

**87163**            **DENIAL OF LICENSE APPLICATION (Continued)**                      **87163**

- (f) An applicant may appeal the denial of the application by sending a written notice of appeal to the licensing agency within 15 days of the postmark date of the denial notice.
- (g) The licensing agency shall, upon receipt of the notice of appeal, advise the applicant in writing of the appeal procedure.
- (h) The proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

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

**Article 4. Operating Requirements****87202 FIRE CLEARANCE****87202**

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

- (1) Nonambulatory persons.
- (2) Bedridden persons

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Health and Safety Code Section 1569.72(c) provides in part:

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

- (1) The fire safety requirements are met. Residents who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.
- (2) Alternative methods of protection are approved."

Health and Safety Code Sections 1569.72(h)(2)(B)(ii) provides:

"(h)(2)(B)(ii) Either the facility, the resident or residents' representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshal shall issue the written opinion within 45 days following the request."

Health and Safety Code Sections 1569.72(i) provides:

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

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NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.2, 1569.312, and 15692.72, Health and Safety Code.

**87203 FIRE SAFETY****87203**

All facilities shall be maintained in conformity with the regulations adopted by the State Fire Marshal for the protection of life and property against fire and panic.

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

**87204 LIMITATIONS -- CAPACITY AND AMBULATORY STATUS****87204**

- (a) A licensee shall not operate a facility beyond the conditions and limitations specified on the license, including specification of the maximum number of persons who may receive services at any one time. An exception may be made in the case of catastrophic emergency when the licensing agency may make temporary exceptions to the approved capacity.
- (b) Resident rooms approved for 24-hour care of ambulatory residents only shall not accommodate nonambulatory residents. Residents whose condition becomes nonambulatory shall not remain in rooms restricted to ambulatory residents.

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

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**87205 ACCOUNTABILITY OF LICENSEE GOVERNING BODY 87205**

- (a) The licensee, whether an individual or other entity, shall exercise general supervision over the affairs of the licensed facility and establish policies concerning its operation in conformance with these regulations and the welfare of the individuals it serves.
- (b) If the licensee is a corporation or an association, the governing body shall be active, and functioning in order to assure accountability.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.15, 1569.16, 1569.17, 1569.31 and 1569.312, Health and Safety Code.

**87206 ADVERTISEMENTS AND LICENSE NUMBER 87206**

- (a) In accordance with Health and Safety Code sections 1569.68 and 1569.681, licensees shall reveal each facility license number in all public advertisements, including Internet, or correspondence.

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Health and Safety Code section 1569.681 provides:

- (a) Each residential care facility for the elderly licensed under this chapter shall reveal its license number in all advertisements, publications, or announcements made with the intent to attract clients or residents.
- (b) Advertisements, publications, or announcements subject to the requirements of subdivision (a) referred to herein include, but are not limited to, those contained in the following:
  - (1) Newspaper or magazine.
  - (2) Consumer report.
  - (3) Announcement of intent to commence business.
  - (4) Telephone directory yellow pages.

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**87206 ADVERTISEMENTS AND LICENSE NUMBER (Continued)****87206**

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- (5) Professional or service directory.
- (6) Radio or television commercial.

Health and Safety Code section 1569.68 provides:

All residential care facilities shall be required to include their current license number in any public advertisement or correspondence.

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- (b) Licensees who operate more than one facility and use a common advertisement for these facilities shall be required to list each facility license number in accordance with Health and Safety Code sections 1569.681 and 1569.68.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.68 and 1569.681, Health and Safety Code.

**87207 FALSE CLAIMS****87207**

No licensee, officer or employee of a licensee shall make or disseminate any false or misleading statement regarding the facility or any of the services provided by the facility.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Section 1569.44, Health and Safety Code.

**87208 PLAN OF OPERATION****87208**

- (a) Each facility shall have and maintain a current, written definitive plan of operation. The plan and related materials shall be on file in the facility and shall be submitted to the licensing agency with the license application. Any significant changes in the plan of operation which would affect the services to residents shall be submitted to the licensing agency for approval. The plan and related materials shall contain the following:
- (1) Statement of purposes and program goals.
  - (2) A copy of the Admission Agreement, containing basic and optional services.
  - (3) Statement of admission policies and procedures regarding acceptance of persons for services.
  - (4) Administrative organization.
  - (5) Staffing plan, qualifications and duties.
  - (6) Plan for training staff, as required by Section 87411(c).
  - (7) Sketches, showing dimensions, of the following:
    - (A) Building(s) to be occupied, including a floor plan that describes the capacities of the buildings for the uses intended and a designation of the rooms to be used for nonambulatory residents and for bedridden residents, other than for a temporary illness or recovery from surgery as specified in Section 87606(d) and (e).
    - (B) The grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation area and other space used by the residents.
  - (8) Transportation arrangements for persons served who do not have independent arrangements.
  - (9) A statement whether or not the applicant will handle residents' money or valuables. If money or valuables will be handled, the method for safeguarding pursuant to Sections 87215, Commingling of Money, 87216, Bonding and 87217, Safeguards for Resident Cash, Personal Property, and Valuables.
  - (10) A statement of the facility's policy concerning family visits and other communication with clients, as specified in Health and Safety Code section 1569.313.

**87208 PLAN OF OPERATION (Continued)****87208****HANDBOOK BEGINS HERE**

Health and Safety Code section 1569.313 provides in part:

"The facility's policy concerning family visits and communication shall be designed to encourage regular family involvement with the resident client and shall provide ample opportunities for family participation in activities at the facility."

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- (11) If the licensee intends to admit and/or specialize in care for one or more residents who have a documented history of behaviors that may result in harm to self or others, the facility plan of operation shall include a description of precautions that will be taken to protect that resident and all other residents.
- (b) A licensee who advertises or promotes dementia special care, programming or environments shall include additional information in the plan of operation as specified in Section 87706(a)(2).
- (c) A licensee who accepts or retains residents diagnosed by a physician to have dementia shall include additional information in the plan of operation as specified in Section 87705(b).
- (d) A licensee who accepts or retains bedridden persons shall include additional information in the plan of operation as specified in Section 87606(f).

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.15, 1569.157, 1569.175, 1569.2, 1569.31, 1569.312, 1569.313, 1569.316, 1569.626, 1569.627, and 1569.72, Health and Safety Code.

**87209 PROGRAM FLEXIBILITY****87209**

- (a) The use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects shall not be prohibited by these regulations provided that:
- (1) Such alternatives shall be carried out with provisions for safe and adequate services.
  - (2) A written request for a waiver or exception and substantiating evidence supporting the request shall be submitted in advance to the licensing agency by the applicant or licensee.
  - (3) Prior written approval of the licensing agency shall be received.
    - (A) In determining the merits of each request, the licensing agency shall use as guidelines the standards utilized or recommended by well-recognized state and national organizations as appropriate.



**87209 PROGRAM FLEXIBILITY (Continued) 87209**

- (B) The licensing agency shall provide written approval or denial.
- (b) Unless prior written approval of the licensing agency is received, all community care facilities shall maintain continuous compliance with the licensing regulations.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Section 1530 and 1569.31, Health and Safety Code.

