

**DEPARTMENT OF SOCIAL SERVICES**

744 P Street, Sacramento, CA 95814



Regulation Package 0908-06

CDSS MANUAL LETTER NO. CCL-10-06

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22,  
DIVISION 6, CHAPTER 9.5, FOSTER FAMILY HOMES

**Regulation Package 0908-06****Effective 04/03/10****Sections- Entire Manual**

This manual letter has been posted on the Office of Regulations Development website at [http://www.dss.cahwnet.gov/ord/FosterFami\\_629.htm](http://www.dss.cahwnet.gov/ord/FosterFami_629.htm).

In enacting Senate Bill (SB) 1641 (Chapter 388, Statutes of 2006 [amended Health and Safety Code section 1536.2 and Welfare and Institutions Code section 361.2]), the Legislature observed that many of the state's foster care licensing regulations were developed with the objective of protecting the health and safety of children and youth in foster care, but were inadequate in providing a normal childhood experience or for creating a foster home environment that resembles a nonfoster care home environment. Further, Foster Family Homes (FFH) regulations were not user-friendly and difficult for current or prospective foster parents to follow. SB 1641 provided the California Department of Social Services (CDSS) with broad authority to establish updated FFH regulations to normalize the lives and to promote the well being of children in foster care.

CDSS convened a workgroup called the Children's Residential Regulations Review Workgroup (CRRRW) whose purpose was to review and revise the FFH regulations. The CRRRW met from May 2006 to November 2007. The CRRRW was comprised of experts in the field of foster care and included such organizations as the California Youth Connection (CYC), County Welfare Directors Association (CWDA), Legal Advocates for Permanent Parenting (LAPP), National Center for Lesbian Rights (NCLR), Youth Law Center (YLC), as well as current and former foster parents, foster parent associations and former foster youth. In developing the updated FFH regulations, the CRRRW created and relied on four guiding principles:

- Provide for the health, safety, and well-being of children
- Be clear, concise, user-friendly, and simple
- Promote a "normal" childhood experience
- Prepare foster youth for adulthood

These updated FFH regulations also implement several pieces of legislation that are folded into the regulations. This legislation includes:

- Assembly Bill (AB) 408 (Chapter 813, Statutes of 2003 [added Welfare and Institutions Code section 362.05]), entitled children in foster care to participate in age-appropriate extracurricular, enrichment, and social activities and required the caregiver to use the prudent parent standard in allowing children to participate in these activities.
- AB 1116 (Chapter 637, Statutes of 2005 [added Health and Safety Code section 1507.25]), authorized designated, trained caregivers who are not licensed health care providers to administer emergency medical assistance and/or injections for specific reasons to a child in foster care.
- AB 1514 (Chapter 120, Statutes of 2007 [added Welfare and Institutions Code section 739.5]), specified that psychotropic medication may be administered to a child who is a ward of the court only with a court order.
- AB 2096 (Chapter 483, Statutes of 2008 [amended Welfare and Institutions Code sections 362.05 and 727]), entitled children in foster care who are dependents of the court and wards of the court to participate in age-appropriate extracurricular, enrichment, and social activities and required the caregiver to use the prudent parent standard in allowing children to participate in these activities.
- SB 358 (Chapter 628, Statutes of 2005 [added Welfare and Institutions Code section 362.04]), required the caregiver to use the reasonable and prudent parent standard in selecting occasional short-term babysitters and exempted these babysitters from regulatory requirements for criminal background check, health screening, and CPR training.
- SB 500 (Chapter 630, Statutes of 2005 [amended Welfare and Institutions Code sections 11400 and 16501.25]), defined a "Whole Family Foster Home" and required a "Shared Responsibility Plan" for a minor parent and caregiver with regard to the minor parent's child.

These regulations were adopted on April 3, 2010 and were considered at the Department's public hearing held on June 17, 2009.

## **FILING INSTRUCTIONS**

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-10-05. The latest prior manual letter containing Foster Family Homes regulation changes was Manual Letter No. CCL-10-05.

Please replace the entire manual with the attached pages.

Attachments

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**Manual of Policies and Procedures**  
COMMUNITY CARE LICENSING DIVISION

**FOSTER FAMILY HOMES**

**Title 22**  
**Division 6**  
**Chapter 9.5**



**STATE OF CALIFORNIA**  
**Arnold Schwarzenegger, Governor**  
**HEALTH AND HUMAN SERVICES AGENCY**  
**S. Kimberly Belshé, Secretary**  
**DEPARTMENT OF SOCIAL SERVICES**  
**John A. Wagner, Director**

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**April 2010**

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This Users' Manual is issued as an operational tool.

This Manual contains:

- a) Regulations adopted by the California Department of Social Services (CDSS) for the governance of its agents, licensees, and/or beneficiaries
- b) Regulations adopted by other State Departments affecting CDSS programs
- c) Statutes from appropriate Codes which govern CDSS programs; and
- d) Court decisions
- e) Operational standards by which CDSS staff will evaluate performance within CDSS programs.

Regulations of CDSS are printed in gothic type as is this sentence.

Handbook material, which includes reprinted statutory material, other department's regulations and examples, is separated from the regulations by double lines and the phrases "**HANDBOOK BEGINS HERE**", "**HANDBOOK CONTINUES**", and "**HANDBOOK ENDS HERE**" in bold print. Please note that both other department's regulations and statutes are mandatory, not optional.

Questions relative to this Users' Manual should be directed to your usual program policy office.

**Article 1. GENERAL REQUIREMENTS, DEFINITIONS, AND FORMS****89200 GENERAL****89200**

- (a) The caregiver shall ensure compliance with applicable laws and regulations.
- (b) General Licensing Requirements, Chapter 1, shall not apply to Foster Family Homes, Chapter 9.5.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1502, 1530, 1530.5 and 1531, Health and Safety Code.

**89201 DEFINITIONS****89201**

The following definitions shall apply whenever the terms are used throughout this chapter.

- (a) (1) "Adult" means a person who is 18 or over, except:
  - (A) A "child" who is 18 or 19 as specified in the definition for "child" under subsection (c)(7), and
  - (B) A "child" who is 18-22 as specified in the definition for "child with special health care needs" under subsection (c)(10).
- (2) "Age-Appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.
- (3) "Alternative Caregiver" means a person who cares for a "child" in the caregiver's licensed or approved home when the caregiver is away for more than 24 hours at a time as specified in Section 89378, subsection (a)(1)(B).
- (4) "Applicant" means any adult who has applied for a foster family home license or to be an approved home.
- (5) "Approval Agency" means the child-placing agency that is responsible for approving the homes of relative and nonrelative extended family members that meet the same standards as those in Article 3.
- (6) "Approved Home" means the home of a relative or nonrelative extended family member that is exempt from licensure and is approved as meeting the same standards as those in Article 3.

**89201** DEFINITIONS (Continued)**89201**

- (7) "Authorized Representative" means the person or entity authorized by law to act on behalf of a "child." The person or entity may include, but not be limited to, a parent or attorney of a "child," Court Appointed Special Advocates (CASA), a legal guardian, a conservator, or a public placement agency.
- (b) (1) "Basic Rate" means the amount of money that is paid to the licensed or approved caregiver for providing care and supervision of an Aid to Families with Dependent Children-Foster Care (AFDC-FC) "child" as specified in Welfare and Institutions Code section 11461.

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Welfare and Institutions Code section 11461 provides in part:

- "(a) For children placed in a licensed or approved family home with a capacity of six or less, or in an approved home of a relative or nonrelated legal guardian, or the approved home of a nonrelative extended family member as described in Section 362.7, the per child per month rates in the following schedule shall be in effect...
- (d) (1) (A) Beginning with the 1991-92 fiscal year, the schedule of basic rates in subdivision (a) shall be adjusted by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.
- (e) (1) As used in this section, 'specialized care increment' means an approved amount paid with state participation on behalf of an AFDC-FC child requiring specialized care to a home listed in subdivision (a) in addition to the basic rate. On the effective date of this section, the department shall continue and maintain the current ratesetting system for specialized care.
- (f) (1) As used in this section, 'clothing allowance' means the amount paid with state participation in addition to the basic rate for the provision of additional clothing for an AFDC-FC child, including, but not limited to, an initial supply of clothing and school or other uniforms...
- (5) For the 2000-01 fiscal year and each fiscal year thereafter, without a county share of cost, notwithstanding subdivision (c) of Section 15200, each child shall be entitled to receive a supplemental clothing allowance of one hundred dollars (\$100) per year subject to the availability of funds. The clothing allowance shall be used to supplement, and not supplant, the clothing allowance specified in paragraph (1)."

