

Appendix A -

Excerpts from the Health Safety Code – Child Care Act (as amended through 1999)

HEALTH AND SAFETY CODE

SECTION 1566-1566.8

1566. The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of residential care facilities as are commensurate with local need.

The provisions of this article shall apply equally to any chartered city, general law city, county, city and county, district, and any other local public entity.

For the purposes of this article, "six or fewer persons" does not include the licensee or members of the licensee's family or persons employed as facility staff.

1566.1. Any person licensed under the provisions of this chapter who operates, or proposes to operate a residential facility, the department or other public agency authorized to license such a facility, or any public or private agency which uses or may use the services of the facility to place its clients, may invoke the provisions of this article.

This section shall not be construed to prohibit any interested party from bringing suit to invoke the provisions of this article.

1566.2. A residential facility, which serves six or fewer persons shall not be subject to any business taxes, local registration fees, use permit fees, or other fees to which other family dwellings of the same type in the same zone are not likewise subject. Nothing in this section shall be construed to forbid the imposition of local property taxes, fees for water service and garbage collection, fees for inspections not prohibited by Section 1566.3, local bond assessments, and other fees, charges, and assessments to which other family dwellings of the same type in the same zone are likewise subject. Neither the State Fire Marshal nor any local public entity shall charge any fee for enforcing fire inspection regulations pursuant to state law or regulation or local ordinance, with respect to residential facilities which serve six or fewer persons.

For the purposes of this section, "family dwellings," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units



in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

1566.25. If a county of residence agrees to pay a placement county the costs of providing services to a minor pursuant to subdivision (a) of Section 740 of the Welfare and Institutions Code, all of the following shall apply:

(a) The county of residence shall agree to pay the placement county the actual costs of providing services to a child placed in a community care facility outside his or her county of residence by a placement agency, as defined in Section 1536.1, that are incurred by the probation department, social services department, health department, or mental health department of the placement county for which the placement county is not otherwise reimbursed.

(b) Claims made by the county of placement to the county of residency pursuant to subdivision (a) shall include documentation and shall be paid within 30 days of submission of these claims.

(c) For the purposes of this section, the county from where the child was placed in the community care facility shall be considered the county of residency.

1566.3. Whether or not unrelated persons are living together, a residential facility which serves six or fewer persons shall be considered a residential use of property for the purposes of this article. In addition, the residents and operators of such a facility shall be considered a family for the purposes of any law or zoning ordinance which relates to the residential use of property pursuant to this article.

For the purpose of all local ordinances, a residential facility which serves six or fewer persons shall not be included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or the mentally infirm, foster care home, guest home, rest home, sanitarium, mental hygiene home, or other similar term which implies that the residential facility is a business run for profit or differs in any other way from a family dwelling.

This section shall not be construed to forbid any city, county, or other local public entity from placing restrictions on building heights, setback, lot dimensions, or placement of signs of a residential facility which serves six or fewer persons as long as such restrictions are identical to those applied to other family dwellings of the same type in the same zone.

This section shall not be construed to forbid the application to a residential care facility of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity if the ordinance does not distinguish residential care facilities which serve six or fewer persons from other family dwellings of the same type in the same zone; and if the ordinance does not distinguish residents of the residential care facilities from persons who reside in other family dwellings of the same type in the same zone.

No conditional use permit, zoning variance, or other zoning clearance shall be required of a residential facility which serves six or fewer persons which is not required of a family dwelling of the same type in the same zone.



Use of a family dwelling for purposes of a residential facility serving six or fewer persons shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 or local building codes. However, nothing in this section is intended to supersede Section 13143 or 13143.6, to the extent such sections are applicable to residential facilities providing care for six or fewer residents.

For the purposes of this section, "family dwelling," includes, but is not limited to, single-family dwellings, units in multifamily dwellings, including units in duplexes and units in apartment dwellings, mobilehomes, including mobilehomes located in mobilehome parks, units in cooperatives, units in condominiums, units in townhouses, and units in planned unit developments.

1566.4. No fire inspection clearance or other permit, license, clearance, or similar authorization shall be denied to a residential facility because of a failure to comply with local ordinances from which such facilities are exempt under Section 1566.3, provided that the applicant otherwise qualifies for such fire clearance, license, permit, or similar authorization.

1566.45. (a) (1) For purposes of this section, "bedridden" means either requiring assistance in turning and repositioning in bed, or being unable to independently transfer to and from bed, except in facilities with appropriate and sufficient care staff, mechanical devices if necessary, and safety precautions, as determined by the director in regulations.