**87211 REPORTING REQUIREMENTS 87211**

- (a) Each licensee shall furnish to the licensing agency such reports as the Department may require, including, but not limited to, the following:
- (1) A written report shall be submitted to the licensing agency and to the person responsible for the resident within seven days of the occurrence of any of the events specified in (A) through (D) below. This report shall include the resident's name, age, sex and date of admission; date and nature of event; attending physician's name, findings, and treatment, if any; and disposition of the case.
    - (A) Death of any resident from any cause regardless of where the death occurred, including but not limited to a day program, a hospital, en route to or from a hospital, or visiting away from the facility.
    - (B) Any serious injury as determined by the attending physician and occurring while the resident is under facility supervision.
    - (C) The use of an Automated External Defibrillator.
    - (D) Any incident which threatens the welfare, safety or health of any resident, such as physical or psychological abuse of a resident by staff or other residents, or unexplained absence of any resident.
  - (2) Occurrences, such as epidemic outbreaks, poisonings, catastrophes or major accidents which threaten the welfare, safety or health of residents, personnel or visitors, shall be reported within 24 hours either by telephone or facsimile to the licensing agency and to the local health officer when appropriate.

**87211 REPORTING REQUIREMENTS (Continued)****87211**

- (3) Fires or explosions which occur in or on the premises shall be reported immediately to the local fire authority; in areas not having organized fire services, within 24 hours to the State Fire Marshal; and no later than the next working day to the licensing agency.
- (b) The licensee shall notify the Department, in writing, within thirty (30) days of the hiring of a new administrator. The notification shall include the following:
  - (1) Name and residence and mailing addresses of the new administrator.
  - (2) Date he/she assumed his/her position.
  - (3) Description of his/her background and qualifications, including documentation of required education and administrator certification.
    - (A) A photocopy of the documentation is acceptable.
- (c) Any change in the chief corporate officer of an organization, corporation or association shall be reported to the licensing agency in writing within fifteen (15) working days following such change. Such notification shall include the name, address and the fingerprint card of the new chief executive officer, as required by Section 87355, Criminal Record Clearance.

NOTE: Authority cited: Sections 1569.30 and 1569.616, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.616 and 1797.196, Health and Safety Code.

**87212 EMERGENCY DISASTER PLAN****87212**

- (a) Each facility shall have a disaster and mass casualty plan of action. The plan shall be in writing and shall be readily available.
- (b) The plan shall be subject to review by the Department and shall include:
  - (1) Designation of administrative authority and staff assignments.
  - (2) Plan for evacuation including:
    - (A) Fire safety plan.
    - (B) Means of exiting.
    - (C) The assembly of residents to a predetermined evacuation site.
    - (D) Transportation arrangements.

<b>87212</b>	<b>EMERGENCY DISASTER PLAN (Continued)</b>	<b>87212</b>
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- (E) Relocation sites which are equipped to provide safe temporary accommodations for residents.
- (F) Supervision of residents during evacuation or relocation and contact after relocation to assure that relocation has been completed as planned.
- (G) Means of contacting local agencies such as fire department, law enforcement agencies, civil defense and other disaster authorities.

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

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

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

<b>87213</b>	<b>FINANCES</b>	<b>87213</b>
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The licensee shall have a financial plan that conforms to the requirements of Section 87155, Application for License, and that assures sufficient resources to meet operating costs for care of residents; shall maintain adequate financial records; and shall submit such financial reports as may be required upon the written request of the licensing agency. Such request shall explain the need for disclosure. The licensing agency reserves the right to reject any financial report and to request additional information or examination, including interim financial statements.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2 and 1569.15, Health and Safety Code.

<b>87215</b>	<b>COMMINGLING OF MONEY</b>	<b>87215</b>
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Money and valuables of residents entrusted to the licensee of one community care facility licensed under a particular license number shall not be commingled with those of another residential care facility for the elderly of a different license number, regardless of joint ownership.

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

**87216 BONDING**

**87216**

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

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

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

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

(b) Whenever the licensing agency determines that the amount of the bond is insufficient to adequately protect the money of residents, or whenever the amount of any bond is impaired by any recovery against the bond, the licensing agency may require the licensee to file an additional bond in such amount as the licensing agency determines to be necessary to adequately protect the residents' money.

(c) Each application for a license or renewal of license shall be accompanied by an affidavit on a form provided by the licensing agency. The affidavit shall state whether the applicant/licensee will be entrusted/is entrusted to safeguard or control cash resources of persons and the maximum amount of money to be handled for all persons in any month.

(d) No licensee shall either handle money of a resident or handle amounts greater than those stated in the affidavit submitted by him or for which his bond is on file without first notifying the licensing agency and filing a new or revised bond as required by the licensing agency.

(e) A written request for a variance from the bonding requirement may be made to the licensing agency. Approval by the licensing agency of a variance shall be in writing. The request shall include a signed statement from the licensee indicating:

- (1) That the bonding requirement is so onerous that as a result the facility will cease to operate.
- (2) The place of deposit in which the resident's funds are to be held.
- (3) That withdrawals will be made only on the authorization of the resident or his responsible person.

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

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY, AND VALUABLES 87217**

- (a) A licensee shall not be required to handle residents' cash resources. However, if a resident incapable of handling his own cash resources, as documented by the initial or subsequent appraisal, is accepted for care, his cash resource shall be safeguarded in accordance with the regulations in this section.
- (b) Every facility shall take appropriate measures to safeguard residents' cash resources, personal property and valuables which have been entrusted to the licensee or facility staff. The licensee shall give the residents receipts for all such articles or cash resources.
- (c) Every facility shall account for any cash resources entrusted to the care or control of the licensee or facility staff.
- (1) Cash resources include but are not limited to monetary gifts, tax credits and/or refunds, earnings from employment or workshops, and personal and incidental need allowances from funding sources such as SSI/SSP.
- (d) Except as provided in approved continuing care agreements, no licensee or employee of a facility shall:
- (1) accept appointment as a guardian or conservator of the person and/or estate of any resident;
- (2) accept any general or special power of attorney for any such person;
- (3) become substitute payee for any payments made to any persons;
- (A) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the resident.
- (4) become the joint tenant on any account specified in Section 87217(h) with a resident.
- (e) Cash resources and valuables of residents which are handled by the licensee for safekeeping shall not be commingled with or used as the facility funds or petty cash, and shall be separate, intact and free from any liability the licensee incurs in the use of his own or the facility's funds and valuables. This does not prohibit the licensee from providing advances or loans to residents from facility money.
- (f) No licensee or employee of a facility shall make expenditures from residents' cash resources for any basic service specified in this Chapter, or for any basic services identified in a contract/admission agreement between the resident and facility.
- (1) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the resident.

**87217 SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY, AND VALUABLES (Continued) 87217**

- (g) Each licensee shall maintain adequate safeguards and accurate records of cash resources and valuables entrusted to his care, including, but not limited to the following:
- (1) Records of residents' cash resources maintained as a drawing account shall include a ledger accounting (columns for income, disbursements and balance) for each resident, and supporting receipts filed in chronological order. Each accounting shall be kept current.
    - (A) An acceptable receipt where cash is provided to residents from their respective accounts, includes: the resident's signature or mark, or responsible party's full signature, and a statement acknowledging receipt of the amount and date received. An acceptable form of receipt would include:  
  
"(full signature of resident) accepts (dollar amount) (amount written in cursive), this date (date), from (payor)".
    - (B) An acceptable receipt where purchases are made for the resident, from his account, is the store receipt.
  - (2) Records of residents' cash resources and other valuables entrusted to the licensee for safekeeping shall include a copy of the receipt furnished to the resident as specified in (b) above or to his responsible person. The receipt provided to the resident for money or valuables entrusted to the licensee shall be original and include the resident's and/or his responsible person's signature.
  - (3) Bank records for transactions of cash resources deposited in and drawn from the account as specified in (h) below.
- (h) Immediately upon admission, residents' cash resources entrusted to the licensee and not kept in the licensed facility shall be deposited in any type of bank, savings and loan or credit union account, which is maintained separate from the personal or business accounts of the licensee, provided that the account title clearly notes that it is residents' money and the resident has access to the money upon demand to the licensee.
- (1) Such accounts shall be maintained in a local bank, savings and loan or credit union authorized to do business in California, the deposits of which are insured by a branch of the Federal Government; except, however that a local public agency may deposit such funds with the public treasurer.
  - (2) Cash resources entrusted to the licensee for residents and kept on the facility premises shall be kept in a locked and secure location.

