of the deficiency that  
18 resulted in the assessment of the civil penalty was not made, in  
19 accordance with applicable statutes or regulations of the  
20 department, he or she may amend or dismiss the civil penalty or  
21 finding of deficiency. The licensee shall be notified in writing of  
22 the deputy director's decision within 60 business days of the date  
23 when all necessary information has been provided to the  
24 department by the licensee.

25 (2) (A) Upon exhausting the review described in paragraph  
26 (1), a licensee may further appeal that decision to an administrative  
27 law judge. Proceedings shall be conducted in accordance with  
28 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
29 3 of Title 2 of the Government Code, and the department shall  
30 have all the powers granted by those provisions. In all proceedings  
31 conducted in accordance with this section, the standard of proof  
32 shall be by a preponderance of the evidence.

33 (B) *Notwithstanding any other law, if a licensee prevails in an*  
34 *appeal pursuant to subparagraph (A), the department shall refund*  
35 *to the licensee the amount of any civil penalty that the licensee*  
36 *had paid in connection with the citation within 10 business days*  
37 *of a final determination by the administrative law judge.*

38 (3) If, in addition to an assessment of civil penalties, the  
39 department elects to file an administrative action to suspend or  
40 revoke the facility license that includes violations relating to the

1 assessment of the civil penalties, the department review of the  
2 pending appeal shall cease and the assessment of the civil penalties  
3 shall be heard as part of the administrative action process.

4 ~~(k)~~

5 *(j)* (1) A licensee shall have the right to submit to the  
6 department a written request for a formal review of any other civil  
7 penalty or deficiency not described in subdivision-~~(j)~~ *(i)* within 15  
8 business days of receipt of the notice of a civil penalty assessment  
9 or a finding of a deficiency, and shall provide all available  
10 supporting documentation at that time. The review shall be  
11 conducted by a regional manager of the Community Care Licensing  
12 Division. The licensee may submit additional supporting  
13 documentation that was unavailable at the time of submitting the  
14 request for review within the first 30 business days after submitting  
15 the request for review. If the department requires additional  
16 information from the licensee, that information shall be requested  
17 within the first 30 business days after receiving the request for  
18 review. The licensee shall provide this additional information  
19 within 30 business days of receiving the request from the  
20 department. If the regional manager determines that the civil  
21 penalty was not assessed, or the finding of the deficiency was not  
22 made, in accordance with applicable statutes or regulations of the  
23 department, he or she may amend or dismiss the civil penalty or  
24 finding of deficiency. The licensee shall be notified in writing of  
25 the regional manager's decision within 60 business days of the  
26 date when all necessary information has been provided to the  
27 department by the licensee.

28 (2) *(A)* Upon exhausting the review described in paragraph  
29 (1), the licensee may further appeal that decision to the program  
30 administrator of the Community Care Licensing Division within  
31 15 business days of receipt of notice of the regional manager's  
32 decision. The licensee may submit additional supporting  
33 documentation that was unavailable at the time of appeal to the  
34 program administrator within the first 30 business days after  
35 requesting that appeal. If the department requires additional  
36 information from the licensee, that information shall be requested  
37 within the first 30 business days after receiving the request for the  
38 appeal. The licensee shall provide this additional information  
39 within 30 business days of receiving the request from the  
40 department. If the program administrator determines that the civil

1 penalty was not assessed, or the finding of the deficiency was not  
 2 made, in accordance with applicable statutes or regulations of the  
 3 department, he or she may amend or dismiss the civil penalty or  
 4 finding of deficiency. The licensee shall be notified in writing of  
 5 the program administrator's decision within 60 business days of  
 6 the date when all necessary information has been provided to the  
 7 department by the licensee. The program administrator's decision  
 8 is considered final and concludes the licensee's administrative  
 9 appeal rights regarding the appeal conducted pursuant to this  
 10 paragraph.

11 *(B) Notwithstanding any other law, if a licensee prevails in an*  
 12 *appeal pursuant to subparagraph (A), the department shall refund*  
 13 *to the licensee the amount of any civil penalty that the licensee*  
 14 *had paid in connection with the citation within 10 business days*  
 15 *of a final determination by the administrator of the Community*  
 16 *Care Licensing Division.*

17 ~~(j)~~

18 *(k)* The department shall adopt regulations implementing this  
 19 section.

20 ~~(m)~~

21 *(l)* The department shall, by January 1, 2016, amend its  
 22 regulations to reflect the changes to this section made by Section  
 23 6 of Chapter 813 of the Statutes of 2014.

24 ~~(n)~~

25 *(m)* Notwithstanding the Administrative Procedure Act (Chapter  
 26 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
 27 Title 2 of the Government Code), the department may implement  
 28 and administer the changes made by the act that added this  
 29 subdivision through all-county letters or similar written instructions  
 30 until regulations are adopted pursuant to the Administrative  
 31 Procedure Act.

32 SEC. 4. Section 1596.8595 of the Health and Safety Code is  
 33 amended to read:

34 1596.8595. (a) (1) Each licensed child day care facility shall  
 35 post a copy of any licensing report pertaining to the facility that  
 36 documents either a facility—~~visit~~ *inspection* or a complaint  
 37 investigation that results in a citation for a violation that, if not  
 38 corrected, will create a direct and immediate risk to the health,  
 39 safety, or personal rights of *the* children in care. The licensing  
 40 report provided by the department shall be posted immediately

1 upon receipt, adjacent to the postings required pursuant to Section  
2 1596.817 and on, or immediately adjacent to, the interior side of  
3 the main door to the facility and shall remain posted for 30  
4 consecutive days.

5 (2) A family day care home shall comply with the posting  
6 requirements contained in paragraph (1) during the hours when  
7 clients are present.

8 (3) Failure to comply with paragraph (1) shall result in an  
9 immediate civil penalty of one hundred dollars (\$100).

10 (b) (1) Notwithstanding subdivision (b) of Section 1596.859,  
11 the licensee shall post a licensing report or other appropriate  
12 document verifying the licensee's compliance or noncompliance  
13 with the department's order to correct a deficiency that is subject  
14 to posting pursuant to paragraph (1) of subdivision (a). The  
15 licensing report or other document shall be posted immediately  
16 upon receipt, adjacent to the postings required pursuant to Section  
17 1596.817, on, or immediately adjacent to, the interior side of the  
18 main door into the facility and shall be posted for a period of 30  
19 consecutive days.

20 (2) A family day care home shall comply with the posting  
21 requirements contained in paragraph (1) during the hours when  
22 clients are present.

23 (3) Failure to comply with paragraph (1) shall result in an  
24 immediate civil penalty of one hundred dollars (\$100).

25 (c) (1) A licensed child day care facility shall provide to the  
26 parents or guardians of each child receiving services in the facility  
27 copies of any licensing report that documents ~~any Type A or more~~  
28 *serious a citation issued pursuant to subdivision (e) or (f) of Section*  
29 *1569.99 or subdivision (e) or (f) of Section 1597.58* or that  
30 represents an immediate risk to the health, safety, or personal rights  
31 of children in care as set forth in paragraph (1) of subdivision (a)  
32 of Section 1596.893b.

33 (2) Upon enrollment of a new child in a facility, the licensee  
34 shall provide to the parents or legal guardians of the newly  
35 enrolling child copies of any licensing report that the licensee has  
36 received during the prior 12-month period that documents ~~any~~  
37 *Type A or more serious a citation issued pursuant to subdivision*  
38 *(e) or (f) of Section 1569.99 or subdivision (e) or (f) of Section*  
39 *1597.58* or that represents an immediate risk to the health, safety,

1 or personal rights of children in care as set forth in paragraph (1)  
2 of subdivision (a) of Section 1596.893b.

3 (3) The licensee shall require each recipient of the licensing  
4 report described in paragraph (1) pertaining to a complaint  
5 investigation to sign a statement indicating that he or she has  
6 received the document and the date it was received.

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

9 (d) (1) A licensed child day care facility shall provide to the  
10 parents or legal guardians of each child receiving services in the  
11 facility copies of any licensing document pertaining to a conference  
12 conducted by a local licensing agency management representative  
13 with the licensee in which issues of noncompliance are discussed.

14 (2) Upon enrollment of a new child in a facility, the licensee  
15 shall provide to the parents or legal guardians of the newly  
16 enrolling child copies of any licensing document that the licensee  
17 has received during the prior 12-month period that pertains to a  
18 conference conducted by a local licensing agency management  
19 representative with the licensee in which issues of noncompliance  
20 are discussed.

21 (3) The licensee shall require each recipient of the licensing  
22 document pertaining to a conference to sign a statement indicating  
23 that he or she has received the document and the date it was  
24 received.

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

27 SEC. 5. Section 1596.99 of the Health and Safety Code is  
28 amended to read:

29 1596.99. (a) In addition to the suspension, temporary  
30 suspension, or revocation of a license issued under this chapter or  
31 Chapter 3.4 (commencing with Section 1596.70), the department  
32 shall levy civil penalties as follows:

33 (b) (1) The amount of the civil penalty shall be one hundred  
34 dollars (\$100) per day for each violation of this chapter if an agency  
35 or facility fails to correct a deficiency after being provided a  
36 specified length of time to correct the deficiency. ~~If the nature or  
37 seriousness of the violation or the frequency of the violation  
38 warrants a higher penalty or an immediate civil penalty assessment,  
39 or both, as provided in this chapter. A correction of a deficiency  
40 shall not impact the imposition of a civil penalty.~~

1 (A) If a licensee or a licensee's representative submits evidence  
2 to the department that the licensee has corrected a deficiency, and  
3 the department, after reviewing that evidence, has determined that  
4 the deficiency has been corrected, the civil penalty shall cease as  
5 of the day the department received that evidence.

6 (B) If the department deems it necessary, the department shall  
7 inspect the facility within five working days after the department  
8 receives evidence pursuant to subparagraph (A) to confirm that  
9 the deficiency has been corrected.