(2) In developing the regulations for child residential facilities, the department shall take into consideration the size and weight of the child.

(3) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(4) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which a bedridden person resides if either of the following conditions are met:

(1) The fire safety requirements are met.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective



occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshall shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

1566.5. For the purposes of any contract, deed, or covenant for the transfer of real property executed on or after January 1, 1979, a residential facility which serves six or fewer persons shall be considered a residential use of property and a use of property by a single family, notwithstanding any disclaimers to the contrary.

1566.6. The department shall annually prepare, with a quarterly update commencing July 1, 1979, specifying newly licensed facilities, a list or lists of all licensed community care facilities in the state, other than foster family homes, which shall include the information required by Section 1536 and shall additionally specify as to each such facility the licensed capacity of the facility and whether it is licensed by the state department or by another public agency pursuant to Section 1511. Compliance with this section shall also constitute compliance with Section 1536.

1566.7. The department shall notify affected placement agencies and the Office of the State Long-Term Care Ombudsman, as defined in subdivision (c) of Section 9701 of the Health and Safety Code, whenever the department substantiates that a violation has occurred which poses a serious threat to the health and safety of any resident when the violation results in the assessment of any penalty or causes an accusation to be filed for the revocation of a license. If the violation is appealed by the facility within 10 days, the department shall only notify placement agencies of the violation when the appeal has been exhausted. If the appeal process has not been completed within 60 days, the placement agency shall be notified with a notation which indicates that the case is still under appeal. The notice to each placement agency shall be



updated monthly for the following 24-month period and shall include the name and location of the facility, the amount of the fine, the nature of the violation, the corrective action taken, the status of the revocation, and the resolution of the complaint. At any time during which a facility is found to have one or more of the following serious deficiencies, the director shall provide an immediate notice of not to exceed five working days to the placement agency:

(a) Discovery that an employee of the facility has a criminal record which would affect the facility's compliance with Section 1522.

(b) Discovery that a serious incident which resulted in physical or emotional trauma of a resident has occurred in a facility.

1566.8. Notwithstanding any other provision of law, if according to the rules and regulations of a mobilehome park, the park is designated as a family park or a section of a mixed mobilehome park is designated as a family section, no rule, regulation, rental agreement, or any other provision in existence on the effective date of this section shall, directly or indirectly, prohibit a person from operating in any mobilehome in a family park or designated family section, a licensed foster family home.



HEALTH AND SAFETY CODE

SECTION 1596.70-1596.798

1596.70. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with 1597.30) may be cited as the California Child Day Care Facilities Act.

1596.71. This chapter applies to Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30). This chapter also applies to Chapter 3.65 (commencing with Section 1597.70).

1596.72. The Legislature finds all of the following:

(a) That child day care facilities can contribute positively to a child's emotional, cognitive, and educational development.

(b) That it is the intent of this state to provide a comprehensive, quality system for licensing child day care facilities to ensure a quality day care environment.

(c) That this system of licensure requires a special understanding of the unique characteristics and needs of the children served by child day care facilities.

(d) That it is the intent of the Legislature to establish within the State Department of Social Services an organizational structure to separate licensing of child day care facilities from those facility types administered under Chapter 3 (commencing with Section 1500).

(e) That good quality child day care services are an essential service for working parents.

1596.73. The purposes of this act are to:

(a) Streamline the administration of child care licensing and thereby increase the efficiency and effectiveness of this system.

(b) Encourage the development of licensing staff with knowledge and understanding of children and child care needs.

(c) Provide providers of child care with technical assistance about licensing requirements.

(d) Enhance consumer awareness of licensing requirements and the benefits of licensed child care.

(e) Recognize that affordable, quality licensed child care is critical to the well-being of parents and children in this state.

1596.74. Unless the context otherwise requires, the definitions contained in this chapter govern the construction of this chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30).

1596.75. "Child" means a person who is under 18 years of age who is being provided care and supervision in a child day care facility, except where otherwise specified in this act.



1596.750. "Child day care facility" means a facility that provides nonmedical care to children under 18 years of age in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. Child day care facility includes day care centers, employer-sponsored child care centers, and family day care homes.

1596.76. "Day care center" means any child day care facility other than a family day care home, and includes infant centers, preschools, and extended day care facilities.

1596.77. "Department" means the State Department of Social Services.

1596.770. "Director" means the Director of Social Services.

1596.771. "Employer-sponsored child care center" means any child day care facility at the employer's site of business operated directly or through a provider contract by any person or entity having one or more employees, and available exclusively for the care of children of that employer, and of the officers, managers, and employees of that employer.