<b>87217</b>	<b>SAFEGUARDS FOR RESIDENT CASH, PERSONAL PROPERTY, AND VALUABLES (Continued)</b>	<b>87217</b>
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- (i) Upon discharge of a resident, all cash resources, personal property and valuables of that resident which have been entrusted to the licensee shall be surrendered to the resident, or his responsible person. A signed receipt shall be obtained.
- (j) Upon the death of a resident, all cash resources, personal property, and valuables of that resident shall immediately be safeguarded.
  - (1) All cash resources shall be placed in an account as specified in (g) above.
  - (2) The executor or the administrator of the estate shall be notified by the licensee, and the cash resources, personal property, and valuables surrendered to said party.
  - (3) If no executor or administrator has been appointed, the responsible person shall be notified, and the cash resources, personal property, and valuables shall be surrendered to said person in exchange for a signed itemized receipt.
  - (4) If the licensee is unable to notify a responsible party as specified above, immediate written notice of the resident's death shall be given to the public administrator of the county as provided by Section 1145 of the California Probate Code.
- (k) Whenever there is a change of licensee, the licensee shall:
  - (1) notify the licensing agency of any pending change of licensee, and
  - (2) shall provide the licensing agency an accounting of all residents' cash resources, personal property and valuables entrusted to his/her care. Such accounting shall be made on a form provided or approved by the Department.
- (l) When the licensing agency approves the application for the new licensee, the form specified in (2) above shall be updated, signed by both parties, and forwarded to the licensing agency.
- (m) All monetary gifts, and any gift exceeding an estimated value of \$100, which are given to a licensee by or on behalf of a resident shall be recorded. The record shall be attached to the account specified in (f) above. This shall not include monetary gifts or valuables given by the friends or relatives of a deceased resident.

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

**87218 THEFT AND LOSS****87218**

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

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Health and Safety Code section 1569.153 provides in part:

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

- (a) Establishment and posting of the facility's policy regarding theft and investigative procedures.
- (b) Orientation to the policies and procedures for all employees within 90 days of employment.
- (c) Documentation of lost and stolen resident property with a value of twenty-five dollars (\$25) or more within 72 hours of the discovery of the loss or theft and, upon request, the documented theft and loss record for the past 12 months shall be made available to the State Department of Social Services, law enforcement agencies and to the office of the State Long-Term Care Ombudsman in response to a specific complaint. The documentation shall include, but not be limited to, the following:
  - (1) A description of the article.
  - (2) Its estimated value.

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- (3) The date and time the theft or loss was discovered.
- (4) If determinable, the date and time the loss or theft occurred.
- (5) The action taken.
- (d) A written resident personal property inventory is established upon admission and retained during the resident's stay in the residential care facility for the elderly. Inventories shall be written in ink, witnessed by the facility and the resident or resident's representative, and dated. A copy of the written inventory shall be provided to the resident or the person acting on the resident's behalf. All additions to an inventory shall be made in ink, and shall be witnessed by the facility and the resident or resident's representative, and dated. Subsequent items brought into or removed from the facility shall be added to or deleted from the personal property inventory by the facility at the written request of the resident, the resident's family, a responsible party, or a person acting on behalf of a resident. The facility shall not be liable for items which have not been requested to be included in the inventory or for items which have been deleted from the inventory. A copy of a current inventory shall be made available upon request to the resident, responsible party, or other authorized representative. The resident, resident's family, or a responsible party may list those items which are not subject to addition or deletion from the inventory, such as personal clothing or laundry, which are subject to frequent removal from the facility.
- (e) Inventory and surrender of the resident's personal effects and valuables upon discharge to the resident or authorized representative in exchange for a signed receipt.
- (f) Inventory and surrender of personal effects and valuables following the death of a resident to the authorized representative in exchange for a signed receipt. Immediate written notice to the public administrator of the county upon the death of a resident whose heirs are unable or unwilling to claim the property as specified in Chapter 20 (commencing with Section 1140) of Division 3 of the Probate Code.
- (g) Documentation, at least semiannually, of the facility's efforts to control theft and loss, including the review of theft and loss documentation and investigative procedures and results of the investigation by the administrator and, when feasible, the resident council.
- (h) Establishment of a method of marking, to the extent feasible, personal property items for identification purposes upon admission and, as added to the property inventory list, including engraving of dentures and tagging of other prosthetic devices.

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**87218 THEFT AND LOSS (Continued)****87218**

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

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

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

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

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

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

**87219 PLANNED ACTIVITIES****87219**

- (a) Residents shall be encouraged to maintain and develop their fullest potential for independent living through participation in planned activities. The activities made available shall include:
- (1) Socialization, achieved through activities such as group discussion and conversation, recreation, arts, crafts, music and care of pets.
  - (2) Daily living skills/activities which foster and maintain independent functioning.
  - (3) Leisure time activities cultivating personal interests and pursuits, and encouraging leisure-time activities with other residents.

**87219 PLANNED ACTIVITIES (Continued) 87219**

- (4) Physical activities such as games, sports and exercise which develop and maintain strength, coordination and range of motion.
  - (5) Education, achieved through special classes or activities.
  - (6) Provision for free time so residents may engage in activities of their own choosing.
- (b) Residents served shall be encouraged to contribute to the planning, preparation, conduct, clean-up and critique of the planned activities.
- (c) The licensee shall arrange for utilization of available community resources through contact with organizations and volunteers to promote resident participation in community-centered activities which may include:
- (1) Attendance at the place of worship of the resident's choice.
  - (2) Service activities for the community.
  - (3) Community events such as concerts, tours and plays.
  - (4) Participation in community organized group activities, such as senior citizen groups, sports leagues and service clubs.
- (d) In facilities licensed for seven (7) or more persons, notices of planned activities shall be posted in a central location readily accessible to residents, relatives, and representatives of placement and referral agencies. Copies shall be retained for at least six (6) months.
- (e) In facilities licensed for sixteen (16) to forty-nine (49) persons, one staff member, designated by the administrator, shall have primary responsibility for the organization, conduct and evaluation of planned activities. This person shall have had at least six (6) months experience in providing planned activities or have completed or be enrolled in an appropriate education or training program.
- (f) In facilities licensed for fifty (50) persons or more, one staff member shall have full-time responsibility to organize, conduct and evaluate planned activities, and shall be given such staff assistance as necessary in order for all residents to participate in accordance with their interests and abilities. The program of activities shall be written, planned in advance, kept up-to-date, and made available to all residents. The responsible employee shall have had at least one year of experience in conducting group activities and be knowledgeable in evaluating resident needs, supervising other employees, and in training volunteers.
- (1) An exception to this requirement may be made by the licensing agency upon the facility's presentation in writing of a satisfactory alternative plan.

