

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



March 27, 2007

Regulation Package #1104-06

CDSS MANUAL LETTER NO. CCL-07-05

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,
DIVISION 6, CHAPTER 5, GROUP HOMES

Regulation Package #1104-06**Effective 2/16/07****Sections 84072, 84079, 84172, and 84272**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/GroupHomes_631.htm.

Community care facilities regulations list personal rights accorded to children in out-of-home placement as specified in Section 16001.9 of the Welfare and Institutions Code. Assembly Bill (AB) 458, Chapter 331, Statute of 2003 and Senate Bill (SB) 1639, Chapter 668, Statute of 2004, further amended Section 16001.9 of the Welfare and Institutions Code by adding additional personal rights.

AB 458 accords foster children the right to have fair and equal access to all available services, placement, care, treatment and benefits, and to not be subjected to discrimination or harrassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status. This statute provides specific anti-discrimination policies protecting foster care youth statewide and ensures consistent implementation throughout the state.

SB 1639 accords foster children who are 16 years old or older the right to have access to postsecondary educational and vocational opportunities available and financial aid information for those programs. Foster youth face numerous barriers to educational and training opportunities, including the lack of information about postsecondary education and financial aid opportunities. This personal right will benefit foster youth by increasing access to higher education and training information and reducing informational barriers.

These regulations changes were developed to incorporate the provisions of AB 458 and SB 1639 into the Group Homes regulations manual and were considered at the Department's public hearing held on August 17, 2005.

FILING INSTRUCTIONS

Revisions to all manuals are indicated by a vertical line in the left margin. 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-07-04. The latest prior manual letter containing Group Home regulation changes was Manual Letter No. CCL-05-02.

Page(s)

46.1 through 46.4
51 and 53.1
99.1 through 99.3
104 and 105
134 and 135

Replace(s)

Pages 46.1 through 46.4
Pages 51 and 53.1
Pages 99.1 through 99.3
Pages 104 and 105
Pages 134 and 135

Attachments

NH

84072 PERSONAL RIGHTS (Continued)**84072**

- (10) To have access to individual storage space for his/her private use.
- (11) To make and receive confidential telephone calls, unless prohibited by court order.
- (A) Reasonable restrictions to telephone use may be imposed by the licensee. The licensee shall be permitted to:
1. Restrict the making of long distance calls upon documentation that requested reimbursement for previous long distance calls has not been received;
 2. Restrict phone use in accordance with the facility's discipline program;
 3. Impose restrictions to ensure that phone use does not infringe on the rights of others or restrict the availability of the phone during emergencies.
- (B) All restrictions shall be documented in the child's needs and services plan or the facility's discipline policies, and be signed by the child's authorized representative.
- (C) Calls permitted to be restricted by subsections (A)1. and 2. above shall not include calls to the child's authorized representative, placement agency, family members (except by court order), social workers, attorneys, Court Appointed Special Advocates (CASA), probation officers, Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson.
- (12) To send and receive unopened correspondence unless prohibited by court order.
- (13) To be accorded dignity in his or her personal relationships with staff and other persons.
- (14) To live in a safe, healthy, and comfortable home where he or she is treated with respect, in accordance with Section 84072(c)(16).
- (15) To be free from physical, sexual, emotional, or other abuse, and corporal punishment.
- (16) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- (17) To receive adequate and healthy food, adequate clothing, and an allowance.
- (A) Clothing and personal items provided shall be in accordance with Section 84072(c)(16).
- (18) To receive medical, dental, vision, and mental health services.
- (19) To be free of the administration of medication or chemical substances, unless authorized by a physician.