1596.775. The Legislature finds and declares all of the following:

(a) There is a severe shortage of child care for schoolage children throughout California, with many schoolage children going home to an empty, unsupervised setting after school.

(b) For nearly five years several counties have participated in a pilot program that allows for a family day care home to care for two additional children above the current number allowed pursuant to licensing regulations.

(c) As part of the pilot program, a study was conducted by the Assembly Office of Research. The results of the study demonstrated that the pilot program achieved all of the following results:

(1) Increased access to care for schoolage children.

(2) Participating providers encountered few problems and strongly support expansion of the program.

(3) Parents of children in the pilot program family day care homes strongly support the program.

(4) Participating providers with additional children were no more likely to receive substantiated complaints from licensing officials than nonparticipants.

(5) Local governments and planning officials saw little or no impact on their licensing policies and procedures.

(6) Overall quality of care was not adversely affected.

1596.78. (a) "Family day care home" means a home that regularly provides care, protection, and supervision for 14 or fewer children, in the provider's own home, for periods of less than 24



hours per day, while the parents or guardians are away, and is either a large family day care home or a small family day care home.

(b) "Large family day care home" means a home that provides family day care for 7 to 14 children, inclusive, including children under the age of 10 years who reside at the home, as set forth in Section 1597.465 and as defined in regulations.

(c) "Small family day care home" means a home that provides family day care for eight or fewer children, including children under the age of 10 years who reside at the home, as set forth in Section 1597.44 and as defined in regulations.

1596.79. "Person" means an individual, partnership, association, corporation, limited liability company, or governmental entity, such as the state, a county, city, special district, school district, community college district, chartered city, or chartered city and county.

1596.790. "Planning agency" means the agency designated pursuant to Section 65100 of the Government Code.

1596.791. "Provider" means a person who operates a child day care facility and is licensed pursuant to Chapter 3.5 (commencing with Section 1596.90) or 3.6 (commencing with Section 1597.30).

1596.792. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any community care facility, as defined by Section 1502.
- (d) Any family day care home providing care for the children of only one family in addition to the operator's own children.
- (e) Any cooperative arrangement between parents for the care of their children where no payment is involved and the arrangement meets all of the following conditions:
 - (1) In a cooperative arrangement, parents shall combine their efforts so that each parent, or set of parents, rotates as the responsible care giver with respect to all the children in the cooperative.
 - (2) Any person caring for children shall be a parent, legal guardian, stepparent, grandparent, aunt, uncle, or adult sibling of at least one of the children in the cooperative.
 - (3) There can be no payment of money or receipt of in-kind income in exchange for the provision of care. This does not prohibit in-kind contributions of snacks, games, toys, blankets for napping, pillows, and other materials parents deem appropriate for their children. It is not the intent of this paragraph to prohibit payment for outside activities, the amount of that may not exceed the actual cost of the activity.
 - (4) No more than 12 children are receiving care in the same place at the same time.
- (f) Any arrangement for the receiving and care of children by a relative.



(g) Any public recreation program. "Public recreation program" means a program operated by the state, city, county, special district, school district, community college district, chartered city, or chartered city and county that meets either of the following criteria:

(1) The program is operated only during hours other than normal school hours for grades K-12, inclusive, in the public school district where the program is located, or operated only during periods when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located, for either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive. In determining "normal school hours" or periods when students are "normally not in session," the State Department of Social Services shall, where appropriate, consider the normal school hours or periods when students are normally not in session for students attending a year-round school.

(2) The program is provided to children who are over the age of four years and nine months and not yet enrolled in school and the program is operated during either of the following periods:

(A) For under 16 hours per week.

(B) For a total of 12 weeks or less during a 12-month period. This total applies to any 12 weeks within any 12-month period, without regard to whether the weeks are consecutive.

(3) The program is provided to children under the age of four years and nine months with sessions that run 12 hours per week or less and are 12 weeks or less in duration. A program subject to this paragraph may permit children to be enrolled in consecutive sessions throughout the year. However, the program shall not permit children to be enrolled in a combination of sessions that total more than 12 hours per week for each child.

(h) Extended day care programs operated by public or private schools.

(i) Any school parenting program or adult education child care program that satisfies both of the following:

(1) Is operated by a public school district or operated by an individual or organization pursuant to a contract with a public school district.

(2) Is not operated by an organization specified in Section 1596.793.

(j) Any child day care program that operates only one day per week for no more than four hours on that one day.

(k) Any child day care program that offers temporary child care services to parents and which satisfies both of the following:

(1) The services are only provided to parents and guardians who are on the same premises as the site of the child day care program.