10 (C) If the department determines that the deficiency has not  
11 been corrected, the civil penalties shall continue to accrue from  
12 the date of the original citation.

13 (D) If the department is able to verify that the deficiency was  
14 corrected prior to the date on which the department received the  
15 evidence pursuant to subparagraph (A), the civil penalty shall  
16 cease as of that earlier date.

17 (2) (A) ~~Any~~ If the department issues a notification of deficiency  
18 to an agency or facility that repeats for a repeat violation of a  
19 violation specified in paragraph (1) within 12 months of a prior  
20 violation having a similar factual description of the deficiency on  
21 the notification of deficiency, (1), the department shall be subject  
22 to assess an immediate civil penalty of two hundred fifty dollars  
23 (\$250) per repeat violation and one hundred dollars (\$100) for  
24 each day the repeat violation continues after citation.

25 (B) For purposes of this section, "repeat violation" means the  
26 violation within 12 months of a prior violation of a statutory or  
27 regulatory provision designated by the same combination of letters  
28 or numerals, or both letters and numerals.

29 (3) If the nature or seriousness of the violation or the frequency  
30 of the violation warrants a higher penalty or an immediate civil  
31 penalty assessment, or both, as provided in this chapter. A  
32 correction of a deficiency shall not impact the imposition of a civil  
33 penalty.

34 (c) The department shall assess an immediate civil penalty of  
35 five hundred dollars (\$500) per violation and one hundred dollars  
36 (\$100) for each day the violation continues after citation, for any  
37 of the following serious violations:

38 (1) Any violation that the department determines resulted in the  
39 injury or illness of a child.

- 1 (2) Fire clearance violations, including, but not limited to,  
2 overcapacity, inoperable smoke alarms, and inoperable fire alarm  
3 systems.
- 4 (3) Absence of supervision, including, but not limited to, a child  
5 left unattended, supervision of a child by a person under 18 years  
6 of age, and lack of supervision resulting in a child wandering away.
- 7 (4) Accessible bodies of ~~water.~~ *water if prohibited by this*  
8 *chapter or regulations adopted pursuant to this chapter.*
- 9 (5) Accessible firearms, ammunition, or both.
- 10 (6) Refused entry to a facility or any part of a facility in violation  
11 of Section 1596.852, 1596.853, or 1597.09.
- 12 (7) The presence of a person subject to a department Order of  
13 Exclusion on the premises.
- 14 (d) ~~Any~~ *If the department issues a notice of deficiency to a*  
15 *facility that repeats a for a repeat violation of a violation specified*  
16 *in subdivision (c) within 12 months of a prior violation, having a*  
17 *similar factual description of deficiency as stated in the notification*  
18 *of deficiency, (c), the department shall be subject to assess an*  
19 *immediate civil penalty of one thousand dollars (\$1,000) per repeat*  
20 *violation and one hundred dollars (\$100) for each day the repeat*  
21 *violation continues after citation.*
- 22 (e) For a violation that the department determines resulted in  
23 the death of a child, the civil penalty shall be assessed as follows:
- 24 (1) Seven thousand five hundred dollars (\$7,500) for a facility  
25 licensed to care for 30 or fewer children.
- 26 (2) Ten thousand dollars (\$10,000) for a facility licensed to care  
27 for 31 to 100, inclusive, children.
- 28 (3) Fifteen thousand dollars (\$15,000) for a facility licensed to  
29 care for more than 100 children.
- 30 (f) (1) For a violation that the department determines constitutes  
31 physical abuse or resulted in serious injury, as defined in Section  
32 1596.8865, to a child, the civil penalty shall be assessed as follows:
- 33 (A) Two thousand five hundred dollars (\$2,500) for a facility  
34 licensed to care for 30 or fewer children.
- 35 (B) Five thousand dollars (\$5,000) for a facility licensed to care  
36 for 31 to 100, inclusive, children.
- 37 (C) Ten thousand dollars (\$10,000) for a facility licensed to  
38 care for more than 100 children.
- 39 (2) For purposes of this subdivision, “physical abuse” includes  
40 physical injury inflicted upon a child by another person by other

1 than accidental means, sexual abuse as defined in Section 11165.1  
 2 of the Penal Code, neglect as defined in Section 11165.2 of the  
 3 Penal Code, or unlawful corporal punishment or injury as defined  
 4 in Section 11165.4 of the Penal Code when the person responsible  
 5 for the child's welfare is a licensee, administrator, or employee of  
 6 any facility licensed to care for children, or an administrator or  
 7 employee of a public or private school or other institution or  
 8 agency.

9 (g) (1) Before the assessment of a civil penalty pursuant to  
 10 subdivision (e) or (f), the decision shall be approved by the program  
 11 administrator of the Community Care Licensing Division.

12 ~~(2) If the (A) The department assesses shall reduce the amount~~  
 13 ~~of a civil penalty pursuant to subdivision (e) or (f), that (f) by the~~  
 14 ~~amount of the civil penalty shall prevail and the civil penalty~~  
 15 ~~already assessed for the underlying violation shall be waived.~~  
 16 ~~violation.~~

17 ~~(h) Citations issued by the department shall be classified~~  
 18 ~~according to the nature of the violation and shall indicate the~~  
 19 ~~classification on its face.~~

20 ~~(1) A Type AA violation is a violation that the department~~  
 21 ~~determines resulted in the death or serious bodily injury of, or that~~  
 22 ~~constitutes physical abuse of, a client, pursuant to subdivision (e)~~  
 23 ~~or (f).~~

24 ~~(2) A Type A violation is a violation that the department~~  
 25 ~~determines poses a direct and immediate risk to the health or safety~~  
 26 ~~of a person in care.~~

27 ~~(3) A Type B violation is a violation that does not meet the~~  
 28 ~~standards of a Type AA or A violation, but that the department~~  
 29 ~~determines poses a potential risk to the health or safety of a person~~  
 30 ~~in care.~~

31 ~~(4) A Type C violation is a violation that does not meet the~~  
 32 ~~standards of a Type AA, A, or B violation.~~

33 ~~(B) If the amount of the civil penalty that the department has~~  
 34 ~~already assessed for the underlying violation exceeds the amount~~  
 35 ~~of the penalty pursuant to subdivision (e) or (f), the larger amount~~  
 36 ~~shall prevail and be due and payable as already assessed by the~~  
 37 ~~department.~~

38 (i)

39 (h) Notwithstanding any law, revenues received by the state  
 40 from the payment of civil penalties imposed on licensed child care

1 centers pursuant to this chapter or Chapter 3.4 (commencing with  
2 Section 1596.70), shall be deposited in the Child Health and Safety  
3 Fund, created pursuant to Chapter 4.6 (commencing with Section  
4 18285) of Part 6 of Division 9 of the Welfare and Institutions Code,  
5 and shall be expended, upon appropriation by the Legislature,  
6 pursuant to subdivision (f) of Section 18285 of the Welfare and  
7 Institutions Code exclusively for the technical assistance,  
8 orientation, training, and education of licensed day care center  
9 providers.

10 (f)

11 (i) (1) A notification of a deficiency written by a representative  
12 of the department shall include a factual description of the nature  
13 of the deficiency fully stating the manner in which the licensee  
14 failed to comply with the specified statute or regulation, and, if  
15 applicable, the particular place or area in which the deficiency  
16 occurred. The department shall make a good faith effort to work  
17 with the licensee to determine the cause of the deficiency and ways  
18 to prevent any repeat violations.

19 (2) The department shall adopt regulations setting forth the  
20 appeal procedures for deficiencies.

21 (k)

22 (j) (1) A licensee shall have the right to submit to the  
23 department a written request for a formal review of a civil penalty  
24 assessed pursuant to subdivisions (d) and (e) within 15 business  
25 days of receipt of the notice of a civil penalty assessment and shall  
26 provide all available supporting documentation at that time. The  
27 review shall be conducted by the deputy director of the Community  
28 Care Licensing Division. The licensee may submit additional  
29 supporting documentation that was unavailable at the time of  
30 submitting the request for review within the first 30 business days  
31 after submitting the request for review. If the department requires  
32 additional information from the licensee, that information shall be  
33 requested within the first 30 business days after receiving the  
34 request for review. The licensee shall provide this additional  
35 information within 30 business days of receiving the request from  
36 the department. If the deputy director determines that the civil  
37 penalty was not assessed, or the finding of the deficiency that  
38 resulted in the assessment of the civil penalty was not made, in  
39 accordance with applicable statutes or regulations of the  
40 department, he or she may amend or dismiss the civil penalty or

1 finding of deficiency. The licensee shall be notified in writing of  
2 the deputy director's decision within 60 business days of the date  
3 when all necessary information has been provided to the  
4 department by the licensee.

5 (2) (A) Upon exhausting the review described in paragraph  
6 (1), a licensee may further appeal that decision to an administrative  
7 law judge. Proceedings shall be conducted in accordance with  
8 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
9 3 of Title 2 of the Government Code, and the department shall  
10 have all the powers granted by those provisions. In all proceedings  
11 conducted in accordance with this section, the standard of proof  
12 shall be by a preponderance of the evidence.

13 (B) *Notwithstanding any other law, if a licensee prevails in an*  
14 *appeal pursuant to subparagraph (A), the department shall refund*  
15 *to the licensee the amount of any civil penalty that the licensee*  
16 *had paid in connection with the citation within 10 business days*  
17 *of a final determination by the administrative law judge.*

18 (3) If, in addition to an assessment of civil penalties, the  
19 department elects to file an administrative action to suspend or  
20 revoke the facility license that includes violations relating to the  
21 assessment of the civil penalties, the department review of the  
22 pending appeal shall cease and the assessment of the civil penalties  
23 shall be heard as part of the administrative action process.

