

Article 3. APPLICATION PROCEDURES**81017 NON-DISCRIMINATION OF APPLICANTS****81017**

- (a) Any adult shall be permitted to apply for a license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, gender identity, HIV status, or ancestry.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Section 5670 and 5671, Welfare and Institutions Code; Section 51, Civil Code; and Section 1520, Health and Safety Code.

81018 APPLICATION FOR LICENSE**81018**

- (a) Any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity desiring to obtain a license shall file with the licensing agency a verified application on forms furnished by the licensing agency.
- (b) Prior to filing an application, the applicant shall attend an orientation designed for the social rehabilitation facility category and provided by the licensing agency.
- (1) The orientation shall cover, but not be limited to, the following areas:
- (A) Completion of the application for license.
- (B) Scope of operation subject to regulation by the Department.
- (2) An applicant, who is already licensed for a facility in the same category, shall not be required to attend an orientation if the last orientation attended was for the same facility type and within two (2) years of the next scheduled orientation.
- (3) An applicant applying for more than one social rehabilitation facility license, shall be required to attend only one orientation.
- (c) The applicant/licensee shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency.

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(d) The application and supporting documents shall contain the following:

- (1) Name or proposed name and address of facility.
- (2) Name and residence and mailing addresses of applicant.
 - (A) If the applicant is a partnership, the name and principal business address of each partner.
 - (B) If the applicant is a corporation or association, the name, title and principal business address of each officer, executive director and member of the governing board.
 - (C) If the applicant is a corporation which issues stock, the name and address of each person owning more than 10 percent of stock in such corporation.
 - (D) If the applicant is a corporation or association, a copy of the articles of incorporation, the constitution and the by-laws.
 - (E) If the applicant is a corporation, each member of the board of directors, executive director, and any officer shall list the names of facilities which they have been licensed to operate, employed by or a member of the board of directors, executive director or an officer.
- (3) Name and address of owner of facility premises if applicant is leasing or renting.
- (4) Procedures as required pursuant to Section 1524.5 of the Health and Safety Code.

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Health and Safety Code section 1524.5 provides:

- (a) In addition to any other requirements of this chapter, any community care facility providing residential care for six or fewer persons, except family homes certified by foster family agencies, foster family homes, and small family homes, shall provide a procedure approved by the licensing agency for immediate response to incidents and complaints. This procedure shall include a method of assuring that the owner, licensee, or person designated by the owner or licensee is notified of the incident, that the owner, licensee, or person designated by the owner or licensee has personally investigated the matter, and that the person making the complaint or reporting the incident has received a written response of action taken or a reason why no action needs to be taken.

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(b) In order to assure the opportunity for complaints to be made directly to the owner, licensee, or person designated by the owner or licensee, and to provide the opportunity for the owner, licensee, or person designated by the owner or licensee to meet residents and learn of problems in the neighborhood, any facility, except family homes certified by foster family agencies, foster family homes, and small family homes, shall establish a fixed time on a weekly basis when the owner, licensee, or person designated by the owner or licensee will be present.

(c) Facilities shall establish procedures to comply with the requirements of this section on or before July 1, 1996.

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- (5) Category of facility to be operated.
- (6) Maximum number of persons to be served.
- (7) Age range, sex and categories of persons to be served, including but not limited to persons with developmental disabilities, mental disorders, and physically handicapped and/or nonambulatory persons.
- (8) Hours or periods of facility operation.
- (9) Name of administrator, if applicable.
- (10) Information required by Health and Safety Code section 1520(d).

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Health and Safety Code section 1520(d) provides:

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

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- (11) Information required by Health and Safety Code section 1520(e).

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Health and Safety Code section 1520(e) provides:

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

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- (12) Name, address and telephone number of the city or county fire department, the district providing fire protection services, or the State Fire Marshal's Office having jurisdiction in the area where the facility is located.
- (13) A plan of operation as specified in Section 81022.
- (14) Criminal record clearance as specified in Section 81019.
- (15) The bonding affidavit specified in Section 81025(a).
- (16) A health screening report on the applicant as specified in Section 81065(g).
- (17) The fee for processing the application by the requested capacity as specified in Section 81036.
- (18) Such other information as may be required pursuant to Section 1520(g) of the Health and Safety Code.

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Health and Safety Code section 1520(g) provides:

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

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- (e) The application shall be signed by the applicant.
 - (1) If the applicant is a partnership, the application shall be signed by each partner.
 - (2) If the applicant is a firm, association, corporation, county, city, public agency or other governmental entity, the application shall be signed by the chief executive officer or authorized representative.
- (f) The application shall be filed with the licensing agency that serves the geographical area in which the facility is located.
- (g) Each applicant shall submit to the Department an itemized financial plan of operation. The financial plan of operation shall consist of a financial statement listing the applicant's assets and liabilities and an anticipated budget, including operating income and costs.
 - (1) Liquid assets shall be available for start-up funds sufficient to cover the first three months operating costs of the facility.
 - (A) The value of an existing contract with a county mental health agency shall be included as a liquid asset.
- (h) The licensing agency shall have the authority to require written verification of the availability of the funds required in Section 81018 (g)(1) above.
- (i) Prior to licensure, each applicant shall submit to the licensing agency evidence of current program certification, which shall be signed by an authorized representative of the California Department of Health Care Services.
 - (1) The certification document shall contain the following:
 - (A) Facility name and address;
 - (B) Program type(s);
 - (C) Capacity for each program type;
 - (D) Staff positions and qualifications;
 - (E) Staffing pattern and ratio; and
 - (F) Certification effective/expiration date.

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- (2) The facility shall notify the California Department of Health Care Services of any changes pertaining to Section 81018(i)(1).
- (A) The licensee shall keep written evidence on file at the facility that the California Department of Health Care Services has received the notification.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1502(a)(7), 1520, 1520.11 1522, 1523.1, 1524.5 and 1560, Health and Safety Code.

81019 CRIMINAL RECORD CLEARANCE**81019**

- (a) The Department shall conduct a criminal record review of all individuals specified in Health and Safety Code section 1522(b), 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.

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Health and Safety Code section 1522(a)(1) provides:

Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code for violating Section 245 or 273.5, of the Penal Code, subdivision (b) of Section 273a of the Penal Code, 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.

Health and Safety Code section 1522(b)(1) provides:

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

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility.

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(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 community care facility. The facility shall maintain the copy of the certification on file as long as 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 community care facility pursuant to Section 1558.

(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 like capacity.

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

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

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

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

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

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- (C) The individual is providing care or services within the individual's scope of practice.
 - (D) The individual is not a community care facility licensee or an employee of the facility.
- (2) A third-party repair person, or similar retained contractor, if all of the following apply:
- (A) The individual is hired for a defined, time-limited job.
 - (B) The individual is not left alone with clients.
 - (C) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.
- (3) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client of the facility, and are in the facility at the request of that client or client's legal decision maker.
- (A) The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.
- (4) Clergy and other spiritual caregivers who are performing services in common areas of the residential care facility, or who are advising an individual client at the request of, or with the permission of, the client.
- (A) This exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.
- (5) Members of fraternal, service and similar organizations who conduct group activities for clients, if all of the following apply:
- (A) Members are not left alone with the clients.
 - (B) Members do not transport clients off the facility premises.
 - (C) The same group does not conduct such activities more often than once a month.

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- (6) The following persons unless contraindicated by the client's individualized program plan (IPP) or Needs and Services Plan:
- (A) A spouse, significant other, relative, close friend of a client, or the attendant or facilitator who is not employed, retained or contracted by the licensee for a client with a developmental disability, as long as the person is visiting the resident or providing direct care and supervision to that client only.
 - (B) An attendant or facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained or contracted by the licensee.
 - (C) The exemptions in Section 81019(b)(6)(A) or (B) apply only if the person is visiting the client or providing direct care and supervision to the client.
- (7) 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.
- (c) Prior to the Department issuing a license, the applicant, administrator, and any adult other than a client, residing in the facility shall obtain a California criminal record clearance or exemption as specified in Health and Safety Code section 1522(a)(4).

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Health and Safety Code section 1522(a)(4) provides in pertinent part:

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 applicant shall be denied, unless the director grants an exemption pursuant to subdivision (g).
- (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 other person specified in paragraph (1) 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 (g).

(E) An applicant and any other person specified in subdivision (b) shall submit fingerprint images and related information to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except the receipt of the Federal Bureau of Investigation's criminal offender record information search response for the applicant or any of the persons described in subdivision (b), the Department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The Department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

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- (d) All individuals subject to criminal record review shall be fingerprinted and sign a Criminal Record Statement - LIC 508 (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 81019(i), regardless of whether the individual was granted a pardon for the conviction or received an expungement pursuant to Penal Code section 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, provide information regarding the conviction.
- (2) The licensee 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 to comply with the requirements of Section 81019(e), prior to the individual's employment, residence, or initial presence in the community care facility.