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**89201**      **DEFINITIONS (Continued)****89201**

- (c) (1) "California Department of Justice Clearance" means a person has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the California Department of Justice.
- (2) "Capacity" means the number of "children" for whom the foster family home is licensed to provide care and supervision.
- (3) "Care and Supervision" is defined in Welfare and Institutions Code section 11460, subsection (b) and includes, but is not limited to, any one or more of the following activities provided by a caregiver to meet the needs of a "child":
- (A) Assistance in dressing, grooming, bathing, and other personal hygiene.
  - (B) Central storage for or distribution of medicine, and assistance with taking medicine, as specified in Section 89475, subsection (c).
  - (C) Arrangement of and assistance with medical and dental care. This may include transportation.
  - (D) Maintenance of house rules for protection.
  - (E) Supervision of schedules and activities.
  - (F) Maintenance and supervision of the child's cash resources or property where appropriate.
  - (G) Monitoring food intake or special diets.

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Welfare and Institutions Code section 11460, subsection (b) provides:

"Care and supervision' includes food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation."

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- (4) "Caregiver" means the person who is licensed or approved to have authority and responsibility for the care and supervision of a "child" and operation of the home.

**89201** DEFINITIONS (Continued)**89201**

- (5) "Caregiver's Family" means the caregiver's spouse, any relative, adopted child, or person under guardianship or conservatorship of the caregiver, or the caregiver who resides in the home.
- (6) "Cash Resources" means:
- (A) Gifts of money.
  - (B) Tax credits and/or refunds.
  - (C) Earnings from employment or workshops.
  - (D) Money for personal and incidental need allowances from sources of income including, but not limited to, SSI/SSP.
  - (E) Allowance paid to a "child."

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The caregiver is not required to, but may decide to, give a "child" an allowance.

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- (F) Any other similar resources as decided by the licensing agency.
- (7) "Child" means a person who is under 18 placed with a caregiver in a licensed foster family home or approved home by a regional center, a parent or guardian, or a public child placement agency with or without a court order. "Child" also means a person who is:
- (A) 18 or 19, meets the requirements of Welfare and Institutions Code section 11403, and continues to be provided with care and supervision by the caregiver in the home, or
  - (B) 18-22 as specified in the definition for "child with special health care needs" under subsection (c)(10) and continues to be provided with care and supervision by the caregiver in the home.

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Welfare and Institutions Code section 11403 provides:

"A child who is in foster care and receiving aid pursuant to this chapter and who is attending high school or the equivalent level of vocational or technical training on a full-time basis, or who is in the process of pursuing a high school equivalency certificate, prior to his or her 18th birthday, may continue to receive aid following his or her 18th birthday so long as the child continues to reside in foster care placement, remains otherwise eligible for AFDC-FC payments, and continues to attend high school or the equivalent level of vocational or technical training on a full-time basis, or continues to pursue a high school equivalency certificate, and the child may reasonably be expected to complete the educational or training program or to receive a high school equivalency certificate, before his or her 19th birthday. Aid shall be provided to an individual pursuant to this section provided both the individual and the agency responsible for the foster care placement have signed a mutual agreement, if the individual is capable of making an informed agreement, which documents the continued need for out-of-home placement."

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- (8) "Child Abuse Central Index (CACI)" means the California Department of Justice maintained statewide, multi-jurisdictional, centralized index of child abuse investigation reports. These reports pertain to alleged incidents of physical abuse, sexual abuse, mental/emotional abuse or severe neglect. Each child protection agency (police, sheriff, county welfare, and probation departments) is required by law to forward to the California Department of Justice a report of every child abuse incident it investigates, unless an incident is determined to be unfounded.
- (9) "Child Abuse Central Index (CACI) Clearance" means that the California Department of Justice has conducted a name search of the index and the search did not result in a match, or if there is a match, the allegation(s) was not substantiated by the Department after independent review and investigation pursuant to Health and Safety Code section 1522.1.
- (10) "Child with Special Health Care Needs" means a person under 18 or 22 and younger, who meets the requirements of Welfare and Institutions Code section 17710, subsection (a) and all of the following conditions:
- (A) Has a medical condition that requires specialized in-home health care and
  - (B) Is one of the following:
    - 1. A child who has been adjudged a dependent of the court under Welfare and Institutions Code section 300.

**89201** DEFINITIONS (Continued)**89201**

2. A child who has not been adjudged a dependent of the court under Welfare and Institutions Code section 300, but who is in the custody of the county welfare department.
3. A child with a developmental disability who is receiving services and case management from a regional center.

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Welfare and Institutions Code section 17710, subsection (a) provides:

"Child with special health care needs' means a child, or a person who is 22 years of age or younger who is completing a publicly funded education program, who has a condition that can rapidly deteriorate resulting in permanent injury or death or who has a medical condition that requires specialized in-home health care, and who either has been adjudged a dependent of the court pursuant to Section 300, has not been adjudged a dependent of the court pursuant to Section 300 but is in the custody of the county welfare department, or has a developmental disability and is receiving services and case management from a regional center."

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- (11) "Completed Application" means:
- (A) The applicant has submitted and the licensing agency has received, all required information and materials that are required for a license. A completed application includes an approved fire clearance from the local fire authority, if a fire clearance for the home is required. It also includes a Child Abuse Central Index (CACI) clearance and a California criminal record clearance or exemption, or evidence of compliance with the FBI requirements specified in Health and Safety Code section 1522(d)(4)(D), for the applicant and any other person specified in Section 89219, Criminal Record Clearance, and
  - (B) The licensing agency has completed a site visit to the home.
- (12) "Conservator" means a person appointed by the Superior Court pursuant to the provisions commencing with Probate Code section 1800 or Welfare and Institutions Code section 5350, to care for the person, or the estate, or the person and estate, of another.

**89201** DEFINITIONS (Continued)**89201**

- (13) "Control of Property" means the legal right to enter, occupy, and maintain the operation of the home as verified by documents that are provided to the Department or approval agency upon request. Such documents may include:
- (A) A Grant Deed showing ownership,
  - (B) A lease or rental agreement,
  - (C) A court order or similar document which shows authority to control the property pending the outcome of a probate proceeding or an estate settlement, or
  - (D) Any other document that is acceptable to the Department, to include, but not be limited to, utility bills, insurance statement, etc.
- (14) "Conviction" means:
- (A) A criminal conviction in California, or
  - (B) Any criminal conviction of another state, federal, military, or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (15) "Criminal Record Clearance" means a person has a California Department of Justice clearance and an FBI clearance or evidence of compliance with FBI requirements as specified in Health and Safety Code section 1522, subsection (d)(4)(D).
- (d) (1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act beginning with Health and Safety Code section 1500 or regulations adopted by the Department pursuant to the Act.
- (2) "Department" is defined in Health and Safety Code section 1502, subsection (b) as the State Department of Social Services.
- (3) "Director" is defined in Health and Safety Code section 1502, subsection (c) as the Director of the State Department of Social Services.
- (4) "Disability" means a developmental, mental, or physical condition for which a "child" requires special care and supervision.
- (5) "Documented Alternative Plan (DAP)" means a written plan that the licensing or approval worker reviews and approves on a case-by-case basis as another, but equally protective, way to meet the intent of a specific regulation in Article 3.

**89201**      **DEFINITIONS (Continued)****89201**

- (e) (1) "Evaluator" means any person who is a duly authorized officer, employee, or agent of the Department, county or other public agency, such as a Licensing Program Analyst (LPA), who makes licensing visits to a foster family home.
- (2) "Evidence of Caregiver's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary, or a letter from the attending physician or coroner's office verifying the caregiver's death.
- (3) "Exception" means a "child"-specific, nontransferable, written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation(s) based on documentation of the unique needs or circumstances of a specific "child" placed in the home.
- (4) "Exemption" means the granting of an exemption to the disqualification for a license, employment or presence in a home, as allowed under Health and Safety Code section 1522, subsection (g), for a person who does not have a criminal records clearance.

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Health and Safety Code section 1522(g)(1) reads in part:

"After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraph (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4), (7), and (8) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c)..."

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- (f) (1) "Family Health Care" means health care which does not require the skills of qualified technical or professional health care personnel and is provided to a "child" by the caregiver in accordance with Section 89475, Health Related Services.

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Family health care may include, but is not limited to, the following:

- (A) Routine administration of medicine such as suppositories, ointments, lotions, pills, enemas, or medicine given by liquid medication dispenser, puffer, dropper, or nebulizer.
- (B) Changing ostomy or indwelling urinary catheter bags.
- (C) Urine and blood glucose testing using a monitoring kit approved for home use.
- (D) Heart and breathing apnea monitoring when only providing stimulation to the infant or child when the infant's or child's cardiac or respiratory rate falls below a specified rate. It is not interpreting a monitor pattern and making an intervention based on that interpretation.
- (E) Assistance with procedures self-administered by older children as appropriate to their age, development, and disability, if any, such as insulin injection and oxygen administration.
- (F) Assistance to children with other procedures, such as injections, where not otherwise prohibited by law.

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- (2) "Federal Bureau of Investigation (FBI) Clearance" means a person has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the FBI.
- (3) "Foster Family Home (FFH)" means the home owned, leased, or rented by the caregiver(s) as their residence and where the caregiver(s) is licensed or approved to provide 24-hour care and supervision for six or fewer foster children as defined in Health and Safety Code section 1502, subsection (a)(5). A foster family home may provide sibling care for up to eight children provided the requirements of Health and Safety Code section 1505.2 are met.