24 (f)

25 (k) (1) A licensee shall have the right to submit to the  
26 department a written request for a formal review of any other civil  
27 penalty or deficiency not described in subdivision ~~(k)~~ (j) within  
28 15 business days of receipt of the notice of a civil penalty  
29 assessment or a finding of a deficiency, and shall provide all  
30 available supporting documentation at that time. The review shall  
31 be conducted by a regional manager of the Community Care  
32 Licensing Division. The licensee may submit additional supporting  
33 documentation that was unavailable at the time of submitting the  
34 request for review within the first 30 business days after submitting  
35 the request for review. If the department requires additional  
36 information from the licensee, that information shall be requested  
37 within the first 30 business days after receiving the request for  
38 review. The licensee shall provide this additional information  
39 within 30 business days of receiving the request from the  
40 department. If the regional manager determines that the civil

1 penalty was not assessed, or the finding of the deficiency was not  
2 made, in accordance with applicable statutes or regulations of the  
3 department, he or she may amend or dismiss the civil penalty or  
4 finding of deficiency. The licensee shall be notified in writing of  
5 the regional manager's decision within 60 business days of the  
6 date when all necessary information has been provided to the  
7 department by the licensee.

8 (2) (A) Upon exhausting the review described in paragraph  
9 (1), the licensee may further appeal that decision to the program  
10 administrator of the Community Care Licensing Division within  
11 15 business days of receipt of notice of the regional manager's  
12 decision. The licensee may submit additional supporting  
13 documentation that was unavailable at the time of appeal to the  
14 program administrator within the first 30 business days after  
15 requesting that appeal. If the department requires additional  
16 information from the licensee, that information shall be requested  
17 within the first 30 business days after receiving the request for the  
18 appeal. The licensee shall provide this additional information  
19 within 30 business days of receiving the request from the  
20 department. If the program administrator determines that the civil  
21 penalty was not assessed, or the finding of the deficiency was not  
22 made, in accordance with applicable statutes or regulations of the  
23 department, he or she may amend or dismiss the civil penalty or  
24 finding of deficiency. The licensee shall be notified in writing of  
25 the program administrator's decision within 60 business days of  
26 the date when all necessary information has been provided to the  
27 department by the licensee. The program administrator's decision  
28 is considered final and concludes the licensee's administrative  
29 appeal rights regarding the appeal conducted pursuant to this  
30 paragraph.

31 (B) *Notwithstanding any other law, if a licensee prevails in an*  
32 *appeal pursuant to subparagraph (A), the department shall refund*  
33 *to the licensee the amount of any civil penalty that the licensee*  
34 *had paid in connection with the citation within 10 business days*  
35 *of a final determination by the program administrator of the*  
36 *Community Care Licensing Division.*

37 (iii)

38 (l) The department shall, by January 1, 2016, amend its  
39 regulations to reflect the changes to this section made by Section  
40 8 of Chapter 813 of the Statutes of 2014.

1 (n)

2 (m) Notwithstanding the Administrative Procedure Act (Chapter  
3 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
4 Title 2 of the Government Code), the department may implement  
5 and administer the changes made by the act that added this  
6 subdivision through all-county letters or similar written instructions  
7 until regulations are adopted pursuant to the Administrative  
8 Procedure Act.

9 ~~(e) This section shall become operative on July 1, 2015.~~

10 SEC. 6. Section 1597.58 of the Health and Safety Code is  
11 amended to read:

12 1597.58. (a) In addition to the suspension, temporary  
13 suspension, or revocation of a license issued under this chapter,  
14 the department shall levy a civil penalty.

15 (b) (1) The amount of the civil penalty shall be one hundred  
16 dollars (\$100) per day for each violation of this chapter if an agency  
17 or facility fails to correct a deficiency after being provided a  
18 specified length of time to correct that deficiency. ~~If the nature or  
19 seriousness of the violation or the frequency of the violation  
20 warrants a higher penalty or an immediate civil penalty assessment,  
21 or both, as provided in this chapter, a correction of the deficiency  
22 shall not impact the imposition of a civil penalty.~~

23 (A) *If a licensee or a licensee's representative submits evidence  
24 to the department that the licensee has corrected a deficiency, and  
25 the department, after reviewing that evidence, has determined that  
26 the deficiency has been corrected, the civil penalty shall cease as  
27 of the day the department received that evidence.*

28 (B) *If the department deems it necessary, the department shall  
29 inspect the facility within five working days after the department  
30 receives evidence pursuant to subparagraph (A) to confirm that  
31 the deficiency has been corrected.*

32 (C) *If the department determines that the deficiency has not  
33 been corrected, the civil penalties shall continue to accrue from  
34 the date of the original citation.*

35 (D) *If the department is able to verify that the deficiency was  
36 corrected prior to the date on which the department received the  
37 evidence pursuant to subparagraph (A), the civil penalty shall  
38 cease as of that earlier date.*

39 (2) (A) ~~Any~~ *If the department issues a notification of deficiency  
40 to a facility that repeats for a repeat violation of a violation*

1 specified in paragraph (1) within 12 months of a prior violation  
2 having a similar factual description of deficiency as stated on the  
3 notification of deficiency, (1), the department shall be subject to  
4 assess an immediate civil penalty of two hundred fifty dollars  
5 (\$250) per repeat violation and one hundred dollars (\$100) for  
6 each day the repeat violation continues after citation.

7 (B) For purposes of this section, "repeat violation" means the  
8 violation within 12 months of a prior violation of a statutory or  
9 regulatory provision designated by the same combination of letters  
10 or numerals, or both letters and numerals.

11 (3) If the nature or seriousness of the violation or the frequency  
12 of the violation warrants a higher penalty or an immediate civil  
13 penalty assessment, or both, as provided in this chapter, a  
14 correction of the deficiency shall not impact the imposition of a  
15 civil penalty.

16 (c) The department shall assess an immediate civil penalty of  
17 five hundred dollars (\$500) per violation and one hundred dollars  
18 (\$100) for each day the violation continues after citation, for any  
19 of the following serious violations:

20 (1) Any violation that the department determines resulted in the  
21 injury or illness of a child.

22 (2) Absence of supervision, including, but not limited to, a child  
23 left unattended, a child left alone with a person under 18 years of  
24 age, and lack of supervision resulting in a child wandering away.

25 (3) Accessible bodies of water. water if prohibited by this  
26 chapter or regulations adopted pursuant to this chapter.

27 (4) Accessible firearms, ammunition, or both.

28 (5) Refused entry to a facility or any part of a facility in violation  
29 of Sections 1596.852, 1596.853, 1597.55a, and 1597.55b.

30 (6) The presence of a person subject to a department Order of  
31 Exclusion on the premises.

32 (d) ~~Any~~ If the department issues a notification of deficiency to  
33 a facility that repeats a for a repeat violation of a violation  
34 specified in subdivision (c) within 12 months of a prior violation,  
35 having a similar factual description of deficiency as stated in the  
36 notification of deficiency, is subject to (c), the department shall  
37 assess an immediate civil penalty of one thousand dollars (\$1,000)  
38 per repeat violation and one hundred dollars (\$100) for each day  
39 the repeat violation continues after citation.

- 1 (e) For a violation that the department determines resulted in  
2 the death of a child, the civil penalty shall be assessed as follows:
- 3 (1) Five thousand dollars (\$5,000) for a small family day care  
4 home, as described in Section 1597.44.
- 5 (2) Seven thousand five hundred dollars (\$7,500) for a large  
6 family day care home, as described in Section 1597.465.
- 7 (f) (1) For a violation that the department determines constitutes  
8 physical abuse or resulted in serious injury, as defined in Section  
9 1596.8865, to a child, the civil penalty shall be assessed as follows:
- 10 (A) One thousand dollars (\$1,000) for a small family day care  
11 home, as described in Section 1597.44.
- 12 (B) Two thousand dollars (\$2,000) for a large family day care  
13 home, as described in Section 1597.465.
- 14 (2) For purposes of this subdivision, “physical abuse” includes  
15 physical injury inflicted upon a child by another person by other  
16 than accidental means, sexual abuse as defined in Section 11165.1  
17 of the Penal Code, neglect as defined in Section 11165.2 of the  
18 Penal Code, or unlawful corporal punishment or injury as defined  
19 in Section 11165.4 of the Penal Code when the person responsible  
20 for the child’s welfare is a licensee, administrator, or employee of  
21 any facility licensed to care for children, or an administrator or  
22 employee of a public or private school or other institution or  
23 agency.
- 24 (g) (1) Before the assessment of a civil penalty pursuant to  
25 subdivision (e) or (f), the decision shall be approved by the program  
26 administrator of the Community Care Licensing Division.
- 27 (2) ~~If the (A) The department assesses shall reduce the amount~~  
28 ~~of a civil penalty due pursuant to subdivision (e) or (f), that (f) by~~  
29 ~~the amount of the civil penalty shall prevail and the civil penalty~~  
30 ~~already assessed for the underlying violation shall be waived.~~  
31 ~~violation.~~
- 32 ~~(h) A violation cited by the department shall be classified~~  
33 ~~according to the nature of the violation and shall indicate the~~  
34 ~~classification on its face.~~
- 35 ~~(1) A Type AA violation is a violation that the department~~  
36 ~~determines resulted in the death or serious bodily injury of, or that~~  
37 ~~constitutes physical abuse of, a client, pursuant to subdivision (e)~~  
38 ~~or (f).~~

1 ~~(2) A Type A violation is a violation that the department~~  
 2 ~~determines poses a direct and immediate risk to the health or safety~~  
 3 ~~of a person in care.~~

4 ~~(3) A Type B violation is a violation that does not meet the~~  
 5 ~~standards of a Type AA or A violation, but that the department~~  
 6 ~~determines poses a potential risk to the health or safety of a person~~  
 7 ~~in care.~~

8 ~~(4) A Type C violation is a violation that does not meet the~~  
 9 ~~standards of a Type AA, A, or B violation.~~