(2) The child day care program is not operated on the site of a ski facility, shopping mall, department store, or any other similar site identified by the department by regulation.

(l) Any program that provides activities for children of an instructional nature in a classroom-like setting and satisfies both of the following:



(1) Is operated only during periods of the year when students in grades K-12, inclusive, are normally not in session in the public school district where the program is located due to regularly scheduled vacations.

(2) Offers any number of sessions during the period specified in paragraph (1) that when added together do not exceed a total of 30 days when only schoolage children are enrolled in the program or 15 days when children younger than schoolage are enrolled in the program.

(m) A program facility administered by the Department of Corrections that (1) houses both women and their children, and (2) is specifically designated for the purpose of providing substance abuse treatment and maintaining and strengthening the family unit pursuant to Chapter 4 (commencing with Section 3410) of Title 2 of Part 3 of the Penal Code, or Chapter 4.8 (commencing with Section 1174) of Title 7 of Part 2 of that code.

1596.793. This chapter and Chapters 3.5 (commencing with Section 1596.90) and 3.6 (commencing with Section 1597.30) do not apply to recreation programs conducted for children by the Girl Scouts, Boy Scouts, Boys Club, Girls Club, or Camp Fire, or similar organizations as determined by regulations of the department. Child day care programs conducted by these organizations and the fees charged for that specific purpose are subject to the requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), and Chapter 3.6 (commencing with Section 1597.30).

1596.795. (a) The smoking of tobacco in a private residence that is licensed as a family day care home shall be prohibited during the hours of operation as a family day care home and in those areas of the family day care home where children are present. Nothing in this section shall prohibit a city or county from enacting or enforcing an ordinance relating to smoking in a family day care home if the ordinance is more stringent than this section.

(b) The smoking of tobacco on the premises of a licensed day care center shall be prohibited.

1596.796. Notwithstanding any other provision of law, payments are not required to be made to any person who provides child care services and is exempt from the licensing requirements of this chapter, Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) if that person either is known to have tuberculosis, or to have been convicted of any crime involving violence against, or abuse or neglect of, children.

This section shall not be construed to create an affirmative duty on any individual, government body, or other entity paying for child care to investigate the person to whom payments are being made nor shall it be construed to create any liability for failure to investigate that person. To the extent that this section is inconsistent with federal law, it shall be inoperative.

1596.797. (a) Blood glucose testing for the purposes of monitoring a minor child diagnosed with diabetes may be performed in a child day care facility in accordance with paragraph (6) of subdivision (b) of Section 1241 of the Business and Professions Code.



(b) Nothing in this section, or in any other provision of law, including, but not limited to, Section 1241 or 2058 of the Business and Professions Code, shall require an insulin injection to be administered to any child in a child day care facility.

1596.798. (a) Notwithstanding any other provision of law, licensees and staff of a child day care facility may administer inhaled medication to a child if all of the following requirements are met:

(1) The licensee or staff person has been provided with written authorization from the minor's parent or legal guardian to administer inhaled medication and authorization to contact the child's health care provider. The authorization shall include the telephone number and address of the minor's parent or legal guardian.

(2) The licensee or staff person complies with specific written instructions from the child's physician to which all of the following shall apply:

(A) The instructions shall contain all of the following information:

(i) Specific indications for administering the medication pursuant to the physician's prescription.

(ii) Potential side effects and expected response.

(iii) Dose-form and amount to be administered pursuant to the physician's prescription.

(iv) Actions to be taken in the event of side effects or incomplete treatment response pursuant to the physician's prescription.

(v) Instructions for proper storage of the medication.

(vi) The telephone number and address of the child's physician.

(B) The instructions shall be updated annually.

(3) The licensee or staff person that administers the inhaled medication to the child shall record each instance and provide a record to the minor's parent or legal guardian on a daily basis.

(4) Beginning January 1, 2000, a licensee or staff person who obtains or renews a pediatric first aid certificate pursuant to Section 1596.866 shall complete formal training designed to provide instruction in administering inhaled medication to children with respiratory needs. This training shall include, but not be limited to, training in the general use of nebulizer equipment and inhalers, how to clean the equipment, proper storage of inhaled medication, how a child should respond to inhaled medication, what to do in cases of emergency, how to identify side effects of the medication, and when to notify a parent or legal guardian or physician. This training shall be a component in the pediatric first aid certificate requirement as provided in Section 1596.8661.

(5) For a specified child, the licensee or staff person who administers inhaled medication has been instructed to administer inhaled medication by the child's parent or guardian.

