

Article 3. Application Procedures**87218 APPLICATION FOR LICENSE****87218**

- (a) Any individual, firm, partnership, association, corporation or governmental entity desiring to obtain a license shall file with the licensing agency an application on forms furnished by the licensing agency. The licensee shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency. The application and supporting documents shall contain the following:
- (1) Name or proposed name and address of facility.
 - (2) Name and address of the applicant and documentation verifying completion by the applicant of certification requirements as specified in Section 87564.2.
 - (A) This section shall apply to all applications for license, unless the applicant has a current license for another residential care facility for the elderly which was initially licensed prior to July 1, 1989 or has successfully completed an approved certification program within the prior five years.
 - (B) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or person serving in a like capacity or the designated administrator of the facility shall meet the requirements of this section.
 - (3) If the applicant is a partnership, the name, signature and principal business address of each partner.
 - (4) If the applicant is a corporation or association, the name, title and principal business address of each officer, executive director, and member of the governing board. The application shall be signed by the chief executive officer or authorized representative. In addition, a copy of the Articles of Incorporation, Constitution and By-laws, and the name and address of each person owning more than 10 percent of stock in the corporation shall be provided.
 - (5) If the applicant is a corporation, each member of the board of directors, executive director, and any officer shall list the name of all facilities which they have been licensed to operate, employed by or a member of the board of the directors, executive director or an officer.
 - (6) Procedures as required pursuant to Section 1569.175 of the Health and Safety Code.

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- (A) Health and Safety Code Section 1569.175 provides:
- (a) In addition to any other requirements of this chapter, any residential care facility for the elderly providing residential care for six or fewer persons at which the owner does not reside shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a response of action taken or a reason why no action needs to be taken.
 - (b) In order to assure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet residents and learn of problems in the neighborhood, any facility with a nonresident owner shall establish a fixed time on a weekly basis when the owner, licensee, or person designated by the owner or licensee will be present.
 - (c) Facilities with nonresident owners shall establish procedures to comply with the requirements of this section on or before July 1, 1987.

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- (7) Name and address of owner of facility premises if applicant is leasing or renting.
- (8) The category of facility to be operated.
- (9) Maximum number to be served.
- (10) The name, residence and mailing addresses of the facility administrator, a description of the administrator's background and qualifications, and documentation verifying the required education and administrator certification.

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- (11) Copy of the current organizational chart showing type and number of positions and line of authority. However, facilities for less than sixteen persons may furnish, in lieu of an organization chart, a list of positions and the periods of time that persons in these positions will be providing services at the facility.
- (12) Evidence pursuant to Health and Safety Code, Section 1569.15(b).

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Evidence satisfactory to the licensing agency that the applicant is of reputable and responsible character. If the applicant is a firm, association, organization, partnership, business trust, corporation or company, like evidence as to the members or shareholders and the person who will be in charge of the community care facility.

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- (13) A financial plan of operation on forms provided or approved by the Department. Start-up funds shall be sufficient to meet a minimum of three (3) months operating costs. In addition:
 - (A) Where construction is anticipated to meet the requirements for a license, sufficient financing for the construction shall be available.
 - (B) The scope of the applicant's services shall be such that an adequate quality of service will be permitted from available funds. The licensing agency shall have the right to verify the availability of these funds.
- (14) When there is a change of licensee, the required documentation shall include the information specified in Section 87227(k).

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- (15) Information concerning insurance carried by the applicant relating to the operation of the facility.
 - (16) Plan of Operation as specified in Section 87222.
 - (17) The fee for processing the application for the requested capacity as specified in Section 87224.
 - (18) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.
 - (19) Such other information as may be required by the licensing agency for the proper administration and enforcement of the licensing law and regulations.
- (b) An application shall be filed with the licensing agency which serves the area in which the facility is located.

NOTE: Authority cited: Sections 1569.23, 1569.30, and 1569.616, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.10, 1569.15, 1569.151, 1569.1515, 1569.16, 1569.17, 1569.185, 1569.19, 1569.20, 1569.21, 1569.22, 1569.23, 1569.24, 1569.312, 1569.45, 1569.60, 1569.616, and 1569.62, Health and Safety Code.

87219 CRIMINAL RECORD CLEARANCE**87219**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code Section 1569.17 and shall have the authority to approve or deny a facility license, or employment, residence, or presence in the facility, based upon the results of such review.
- (b) Prior to the Department issuing a license, the applicant, administrator and any adults other than a client, residing in the facility shall have a criminal record clearance or exemption.

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- (1) Section 1569.17(a) of the Health and Safety Code provides in part:

Before issuing a license to any person or persons to operate or manage a residential care facility for the elderly, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation, or arrested for any crime specified in Section 290 of the Penal Code or arrested for violating Section 245, 273.5 subdivision (b) of Section 273a, or prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated. That criminal history information shall include the full criminal record, if any, of those persons and subsequent arrest information pursuant to Section 11105.2 of the Penal Code. The following shall apply to the criminal record information.

- (A) If the California Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).
- (B) If the California Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the California Department of Social Services shall cease processing the application until the conclusion of the trial.
- (C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the California Department of Social Services with a statement of that fact.
- (D) If the California Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).
- (E) An applicant and any person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a).

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- (2) Section 1569.17(b) of the Health and Safety Code provides in part:

In addition to the applicant, the provisions of this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.
- (D) Any staff person or employee who has contact with the clients.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.
- (F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

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(3) The following individuals are exempt from requirements applicable under paragraph (1):

- (A) A medical professional, as defined in Section 87101(m)(1), who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all of the following apply:
 - (i) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (ii) The individual is providing time-limited specialized clinical care or services.
 - (iii) The individual is providing care or services within the individual's scope of practice.
 - (iv) The individual is not a community care facility licensee or an employee of the facility.
- (B) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (i) The individual is hired for a defined, time-limited job.
 - (ii) The individual is not left alone with clients.
 - (iii) When clients are present in the room in which the repair person or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (C) A third-party contractor or other business professional, if all of the following apply:
 - (i) The individual is retained by a client.
 - (ii) The individual is at the facility at the request or by permission of that client.
 - (iii) The individual is not left alone with other clients.

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- (D) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
 - (i) The exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (E) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
 - (i) This exemption shall not apply to an individual who is a community care facility licensee or an employee of the facility.
- (F) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
 - (i) Members are not left alone with the clients.
 - (ii) Members do not transport clients off the facility premises.
 - (iii) The same group does not conduct such activities more often than once a month.
- (G) A volunteer, if all of the following apply:
 - (i) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.
 - (ii) The volunteer is never left alone with clients.
 - (iii) The volunteer does not provide any client assistance with dressing, grooming, bathing or personal hygiene.
 - (iv) The volunteer is at the facility during normal waking hours.
 - (v) The volunteer spends no more than 16 hours per week at the facility.

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(H) The following individuals unless contraindicated by the client's needs and service plan:

(i) A spouse, significant other, relative, or close friend of a client.

(ii) An attendant or facilitator if the attendant or facilitator is not employed, retained or contracted by the licensee.

(iii) The exemptions in Section 87219(b)(3)(H)(i) or (ii) apply only if the individual is visiting the client or providing direct care and supervision to that client only.

(I) Nothing in this paragraph shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(4) Section 1569.17(e) of the Health and Safety Code provides in part:

The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

(5) Section 1569.17(a)(5) of the Health and Safety Code states in part:

An applicant and any person specified in subdivision (b) of the Health and Safety Code Section 1569 shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and individuals listed in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person described in subdivision (b) has a criminal record, the license may be revoked pursuant to Health and Safety Code Section 1569.50. The department may also suspend the license pending an administrative hearing pursuant to Health and Safety Code Sections 1569.50 and 1569.51.

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- (c) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request, LIC 9182 (Rev. 4/02).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

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- (4) Section 1569.17(g) of the Health and Safety Code states:

The California Department of Social Services shall hold criminal records clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal records clearances to be transferred.

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- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (1) A person signing the LIC 508 must:
 - (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87219(h) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
 - (B) If convicted of a crime other than a minor traffic violation as specified in Section 87219(h), provide information regarding the conviction.