10 *(B) If the amount of the civil penalty that the department has*  
 11 *already assessed for the underlying violation exceeds the amount*  
 12 *of the penalty pursuant to subdivision (e) or (f), the larger amount*  
 13 *shall prevail and be due and payable as already assessed by the*  
 14 *department.*

15 ~~(i)~~

16 *(h) Notwithstanding any other law, revenues received by the*  
 17 *state from the payment of civil penalties imposed on licensed*  
 18 *family day care homes pursuant to this chapter or Chapter 3.4*  
 19 *(commencing with Section 1596.70), shall be deposited in the*  
 20 *Child Health and Safety Fund, created pursuant to Chapter 4.6*  
 21 *(commencing with Section 18285) of Part 6 of Division 9 of the*  
 22 *Welfare and Institutions Code, and shall be expended, upon*  
 23 *appropriation by the Legislature, pursuant to subdivision (f) of*  
 24 *Section 18285 of the Welfare and Institutions Code exclusively*  
 25 *for the technical assistance, orientation, training, and education of*  
 26 *licensed family day care home providers.*

27 ~~(j)~~

28 *(i) (1) A notification of a deficiency written by a representative*  
 29 *of the department shall include a factual description of the nature*  
 30 *of the deficiency fully stating the manner in which the licensee*  
 31 *failed to comply with the specified statute or regulation, and, if*  
 32 *applicable, the particular place or area in which the deficiency*  
 33 *occurred. The department shall make a good faith effort to work*  
 34 *with the licensee to determine the cause of the deficiency and ways*  
 35 *to prevent any repeat violations.*

36 *(2) The department shall adopt regulations setting forth appeal*  
 37 *procedures for deficiencies.*

38 ~~(k)~~

39 *(j) (1) A licensee shall have the right to submit to the*  
 40 *department a written request for a formal review of a civil penalty*

1 assessed pursuant to subdivisions (d) and (e) within 15 business  
2 days of receipt of the notice of a civil penalty assessment and shall  
3 provide all available supporting documentation at that time. The  
4 review shall be conducted by the deputy director of the Community  
5 Care Licensing Division. The licensee may submit additional  
6 supporting documentation that was unavailable at the time of  
7 submitting the request for review within the first 30 business days  
8 after submitting the request for review. If the department requires  
9 additional information from the licensee, that information shall be  
10 requested within the first 30 business days after receiving the  
11 request for review. The licensee shall provide this additional  
12 information within 30 business days of receiving the request from  
13 the department. If the deputy director determines that the civil  
14 penalty was not assessed, or the finding of the deficiency that  
15 resulted in the assessment of the civil penalty was not made, in  
16 accordance with applicable statutes or regulations of the  
17 department, he or she may amend or dismiss the civil penalty or  
18 finding of deficiency. The licensee shall be notified in writing of  
19 the deputy director's decision within 60 business days of the date  
20 when all necessary information has been provided to the  
21 department by the licensee.

22 (2) (A) Upon exhausting the review described in paragraph  
23 (1), a licensee may further appeal that decision to an administrative  
24 law judge. Proceedings shall be conducted in accordance with  
25 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
26 3 of Title 2 of the Government Code, and the department shall  
27 have all the powers granted by those provisions. In all proceedings  
28 conducted in accordance with this section, the standard of proof  
29 shall be by a preponderance of the evidence.

30 (B) *Notwithstanding any other law, if a licensee prevails in an*  
31 *review pursuant to subparagraph (A), the department shall refund*  
32 *to the licensee the amount of any civil penalty that the licensee*  
33 *had paid in connection with the citation within 10 business days*  
34 *of a final determination by the administrative law judge.*

35 (3) If, in addition to an assessment of civil penalties, the  
36 department elects to file an administrative action to suspend or  
37 revoke the facility license that includes violations relating to the  
38 assessment of the civil penalties, the department review of the  
39 pending appeal shall cease and the assessment of the civil penalties  
40 shall be heard as part of the administrative action process.

1     ~~(f)~~

2     ~~(k)~~ (1) A licensee shall have the right to submit to the  
3 department a written request for a formal review of any other civil  
4 penalty or deficiency not described in subdivision-~~(k)~~ ~~(j)~~ within  
5 15 business days of receipt of the notice of a civil penalty  
6 assessment or a finding of a deficiency, and shall provide all  
7 available supporting documentation at that time. The review shall  
8 be conducted by a regional manager of the Community Care  
9 Licensing Division. The licensee may submit additional supporting  
10 documentation that was unavailable at the time of submitting the  
11 request for review within the first 30 business days after submitting  
12 the request for review. If the department requires additional  
13 information from the licensee, that information shall be requested  
14 within the first 30 business days after receiving the request for  
15 review. The licensee shall provide this additional information  
16 within 30 business days of receiving the request from the  
17 department. If the regional manager determines that the civil  
18 penalty was not assessed, or the finding of the deficiency was not  
19 made, in accordance with applicable statutes or regulations of the  
20 department, he or she may amend or dismiss the civil penalty or  
21 finding of deficiency. The licensee shall be notified in writing of  
22 the regional manager's decision within 60 business days of the  
23 date when all necessary information has been provided to the  
24 department by the licensee.

25     (2) ~~(A)~~ Upon exhausting the review described in paragraph (1),  
26 the licensee may further appeal that decision to the program  
27 administrator of the Community Care Licensing Division within  
28 15 business days of receipt of notice of the regional manager's  
29 decision. The licensee may submit additional supporting  
30 documentation that was unavailable at the time of appeal to the  
31 program administrator within the first 30 business days after  
32 requesting that appeal. If the department requires additional  
33 information from the licensee, that information shall be requested  
34 within the first 30 business days after receiving the request for the  
35 appeal. The licensee shall provide this additional information  
36 within 30 business days of receiving the request from the  
37 department. If the program administrator determines that the civil  
38 penalty was not assessed, or the finding of the deficiency was not  
39 made, in accordance with applicable statutes or regulations of the  
40 department, he or she may amend or dismiss the civil penalty or

1 finding of deficiency. The licensee shall be notified in writing of  
2 the program administrator's decision within 60 business days of  
3 the date when all necessary information has been provided to the  
4 department by the licensee. The program administrator's decision  
5 is considered final and concludes the licensee's administrative  
6 appeal rights regarding the appeal conducted pursuant to this  
7 paragraph.

8 ~~(m) The department shall, by January 1, 2016, amend its~~  
9 ~~regulations to reflect the changes to this section made by Section~~  
10 ~~10 of Chapter 813 of the Statutes of 2014.~~

11 *(B) Notwithstanding any other law, if a licensee prevails in an*  
12 *appeal pursuant to subparagraph (A), the department shall refund*  
13 *to the licensee the amount of any civil penalty that the licensee*  
14 *had paid in connection with the citation within 10 business days*  
15 *of a final determination by the administrator of the Community*  
16 *Care Licensing Division.*

17 ~~(n)~~  
18 *(l) Notwithstanding the Administrative Procedure Act (Chapter*  
19 *3.5 (commencing with Section 11340) of Part 1 of Division 3 of*  
20 *Title 2 of the Government Code), the department may implement*  
21 *and administer the changes made by the act that added this*  
22 *subdivision through all-county letters or similar written instructions*  
23 *until regulations are adopted pursuant to the Administrative*  
24 *Procedure Act.*

25 ~~(o) This section shall become operative on July 1, 2015.~~

O



## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** SB 982, as amended April 14, 2016. McGuire. State Department of Developmental Services: Developmental Centers.

**ISSUE:** Should the Council support a study of the closing of the Developmental Centers in California?

**SUMMARY:** SB 982 requires a longitudinal quality of life study to monitor and evaluate the transition process and ensure our state follows through with its commitment to provide appropriate services to developmentally disabled Californians.

**BACKGROUND/ISSUES/ANALYSIS:** The Lanterman Developmental Disabilities Services Act declares that people with developmental disabilities and their families have a right to get the services and supports they need to live like people without disabilities.

In the 2015 May Revision, the Governor proposed to initiate the closure of the remaining three developmental centers in California. This means over the next five years, starting with the Sonoma Developmental Center (SDC), over 1000 developmental center residents will be transitioning into the community system with no developmental center to fall back on if the placement fails.

The Department of Developmental Services submitted to the Legislature a Plan for Closure of Sonoma Developmental Center this year. The closure plan established as its highest priority the health and safety of SDC residents, with a promise to the people of the State of California, the SDC residents and their families that no residents will be moved "...from SDC until appropriate services and supports identified in their Individual Program Plan (IPP) are available in the community."

The longitudinal study required by SB 982 is modeled after the highly successful study conducted as part of the Stockton Developmental Center closure. It took three-years to track residents' quality of life, satisfaction with services, and other factors before the individual left the developmental center and one and two years after they had moved.

Additionally, developmental center residents and their family members were asked to assess how well the closure was handled and to make recommendations for how the process could be improved.

**DISCUSSION:** These advocates have called on the state to prove developmental center residents will be appropriately served. SB 982 would do this through requiring the Department of Developmental Disabilities to:

- Develop and conduct a longitudinal study to assess the quality of life and outcomes of developmental center residents that relocate from the Developmental Centers as a result of the closure of that center
- Submit interim reports to the Legislature
- Require, upon the completion of the study, the department to submit the study to the Legislature

As a result, families can be assured that their loved ones are receiving quality care. Additionally, it would enable the state to learn from and correct any challenges that may arise from the transition, and would provide transparency and accountability on the state's investment and responsibility to the Developmentally Disabled community. (Source: Author's fact sheet).