(6) Beginning January 1, 2000, any training materials pertaining to nebulizer care that licensees or staff receive in the process of obtaining or renewing a pediatric first aid certificate pursuant to paragraph (4) shall be kept on file at the child care facility. The materials shall be made available to a licensee or staff person who administers inhaled medication. This requirement



shall only apply to the extent that training materials are made available to licensees or staff who obtain or renew a pediatric first aid certificate pursuant to paragraph (4).

(b) For purposes of this section, inhaled medication shall refer to medication prescribed for the child to control lung-related illness, including, but not limited to, local held nebulizers.

(c) Nothing in this section shall be interpreted to require a certificated teacher who provides day care pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code in a public school setting to administer inhaled medication.



HEALTH AND SAFETY CODE

SECTION 1597.30-1597.621

1597.30. The Legislature finds and declares:

- (a) It has a responsibility to ensure the health and safety of children in family homes that provide day care.
- (b) That there are insufficient numbers of regulated family day care homes in California.
- (c) There will be a growing need for child day care facilities due to the increase in working parents.
- (d) Many parents prefer child day care located in their neighborhoods in family homes.
- (e) There should be a variety of child care settings, including regulated family day care homes, as suitable alternatives for parents.
- (f) That the program to be operated by the state should be cost effective, streamlined, and simple to administer in order to ensure adequate care for children placed in family day care homes, while not placing undue burdens on the providers.
- (g) That the state should maintain an efficient program of regulating family day care homes that ensures the provision of adequate protection, supervision, and guidance to children in their homes.

1597.36. The department shall provide written documentation to providers of the need for repairs, renovations, or additions when requested for an application for a loan guarantee pursuant to subdivision (d) of Section 8277.6 of the Education Code whenever the repairs, renovations, or additions are required by the department in order for the licensee to maintain or obtain a license for more than six children.

1597.40. (a) It is the intent of the Legislature that family day care homes for children should be situated in normal residential surroundings so as to give children the home environment which is conducive to healthy and safe development. It is the public policy of this state to provide children in a family day care home the same home environment as provided in a traditional home setting.

The Legislature declares this policy to be of statewide concern with the purpose of occupying the field to the exclusion of municipal zoning, building and fire codes and regulations governing the use or occupancy of family day care homes for children, except as specifically provided for in this chapter, and to prohibit any restrictions relating to the use of single-family residences for family day care homes for children except as provided by this chapter.

(b) Every provision in a written instrument entered into relating to real property which purports to forbid or restrict the conveyance, encumbrance, leasing, or mortgaging of the real property for use or occupancy as a family day care home for children, is void and every restriction or prohibition in any such written instrument as to the use or occupancy of the property as a family day care home for children is void.



(c) Except as provided in subdivision (d), every restriction or prohibition entered into, whether by way of covenant, condition upon use or occupancy, or upon transfer of title to real property, which restricts or prohibits directly, or indirectly limits, the acquisition, use, or occupancy of such property for a family day care home for children is void.

(d) (1) A prospective family day care home provider, who resides in a rental property, shall provide 30 days' written notice to the landlord or owner of the rental property prior to the commencement of operation of the family day care home.

(2) For family day care home providers who have relocated an existing licensed family day care home program to a rental property on or after January 1, 1997, less than 30 days' written notice may be provided in cases where the department approves the operation of the new location of the family day care home in less than 30 days, or the home is licensed in less than 30 days, in order that service to the children served in the former location not be interrupted.

(3) A family day care home provider in operation on rental or leased property as of January 1, 1997, shall notify the landlord or property owner in writing at the time of the annual license fee renewal, or by March 31, 1997, whichever occurs later.

(4) Notwithstanding any other provision of law, upon commencement of, or knowledge of, the operation of a family day care home on his or her property, the landlord or property owner may require the family day care home provider to pay an increased security deposit for operation of the family day care home. The increase in deposit may be required notwithstanding that a lesser amount is required of tenants who do not operate family day care homes. In no event, however, shall the total security deposit charged exceed the maximum allowable under existing law.

(5) Section 1596.890 shall not apply to this subdivision.

1597.43. The Legislature finds and declares all of the following:

(a) Family day care homes operated under the standards of state law constitute accessory uses of residentially zoned and occupied properties and do not fundamentally alter the nature of the underlying residential uses. Family day care homes draw clients and vehicles to their sites during a limited time of day and do not require the attendance of a large number of employees and equipment.