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- (2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was \$300 or less, the licensee shall immediately notify the Department and the Department will take appropriate action as specified in Section 87219(h). The Department shall take the same actions as would be taken in Health and Safety Code Section 1569.17(c) if a criminal record transcript had been received.
- (3) The license shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 87219(c), prior to the individual's employment, residence, or initial presence in the community care facility.
 - (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1569.17(b) shall prior to working, residing or volunteering in a licensed facility:
 - (1) Obtain a California clearance or a criminal record exemption as required by the Department or
 - (2) Request a transfer of a criminal record clearance as specified in Section 87219(c) or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87219.1(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.

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- (f) Violation of Section 87219(e) will result in an immediate assessment of civil penalties of one hundred dollars (\$100) per violation by per day for a maximum of five (5) days by the Department.
 - (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred (\$100) per violation per day for a maximum of thirty (30) days.
 - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.
- (g) Violation of Section 87219(e) may result in a denial of the license application or suspension and/or revocation of the license.
- (h) If the criminal record transcript of any of the individuals specified in Health and Safety Code Section 1569.17(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300 and an exemption pursuant to Section 87219.1(a) has not been granted, the Department shall take the actions specified in Health and Safety Code Section 1569.17(c).
 - (1) For an initial applicant, the Department may deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58 and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

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- (5) Section 1569.17(c)(4) of the Health and Safety Code provides in part:

If it is determined by the California Department of Social Services on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a or 273d, or subdivision (a) or (b) of Section 368 of the Penal Code, or has been convicted of a felony, the California Department of Social Services shall notify the licensee in writing within 15 calendar days of receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential community care facility. The California Department of Social Services may subsequently grant an exemption pursuant to subdivision (f).

- (A) Section 243.4 of the Penal Code provides in part:

1. Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
2. Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.

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(B) Section 273a of the Penal Code provides:

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer or inflicts thereon unjustifiable physical pain or mental suffering or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not to exceed one year, or in the state prison for 2, 3, or 4 years.
2. Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.

(C) Section 273d of the Penal Code provides:

1. Any person who willfully inflicts upon any child cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4, or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

(D) Section 368 of the Penal Code provides:

1. Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

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2. Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.

(6) Section 1569.17(c) of the Health and Safety Code provides in part:

- (A) If the conviction was for another crime, except a minor traffic violation, the licensee shall, upon notification by the California Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the community care facility; (2) seek an exemption pursuant to subdivision (g). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered by the department.

(7) Section 1569.17(h) of the Health and Safety Code provides:

If the licensee or facility is required by law to deny employment or to terminate employment of any employee based written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1569.58, the licensee or the facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

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- (i) The Department shall notify the licensee and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record clearance.

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- (j) The license shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87566.
- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
 - (1) Documentation shall be available at the facility for inspection by the Department.
- (l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
 - (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

NOTE: Authority cited: Section 1569.30 and 1569.49(d), Health and Safety Code. Reference: Section 1569.17 and 1569.49, Health and Safety Code.

87219.1 CRIMINAL RECORD EXEMPTION**87219.1**

- (a) The Department will notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87219.1(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 87219.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

(c) After a review of the criminal record transcript, the Department may grant an exemption if:

- (1) The applicant/licensee requests an exemption in writing for himself or herself, or
- (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
- (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
- (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

(d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 87219.1(c)(4). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.

(1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.

(2) The notice will list the information that must be submitted to request a criminal record exemption.

(3) The information must be submitted within forty-five (45) days of the date of the Department's notice.

(A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87219.1(e).

(B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.

(C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.

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- (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
1. Chooses not to request the exemption and
 2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or
 3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.
- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, such as employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.
 - (6) Character references.
 - (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).
 - (7) A certificate of rehabilitation from a superior court.
 - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
 - (A) Documents include, but are not limited to:
 1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
 - (1) Facility and type of association.
 - (2) The individual's age at the time the crime was committed.
- (g) The Department may deny an exemption request if:
 - (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
 - (1) Exemption denial notices shall specify the reason the exemption was denied.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to their application for a criminal record clearance or exemption,
 - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
 - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
 - (2) Is on probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87219.1(j)(2).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 87219.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87219.1(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87219.1(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87219.1(k)(1) through (6).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1569.17(f)(1) of the Health and Safety Code.

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Health and Safety Code Section 1569.17(f)(1) provides that no exemption shall be granted if an individual has been convicted of any of the following offenses:

- (1) Penal Code Sections 136.1 and 186.22 – Gang related/Intimidation of witnesses or victims.
- (2) Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (3) Penal Code Section 203 – Any mayhem.
- (4) Penal Code Section 206 - Felony torture.
- (5) Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
- (6) Penal Code Sections 211, 212.5, 213, 214 – Any robbery.
- (7) Penal Code Section 215 – Carjacking.
- (8) Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
- (9) Penal Code Section 243.4 – Sexual battery.
- (10) Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (11) Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
- (12) Penal Code Section 264.1 – Rape in concert.
- (13) Penal Code Section 266 – Enticing a minor into prostitution.

HANDBOOK CONTINUES

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

HANDBOOK CONTINUES

- (14) Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (15) Penal Code Section 266h(b) – Pimping a minor.
- (16) Penal Code Section 266i(b) – Pandering a minor.
- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.

HANDBOOK CONTINUES

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

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- (29) Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
- (30) Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.
- (31) Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
- (32) Penal Code Section 311.3 – Sexual exploitation of a child.
- (33) Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
- (34) Penal Code Section 311.10 – Advertising or distributing child pornography.
- (35) Penal Code Section 311.11 – Possessing child pornography.
- (36) Penal Code Sections 314 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368– Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

HANDBOOK CONTINUES

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

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- (44) Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
- (45) Penal Code Sections 664/187 – Any attempted murder.
- (46) Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.
- (47) Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (48) Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (49) Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
- (50) Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (51) Penal Code Section 667.5(c)(23) – Use of weapon of mass destruction.
- (52) Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

HANDBOOK ENDS HERE

- (n) The Department shall consider granting a simplified criminal record exemption if the individual has the criminal history profile outlined in Sections 87219.1(n)(1) through (4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.
- (o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption the Department shall:
 - (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code Section 1569.58, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 87219.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
 - (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code Section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 87219.1(q)(1) above, the Department may, in accordance with the provisions in Section 87219.1 et seq., grant or deny the subsequent request for an exemption.
 - (4) If an individual submits a petition pursuant to Government Code Section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal record exemption as provided in Section 87219.1. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request, LIC 9188 (Rev. 9/03).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state of the United States Government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., LIC 508, Criminal Record Statement [Rev. 1/03] and job description).

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve the transfer of an exemption from one facility to another:
 - (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
 - (6) Whether the exemption meets current exemption laws or regulations.
- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
 - (1) The exemption was granted in error, or
 - (2) The exemption does not meet current exemption laws or regulations, or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.

87219.1 CRIMINAL RECORD EXEMPTION (Continued)**87219.1**

- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct which is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate an administrative action.
- (x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.17, Health and Safety Code; and Gresher v. Anderson (2005) 127 Cal. App. 4th 88.

87220 FIRE CLEARANCE**87220**

- (a) All facilities shall maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal. Prior to accepting any of the following types of persons, the applicant or licensee shall notify the licensing agency and obtain an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, through the licensing agency:

- (1) Persons over 65 years of age.
- (2) Nonambulatory persons.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.30 and 1569.312, Health and Safety Code.

87222 PLAN OF OPERATION**87222**

- (a) Each facility shall have and maintain a current, written definitive plan of operation. The plan and related materials shall be on file in the facility and shall be submitted to the licensing agency with the license application. Any significant changes in the plan of operation which would affect the services to residents shall be submitted to the licensing agency for approval. The plan and related materials shall contain the following:

- (1) Statement of purposes and program goals.
- (2) A copy of the Admission Agreement, containing basic and optional services.
- (3) Statement of admission policies and procedures regarding acceptance of persons for services.
- (4) Administrative organization.
- (5) Staffing plan, qualifications and duties.
- (6) Plan for training staff, as required by Section 87565(c).