**RECOMMENDATION:** Support SB 982 (McGuire).

**COUNCIL STRATEGIC PLAN OBJECTIVE :** Goal 2: Rights training and advocacy. Individuals with developmental disabilities and their families become aware of their rights and receive the supports and services they are entitled to by law across the lifespan, including early intervention, transition into school, education, transition to adult life, adult services and supports, and senior services and supports.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati

AMENDED IN SENATE APRIL 14, 2016  
AMENDED IN SENATE MARCH 28, 2016

**SENATE BILL**

**No. 982**

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**Introduced by Senator McGuire**

February 10, 2016

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An act to add and repeal Section 4474.12 of to the Welfare and Institutions Code, relating to developmental services.

LEGISLATIVE COUNSEL'S DIGEST

SB 982, as amended, McGuire. State Department of Developmental Services: ~~Sonoma State Hospital~~ *developmental centers*.

Existing law vests in the State Department of Developmental Services jurisdiction over state hospitals referred to as developmental centers for the provision of residential care to individuals with developmental disabilities, including the Sonoma State Hospital *Developmental Center, the Fairview Developmental Center, and the Porterville Developmental Center, as specified*. Existing law requires the department to comply with procedural requirements when closing a developmental center. Existing law required, on or before October 1, 2015, the State Department of Developmental Services to submit to the Legislature a plan or plans to close one or more developmental centers.

This bill would require, until January 1, 2021, *require* the department to develop and conduct a 3-year *contract for a longitudinal study, over the course of the 2017-18 through 2019-20, inclusive, fiscal years, study, commencing July 1, 2017*, to assess the quality of life and outcomes of developmental center residents ~~that~~ *who* relocate from the Sonoma State Hospital *Developmental Center, the Fairview Developmental Center, and the general treatment area of the Porterville Developmental Center* as a result of the closure of ~~that center~~ *those*

~~centers. The bill would specify the contents of the study, including assessments of the residents before they leave the center and at one-year and two-year intervals after they relocate from the center. qualifications and duties of the contractor, as specified. The bill would require the department to submit interim reports to the Legislature regarding the study at the end of the first and second years of the study. The bill would require, upon the completion of the study, the department to submit the study to the Legislature, 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 4474.12 is added to the Welfare and  
2 Institutions Code, *immediately following Section 4474.11*, to read:  
3 4474.12. (a) ~~The~~ *To ensure that persons with developmental*  
4 *disabilities who are moved from developmental centers to the*  
5 *community are receiving necessary services and supports, the*  
6 *department shall develop and conduct a three-year contract with*  
7 *an independent agency or organization for a longitudinal study*  
8 *study, commencing July 1, 2017, to assess the quality of life and*  
9 *outcomes of developmental center residents that who relocate from*  
10 *the Sonoma State Hospital Developmental Center, the Fairview*  
11 *Developmental Center, and the general treatment area of the*  
12 *Porterville Developmental Center, as those institutions are*  
13 *identified in Sections 4440 and 4440.5, as a result of the closure*  
14 *of that center. The study shall be conducted over the course of the*  
15 *2017-18 through 2019-20, inclusive, fiscal years. those centers.*  
16 (b) ~~The study conducted pursuant to this section shall do all of~~  
17 ~~the following:~~  
18 (1) ~~Measure the residents' quality of life, their satisfaction with~~  
19 ~~services, the degree to which the residents achieve their goals,~~  
20 ~~such as independence, and other dimensions as determined by the~~  
21 ~~department.~~  
22 (2) ~~Include assessments of the residents before they leave the~~  
23 ~~center and at one-year and two-year intervals after they relocate~~  
24 ~~from the center.~~  
25 (3) ~~Track the residential locations of the former residents of the~~  
26 ~~center for purposes of conducting the one-year and two-year~~  
27 ~~postrelocation reassessments.~~

- 1 (4) Include a written report that does all of the following:
- 2 (A) Summarizes the findings based on the data collected.
- 3 (B) Provides recommendations regarding how the closure could
- 4 have been conducted in a manner that better served the needs of
- 5 the residents and their families.
- 6 (C) Specifies any community-based services for former residents
- 7 that need to be improved.
- 8 (b) The contractor shall be experienced in all of the following:
- 9 (1) Designing valid tracking instruments.
- 10 (2) Tracking the quality of community programs, including
- 11 outcome-based measures such as health and safety, quality of life,
- 12 integration, choice, and consumer satisfaction.
- 13 (3) Tracking the quality and appropriateness of community
- 14 placements for persons moving from large institutions into
- 15 community settings.
- 16 (4) Developing data systems.
- 17 (5) Data analysis and report preparation.
- 18 (c) (1) The contractor shall measure consumer and family
- 19 satisfaction with services provided, including case management
- 20 and quality of life, including, but not limited to, health and safety,
- 21 independence, productivity, integration, opportunities for choice,
- 22 and delivery of needed services.
- 23 (2) The contractor shall meet with each person, and the person's
- 24 family, or legal guardian or conservator, when appropriate, no
- 25 less than once per year to discuss quality of life and observe the
- 26 person's services and supports.
- 27 (3) In cases in which the consumer is not capable of
- 28 communicating his or her responses, and in which a family
- 29 member, or legal guardian or conservator, is not involved, the
- 30 contractor shall meet with no fewer than two persons familiar with
- 31 the consumer. Additionally, the contractor shall interview staff
- 32 and friends who know the consumer best and review records, as
- 33 appropriate.
- 34 (d) The contract may be satisfied by the same contractor used
- 35 by the department to implement the quality assurance instrument
- 36 pursuant to Section 4571, if appropriate.
- 37 (e)
- 38 (e) (1) For purposes of conducting the study, the department
- 39 shall maintain and update the addresses of, and contact information

1 for, former residents of the center who relocated as a result of the  
2 closure of the ~~center.~~ *centers.*

3 (2) The department shall ensure, to the extent permitted by law,  
4 that researchers conducting the study have access to data and other  
5 information necessary to conduct the study, including the addresses  
6 of, and contact information for, former residents of the center who  
7 relocated due to the closure of the center.

8 (d)

9 (f) The department shall submit interim reports to the Legislature  
10 regarding the study at the end of the first and second years of the  
11 study, in accordance with the requirements of Section 9795 of the  
12 Government Code. Upon the completion of the study, the  
13 department shall submit the study to the Legislature, in accordance  
14 with the requirements of Section 9795 of the Government Code.

15 ~~(e) This section shall remain in effect only until January 1, 2021,~~  
16 ~~and as of that date is repealed, unless a later enacted statute, that~~  
17 ~~is enacted before January 1, 2021, deletes or extends that date.~~

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## LPPC AGENDA ITEM DETAIL SHEET

**BILL:** SB 1034, as amended April 26, 2016. Mitchell. Health care coverage: autism.

**ISSUE:** Health and Safety Code Section 1374.73 and Insurance Code Section 10144.51 require coverage for behavioral health treatment for children with autism. In addition, these sections outline the how the coverage will be applied and who may provide treatment. Both sections sunset in 2017. Legislation is necessary to ensure continued coverage

**SUMMARY:** SB 1034 will ensure that children diagnosed with autism have access to medically necessary treatments to increase their quality of life and functional independence by removing the (2017) sunset on the requirement for health plans and insurers to provide behavioral health treatments to children with autism.

In addition, this bill makes the following changes to the existing autism insurance mandate:

- Updates the definition of behavioral health treatment to ensure coverage for interventions designed to maintain functioning, which is critical to children with autism.
- Clarifies the roles of a qualified autism service professional and qualified autism service paraprofessional.
- Limits unnecessary treatment plan reviews and clarifies that medically necessary services cannot be denied based on time and location of delivery.
- Removes the requirement for providers to be approved as a vendor by a California Regional Center, but retains the same qualifications.

**BACKGROUND/ISSUES/ANALYSIS:** In 2011, landmark legislation was signed into law, SB 946 (Chapter 650), to require all health insurance plans to provide coverage for behavior health treatment for pervasive developmental disorder or autism. At the time SB 946 was signed there were a number of outstanding questions with regards to mandated benefits, the Affordable Care Act (ACA), and the State's fiscal responsibility. Because of this, SB 946 included a sunset in 2014 to provide an opportunity for the legislature to revisit the issue after receiving guidance from the federal government on the implementation of the essential health

benefits (EHB) under the ACA. That sunset was later extended in 2013 to 2017 (SB 126) and passed with bipartisan support.

The federal government has since provided guidance on selection and implementation of the EHBs. In addition, the Department of Managed Health Care has determined that behavioral health treatments for autism are covered under California and Federal Mental Health Parity which extended coverage to the Healthy Families Program and CalPERS plans that had been exempt for fiscal reasons.

Finally, SB 946 did not provide coverage for Medi-Cal recipients. However, earlier this year the Department of Health Care Services received federal approval to provide behavioral health services to children with autism under the age of 21.

**DISCUSSION:** Since the passage of SB 946, countless children have received treatment through their health plans. Prior to the passage of SB 946, families (with health insurance) often paid upwards of \$50,000 per year. In the process, many risked their homes and the educations of their unaffected children – essentially mortgaging their entire futures. Alternately, services were provided by regional and developmental centers at a high cost to the state. Removing the sunset of the California autism insurance mandate will allow children with autism to continue to receive medically necessary behavioral health treatment from qualified autism service providers. (Source: Author's fact sheet).

**RECOMMENDATION:** Support SB 1034 (Mitchell).

**COUNCIL STRATEGIC PLAN OBJECTIVE:** Goal 10: Health: Individuals with developmental disabilities understand their options regarding health services and have access to a full range of coordinated health, dental and mental health services in their community.

**ATTACHMENTS:** None.

**PREPARED:** Bob Giovati.

**Introduced by Senator Mitchell**

February 12, 2016

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An act to amend Section 1374.73 of the Health and Safety Code, and to amend Sections 10144.51 and 10144.52 of the Insurance Code, relating to health care coverage.

LEGISLATIVE COUNSEL'S DIGEST

SB 1034, as amended, Mitchell. Health care coverage: autism.

Existing law provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. A violation of those provisions is a crime. Existing law provides for the licensure and regulation of health insurers by the Department of Insurance.