(b) The uses of congregate care facilities are distinguishable from the uses of family day care homes operated under the standards of state law. For purposes of this section, a "congregate care facility" means a "residential facility," as defined in paragraph (1) of subdivision (a) of Section 1502. Congregate care facilities are used throughout the day and night, and the institutional uses of these facilities are primary uses of the facilities, not accessory uses, and draw a large number of employees, vehicles, and equipment compared to that drawn to family day care homes.

(c) The expansion permitted for family day care homes by Sections 1597.44 and 1597.465 is not appropriate with respect to congregate care facilities, or any other facilities with quasi-institutional uses. Therefore, with these provisions, the Legislature does not intend to alter the legal standards governing congregate care facilities and these provisions are not intended to



encourage, or be a precedent for, changes in statutory and case law governing congregate care facilities.

1597.44. A small family day care home may provide care for more than six and up to eight children, without an additional adult attendant, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than two infants are cared for during any time when more than six children are cared for.
- (c) The licensee notifies each parent that the facility is caring for two additional schoolage children and that there may be up to seven or eight children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

1597.45. All of the following shall apply to small family day care homes:

- (a) The use of single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.
- (b) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home.
- (c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.
- (d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

1597.46. All of the following shall apply to large family day care homes:

- (a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:
 - (1) Classify these homes as a permitted use of residential property for zoning purposes.
 - (2) Grant a nondiscretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, if any, or if there is no zoning administrator by the person or persons designated by the planning agency to grant such permits, upon the certification without a hearing.
 - (3) Require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, if any, or if there is no zoning administrator, the



person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process. Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle such use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100 foot radius of the exterior boundaries of the proposed large family day care home. No hearing on the application for a permit issued pursuant to this paragraph shall be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any of the appeal.

(b) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.

(d) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Administrative Code. These standards shall apply uniformly throughout the state and shall include, but not be limited to: (1) the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal; (2) specification as to the number of required exits from the home; and (3) specification as to the floor or floors on which day care may be provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.



(e) No later than April 1, 1984, the State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement the provisions of this section.

1597.465. A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
- (c) The licensee notifies a parent that the facility is caring for two additional schoolage children and that there may be up to 13 or 14 children in the home at one time.
- (d) The licensee obtains the written consent of the property owner when the family day care home is operated on property that is leased or rented.

1597.467. (a) Whenever any licensee under this chapter has reasonable cause to believe that a child in his or her care has suffered any injury or has been subjected to any act of violence while under the licensee's care, the licensee shall, as soon as possible, report that injury or act of violence to the parent, parents, or guardian of that child.

(b) (1) A report shall be made to the department by telephone or fax during the department's normal business hours before the close of the next working day following the occurrence during the operation of a family day care home of any of the following events:

- (A) Death of any child from any cause.
- (B) Any injury to any child that requires medical treatment.
- (C) Any unusual incident or child absence that threatens the physical or emotional health or safety of any child.

(2) In addition to the report required pursuant to paragraph (1), a written report shall be submitted to the department within seven days following the occurrence of any events specified in paragraph (1). The report shall contain all of the following information:

- (A) Child's name, age, sex, and date of admission.
- (B) Date and nature of the event.
- (C) Attending physician's name and findings and treatment, if any.
- (D) Disposition of the case.

(c) The department may develop the report form to be used for reporting purposes pursuant to this section, and shall maintain all reports filed under this section in a manner that allows the department to report the data to the Legislature.

(d) The failure of a licensee to report, as prescribed by this section, any injury of, or act of violence to, a child under the licensee's care may be grounds for the suspension of his or her license pursuant to this chapter, but shall not constitute a misdemeanor.

(e) Nothing in this section shall relieve any licensee of any obligation imposed by other law including, but not limited to, laws relating to seeking medical attention for a child or reporting suspected child abuse.



1597.47. The provisions of this chapter shall not be construed to preclude any city, county, or other local public entity from placing restrictions on building heights, setback, or lot dimensions of a family day care facility as long as such restrictions are identical to those applied to other single-family residences. The provisions of this chapter shall not be construed to preclude the application to a family day care facility for children of any local ordinance which deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity. The provisions of this chapter also shall not be construed to prohibit or restrict the abatement of nuisances by a city, county, or city and county. However, such ordinance or nuisance abatement shall not distinguish family day care facilities from other single-family dwellings, except as otherwise provided in this chapter.

1597.52. (a) Licensing reviews of a family day care home for children shall be limited to health and safety considerations and shall not include any reviews of the content of any educational or training programs of the facility.

(b) No home shall be licensed or registered as a large family day care home after January 1, 1984, unless the provider has at least one year's experience as a regulated small family day care home operator or as an administrator of a licensed day care center. The director may waive this requirement upon a finding that the applicant has sufficient qualifying experience.

