

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 14, 2005

Regulation Package #0803-18

CDSS MANUAL LETTER NO. CCL-05-09

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 12,
CHAPTER 3, FAMILY CHILD CARE HOMES

Regulation Package #0803-18**Effective 6/8/05****Sections 102391 and 102392**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/FamilyChil_627.htm.

These regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program. For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

These regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. These regulations will ensure that CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

These regulations were considered at the Department's public hearing held on June 16, 2004.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-05-08. The latest prior manual letter containing Family Child Care Homes regulation changes was Manual Letter No. CCL-04-09

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FAMILY CHILD CARE HOMES

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Article 4. ENFORCEMENT PROVISIONS**102391 INSPECTION AUTHORITY OF THE DEPARTMENT****102391**

- (a) Any duly authorized officer, employee, or agent of the Department shall, 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, the regulations adopted by the Department governing family child care homes, and in accordance with Section 102396.
- (b) The licensee shall permit the Department to inspect the family child care home, and to privately interview children or staff, to determine compliance with or to prevent violations of family child care laws or regulations. The Department shall exercise this authority as specified in Health and Safety Code Section 1596.8535(a).

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- (1) Health and Safety Code Section 1596.8535(a) provides:

"Notwithstanding any other provision of law, the department shall conduct any authorized inspection, announced site visit, or unannounced site visit of any child daycare facility only during the period beginning one hour before and ending one hour after the facility's normal business hours or at any time childcare services are being provided. This subdivision shall not apply to the investigation of any complaint received by the department if the department determines that an inspection or site visit outside the time period beginning one hour before, and ending one hour after, the facility's normal operating hours is necessary to protect the health or safety of any child in the facility."

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- (c) The licensee shall permit the Department to inspect any part of the family child care home in which family child care services are provided or to which children have access.
- (d) The licensee shall permit the Department to inspect, audit, and copy children's records or other family child care home records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing representatives shall not remove the following current records unless the same information is otherwise readily available in another document or format:
- (A) Current emergency information cards for current children in care as specified in Section 102417(g)(7).
- (B) The current roster of children in care as specified in Section 102417(g)(8).
- (C) Children's immunization records as specified in Section 102418(g).

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- (D) Documentation of completion of health and safety training by the licensee and other personnel as specified in Sections 102368(d) and 102416(c).
- (E) Any other records containing current emergency or health-related information for current children in care or staff.
- (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the licensee or designated substitute.
- (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.

NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.72, 1596.73, 1596.852, 1597.55a and 1597.55b, Health and Safety Code; Rush v. Obledo, (9th Cir. 1985) 756F.2d 713, and Golden Day Schools, Inc. v. Pirillo (C.D. Cal. 2000) 118 F. Supp. 2nd 1037.

102392 SITE VISITS**102392**

- (a) Site visits to family child care homes shall be conducted as specified in Health and Safety Code Sections 1596.8535(a) [as referenced in Section 102391(b)] and 1597.55a.

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Health and Safety Code Section 1597.55a provides in part:

"Every family day care home shall be subject to unannounced visits by the department as provided in this section. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

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

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

- "(1) When a license is on probation.

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- "(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) In order to verify that a person who has been ordered out of a family day care home 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 licensed family day care home less often than once every five years.
- "(e) A public agency under contract with the department may make spot checks if it does not result in any cost to the state. However, spot checks shall not be required by the department.
- "(f) The department or licensing agency shall make an unannounced site visit on the basis of a complaint and a followup visit as provided in Section 1596.853.
- "(g) An unannounced site visit shall adhere to both of the following conditions:
- "(1) The visit shall take place only during the facility's normal business hours or at any time family day care services are being provided.
- "(2) The inspection of the facility shall be limited to those parts of the facility in which family day care services are provided or to which the children have access.
- "(h) The department shall implement this section during periods that Section 1597.55b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code [which provides, in part, that additional licensing visits be conducted if sufficient funds are available through the "Have a Heart, Be a Star, Help Our Kids" license plate program].

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NOTE: Authority cited: Section 1596.81, Health and Safety Code. Reference: Sections 1596.81(b), 1596.852, 1597.55a, and 1597.55b, Health and Safety Code; and Section 18285.5, Welfare and Institutions Code.

102393 UNLICENSED FACILITY PENALTIES**102393**

- (a) A penalty of \$200 per day 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 a Notice of Operation in Violation of Law pursuant to Section 102357 and continues to operate.
 - (A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 102359.
 - (B) The completed application shall be deemed to be submitted when received by the licensing agency.
 - (2) Unlicensed operation continues 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) The \$200 per day 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 penalty shall continue until the operator ceases operation or submits a completed application pursuant to Section 102393(a)(1)(A) and (B).