Existing law requires every health care service plan contract and health insurance policy to provide coverage for behavioral health treatment for pervasive developmental disorder or autism until January 1, 2017, and defines "behavioral health treatment" to mean specified services provided by, among others, a qualified autism service professional supervised and employed by a qualified autism service provider. Existing law defines a "qualified autism service professional" to mean a person who, among other requirements, is a behavior service provider approved as a vendor by a California regional center to provide services as an associate behavior analyst, behavior analyst, behavior management assistant, behavior management consultant, or behavior management program pursuant to specified regulations adopted under the Lanterman Developmental Disabilities Services Act. Existing law requires a treatment plan to be reviewed no less than once every 6 months.

This bill would, among other things, modify requirements to be a qualified autism service professional to include providing behavioral health treatment, such as clinical management and case supervision. The bill would require that a treatment plan be reviewed no more than once every 6 months, unless a shorter period is recommended by the qualified autism service provider. The bill would extend the operation of these provisions indefinitely. The bill would make conforming changes.

By extending the operation of these provisions, the violation of which by a health care service plan would be a crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

- 1 SECTION 1. Section 1374.73 of the Health and Safety Code  
2 is amended to read:  
3 1374.73. (a) (1) Every health care service plan contract that  
4 provides hospital, medical, or surgical coverage shall also provide  
5 coverage for behavioral health treatment for pervasive  
6 developmental disorder or autism no later than July 1, 2012. The  
7 coverage shall be provided in the same manner and shall be subject  
8 to the same requirements as provided in Section 1374.72.  
9 (2) Notwithstanding paragraph (1), as of the date that proposed  
10 final rulemaking for essential health benefits is issued, this section  
11 does not require any benefits to be provided that exceed the  
12 essential health benefits that all health plans will be required by  
13 federal regulations to provide under Section 1302(b) of the federal  
14 Patient Protection and Affordable Care Act (Public Law 111-148),  
15 as amended by the federal Health Care and Education  
16 Reconciliation Act of 2010 (Public Law 111-152).  
17 (3) This section shall not affect services for which an individual  
18 is eligible pursuant to Division 4.5 (commencing with Section

1 4500) of the Welfare and Institutions Code or Title 14  
2 (commencing with Section 95000) of the Government Code.

3 (4) This section shall not affect or reduce any obligation to  
4 provide services under an individualized education program, as  
5 defined in Section 56032 of the Education Code, or an individual  
6 service plan, as described in Section 5600.4 of the Welfare and  
7 Institutions Code, or under the federal Individuals with Disabilities  
8 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
9 regulations.

10 (b) Every health care service plan subject to this section shall  
11 maintain an adequate network that includes qualified autism service  
12 providers who supervise qualified autism service professionals or  
13 paraprofessionals who provide and administer behavioral health  
14 treatment. Nothing shall prevent a health care service plan from  
15 selectively contracting with providers within these requirements.

16 (c) For the purposes of this section, the following definitions  
17 shall apply:

18 (1) "Behavioral health treatment" means professional services  
19 and treatment programs, including applied behavior analysis and  
20 other evidence-based behavior intervention programs, that develop,  
21 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
22 functioning of an individual with pervasive developmental disorder  
23 or autism and that meet all of the following criteria:

24 (A) The treatment is prescribed by a physician and surgeon  
25 licensed pursuant to Chapter 5 (commencing with Section 2000)  
26 of, or is developed by a psychologist licensed pursuant to Chapter  
27 6.6 (commencing with Section 2900) of, Division 2 of the Business  
28 and Professions Code.

29 (B) The treatment is provided under a treatment plan prescribed  
30 by a qualified autism service provider and is administered by one  
31 of the following:

32 (i) A qualified autism service provider.

33 (ii) A qualified autism service professional supervised by the  
34 qualified autism service provider.

35 (iii) A qualified autism service paraprofessional supervised by  
36 a qualified autism service provider.

37 (C) The treatment plan has measurable goals over a specific  
38 timeline that is developed and approved by the qualified autism  
39 service provider for the specific patient being treated. The treatment  
40 plan shall be reviewed no more than once every six months by the

1 qualified autism service provider, unless a shorter period is  
2 recommended by the qualified autism service provider, and  
3 modified whenever appropriate, and shall be consistent with  
4 Section 4686.2 of the Welfare and Institutions Code pursuant to  
5 which the qualified autism service provider does all of the  
6 following:

7 (i) Describes the patient's behavioral health impairments or  
8 developmental challenges that are to be treated.

9 (ii) Designs an intervention plan that includes the service type,  
10 number of hours, and parent or caregiver participation  
11 recommended by the qualified autism service provider, needed  
12 provider to achieve the plan's goal and objectives, and the  
13 frequency at which the patient's progress is evaluated and reported.  
14 Lack of parent or caregiver participation shall not be used to deny  
15 or reduce medically necessary behavioral health treatment.

16 (iii) Provides intervention plans that utilize evidence-based  
17 practices, with demonstrated clinical efficacy in treating pervasive  
18 developmental disorder or autism.

19 (iv) Discontinues intensive behavioral intervention services  
20 when the treatment goals and objectives are achieved or no longer  
21 appropriate, and continued therapy is not necessary to maintain  
22 function or prevent deterioration.

23 (D) (i) The treatment plan is not used for purposes of providing  
24 or for the reimbursement of respite, day care, or educational  
25 academic services and is not used to reimburse a parent for  
26 participating in the treatment program.

27 ~~(ii) Notwithstanding the clause (i), all medically necessary~~  
28 ~~behavioral health treatment shall be covered in all settings~~  
29 ~~regardless of time or location of delivery.~~

30 *(ii) The setting, location, or time of treatment shall not be used*  
31 *as a reason to deny medically necessary behavioral health*  
32 *treatment.*

33 (iii) The treatment plan shall be made available to the health  
34 care service plan upon request.

35 (2) "Pervasive developmental disorder or autism" shall have  
36 the same meaning and interpretation as used in Section 1374.72.

37 (3) "Qualified autism service provider" means either of the  
38 following:

39 (A) A person, entity, or group that is certified by a national  
40 entity, such as the Behavior Analyst Certification Board, that is

1 accredited by the National Commission for Certifying Agencies,  
2 and who designs, supervises, or provides treatment for pervasive  
3 developmental disorder or autism, provided the services are within  
4 the experience and competence of the person, entity, or group that  
5 is nationally certified.

6 (B) A person licensed as a physician and surgeon, physical  
7 therapist, occupational therapist, psychologist, marriage and family  
8 therapist, educational psychologist, clinical social worker,  
9 professional clinical counselor, speech-language pathologist, or  
10 audiologist pursuant to Division 2 (commencing with Section 500)  
11 of the Business and Professions Code, who designs, supervises,  
12 or provides treatment for pervasive developmental disorder or  
13 autism, provided the services are within the experience and  
14 competence of the licensee.

15 (4) "Qualified autism service professional" means an individual  
16 who meets all of the following criteria:

17 (A) Provides behavioral health treatment, including clinical  
18 management and case supervision.

19 (B) Is supervised by a qualified autism service provider.

20 (C) Provides treatment pursuant to a treatment plan developed  
21 and approved by the qualified autism service provider.

22 (D) Is a behavioral service provider who meets the education  
23 and experience qualifications defined in Section ~~5432~~ 54342 of  
24 Title 17 of the California Code of Regulations for an Associate  
25 Behavior Analyst, Behavior Analyst, Behavior Management  
26 Assistant, Behavior Management Consultant, or Behavior  
27 Management Program.

28 (E) Has training and experience in providing services for  
29 pervasive developmental disorder or autism pursuant to Division  
30 4.5 (commencing with Section 4500) of the Welfare and  
31 Institutions Code or Title 14 (commencing with Section 95000)  
32 of the Government Code.

33 (5) "Qualified autism service paraprofessional" means an  
34 unlicensed and uncertified individual who meets all of the  
35 following criteria:

36 (A) Is supervised by a qualified autism service provider.

37 (B) Provides treatment and implements services pursuant to a  
38 treatment plan developed and approved by the qualified autism  
39 service provider or qualified autism service professional.

1 (C) Meets the education and ~~experience~~ *training* qualifications  
2 defined in the regulations adopted pursuant to Section 4686.3 of  
3 the Welfare and Institutions Code.

4 (D) Has adequate education, training, and experience, as  
5 certified by a qualified autism service provider.

6 (d) This section shall not apply to the following:

7 (1) A specialized health care service plan that does not deliver  
8 mental health or behavioral health services to enrollees.

9 (2) A health care service plan contract in the ~~MDI-Cal~~ *Medi-Cal*  
10 program (Chapter 7 (commencing with Section 14000) of Part 3  
11 of Division 9 of the Welfare and Institutions Code).

12 (e) This section does not limit the obligation to provide services  
13 pursuant to Section 1374.72.

14 (f) As provided in Section 1374.72 and in paragraph (1) of  
15 subdivision (a), in the provision of benefits required by this section,  
16 a health care service plan may utilize case management, network  
17 providers, utilization review techniques, prior authorization,  
18 copayments, or other cost sharing.

19 SEC. 2. Section 10144.51 of the Insurance Code is amended  
20 to read:

21 10144.51. (a) (1) Every health insurance policy shall also  
22 provide coverage for behavioral health treatment for pervasive  
23 developmental disorder or autism no later than July 1, 2012. The  
24 coverage shall be provided in the same manner and shall be subject  
25 to the same requirements as provided in Section 10144.5.

26 (2) Notwithstanding paragraph (1), as of the date that proposed  
27 final rulemaking for essential health benefits is issued, this section  
28 does not require any benefits to be provided that exceed the  
29 essential health benefits that all health insurers will be required by  
30 federal regulations to provide under Section 1302(b) of the federal  
31 Patient Protection and Affordable Care Act (Public Law 111-148),  
32 as amended by the federal Health Care and Education  
33 Reconciliation Act of 2010 (Public Law 111-152).