87222 PLAN OF OPERATION (Continued)**87222**

- (7) Sketches, showing dimensions, of the following:
 - (A) Building(s) to be occupied, including a floor plan that describes the capacities of the buildings for the uses intended and a designation of the rooms to be used for nonambulatory residents.
 - (B) The grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation area and other space used by the residents.
- (8) Transportation arrangements for persons served who do not have independent arrangements.
- (9) A statement whether or not the applicant will handle residents' money and/or valuables. If money and/or valuables will be handled, the method for safeguarding pursuant to Sections 87225, 87226 and 87227.
- (10) A statement of the facility's policy concerning family visits and other communication with clients, as specified in Health and Safety Code Section 1569.313.

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- (A) Section 1569.313 of the Health and Safety Code provides that:

This policy shall be designed to encourage regular family involvement with the client and shall provide ample opportunities for family participation in activities at the facility.

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- (11) If the licensee intends to admit and/or specialize in care for one or more residents who have a documented history of behaviors that may result in harm to self or others, the facility plan of operation shall include a description of precautions that will be taken to protect that resident and all other residents.
- (b) A licensee who advertises or promotes dementia special care, programming, and/or environments shall include additional information in the plan of operation as specified in Section 87725(a)(2).
- (c) A licensee who accepts or retains residents diagnosed by a physician to have dementia shall include additional information in the plan of operation as specified in Section 87724(b).

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.157, 1569.175, 1569.2, 1569.30, 1569.31, 1569.312, 1569.313, 1569.316(a), 1569.626, and 1569.627, Health and Safety Code; and Section 11006.9, Welfare and Institutions Code.

87223	DISASTER AND MASS CASUALTY PLAN	87223
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(a) Each facility shall have a disaster and mass casualty plan of action. The plan shall be in writing and shall be readily available.

(b) The plan shall be subject to review by the Department and shall include:

(1) Designation of administrative authority and staff assignments.

(2) Plan for evacuation including:

(A) Fire safety plan.

(B) Means of exiting.

(C) Transportation arrangements.

(D) Relocation sites which are equipped to provide safe temporary accommodations for residents.

(E) Supervision of residents during evacuation or relocation and contact after relocation to assure that relocation has been completed as planned.

(F) Means of contacting local agencies such as fire department, law enforcement agencies, civil defense and other disaster authorities.

(3) Provision for notifying a resident's hospice agency, if any, in the event of evacuation and/or relocation.

(c) Emergency exiting plans and telephone numbers shall be posted.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, and 13131, Health and Safety Code.

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87224 LICENSING FEES**87224**

- (a) An applicant or licensee shall be charged fees as specified in Health and Safety Code Section 1569.185.

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Health and Safety Code Section 1569.185 provides:

“(a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license to operate a residential care facility for the elderly. After initial licensure, a fee shall be charged by the department annually on each anniversary of the effective date of the license.

The fees are for the purpose of financing activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Capacity	Initial Application	Annual
1-3	\$375	\$375
4-6	\$750	\$375
7-15	\$1,126	\$563
16-30	\$1,500	\$750
31-49	\$1,876	\$938
50-74	\$2,252	\$1,126
75-100	\$2,628	\$1,314
101-150	\$3,004	\$1,502
151-200	\$3,502	\$1,751
201-250	\$4,000	\$2,000
251-300	\$4,500	\$2,250
301-350	\$5,000	\$2,500
351-400	\$5,500	\$2,750
401-500	\$6,500	\$3,250
501-600	\$7,500	\$3,750
601-700	\$8,500	\$4,250
701+	\$10,000	\$5,000

- (b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

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87224 LICENSING FEES (Continued)

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(C) A fee of twenty-five dollars (\$25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of fifty dollars (\$50) for attendance by any individual at a department-sponsored orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars (\$200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan. (2) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(c) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care or supervision by licensees and to support the activities of the licensing programs, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the annual Budget Act in support of the licensing program. (2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A residential care facility for the elderly may use a bona fide business check to pay the license fee required under this section.

(e) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.”

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87224	LICENSING FEES (Continued)	87224
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- (b) The annual fee shall be according to existing licensed capacity unless the licensee requests a lower or higher capacity.
- (c) An additional fee shall be charged when the licensee requests an increase or decrease in capacity as specified in Health and Safety Code Section 1569.185(b)(1)(C).
- (d) When a licensee moves a facility from one location to another, the relocation fee shall be as specified in Health and Safety Code Section 1569.185(b)(1)(A).

<u>Capacity</u>	<u>Relocation</u>
1 - 6	\$ 50
7 - 15	75
16 - 49	100
50 +	125

- (1) To qualify for the relocation fee the following shall apply:
 - (A) The licensee shall have notified the licensing agency before actually relocating the facility.
 - (B) The categorical type of facility shall remain the same when relocating the facility.
 - (C) The fee shall be by requested capacity at the new location.
- (e) The fees shall be nonrefundable.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.185 and 1569.19, Health and Safety Code.

87225	COMMINGLING OF MONEY	87225
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Money and valuables of residents entrusted to the licensee of one community care facility licensed under a particular license number shall not be commingled with those of another residential care facility for the elderly of a different license number, regardless of joint ownership.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530, 1531, 1560, and 1561, Health and Safety Code.

87226	BONDING	87226
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- (a) Each licensee, other than a county, who is entrusted to safeguard resident cash resources, shall file or have on file with the licensing agency a copy of a bond issued by a surety company to the State of California as principal.

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87226 BONDING (Continued)**87226**

- (1) The amount of the bond shall be in accordance with the following schedule:

Total Safeguarded Per Month	Bond Required
\$750 or less.....	\$1,000
\$751 to \$1,500.....	\$2,000
\$1,501 to \$2,500.....	\$3,000

Every further increment of \$1,000 or fraction thereof shall require an additional \$1,000 on the bond.

- (b) Whenever the licensing agency determines that the amount of the bond is insufficient to adequately protect the money of residents, or whenever the amount of any bond is impaired by any recovery against the bond, the licensing agency may require the licensee to file an additional bond in such amount as the licensing agency determines to be necessary to adequately protect the residents' money.
- (c) Each application for a license or renewal of license shall be accompanied by an affidavit on a form provided by the licensing agency. The affidavit shall state whether the applicant/licensee will be entrusted/is entrusted to safeguard or control cash resources of persons and the maximum amount of money to be handled for all persons in any month.
- (d) No licensee shall either handle money of a resident or handle amounts greater than those stated in the affidavit submitted by him or for which his bond is on file without first notifying the licensing agency and filing a new or revised bond as required by the licensing agency.
- (e) A written request for a variance from the bonding requirement may be made to the licensing agency. Approval by the licensing agency of a variance shall be in writing. The request shall include a signed statement from the licensee indicating:
- (1) That the bonding requirement is so onerous that as a result the facility will cease to operate.
 - (2) The place of deposit in which the resident's funds are to be held.
 - (3) That withdrawals will be made only on the authorization of the resident or his responsible person.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.15, 1569.30, 1569.31, 1569.312, 1569.60 and 1569.61, Health and Safety Code.

**87227 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY,
AND VALUABLES OF RESIDENTS****87227**

- (a) A licensee shall not be required to handle residents' cash resources. However, if a resident incapable of handling his own cash resources, as documented by the initial or subsequent appraisal, is accepted for care, his cash resource shall be safeguarded in accordance with the regulations in this section.
- (b) Every facility shall take appropriate measures to safeguard residents' cash resources, personal property and valuables which have been entrusted to the licensee or facility staff. The licensee shall give the residents receipts for all such articles or cash resources.
- (c) Every facility shall account for any cash resources entrusted to the care or control of the licensee or facility staff.
 - (1) Cash resources include but are not limited to monetary gifts, tax credits and/or refunds, earnings from employment or workshops, and personal and incidental need allowances from funding sources such as SSI/SSP.
- (d) Except as provided in approved continuing care agreements, no licensee or employee of a facility shall:
 - (1) accept appointment as a guardian or conservator of the person and/or estate of any resident;
 - (2) accept any general or special power of attorney for any such person;
 - (3) become substitute payee for any payments made to any persons;
 - (A) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the resident.
 - (4) become the joint tenant on any account specified in Section 87227(h) with a resident.
- (e) Cash resources and valuables of residents which are handled by the licensee for safekeeping shall not be commingled with or used as the facility funds or petty cash, and shall be separate, intact and free from any liability the licensee incurs in the use of his own or the facility's funds and valuables. This does not prohibit the licensee from providing advances or loans to residents from facility money.