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Health and Safety Code section 1502(a)(5) provides:

"Foster family home" means any residential facility providing 24-hour care for six or fewer foster children that is owned, leased, or rented and is the residence of the foster parent or parents, including their family, in whose care the foster children have been placed. The placement may be by a public or private child placement agency or by a court order, or by voluntary placement by a parent, parents, or guardian. It also means a foster family home described in Section 1505.2."

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**HANDBOOK CONTINUES**

Health and Safety Code section 1505.2 provides:

"A licensing agency may authorize a foster family home to provide 24-hour care for up to eight foster children, for the purpose of placing siblings or half siblings together in foster care. This authorization may be granted only if all of the following conditions are met:

(A) The foster family is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.

(B) The home is sufficient in size to accommodate the needs of all children in the home.

(C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

The licensing agency may authorize a foster family home to provide 24-hour care for more than eight children only if the foster family home specializes in the care of sibling groups, that placement is solely for the purpose of placing together one sibling group that exceeds eight children, and all of the above conditions are met."

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- (g) (1) "Gender Identity" means a person's internal identification or self-image as male or female.
- (2) "Guardian" means a person who is appointed by the Superior Court pursuant to the provisions commencing with Probate Code section 1500 or Welfare and Institutions Code sections 360 or 366.26 to care for the person, or the estate, or the person and estate, of another.
- (h) (1) "Health and Education Passport" means a summary of health and education information or records for a "child" that includes mental health information or records, as provided in Welfare and Institutions Code section 16010.

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Welfare and Institutions Code section 16010 provides in part:

"(a) When a child is placed in foster care, the case plan for each child recommended pursuant to Section 358.1 shall include a summary of the health and education information or records, including mental health information or records, of the child. The summary may be maintained in the form of a health and education passport, or a comparable format designed by the child protective agency. The health and education summary shall include, but not be limited to, the names and addresses of the child's health, dental, and education providers, the child's grade level performance, the child's school record, assurances that the child's placement in foster care takes into account proximity to the school in which the child is enrolled at the time of placement, a record of the child's immunizations and allergies, the child's known medical problems, the child's current medications, past health problems and hospitalizations, a record of the child's relevant mental health history, the child's known mental health condition and medications, and any other relevant mental health, dental, health, and education information concerning the child determined to be appropriate by the Director of Social Services. If any other provision of law imposes more stringent information requirements, then that section shall prevail."

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- (2) "Health Care Professional" means a physician or person who is licensed or certified under Business and Professions Code Division 2 to perform necessary care that is prescribed by a physician. These health care professionals include the following: Registered Nurse, Public Health Nurse, Licensed Vocational Nurse, Psychiatric Technician, Physical Therapist, Occupational Therapist, and Respiratory Therapist.
  
- (3) "Home" means a Foster Family Home.
  
- (i) (1) "Inconclusive" means that although the allegation may have happened or is valid, there is not a preponderance of the evidence to prove that the alleged violation occurred.
  
- (2) "Independent Living Program (ILP)" means the program authorized under 42 USC section 677 to provide services and activities to assist children 16 or older in foster care in making the transition from foster care to independent living.

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Examples of ILP services may include assistance with:

- (A)    Obtaining a high school diploma,
- (B)    Career exploration,
- (C)    Vocational training,
- (D)    Job placement and retention,
- (E)    Daily living skills,
- (F)    Budgeting and financial management skills,
- (G)    Substance abuse prevention, and
- (H)    Preventive health activities.

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- (3) "Individualized Health Care Plan" means the written plan developed by an individualized health care plan team and approved by the team physician, or other health care professional designated by the physician to serve on the team, for the provision of specialized in-home health care to a "child with special health care needs." A hospital discharge plan may be used in place of the individualized health care plan as specified in Section 89569.1, subsection (c).
- (4) "Individualized Health Care Plan Team" means those persons who develop an individualized health care plan for a "child with special health care needs." These persons include the primary care physician for a "child" or other health care professional chosen by the physician to serve on the team, the county social worker or regional center caseworker for the "child," and any health care professional chosen to monitor the specialized in-home health care provided to a "child" pursuant to the individualized health care plan.

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The individualized health care plan team is convened by the county social worker or regional center social worker for a "child with special health care needs." This team may also include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department, the parent or parents of a "child" if they are available, and the prospective specialized caregiver.

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**89201 DEFINITIONS (Continued)****89201**

- (5) "Infant" means a child under 2.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "Licensing Agency" means the California Department of Social Services (CDSS) or any state, county or other public agency that is authorized by the Department to assume specific licensing responsibilities pursuant to Health and Safety Code section 1511.
- (2) "Licensed Home" means a home that is licensed by the California Department of Social Services (CDSS), Community Care Licensing Division or a county.
- (m) (1) "Medical Assessment" means a written medical evaluation by a health care professional which documents the health of a "child", including any possible medical problems.
- (2) "Medical Conditions That Require Specialized In-Home Health Care" means health conditions that a "child" may have that a caregiver who has received training can care for safely when in the home.

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These conditions may include:

- (A) Dependency upon one or more of the following: Enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, kidney dialysis, care that is required by tracheostomy, colostomy, ileostomy, ileal conduit or other medical or surgical procedures; or special medication regimens, including injection and intravenous medicine; or
- (B) AIDS, premature birth, congenital defects, severe seizure disorders, severe asthma, bronchopulmonary dysplasia, and severe gastroesophageal reflux when, because his or her condition could rapidly deteriorate causing permanent injury or death, a "child" requires in-home health care other than, or in addition to, family health care.

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**HANDBOOK ENDS HERE**

- (3) "Medical Professional" means a health care professional as defined in subsection (h)(2).
- (n) (1) "Nonrelative Extended Family Member (NREFM)" means any adult caregiver as defined in Welfare and Institutions Code section 362.7.

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**HANDBOOK BEGINS HERE**

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Welfare and Institutions Code section 362.7 provides:

"... A 'nonrelative extended family member' is defined as any adult caregiver who has an established familial or mentoring relationship with the child. The county welfare department shall verify the existence of a relationship through interviews with the parent and child or with one or more third parties. The parties may include relatives of the child, teachers, medical professionals, clergy, neighbors, and family friends."

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- (2) "Nonambulatory Person" means a person as defined in Health and Safety Code section 13131.
- (A) A person who uses postural supports as specified in section 89475.2, subsection (a)(1) is nonambulatory.
- (B) A person is not considered nonambulatory solely because he or she is deaf, blind, or prefers to use an aid for assistance.
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Health and Safety Code section 13131 provides:

"Nonambulatory persons' means persons unable to leave a building unassisted under emergency conditions. It includes any person who is unable, or likely to be unable, to physically and mentally respond to a sensory signal approved by the State Fire Marshal, or an oral instruction relating to fire danger, and persons who depend upon mechanical aids such as crutches, walkers, and wheelchairs. The determination of ambulatory or nonambulatory status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative in consultation with the Director of Developmental Services or his or her designated representative. The determination of ambulatory or nonambulatory status of all other disabled persons placed after January 1, 1984 who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative."

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**89201**      **DEFINITIONS** (Continued)**89201**

- (o) (1) "Occasional Short-Term Babysitter" means a person who cares for a "child" in or out of the caregiver's licensed or approved home on an occasional basis for no more than 24 hours at a time as specified in Section 89378, subsection (a)(1)(A).
- (p) (1) "Personal Property" means items that a "child" brings to or obtains while in foster care, such as clothes, gifts, and personal effects.
- (2) "Physician" means a person who is licensed by the Medical Board of California or by the Osteopathic Medical Board of California as a physician or surgeon.
- (3) "Postural Support" means appliances or devices that are used to achieve proper body position and balance for a "child," improve mobility and independent functioning for a "child," position a "child," or prevent a "child" from falling or injury as specified in Section 89475.2, Postural Supports and Protective Devices.
- (4) "Pre-Placement Questionnaire" means the set of questions specified in Section 89468, Admission Procedures and the Pre-Placement Questionnaire (LIC 9225).
- (5) "PRN Medication" (pro re nata) means any nonprescription or prescription medication that is to be taken as needed.
- (6) "Protective Devices" means items that protect a "child" from getting hurt and are prescribed by a physician as specified in Section 89475.2, Postural Supports and Protective Devices.
- (7) "Provision" or "Provide" means whenever any regulation requires that provision be made for or that there be provided any service, personnel, or other requirement, the caregiver shall do so directly or present evidence to the licensing agency that the requirement has been met by some other means.
- (8) "Prudent Parent" or "Reasonable and Prudent Parent Standard" is defined in Welfare and Institutions Code section 362.04, subsection (a)(2) and specified in Section 89377, Reasonable and Prudent Parent Standard.

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Welfare and Institutions Code section 362.04, subsection (a)(2) provides:

"'Reasonable and prudent parent' or 'reasonable and prudent parent standard' means the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interest."