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- (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 Department.
- (e) All individuals subject to a criminal record review pursuant to Health and Safety Code section 1522 shall prior to working, residing or volunteering in a licensed facility:
- (1) Obtain a California clearance or a criminal record exemption as required by the Department; or
 - (2) Request a transfer of a criminal record clearance as specified in Section 81019(f); or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in Section 81019.1(s), unless, upon request for the transfer, the Department permits the individual to be employed, reside or be present at the facility.
- (f) A licensee or applicant for a license may request a transfer of a criminal record clearance from one state-licensed facility to another, or from TrustLine to a state-licensed facility by providing the following documents to the Department:
- (1) A signed Criminal Background Clearance Transfer Request - LIC 9182 (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., Criminal Record Statement - LIC 508 (1/03), job description).

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Health and Safety Code section 1522(h)(2) provides:

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

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- (g) Violation of Section 81019(e) will result in a citation of a deficiency and an immediate assessment of a civil penalty 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 dollars (\$100) per violation per day for a maximum of thirty (30) days.
 - (2) The Department may assess civil penalties for continued violations as permitted by Health and Safety Code section 1548.
- (h) Violation of Section 81019(e) may result in a denial of the license application or suspension or revocation of the license.
- (i) If the criminal record transcript of any of the individuals specified in Health and Safety Code section 1522(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 81019.1(a) has not been granted, the Department shall take the following actions:
- (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code section 1558, and revoke the license, if the individual continues to provide services at the facility.
 - (4) For convicted individuals residing in the facility, exclude the affected individual pursuant to Health and Safety Code section 1558, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (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 81066.
- (1) The documentation shall be available for inspection by the Department.

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- (k) 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 1530 and 1548(e), Health and Safety Code. Reference: Sections 1503.5, 1505, 1508, 1522, 1531 1533, 1538, 1540, 1540.1, 1541, 1547, 1548 and 1549, Health and Safety Code.

81019.1 CRIMINAL RECORD EXEMPTION**81019.1**

- (a) The Department will notify a licensee to act immediately to remove from the facility or bar from entering the facility any person described in Sections 81019.1(a)(1) through (a)(5) below while the Department considers granting or denying an exemption. Upon notification, the licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
- (2) Any person who has been convicted of a felony;
- (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273d, 273g, or 368 of the Penal Code or any other crime specified in Health and Safety Code section 1522(c)(3);
- (4) Any person who has been convicted of any crime specified below:
- (A) Battery
- (B) Shooting at Inhabited Dwelling
- (C) Corporal Injury on Spouse/Cohabitant
- (D) Discharging Firearm with Gross Negligence
- (E) Exhibiting Weapon/Firearm
- (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death

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- (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child;
 - (5) Any other person ordered to be removed by the Department.
- (b) In addition to the requirements of Section 81019.1(a), the licensee must return the confirmation of removal form that is sent by the Department, within five (5) days of the date of the form that confirms under penalty of perjury that the individual has been removed from the facility.
- (1) Confirmation must be made on either a Removal Confirmation – Exemption Needed - LIC 300A (9/03), Removal Confirmation - Denial - LIC 300B (9/03), Removal Confirmation - Rescinded - LIC 300C (9/03), or Removal Confirmation – Non-exemptible - LIC 300D (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, presence, or residence in a licensed facility.
- (d) To request a criminal record exemption, a licensee or license applicant must submit information that indicates that the individual meets the requirements of Section 81019.1(c)(4). The Department will notify the licensee or license applicant and the affected individual, in concurrent, separate notices, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in an exemption request.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (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 81019(e).
 - (B) If the individual for whom the criminal record exemption is requested is an employee or resident other than a spouse or a 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.
- (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.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.
 - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.
 - (6) Character references.
 - (A) All character references shall be on a Reference Request form – (LIC 301E – Exemptions [Rev. (07/03)]).
 - (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 (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.
- (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.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (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 81019.1(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 81019.1(k)(1) through (6) and the individual provides the Department with substantial and convincing evidence of good character as specified in Section 81019.1(c)(4). For purposes of this Section, a violent crime is a crime that, upon evaluation of the code Section violated or the reports regarding the underlying offense, presents a risk of harm or violence.
- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
- (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (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 of 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 81019.1(k)(1) through (k)(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 81019.1(k)(1) through (k)(6).
- (m) The Department shall not grant an exemption if the individual has a conviction for any offense specified in Section 1522(g)(1) of the Health and Safety Code.

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Pursuant to Health and Safety Code section 1522(g)(1), no exemption shall be granted if an individual has been convicted of any of the following offenses, including those in Penal Code sections 290(c) and 667.5(c):

- (1) Penal Code section 37 – Treason
- (2) Penal Code section 128* - Perjury resulting in the conviction of an innocent person
- (3) Penal Code sections 136.1* constituting a felony of 186.22 – Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22.

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81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

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- (4) Penal Code sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
- (5) Penal Code section 203 – Any mayhem.
- (6) Penal Code section 206 – Felony torture.
- (7) Penal Code sections 207**, 208, 209**, 209.5, 210 – Kidnapping.
- (8) Penal Code sections 211, 212.5, 213, 214 – Any robbery. Pursuant to Glesmann v. Saenz (2006) 140 Cal. App. 4th 960, 990 an exemption may be considered if the subject was convicted of 2nd degree robbery and has obtained a certificate of rehabilitation.
- (9) Penal Code section 215 – Carjacking.
- (10) Penal Code section 218 or 219 – Train Wrecking
- (11) Penal Code section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation. A conviction for an attempt to commit this crime is also non-exemptible, except for attempted assault with intent to commit mayhem, as specified at Penal Code section 290(c).
- (12) Penal Code section 243.4 **– Sexual battery.
- (13) **Penal Code section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
- (14) Penal Code section 262(a)(1)** or (4) – Rape of a spouse. Section 262(a)(1) requires use of violence or force for which the subject was sentenced to state prison, as specified at Penal Code section 290(c).
- (15) Penal Code section 264.1** – Rape in concert.
- (16) Penal Code section 266** – Enticing a minor into prostitution.
- (17) Penal Code section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.
- (18) Penal Code section 266h(b) – Pimping a minor.

HANDBOOK CONTINUES

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

HANDBOOK CONTINUES

- (19) Penal Code section 266i(b) – Pandering a minor.
- (20) Penal Code section 266j – Providing a minor under 16 for lewd or lascivious act.
- (21) Penal Code section 267** – Abduction for prostitution.
- (22) Penal Code section 269** – Aggravated assault of a child.
- (23) Penal Code section 272** – Contributing to the delinquency of a minor. Must involve lewd or lascivious conduct as specified at Penal Code section 290(c).
- (24) 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.
- (25) Penal Code section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child. If conviction was prior to 1978, then it must be for child abuse and not spousal abuse.
- (26) Penal Code section 285** – Incest.
- (27) Penal Code section 286** – Sodomy. Pursuant to Penal Code section 290(c), need not be "by force".
- (28) Penal Code section 288** – Lewd or lascivious act upon a child under 14.
- (29) Penal Code section 288a – Oral copulation. Pursuant to Penal Code section 290(c), need not be "by force".
- (30) Penal Code section 288.2** – Felony conviction for distributing lewd material to children.
- (31) Penal Code section 288.3 - Contact with a minor to commit sexual offense
- (32) Penal Code section 288.4 – Meeting with minor for sexual purpose
- (33) Penal Code section 288.5 – Continuous sexual abuse of a child and attempted.
- (34) Penal Code section 288.7 — Sexual conduct with child 10 years or younger

HANDBOOK CONTINUES

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

HANDBOOK CONTINUES

- (35) Penal Code section 288.5(a)** – Continuous sexual abuse of a child.
- (36) Penal Code section 289** – Genital or anal penetration or abuse by any foreign or unknown object.
- (37) Penal Code section 290(a) – All crimes specified for which one must register as a sex offender including attempts and not guilty by insanity.
- (38) Penal Code section 311.1** – Sent or brought into state for possession or distribution: child related pornography.
- (39) **Penal Code section 311.2(b), (c) or (d) – Sending or bringing into state, possessing for distribution: child-related pornography.
- (40) Penal Code section 311.3** – Sexual exploitation of a child.
- (41) Penal Code section 311.4** – Using a minor to assist in making or distributing child pornography.
- (42) Penal Code section 311.10** – Advertising or distributing child pornography.
- (43) Penal Code section 311.11** – Possessing child pornography.
- (44) Penal Code section 314 (1) or (2) – Lewd or obscene exposure of private parts.
- (45) Penal Code section 347(a) – Felony poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well or reservoir.
- (46) Penal Code section 368 – Elder or dependent adult abuse.
- (47) Penal Code section 417(b) – Felony drawing, exhibiting or using a loaded firearm on the grounds of a child day care center or similar program.
- (48) Penal Code section 451(a) – Arson with great bodily injury.
- (49) Penal Code sections 186.22 and 518 – Felony Extortion/ Gang related.
- (50) **Penal Code section 647.6 or prior to 1988 former Section 647a – Annoy or molest a child under 18.