**87219 PLANNED ACTIVITIES (Continued)****87219**

- (2) Where the facility can demonstrate that its residents are self-directed to the extent that they are able to plan, organize and conduct the facility's activity program themselves, this requirement may be reduced or waived by the licensing agency.
- (g) Participation of volunteers in planned activities shall be encouraged, and such volunteers shall be under the direction and supervision of the employees responsible for the activity program.
- (h) Facilities shall provide sufficient space to accommodate both indoor and outdoor activities. Activities shall be encouraged by provision of:
- (1) A comfortable, appropriately furnished area such as a living room, available to all residents for their relaxation and for entertaining friends and relatives.
  - (2) Outdoor activity areas which are easily accessible to residents and protected from traffic. Gardens or yards shall be sufficient in size, comfortable, and appropriately equipped for outdoor use.
- (i) Facilities shall provide sufficient equipment and supplies to meet the requirements of the activity program including access to daily newspapers, current magazines and a variety of reading materials. Special equipment and supplies necessary to accommodate physically handicapped persons or other persons with special needs shall be provided as appropriate.
- (1) When not in use, recreational equipment and supplies shall be stored where they do not create a hazard to residents.

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

**87221 RESIDENT COUNCILS****87221**

The facility shall permit the formation of a resident council by interested residents, provide space and post notice for meetings, and provide assistance in attending meetings for those residents who request it. In order to permit a free exchange of ideas, at least part of each meeting shall be allowed to be conducted without the presence of any facility personnel. Residents shall be encouraged, but shall not be compelled to attend. The purpose of such an organization shall be to work with the administration in improving the quality of life for all residents by enriching the activity program and to discuss the services offered by the facility and make recommendations regarding identified problems.

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

**87222 REQUIREMENTS FOR EMERGENCY ADULT PROTECTIVE SERVICES PLACEMENTS****87222**

- (a) The licensee shall be permitted to accept emergency placements by an adult protective services (APS) agency, if the licensee has received approval from the Department to provide emergency shelter services.
- (1) To obtain approval, the licensee shall submit a written request to the Department. The request shall include, but not be limited to, the following:
- (A) A letter of interest from the county APS agency stating that if the request to provide emergency shelter services is approved, the APS agency may enter into an agreement with the licensee to provide such services.
1. A copy of the written agreement between the APS agency and the licensee, listing the responsibilities of each party, shall be sent to the Department within seven calendar days of signing.
- (B) A written addendum to the Plan of Operation, specified in Section 87208, Plan of Operation that includes procedures for the intake of an APS emergency placement. The addendum shall specify how the licensee will meet the needs of a resident placed on an emergency basis, such as on-call staff, additional staff and training.
1. The procedures shall include, but not be limited to, provisions for a private room.
- a. The licensee shall provide a private room for the resident until a pre-admission appraisal of the resident's individual service needs has been completed, specified in Section 87457, Pre-admission Appraisal.
- b. The Department may approve an alternative to a private room, such as awake or additional staff, but an alternative shall not be approved if it displaces staff or other residents of the facility.
- (C) A licensee of a residential care facility for the elderly may accept an adult resident, 18 through 59 years of age, for emergency placement under the following conditions:
1. The APS agency has written a statement indicating a local need exists for the licensee to accept emergency placements of adults 18 through 59 years of age.
- a. The licensee attaches this APS statement of local need [Section 87222(a)(1)(C)1.] to the written request, specified in Section 87222(a)(1).

**87222 REQUIREMENTS FOR EMERGENCY ADULT PROTECTIVE SERVICES PLACEMENTS (Continued)****87222**

- b. The licensee must request a statement each year from the APS agency, indicating a local need still exists as specified in Section 87222(a)(1)(C)1., and submit the statement to the Department.
- (b) The Department shall provide written approval or denial of a licensee's request to provide emergency shelter services within 15 working days of its receipt.
- (c) The licensee shall comply with the regulations in Title 22, Division 6, Chapter 8 (Residential Care Facilities for the Elderly), unless otherwise stated in Section 87222, Requirements for Emergency Adult Protective Services Placements. These regulations include, but are not limited to, the following:
  - (1) The licensee shall not exceed the capacity limitations specified on the license and shall not allow rooms approved only for ambulatory residents to be used by nonambulatory residents, as specified in Section 87204, Limitations - Capacity and Ambulatory Status.
  - (2) The licensee shall meet the requirements in Section 87202 on fire clearance if the licensee has accepted a nonambulatory resident, defined in Section 87101(n).
- (d) The licensee shall not accept the following persons as APS emergency placements:
  - (1) Individuals with prohibited health conditions [Section 87615, Prohibited Health Conditions].
  - (2) Individuals with restricted health conditions [Section 87612, Restricted Health Conditions].
    - (A) The licensee may accept an APS emergency placement who is incontinent when the requirements in Section 87625, Managed Incontinence, are met.
  - (3) Individuals who are receiving hospice care [Section 87633, Hospice Care for Terminally Ill Residents].
  - (4) Individuals who have active communicable tuberculosis [Section 87455(c)(1)].
  - (5) Individuals who require 24-hour, skilled nursing or intermediate care [Section 87455(c)(2)].
  - (6) Individuals whose primary need for care and supervision results from an ongoing behavior, caused by a mental disorder, that would upset the general resident group [Section 87455(c)(3)(A)].
  - (7) Individuals who are bedridden, as defined in Section 87455(d).
- (e) If a licensee accepts an APS emergency placement with dementia, the licensee shall meet the requirements in Section 87405, Care of Persons with Dementia.

**87222 REQUIREMENTS FOR EMERGENCY ADULT PROTECTIVE SERVICES PLACEMENTS (Continued) 87222**

- (f) The licensee shall not admit an APS emergency placement unless the APS worker is present at the facility at the time of admission.
- (g) Prior to acceptance of an APS emergency placement, the licensee shall obtain and keep on file the following information received from the APS worker:
- (1) Resident's name.
  - (2) Resident's ambulatory status.
  - (3) Name(s) and telephone number(s) of the resident's physician(s).
  - (4) Name(s), business address(es), and telephone number(s) of the APS worker responsible for the resident's placement and the APS case worker, if known.
  - (5) Name, address, and telephone number of any person responsible for the care of the resident, if available.
- (h) Within seven calendar days of an APS emergency placement, the licensee shall obtain other resident information specified in Section 87506, Resident Records.
- (1) The resident must have a tuberculosis test [Section 87458(b)(1)] by the seventh day of placement even though the test results may not be available by the seventh day of placement.
- (i) The licensee shall contact the resident's attending physician or the person authorized to act for the physician to identify all of the resident's prescribed medications and usage instructions [Section 87458(b)(3)] by the next working day, but no later than 72 hours from the initial APS emergency placement.
- (1) The attending physician or the person acting for the physician shall have access to the resident's records to determine whether the full medication regimen is accounted for and accurate.
  - (2) If medication verification, as specified in Section 87222(i), has not been obtained within 72 hours from the resident's initial placement, the licensee shall contact the APS worker to request that the resident be relocated, as specified in Section 87222(j).
- (j) The licensee shall contact the APS worker to request that the resident be relocated immediately when the licensee identifies that needs cannot be met or that the resident has a condition specified in Section 87222(d).

**87222 REQUIREMENTS FOR EMERGENCY ADULT PROTECTIVE SERVICES PLACEMENTS (Continued) 87222**

- (1) A licensee cannot retain a resident under age 60 beyond 30 calendar days from initial placement by the APS agency, unless the acceptance and retention requirement provided in Section 87455(b)(6) is met.
- (k) Within seven calendar days of the licensee making any changes to an agreement with an APS agency, the licensee shall notify the Department in writing of these changes, which may include a renewed agreement, amended language and/or notification of a terminated agreement.
- (l) All emergency placements are subject to the same record requirements as set forth in Section 87506(d).