34 (3) This section shall not affect services for which an individual  
35 is eligible pursuant to Division 4.5 (commencing with Section  
36 4500) of the Welfare and Institutions Code or Title 14  
37 (commencing with Section 95000) of the Government Code.

38 (4) This section shall not affect or reduce any obligation to  
39 provide services under an individualized education program, as  
40 defined in Section 56032 of the Education Code, or an individual

1 service plan, as described in Section 5600.4 of the Welfare and  
2 Institutions Code, or under the federal Individuals with Disabilities  
3 Education Act (20 U.S.C. Sec. 1400 et seq.) and its implementing  
4 regulations.

5 (b) Pursuant to Article 6 (commencing with Section 2240) of  
6 Title 10 of the California Code of Regulations, every health insurer  
7 subject to this section shall maintain an adequate network that  
8 includes qualified autism service providers who supervise qualified  
9 autism service professionals or paraprofessionals who provide and  
10 administer behavioral health treatment. Nothing shall prevent a  
11 health insurer from selectively contracting with providers within  
12 these requirements.

13 (c) For the purposes of this section, the following definitions  
14 shall apply:

15 (1) "Behavioral health treatment" means professional services  
16 and treatment programs, including applied behavior analysis and  
17 other evidence-based behavior intervention programs, that develop,  
18 ~~maintain~~, *keep*, or restore, to the maximum extent practicable, the  
19 functioning of an individual with pervasive developmental disorder  
20 or autism, and that meet all of the following criteria:

21 (A) The treatment is prescribed by a physician and surgeon  
22 licensed pursuant to Chapter 5 (commencing with Section 2000)  
23 of, or is developed by a psychologist licensed pursuant to Chapter  
24 6.6 (commencing with Section 2900) of, Division 2 of the Business  
25 and Professions Code.

26 (B) The treatment is provided under a treatment plan prescribed  
27 by a qualified autism service provider and is administered by one  
28 of the following:

- 29 (i) A qualified autism service provider.
- 30 (ii) A qualified autism service professional supervised by the  
31 qualified autism service provider.
- 32 (iii) A qualified autism service paraprofessional supervised by  
33 a qualified autism service provider.

34 (C) The treatment plan has measurable goals over a specific  
35 timeline that is developed and approved by the qualified autism  
36 service provider for the specific patient being treated. The treatment  
37 plan shall be reviewed no more than once every six months by the  
38 qualified autism service provider, unless a shorter period is  
39 recommended by the qualified autism service provider, and  
40 modified whenever appropriate, and shall be consistent with

1 Section 4686.2 of the Welfare and Institutions Code pursuant to  
2 which the qualified autism service provider does all of the  
3 following:

4 (i) Describes the patient's behavioral health impairments or  
5 developmental challenges that are to be treated.

6 (ii) Designs an intervention plan that includes the service type,  
7 number of hours, and parent or caregiver participation  
8 recommended by a qualified autism service provider needed to  
9 achieve the plan's goal and objectives, and the frequency at which  
10 the patient's progress is evaluated and reported. Lack of parent or  
11 caregiver participation shall not be used to deny or reduce  
12 medically necessary behavioral health treatment.

13 (iii) Provides intervention plans that utilize evidence-based  
14 practices, with demonstrated clinical efficacy in treating pervasive  
15 developmental disorder or autism.

16 (iv) Discontinues intensive behavioral intervention services  
17 when the treatment goals and objectives are achieved or no longer  
18 appropriate, and continued therapy is not necessary to maintain  
19 function or prevent deterioration.

20 (D) (i) The treatment plan is not used for purposes of providing  
21 or for the reimbursement of respite, day care, or ~~educational~~  
22 ~~academic~~ services and is not used to reimburse a parent for  
23 participating in the treatment program.

24 ~~(ii) Notwithstanding the above, all medically necessary~~  
25 ~~behavioral health treatment shall be covered in all settings~~  
26 ~~regardless of time or location of delivery.~~

27 *(ii) The setting, location, or time of treatment shall not be used*  
28 *as a reason to deny medically necessary behavioral health*  
29 *treatment.*

30 (iii) The treatment plan shall be made available to the insurer  
31 upon request.

32 (2) "Pervasive developmental disorder or autism" shall have  
33 the same meaning and interpretation as used in Section 10144.5.

34 (3) "Qualified autism service provider" means either of the  
35 following:

36 (A) A person, entity, or group that is certified by a national  
37 entity, such as the Behavior Analyst Certification Board, that is  
38 accredited by the National Commission for Certifying Agencies,  
39 and who designs, supervises, or provides treatment for pervasive  
40 developmental disorder or autism, provided the services are within

1 the experience and competence of the person, entity, or group that  
2 is nationally certified.

3 (B) A person licensed as a physician and surgeon, physical  
4 therapist, occupational therapist, psychologist, marriage and family  
5 therapist, educational psychologist, clinical social worker,  
6 professional clinical counselor, speech-language pathologist, or  
7 audiologist pursuant to Division 2 (commencing with Section 500)  
8 of the Business and Professions Code, who designs, supervises,  
9 or provides treatment for pervasive developmental disorder or  
10 autism, provided the services are within the experience and  
11 competence of the licensee.

12 (4) "Qualified autism service professional" means an individual  
13 who meets all of the following criteria:

14 (A) Provides behavioral health treatment, including clinical  
15 management and case supervision.

16 (B) Is employed and supervised by a qualified autism service  
17 provider.

18 (C) Provides treatment pursuant to a treatment plan developed  
19 and approved by the qualified autism service provider.

20 (D) Is a behavioral service provider who meets the education  
21 and experience qualifications defined in Section ~~5432~~ 54342 of  
22 Title 17 of the California Code of Regulations for an Associate  
23 Behavior Analyst, Behavior Analyst, Behavior Management  
24 Assistant, Behavior Management Consultant, or Behavior  
25 Management Program.

26 (E) Has training and experience in providing services for  
27 pervasive developmental disorder or autism pursuant to Division  
28 4.5 (commencing with Section 4500) of the Welfare and  
29 Institutions Code or Title 14 (commencing with Section 95000)  
30 of the Government Code.

31 (5) "Qualified autism service paraprofessional" means an  
32 unlicensed and uncertified individual who meets all of the  
33 following criteria:

34 (A) Is supervised by a qualified autism service provider.

35 (B) Provides treatment and implements services pursuant to a  
36 treatment plan developed and approved by the qualified autism  
37 service provider or qualified autism service professional.

38 (C) Meets the education and ~~experience~~ *training* qualifications  
39 defined in the regulations adopted pursuant to Section 4686.3 of  
40 the Welfare and Institutions Code.

1 (D) Has adequate education, training, and experience, as  
2 certified by a qualified autism service provider.

3 (d) This section shall not apply to the following:

4 (1) A specialized health insurance policy that does not cover  
5 mental health or behavioral health services or an accident only,  
6 specified disease, hospital indemnity, or Medicare supplement  
7 policy.

8 (2) A health insurance policy in the ~~MDI-Cal~~ *Medi-Cal* program  
9 (Chapter 7 (commencing with Section 14000) of Part 3 of Division  
10 9 of the Welfare and Institutions Code).

11 (e) As provided in Section 10144.5 and in paragraph (1) of  
12 subdivision (a), in the provision of benefits required by this section,  
13 a health insurer may utilize case management, network providers,  
14 utilization review techniques, prior authorization, copayments, or  
15 other cost sharing.

16 SEC. 3. Section 10144.52 of the Insurance Code is amended  
17 to read:

18 10144.52. For purposes of this part, the terms “provider,”  
19 “professional provider,” “network provider,” “mental health  
20 provider,” and “mental health professional” shall include the term  
21 “qualified autism service provider,” as defined in subdivision (c)  
22 of Section 10144.51.

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.

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**8b. MUSCULAR  
DYSTROPHY  
PROCLAMATION**

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*Proclamations:*

Official proclamations - which are legal documents - declare a day, week or month and are issued for holidays or public awareness campaigns initiated by state agencies. If your proclamation request is for an event or day other than a state or national holiday, it must be first evaluated and sponsored by the state agency under which the issue falls. The agency works directly with the requestor to determine if the agency will sponsor the proclamation.

To find the appropriate agency to sponsor your proclamation request, please visit <http://www.ca.gov/Apps/Agencies.aspx>

The Governor's Office does not issue official proclamations for individuals or private organizations; those types of requests are fulfilled by commemorative messages.

RE: Proclamation for Muscular dystrophy awareness month/ Light it Up green for MD August 2016;

Email: [lightitupgreenmd@gmail.com](mailto:lightitupgreenmd@gmail.com),

Light It Up Green for MD / 1.561.704.3004

10093 Clubhouse Turn Rd, Lake Worth FL 33449-5453

Dear Governor Brown,

Light it up green for MD is an awareness Campaign dedicated to increasing awareness in communities around the country about **9** muscular and **43** neuromuscular diseases. We have partnered with MDA (Muscular Dystrophy assoc.) a nonprofit Organization known worldwide that covers all under their umbrella. These Muscle diseases can affect anyone at any time from Birth to 90. They do not discriminate Young, Old, Rich or Poor. There are currently no known cures but research is happening. It is our goal increase funding of research through our efforts to literally shine a light on these diseases in every state around the U.S. by asking every city in the nation to light landmarks Lime green as this is the color that represents the Dystrophies and Neuro- muscular disorders. **It is our goal to have August as our own awareness month.**

Light it Up Green for MD was created by me Nadine Kirby(mother of a child with Duchenne) in order to be able to give back and make a difference in the lives of so many families living with muscular and neuromuscular diseases, 365 days a year. Two of the bigger ones you may have heard of include Duchenne (est. 20,000 boys are diagnosed each year) and ALS (est. that as many as 30,000 Americans may be living with ALS at any given time).