HANDBOOK CONTINUES

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

HANDBOOK CONTINUES

- (51) Penal Code section 653f(c)** – Solicit another to commit rape, sodomy, etc.
- (52) Penal Code sections 664/187 – Any attempted murder.
- (53) *Penal Code section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life without possibility of parole.
- (54) *Penal Code section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
- (55) Penal Code section 12308, 12309 or 12310 – Exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
- (56) Penal Code section 12022.53 – Enhancement for listed felonies where use of a firearm.
- (57) Penal Code section 11418(b)(1) or (b)(2) – Use of weapon of mass destruction.
- (58) Business and Professions Code section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

* See Health and Safety Code section 1522(g)(1) for exception.

** A conviction for the attempt to commit these crimes is also non-exemptible, as specified at Penal Code section 290(a)(2)(A).

HANDBOOK ENDS HERE

- (n) The Department shall consider granting a simplified criminal record exemption only if the individual has the criminal history profile outlined in Sections 81019.1(n)(1) through (n)(4) below:
 - (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has no more than one conviction;
 - (3) The conviction is a misdemeanor and is a crime that is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the completion of the most recent period of incarceration or supervised probation.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (o) At the Department's discretion, an individual who is otherwise eligible for a simplified exemption may be required to go through the standard exemption process if the Department determines such action will help to protect the health and safety of clients.
- (p) If the Department denies or cannot grant a criminal record exemption, the Department shall:
- (1) For initial applicants, deny the application.
 - (2) For current licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For current employees, exclude the affected individual pursuant to Health and Safety Code section 1558, deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
 - (4) For individuals residing in the facility or the licensee, exclude the affected individual pursuant to Health and Safety Code section 1558, and deny the application or revoke the license, if the individual continues to provide services and/or reside at the facility.
- (q) If a request for an exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no exemption may be granted pursuant to Section 81019.1(m). If a request for an exemption has been denied based on a conviction of a crime for which no exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
- (1) If the Department determines during the review of an exemption request, that the individual was denied an exemption for a conviction of a crime for which an exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on an exemption denial, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Government Code section 11522 that was denied, the Department shall cease review of the request for an exemption until two years from the effective date of the decision and order of the Department denying the petition.
 - (2) An exclusion order based solely upon a denied exemption shall remain in effect and the individual shall not be employed in or present in a licensed facility or certified home, unless either a petition or an exemption is granted.
 - (3) If an individual who has previously been denied an exemption re-applies after the relevant time period described in Section 81019.1(q)(1) above, the Department may, according to the provisions in this section, grant or deny the subsequent request for an exemption.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (4) If an individual submits a petition pursuant to Government Code section 11522 for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to work or be present in a facility, along with all information required of an individual requesting a criminal exemption as provided in this section. If it is determined, based upon information provided by the Department of Justice, that the individual has been convicted of a crime for which no exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department, shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.
- (r) A licensee or applicant for a license may request a transfer of a criminal record exemption from one state licensed facility to another by providing the following documents to the Department:
- (1) A signed Criminal Record Exemption Transfer Request - LIC 9188 (9/03).
 - (2) A copy of the individual's:
 - (A) Driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles, or
 - (C) Valid photo identification issued by another state or the United States Government if the individual is not a California resident.
 - (3) Any other documentation required by the Department (e.g., Criminal Record Statement - LIC 508 (1/03), job description).
- (s) The Department may consider factors including, but not limited to, the following in determining whether or not to approve an exemption transfer:
- (1) The basis on which the Department granted the exemption;
 - (2) The nature and frequency of client contact in the new position;
 - (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients in the facility where the individual wishes to transfer;
 - (5) Whether the exemption was appropriately evaluated and granted in accordance with existing exemption laws or regulations; or
 - (6) Whether the exemption meets current exemption laws or regulations.

81019.1 CRIMINAL RECORD EXEMPTION (Continued)**81019.1**

- (t) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the licensee with written notification that states the Department's decision and informs the affected individual of their right to an administrative hearing to contest the Department's decision.
- (u) At the Department's discretion, an exemption may be rescinded if it is determined that:
- (1) The exemption was granted in error, or
 - (2) The exemption does not meet current exemption laws or regulations, or
 - (3) The conviction for which an exemption was granted subsequently becomes non-exemptible by law.
- (v) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct that is inconsistent with the good character requirement of a criminal record exemption, as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.
- (w) If the Department rescinds an exemption the Department shall:
- (1) Notify the licensee and the affected individual in writing; and
 - (2) Initiate an administrative action.
- (x) If the Department learns that an individual with a criminal record clearance or exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1522 and 1531, Health and Safety Code, and Gresher v. Anderson (2005) 127 Cal. App. 4th 88; and Glesmann v. Saenz (2006) 140 Cal. App.4th 960.

81020 FIRE CLEARANCE**81020**

- (a) A social rehabilitation facility shall secure and maintain a fire clearance approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal.
- (1) The request for fire clearance shall be made through and maintained by the licensing agency.
- (b) The applicant shall notify the licensing agency if the facility plans to admit any of the following categories of clients so that an appropriate fire clearance, approved by the city or county fire department, the district providing fire protection services, or the State Fire Marshal, can be obtained prior to the acceptance of such clients:
- (1) Persons 65 years of age and over.
- (2) Persons who are nonambulatory, as defined in Section 81001(n)(2).

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Persons who use postural supports pursuant to Section 81072(a)(8) are nonambulatory.

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1520 and 1531, Health and Safety Code.

81021 WATER SUPPLY CLEARANCE**81021**

- (a) A social rehabilitation facility where water for human consumption is from a private source shall meet the following requirements:
- (1) As a condition of initial licensure, the applicant shall provide evidence of an onsite inspection of the source of the water and a bacteriological analysis which establishes the safety of the water, conducted by the local health department, the State Department of Public Health or a licensed commercial laboratory.
- (2) Subsequent to initial licensure, the licensee shall provide evidence of a bacteriological analysis of the private water supply as frequently as is necessary to ensure the safety of the clients, but no less frequently than specified in the following table:

81021 WATER SUPPLY CLEARANCE (Continued) 81021

<u>LICENSED CAPACITY</u>	<u>ANALYSIS REQUIRED</u>	<u>PERIODIC SUBSEQUENT ANALYSIS</u>
6 or fewer	Initial licensing	Not required unless evidence supports the need for such analysis to protect clients.
7 through 15	Initial licensing	Annually
16 through 24	Initial licensing	Semiannually
25 or more	Initial licensing	Quarterly

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1520 and 1531, Health and Safety Code.

81022 PLAN OF OPERATION 81022

- (a) Each licensee shall have and maintain on file a current, written, definitive plan of operation.
- (b) The plan and related materials shall contain the following:
- (1) Statement of purposes, and program methods and goals.
 - (2) Statement of admission policies and procedures regarding acceptance of clients.
 - (3) A copy of the admission agreement.
 - (4) Administrative organization, if applicable.
 - (5) Staffing plan, qualifications and duties, if applicable.
 - (6) Plan for inservice education of staff if required by regulations governing this chapter.
 - (7) A sketch of the building(s) to be occupied, including a floor plan which describes the capacities of the buildings for the uses intended, room dimensions, and a designation of the rooms to be used for nonambulatory clients, if any.

81022 PLAN OF OPERATION (Continued)**81022**

- (8) A sketch of the grounds showing buildings, driveways, fences, storage areas, pools, gardens, recreation areas and other space used by the clients.
 - (A) The sketch shall include the dimensions of all areas which will be used by the clients.
- (9) Sample menus and a schedule for one calendar week indicating the time of day that meals and snacks are to be served.
- (10) Transportation arrangements for clients who do not have independent arrangements.
- (11) Rate setting policy including, but not limited to, policy on refunds.
- (12) A statement whether or not the licensee will handle the clients' money, personal property, and/or valuables. If money, personal property, and/or valuables will be handled, the method for safeguarding shall ensure compliance with Sections 81025 and 81026.
- (13) Consultant and community resources to be utilized by the facility as part of its program.
- (14) A statement of the facility's policy concerning family visits and other communications with the client pursuant to Health and Safety Code section 1512.