NOTE: Authority cited: Section 1569.30, Health and Safety Code; Senate Bill 2199 (Chapter 946, Statutes of 1998), Section 14 uncodified. Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.315, 1569.316, 1569.47, 1569.54, 1569.698, 1569.699, 1569.71, 1569.72 and 1569.73, Health and Safety Code; Sections 15610.13 and 15763, Welfare and Institutions Code.

**87223 RELOCATION OF RESIDENT 87223**

- (a) When a resident must be relocated by Department order whether individual health-condition relocations pursuant to Section 87612, Restricted Health Conditions, or temporary suspension orders pursuant to Section 87775(c), the licensee shall not obstruct the relocation process and shall cooperate with the Department in the relocation process. Such cooperation shall include, but not be limited to, the following activities:
  - (1) Identifying and preparing for removal of the medications, Medi-Cal or Medicare or other medical insurance documents, clothing, safeguarded cash resources, valuables and other belongings of the resident.
  - (2) Contacting the person responsible for the resident to assist in transporting him or her, if necessary.
  - (3) Contacting other suitable facilities for placement, if necessary.
  - (4) Providing access to resident's files when required by the Department.

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



**87224 EVICTION PROCEDURES****87224**

- (a) The licensee may, upon thirty (30) days written notice to the resident, evict the resident for one or more of the following reasons:
- (1) Nonpayment of the rate for basic services within ten days of the due date.
  - (2) Failure of the resident to comply with state or local law after receiving written notice of the alleged violation.
  - (3) Failure of the resident to comply with general policies of the facility. Said general policies must be in writing, must be for the purpose of making it possible for residents to live together and must be made part of the admission agreement.
  - (4) If, after admission, it is determined that the resident has a need not previously identified and a reappraisal has been conducted pursuant to Section 87463, and the licensee and the person who performs the reappraisal believe that the facility is not appropriate for the resident.
  - (5) Change of use of the facility.
- (b) The licensee may, upon obtaining prior written approval from the licensing agency, evict the resident upon three (3) days written notice to quit. The licensing agency may grant approval for the eviction upon a finding of good cause. Good cause exists if the resident is engaging in behavior which is a threat to the mental and/or physical health or safety of himself or to the mental and/or physical health or safety of others in the facility.
- (c) The licensee shall, in addition to either serving thirty (30) days notice or seeking approval from the Department and service three (3) days notice on the resident, notify or mail a copy of the notice to quit to the resident's responsible person.
- (d) The licensee shall set forth in the notice to quit the reasons relied upon for the eviction with specific facts to permit determination of the date, place, witnesses, and circumstances concerning those reasons.
- (1) The notice to quit shall include the following information:
    - (A) The effective date of the eviction.
    - (B) Resources available to assist in identifying alternative housing and care options which include, but are not limited to, the following:
      1. Referral services that will aid in finding alternative housing.
      2. Case management organizations which help manage individual care and service needs.

## 87224 EVICTION PROCEDURES (Continued)

87224

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The following list is a sample of resource options:

- (1) California Advocates for Nursing Home Reform: Residential Care Guide  
<http://www.residentialcareguide.org>  
(415) 974-5171
- (2) Elder Care Locator  
[www.eldercare.gov](http://www.eldercare.gov)  
1-800-677-1116
- (3) California Health Care Foundation  
[www.calqualitycare.org](http://www.calqualitycare.org)
- (4) Community Care Licensing Division Facility Search  
<http://www.cclcd.ca.gov/PG477.htm>
- (5) California Department of Aging: local services  
[http://www.aging.ca.gov/call\\_for\\_services.asp#ombudsman](http://www.aging.ca.gov/call_for_services.asp#ombudsman)
- (6) The Alzheimer's Association – <http://www.alz.org/>
- (7) National Association of Professional Geriatric Care Managers  
<http://www.caremanager.org/>
- (8) Jewish Family Services Association  
[http://www.acronymfinder.com/Jewish-Family-Service-Association-\(various-locations\)-\(JFSA\).html](http://www.acronymfinder.com/Jewish-Family-Service-Association-(various-locations)-(JFSA).html)
- (9) California Registry – <http://calregistry.com/>
- (10) The statewide Senior Information Hotline (800-510-2020)
- (11) Licensees may contact vendors, advocacy organizations and provider associations to assist in developing a list of resources;

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- (C) A statement informing residents of their right to file a complaint with the licensing agency, as specified in Section 87468, subsection (a)(4), including the name, address and telephone number of the licensing office with whom the licensee normally conducts business, and the State Long Term Care Ombudsman office.

**87224**      **EVICITION PROCEDURES** (Continued)**87224**

- (D) The following exact statement as specified in Health and Safety Code Section 1569.683(a)(4): "In order to evict a resident who remains in the facility after the effective date of the eviction, the residential care facility for the elderly must file an unlawful detainer action in superior court and receive a written judgment signed by a judge. If the facility pursues the unlawful detainer action, you must be served with a summons and complaint. You have the right to contest the eviction in writing and through a hearing."
- (e) Upon request of a resident, or his/her designated representative, the Department shall, pursuant to the provisions of Section 1569.35 of the Health and Safety Code, investigate the reasons given for the eviction.
- (f) A written report of any eviction shall be sent to the licensing agency within five (5) days.
- (g) This section shall not apply to a particular resident who has entered into a continuing care contract with a facility pursuant to Health and Safety Code, Chapter 10, Division 2.
- (h) Nothing in this section is intended to preclude the licensee or resident from invoking any other available remedy.
- (i) Nothing in Section 87224 precludes the licensee from initiating the urgent relocation to a licensed health facility of a terminally ill resident receiving hospice services when the resident's condition has changed and a joint determination has been made by the Department, the resident or resident's health care surrogate decision maker, the resident's hospice agency, a physician, and the licensee, that the resident's continued retention in the facility poses a health and safety risk to the resident or any other facility resident.
- (1) The licensee shall follow the procedures specified in Section 87637(b)(2) to reduce the risk of transfer trauma.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1, 1569.2, 1569.31, 1569.312, 1569.315, 1569.54, 1569.683, and 1569.73, Health and Safety Code.

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**Article 5. Physical Environment and Accommodations****87303 MAINTENANCE AND OPERATION****87303**

- (a) The facility shall be clean, safe, sanitary and in good repair at all times. Maintenance shall include provision of maintenance services and procedures for the safety and well-being of residents, employees and visitors.
- (1) Floor surfaces in bath, laundry and kitchen areas shall be maintained in a clean, sanitary, and odorless condition.
- (b) A comfortable temperature for residents shall be maintained at all times.
- (1) The facility shall heat rooms that residents occupy to a minimum of 68 degree F, (20 degrees C).
- (2) The facility shall cool rooms to a comfortable range, between 78 degrees F (26 degrees C) and 85 degrees F (30 degrees C), or in areas of extreme heat to 30 degrees F less than the outside temperature.
- (3) Nothing in this section shall prohibit residents from adjusting individual thermostatic controls.
- (c) All window screens shall be clean and maintained in good repair.
- (d) There shall be lamps or light appropriate for the use of each room and sufficient to ensure the comfort and safety of all persons in the facility.
- (e) Water supplies and plumbing fixtures shall be maintained as follows:
- (1) All community care facilities where water for human consumption is from a private source shall:
- (A) As a condition of initial licensure, provide evidence of an on-site inspection of the source of the water and a bacteriological analysis by a local or state health department or other qualified public or private laboratory which establishes the safety of the water.
- (B) Following licensure, provide a bacteriological analysis of the private water supply as frequently as is necessary to assure the safety of the residents, but no less frequently than the time intervals shown in the table below. However, facilities licensed for six or fewer residents shall be required to have a bacteriological analysis subsequent to initial licensure only if evidence supports the need for such an analysis to protect residents.