Together we (MDA and LIUG4MD) hope that you will sign a Proclamation as was done in August 2015 , officially declaring again

that **August as MD awareness (and Light it Up Green for MD) month** across the state of **California** in 2016 .

Thank you **Nadine Kirby (President Light It up Green for MD& Mom of young adult with Duchenne)**

**Please send copies to: MDA Sacramento 3010 Lava Ridge Court #160  
Roseville, CA 95661**

**Light it Up Green for MD 10093 Clubhouse turn RD Lake worth, FL  
33449 and email PDF to: [lightitupgreenmd@gmail.com](mailto:lightitupgreenmd@gmail.com)**

Text Language of Proclamation:

Whereas, muscular dystrophy is not a single disease or disorder that effects everyone the same way but an umbrella term covering more than 52 different types of muscular and neuromuscular diseases ranging in severity; and  
Whereas, all muscular dystrophies result in progressive muscle weakness, from mild muscle weakness to complete paralysis of all voluntary muscles, including those used for breathing and/or swallowing; and  
Whereas, more than one million individuals in the United states are affected by one of the different types of muscular dystrophy; and  
Whereas, muscular dystrophy strikes people regardless of Race, Sex, age or ethnicity; and  
Whereas there are four times as many new clinical trials underway in the 1990s and there are more new drugs expected in the next 4 yrs than in the previous 5 decades in the fight for a cure for neuro muscular disease; and  
Whereas raising public awareness of these diseases will continue to facilitate the discovery of treatments and cures, as well as bring much needed funding for support and services for families in the state of **California** affected by muscular dystrophy and neuromuscular diseases; and  
Whereas, Muscular Dystrophy Awareness month and Light it Up Green for MD month is a special opportunity to educate the public about muscular dystrophy and issues in the muscular dystrophy community;  
Now therefore ,I (Gov name) of the state of ( state name) do hereby extend greetings and best wishes to all observing August 2016 as Muscular Dystrophy Awareness Month and "Light it Up Green for MD " month in (State name)

## 8c. DISCUSSION OF COUNCIL LEGISLATIVE PLATFORM

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# LEGISLATIVE and Public Policy Platform

Approved 2014

# About the Council

*The federal Developmental Disabilities Assistance and Bill of Rights Act of 2000 establishes State Councils on Developmental Disabilities in each of the 56 states and territories to promote self-determination, independence, productivity, integration, and inclusion in all aspects of community life for people with intellectual and developmental disabilities (IDD) and their families. The Lanterman Act establishes the California State Council on Developmental Disabilities (Council) to fulfill those obligations through advocacy, capacity building, and systems change.*

*To that end, the Council develops and implements goals, objectives, and strategies designed to improve and enhance the availability and quality of services and supports.*

*The Council is comprised of 31 members appointed by the Governor, including individuals with disabilities and their families, and representatives from Disability Rights California, the University Centers for Excellence in Developmental Disabilities, and state agencies.*

*In addition to the Council's Sacramento headquarters, 13 regional offices support individuals with IDD and their families through activities such as advocacy training, monitoring, and public information. The Council strives to ensure that appropriate laws, regulations, and policies pertaining to the rights of individuals are observed and protected.*

*This document conveys the Council's position on major policy issues that affect individuals with IDD and their families.*



## SELF-DETERMINATION

Individuals with IDD and their families must be given the option to control their service dollars and their services through Self-Determination. With the support of those they choose and trust, people with IDD and their families are best suited to understand their own unique needs, develop their own life goals, and construct those services and supports most appropriate to reach their full potential. Self-Determination gives individuals the tools and the basic human right to pursue life, liberty, and happiness in the ways that they choose.



## EMPLOYMENT

A regular job with competitive pay gives people an opportunity to contribute and be valued at a work site; it gives them a chance to build relationships with co-workers, be a part of their communities, and contribute to their local economies. It reduces poverty and reliance on state support, and it provides a life of greater dignity.

Integrated competitive employment is the priority outcome for working age individuals with IDD, regardless of the severity of their disability. Policies and practices must set expectations for employment, promote collaboration between state agencies, and remove barriers to integrated competitive employment through access to information, benefits counseling, job training, postsecondary education, and appropriate provider rates that incentivize quality employment outcomes.

## EQUITY

Regional center services and supports must be distributed equitably so that individuals receive culturally and linguistically competent services and supports that meet their needs, regardless of their race, ethnicity, or income. Disparities in services can result in severe health, economic, and quality of life consequences.



## TRANSPORTATION

Access to transportation is essential to the education, employment, and inclusion of individuals with disabilities. Individuals with IDD must be a part of transportation planning and policymaking to assure their needs and perspectives are heard and addressed. Mobility training must be a standard program among public transportation providers to increase the use of public transportation and reduce reliance on more costly segregated systems.

## HEALTH CARE

Individuals must be reimbursed for insurance co-pays, co-insurance, and deductibles, when their health insurance covers therapies that are on their IPPs.

California has an obligation to assure that individuals with disabilities have continuity of care, a full continuum of health care services and equipment, and access to plain language information and supports to make informed decisions about their health care options.

California has an obligation to support the health care of individuals with IDD. This includes people with multiple health care needs, those who require routine preventative care, mental health treatment, dental care, durable medical equipment, and those with gender specific health issues.



## EDUCATION

Schools must implement the goals of the Individuals with Disabilities Education Act (IDEA) to provide children with disabilities with free appropriate public education and prepare them for post-secondary education, employment, and independent living. Students with disabilities will be educated alongside their non-disabled peers in the least restrictive environment. School districts and other educational authorities need to be held accountable for implementing the letter and the intent of IDEA, in all aspects, including measureable postsecondary goals.

## HOUSING

Community integrated living options for individuals with IDD must be increased and enhanced through access to housing subsidy programs and neighborhood education to reduce discrimination. Permanent, affordable, accessible, and sustained housing options must be continually developed to meet both current and future needs.

## SELF-ADVOCACY

Individuals with IDD must be supported to exert maximum control over their lives. They must be provided the opportunity and support to assume their rightful leadership in the service system and society, including voting and other civic responsibilities. Self-advocates must have access to enhanced training, plain language materials, and policy making opportunities.

## COMMUNITY PARTICIPATION

Individuals with IDD must have access to and be supported to participate in their communities, with their non-disabled peers, through opportunities such as education, employment, recreation, organizational affiliations, spiritual development, and civic responsibilities.

## TRANSITION TO ADULT LIFE

Education, rehabilitation, and regional center services must support students to transition to integrated competitive employment or post-secondary educational opportunities that will lead to employment. Successful strategies include starting career exploration at age 14, coordination among systems, youth empowerment in their education and service planning, integrated work experiences, family engagement, and a seamless transition to post-secondary work or education.



## RATES FOR SERVICES

The state must restore rates to adequately support the availability of quality services for people with all disabilities in all the systems that serve them. A planned and systematic approach to rate adjustments must prioritize and incentivize services and supports that best promotes self-determination, independence, employment, and inclusion in all aspects of community life.

## VICTIMS OF CRIME

All people have a right to be safe; however, individuals with IDD experience a much greater rate of victimization, and a far lower rate of prosecution for crimes against them, than does the general public. The same level of due process protections must be provided to all people. Individuals with IDD need to be trained in personal safety, how to protect themselves against becoming victims of crime, and how their participation in identification and prosecution can make a difference. Law enforcement personnel must be trained in how to work with people with IDD who they interact with during the course of their duties, including those who are victims of crimes.



## QUALITY OF SERVICES AND SUPPORTS

The State of California must ensure that funding is used to achieve positive outcomes for individuals with IDD and their families. The state must streamline burdensome and duplicative regulations and processes that do not lead to positive outcomes for people with IDD and their families. Quality assessment and oversight must be provided by the state; it must measure what matters, be administered in a culturally competent manner, and the results made public and used to improve the system of services and supports.



## Promise of the Lanterman Act

*The Lanterman Act promises to honor the needs and choices of individuals with IDD by establishing an array of quality services throughout the state. Services shall support people to live integrated, productive lives in their home communities, in the least restrictive environment. Access to needed services and supports must not be undermined through categorical service elimination, service caps, means testing, or family cost participation fees and other financial barriers. California must not impose artificial limitations or reductions in community-based services and supports that would compromise the health and safety of persons with IDD.*



## California State Council Regional Offices

**North Coast (707) 463-4700**

**Counties Served: Del Norte,  
Humboldt, Lake, Mendocino**

**North State (530) 895-4027**

**Counties Served: Butte, Glenn,  
Lassen, Plumas, Modoc,  
Shasta, Siskiyou, Tehama, Trinity**

**Sacramento (916) 263-3085**

**Counties Served: Alpine, Colusa, El  
Dorado, Nevada, Placer, Sacramento,  
Sutter, Yolo, Yuba, Sierra**

**North Bay (707) 648-4073**

**Counties Served: Napa, Solano,  
Sonoma**

**Bay Area (510) 286-0439**

**Counties Served: Alameda, Contra  
Costa, Marin, San Francisco,  
San Mateo**

**North Valley Hills (209) 473-6930**

**Counties Served: Amador, Calaveras,  
San Joaquin, Stanislaus, Tuolumne**

**Silicon Valley/Monterey Bay (408) 324-2106**

**Counties Served: Monterey, San  
Benito, Santa Clara, Santa Cruz**

**Sequoia (559) 222-2496**

**Counties Served: Fresno, Kern, Kings,  
Madera, Mariposa, Merced, Tulare**

**Central Coast (805) 648-0220**

**Counties Served: San Luis Obispo,  
Santa Barbara, Ventura**

**Los Angeles (818) 543-4631**

**Serving Los Angeles County**

**Orange County (714) 558-4404**

**Serving Orange County**

**San Bernardino (909) 890-1259**

**Counties Served: Inyo, Mono, Riverside,  
San Bernardino**

**San Diego Imperial (619) 688-3323**

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