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Health and Safety Code section 1512 provides in pertinent part:

...The community care 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.

HANDBOOK ENDS HERE

- (15) A statement that specifies the maximum length of treatment for the clients, which shall not exceed 18 months.
- (16) Written evidence of arrangements for any consultants and community resources which are to be utilized in the facility's plan of operation or to meet regulatory requirements.
- (17) Provisions for ensuring that food service requirements (Section 81076) and building and grounds requirements (Section 81087) shall continue to be met when the clients are unable or unwilling to perform these functions as a part of their treatment plans.

81022 PLAN OF OPERATION (Continued)**81022**

- (18) A written plan for the supervision and training of staff as required by Section 81065(q).
- (19) A written staff continuing education plan which meets the requirements of Section 81065(r).
- (20) A written plan for managing client psychiatric crises, including procedures for facility staff intervention and for securing assistance from local psychiatric emergency response agencies.
- (21) A current, valid program certification by the Department of Health Care Services.
 - (A) The certification document shall contain the information required in Section 81018.
- (c) Any facility with a certified Long-Term Residential Treatment Program shall submit the following information to the licensing agency:
 - (1) The treatment program which shall include those services specified in Section 81001(1)(5).
- (d) Any facility with a certified Short-Term Crisis Residential Program shall submit the following information to the licensing agency:
 - (1) The treatment program, which shall include those services specified in Section 81001(s)(2).
- (e) Any facility with a certified Transitional Residential Program shall submit the following information to the licensing agency:
 - (1) The treatment program which shall include those services specified in Section 81001(t)(2).
- (f) If the licensee intends to admit or care for one or more clients who have a restricted health condition as specified in Section 81092, the facility policies and a program description shall be included. At a minimum, the information related to those clients and their needs shall specify all of the following:
 - (1) The type of restricted health condition that the licensee plans to admit.
 - (2) The licensee's plans for serving that client.
 - (A) If the licensee plans to admit or care for one or more clients who have a staph or other serious, communicable infection, the plan must include:
 - 1. A statement that all staff will receive training in universal precautions within the first 10 days of employment, and before providing care to these clients.

81022 PLAN OF OPERATION (Continued)

81022

2. A statement of how the licensee will ensure that the training is obtained, and the name and qualifications of the person or organization that will provide the training.
 - (3) The services that will be provided.
 - (4) Staffing adjustments if needed in order to provide the proposed services.
 - (A) This may include increased staffing, hiring staff with additional or different qualifications, utilizing licensed professionals as consultants, or hiring licensed professionals.
- (g) If the licensee intends to admit or care for one or more clients who rely upon others to perform all activities of daily living, the plan of operation must also include a statement that demonstrates the licensee's ability to care for these clients. The evidence of ability may include, but not be limited to:
 - (1) The licensee's experience in providing care to these clients.
 - (2) The licensee's experience providing care to a family member with this condition.
 - (3) The licensee's plan to hire staff who have experience providing care to these clients, and documentation of what the staff person's experience has been.
 - (4) Documentation of training the licensee and/or staff have completed specific to the needs of these clients.
 - (5) History of continued placements by a regional center.
- (h) If the licensee intends to admit and/or specialize in care for one or more clients who has a propensity for behaviors that 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 client and all other clients.
- (i) Any changes in the plan of operation which affect the services to clients shall be subject to licensing agency approval and shall be reported as specified in Section 81061.
- (j) The facility shall operate in accordance with the terms specified in the plan of operation and may be cited for not doing so.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1502(a)(7), 1507, 1512, 1520 and 1531, Health and Safety Code.

81023 DISASTER AND MASS CASUALTY PLAN**81023**

- (a) Each licensee shall have and maintain on file a current, written disaster and mass casualty plan of action.
- (b) The plan shall be subject to review by the licensing agency and shall include:
 - (1) Designation of administrative authority and staff assignments.
 - (2) Contingency plans for action during fires, floods, and earthquakes, including but not limited to the following:
 - (A) Means of exiting.
 - (B) Transportation arrangements.
 - (C) Relocation sites which are equipped to provide safe temporary accommodation for clients.
 - (D) Arrangements for supervision of clients during evacuation or relocation, and for contact after relocation to ensure that relocation has been completed as planned.
 - (E) Means of contacting local agencies, including but not limited to the fire department, law enforcement agencies, and civil defense and other disaster authorities.
- (c) The licensee shall instruct all clients, age and abilities permitting, all staff, and/or members of the household in their duties and responsibilities under the plan.
- (d) Disaster drills shall be conducted at least every six months.
 - (1) Completion of such drills shall not require travel away from the facility grounds or contact with local disaster agencies.
 - (2) The drills shall be documented and the documentation maintained in the facility for at least one year.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1520 and 1531, Health and Safety Code.

81024 WAIVERS AND EXCEPTIONS**81024**

- (a) Unless prior written licensing agency approval is received as specified in Section 81024(b) below, all licensees shall maintain continuous compliance with the licensing regulations.
- (b) The licensing agency shall have the authority to approve the use of alternate concepts, programs, services, procedures, techniques, equipment, space, personnel qualifications or staffing ratios, or the conduct of experimental or demonstration projects under the following circumstances:
 - (1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any facility client.
 - (2) The applicant or licensee shall submit to the licensing agency a written request for a waiver or exception, together with substantiating evidence supporting the request.

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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 available or determined appropriate by the licensing agency.

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- (3) The licensing agency shall provide written approval or denial of the request.
- (c) Within 30 days of receipt of a request for a waiver or an exception, the licensing agency shall notify the applicant or licensee, in writing, of one of the following:
 - (1) The request with substantiating evidence has been received and accepted for consideration.
 - (2) The request is deficient, describing additional information required for the request to be acceptable and a time frame for submitting this information.
 - (A) Failure of the applicant or licensee to comply within the time specified in Section 81024(c)(2) above shall result in denial of the request.
- (d) Within 30 days of receipt of an acceptable request for a waiver or an exception, the licensing agency shall notify the applicant or licensee, in writing, whether the request has been approved or denied.
- (e) The Department shall notify the California Department of Health Care Services of all waiver and exception requests.
 - (1) A copy of the approval or denial shall be sent to the California Department of Health Care Services.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; and Sections 1501, 1502(a)(7), 1509 and 1531, Health and Safety Code.

81025**BONDING****81025**

- (a) The licensee shall submit an affidavit, on a form provided by the licensing agency, stating whether he/she safeguards or will safeguard cash resources of clients; and the maximum amount of cash resources to be safeguarded for all clients, or for each client in any month.
- (b) All licensees, other than governmental entities, who are entrusted to care for and control clients' cash resources shall file or have on file with the licensing agency, a bond issued by a surety company to the State of California as principal.
- (c) The amount of the bond shall be according to the following schedule:

<u>AMOUNT SAFEGUARDED PER MONTH</u>	<u>BOND REQUIRED</u>
\$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.

- (d) The licensee shall submit a new affidavit and bond to the licensing agency prior to the licensee safeguarding amounts of clients' cash resources in excess of the current bond.
- (e) Whenever the licensing agency determines that the amount of the bond is insufficient to provide necessary protection of clients' cash resources, or whenever the amount of any bond is impaired by any recovery against the bond, the licensing agency shall have the authority to require the licensee to file an additional bond in such amount as the licensing agency determines to be necessary to protect clients' cash resources.
- (f) The provisions of this section shall not apply if the licensee meets the requirements specified in Section 1560 of the Health and Safety Code.

NOTE: Authority Cited: Sections and 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; 1560 and 1561, Health and Safety Code.

81026 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES**81026**

- (a) A licensee shall not be required to accept for admission or continue to care for any client whose incapacities, as documented by the initial or subsequent needs appraisals, would require the licensee to handle such client's cash resources.
- (b) If such a client is accepted for or maintained in care, his/her cash resources, personal property, and valuables not handled by a person outside the facility who has been designated by the client or his/her authorized representative shall be handled by the licensee or facility staff, and shall be safeguarded in accordance with the requirements specified in Section 81026(c) through (n) below.
- (c) Except where provided for in approved continuing care agreements, no licensee or employee of a licensee shall:
- (1) accept appointment as a guardian or conservator of the person and/or estate of any client;
 - (2) accept any general or special power of attorney except for Medi-Cal or Medicare claims for any client;
 - (3) become the substitute payee for any payments made to any client.
 - (A) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the client.
 - (4) become the joint tenant on any account specified in Section 81026(i) with a resident.
- (d) Cash resources, personal property, and valuables of clients handled by the licensee shall be free from any liability the licensee incurs.
- (e) Cash resources, personal property, and valuables of clients shall be separate and intact, and shall not be commingled with facility funds or petty cash.
- (1) The above requirement shall not prohibit the licensee from providing advances or loans to clients from facility funds.
 - (A) Documentation of such transactions shall be maintained in the facility.
- (f) The licensee or employee of a licensee shall not make expenditures from clients' cash resources for any basic services specified in these regulations, or for any basic services identified in a contract/admission agreement between the client and the licensee.
- (1) This requirement does not apply to a licensee who is appointed by the Social Security Administration as representative payee for the clients.