## 87303 MAINTENANCE AND OPERATION (Continued)

87303

Licensed Capacity	Analysis Required	Periodic Subsequent Analysis
Under 6	Initial Licensing	Upon evidence of need
7 through 15	Initial Licensing	Annually
16 through 24	Initial Licensing	Every six months
25 or more	Refer to the county health department for compliance with the California Safe Drinking Water Act, Health and Safety Code, Division 5, Part 1, Chapter 7, Water and Water Systems.	

- (2) Faucets used by residents for personal care such as shaving and grooming shall deliver hot water. Hot water temperature controls shall be maintained to automatically regulate the temperature of hot water used by residents to attain a temperature of not less than 105 degree F (41 degree C) and not more than 120 degree F (49 degree C).
- (3) Taps delivering water at 125 degree F (52 degree C) or above shall be prominently identified by warning signs.
- (4) Grab bars shall be maintained for each toilet; bathtub and shower used by residents.
- (5) Non-skid mats or strips shall be used in all bathtubs and showers.
- (6) Toilet, handwashing and bathing facilities shall be maintained in operating condition. Additional equipment shall be provided in facilities accommodating physically handicapped and/or nonambulatory residents, based on the residents' needs.
- (f) Solid waste shall be stored and disposed of as follows:
- (1) Solid waste shall be stored, located and disposed of in a manner that will not permit the transmission of a communicable disease or of odors, create a nuisance, provide a breeding place or food source for insects or rodents.
- (2) Syringes and needles are disposed of in accordance with the California Code of Regulations, Title 8, Section 5193 concerning blood borne pathogens.

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California Code of Regulations, Title 8, Sections 5193(d)(3)(B) through (D) are paraphrased in pertinent part:

1. Shearing or breaking of contaminated needles is prohibited.
2. Contaminated needles shall not be bent or recapped.
3. Waste containers shall not be opened or emptied manually.
4. Immediately or as soon as possible after use, contaminated needles shall be placed in appropriate containers that shall be:
  - a. Rigid;
  - b. Puncture resistant;
  - c. Leak proof on the sides and bottom;
  - d. Portable, if portability is necessary to ensure easy access by the user;
  - e. Labeled as BIOHAZARDOUS WASTE or SHARPS WASTE.

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- (3) All containers, except movable bins, used for storage of solid wastes shall have tight-fitting covers on the containers; shall be in good repair; shall have external handles; and shall be leak proof and rodent-proof.
- (4) Movable bins when used for storing or transporting solid wastes from the premises shall have tight-fitting covers on the containers; shall be in good repair; and shall be rodent-proof unless stored in a room or screened enclosure.
- (5) Solid waste containers, including movable bins, receiving putrescible waste shall be emptied at least once per week or more often if necessary. Such containers shall be maintained in a clean and sanitary condition.
- (6) Each movable bin shall provide for suitable access and a drainage device to allow complete cleaning at the storage area.

**87303 MAINTENANCE AND OPERATION** (Continued)**87303**

- (g) Facilities which have machines and do their own laundry shall:
- (1) Have adequate supplies available and equipment maintained in good repair. Space used to sort soiled linen shall be separate from the clean linen storage and handling area. Except for facilities licensed for fifteen (15) residents or less, the space used to do laundry shall not be part of an area used for storage of anything other than clean linens and/or other supplies normally associated with laundry activities. Steam, odors, lint and objectionable laundry noises shall not reach resident or employee areas.
  - (2) Make at least one machine available for use by residents who are able and who desire to do their own personal laundry. This machine shall be maintained in good repair. Equipment in good repair shall be provided to residents who are capable and desire to iron their own clothes.
- (h) Emergency lighting shall be maintained. At a minimum this shall include flashlights, or other battery powered lighting, readily available in appropriate areas accessible to residents and staff. Open-flame lights shall not be used.
- (i) Facilities shall have signal systems which shall meet the following criteria:
- (1) All facilities licensed for 16 or more and all residential facilities having separate floors or buildings shall have a signal system which shall:
    - (A) Operate from each resident's living unit.
    - (B) Transmit a visual and/or auditory signal to a central staffed location or produce an auditory signal at the living unit loud enough to summon staff.
    - (C) Identify the specific resident living unit.
  - (2) Facilities having more than one wing, floor or building shall be permitted to have a separate system in each, provided each meets the above criteria.

NOTE: Authority cited: Section 1569.30, Health and Safety Code. Reference: Sections 1569.1 and 1569.31, Health and Safety Code; Title 8, California Code of Regulations, Section 5193.



**87305 ALTERATIONS TO EXISTING BUILDINGS OR NEW FACILITIES 87305**

- (a) Prior to construction or alterations, all facilities shall obtain a building permit.
- (b) The licensing agency may require the facility to acquire a local building inspection where the agency determines that a suspected hazard to health and safety exists.

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

**87307 PERSONAL ACCOMMODATIONS AND SERVICES 87307**

- (a) Living accommodations and grounds shall be related to the facility's function. The facility shall be large enough to provide comfortable living accommodations and privacy for the residents, staff, and others who may reside in the facility. The following provisions shall apply:
  - (1) There shall be common rooms such as living rooms, dining rooms, dens or other recreation/activity rooms. They shall be of sufficient space and/or separation to promote and facilitate the program of activities and to prevent such activities from interfering with other functions.
  - (2) Resident bedrooms shall be provided which meet, at a minimum, the following requirements:
    - (A) Bedrooms shall be large enough to allow for easy passage between and comfortable usage of beds and other required items of furniture specified below, and any resident assistive devices such as wheelchairs or walkers.
    - (B) No room commonly used for other purposes shall be used as a sleeping room for any resident. This includes any hall, stairway, unfinished attic, garage storage area, shed or similar detached building.
    - (C) No bedroom of a resident shall be used as a passageway to another room, bath or toilet.
    - (D) Not more than two residents shall sleep in a bedroom.
  - (3) Equipment and supplies necessary for personal care and maintenance of adequate hygiene practice shall be readily available to each resident. The resident may provide the following items; however, if the resident is unable or chooses not to provide them, the licensee shall assure provision of:

**87307 PERSONAL ACCOMMODATIONS AND SERVICES (Continued)****87307**

- (A) A bed for each resident, except that married couples may be provided with one appropriate sized bed. Each bed shall be equipped with good springs, a clean and comfortable mattress, available pillow(s) and lightweight warm bedding. Fillings and covers for mattresses and pillows shall be flame retardant. Rubber sheeting shall be provided when necessary.
  - (B) Bedroom furniture, which shall include, for each resident, a chair, night stand, a lamp, or lights sufficient for reading, and a chest of drawers.
  - (C) Clean linen, including blankets, bedspreads, top bed sheets, bottom bed sheets, pillow cases, mattress pads, bath towels, hand towels and wash cloths. The quantity shall be sufficient to permit changing at least once per week or more often when indicated to ensure that clean linen is in use by residents at all times. The linen shall be in good repair. The use of common wash cloths and towels shall be prohibited.
  - (D) Hygiene items of general use such as soap and toilet paper.
  - (E) Portable or permanent closets and drawer space in the bedrooms for clothing and personal belongings. A minimum of eight (8) cubic feet (.743 cubic meters) of drawer space per resident shall be provided.
  - (F) Basic laundry service (washing, drying, and ironing of personal clothing).
- (b) Toilets and bathrooms shall be conveniently located. The licensed capacity shall be established based on Section 87158, Capacity, and the following:
- (1) At least one toilet and washbasin for each six (6) persons, which include residents, family and personnel.
  - (2) At least one bathtub or shower for each ten (10) persons, which includes residents, family and live-in personnel.
- (c) Individual privacy shall be provided in all toilet, bath and shower areas.
- (d) The following space and safety provisions shall apply to all facilities:
- (1) Sufficient room shall be available to accommodate persons served in comfort and safety.
  - (2) The premises shall be maintained in a state of good repair and shall provide a safe and healthful environment.