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## 89201 DEFINITIONS (Continued)

89201

- (q) (Reserved)
- (r) (1) "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service, which assist a person in reestablishing good character.
- (2) "Relative" means:
- (A) A person related to a "child" by birth or adoption within the fifth degree of kinship who, regardless of whether a parent's rights to a "child" have been terminated or relinquished, is one of the following:
1. Parent (mother, father), sibling (brother, sister), half-sibling (half-brother, half-sister), nephew, niece, uncle, aunt, first cousin, first cousin once removed, or is in an earlier generation denoted by the prefixes grand, great, great-great, or great-great-great.
- (B) Stepfather, stepmother, stepbrother, or stepsister; or
- (C) The spouse of any person named in (A) or (B) above, even if the marriage has been terminated by death or dissolution.
- (3) "Restraining Device" means any physical or mechanical item that is attached or next to the body of a "child" that a "child" cannot remove easily and keeps the "child" from moving freely as specified in Section 89475.2, Postural Supports and Protective Devices.
- (s) (1) "Self Administer" means the act of a "child" administering or giving him or herself medicine or injections as specified in Sections 89475.1, Emergency Medical Assistance, Injections, and Self-Administration of Medications and 89475, Health Related Services.
- (2) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health, or safety of any child in a home.
- (3) "Sexual Orientation" means the actual or perceived identification of any person as heterosexual, gay, lesbian, or bisexual.
- (4) "Shared Responsibility Plan" means a written plan that describes the duties, rights, and responsibilities of the teen parent and the caregiver with regard to the teen parent's child as defined in Welfare and Institutions Code section 16501.25 and specified in Section 89378, Responsibility for Providing Care and Supervision.

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Welfare and Institutions Code section 16501.25 provides in part:

"...(b)(1) When the child of a teen parent is not subject to the jurisdiction of the dependency court but is in the full or partial physical custody of the teen parent, a written shared responsibility plan shall be developed. The plan shall be developed between the teen parent, caregiver, and a representative of the county child welfare agency or probation department, and in the case of a certified home, a representative of the agency providing direct and immediate supervision to the caregiver. Additional input may be provided by any individuals identified by the teen parent, the other parent of the child, if appropriate, and other extended family members. The plan shall be developed as soon as is practicably possible. However, if one or more of the above stakeholders are not available to participate in the creation of the plan within the first 30 days of the teen parent's placement, the teen parent and caregiver may enter into a plan for the purposes of fulfilling the requirements of paragraph (2) of subdivision (d) of Section 11465, which may be modified at a later time when the other individuals become available.

(2) The plan shall be designed to preserve and strengthen the teen parent family unit, as described in Section 16002.5, to assist the teen parent in meeting the goals outlined in Section 16002.5, to facilitate a supportive home environment for the teen parent and the child, and to ultimately enable the teen parent to independently provide a safe, stable, and permanent home for the child. The plan shall in no way limit the teen parent's legal right to make decisions regarding the care, custody, and control of the child.

(3) The plan shall be written for the express purpose of aiding the teen parent and the caregiver to reach agreements aimed at reducing conflict and misunderstandings. The plan shall outline, with as much specificity as is practicable, the duties, rights, and responsibilities of both the teen parent and the caregiver with regard to the child, and identify supportive services to be offered to the teen parent by the caregiver or, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver, or both. The plan shall be updated, as needed, to account for the changing needs of infants and toddlers, and in accordance with the teen parent's changing school, employment, or other outside responsibilities. The plan shall not conflict with the teen parent's case plan. Areas to be addressed by the plan include, but are not limited to, all of the following:

(A) Feeding.

(B) Clothing.

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(C) Hygiene.

(D) Purchase of necessary items, including, but not limited to, safety items, food, clothing, and developmentally appropriate toys and books. This includes both one-time purchases and items needed on an ongoing basis.

(E) Health care.

(F) Transportation to health care appointments, child care, and school, as appropriate.

(G) Provision of child care and babysitting.

(H) Discipline.

(I) Sleeping arrangements.

(J) Visits among the child, his or her noncustodial parent, and other appropriate family members, including the responsibilities of the teen parent, the caregiver, and the foster family agency, as appropriate, for facilitating the visitation. The shared responsibility plan shall not conflict with the teen parent's case plan and any visitation orders made by the court."

(c) Upon completion of the shared responsibility plan and any subsequent updates to the plan, a copy shall be provided to the teen parent and his or her attorney, the caregiver, the county child welfare agency or probation department and, in the case of a certified home, the agency providing direct and immediate supervision to the caregiver."

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(5) "Social Worker" means a person who:

(A) Has a graduate degree from an accredited school of social work, or

(B) Is employed by a public agency and designated by that agency as a social worker providing services to a "child" and his or her family.

(6) "Specialized Foster Family Home" means a licensed foster family home that provides specialized in-home health care to a "child" pursuant to Health and Safety Code section 1507 and Welfare and Institutions Code section 17710, subsection (i).

**89201 DEFINITIONS (Continued)****89201**

- (7) "Specialized In-Home Health Care" means health care identified by the child's primary physician as appropriately administered in the home by a health care professional, caregiver, or any person trained by health care professionals as defined in Welfare and Institutions Code section 17710, subsection (h).

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Welfare and Institutions Code section 17710 provides in part:

"...(h) "Specialized in-home health care" includes, but is not limited to, those services identified by the child's primary physician as appropriately administered in the home by any one of the following:

- (1) A parent trained by health care professionals where the child is being placed in, or is currently in, a specialized foster care home...."

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- (8) "SSI/SSP" means the Supplemental Security Income/State Supplemental Program, which is a federal or state government program that provides financial assistance to aged, blind, or disabled residents of California.
- (9) "Substantiated" means that the allegation is valid because the preponderance of the evidence standard has been met.
- (t) (1) "Transitional Independent Living Plan (TILP)" means the written plan that describes programs, services, and activities that a "child" is participating in to prepare to make the transition from foster care to independent living.
- (u) (1) "Unfounded" means that the allegation is false, could not have happened, or is without a reasonable basis.
- (2) "Unlicensed Community Care Facility" means a facility as defined in Health and Safety Code section 1503.5, subsection (a) and section 1505.
- (A) A home which is providing "care and supervision" as defined in subsection (c)(3) includes, but is not limited to, one in which an unemancipated minor has been placed for temporary or permanent care.

89201

## DEFINITIONS (Continued)

89201

- (B) A home which is held out as or represented as providing "care and supervision" includes, but is not limited to:
- (1) A home which has been revoked or denied as follows:
    - a. a license, if licensed as a foster family home; or
    - b. an approval, if approved as a relative or nonrelative extended family member home; or
    - c. a certificate, if certified by a Foster Family Agency as a foster home;
    - d. the person continues to provide care for the same or different clients with similar needs.
  - (2) A home where change of ownership has occurred and the same clients retained.
  - (3) A licensed home that moves to a new location.
- and,
- (C) A home which "accepts or retains residents who demonstrate the need for care and supervision" includes, but is not limited to a home which houses unemancipated minors, even though the home is providing board and room only, or board only, or room only.

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Health and Safety Code section 1503.5, subsection (a) provides in pertinent part:

"A facility shall be deemed to be an 'unlicensed community care facility' and "maintained and operated to provide non-medical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

- (1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.

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(4) The facility represents itself as a licensed community care facility.

Health and Safety Code section 1505 provides:

"This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

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(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l)(1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(n)(1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

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(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p)...

(q) Any similar facility determined by the director."

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**HANDBOOK ENDS HERE**

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(v) (1) "Volunteer" means a person who provides unpaid support services to the home and does not replace required staff.

(w) (1) "Waiver" means a home-wide nontransferable written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation and which is based on a demonstration of the unique needs or circumstances of the home.

(2) "Whole Family Foster Home (WFFH)" means a licensed or approved foster family home or certified family home where the caregiver provides care for a minor parent and the minor parent's child as defined in Welfare and Institutions Code section 11400, subsection (t).

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Welfare and Institutions Code section 11400, subsection (t) provides:

"'Whole family foster home' means a new or existing family home, approved relative caregiver or nonrelative extended family member's home, the home of a nonrelated legal guardian whose guardianship was established pursuant to Section 366.26 or 360, certified family home that provides foster care for a minor parent and his or her child, and is specifically recruited and trained to assist the minor parent in developing the skills necessary to provide a safe, stable, and permanent home for his or her child. The child of the minor parent need not be the subject of a petition filed pursuant to Section 300 to qualify for placement in a whole family foster home."

**HANDBOOK ENDS HERE**

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- (3) "Written Plan Identifying the Specific Needs and Services of the Child", formerly referred to as the "Needs and Services Plan", means a time-limited, goal-oriented written plan that identifies the specific needs of an individual "child". This plan shall contain information on the background and needs of a "child" that the placing social worker deems necessary for the effective care of the "child."

**HANDBOOK BEGINS HERE**

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This plan may include a social work assessment, medical reports, educational assessment, and identification of special needs.