81026 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES (Continued)**81026**

- (g) The licensee shall not commingle cash resources and valuables of clients with those of another community care facility of a different license number regardless of joint ownership.
- (h) Each licensee shall maintain accurate records of accounts of cash resources, personal property, and valuables entrusted to his/her care, including, but not limited to the following:
- (1) Records of clients' cash resources maintained as a drawing account, which shall include a current ledger accounting, with columns for income, disbursements and balance, for each client. Supporting receipts for purchases shall be filed in chronological order.
 - (A) Receipts for cash provided to any client from his/her account(s) shall include the client's full signature or mark, or authorized representative's full signature or mark, and a statement acknowledging receipt of the amount and date received, as follows:

"(full signature of client) accepts (dollar amount) (amount written cursive), this date (date), from (payor)."
 - (B) The store receipt shall constitute the receipt for purchases made for the client from his/her account.
 - (C) The original receipt for cash resources, personal property or valuables entrusted to the licensee shall be provided to the client's authorized representative, if any, otherwise to the client.
 - (2) Bank records for transactions of cash resources deposited in and drawn from the account specified in (i) below.
- (i) Immediately upon admission of a client, all of his/her 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 meeting the following requirements:
- (1) The account shall be maintained as a trust account separate from the personal or business accounts of the licensee.
 - (2) The account title shall clearly note that the account contains client cash resources.
 - (3) The licensee shall provide access to the cash resources upon demand by the client or his/her authorized representative.

81026 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES (Continued) 81026

- (4) The account 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.
- (A) A local public agency shall have the authority to deposit such cash resources with the public treasurer.
- (j) Cash resources entrusted to the licensee and kept on the facility premises, shall be kept in a locked and secure location.
- (k) Upon discharge of a client, all cash resources, personal property, and valuables of that client which have been entrusted to the licensee shall be surrendered to the client, or his/her authorized representative, if any.
- (1) The licensee shall obtain and retain a receipt signed by the client or his/her authorized representative.
- (l) Upon the death of a client, all cash resources, personal property and valuables of that client shall immediately be safeguarded in accordance with the following requirements:
- (1) All cash resources shall be placed in an account as specified in Section 81026(i) above.
- (2) The executor or the administrator of the estate shall be notified by the licensee of the client's death, and the cash resources, personal property, and valuables shall be surrendered to said party in exchange for a signed, itemized receipt.
- (3) If no executor or administrator has been appointed, the authorized representative, if any, shall be notified by the licensee of the client's death, 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 in Section 81026(l)(2) or (l)(3) above, the licensee shall give immediate written notice of the client's death to the public administrator of the county as provided in Section 7600.5 of the California Probate Code.
- (m) The following requirements shall be met whenever there is a proposed change of licensee:
- (1) The licensee shall notify the licensing agency of any pending change of licensee, and shall provide the licensing agency an accounting of each client's cash resources, personal property and valuables entrusted to his/her care.

81026 SAFEGUARDS FOR CASH RESOURCES, PERSONAL PROPERTY, AND VALUABLES (Continued) 81026

- (A) Such accounting shall be made on a form provided or approved by the licensing agency.
- (2) Provided the licensing agency approves the application for the new licensee, the form specified in Section 81026(m)(1)(A) above shall be updated, signed by both the former and new licensee, and forwarded to the licensing agency.
- (n) The licensee shall maintain a record of all monetary gifts, and of any other gift exceeding an estimated value of \$100, provided by or on behalf of a client to the licensee, administrator or staff.
 - (1) The record shall be attached to the account(s) specified in Section 81026(h) above if the client's cash resources, personal property or valuables have been entrusted to the licensee.
 - (2) Monetary gifts or valuables given by friends or relatives of a deceased client shall not be subject to the requirements specified in Section 81026(n) and (n)(1) above.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; 1501, 1531 and 1560, Health and Safety Code; and 20 CFR 416.601.

81027 INITIAL APPLICATION REVIEW 81027

- (a) Within 90 days of receipt of the application by the licensing agency, the licensing agency shall give written notice to the applicant of one of the following:
 - (1) The application is complete.
 - (2) The application is deficient, describing what documents are outstanding and/or inadequate, and informing the applicant that the information must be submitted within 30 days of the date of the notice.
 - (A) If the applicant does not submit the required information within the 30 days, the application shall be deemed withdrawn unless either the licensing agency has denied the application or the facility is under construction.
- (b) The licensing agency shall cease review of any application under the conditions specified in Section 1520.3 of the Health and Safety Code.
 - (1) If cessation of review occurs, the application shall be returned to the applicant. It shall be the responsibility of the applicant to request resumption of review as specified in Health and Safety Code section 1520.3.

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Health and Safety Code section 1520.3 provides in pertinent part:

(a)(1) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a license under this chapter or under Chapter 1 (commencing with Section 1200), Chapter 2 (commencing with Section 1250), Chapter 3.01 (commencing with Section 1568.01), Chapter 3.3 (commencing with Section 1569), Chapter 3.4 (commencing with Section 1596.70), Chapter 3.5 (commencing with Section 1596.90), or Chapter 3.6 (commencing with Section 1597.30) and the prior license was revoked within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation. The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other provision of law. . . .

(b) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a license under any of the chapters listed in paragraph (1) of subdivision (a) and the application was denied within the last year, the department shall cease further review of the application as follows:

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

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

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

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(c) The circumstances and the conditions in which the licensing agency may continue to review a previously denied application shall include, but not limited to, the following:

- (1) A fire clearance previously denied, but now approved;
- (2) An administrator who did not meet the minimum qualifications, but now fulfills the qualifications; or

81027 INITIAL APPLICATION REVIEW (Continued) 81027

- (3) A person with a criminal record, which was the basis for license denial, is no longer associated with the facility.
- (d) The application review shall not constitute approval of the application.
- (e) The application fees shall be nonrefundable as specified in Section 81036(d).

NOTE: Authority Cited: Sections 1524 and 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; 1520, 1520.3, 1523.1, and 1524, Health and Safety Code.

81028 CAPACITY DETERMINATION 81028

- (a) A license shall be issued for a specific capacity.
- (b) The number of persons for whom the facility is licensed to provide care and supervision shall be determined on the basis of the application review by the licensing agency, which shall take into consideration the following:
 - (1) The fire clearance specified in Section 81020.
 - (2) The licensee's/administrator's ability to comply with applicable law and regulation.
 - (3) Any other household members, including but not limited to persons under guardianship or conservatorship, who reside at the facility and their individual needs.
 - (4) Physical features of the facility, including available living space, which are necessary in order to comply with regulations.
 - (5) Number of available staff to meet the care and supervision needs of the clients.
 - (6) Any restrictions pertaining to a social rehabilitation facility.
- (c) The licensing agency shall be authorized to issue a license for fewer clients than is requested when the licensing agency determines that:
 - (1) The licensee's responsibilities to other persons in the home, including persons under guardianship and conservatorship, would preclude provision of the care required by these regulations.
- (d) When the license is issued for fewer clients than requested, the licensee shall be notified in writing of the reasons for the limitation and of the licensee's rights to appeal the decision as specified in Section 81040.

81028 CAPACITY DETERMINATION**81028**

- (e) The licensing agency shall have the authority to decrease existing licensed capacity with the licensee's agreement, when there is a change in any of the factors specified in Section 81028(b) above.
- (1) If the licensee does not agree to the decrease in capacity, the licensing agency shall have the authority to initiate revocation action as specified in Section 81042.
- (f) The licensing agency shall be authorized to restrict care to specific individuals.
- (1) If care and supervision is limited to specific individuals, the licensing agency shall specify the names of the individuals in a letter to the licensee.
- (2) Except where the limitation is requested by the licensee, the licensee shall be notified in writing of the reasons for such limitation and of the licensee's right to appeal the decision as specified in Section 81040.

NOTE: Authority Cited: Section 1530, Health and Safety Code and Section 10554, Welfare and Institutions Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1524, and 1531, Health and Safety Code.