<b>87307</b>	<b>PERSONAL ACCOMMODATIONS AND SERVICES (Continued)</b>	<b>87307</b>
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- (3) All persons shall be protected against hazards within the facility through provision of the following:
  - (A) Protective devices such as nonslip material on rugs.
  - (B) Information and instruction regarding life protection and other appropriate subjects.
- (4) Stairways, inclines, ramps and open porches and areas of potential hazard to residents with poor balance or eyesight shall be made inaccessible to residents unless equipped with sturdy hand railings and unless well-lighted.
- (5) Night lights shall be maintained in hallways and passages to nonprivate bathrooms.
- (6) All outdoor and indoor passageways and stairways shall be kept free of obstruction.
- (7) Fireplaces and open-faced heaters shall be adequately screened.
- (e) Facilities providing services to residents who have physical or mental disabilities shall assure the inaccessibility of fishponds, wading pools, hot tubs, swimming pools, or similar bodies of water, when not in active use by residents, through fencing, covering or other means.

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

<b>87308</b>	<b>RESIDENT AND SUPPORT SERVICES</b>	<b>87308</b>
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- (a) Nothing in these regulations shall prohibit the provision of required services from a centralized service facility serving two or more licensed facilities when approved in writing by the licensing agency.
- (b) Administrative offices or area shall be maintained in facilities having a capacity of sixteen (16) persons or more, which includes space for business, administration and admission activities, a reception area and restroom facilities which may be used by visitors. Appropriate equipment shall be available, including a telephone. A private office shall be maintained for the administrator or other professional staff as appropriate.
- (c) General storage space shall be maintained for equipment and supplies as necessary to ensure that space used to meet other requirements of these regulations is not also used for storage.

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

**87309 STORAGE SPACE****87309**

- (a) Disinfectants, cleaning solutions, poisons, firearms and other items which could pose a danger if readily available to clients shall be stored where inaccessible to clients.
  - (1) Storage areas for poisons, and firearms and other dangerous weapons shall be locked.
  - (2) In lieu of locked storage of firearms, the licensee may use trigger locks or remove the firing pin.
    - (A) Firing pins shall be stored and locked separately from firearms.
  - (3) Ammunition shall be stored and locked separately from firearms.
- (b) Medicines shall be stored as specified in Section 87465(c) and separately from other items specified in (a) above.
- (c) The items specified in (a) above shall not be stored in food storage areas or in storage areas used by or for clients.

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

**87311 TELEPHONES****87311**

All facilities shall have telephone service on the premises. Facilities with a capacity of sixteen (16) or more persons shall be listed in the telephone directory under the name of the facility.

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

**87312 MOTOR VEHICLES USED IN TRANSPORTING RESIDENTS****87312**

Only drivers licensed for the type of vehicle operated shall be permitted to transport residents. The rated seating capacity of the vehicles shall not be exceeded. Any vehicle used by the facility to transport residents shall be maintained in a safe operating condition.

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

**Article 6. Background Check****87355 CRIMINAL RECORD CLEARANCE****87355**

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

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Health and Safety Code Section 1569.17 provides in part:

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

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

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(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

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

(b) In addition to the applicant, the provisions of this section shall apply to criminal convictions of the following persons:

(1)(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility. Residents of unlicensed independent senior housing facilities that are located in contiguous buildings on the same property as a residential care facility for the elderly shall be exempt from these requirements.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the residential care facility for the elderly. The facility shall maintain the copy of the certification on file as long as the care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed residential care facility for the elderly pursuant to Section 1569.58.

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

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in a similar capacity.

(F) Additional officers of the governing body of the applicant or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from requirements applicable under paragraph (1):

(A) A spouse, relative, significant other, or close friend of the client shall be exempt if this person is visiting the client or provides direct care and supervision to that client only.

(B) A volunteer to whom all of the following apply:

(i) The volunteer is at the facility during normal waking hours.

(ii) The volunteer is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(iii) The volunteer spends no more than 16 hours per week at the facility.

(iv) The volunteer does not provide clients with assistance in dressing, grooming, bathing, or personal hygiene.

(v) The volunteer is not left alone with clients in care.

(C) A third-party contractor retained by the facility if the contractor is not left alone with clients in care.

(D) A third-party contractor or other business professional retained by the client and at the facility at the request or by the permission of that client. These individuals may not be left alone with other clients.

(E) Licensed or certified medical professionals are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

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(F) Employees of licensed home health agencies and members of licensed hospice interdisciplinary teams who have contact with a resident of a residential care facility at the request of the resident or resident's legal decisionmaker are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(G) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual resident at the request of, or with permission of, the resident, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption does not apply to a person who is a community care facility licensee or an employee of the facility.

(H) Any person similar to those described in this subdivision, as defined by the department in regulations.

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

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



**87355 CRIMINAL RECORD CLEARANCE (Continued)****87355****HANDBOOK BEGINS HERE**

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

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

**HANDBOOK ENDS HERE**

- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement (LIC 508 [Rev. 1/03]) under penalty of perjury.
- (1) A person signing the LIC 508 must:
- (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in Section 87355(h) regardless of whether the individual was granted a pardon for the conviction, received an expungement pursuant to Penal Code 1203.4 or the individual's record was sealed as a result of a court order.
- (B) If convicted of a crime other than a minor traffic violation as specified in Section 87355(h), provide information regarding the conviction.
- (2) If the signed statement indicates a conviction for any crime other than a minor traffic violation for which the fine was \$300 or less, the licensee shall immediately notify the Department and the Department shall take appropriate action as specified in Section 87355(h). The Department shall take the same actions as would be taken in Health and Safety Code section 1569.17(c) if a criminal record transcript had been received.
- (3) The license shall submit these fingerprints to the California Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or comply with Section 87355(c), prior to the individual's employment, residence, or initial presence in the facility.
- (A) Fingerprints shall be submitted to the California Department of Justice by the licensee or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Social Services.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code Section 1569.17(b) shall prior to working, residing or volunteering in a licensed facility:
- (1) Obtain a California clearance or a criminal record exemption as required by the Department or

**87355 CRIMINAL RECORD CLEARANCE (Continued)****87355**

- (2) Request a transfer of a criminal record clearance as specified in Section 87355(c) or
  - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 87356(r), unless, upon request for a transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (f) Violation of Section 87355(e) shall result in an immediate assessment of civil penalties of one hundred dollars (\$100) per violation per day for a maximum of five (5) days by the Department.
- (1) Subsequent violations within a twelve (12) month period will result in a civil penalty of one hundred (\$100) per violation per day for a maximum of thirty (30) days.
  - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code Section 1569.49.
- (g) Violation of Section 87355(e) may result in a denial of the license application or suspension and/or revocation of the license.
- (h) If the criminal record transcript of any of the individuals specified in Health and Safety Code section 1569.17(b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300 and an exemption pursuant to Section 87356(a) has not been granted, the Department shall take the actions specified in Health and Safety Code section 1569.17(c).
- (1) For an initial applicant, the Department may deny the application.
  - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
  - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code Section 1569.58 and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
  - (4) For individuals residing in the facility, including spouses of the applicant, licensee, or employee, exclusion of the affected individual pursuant to Health and Safety Code Section 1569.58 and denial of the application or revocation of the license, if the individual continues to provide services and/or reside in the facility.