1597.53. No family day care home for children shall be licensed under Chapter 3 (commencing with Section 1500), but shall be subject to licensure exclusively in accordance with this chapter and Chapter 3.4 (commencing with Section 1596.70) which shall apply to family day care homes.

1597.531. (a) All family day care homes for children shall maintain in force either liability insurance covering injury to clients and guests in the amount of at least one hundred thousand dollars (\$100,000) per occurrence and three hundred thousand dollars (\$300,000) in the total annual aggregate, sustained on account of the negligence of the licensee or its employees, or a bond in the aggregate amount of three hundred thousand dollars (\$300,000). In lieu of the liability insurance or the bond, the family day care home may maintain a file of affidavits signed by each parent with a child enrolled in the home which meets the requirements of this subdivision. The affidavit shall state that the parent has been informed that the family day care home does not carry liability insurance or a bond according to standards established by the state. If the provider does not own the premises used as the family day care home, the affidavit shall also state that the parent has been informed that the liability insurance, if any, of the owner of the property or the homeowners' association, as appropriate, may not provide coverage for losses arising out of, or in connection with, the operation of the family day care home, except to the extent that the losses are caused by, or result from, an action or omission by the owner of the property or the homeowners' association, for which the owner of the property or the homeowners' association would otherwise be liable under the law. These affidavits shall be on a form provided by the department and shall be reviewed at each licensing inspection.



(b) A family day care home that maintains liability insurance or a bond pursuant to this section, and that provides care in premises that are rented or leased or uses premises which share common space governed by a homeowners' association, shall name the owner of the property or the homeowners' association, as appropriate, as an additional insured party on the liability insurance policy or bond if all of the following conditions are met:

(1) The owner of the property or governing body of the homeowners' association makes a written request to be added as an additional insured party.

(2) The addition of the owner of the property or the homeowners' association does not result in cancellation or nonrenewal of the insurance policy or bond carried by the family day care home.

(3) Any additional premium assessed for this coverage is paid by the owner of the property or the homeowners' association.

(c) As used in this section, "homeowners' association" means an association of a common interest development, as defined in Section 1351 of the Civil Code.

1597.54. All family day care homes for children, shall apply for a license under this chapter, except that any home which on June 28, 1981, had a valid and unexpired license to operate as a family day care home for children under other provisions of law shall be deemed to have a license under this chapter for the unexpired term of the license at which time a new license may be issued upon fulfilling the requirements of this chapter.

An applicant for licensure as a family day care home for children shall file with the department, pursuant to its regulations, an application on forms furnished by the department, which shall include, but not be limited to, all of the following:

(a) A brief statement confirming that the applicant is financially secure to operate a family day care home for children. The department shall not require any other specific or detailed financial disclosure.

(b) (1) Evidence that the small family day care home contains a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal under subdivision (d) of Section 1597.45, or evidence that the large family day care home meets the standards established by the State Fire Marshal under subdivision (d) of Section 1597.46.

(2) Evidence satisfactory to the department that there is a fire escape and disaster plan for the facility and that fire drills and disaster drills will be conducted at least once every six months. The documentation of these drills shall be maintained at the facility on a form prepared by the department and shall include the date and time of the drills.

(c) The fingerprints of any applicant of a family day care home license, and any other adult, as required under subdivision (b) of Section 1596.871.

(d) Evidence of a current tuberculosis clearance, as defined in regulations that the department shall adopt, for any adult in the home during the time that children are under care.

(e) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and Chapter 3.4 (commencing with Section 1596.70) and the regulations adopted pursuant to those chapters.



(f) Evidence satisfactory to the department that the applicant and all other persons residing in the home are of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1596.871, employment history, and character references.

(g) Failure of the applicant to cooperate with the licensing agency in the completion of the application shall result in the denial of the application. Failure to cooperate means that the information described in this section and in regulations of the department has not been provided, or not provided in the form requested by the licensing agency, or both.

(h) Other information as may be required by the department for the proper administration and enforcement of the act.

1597.541. (a) The department shall adopt regulations regarding age-appropriate immunization requirements for enrolled children for family day care homes.

(b) All family day care homes for children shall maintain evidence that enrolled children have met the age-appropriate immunization requirements adopted pursuant to this section.

1597.542. (a) The Division of Child Care Licensing in the department shall clearly differentiate degrees of violations of the regulations adopted for purposes of this chapter by the impact upon children in care.

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

1597.55a. No site visits, or unannounced visits or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the initial licensing of the applicant.