87227 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES OF RESIDENTS (Continued) 87227

- (f) No licensee or employee of a facility shall make expenditures from residents' cash resources for any basic service specified in this Chapter, or for any basic services identified in a contract/admission agreement between the resident and facility.
- (1) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the resident.
- (g) Each licensee shall maintain adequate safeguards and accurate records of cash resources and valuables entrusted to his care, including, but not limited to the following:
- (1) Records of residents' cash resources maintained as a drawing account shall include a ledger accounting (columns for income, disbursements and balance) for each resident, and supporting receipts filed in chronological order. Each accounting shall be kept current.
- (A) An acceptable receipt where cash is provided to residents from their respective accounts, includes: the resident's signature or mark, or responsible party's full signature, and a statement acknowledging receipt of the amount and date received. An acceptable form of receipt would include:
- "(full signature of resident) accepts (dollar amount) (amount written in cursive), this date (date), from (payor)".
- (B) An acceptable receipt where purchases are made for the resident, from his account, is the store receipt.
- (2) Records of residents' cash resources and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident as specified in (b) above or to his responsible person. The receipt provided to the resident for money or valuables entrusted to the licensee shall be original and include the resident's and/or his responsible person's signature.
- (3) Bank records for transactions of cash resources deposited in and drawn from the account as specified in(h) below.

**87227 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY,
AND VALUABLES OF RESIDENTS (Continued)****87227**

- | (h) Immediately upon admission, residents' cash resources entrusted to the licensee and not kept in the licensed facility shall be deposited in any type of bank, savings and loan or credit union account, which is maintained separate from the personal or business accounts of the licensee, provided that the account title clearly notes that it is residents' money and the resident has access to the money upon demand to the licensee.
 - (1) Such accounts shall be maintained in a local bank, savings and loan or credit union authorized to do business in California, the deposits of which are insured by a branch of the Federal Government; except, however that a local public agency may deposit such funds with the public treasurer.
 - (2) Cash resources entrusted to the licensee for residents and kept on the facility premises shall be kept in a locked and secure location.
- | (i) Upon discharge of a resident, all cash resources, personal property and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident, or his responsible person. A signed receipt shall be obtained.
- | (j) Upon the death of a resident, all cash resources, personal property, and valuables of that resident shall immediately be safeguarded.
 - (1) All cash resources shall be placed in an account as specified in (g) above.
 - (2) The executor or the administrator of the estate shall be notified by the licensee, and the cash resources, personal property, and valuables surrendered to said party.
 - (3) If no executor or administrator has been appointed, the responsible person shall be notified, and the cash resources, personal property, and valuables shall be surrendered to said person in exchange for a signed itemized receipt.
 - (4) If the licensee is unable to notify a responsible party as specified above, immediate written notice of the resident's death shall be given to the public administrator of the county as provided by Section 1145 of the California Probate Code.
- | (k) Whenever there is a change of licensee, the licensee shall:
 - (1) notify the licensing agency of any pending change of licensee, and

87227 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES OF RESIDENTS (Continued) 87227

- (2) shall provide the licensing agency an accounting of all residents' cash resources, personal property and valuables entrusted to his/her care. Such accounting shall be made on a form provided or approved by the Department.
- (l) When the licensing agency approves the application for the new licensee, the form specified in (2) above shall be updated, signed by both parties, and forwarded to the licensing agency.
- (m) All monetary gifts, and any gift exceeding an estimated value of \$100, which are given to a licensee by or on behalf of a resident shall be recorded. The record shall be attached to the account specified in (f) above. This shall not include monetary gifts or valuables given by the friends or relatives of a deceased resident.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.15, 1569.30, 1569.31, 1569.60 and 1569.61, Health and Safety Code; Section 11006.9, Welfare and Institutions Code; and 20 CFR 416.601.

87227.1 THEFT AND LOSS**87227.1**

- (a) The licensee shall ensure an adequate theft and loss program as specified in Health and Safety Code Section 1569.153.
 - (1) The initial personal property inventory shall be completed by the licensee, and the resident, or the resident's representative.
 - (2) A licensee who fails to make reasonable efforts to safeguard resident property, shall reimburse a resident for or replace stolen or lost resident property at its current value. The licensee shall be presumed to have made reasonable efforts to safeguard resident property if there is clear and convincing evidence of efforts to meet each requirement specified in Section 1569.153.
 - (A) A civil penalty shall be levied if the licensee or facility staff have not implemented the theft and loss program, or if the licensee has not shown clear and convincing evidence of its efforts to meet all of the requirements set forth in Section 1569.153.
 - (3) The facility contract of admission, including all documents a resident or his or her representative must sign as a condition of admission, shall not require or suggest a lesser standard of responsibility for the personal property of residents than the law requires.

87227.1 THEFT AND LOSS (Continued)

87227.1

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- (4) Section 1569.153 of the Health and Safety Code provides in part:

“A theft and loss program shall be implemented by the residential care facilities for the elderly within 90 days after January 1, 1989. The program shall include all of the following:

“(a) Establishment and posting of the facility's policy regarding theft and investigative procedures.

“(b) Orientation to the policies and procedures for all employees within 90 days of employment.

“(c) Documentation of lost and stolen resident property with a value of twenty-five dollars (\$25) or more within 72 hours of the discovery of the loss or theft and, upon request, the documented theft and loss record for the past 12 months shall be made available to the State Department of Social Services, law enforcement agencies and to the office of the State Long-Term Care Ombudsman in response to a specific complaint. The documentation shall include, but not be limited to, the following:

“(1) A description of the article.

“(2) Its estimated value.

“(3) The date and time the theft or loss was discovered.

“(4) If determinable, the date and time the loss or theft occurred.

“(5) The action taken.

“(d) A written resident personal property inventory is established upon admission and retained during the resident's stay in the residential care facility for the elderly. Inventories shall be written in ink, witnessed by the facility and the resident or resident's representative, and dated. A copy of the written inventory shall be provided to the resident or the person acting on the resident's behalf. All additions to an inventory shall be made in ink, and shall be witnessed by the facility and the resident or resident's representative, and dated. Subsequent items brought into or removed from the facility shall be added to or deleted from the personal property inventory by the facility at the written request of the resident, the resident's family, a responsible party, or a person acting on behalf of a resident. The facility shall not be liable for items which have not been requested to be included in the inventory or for items which have been deleted from the inventory. A copy of a current inventory shall be made available upon request to the resident, responsible party, or other authorized representative....

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87227.1 THEFT AND LOSS (Continued)**87227.1**

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“(e) Inventory and surrender of the resident's personal effects and valuables upon discharge to the resident or authorized representative in exchange for a signed receipt.

“(f) Inventory and surrender of personal effects and valuables following the death of a resident to the authorized representative in exchange for a signed receipt. Immediate written notice to the public administrator of the county upon the death of a resident whose heirs are unable or unwilling to claim the property as specified in Chapter 20 (commencing with Section 1140) of Division 3 of the Probate Code.

“(g) Documentation, at least semiannually, of the facility's efforts to control theft and loss, including the review of theft and loss documentation and investigative procedures and results of the investigation by the administrator and, when feasible, the resident council.

“(h) Establishment of a method of marking, to the extent feasible, personal property items for identification purposes upon admission and, as added to the property inventory list, including engraving of dentures and tagging of other prosthetic devices.

“(i) Reports to the local law enforcement agency within 36 hours when the administrator of the facility has reason to believe resident property with a then current value of one hundred dollars (\$100) or more has been stolen. Copies of those reports for the preceding 12 months shall be made available to the State Department of Social Services and law enforcement agencies.

“(j) Maintenance of a secured area for residents' property which is available for safekeeping of resident property upon the request of the resident or the resident's responsible party. Provide a lock for the resident's bedside drawer or cabinet upon request of and at the expense of the resident, the resident's family, or authorized representative. The facility administrator shall have access to the locked areas upon request.