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Health and Safety Code section 1569.17(c)(3) provides in part:

"...If the State Department of Social Services determines, on the basis of the fingerprint images submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4 [sexual battery], 273a, 273d [child abuse], 273g, [lewd conduct in the presence of a child], or 368 [elder or adult dependent abuse] of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee in writing within 15 calendar days of receipt of the notification from the Department of Justice to act immediately to terminate the person's employment, remove the person from the residential care facility for the elderly, or bar the person from entering the residential care facility for the elderly. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (f)...."

Health and Safety Code section 1569.17(c)(3) provides in part:

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

Health and Safety Code section 1569.17(h) provides:

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

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**HANDBOOK ENDS HERE**

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

**87355 CRIMINAL RECORD CLEARANCE (Continued)****87355**

- (j) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of employees in the individual's personnel file as required in Section 87412, Personnel Records.
- (k) The licensee shall maintain documentation of criminal record clearances or criminal record exemptions of volunteers that require fingerprinting and non-client adults residing in the facility.
  - (1) Documentation shall be available at the facility for inspection by the Department.
- (l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.
  - (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.

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

**87356 CRIMINAL RECORD EXEMPTION****87356**

- (a) The Department shall notify a licensee to act immediately to terminate the employment of, remove from the facility or bar from entering the facility any person described in Sections 87356(a)(1) through (5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
  - (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
  - (2) Any person who has been convicted of a felony;
  - (3) Any person who has been convicted of an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code Section 1569.17(c)(3);
  - (4) Any person who has been convicted of any crime specified below:
    - (A) Battery
    - (B) Shooting at Inhabited Dwelling

**87356 CRIMINAL RECORD EXEMPTION (Continued) 87356**

- (C) Corporal Injury on Spouse/Cohabitant
  - (D) Discharging Firearm with Gross Negligence
  - (E) Exhibiting Weapon/Firearm
  - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
  - (G) Criminal Threat to Harm or Injure Another Person
  - (H) Cruelty to Animals
  - (I) Willful Harm or Injury to Child; or
- (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 87356(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form, that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed, LIC 300A (Rev. 9/03), Removal Confirmation - Denial, LIC 300B (Rev. 9/03), Removal Confirmation - Rescinded, LIC 300C (Rev. 9/03), or Removal Confirmation - Nonexemptible, LIC 300D (Rev. 9/03).
- (c) After a review of the criminal record transcript, the Department may grant an exemption if:
- (1) The applicant/licensee requests an exemption in writing for himself or herself, or
  - (2) The applicant/licensee requests an exemption in writing for an individual associated with the facility, or
  - (3) The applicant/licensee chooses not to seek an exemption on the affected individual's behalf, the affected individual requests an individual exemption in writing, and
  - (4) The affected individual presents substantial and convincing evidence satisfactory to the Department that he/she has been rehabilitated and presently is of such good character as to justify being issued or maintaining a license, employment or residence in a licensed facility.

**87356 CRIMINAL RECORD EXEMPTION (Continued)****87356**

- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 87356(c)(4). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.
  - (2) The notice will list the information that must be submitted to request a criminal record exemption.
  - (3) The information must be submitted within forty-five (45) days of the date of the Department's notice.
    - (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the exemption request, pursuant to Section 87356(e).
    - (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may cease processing the exemption request and close the case.
    - (C) If the individual for whom the criminal record exemption is requested is an applicant, licensee, spouse or dependent family member and the licensee/license applicant does not submit the information listed in the Department's written notice within 45 days of the date of the notice, the Department may deny the exemption request.
    - (D) Individuals may request a criminal record exemption on their own behalf if the licensee or license applicant:
      1. Chooses not to request the exemption and
      2. Chooses not to employ or terminates the individual's employment after receiving notice of the individual's criminal history, or
      3. Removes the individual who resides in the facility after receiving notice of the individual's criminal history.

**87356 CRIMINAL RECORD EXEMPTION (Continued)****87356**

- (e) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
  - (2) Period of time since the crime was committed and number of offenses.
  - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
  - (4) Activities since conviction, such as employment or participation in therapy or education, that would indicate changed behavior.
  - (5) Granting by the Governor of a full and unconditional pardon.
  - (6) Character references.
    - (A) All character references shall be on a Reference Request form (LIC 301E - Exemptions [Rev. 7/03]).
  - (7) A certificate of rehabilitation from a superior court.
  - (8) Evidence of honesty and truthfulness as revealed in exemption application documents.
    - (A) Documents include, but are not limited to:
      1. A Criminal Record Statement (LIC 508, Criminal Record Statement [Rev. 1/03]) and
      2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.
  - (9) Evidence of honesty and truthfulness as revealed in exemption application interviews and conversations with the Department.
- (f) The Department shall also consider the following factors in evaluating a request for an exemption:
- (1) Facility and type of association.
  - (2) The individual's age at the time the crime was committed.

**87356 CRIMINAL RECORD EXEMPTION (Continued)****87356**

- (g) The Department may deny an exemption request if:
- (1) The licensee and/or the affected individual fails to provide documents requested by the Department, or
  - (2) The licensee and/or the affected individual fails to cooperate with the Department in the exemption process.
- (h) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (1) Exemption denial notices shall specify the reason the exemption was denied.
- (i) The Department has the authority to grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed facility.
- (j) It shall be conclusive evidence that the individual is not of such good character as to justify issuance of an exemption if the individual:
- (1) Makes a knowingly false or misleading statement regarding:
    - (A) Material relevant to their application for a criminal record clearance or exemption,
    - (B) His or her criminal record clearance or exemption status to obtain employment or permission to be present in a licensed facility, after the Department has ordered that they be excluded from any or all licensed facilities, or
    - (C) His or her criminal record clearance or exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional exemption; or
  - (2) Is on probation or parole.
    - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption notwithstanding Section 87356(j)(2).
- (k) The Department shall consider granting a criminal record exemption if the individual's criminal history meets all of the applicable criteria specified in Sections 87356(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 87356(c)(4). For purposes of this section, a violent crime is a crime that, upon evaluation of the code section violated and/or the reports regarding the underlying offense, presents a risk of harm or violence.



**87356 CRIMINAL RECORD EXEMPTION (Continued)****87356**

- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
  - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (3) The individual has been convicted of one or more violent misdemeanors and 15 consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
  - (6) The individual has not been convicted a violent felony.
  - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in Sections 87356(k)(1) through (5) above shall begin from the last date of conviction(s).
- (l) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of an exemption if the individual fails to meet the requirements specified in Sections 87356(k)(1) through (6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in section 1569.17(f)(1) of the Health and Safety Code.

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

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

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- (17) Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
- (18) Penal Code Section 267 – Abduction for prostitution.
- (19) Penal Code Section 269 – Aggravated assault of a child.
- (20) Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
- (21) Penal Code Section 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
- (22) Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
- (23) Penal Code Section 285 – Incest.
- (24) Penal Code Section 286 – Sodomy.
- (25) Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
- (26) Penal Code Section 288a – Oral copulation.
- (27) Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
- (28) Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
- (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 paragraphs 1 or 2 – Lewd or obscene exposure of private parts.
- (37) Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
- (38) Penal Code Section 368– Elder or dependent adult abuse.
- (39) Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
- (40) Penal Code Section 451(a) or (b) – Arson.
- (41) Penal Code Section 460(a) – First degree burglary if it is charged and proved that a non-accomplice was present in the residence during the burglary.
- (42) Penal Code Sections 186.22 and 518 – Gang related/Extortion.
- (43) Penal Code Section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.
- (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.

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