84072 PERSONAL RIGHTS (Continued)

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- (20) To contact family members (including brothers and sisters), unless prohibited by court order, and social workers, attorneys, foster youth advocates and supporters, Court Appointed Special Advocates (CASA), and probation officers.
- (21) To contact the Community Care Licensing Division of the California Department of Social Services or the State Foster Care Ombudsperson regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats or punishment for making complaints.
- (22) To be informed, and to have his/her authorized representative, if any, informed, by the licensee of the provisions of law regarding complaints including, but not limited to, the address and telephone number of the complaint receiving unit of the licensing agency, and of information regarding confidentiality.
- (23) To be free to attend religious services or activities of his/her choice and to have visits from the spiritual advisor of his/her choice. Attendance at religious services, in or outside of the facility, shall be on a completely voluntary basis.
- (24) To not be locked in any room, building, or facility premises at any time.
- (A) The licensee shall not be prohibited by this provision from locking exterior doors and windows or from establishing house rules for the protection of clients provided the clients are able to exit the facility.
- (B) The license shall be permitted to utilize means other than those specified in (A) above for securing exterior doors and windows only provided the clients are able to exit the facility and with the prior approval of the licensing agency.
- (25) To attend school and participate in extracurricular, cultural, and personal enrichment activities consistent with the child's age and developmental level, in accordance with Section 84072 (c)(16).
- (26) To work and develop job skills at an age-appropriate level that is consistent with state law.
- (27) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends, in accordance with Section 84072(c)(16).
- (28) To attend Independent Living Program classes and activities if he or she meets age requirements.
- (29) To attend hearings and speak to the judge.

84072 PERSONAL RIGHTS (Continued)

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- (30) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.
- (31) To be free of unreasonable searches of personal belongings.
- (32) To confidentiality of all juvenile court records consistent with existing law.
- (33) Not to be placed in any restraining device. Postural supports may be used if they are approved in advance by the licensing agency as specified in (A) through (F) below.
 - (A) Postural supports shall be limited to appliances or devices including braces, spring release trays, or soft ties used to achieve proper body position and balance, to improve a client's mobility and independent functioning, or to position rather than restrict movement including, but not limited to, preventing a client from falling out of bed, a chair, etc.
 - 1. Physician-prescribed orthopedic devices such as braces or casts used for support of a weakened body part or correction of body parts are considered postural supports.
 - (B) All requests to use postural supports shall be in writing and include a written order of a physician indicating the need for such supports. The licensing agency shall be authorized to require other additional documentation in order to evaluate the request.
 - (C) Approved postural supports shall be fastened or tied in a manner which permits quick release by the child.
 - (D) The licensing agency shall approve the use of postural supports only after the appropriate fire clearance, as required by Section 80020(a) or (b), has been secured.
 - (E) The licensing agency shall have the authority to grant conditional and/or limited approvals to use postural supports.
 - (F) Under no circumstances shall postural supports include tying of, or depriving or limiting the use of, a child's hands or feet.
 - 1. A bed rail that extends from the head half the length of the bed and used only for assistance with mobility shall be allowed with prior licensing approval. Bed rails that extend the entire length of the bed are prohibited.

84072 PERSONAL RIGHTS (Continued)

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(G) Protective devices including, but not limited to, helmets, elbow guards, and mittens which do not prohibit a client's mobility but rather protect the client from self-injurious behavior are not to be considered restraining devices for the purpose of this regulation. Protective devices may be used if they are approved in advance by the licensing agency as specified below.

1. All requests to use protective devices shall be in writing and include a written order of a physician indicating the need for such devices. The licensing agency shall be authorized to require additional documentation including, but not limited to, the Individual Program Plan (IPP) as specified in Welfare and Institutions Code Section 4646, and the written consent of the authorized representative, in order to evaluate the request.
2. The licensing agency shall have the authority to grant conditional and/or limited approvals to use protective devices.

(H) Under no circumstances shall postural supports or protective devices be used for disciplinary purposes.

(34) At 16 years or older, to have access to existing information regarding available educational options, including, but not limited to, coursework necessary for vocational and postsecondary educational programs, and financial aid information for these programs.

(d) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placement.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530.91, and 1531, Health and Safety Code; and Section 16001.9, Welfare and Institutions Code.

84077 PERSONAL SERVICES (Continued) 84077

- (B) If the child is unable to manage his/her own money because of age or if the authorized representative determines that the child cannot manage his/her own money.
 - (1) If the authorized representative considers the child incapable of money management, it must be specified in the needs and services plan.
- (3) Portions of a child's allowance may be withheld through a fining system as specified in Section 84026

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

84078 RESPONSIBILITY FOR PROVIDING CARE AND SUPERVISION 84078

- (a) In addition to Section 80078, the following shall apply.
- (b) The licensee shall provide those services identified in each child's needs and services plan and in the individualized health care plan for each child with special health care needs as necessary to meet the child's needs.
- (c) The licensee is responsible for ensuring care and supervision of the child(ren) of any minor parent(s) in placement.
 - (1) Direct care and supervision of the child(ren) of a minor parent is to be provided during the hours that the minor parent is unavailable or unable to provide such care and supervision.
- (d) The licensee shall ensure each child's attendance at an educational program in accordance with state law.