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(x) (Reserved)

(y) (Reserved)

(z) (Reserved)

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill 1695 (Chapter 653, Statutes of 2001). Reference: California Fair Employment and Housing Act, Government Code Section 12921, 12926, and 12926.1(c); Section 51931(a), Education Code; Sections 1337, 1500, 1501, 1502, 1503, 1503.5, 1505, 1505.2, 1507, 1507.5, 1520, 1522, 1522.1, 1524, 1526, 1526.5, 1527, 1530, 1530.5, 1530.6, 1531, 1531.5, 1533, 1534, 1536.1, 1537, 1550, 1551, 1558, 1558.1, 1559.110, 1727(c), 11834.11, and 13131, Health and Safety Code; Unruh Civil Rights Act, Civil Code Section 51; Sections 309, 319(d), 361.2(j) - (j)(2), 362.04, 362.05, 362.7, 366.26, 11400(t), 11403, 11460, 11461, 16501.25, 16522, 17710, 17710(a), (g), (h) and (i), 17731, 17731(c) and 17736(a), Welfare and Institutions Code; 42 U.S.C.A. Section 1305.

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| <b>89202</b> | <b>DEFINITIONS - FORMS</b> | <b>89202</b> |
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The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 9.5 (Foster Family Homes).

- (a) LIC 195 (10/07) – Notice of Operation in Violation of Law.
- (b) LIC 198 (2/01) – Child Abuse Central Index Check for County Licensed Facilities.
- (c) LIC 198A (9/07) – Child Abuse Central Index Check for State Licensed Facilities.
- (d) LIC 283 (1/03) – Foster Family Home Application.
- (e) LIC 508D (12/07) – Out-Of-State Disclosure and Criminal Record Statement (Foster Family Homes, Small Family Homes, Certified Family Homes).
- (f) LIC 973 (4/03) – Documented Alternative Plan, Foster Family Homes (Bedrooms).
- (g) LIC 974 (4/03) – Documented Alternative Plan, Foster Family Homes (Telephones).
- (h) LIC 9182 (12/07) – Criminal Background Clearance Transfer Request.
- (i) LIC 9188 (12/07) – Criminal Record Exemption Transfer Request.
- (j) LIC 9225 (8/08) – Pre-Placement Questionnaire.
- (k) PUB 396 (4/07) – Foster Youth Rights

NOTE: Authority cited: Section 1530, Health and Safety Code and Section 21 of the Assembly Bill 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1522 and 1522.1, Health and Safety Code; Section 16001.9, Welfare and Institutions Code.

**Article 2. ADMINISTRATIVE****89205 LICENSE REQUIRED****89205**

Unless a home is exempt from licensure as specified in Section 89207, Exemption from Licensure, no person shall operate, establish, manage, conduct or maintain a foster family home, or hold out, advertise or represent by any means to do so, without first obtaining a current valid license from the licensing agency.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, 1503.5, 1505, 1508, 1509, 1524, 1531, 1536.1, 1540, 1540.1, 1541, and 1547, Health and Safety Code.

**89206 OPERATION WITHOUT A LICENSE****89206**

- (a) If the home is alleged to be in violation of Health and Safety Code sections 1503.5 or 1508, the licensing agency shall conduct a site visit, and an evaluation of the home pursuant to Health and Safety Code section 1533.

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Health and Safety Code section 1503.5 provides:

"(a) A facility shall be deemed to be an "unlicensed community care facility" and "maintained and operated to provide nonmedical care" if it is unlicensed and not exempt from licensure and any one of the following conditions is satisfied:

- (1) The facility is providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (2) The facility is held out as or represented as providing care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (3) The facility accepts or retains residents who demonstrate the need for care or supervision, as defined by this chapter or the rules and regulations adopted pursuant to this chapter.
- (4) The facility represents itself as a licensed community care facility.
- (5) The facility is performing any of the functions of a foster family agency or holding itself out as a foster family agency.

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(6) The facility is performing any of the functions of an adoption agency or holding itself out as performing any of the functions of an adoption agency as specified in paragraph (9) of subdivision (a) of Section 1502 or subdivision (b) of Section 8900.5 of the Family Code.

(b) No unlicensed community care facility, as defined in subdivision (a), shall operate in this state.

(c) Upon discovery of an unlicensed community care facility, the department shall refer residents to the appropriate local or state ombudsman, or placement, adult protective services, or child protective services agency if either of the following conditions exist:

(1) There is an immediate threat to the clients' health and safety.

(2) The facility will not cooperate with the licensing agency to apply for a license, meet licensing standards, and obtain a valid license."

Health and Safety Code section 1508 provides:

"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 community care facility in this state, without a current valid license therefor as provided in this chapter.

No person, firm, partnership, association, or corporation within the state and no state or local public agency shall provide specialized services within a community care facility in this state, without a current valid special permit therefore as provided in this chapter.

Except for a juvenile hall operated by a county, or a public recreation program, this section applies to community care facilities directly operated by a state or local public agency. Each community care facility operated by a state or local public agency shall comply with the standards established by the director for community care facilities.

As used in this chapter, 'local public agency' means a city, county, special district, school district, community college district, chartered city, or chartered city and county."

Health and Safety Code section 1533 provides in pertinent part:

"Except as otherwise provided in this section, any duly authorized officer, employee, or agent of the State Department of Social Services 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, any provision of this chapter.

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Foster family homes which are considered private residences for the purposes of Section 1530.5 shall not be subject to inspection by the department or its officers without advance notice, except in response to a complaint. The unannounced visits shall not constitute the annual evaluation visit required by Section 1534. Inspection visits to foster family homes shall be made during normal business hours, unless the serious nature of a complaint requires otherwise.

'Normal business hours,' as used in this section, means from 8 a.m. to 5 p.m., inclusive, of each day from Monday to Friday, inclusive, other than state holidays."

**HANDBOOK ENDS HERE**

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- (b) If the home is operating without a license, the licensing agency shall issue a Notice of Operation in Violation of Law (LIC 195) and shall refer the case for criminal prosecution or civil proceedings.
- (c) The licensing agency shall issue an immediate civil penalty as specified in Section 89255, Penalties for Unlicensed Homes.
- (d) Subsections (b) and (c) may be applied pursuant to Health and Safety Code section 1549.

**HANDBOOK BEGINS HERE**

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Health and Safety Code section 1549 provides:

"The civil, criminal, and administrative remedies available to the department pursuant to this article are not exclusive and may be sought and employed in any combination deemed advisable by the department to enforce this chapter."

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- (e) The licensing agency shall notify the appropriate placement or protective service agency if either of the following conditions exist:
  - (1) There is an immediate threat to the health and safety of children.
  - (2) The unlicensed home does not submit an application for licensure to the licensing agency within 15 calendar days of being served a Notice of Operation in Violation of Law (LIC 195).

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503, 1503.5, 1505, 1508, 1531, 1533, 1536.1, 1538, 1540, 1540.1, 1541, and 1549, Health and Safety Code.

**89207 EXEMPTION FROM LICENSURE****89207**

- (a) The provisions of this chapter shall not apply to facilities, homes, and arrangements specified in Health and Safety Code section 1505.

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Health and Safety Code section 1505 provides in part:

"This chapter does not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202 [*sic* 1200].
- (c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.
- (f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of such church or denomination.
- (g) Any school dormitory or similar facility determined by the Department.
- (h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the Director.
- (i) Recovery houses or other similar facilities providing a group living arrangement for persons recovering from alcoholism or drug addiction which provides no care or supervision.
- (j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

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**HANDBOOK CONTINUES**

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**HANDBOOK CONTINUES**

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(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l)(1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probations department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) ...

(n)(1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

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**HANDBOOK CONTINUES**

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**HANDBOOK CONTINUES**

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p) ...

(q) Any similar facility determined by the director.

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**HANDBOOK ENDS HERE**

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(b) The provisions of this chapter shall not apply to any school dormitory or similar facility where all of the following conditions exist:

(1) The school is certified or registered by the State Department of Education.

(2) The school and the school dormitory are on the same grounds.

(3) All children accepted by the school are 6 or over.

(4) The program operates only during normal school terms unless the academic program runs year-round.

(5) The school's function is educational only.

(6) The school program is not designated as providing rehabilitative or treatment services.

(7) The school's function does not intend to provide community care services, and the family does not accept children who are in need of such services, including but not limited to children with developmental disabilities, mental disorders or physical handicaps; juveniles declared dependents of the court under Welfare and Institutions Code section 300; and juveniles declared wards of the court under Welfare and Institutions Code sections 601 and 602.