81029 WITHDRAWAL OF APPLICATION**81029**

- (a) An applicant shall have the right to withdraw an application.
- (1) Such withdrawal shall be in writing.

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Health and Safety Code section 1553 provides in pertinent part:

The withdrawal of an application for a license or special permit after it has been filed with the state department shall not, unless the state department consents in writing to such withdrawal, deprive the state department of its authority to institute or continue a proceeding against the applicant for the denial of the license or a special permit upon any ground provided by law or to enter an order denying the license or special permit upon any such ground. . . .

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- (2) The fee for processing the application shall be forfeited.

NOTE: Authority Cited: Sections 1530 and 1553, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1520, 1523.1, 1524 and 1553, Health and Safety Code.

81030 PROVISIONAL LICENSE**81030**

- (a) The licensing agency shall have the authority to issue a provisional license to an applicant, pending action under Sections 81031 or 81040 on a completed application for an initial license, if it determines that all of the following circumstances exist:
- (1) The facility is in substantial compliance with applicable law and regulation.
 - (2) An urgent need for licensure exists.
 - (3) A corporate applicant's board of directors, executive director and officer are eligible for licensure as specified in Health and Safety Code section 1520.11(b).

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Health and Safety Code section 1520.11(b) provides:

- (b) The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Section 1520.3 or Section 1558.1.

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- (b) The capacity of a provisional license shall be limited to the number of clients for whom urgent need has been established, or the capacity established for the specific facility, whichever is less.
- (c) The licensing agency shall have the authority to issue a provisional license for a maximum of six months when it determines that full compliance with licensing regulations will be achieved within that time period.
- (d) The licensing agency shall have the authority to issue a provisional license for a maximum of 12 months when it determines, at the time of application, that more than six months is required to achieve full compliance with licensing regulations due to circumstances beyond the control of the applicant.
- (e) If, during the provisional license period, the licensing agency discovers any serious deficiencies, the Department shall have the authority to institute administrative action or civil proceedings, or to refer the case for criminal prosecution.
- (f) A provisional license shall not be renewable and shall terminate on the date specified on the license, or upon denial of the application, whichever is earlier.

NOTE: Authority Cited: Sections 1530 and 1553, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1520, 1520.11, 1524, 1525.5, 1550, and 1553, Health and Safety Code.

81031 ISSUANCE OF LICENSE**81031**

- (a) Within 90 days of the date that a completed application, as defined in Section 81001(c)(10), has been received, the licensing agency shall give written notice to the applicant of one of the following:
- (1) The application has been approved.
 - (2) The application has been denied.
 - (A) The notice of denial shall include the information specified in Section 81040.
- (b) The licensing agency shall notify the applicant in writing, of the issuance of the license.
- (1) Issuance of the license itself shall constitute written notification of license approval.
- (c) No limitation shall be imposed on the licensee or printed on the license solely on the basis that a licensee is a parent who has administered or will continue to administer corporal punishment, not constituting child abuse as defined in Section 11165, subdivision (g) of the Penal Code, or Section 1531.5(c) of the Health and Safety Code, on his/her own child(ren).
- (d) The licensing agency's completed review of an application for the two years immediately preceding this regulation has been approximately:
- (1) A minimum of 30 days.
 - (2) A median of 90 days.
 - (3) A maximum of 180 days.

NOTE: Authority Cited: Sections 1530 and 1553, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1509, 1520, 1520.5, 1525, 1526, and 1553, Health and Safety Code.

81034 SUBMISSION OF NEW APPLICATION**81034**

- (a) A licensee shall file a new application as required by Section 81018 whenever there is a change in the conditions or the limitations described on the current license, or other changes, including, but not limited to, the following:
- (1) Any change in the location of the facility.
 - (2) Any change of licensee, including, but not limited to, the following, when the licensee is a corporation.
 - (A) Sale or transfer of the majority of stock.
 - (B) Separating from a parent company.
 - (C) Merger with another company.
 - (3) Any change in facility category.
 - (4) Any increase in capacity.
 - (A) The licensing agency shall have the authority to grant capacity increases without resubmission of an application following a licensing agency review and the securing of an appropriate fire clearance.
 - (5) A permanent change in any client from ambulatory to nonambulatory status.
- (b) A new application as required by Section 81018 shall be filed whenever an applicant fails to complete a new application within the time limit required by Section 81027(a) if the applicant chooses to continue the application process.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1520, 1523.1, and 1531, Health and Safety Code.

81035 CONDITIONS FOR FORFEITURE OF A LICENSE**81035**

- (a) Conditions for forfeiture of a social rehabilitation facility license may be found in Section 1524 of the Health and Safety Code.

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Health and Safety Code section 1524 provides in pertinent part:

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

(a) The licensee sells or otherwise transfers the facility or facility property, except when change of ownership applies to transferring of stock when the facility is owned by a corporation, and when the transfer of stock does not constitute a majority change of ownership.

(b) The licensee surrenders the license to the department.

(c)(1) The licensee moves a facility from one location to another. The department shall develop regulations to ensure that the facilities are not charged a full licensing fee and do not have to complete the entire application process when applying for a license for the new location.

(d) The licensee is convicted of an offense specified in Section 220, 243.4, or 264.1, or paragraph (1) of Section 273a, Section 273d, 288, or 289 of the Penal Code, or is convicted of another crime specified in subdivision (c) of Section 667.5 of the Penal Code.

(e) The licensee dies. If an adult relative notifies the department of his or her desire to continue operation of the facility and submits an application, the department shall expedite the application. The department shall promulgate regulations for expediting applications submitted pursuant to this subdivision.

(f) The licensee abandons the facility.

(g) When the certification issued by the State Department of Developmental Services to a licensee of an Adult Residential Facility for Persons with Special Health Care Needs, licensed pursuant to Article 9 (commencing with Section 1567.50), is rescinded.

(h) When the certification issued by the State Department of Developmental Services to a licensee of an enhanced behavioral supports home, licensed pursuant to Article 9.5 (commencing with Section 1567.61), is rescinded.

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(i) When the certificate of program approval issued by the State Department of Developmental Services, pursuant to Article 8 (commencing with Section 4698) of Chapter 6 of Division 4.5 of the Welfare and Institutions Code, to a licensee of a community crisis home, licensed pursuant to Article 9.7 (commencing with Section 1567.80), is rescinded.

Health and Safety Code section 1523.1(e) provides:

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

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- (b) "Licensee abandons the facility" shall mean either of the following:
- (1) The licensee informs the licensing agency that the licensee no longer accepts responsibility for the facility; or
 - (2) The licensing agency is unable to determine the licensee's whereabouts after the following:
 - (A) The licensing agency requests information about the licensee's whereabouts from the facility's staff, if any staff can be contacted; and
 - (B) The licensing agency has made at least one (1) phone call per day, to the licensee's last telephone number of record, for five (5) consecutive workdays with no response; and
 - (C) The licensing agency has sent a certified letter, requesting the licensee to contact the licensing agency, to the licensee's last mailing address of record with no response within seven (7) calendar days.
- (c) If the facility licensee dies, an adult relative who has control of the property shall be permitted to operate a previously licensed facility under an Emergency Approval to Operate - LIC 9117 (8/14) (EAO) providing the following conditions are met:
- (1) The relative, or an adult acting on the relative's behalf, notifies the Department by telephone during the first working day after the licensee's death that the relative intends to operate the social rehabilitation facility.

81035 CONDITIONS FOR FORFEITURE OF A LICENSE (Continued)**81035**

- (2) The relative files with the Department within five days of the licensee's death an Application for a Community Care Facility or Residential Care Facility for the Elderly License - LIC 200 (7/91), and evidence of the licensee's death as defined in Section 81001(e)(6).
- (A) Notwithstanding the instructions on the Application for a Community Care Facility or Residential Care Facility for the Elderly License - LIC 200 (7/91), the Department shall permit the relative to submit only the information on the front side of that form.
- (3) The relative files with the California Department of Justice within five calendar days of the licensee's death his/her fingerprint cards.
- (d) If the adult relative complies with Section 81035(c)(1) and (2) above, he/she shall not be considered to be operating an unlicensed facility pending the Department's decision on whether to approve a provisional license.
- (e) The Department shall make a decision within 60 days after the application is submitted on whether to issue a provisional license pursuant to Section 81030.
- (1) A provisional license shall be granted only if the Department is satisfied that the conditions specified in Sections 81035(c) and 81030 have been met and that the health and safety of the residents of the facility will not be jeopardized.

NOTE: Authority Cited: Section 1524 and 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Section 1520, 1522, 1523.1, 1524 and 1525.5, Health and Safety Code.