“(k) A copy of this section and Sections 1569.152 and 1569.154 is provided by a facility to all of the residents and their responsible parties, and available upon request, to all of the facility's prospective residents and their responsible parties.

“(l) Notification to all current residents and all new residents, upon admission, of the facility's policies and procedures relating to the facility's theft and loss prevention program.

“(m) Only those residential units in which there are no unrelated residents and where the unit can be secured by the resident or residents are exempt from the requirements of this section.”

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NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.152, 1569.153, and 1569.154, Health and Safety Code.

87228 APPLICATION REVIEW**87228**

- (a) No initial license shall be issued until the licensing agency has completed the following:
- (1) A review which includes an on-site survey of the proposed premises and a determination of the qualifications of the applicant.
 - (2) A determination that the applicant has secured a fire clearance from the State Fire Marshal.
 - (3) A determination that the applicant and facility comply with the provisions of Chapter 3 (commencing with Section 1569) of Division 2 of the Health and Safety Code, and the regulations in this chapter.
- (b) The licensing agency shall cease review of any application as specified in Section 1569.16 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1569.16 provides:
- (a) If an application for a license indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), 2 (commencing with Section 1250), 3 (commencing with Section 1500), 3.4 (commencing with Section 1596.70), 3.5 (commencing with Section 1596.90), or 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1569.22 or any other provision of law. All residential care facilities for the elderly are exempt from the health planning requirements contained in Part 1.5 (commencing with Section 437) of Division 1.
 - (b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in subdivision (a) and the application was denied within the last year, the department shall, except as provided in Section 1569.22, cease further review of the application until one year has elapsed from the date of the denial letter. In those circumstances where denials are appealed and upheld at an administrative hearing, review of the application shall cease for one year from the date of the decision and order being rendered by the department. The cessation of review shall not constitute a denial of the application.

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87228	APPLICATION REVIEW (Continued)	87228
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- (2) "Application was denied within the last year" as specified in Health and Safety Code Section 1569.16(b) shall include initial or renewal applications.
- (3) If cessation of review occurs, the application shall be returned to the applicant. It shall be the responsibility of the applicant to request resumption of review as specified in Health and Safety Code Section 1569.16.
- (4) The application fee shall be non-refundable as specified in Section 87224(e).

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.16, 1569.17, 1569.20, and 1569.205, Health and Safety Code.

87229	CAPACITY	87229
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- (a) A license shall be issued for a specific capacity which shall be the maximum number of residents which can be provided care at any given time. The capacity shall be exclusive of any members of the licensee's own family who reside at the facility. However, the licensing agency shall consider the presence of other family members or other persons who reside in the facility in determining capacity in order to ensure and promote proper living arrangements for both the licensee's family and the residents and to ensure the provision of adequate care and supervision for the residents.
- (b) The number of persons that the facility is licensed to admit shall be determined on the basis of the application review by the licensing agency which shall consider:
 - (1) Physical energy and skills of the licensee as it relates to their ability to meet the needs of the residents.
 - (2) Any other household members who may reside at the facility and their individual needs.
 - (3) Physical features of the facility, such as available living space, which are necessary in order to comply with regulations.
 - (4) Number of available staff to meet the care needs of the residents.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.31 and 1569.312, Health and Safety Code.

87230 WITHDRAWAL OF APPLICATION**87230**

- | (a) The applicant may withdraw an application. However, unless the licensing agency consents in writing to such withdrawal, the Department or licensing agency shall not be deprived of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.
- | (b) The fee for processing the application shall be forfeited.
- | NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1569.185, 1569.20, 1569.22, 1569.30, 1569.50, 1569.51 and 1569.52, Health and Safety Code.

87231 PROVISIONAL LICENSE**87231**

- (a) The licensing agency may issue a provisional license to an applicant who has submitted a completed application for an initial license if the licensing agency determines that there are no life safety risks, that the facility is in substantial compliance, as defined in Section 87101s.(6), with applicable law and regulations, and an immediate need for licensure exists as defined in Section 87101i.(1).
- (1) A provisional license shall not be issued as specified in Health and Safety Code Section 1569.1515(b).

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- (A) Health and Safety Code Section 1569.1515(b) provides:

"(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59."

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- (b) The capacity of a provisional license shall be limited to the number of residents for whom immediate need has been established, or the capacity established for the specific facility, whichever is less.

87231 PROVISIONAL LICENSE (Continued)**87231**

- (c) A provisional license shall not be renewable and shall terminate on the date specified on the license, or upon denial of the application, whichever is earlier.
- (1) A provisional license may be issued for a maximum of six (6) months when the licensing agency determines that full compliance with licensing regulations will be achieved within that time period.
- (2) A provisional license may be issued for a maximum of twelve (12) months when the licensing agency determines, at the time of application, that more than six (6) months is required to achieve full compliance with licensing regulations due to circumstances beyond the control of the applicant.
- (d) If, during the provisional licensing period, the licensing agency discovers deficiencies which threaten the physical health, mental health, safety or welfare of the residents, the Department may exercise its discretion to institute administrative action or civil proceedings or to refer for criminal prosecution.
- (e) If the licensing agency determines after its review, specified in Section 87228, that the licensee does not meet the licensing requirements, the application shall be denied, as specified in Section 87340.
- (f) If the licensing agency denied the application for an initial license, the applicant may appeal the denial, as provided in Section 87340. Until the Director adopts a decision on the denial action, the facility shall be unlicensed.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.1515(b), 1569.17, 1569.18, 1569.20, 1569.21, 1569.22, 1569.23, and 1569.24, Health and Safety Code.

87233 TERM OF AN INITIAL OR RENEWAL LICENSE**87233**

Repealed by CDSS Manual Letter CCL 01-10, effective 6/29/01.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.19, Health and Safety Code.

87234 APPLICATION FOR RENEWAL OF LICENSE**87234**

| Repealed by CDSS Manual Letter CCL 01-10, effective 6/29/01.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15 and 1569.19, Health and Safety Code.

87235 RESUBMISSION OF APPLICATION**87235**

- (a) A new application shall be made whenever there is any change in conditions or limitations described on the current license, including, but not limited to:
- (1) Any change in the location of the facility.
 - (2) Any change in the licensee.
 - | (3) Failure to complete a new application within the required time limit.
 - (4) Any increase in capacity.
 - (A) Minor capacity increases may be granted following an evaluation by the licensing agency without the need for resubmission of an application.
 - (5) A corporate organizational change, including, but not limited to, change in structure, sale or transfer of the majority of stock, separating from a parent company, or merger with another company. The licensee shall notify the licensing agency of such organizational change within forty-eight (48) hours.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.3, 1569.10, 1569.11, 1569.15 and 1569.19, Health and Safety Code.

**87236 CONDITIONS FOR FORFEITURE OF A RESIDENTIAL CARE
FACILITY FOR THE ELDERLY LICENSE****87236**

- (a) Conditions for forfeiture of a residential care facility for the elderly license shall be as specified in Section 1569.19 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1569.19 reads in part:

A license shall be forfeited by operation of law prior to its expiration date when one of the following occurs:

- (a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change in ownership. The sale of a facility shall be subject to the requirements of this chapter.
- (b) The licensee surrenders the license to the department.
- (c) The licensee moves the facility from one location to another.
- (d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.
- (e) The licensee dies. When a licensee dies, the continued operation shall be subject to the requirements of Section 1569.193.
- (f) The licensee abandons the facility.

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87236 CONDITIONS FOR FORFEITURE OF A RESIDENTIAL CARE FACILITY FOR THE ELDERLY LICENSE (Continued)**87236**

- (2) "Licensee abandons the facility" shall mean either of the following:
- (A) The licensee informs the licensing agency that the licensee no longer accepts responsibility for the facility, or
 - (B) The licensing agency is unable to determine the licensee's whereabouts after the following:
 - 1. The licensing agency requests information of the licensee's whereabouts from the facility's staff if any staff can be contacted; and
 - 2. The licensing agency has made at least one (1) phone call per day, to the licensee's last telephone number of record, for five (5) consecutive workdays with no response; and
 - 3. The licensing agency has sent a certified letter, requesting the licensee to contact the licensing agency, to the licensee's last mailing address of record with no response within seven (7) calendar days.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.19, Health and Safety Code.