**89207 EXEMPTION FROM LICENSURE (Continued)****89207**

- (8) The facility does not receive any public funds designated for care including but not limited to AFDC-FC and SSI/SSP. The facility shall be permitted to receive public funds intended for educational programs.
  - (9) No public or private agency, including but not limited to county welfare departments and probation offices, provides social services to children in the facility.
- (c) The provisions of this chapter shall not apply to the following situations:
- (1) Any care and supervision of a person from only one family by a close friend of the parent, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week.
    - (A) Providing longer hours of care shall not be precluded when care is provided for brief periods of time for reasons that include, but are not limited to, family emergencies, vacation, and military leave.
  - (2) Any family home that is exclusively used by a licensed or exempt Foster Family Agency and has a certificate of approval from that agency.
    - (A) The home shall not be required to obtain a license, but shall be in compliance with all other requirements in this division. The home's compliance with these requirements shall be monitored through and assured by the Foster Family Agency. For the purposes of this section, an exclusive-use home shall mean a nonlicensed home that has been approved by a licensed Foster Family Agency as conforming to the regulations for the Small Family Home category. A home exclusively used by a licensed Foster Family Agency shall only accept a child placed by the agency which approved the home.
  - (3) A home that meets all of the following criteria:
    - (A) Approved by a licensed adoption agency, or the Department, for the adoptive placement of a child; and
    - (B) The child is legally free for adoption; and
    - (C) The agency or the Department is providing supervision of the home pending finalization of the adoption.

**89207 EXEMPTION FROM LICENSURE (Continued) 89207**

- (4) A home that meets all of the following criteria:
- (A) Placement for adoption by a birth parent; and
  - (B) A petition for adoption has been filed by the prospective adoptive parents, and is pending; and
  - (C) A final decision on the petition has not been rendered by the court.
- (5) Any care and supervision of a "child" by a relative, guardian, or conservator. A relative, for purposes of this section, shall include persons as specified in Health and Safety Code section 1505, subsection (k).

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; Section 17730, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503, 1503.5, 1505, 1506, 1508, 1524, 1530, 1530.5, 1531, 1536.1, 1540.1, 1541, and 1547, Health and Safety Code; Sections 226.2, 226.5 and 226.6, Civil Code; and Sections 319(d), 362, 727, 16100, 17710(i), and 17736, Welfare and Institutions Code.

**89209 AVAILABILITY OF LICENSE 89209**

- (a) The licensing agency shall have the authority to request review of the license.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, and 1531, Health and Safety Code.

**89218 APPLICATION FOR LICENSE 89218**

- (a) The licensing agency shall have the authority to require any applicant to file a verified Foster Family Home Application (LIC 283).
- (b) The applicant/caregiver shall cooperate with the licensing agency in providing verification and documentation as requested by the licensing agency.
- (c) In addition to the Foster Family Home Application (LIC 283), supporting documents shall contain the following:
- (1) Name and address of the owner of the premises if the applicant is leasing or renting.
  - (2) A copy of document(s) that establish that the applicant has control of the property to be licensed.

**89218 APPLICATION FOR LICENSE (Continued)****89218**

- (3) Information that is required by Health and Safety Code section 1520.

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Health and Safety Code section 1520 provides in part:

"Any person desiring issuance of a license for a community care facility or a special permit for specialized services under this chapter shall file with the department, pursuant to regulations, an application on forms furnished by the department, which shall include, but not be limited to:

"(a) Evidence satisfactory to the department of the ability of the applicant to comply with this chapter and of rules and regulations promulgated under this chapter by the department.

"(b) Evidence satisfactory to the department that the applicant is of reputable and responsible character. The evidence shall include, but not be limited to, a criminal record clearance pursuant to Section 1522, employment history, and character references...

"(c) Evidence satisfactory to the department that the applicant has sufficient financial resources to maintain the standards of service required by regulations adopted pursuant to this chapter.

"(d) Disclosure of the applicant's prior or present service as an administrator, general partner, corporate officer, or director of, or as a person who has held or holds a beneficial ownership of 10 percent or more in, any community care facility or in any facility licensed pursuant to Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).

"(e) Disclosure of any revocation or other disciplinary action taken, or in the process of being taken, against a license held or previously held by the entities specified in subdivision (d).

"(f) A signed statement that the person desiring issuance of a license or special permit has read and understood the community care facility licensure statute and regulations that pertain to the applicant's category of licensure.

"(g) Any other information that may be required by the department for the proper administration and enforcement of this chapter."

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- (4) Name, address and telephone number of the city or county fire department, or district providing fire protection services, or State Fire Marshal's Office having jurisdiction in the area where the home is located.

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| <b>89218</b> | <b>APPLICATION FOR LICENSE (Continued)</b> | <b>89218</b> |
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- (5) Fingerprint cards and identifying information as specified in Section 89319, Criminal Record Clearance Requirement.
- (6) Information required by Health and Safety Code section 1522.1.

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Health and Safety Code section 1522.1 provides:

"Prior to granting a license to, or otherwise approving, any individual to care for children, the department shall check the Child Abuse Central Index pursuant to paragraph (4) of subdivision (b) of Section 11170 of the Penal Code. The Department of Justice shall maintain and continually update an index of reports of child abuse by providers and shall inform the department of subsequent reports received from the child abuse index pursuant to Section 11170 of the Penal Code and the criminal history. The department shall investigate any reports received from the Child Abuse Central Index. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency which investigated the child abuse report. The department shall not deny a license based upon a report from the Child Abuse Central Index unless child abuse is substantiated."

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- (d) No caregiver shall alter or provide false or misleading information to obtain any foster family home license.
- (e) The applicant shall sign the application.
- (f) The application shall be filed with the licensing agency which serves the geographical area where the home is located.
- (g) No application processing fee shall be charged to foster family homes.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, 1503.5, 1508, 1520, 1520.3, 1521.5, 1522, 1522.1, 1523.1, 1524, 1525.25, 1525.3, 1531, 1536.1, 1540, 1540.1, 1541, and 1547, Health and Safety Code.

**89219 CRIMINAL RECORD CLEARANCE****89219**

- (a) The licensing Department shall conduct a criminal record review of all persons specified in Health and Safety Code section 1522, subsection (b) and shall have the authority to approve or deny a foster family home license, or employment, residence, or presence in the home, based upon the results of such review.

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**HANDBOOK BEGINS HERE**

Health and Safety Code section 1522(b) provides in part:

(1) 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.

(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 re-certified 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 fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care 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 community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

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(b) The following persons are exempt from the requirement to submit fingerprints:

(1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the person's governing California medical care regulatory entity and who is not employed, retained, or contracted by the caregiver, if all of the following apply:

(A) The criminal record of the person has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.

(B) The person is providing time-limited specialized clinical care or services.

89219

**CRIMINAL RECORD CLEARANCE** (Continued)

89219

- (C) The person is providing care or services within the person's scope of practice.
- (D) The person is not a foster family home caregiver or an employee of the home.
- (2) A third-party repair person, or similar retained contractor, if all of the following apply:
  - (A) The person is hired for a defined, time-limited job.
  - (B) The person is not left alone with a "child."
  - (C) When a "child" is present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract for a "child" of the home, and are in the home at the request of the legal decision maker for a "child."
  - (A) The exemption shall not apply to a person who is a foster home caregiver or an employee of the home.
- (4) Clergy and other spiritual caregivers who are performing services in common areas of the home, or who are advising an individual "child" at the request of, or with the permission of, the "child" or the legal decision maker for the "child."
  - (A) This exemption shall not apply to a person who is a foster family home caregiver or an employee of the home.
- (5) Members of fraternal, service and similar organizations who conduct group activities for a "child," if all of the following apply:
  - (A) Members are not left alone with a "child."
  - (B) Members do not take a "child" from the home.
  - (C) The same group does not conduct such activities more often than once a month.
- (6) Adult friends and family of the caregiver who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with a "child."

**89219 CRIMINAL RECORD CLEARANCE (Continued)****89219**

- (7) Parents of friends of a "child" when a "child" is visiting the friend's home and the friend, caregiver or both are also present.
  - (8) Occasional short-term babysitters.
  - (9) Nothing in this paragraph shall prevent a caregiver from requiring a criminal record clearance of any person exempt from the requirements of this section, provided that the person has contact with a "child."
- (c) Prior to the Department issuing a license or special permit to any person or person's to operate or manage a foster family home, the applicant and any adults residing in the home shall, unless exempt under subsection (b), obtain a California criminal record clearance or exemption, and shall comply with FBI requirements as specified in Health and Safety Code section 1522, subsection (d)(4)(D).
- (d) Prior to presence in the home, the persons specified in subsection (a) shall, unless exempt under subsection (b), obtain a California criminal record clearance or exemption and shall comply with FBI requirements as specified in Health and Safety Code section 1522, subsection (d)(4)(D).

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**HANDBOOK BEGINS HERE**

Health and Safety Code section 1522(d)(4)(D) states:

"(D) To the same extent required for federal funding, an applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b) who is not exempt from fingerprinting, shall submit a set of fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, in addition to the criminal records search required by subdivision (a)."

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**HANDBOOK ENDS HERE**

- (e) Prior to employment, residence or initial presence in a foster family home, all persons subject to criminal record review, in order to meet the requirements of subsections (c) and (d), shall be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions and arrests for any crime against a child, spousal cohabitant abuse, or for any crime for which the Department cannot grant an exemption. The declaration shall acknowledge and explain criminal convictions and arrests. The declaration shall also acknowledge that his or her continued employment, residence, or presence in the home is subject to approval of the Department.
- (1) A foster family home applicant/caregiver shall submit the 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 and shall comply with subsection (e), prior to the person's employment, residence, or initial presence in the home.