81036 LICENSING FEES**81036**

- (a) An applicant or a licensee shall be charged fees as specified in Health and Safety Code section 1523.1.

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Health and Safety Code section 1523.1 provides in pertinent part:

- (a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license. After initial licensure, a fee shall be charged by the department annually on each anniversary of the effective date of the license. The fees are for the purpose of financing the activities specified in this chapter. Fees shall be assessed as follows:

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<u>Facility Type</u>	<u>Capacity</u>	<u>Fee Schedule</u>	
		<u>Initial Application</u>	<u>Annual</u>
Other Community Care Facilities	1-3	\$454	\$454
	4-6	\$908	\$454
	7-15	\$1,363	\$681
	16-30	\$1,815	\$908
	31-49	\$2,270	\$1,135
	50-74	\$2,725	\$1,363...

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

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

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

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

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

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

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

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

(H) A plan of correction fee of two hundred dollars (\$200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan. . . .

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(4) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a facility licensed under this chapter which serves six or fewer persons.

(c)(1) The revenues collected from licensing fees pursuant to this Section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the Budget Act in support of the licensing program. The department shall adjust the fees collected pursuant to this section as necessary to ensure that they do not exceed the costs described in this paragraph.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use of this revenue, as approved by the Director of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A facility may use a bona fide business check to pay the license fee required under this Section.

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

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(b) An additional fee shall be charged when a licensee requests an increase or decrease in capacity as specified in Health and Safety Code section 1523.1(b)(1)(C).

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Health and Safety Code section 1523.1(b)(1) provides in pertinent part:

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

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

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81036 LICENSING FEES (Continued)**81036**

- (c) When a licensee moves a facility from one location to another, the relocation fee shall be as specified in Health and Safety Code section 1523.1(b)(1)(A).

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Health and Safety Code section 1523.1(b)(1) provides in pertinent part:

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

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

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- (1) To qualify for the relocation fee, the following shall apply:
- (A) The licensee shall notify the licensing agency before actually relocating the facility.
 - (B) The facility category shall remain the same when relocating the facility.
 - (C) The fee shall be based on the requested capacity at the new location.
- (d) The fees shall be nonrefundable.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1523.1 and 1524, Health and Safety Code.

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Article 4. ADMINISTRATIVE ACTIONS**81040 DENIAL OF INITIAL LICENSE****81040**

- (a) Except as specified in Section 81030, which provides for issuance of a provisional license based upon substantial compliance and urgent need, the licensing agency shall deny an application for an initial license if it is determined that the applicant is not in compliance with applicable law and regulation.
- (1) The licensing agency shall have the authority to deny an application for an initial license if the applicant has failed to pay any civil penalty assessments pursuant to Section 81058 and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the licensing agency have been made.
 - (2) An application for initial licensure shall not be denied solely on the basis that the applicant is a parent who has administered or will continue to administer corporal punishment, not constituting child abuse as defined in Section 11165, subdivision (g) of the Penal Code, or Section 1531.5(c) of the Health and Safety Code, on his/her own child(ren).
 - (3) An application for licensure shall be denied as specified in Health and Safety Code sections 1520.11(b), (d) and 1550.

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Health and Safety Code section 1520.11(b) provides:

The department shall not issue a provisional license or license to any corporate applicant that has a member of the board of directors, an executive director, or an officer, who is not eligible for licensure pursuant to Section 1520.3 or Section 1558.1.

Health and Safety Code section 1520.11(d) provides:

Prior to instituting an administrative action pursuant to either subdivision (b) or (c), the department shall notify the applicant or licensee of the person's ineligibility to be a member of the board of directors, an executive director, or an officer of the applicant or licensee. The licensee shall remove the person from that position within 15 days or, if the person has client contact, he or she shall be removed immediately upon notification.

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81040 DENIAL OF INITIAL LICENSE (Continued)

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Health and Safety Code section 1550 provides:

The department may deny an application for, or suspend or revoke, any license, or any special permit, certificate of approval, or any administrator certificate, issued under this chapter upon any of the following grounds and in the manner provided in this chapter, or may deny a transfer of a license pursuant to paragraph (2) of subdivision (b) of Section 1524 for any of the following grounds:

- (a) Violation of this chapter or of the rules and regulations promulgated under this chapter by the licensee or holder of a special permit or certificate.
- (b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.
- (c) Conduct which is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in, or receiving services from, the facility or certified family home.
- (d) The conviction of a licensee, holder of a special permit or certificate, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.
- (e) The licensee of any facility, the holder of a special permit or certificate, or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.
- (f) Engaging in acts of financial malfeasance concerning the operation of a facility or certified family home, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

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- (b) If the application for an initial license is denied, the licensing agency shall mail the applicant a written notice of denial.
 - (1) The notification shall inform the applicant of and set forth the reasons for the denial, and shall advise the applicant of the right to appeal.
- (c) If the application for an initial license is denied, the application processing fee shall be forfeited.

81040 DENIAL OF INITIAL LICENSE (Continued)**81040**

- (d) An applicant shall have the right to appeal the denial of the application pursuant to Health and Safety Code section 1526.

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Health and Safety Code section 1526 provides in pertinent part:

Immediately upon the denial of any application for a license or for a special permit, the state department [licensing agency] shall notify the applicant in writing. Within 15 days after the state department [licensing agency] mails the notice, the applicant may present his written petition for a hearing to the state department [licensing agency]. Upon receipt by the state department [licensing agency] of the petition in proper form, such petition shall be set for hearing. The proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department [licensing agency] has all the powers granted therein.

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- (e) Notwithstanding any appeal action, the facility is unlicensed and shall not operate pending adoption by the director of a decision on the denial action.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1520, 1520.11, 1523.1, 1525, 1526, 1547, 1548 and 1551, Health and Safety Code; and Section 11500 et seq., Government Code.

81042 REVOCATION OR SUSPENSION OF LICENSE**81042**

- (a) The Department shall have the authority to suspend or revoke any license on any of the grounds specified in Health and Safety Code sections 1550 and 1550.5.

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Health and Safety Code section 1550 provides:

The department may deny an application for, or suspend or revoke, any license, or any special permit, certificate of approval, or any administrator certificate, issued under this chapter upon any of the following grounds and in the manner provided in this chapter, or may deny a transfer of a license pursuant to paragraph (2) of subdivision (b) of Section 1524 for any of the following grounds:

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- (a) Violation of this chapter or of the rules and regulations promulgated under this chapter by the licensee or holder of a special permit or certificate.
- (b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.
- (c) Conduct which is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in, or receiving services from, the facility or certified family home.
- (d) The conviction of a licensee, holder of a special permit or certificate, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.
- (e) The licensee of any facility, the holder of a special permit or certificate, or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.
- (f) Engaging in acts of financial malfeasance concerning the operation of a facility or certified family home, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

Health and Safety Code section 1550.5 provides in pertinent part:

The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is urgent to protect residents or clients of the facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall serve the licensee with the temporary suspension order, a copy of available discovery and other relevant evidence in the possession of the department, including, but not limited to, affidavits, declarations, and any other evidence upon which the director relied in issuing the temporary suspension order, the names of the department's witnesses, and the effective date of the temporary suspension and at the same time shall serve the licensee with an accusation. . . .

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(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after receipt of the notice. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits, unless it is earlier vacated by interim decision of the administrative law judge or a superior court judge. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the original hearing has been completed.

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- (b) Proceedings to hear a revocation action or a revocation and temporary suspension action shall be conducted pursuant to the provisions of Health and Safety Code section 1551.

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Health and Safety Code section 1551 provides:

(a) Proceedings for the suspension, revocation, or denial of a license, registration, special permit, or any administrator certificate under this chapter, or denial of transfer of a license pursuant to paragraph (2) of subdivision (c) of Section 1524, shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the powers granted by those provisions. In the event of conflict between this chapter and the Government Code, the Government Code shall prevail.

(b) In all proceedings conducted in accordance with this Section, the standard of proof to be applied shall be by the preponderance of the evidence.