NOTE: Authority cited: Section 17730, Welfare and Institutions Code and Section 1530, Health and Safety Code. Reference: Sections 11465 and 17731, Welfare and Institutions Code and Sections 1501 and 1531, Health and Safety Code.

84079 PLANNED ACTIVITIES 84079

- (a) The licensee shall develop, maintain, and implement a written plan to ensure that indoor and outdoor activities which include but are not limited to the following are provided for all children:
 - (1) Activities that require group interaction.

84079 PLANNED ACTIVITIES (Continued)**84079**

- (2) Physical activities, including but not limited to games, sports and exercise.
 - (3) Leisure time.
 - (4) Educational activities, including attendance at an educational program in accordance with state law, and supervision of after school study as specified in Section 84078(c).
 - (5) Activities which meet the training, money management, and personal care and grooming needs identified in the children's needs and services plans, as specified in Sections 84068.2(c)(3) through (5).
- (b) Each child who is capable shall be given the opportunity to participate in the planning, preparation, conduct, cleanup, and critique of planned activities.
- (c) The licensee shall permit children to attend and participate in community activities, including but not limited to the following:
- (1) Worship services and activities of the child's choice.
 - (2) Community events, including but not limited to concerts, tours, dances, plays, and celebrations of special events.
 - (3) The YMCA, YWCA, and Boy and Girl Scouts.
- (d) In facilities with a licensed capacity of 13 or more children, a schedule of the planned activities shall be posted on at least a weekly basis in a central facility location readily accessible to children, relatives, and representatives of placement and referral agencies.
- (1) Copies of schedules shall be retained in the facility's files for at least six months.
- (e) For children 16 years of age or older, the licensee shall allow access to existing information regarding available vocational and postsecondary educational options as specified in Section 84072 (c)(34). The information may include, but is not limited to:
- (1) Admission criteria for universities, community colleges, trade or vocational schools and financial aid information for these schools.
 - (2) Informational brochures on postsecondary or vocational schools/programs.
 - (3) Campus tours.
 - (4) Internet research on postsecondary or vocational schools/programs, sources of financial aid, independent living skills program offerings, and other local resources to assist youth.

84079 PLANNED ACTIVITIES (Continued) 84079

- (5) School-sponsored events promoting postsecondary or vocational schools/programs.
- (6) Financial aid information, including information about federal, state and school-specific aid, state and school-specific scholarships, grants and loans, as well as aid available specifically to current or former foster youth and contact information for the Student Aid Commission.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code; Section 16001.9 Welfare and Institutions code.

84080 RESIDENT COUNCILS 84080

- (a) Each facility, at the request of a majority of its residents, shall assist its residents in establishing and maintaining a resident-oriented facility council.
 - (1) The licensee shall provide space and post notice for meetings, and shall provide assistance in attending council meetings for those residents who request it.
 - (A) If residents are unable to read the posted notice because of a physical or functional disability, the licensee shall notify the residents in a manner appropriate to that disability including but not limited to verbal announcements.
 - (2) The licensee shall document notice of meetings, meeting times, and recommendations from council meetings.
 - (3) In order to permit a free exchange of ideas, at least part of each meeting shall be conducted without the presence of any facility personnel.
 - (4) Residents shall be encouraged but shall not be compelled to attend council meetings.
- (b) The licensee shall ensure that in providing for resident councils the requirements of Section 1520.2 of the Health and Safety Code are observed.

84080 RESIDENT COUNCILS (Continued.)**84080**

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Health and Safety Code Section 1250.2 reads in pertinent part:

The council shall be composed of residents of the facility and may include family members of residents of the facility. The council may, among other things, make recommendations to facility administrators to improve the quality of daily living in the facility and may negotiate to protect residents' rights with facility administrators.