**89219 CRIMINAL RECORD CLEARANCE (Continued)****89219**

- (A) Fingerprints shall be submitted to the California Department of Justice by the caregiver or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.
- (B) A caregiver's failure to submit fingerprints to the California Department of Justice or to comply with subsection (e) shall result in the citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation.
  - 1. The caregiver shall then submit the fingerprints to the California Department of Justice for processing.
- (C) The Department shall notify the caregiver of criminal records clearances and where there is not a clearance, the Department shall notify both the caregiver and the affected person associated with the home, in concurrent, separate letters, that the affected person has a criminal conviction and needs to obtain a criminal record exemption.
- (f) To continue to be employed, reside, or be present in a home, each person shall continue to meet the requirements of subsections (c) and (d).
- (g) If the criminal record transcript of any of the persons specified in Health and Safety Code section 1522, subsection (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 89219.1, subsection (a) has not been granted, the Department shall take the following actions:
  - (1) For initial applicants, denial of the application.
  - (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.
  - (3) For other persons, exclusion of the affected person pursuant to Health and Safety Code section 1558, and denial of the application or revocation of license, if the person continues to provide service and/or reside in the home.

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Penal Code section 243.4 provides in part:

(A) 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.

(B) 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.

Penal Code section 273a provides:

(A) 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 exceeding one year, or in the state prison for 2, 3 or 4 years.

(B) 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 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 may be endangered, is guilty of a misdemeanor.

Penal Code section 273d provides:

Any person who willfully inflicts upon any child any 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.

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Penal Code section 368 provides:

(A) 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.

(B) 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.

Health and Safety Code section 1522(d) provides in part:

If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

Health and Safety Code section 1522(e) provides in part:

The California Department of Social Services may 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.

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**89219 CRIMINAL RECORD CLEARANCE (Continued)****89219**

- (h) A transfer of a criminal record clearance from one state licensed facility to another, or from TrustLine to a state licensed facility may be requested by a person or a caregiver by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request (LIC 9182).
  - (2) A copy of the person's valid identification, such as:
    - (A) California driver's license; or
    - (B) California identification card issued by the Department of Motor Vehicles; or
    - (C) Photo identification issued by another state or the United States government if the person is not a California resident.
  - (3) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).
- (i) The caregiver shall maintain documentation of criminal record clearances or criminal record exemptions of employees and volunteers that require fingerprinting and non-client adults residing in the home.
- (1) Documentation shall be available for inspection by the Department.

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Section 729, Business and Professions Code; Sections 1501.1, 1520, 1522, 1522(b)(3)(C), 1522.01, 1522.04, 1524, 1531, 1558, and 14564, Health and Safety Code; Sections 361.2(j) - (j)(1)(B) and 362.04, Welfare and Institutions Code; Section 8712, Family Code; Section 15376, Government Code; and Sections 136.1, 186.22, 187, 190 through 190.4 and 192(a), 203, 206, 207, 208, 209, 209.5, 210, 211, 212, 212.5, 213, 214, 215, 220, 243.4, 261(a), (a)(1)-(4) or (a)(6), 262(a)(1) or (4), 264.1, 266, 266c, 266h(b), 266i(b), 266j, 267, 269, 272, 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994], 273d, 285, 286, 288, 288a, 288.2, 288.5(a), 289, 290(a), 311.2(b), (c) or (d), 311.3, 311.10, 311.11, 314(1) or (2), 347(a), 368(b) or (c) if after January 1, 1999, 417(b), 451(a) or (b), 460(a), 186.22 and 518, 647.6 or prior to 1987 former Section 647a, 653f(c), 664/187, 667.5(c)(7), 667.5(c)(8) 667.5(c)(13), 12308, 12309 or 12310, 667.5(c)(14), 207, 208, 209, 209.5 and 210, 667.5(c)(22), 12022.53, Penal Code; and Section 42001, Vehicle Code.

**89219.1 CRIMINAL RECORD EXEMPTION****89219.1**

- (a) After a review of the criminal record transcript, the Department may grant an exception from disqualification for a license, employment or presence in a home pursuant to Section 89219, subsection (g) if:
- (1) The applicant/caregiver requests an exemption for himself or herself, or
  - (2) The applicant/caregiver requests an exemption in writing for a person associated with the home,  
or
  - (3) The applicant/caregiver does not seek an exemption for the affected person, the affected person may request an individual exemption in writing, if the conditions set forth in Health and Safety Code section 1522, subsection (c)(5) are met; and

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- (A) Health and Safety Code section 1522(c)(5) provides:

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

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- (4) The affected person 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, presence, or residence in a licensed home.
- (b) 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.
  - (2) Period of time since the crime was committed and number of offenses.
  - (3) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.
  - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
  - (5) Granting by the Governor of a full and unconditional pardon.

**89219.1 CRIMINAL RECORD EXEMPTION (Continued)****89219.1**

- (6) Character references.
  - (7) A certificate of rehabilitation from a superior court.
  - (8) Evidence of honesty and truthfulness as revealed in exemption application documents and interviews.
    - (A) Documents include, but are not limited to:
      - 1. A Criminal Record Statement (LIC 508D, Criminal Record Statement); and
      - 2. The person's written statement/explanation of the conviction and the circumstances surrounding the arrest.
  - (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations between the person or others and the Department.
- (c) No exemption shall be granted for a crime that is listed in Health and Safety Code section 1522, subsection (g).

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Health and Safety Code section 1522(g) provides in part:

- (1) Except as otherwise provided in this subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:
  - (A)(i) An offense in Section 220, 243.4, or 264.1, or subdivision (a) of Section 273a, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.
  - (ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7) or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code and has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certification of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

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(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

Health and Safety Code Section 1522(g)(1) lists or refers to convictions for crimes for which no exemptions are allowed. These crimes are identified below:

1. Penal Code Sections 186.22 and 136.1 – 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, 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.
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.

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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 Sections 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.
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.

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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(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(b) or (c) if after January 1, 1999 – 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.
42. Penal Code Sections 186.22 and 518 – Gang related/Extortion.
43. Penal Code Section 647.6 or prior to 1987 former Section 647a – Annoy or molest a child under 18.
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.

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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. Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

**HANDBOOK ENDS HERE**

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- (d) The Department may deny an exemption request if:
- (1) The caregiver and/or the affected person fails to provide documents requested by the Department, or
  - (2) The caregiver and/or the affected person fails to cooperate with the Department in the exemption process.
- (e) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (f) The Department may grant a criminal record exemption that places conditions on the person's continued licensure, and employment or presence in a licensed home.
- (g) A person shall be permitted to transfer a current criminal record exemption from one state-licensed facility to another provided the exemption has been processed through a state licensing regional office and the following are met:
- (1) A signed Criminal Record Exemption Transfer Request (LIC 9188).
  - (2) The request is in writing to the Department and includes:
    - (A) A copy of the person's valid identification, such as:
      1. California driver's license; or
      2. California identification card issued by the Department of Motor Vehicles, or
      3. Photo identification issued by another state or the United States government if the person is not a California resident.

**89219.1 CRIMINAL RECORD EXEMPTION (Continued)****89219.1**

- (B) Any other documentation required by the Department (i.e., LIC 508D, Criminal Record Statement and job description).
- (h) If the Department denies the person's request to transfer a conditional criminal record exemption, the Department shall provide the individual with a right to an administrative hearing to contest the Department's decision.
- (i) The Department shall take the following actions if a criminal record exemption is not or cannot be granted:
- (1) For initial applicants, denial of the application.
  - (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.
  - (3) For current or prospective employees, exclusion of the affected person pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the home.
  - (4) For persons residing in the home, caregiver or employee, exclusion of the affected individual pursuant to Health and Safety Code section 1558, and denial of the application or revocation of the licensee, if the individual continues to provide services and/or reside at the home.

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Section 729, Business and Professions Code; Sections 1520, 1522, 1522.01, 1522.04, 1524, 1531, and 14564, Health and Safety Code; Section 15376, Government Code; and Sections 136.1, 186.22, 187, 190 through 190.4 and 192(a), 203, 206, 207, 208, 209, 209.5, 210, 211, 212, 212.5, 213, 214, 215, 220, 243.4, 261(a), (a)(1), (2), (3), (4) or (6), 262(a)(1) or (4), 264.1, 266, 266c, 266h(b), 266i(b), 266j, 267, 269, 272, 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994], 273d, 285, 286, 288, 288a, 288.2, 288.5(a), 289, 290(a), 311.2(b), (c) or (d), 311.3, 311.10, 311.11, 314(1) or (2), 347(a), 368(b) or (c) if after January 1, 1999, 417(b), 451(a) or (b), 460(a), 186.22 and 518, 647.6 or prior to 1987 former Section 647a, 653f(c), 664/187, 667.5(c)(7), 667.5(c)(8) 667.5(c)(13), 12308, 12309 or 12310, 667.5(c)(14), 207, 208, 209, 209.5 and 210, 667.5(c)(22), 12022.53, Penal Code.