Article 4. Administrative Actions**87340 DENIAL OF INITIAL LICENSE****87340**

- (a) Except as specified in Section 87231(a), which provides that the applicant may be issued a provisional license based upon substantial compliance and immediate need, the licensing agency shall deny an application for an initial license if it is determined that the applicant is not in compliance with applicable law and regulations.
- (b) The licensing agency shall have the authority to deny an application for an initial license if the applicant has failed to pay any civil penalty assessments pursuant to Section 87457 and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the licensing agency have been made.
- (c) The licensing agency shall have the authority to deny an initial application if the applicant does not comply with Sections 87218(a)(2), (a)(9), and Health and Safety Code Sections 1569.1515(b) and 1569.50.

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- (1) Health and Safety Code Section 1569.1515(b) reads:

“(b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59.”

- (2) Health and Safety Code Section 1569.50 reads:

"The department may deny an application for a license or may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

"(a) Violation by the licensee of this chapter or of the rules and regulations adopted under this chapter.

"(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

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

“(d) The conviction of a licensee, or other person mentioned in Section 1569.17 at any time before or during licensure, of a crime as defined in Section 1569.17.

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87340 DENIAL OF INITIAL LICENSE (Continued)

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"(e) Engaging in acts of financial malfeasance concerning the operation of a facility, including, but limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services for the care of clients."

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- (d) If the application for an initial license is denied, the application processing fee shall be forfeited.
- (e) If the application for an initial license is denied, the licensing agency shall send a written notice of denial by certified mail. The notification shall inform the applicant of the denial; set forth the reasons for the denial; and advise the applicant of the right to appeal.
- (f) An applicant may appeal the denial of the application by sending a written notice of appeal to the licensing agency within 15 days of the postmark date of the denial notice.
- (g) The licensing agency shall, upon receipt of the notice of appeal, advise the applicant in writing of the appeal procedure.
- (h) The proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.15, 1569.1515(b), 1569.17, 1569.185, 1569.20, 1569.21, 1569.22, 1569.23(a) and (e), 1569.30, 1569.485, 1569.49, 1569.50, 1569.51, 1569.52, and 1569.53, Health and Safety Code.

87341	DENIAL OF A RENEWAL LICENSE	87341
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| Repealed by CDSS Manual Letter CCL 01-10, effective 6/29/01.

| NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.19, 1569.20, 1569.22, 1569.23, 1569.30, 1569.50, 1569.51, 1569.52, and 1569.615(c), Health and Safety Code.

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87342 REVOCATION OR SUSPENSION OF LICENSE**87342**

- (a) Pursuant to the provisions of Chapter 5, (commencing with Section 11500), Part 1, Division 3, Title 2, of the Government Code, the Department may suspend or revoke any license on any of the grounds stipulated in Health and Safety Code Sections 1569.1515(c) and 1569.50.

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- (1) Health and Safety Code Section 1569.1515(c) reads:

“(c) The department may revoke the license of any corporate licensee that has a member of the board of directors, the executive director, or an officer who is not eligible for licensure pursuant to Sections 1569.16 and 1569.59.”

- (2) Health and Safety Code Section 1569.50 reads:

"The department may deny an application for a license or may suspend or revoke any license issued under this chapter upon any of the following grounds and in the manner provided in this chapter:

"(a) Violation by the licensee of this chapter, or of the rules and regulations adopted this chapter.

"(b) Aiding, abetting or permitting the violation of this chapter or of the rules and regulations adopted under this chapter.

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

"(d) The conviction of a licensee, or the other person mentioned in Section 1569.17 at any time before or during licensure, of a crime as defined in Section 1569.17.

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

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- (b) When the Director intends to seek revocation of a license, the Director shall notify the licensee of the proposed action and at the same time shall serve such person with an accusation. The licensee has a right to a hearing prior to the revocation or suspension of a license, except as provided in (c) below.

87342 REVOCATION OR SUSPENSION OF LICENSE (Continued)**87342**

- (c) The Director may temporarily suspend any license prior to any hearing when in the Director's opinion such action is necessary to protect the residents in the facility from any physical or mental abuse or any other substantial threat to health and safety. When the Director intends to temporarily suspend a license prior to a hearing, the Director shall notify the licensee of the temporary suspension and the effective date thereof and at the same time serve the licensee with an accusation.
- (d) For either a revocation action or a revocation and temporary suspension action, the Director shall within fifteen (15) days of receipt of notice of defense ask the Office of Administrative Hearings to set the matter for hearing.
- (e) For a revocation and temporary suspension action, the Director shall ask the Office of Administrative Hearings to hold the hearing as soon as possible but not later than thirty (30) days after receipt of the Notice of Defense.

| NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1515(c), 1569.50, 1569.51, 1569.52, and 1569.53, Health and Safety Code.

87342.1 RELOCATION OF RESIDENT - GENERAL**87342.1**

- (a) When a resident must be relocated by Department order whether individual health-condition relocations pursuant to Section 87701.1 or temporary suspension orders pursuant to Section 87342(c), the licensee shall not obstruct the relocation process and shall cooperate with the Department in the relocation process. Such cooperation shall include, but not be limited to, the following activities:
 - (1) Identifying and preparing for removal of the medications, Medi-Cal or Medicare or other medical insurance documents, clothing, safeguarded cash resources, valuables and other belongings of the resident.
 - (2) Contacting the person responsible for the resident to assist in transporting him or her, if necessary.
 - (3) Contacting other suitable facilities for placement, if necessary.
 - (4) Providing access to resident's files when required by the Department.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569, 1569.1, 1569.2, 1569.30, 1569.31, 1569.312 and 1569.54, Health and Safety Code.

87343	LICENSE COMPLAINTS	87343
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- (a) Each licensee shall have the right, without prejudice, to bring to the attention of the Department or the licensing agency, or both, any alleged misapplication or capricious enforcement of regulations by any licensing representative, or any substantial differences in opinion as may occur between the licensee and any licensing representative concerning the proper application of the Residential Care Facilities for the Elderly Act or of these regulations.
- (b) Where applicable, a review of the complaint shall be conducted in accordance with Section 87455.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30 and 1569.335, Health and Safety Code.

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87344 INSPECTION AUTHORITY OF THE LICENSING AGENCY**87344**

- (a) Any duly authorized officer, employee or agent of the licensing agency may, upon proper identification and upon stating the purpose of his/her visit, enter and inspect the entire premises of any place providing services at any time, with or without advance notice.
- (b) The licensee shall ensure that provisions are made for private interviews with any resident or any staff member; and for the examination of all records relating to the operation of the facility.
- (c) The licensing agency shall have the authority to inspect, audit, and copy resident or facility records upon demand during normal business hours. Records may be removed is necessary for copying. Removal of records shall be subject to the requirements in Sections 87566(f), 87570(d), and 87571(b).
- (d) The licensing agency shall have the inspection authority specified in Health and Safety Code Sections 1569.24, 1569.32, 1569.33 and 1569.35.

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- (1) Health and Safety Code Section 1569.24 provides in part:

Within 90 days of initial licensure, the department shall inspect the facility to evaluate compliance with rules and regulations and to assess the facility's continuing ability to meet regulatory requirements.

- (2) Health and Safety Code Section 1569.32 provides in part:

"Any duly authorized officer, employee, or agent of the department may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, this chapter."

- (3) Health and Safety Code Section 1569.33 provides in part:

"(a) Every licensed residential care facility for the elderly shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

"(b) The department shall conduct an annual unannounced visit of a facility under any of the following circumstances:

"(1) When a license is on probation.

"(2) When the terms of agreement in a facility compliance plan require an annual evaluation.

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

87344 INSPECTION AUTHORITY OF THE LICENSING AGENCY
(Continued)**87344**

- "(4) When a facility requires an annual visit as a condition of receiving federal financial participation.
 - "(5) In order to verify that a person who has been ordered out of the facility for the elderly by the department is no longer at the facility.
 - "(c) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subdivision (b)...
 - "(d) Under no circumstance shall the department visit a residential care facility for the elderly less often than once every five years."
- (4) Health and Safety Code Section 1569.35 provides in part:
- "Upon receipt of a complaint, ...the department shall make a preliminary review and...an onsite inspection within 10 days after receiving the complaint except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies."