A violation of this section shall not be subject to the provisions of Health and Safety Code Section 1540 (misdemeanors), but shall be subject to the provisions of Health and Safety Code Section 1534 (civil penalties).

This section shall not apply to facilities licensed for six (6) or fewer individuals.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Section 1520.2, Health and Safety Code.

84172 PERSONAL RIGHTS
(Continued)**84172**

HANDBOOK CONTINUES

- (9) To make and receive confidential telephone calls and send and receive unopened mail, unless prohibited by court order.
- (10) To attend religious services and activities of his or her choice.
- (11) To maintain an emancipation bank account and manage personal income, consistent with the child's age and developmental level, unless prohibited by the case plan.
- (12) To not be locked in any room, building, or facility premises, unless placed in a community treatment facility.
- (13) To attend school and participate in extracurricular, cultural, and personal enrichment activities, consistent with the child's age and developmental level.
- (14) To work and develop job skills at an age-appropriate level that is consistent with state law.
- (15) To have social contacts with people outside of the foster care system, such as teachers, church members, mentors, and friends.
- (16) To attend Independent Living Program classes and activities if he or she meets age requirements.
- (17) To attend court hearings and speak to the judge.
- (18) To have storage space for private use.
- (19) To be involved in the development of his or her own case plan and plan for permanent placement.
- (20) To review his or her own case plan if he or she is over 12 years of age and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.
- (21) To be free from unreasonable searches of personal belongings.
- (22) To confidentiality of all juvenile court records consistent with existing law.

HANDBOOK CONTINUES

84172 **PERSONAL RIGHTS**
(Continued)

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HANDBOOK CONTINUES

- (23) To have fair and equal access to all available services, placement, care, treatment, and benefits, and to not be subjected to discrimination or harassment on the basis of actual or perceived race, ethnic group identification, ancestry, national origin, color, religion, sex, sexual orientation, gender identity, mental or physical disability, or HIV status.
- (24) At 16 years of age or older, to have access to existing information regarding educational options available, including, but not limited to, the coursework necessary for vocational and postsecondary educational programs, and information regarding financial aid for postsecondary education.
- (b) Nothing in this section shall be interpreted to require a foster care provider to take any action that would impair the health and safety of children in out-of-home placements.
- (6) Section 1530.91 of the Health and Safety Code states:
- (a) Except as provided in subdivision (b) any care provider that provides foster care for children pursuant to this chapter shall provide each school age child and his or her authorized representative, as defined in regulations adopted by the department, who is placed in foster care, with an age and developmentally appropriate orientation that includes an explanation of the rights of the child, as specified in Section 16001.9 of the Welfare and Institutions Code, and addresses the child's questions and concerns.
- (b) A facility licensed to provide foster care for six or more children pursuant to this chapter shall post a listing of a foster child's rights specified in Section 16001.9 of the Welfare and Institutions Code. The office of the State Foster Care Ombudsperson shall design posters and provide the posters to each facility subject to this subdivision. The posters shall include the telephone number of the State Foster Care Ombudsperson.
- (7) California Code of Regulations, Title 9, Section 862 states:
- "(a) A list of the rights set forth in Section 5325 of the Welfare and Institutions Code and in Section 861, as well as the complaint procedure, prescribed in Section 864, shall remain posted, in English and Spanish, in all wards and common living areas of facilities specified in Section 860.
- "(b) Each person admitted to a facility specified in Section 860 shall be personally notified of his rights in writing, in language he can understand, or shall have his rights brought to his attention by other means if he is unable to read or understand the information provided him.

HANDBOOK CONTINUES

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- "(b) Each person admitted to a facility specified in Section 860 shall be personally notified of his rights in writing, in language he can understand, or shall have his rights brought to his attention by other means if he is unable to read or understand the information provided him.
- "(c) A notation to the effect that notification, or an attempt to provide notification, has occurred, shall be entered in the patient's/resident's record within 24 hours of admission."
- (8) California Code of Regulations, Title 9, Section 863 states:
- "(a) The 'Patients' Rights Specialist' means the person in the Headquarters Office of the Department of Health delegated the responsibility for ensuring that mentally and developmentally disabled persons in facilities providing mental health services or residential care are afforded their statutory and constitutional rights.
- "(b) The 'Patients' Advocate' means the person in a local mental health program delegated the responsibility for ensuring that mentally disabled persons in facilities specified in Section 860 are afforded their statutory and constitutional rights.
- "(c) The Residents' Advocate' means the persons in a regional center program delegated the responsibility for ensuring that developmentally disabled residents in facilities specified in Section 860 are afforded their statutory and constitutional rights."