**89219.2 CHILD ABUSE CENTRAL INDEX****89219.2**

- (a) Prior to the Department issuing a license or special permit for a foster family home, the Department shall conduct a Child Abuse Central Index (CACI) review pursuant to Health and Safety Code section 1522.1 and Penal Code section 11170, subsection (b)(3). The Department shall check the CACI for the applicant(s) and all persons subject to a criminal record review, pursuant to Health and Safety Code section 1522, subsection (d) and shall have the authority to approve or deny a home license, permit, certificate, employment, residence, or presence in the home based on the results of the review.
- (1) The applicant shall submit the Child Abuse Central Index Check for State Licensed Facilities (LIC 198A) for all persons required to be checked directly to the California Department of Justice at the same time that the person's fingerprints are submitted for a criminal background check as required by Section 89219, subsection (c).
- (A) Persons who have submitted the Child Abuse Central Index Check for State Licensed Facilities (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the person can transfer their criminal record clearance or exemption pursuant to Section 89219, subsection (f).
- (2) The Department shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (b) Subsequent to licensure, all persons subject to a criminal record review, pursuant to Health and Safety Code section 1522, subsection (b), shall complete a Child Abuse Central Index Check for State Licensed Facilities (LIC 198A) prior to employment, residence, or initial presence in the home that cares for children.
- (1) The caregiver shall submit the Child Abuse Central Index Check for State Licensed Facilities (LIC 198A) directly to the California Department of Justice with the person's fingerprints as required by Section 89219, subsection (d) prior to the person's employment, residence or initial presence in the home.
- (A) Persons who have submitted the Child Abuse Central Index Check for State Licensed Facilities (LIC 198A) with fingerprints on or after January 1, 1999 need not submit a new check if the person can transfer their criminal record clearance or exemption pursuant to Section 89219, subsection (f) or Section 89219.1, subsection (c).
- (2) The Department shall check the CACI pursuant to Penal Code section 11170, subsection (b)(3), and shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not deny a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

**89219.2 CHILD ABUSE CENTRAL INDEX (Continued)****89219.2**

- (3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.
- (c) A person shall be permitted to transfer a current CACI clearance from one state-licensed facility to another in the following manner:
- (1) If the initial CACI (LIC 198A) was submitted prior to January 1, 1999, the person must submit a new CACI (LIC 198A) to be processed through a state licensing regional office; or
  - (2) If the CACI (LIC 198A) was submitted after January 1, 1999 the person's CACI clearance will be transferred along with the transfer of either the criminal record clearance or exemption in accordance with Sections 89219, Criminal Record Clearance, or 89219.1, Criminal Record Exemptions.

NOTE: Authority cited: Section 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1520, 1522, 1522.01, 1522.1, 1524, 1531, 1558, and 14564, Health and Safety Code; and Section 11170, Penal Code.

**89224 EXCEPTIONS AND WAIVERS****89224**

- (a) Unless prior written licensing agency approval is received as specified in subsection (d) below, a caregiver shall maintain continuous compliance with the licensing regulations.
- (b) The licensing agency shall have the authority to grant an exception or waiver for a specific regulation(s) if the request:
- (1) Demonstrates how the intent of the regulation(s) will be met;
  - (2) Is not detrimental to the health and safety of any child; and
  - (3) Is submitted by the applicant or caregiver to the licensing agency as a written request for a waiver or exception, together with substantiating evidence supporting the request.
- (c) No waiver or exception, pursuant to this section, shall be granted for any provision of Article 3, under this chapter.
- (d) The caregiver shall retain the licensing agency's written approval or denial of the exception or waiver request on file in the home.

**89224 EXCEPTIONS AND WAIVERS (Continued)****89224**

- (e) A Documented Alternative Plan (LIC 973 and LIC 974), as defined in Section 89201, Definitions, shall only be used for regulations specified in Article 3:
- (1) Section 89387, Buildings and Grounds for bedrooms, and
  - (2) Section 89373, Telephones.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1509, 1525.25 and 1531, Health and Safety Code; and Sections 361.2(j) - (j)(1)(C), Welfare and Institutions Code.

**89226 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES****89226**

- (a) The caregiver shall make an itemized inventory list of cash resources, personal property, and valuables that a "child" brings into care and review this list with the "child."
- (1) This list shall be kept in the records for a "child" as specified in Section 89370, Children's Records.
- (b) The caregiver shall safeguard the cash resources, personal property, and valuables of a "child" by:
- (1) Keeping the cash resources, personal property, and valuables of each "child" separate and intact, and
  - (2) Maintaining accurate records of the cash resources, personal property, and valuables belonging to a "child" and entrusted to the caregiver.
- (c) The caregiver shall allow a "child" to have access to and control of his or her cash resources, personal property, and valuables in a manner that is age and developmentally appropriate.
- (d) When a "child" leaves the home, the caregiver shall surrender cash resources, personal property, and valuables that belong to the "child" to the "child," if age and developmentally appropriate, to the placement agency or other authorized representative who is responsible for the care and custody of the "child," with an itemized inventory list of these items.
- (1) The caregiver, a "child," and the authorized representative for the "child" shall inspect the itemized inventory list to ensure that all personal belongings of the "child" are being surrendered, and
  - (2) The caregiver shall request and retain a receipt that is signed and dated by the authorized representative for a "child," the new caregiver, or a "child" if age and developmentally appropriate.

**89226 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES (Continued) 89226**

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1520, and 1531, Health and Safety Code; and Sections 361.2(j) - (j)(2) and 16001.9, Welfare and Institutions Code.

**89227 APPLICATION REVIEW 89227**

(a) The licensing agency shall complete the following as part of the application review process:

(1) Conduct a site visit to the proposed foster family home to:

(A) Determine that all of the requirements of Article 3 of this chapter have been met.

(B) Conduct interviews as specified in Health and Safety Code section 1521.5.

(2) Make a determination that:

(A) The applicant has the ability to comply with the provisions of the Community Care Facilities Act and the regulations in this chapter as specified in Health and Safety Code section 1520.

(B) The home complies with the provisions of the Community Care Facilities Act and the regulations in this chapter.

(C) The applicant has secured a fire clearance from the State Fire Marshal, if required.

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Health and Safety Code section 1521.5 provides:

"(a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more in-home interviews with the prospective foster parent sufficient to collect information on caregiver qualifications that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children. The inability of a prospective foster parent to meet the varying needs of children, shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license.

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**HANDBOOK CONTINUES**

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"(b) All in-home interviews required by this section shall be on an in-person basis.

"(c) If the in-home interview is conducted by the licensing agency, it shall be a part of the licensing record, and shall be shared with the placement agency pursuant to subdivision (e) of Section 1798.24 of the Civil Code.

"(d) The in-home interview required by this section shall be completed no later than 120 days following notification by the licensing agency.

"(e) No license shall be issued unless an in-home interview has been conducted as required by this section."

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**HANDBOOK ENDS HERE**

- (b) If the applicant has not submitted all materials specified in Section 89218, Application for License, within 90 days of receipt of the application by the licensing agency, the licensing agency shall give written notice to the applicant that the application is incomplete.
- (1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn, provided that the licensing agency has not denied or taken action to deny the application.
  - (2) If the application has been deemed denied, the applicant shall file a new application as required by Section 89218, Application for License.
- (c) The licensing agency shall cease review of any application under the conditions specified in Health and Safety Code section 1520.3.
- (1) (Reserved)
  - (2) The circumstances and conditions in which the licensing agency may continue to review a previously denied application shall include, but are not limited to, the following:
    - (A) A fire clearance previously denied, but now approved;
    - (B) A caregiver who did not meet the minimum qualifications, but now fulfills the qualifications; or
    - (C) A person with a criminal record, which was the basis for license denial, is no longer associated with the home.

**89227 APPLICATION REVIEW (Continued)****89227**

- (3) This review shall not constitute approval of the application.
- (4) 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 1520.3.

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Health and Safety Code section 1520.3 provides in part:

"(a)(1) If an application for a license or special permit 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), or Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.3 (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 cease any further review of the application until two years shall have elapsed from the date of such revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other provision of law.

(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 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 the revocation.

(3) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant was excluded from a facility licensed by the department pursuant to Sections 1558, 1568.092, 1569.58, or 1596.8897, the department shall cease any further review of the application unless the excluded individual has been reinstated pursuant to Section 11522 of the Government Code by the department.

"(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 paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.

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(2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1526 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.

"(c) 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 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 cease further review of the application as follows:

(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application 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 cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.

(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence."

"(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law."

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**HANDBOOK ENDS HERE**

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1520, 1520.3, 1521.5, 1521.6, 1523.1, 1525, 1526, 1531, 1550, 1558.1, 13131, and 13143, Health and Safety Code; and Section 16518, Welfare and Institutions Code.