(c) If the license, special permit, certificate of approval, or administrator certificate is not temporarily suspended pursuant to Section 1550, the hearing shall be held within 90 calendar days after receipt of the notice of defense, unless a continuance of the hearing is granted by the department or the administrative law judge. When the matter has been set for hearing only the administrative law judge may grant a continuance of the hearing. The administrative law judge may, but need not, grant a continuance of the hearing only upon finding the existence of one or more of the following:

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- (1) The death or incapacitating illness of a party, a representative or attorney of a party, a witness to an essential fact, or of the parent, child, or member of the household of such person, when it is not feasible to substitute another representative, attorney, or witness because of the proximity of the hearing date.
- (2) Lack of notice of hearing as provided in Section 11509 of the Government Code.
- (3) A material change in the status of the case where a change in the parties or pleadings requires postponement, or an executed settlement or stipulated findings of fact obviate the need for hearing. A partial amendment of the pleadings shall not be good cause for continuance to the extent that the unamended portion of the pleadings is ready to be heard.
- (4) A stipulation for continuance signed by all parties or their authorized representatives, including, but not limited to, a representative, which is communicated with the request for continuance to the administrative law judge no later than 25 business days before the hearing.
- (5) The substitution of the representative or attorney of a party upon showing that the substitution is required.
- (6) The unavailability of a party, representative, or attorney of a party, or witness to an essential fact due to a conflicting and required appearance in a judicial matter if when the hearing date was set, the person did not know and could neither anticipate nor at any time avoid the conflict, and the conflict with request for continuance is immediately communicated to the administrative law judge.
- (7) The unavailability of a party, a representative or attorney of a party, or a material witness due to an unavoidable emergency.
- (8) Failure by a party to comply with a timely discovery request if the continuance request is made by the party who requested the discovery.

Chapter 5 commencing with Section 11500 of Part 1, Division 3, Title 2 of the Government Code provides in pertinent part:

11505(a) Upon filing of the accusation the agency shall serve a copy thereof on the respondent...

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81042 REVOCATION OR SUSPENSION OF LICENSE (Continued)**81042**

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11506(a) Within 15 days after service of the accusation the respondent may file with the agency a notice of defense....

11509 The agency shall deliver or mail a notice of hearing to all parties at least 10 days prior to the hearing...

Health and Safety Code section 1550.5 provides in pertinent part:

(a)(1) The department shall notify the licensee, upon service of an order of temporary license suspension, of the licensee's right to an interim hearing on the order. The department shall also provide the licensee with a form and appropriate information for the licensee's use in requesting an interim hearing. The department shall also notify the licensee, upon service, of the licensee's independent right to seek review of the order by the superior court pursuant to Section 1085 of the Code of Civil Procedure.

(2)(A) ...The licensee shall mail or deliver the request within five days after service of the order. Upon receipt of a timely request for an interim hearing, the Office of Administrative Hearings shall set a hearing date and time which shall be within 10 working days of the office's receipt of the request...

(6) The department may proceed with the accusation as otherwise provided by this Section and Section 1551 notwithstanding an interim decision by the administrative law judge that vacates the order of temporary license suspension.

(b) Upon receipt of a notice of defense to the accusation by the licensee, the director shall, within 15 days, set the matter for a full evidentiary hearing, and the hearing shall be held as soon as possible but not later than 30 days after the receipt of the notice.

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(c) The Department shall initiate revocation action against the license of a Social Rehabilitation Facility when it is found that the program certification has been withdrawn by the California Department of Health Care Services.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1502(a)(7), 1550, 1550.5 and 1551, Health and Safety Code; and Sections 11500 et seq., Government Code.

81043 LICENSEE/APPLICANT COMPLAINTS**81043**

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- (a) Each licensee/applicant shall have the right, without prejudice, to notify the Department of any alleged misapplication or capricious enforcement of regulations by any licensing representative, or any differences in opinion between the licensee and any licensing representative concerning the proper application of these regulations.

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501 and 1531, Health and Safety Code.

81044 INSPECTION AUTHORITY OF THE LICENSING AGENCY**81044**

- (a) The licensing agency shall have the inspection authority specified in Health and Safety Code sections 1526.5, 1533(a), 1534 and 1538.

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Health and Safety Code section 1526.5(a) and (b) provides in pertinent part:

(a) Within 90 days after a facility accepts its first client for placement following the issuance of a license or special permit pursuant to Section 1525, the department shall inspect the facility. The licensee shall, within five business days after accepting its first client for placement, notify the department that the facility has commenced operating. . . .

(b) The inspection required by subdivision (a) shall be conducted to evaluate compliance with the rules and regulations and to assess the facility's continuing ability to meet regulatory requirements. The department may take appropriate remedial action as authorized by this chapter.

Health and Safety Code section 1533(a) provides in pertinent part:

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

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Health and Safety Code section 1534 provides in pertinent part:

(a)(1)(A) Except for foster family homes, every licensed community care facility shall be subject to unannounced visits by the department.

(2)(A) The department may inspect these facilities as often as necessary to ensure the quality of care provided.

(B) The department shall conduct an annual unannounced inspection of a facility under any of the following circumstances:

(i) When a license is on probation.

(ii) When the terms of agreement in a facility compliance plan require an annual inspection.

(iii) When an accusation against a licensee is pending.

(iv) When a facility requires an annual inspection as a condition of receiving federal financial participation.

(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

(C)(i) The department shall conduct annual unannounced inspections of no less than 20 percent of facilities, except for foster family homes, not subject to an inspection under subparagraph (B)...

Health and Safety Code section 1538(c) provides:

Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall make a preliminary review and, unless the state department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, it shall make an onsite inspection of the community care facility or certified family home within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the state department's proposed course of action.

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81044 INSPECTION AUTHORITY OF THE LICENSING AGENCY (Continued) 81044

- (b) The licensing agency shall have the authority to interview clients, including children, or staff members without prior consent.
- (1) The licensee shall ensure that provisions are made for private interviews with any clients, including children, or any staff members.
- (c) The licensing agency shall have the authority to inspect, audit, and copy client or facility records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements specified in Sections 81066(e) and 81070(d).
- (1) The licensee shall ensure that provisions are made for the examination of all records relating to the operation of the facility.
- (d) The licensing agency shall have the authority to observe the physical condition of the client, including conditions that could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the client.

NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1501, 1526.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

81045 EVALUATION VISITS**81045**

- (a) A social rehabilitation facility shall be evaluated as specified in Health and Safety Code sections 1534 and 1548.

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Health and Safety Code section 1534 provides in pertinent part:

- (a)(1)(A) Except for foster family homes, every licensed community care facility shall be subject to unannounced inspections by the department.
- (2)(A) The department may inspect these facilities as often as necessary to ensure the quality of care provided.
- (B) The department shall conduct an annual unannounced inspection of a facility under any of the following circumstances:
- (i) When a license is on probation...

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- (iii) When an accusation against a licensee is pending.
- (iv) When a facility requires an annual inspection as a condition of receiving federal financial participation.
- (v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.
- (C)(i) The department shall conduct annual unannounced inspections of no less than 20 percent of facilities, except for foster family homes, not subject to an inspection under subparagraph (B)...
- (iii) These inspections shall be conducted based on a random sampling methodology developed by the department.
- (iv) If the total citations issued by the department to facilities exceed the previous year's total by 10 percent, the following year the department shall increase the random sample by an additional 10 percent of the facilities not subject to an inspection under subparagraph (B). The department may request additional resources to increase the random sample by 10 percent.
- (v) The department shall not inspect a licensed community care facility less often than once every five years.

Health and Safety Code section 1548 provides in pertinent part:

- (a) In addition to the suspension, temporary suspension, or revocation of a license issued under this chapter, the department may levy a civil penalty.
- (b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day per violation.

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- (b) The licensing agency shall have the authority to make any number of other visits to a facility in order to determine compliance with applicable law and regulation.

NOTE: Authority Cited: Sections 1530 and 1548, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1533, 1534, 1538 and 1548, Health and Safety Code.

81046 EXCLUSIONS**81046**

- (a) An individual can be prohibited from serving as a member of a board of directors, executive director, or officer; from being employed or being present in a licensed facility, as specified in Health and Safety Code sections 1558 and 1558.1.

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Health and Safety Code section 1558 provides:

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

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

(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either the people of this state or an individual in or receiving services from the facility or certified family home.

(3) Been denied an exemption to work or to be present in a facility or certified family home, when that person has been convicted of a crime as defined in Section 1522.

(4) Engaged in any other conduct that would constitute a basis for disciplining a licensee or certified family home.

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

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

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

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

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

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

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

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

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

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

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81046 EXCLUSIONS (Continued)

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

(g) A licensee's or certified family home's failure to comply with the department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1550.

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

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

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

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

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Health and Safety Code section 1558.1 provides:

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

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

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

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

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

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81046 EXCLUSIONS (Continued)

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

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

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

(d) Exclusion or removal of an individual pursuant to this Section shall not be considered an order of exclusion for purposes of Section 1558 or any other law.

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

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NOTE: Authority Cited: Section 1530, Health and Safety Code. Reference: Sections 5670 and 5671, Welfare and Institutions Code; Sections 1558 and 1558.1, Health and Safety Code.