(b) An unannounced site visit shall be required for the renewal of a license.

(c) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.

(d) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853.

(e) In addition to any site visit or spot check authorized under this section, the department shall annually make unannounced visits on 10 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, including the time of a request for a renewal of a license.

(f) An unannounced site visit shall adhere to both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

(g) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.



1597.55b. No site visits, or unannounced visits or spot checks, shall be made under this chapter except as provided in this section.

(a) An announced site visit shall be required prior to the licensing of the applicant.

(b) An unannounced site visit shall be required on or before every third anniversary of the issuance of the license.

(c) A public agency under contract with the department may make spot checks if they do not result in any cost to the state. However, spot checks shall not be required by the department.

(d) An unannounced site visit to all licensed family day care homes shall be made annually and as often as necessary to ensure compliance. The site visits required under subdivision (b) may count towards the annual visit required by this subdivision.

(e) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint.

(f) The department shall annually make unannounced spot visits on 20 percent of all family day care homes for children licensed under this chapter. The unannounced visits may be made at any time, and shall be in addition to the visits required by subdivisions (b), (c), and (d).

(g) An unannounced site visit shall comply with both of the following conditions:

(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.

(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.

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

1597.56. (a) The department shall notify a family day care home in writing of all deficiencies in its compliance with this act and the rules and regulations adopted pursuant to this act, and shall set a reasonable length of time for compliance by the family day care home.

Upon a finding of noncompliance, the department may levy a civil penalty that shall be paid to the department each day until the department finds the family day care home in compliance.

(b) In developing a plan of correction, both the licensee and the department shall give due consideration to the following factors:

(1) The gravity of the violation.

(2) The history of previous violations.

(3) The possibility of a threat to the health or safety of any child in the facility.

(4) The number of children affected by the violation.

(5) The availability of equipment or personnel necessary to correct the violation, if appropriate.

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



1597.57. The department shall do all of the following:

(a) Develop and utilize one application form for all family day care homes for children requesting a new license.

(b) Establish for parents a consumer education program annually on the law and regulations governing family day care homes for children under this chapter and the role of the state and other public entities and local associations in relation to family day care homes for children. In planning this program, the department shall seek the assistance of other public entities and local associations.

(c) Administer an orientation program for new operators of family day care homes for children that may be conducted directly by the department or by contract with local governments or family day care home associations.

1597.59. The department and the local agencies with which it contracts for the licensing of family day care homes for children shall grant or deny a license to a family day care home for children within 30 days after receipt of all appropriate licensing application materials as determined by the department, provided both of the following conditions are met:

(a) A site visit has been completed and the family day care home has been found to be in compliance with licensing standards.

(b) The applicant and each person described by subdivision (b) of Section 1596.871 has obtained a criminal record clearance, or been granted a criminal record exemption by the department or the local contracting agency.

The department shall conduct an initial site visit within 30 days after the receipt of all appropriate licensing application materials.

1597.61. (a) When the department determines that a family day care home for children is operating without a license and notifies the unlicensed provider of the requirement for the license, the licensing agency may issue a cease and desist order only if it finds and documents that continued operation of the facility will be dangerous to the health and safety of the children or if a license held by the facility has been revoked by the department within two years preceding the determination of unlicensed operation. In all other cases where the licensing agency determines such a facility is operating without a license and notifies the unlicensed provider of the requirements for the license, the licensing agency may issue a cease and desist order only if the unlicensed provider does not apply for a license within a reasonable time after the notice.

(b) If an unlicensed family day care home fails to respond to a cease and desist order issued pursuant to subdivision (a), or if the department determines it necessary to protect the immediate health and safety of the children, the licensing agency may bring an action to enjoin such a home from continuing to operate pursuant to Section 1596.89.



(c) The district attorney of a county shall, upon application by the department, institute and conduct the prosecution of any action brought by the licensing agency against an unlicensed family day care home located in that county.

1597.62. (a) The department may impose civil penalties of twenty-five dollars (\$25) per day for uncorrected violations that present an immediate or potential risk to the health and safety of children in care. The penalties shall be imposed in accordance with Section 1596.893.

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

1597.621. Family day care homes that, on December 31, 1983, have a valid unexpired registration to operate as a family day care home for children pursuant to Section 1597.62 in one of the pilot counties shall be deemed to be issued a family day care license effective January 1, 1984. Licensure pursuant to this section shall not require a visit pursuant to the requirement set forth in subdivision (a) of Section 1597.55. However, all other requirements of licensing shall continue to be met. Complaint and revocation procedures may be enforced.