HANDBOOK CONTINUES

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84172 PERSONAL RIGHTS
(Continued)**84172**

(c) Every child has a right to a hearing by writ of habeas corpus. The licensee shall develop, maintain and implement written procedures that shall meet the following requirements:

(1) Any member of the facility staff to whom a request is made shall promptly do the following:

(A) Provide the child making the request with a form for a request for release or mark a copy of the form for the child. The form shall be substantially as follows:

(Name of the Facility) _____ day of ___ 19

I, _____ (member of the community treatment facility staff) have today received a request for the release of _____ (name of patient) from the undersigned patient on his or her own behalf or from the undersigned person on behalf of the patient.

Signature or mark of patient making request for release

Signature or mark of patient making request for release on behalf of patient

Signature of staff person receiving request for release

(B) Deliver the completed request form to the Administrator and note the request in the child's facility record.

(2) Submit the request for release form to the superior court for the county in which the facility is located by the next working day of the request for release.

(3) Inform the person who admitted the child of the request for release within 24 hours of the request for release.

84172**PERSONAL RIGHTS****84172**

(Continued)

- (4) Maintain a copy of the child's request for release as specified in Section 84172(c)(1)(A) along with notification documents to the superior court in the child's record.
 - (5) The facility's administrator shall ensure that the child is informed as soon as possible of the date, time, and location of the hearing.
 - (6) The child shall be permitted to communicate with counsel confidentially and to prepare for and attend the judicial hearing demanding his or her release.
- (d) The facility's policy concerning family visits and other communications with clients shall be provided as specified in Section 1512 of the Health and Safety Code.

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- (1) Section 1512 of the Health and Safety Code states in pertinent part:

Each residential community care facility shall state, on its client information form or admission agreement, and on its patient's rights form, the facility's policy concerning family visits and other communication with resident clients and shall, except as otherwise provided in this section, promptly post notice of its visiting policy at a location in the facility that is accessible to residents and families.

HANDBOOK ENDS HERE

NOTE: Authority cited: Sections 1530 and 1530.9, Health and Safety Code. Reference: Sections 1501, 1530.91 and 1531, Health and Safety Code; and Sections 4096(g), 4094.6, 5275, and 16001.9, Welfare and Institutions Code.

84270 CHILDREN'S RECORDS**84270**

- (a) The licensee or designee shall obtain and maintain the following information in the child's record:
- (1) A recent photograph and physical description of the child.
 - (2) The child's initial and modified needs and services plan.
 - (3) Any prescribed psychotropic medication, including:
 - (A) The name, address, telephone number, and contact date with the physician who prescribed the medication.
 - (B) The dates that the prescribing physician monitors the continuing appropriateness of the psychotropic medication.
 - (4) An assessment of the child's danger to self and others.
 - (5) Daily records of emotional state, dietary patterns, and accomplishments.
 - (6) Social worker notes, e.g., family member contacts, visitations, and legal documentation.
 - (7) The child's scrapbook, reflecting significant events and accomplishments during the placement.
 - (8) The name, address, and telephone number of the involved family member(s), if any.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, 1530.8 and 1531, Health and Safety Code; and Section 11467.1, Welfare and Institutions Code.

84272 PERSONAL RIGHTS**84272**

- (a) Sections 84072(c)(5), (26), (28), and (30) do not apply to children under six years of age.
- (b) When family member involvement is part of the child's needs and services plan, visiting shall be allowed as indicated in the plan. Visiting does not include the time spent by a minor parent as the primary caregiver for his or her child.
 - (1) Visiting shall be only under the supervision of the social work staff, a houseparent or child care worker, or a facility manager, unless the case plan provides for unsupervised visits.
- (c) The licensee shall impose differing visiting rules, depending on the visitor, that person's role in the child's needs and services plan, and the need to protect the child from that person.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1530.8, and 1531, Health and Safety Code; Section 11467.1, Welfare and Institutions Code.