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.24, 1569.33, 1569.34, and 1569.35, Health and Safety Code.

87345 EVALUATION VISIT**87345**

- (a) Every residential care facility for the elderly shall be evaluated as specified in Health and Safety Code Section 1569.33.

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- (1) Health and Safety Code Section 1569.33 provides in part:
- "(a) Every licensed residential care facility for the elderly shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.
 - "(b) The department shall conduct an unannounced visit of a facility under any of the following circumstances:
 - "(1) When a license is on probation.

HANDBOOK CONTINUES

87345 EVALUATION VISIT (Continued)

87345

HANDBOOK CONTINUES

- "(2) When the terms of agreement in a facility compliance plan require an annual evaluation.
- "(3) When an accusation against a licensee is pending.
- "(4) When a facility requires an annual visit as a condition of receiving federal financial participation.
- "(5) In order to verify that a person who has been ordered out of the facility for the elderly by the department is no longer at the facility.
- "(c) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subdivision (b)...
- "(d) Under no circumstance shall the department visit a residential care facility for the elderly less often than once every five years."

HANDBOOK ENDS HERE

- (b) Any number of other visits may be made to a facility for various purposes as determined to be necessary by the licensing agency to determine compliance with applicable laws and regulations.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 14569.11, 1569.24, 1569.32, 1569.33, 1569.34, and 1569.35, Health and Safety Code.

87346 EXCLUSIONS (Continued)

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- (1) Health and Safety Code Section 1569.58 reads:

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

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

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

"(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1569.17.

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

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

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

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

HANDBOOK CONTINUES

87346 EXCLUSIONS (Continued)

87346

HANDBOOK CONTINUES

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

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

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

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

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

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

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

"(f) The department may institute or continue a disciplinary proceeding against a member of the board of directors, an executive director, or an officer of a licensee or an employee, prospective employee, or person who is not a client upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, or an officer of a licensee or the excluded person's employment or presence in the facility or otherwise take disciplinary action against the excluded person, notwithstanding any resignation, withdrawal of employment application or change of duties by the excluded person, or any discharge, failure to hire or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the facility.

HANDBOOK CONTINUES

87346 EXCLUSIONS (Continued)

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HANDBOOK CONTINUES

"(g) A licensee's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1569.50.

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

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

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

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

(2) Health and Safety Code Section 1569.59 reads:

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

"(2) If the department determines that a person previously was issued a certificate of approval by a foster family agency which was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall exclude the person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter.

HANDBOOK CONTINUES

87346 EXCLUSIONS (Continued)

87346

HANDBOOK CONTINUES

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

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

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

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

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

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

"(d) Exclusion or removal of an individual pursuant to this section shall not be considered an order of exclusion for purposes of Section 1569.58 or any other law.

HANDBOOK CONTINUES

87346 EXCLUSIONS (Continued)**87346**

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"(e) The department may determine not to exclude a person from, and remove him or her from the position of, a member of the board of directors, an executive director, or an officer of a licensee of, any facility licensed by the department pursuant to this chapter if it has been determined that the reasons for the denial of the application or revocation of the facility license or certificate of approval were due to circumstances or conditions that either have been corrected or are no longer in existence."

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NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.58 and 1569.59, Health and Safety Code.

Article 5. Enforcement Provisions**87451 SERIOUS DEFICIENCIES - EXAMPLES****87451**

- (a) Regulations including but not limited to the following may result in serious deficiencies when a failure to comply presents an immediate or substantial threat to the physical health, mental health, or safety of the residents:
- (1) Section 87219 relating to criminal record clearance.
 - (2) Section 87220 relating to fire clearance.
 - (3) Section 87110 relating to limitations on the number or types of facility residents.
 - (4) Section 87573 relating to telephone service.
 - (5) Sections 87582(c)(1) or (2), or (4), or Section 87701 relating to persons with communicable diseases, persons requiring inpatient health care, persons who are bedridden, or persons with a prohibited health condition.
 - (6) Section 87110(b) relating to nonambulatory residents.
 - (7) Section 87572(a)(3) relating to resident rights.
 - (8) Section 87578(a) relating to restraints.
 - (9) Sections 87577(d)(3) through (7) or (e) relating to safety of resident accommodations.
 - (10) Sections 87576(b)(24), (25), or (27) relating to storage, preparation and service of food.
 - (11) Section 87575(b)(3) relating to medical and dental care of residents.
 - (12) Section 87575(c) relating to storing and dispensing medications.
 - (13) Section 87691(e)(2) relating to hot water temperature.

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(Continued)

| (14) Sections 87691 (e)(4), (5), or (6) relating to toilet, handwashing and bathing accommodations.

| (15) Sections 87691 (f)(1) or (2) relating to storage and disposal of solid wastes, syringes and needles.

(16) Section 87581 relating to night supervision.

(17) Section 87701.5 relating to licensees forwarding to the Department a resident's request for review by an interdisciplinary team of a health condition relocation order.

| NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.30, 1569.31, 1569.312, 1569.315, 1569.335, 1569.485, 1569.49, and 1569.54, Health and Safety Code.

87452 DEFICIENCIES IN COMPLIANCE**87452**

- (a) When a routine visit, evaluation or investigation of a complaint is conducted and the evaluator determines that a deficiency exists, the evaluator shall issue a notice of deficiency, unless the deficiency is minor and corrected during the visit.
- (b) Prior to completion of a visit, evaluation or investigation, the evaluator shall meet with the licensee, administrator, operator, or other person in charge of the facility to discuss any deficiencies noted. At the meeting, a plan for correcting each deficiency shall be developed and included in the notice of deficiency. Prior to completion of the visit the evaluator shall serve the notice of deficiency on the licensee by either:
 - (1) Personal delivery to the licensee, or
 - (2) If the licensee is not at the facility site, leaving the notice with the person in charge of the facility and also mailing a copy to the licensee.
 - (3) If the licensee or the person in charge of the facility refuses to accept the notice, a notation of the refusal shall be written on the notice and a copy left at the facility.
- (A) Under such circumstances, a copy of the notice shall also be mailed to the licensee.
- (c) The notice of deficiency shall be in writing and shall include:
 - (1) A reference to the statute or regulation upon which the deficiency is premised.
 - (2) A factual description of the nature of the deficiency fully stating the manner in which the licensee failed to comply with specified statute or regulation, and the particular place or area of the facility in which it occurred.
 - (3) The plan developed, as specified in (b) above, for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
- (A) In prescribing the date for correcting a deficiency, the evaluator shall consider the following factors:
 - 1. The seriousness of the deficiency.

87452 DEFICIENCIES IN COMPLIANCE (Continued)**87452**

2. The number of residents affected.
 3. The availability of equipment or personnel necessary to correct the deficiency.
 4. The estimated time necessary for delivery and any installation of necessary equipment.
- (B) The evaluator shall require correction of the deficiency within 24 hours and shall specify on the notice the date by which the correction must be made whenever penalties are assessed pursuant to Sections 87454(c), (d) and (e).
- (C) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the evaluator determines that the deficiency cannot be completely corrected in 30 calendar days. If the date for correcting the deficiency is more than 30 days following service of the notice of deficiency the notice shall specify action which must be taken within 30 calendar days to begin correction.
- (5) The amount of penalty which shall be assessed and the date the penalty shall begin if the deficiency is not corrected by the specific due date.
- (6) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the facility is located.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.30, 1569.31, 1569.312, 1569.315, 1569.335, 1569.485, 1569.49 and 1589.49, Health and Safety Code.

87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE**87453**

- (a) A follow-up visit shall be conducted within 10 working days following the latest date of correction specified in the notice of deficiency, unless the licensee has demonstrated that the deficiency was corrected as required in the notice of deficiency. No penalty shall be assessed unless a follow-up visit is conducted.
- (b) If a follow-up visit indicates that a deficiency was not corrected on or before the date specified in the notice of deficiency, the evaluator shall issue a notice of penalty.
- (c) A notice of penalty shall be in writing and shall include:
- (1) The amount of penalty assessed, and the date the payment is due.
 - (2) The name and address of the agency responsible for collection of the penalty.

87453 FOLLOW-UP VISITS TO DETERMINE COMPLIANCE (Continued)**87453**

- (d) When an immediate penalty has been assessed pursuant to Sections 87454(c), (d), (e) and (f) and correction is made when the evaluator is present, a follow-up visit is not required.

NOTE: Authority cited: Section 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

87454 PENALTIES**87454**

- (a) A penalty of \$50 per day, per cited violation, shall be assessed for all serious deficiencies that are not corrected by the date specified in the notice of deficiency, up to a maximum of \$150 per day.
- (b) Notwithstanding Section 87454(a) above, an immediate penalty of \$100 per cited violation per day for a maximum of five (5) days shall be assessed if any individual required to be fingerprinted under Health and Safety Code Section 1569.17(b) has not obtained a California clearance or a criminal record exemption, requested a transfer of a criminal record clearance or requested and be approved for a transfer of an exemption as specified in Section 87219(e) prior to working, residing or volunteering in the facility.
- (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred dollars (\$100) per violation per day for a maximum of thirty (30) days.
- (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.
- (3) Progressive civil penalties specified in Sections 87454(d) and (e) shall not apply.
- (c) Notwithstanding Section 87454(a) above, an immediate penalty of \$150 per day shall be assessed for any of the following:
- (1) Sickness, injury or death of a client has occurred as a result of the deficiency.
- (d) When a facility is cited for a deficiency and violates the same regulation subsection within a 12-month period, the facility shall be cited and an immediate penalty of \$150 per cited violation shall be assessed for one day only. Thereafter a penalty of \$50 per day, per cited violation, shall be assessed until the deficiency is corrected.
- (e) When a facility that was cited for a deficiency subject to the immediate penalty assessment specified in Section 87454(d) above violates the same regulation subsection within a 12-month period of the last violation the facility shall be cited and an immediate penalty of \$1,000 per cited violation shall be assessed for one day only. Thereafter, a penalty of \$100 per day, per cited violation, shall be assessed until the deficiency is corrected.

87454	PENALTIES (Continued)	87454
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- (1) For purposes of Sections 87454(d) and (e) above, a regulation subsection is the regulation denoted by a lower-case letter after the main regulation number.

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An example of the same regulation subsection are Sections 87218(a)(2) and 87218(a)(5). Sections 87218(a) and 87218(b) are not the same regulation subsection.

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- (f) If any deficiency is not corrected by the date specified in the notice of deficiency, a penalty shall be assessed for each day following that date until compliance has been demonstrated.
- (1) Immediate penalty assessments as specified in (c), (d) and (e) above shall begin on the day the deficiency is cited.
- (g) If a licensee or his/her representative reports to the licensing agency that a deficiency has been corrected, the penalty shall cease as of the day the licensing agency receives notification that the correction was made.
- (1) If the deficiency has not been corrected, civil penalties shall continue to accrue.
- (2) If it can be verified that the correction was made prior to the date of notification, the penalty shall cease as of that earlier date.
- (h) If necessary, a site visit shall be made immediately or within five working days to confirm that the deficiency has been corrected.
- (i) If an immediate civil penalty is assessed and the deficiency is corrected on the same day, the penalty shall still be assessed for that day.
- (j) Unless otherwise ordered by the Department all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.
- (k) The licensing agency shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (j) above.

| NOTE: Authority cited: Sections 1569.30 and 1569.49(a), Health and Safety Code. Reference: Sections 1569.17, 1569.33, 1569.335, 1569.35, 1569.485, and 1569.49, Health and Safety Code.

87455 ADMINISTRATIVE REVIEW - GENERAL**87455**

- (a) A licensee or his/her representative may request in writing a review of a notice of deficiency, notice of penalty and/or health condition relocation order within 10 working days of receipt of the notice or order. This review shall be conducted by a higher level staff person other than the evaluator who issued the notice of deficiency, notice of penalty, and/or health condition relocation order.
- (1) Additional review requirements pertaining to Incidental Medical Services are specified in Section 87720.
- (b) If the reviewer determines that a notice of deficiency or notice of penalty was not issued in accordance with applicable statutes and regulations of the Department, he/she shall amend or dismiss the notice. In addition, the reviewer may extend the date specified for correction of a deficiency if warranted by the facts or circumstances presented to support a request for extension.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.30, 1569.33, 1569.335, 1569.35, 1569.485, 1569.49, and 1569.54, Health and Safety Code.

**87455.1 DENIAL OR REVOCATION OF LICENSE FOR
FAILURE TO PAY CIVIL PENALTIES****87455.1**

- (a) The licensee shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the licensee's responsibility for paying any civil penalties accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.
 - (2) The Department shall have the authority to approve the form of payment.
 - (3) The licensee's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code Section 1569.51.

NOTE: Authority cited: Sections 1569.30 and 1569.49, Health and Safety Code. Reference: Sections 1569.17, 1569.33, 1569.335, 1569.35, 1569.485, 1569.49, and 1569.51, Health and Safety Code.

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87457 UNLICENSED FACILITY PENALTIES**87457**

- | (a) A penalty of \$100 per day per resident shall be assessed for the operation of an unlicensed facility under either of the following conditions:
 - (1) The Operator has not submitted a completed application for licensure within 15 calendar days of issuance of the Notice of Operation in Violation of Law pursuant to Section 87016.
 - (A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 87218.
 - (B) The completed application shall be deemed to be submitted when received by the licensing agency.
 - (2) Unlicensed operation continued after denial of the initial application.
 - (A) Notwithstanding any appeal action, facility operation must cease within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
- | (b) A \$200 per day per resident penalty shall be assessed for the continued operation of an unlicensed facility as follows:
 - (1) On the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law, and has not submitted a completed application as required.
 - | (A) The \$200 per day per resident penalty shall continue until the operator ceases operation, or submits a completed application pursuant to Sections 87457(a)(1)(A) and (B).
 - (2) Within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.

87457 UNLICENSED FACILITY PENALTIES (Continued)**87457**

- (A) The \$200 per day per resident penalty shall continue until the operator ceases operation.
- (c) If the unlicensed operator or his/her representative reports to the licensing agency that unlicensed operation, as defined in Section 1569.44 of the Health and Safety Code, has ceased, the penalty shall cease as of the day the licensing agency receives the notification.
- (1) A site visit shall be made immediately or within five working days to verify that the unlicensed facility operation has ceased.
- (2) Notwithstanding (c) above, if the unlicensed facility operation has not ceased, penalties shall continue to accrue without interruption from the date of initial penalty assessment.
- (d) All penalties shall be due and payable upon receipt of the Notice of Payment from the licensing agency, and shall be paid by check or money order made payable to the agency indicated in the notice.
- (e) The licensing agency shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay penalties as specified in (d) above.

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- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a residential facility for the elderly without a license.
- (1) Section 1569.10 of the Health and Safety Code provides in part:
- No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct or maintain a residential facility for the elderly in this state, without first obtaining and maintaining a valid license therefor as provided in this Chapter.

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NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.3, 1569.10, 1569.11, 1569.14, 1569.145, 1569.15, 1569.19, 1569.20, 1569.21, 1569.22, 1569.312, 1569.35, 1569.44, 1569.45, 1569.485, and 1569.495, Health and Safety Code.

87458 UNLICENSED FACILITY ADMINISTRATIVE APPEAL**87458**

- (a) An unlicensed operator or his/her representative shall have the right to appeal the penalty assessment within 10 working days after service of the penalty assessment.
 - (1) If the unlicensed facility operation has not ceased, the \$200 per day penalty shall continue to accrue during the appeal process.
- (b) The appeal review shall be conducted by a higher level staff person than the evaluator who issued the penalty.
- (c) If the reviewer of the appeal determines that the penalty assessment was not issued in accordance with applicable statutes and regulations of the Department, he/she shall have the authority to amend or dismiss the penalty assessment.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.10, 1569.44, 1569.45, and 1569.485, Health and Safety Code.

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