

Manual of Policies and Procedures
COMMUNITY CARE LICENSING DIVISION

FOSTER FAMILY HOMES

Title 22
Division 6
Chapter 9.5



STATE OF CALIFORNIA
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HEALTH AND HUMAN SERVICES AGENCY
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This Users' Manual is issued as an operational tool.

This Manual contains:

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

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

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

In addition, please note that as a result of the changes to a new computer system revised language in this manual letter and subsequent community care licensing manual letters will now be identified by a vertical line in the left margin.

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

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

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

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

89201 DEFINITIONS**89201**

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

- (a)
 - (1) "Adult" means a person who is 18 years of age or older.
 - (2) "Applicant" means any adult who has made application for foster family home license.
 - (3) "Approval Agency" means the child-placing agency that has the responsibility to approve the homes of relative and nonrelative extended family members as meeting the same standards as those set forth in Article 3 of this chapter.
 - (4) "Approved Home" means the home of a relative or nonrelative extended family member that is exempt from licensure and is approved as meeting the same standards as those set forth in Article 3 of this chapter.
 - (5) "Authorized Representative" means any person or entity authorized by law to act on behalf of any child. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator or a public placement agency.
- (b)
 - (1) "Basic Rate" means the rate charged by a home to provide basic services. For SSI/SSP recipients, the basic rate means the established nonmedical out-of-home care rate which includes any exempt income allowance but does not include that amount allotted for the recipient's personal and incidental needs.
 - (2) "Basic Services" means those services required by applicable law and regulation to be provided by the licensee in order to obtain and maintain a community care facility license.
- (c)
 - (1) "California Department of Justice Clearance" means an individual has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the California Department of Justice.

89201 DEFINITIONS (Continued)**89201**

- (2) "Capacity" means the maximum number of persons authorized to be provided care and supervision at any one time in any licensed facility.
- (3) "Care and Supervision" means any one or more of the following activities provided by a caregiver to meet the needs of the children:
- (A) Assistance in dressing, grooming, bathing and other personal hygiene.
 - (B) Assistance with taking medication, as specified in Section 89475(c).
 - (C) Central storing and/or distribution of medications, as specified in Section 89475(c).
 - (D) Arrangement of and assistance with medical and dental care. This may include transportation.
 - (E) Maintenance of house rules for the protection of children.
 - (F) Supervision of children's schedules and activities.
 - (G) Maintenance and/or supervision of children's cash resources or property.
 - (H) Monitoring food intake or special diets.
 - (I) Providing basic services as defined in Section 89201(b)(2).
- (4) "Caregiver" for the purpose of this chapter means, the licensed/approved individual having the authority and responsibility for the operation of a home.
- (5) "Caregiver's Family" means any relative, as defined in Section 89201(r)(1), or adopted children or persons under guardianship or conservatorship of the caregiver, or the caregiver's spouse, who reside in the home.
- (6) "Cash Resources" means:
- (A) Monetary gifts.
 - (B) Tax credits and/or refunds.
 - (C) Earnings from employment or workshops.
 - (D) Personal and incidental need allowances from funding sources including but not limited to SSI/SSP.

89201 DEFINITIONS (Continued) 89201

- (E) Allowances paid to children.
 - (F) Any other similar resources as determined by the licensing agency.
- (7) "Child" means a person who is under 18 years of age or a person up to 19 years of age, who meets the requirements of Section 11403 of the Welfare and Institutions Code, who is being provided care and supervision in a foster family home, except where specified otherwise in this chapter.

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- (A) Welfare and Institutions Code Section 11403 provides:

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

HANDBOOK ENDS HERE

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

89201 DEFINITIONS (Continued)

89201

(B) Is one of the following:

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

HANDBOOK BEGINS HERE

(C) Welfare and Institutions Code Section 17710(a) provides:

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

HANDBOOK ENDS HERE

(11) "Completed Application" means:

- (A) The applicant has submitted and the licensing agency has received, all required materials, including an approved fire clearance, if applicable, from the local fire authority having jurisdiction, a CACI clearance, and a California criminal record clearance or exemption, or evidence of compliance with FBI requirements as specified in Section 1522(d)(1)(D) of the Health and Safety Code on the applicant and any other individuals specified in Section 89219.
- (B) The licensing agency has completed a site visit to the facility.

(12) "Conservator" means a person appointed by the Superior Court pursuant to the provisions commencing with Section 1800 of the Probate Code or Section 5350 of the Welfare and Institutions Code, to care for the person, or estate, or person and estate, of another.

89201 DEFINITIONS (Continued)**89201**

- (13) "Control of Property" means the legal right to enter, occupy, and maintain the operation of the home as verified by documentation provided upon request of the Department; such documentation may include:
- (A) a Grand Deed showing ownership; or
 - (B) the lease agreement or rental agreement; or
 - (C) a court order or similar document which shows the authority to control the property pending outcome of a probate proceeding or an estate settlement; or
 - (D) any other documents acceptable to the Department (for example, but not limited to, utility bills, insurance statement, etc.).
- (14) "Conviction" means:
- (A) A criminal conviction in California; or
 - (B) Any criminal conviction of another state, federal, military or other jurisdiction, which if committed or attempted in California, would have been punishable as a crime in California.
- (15) "Criminal Record Clearance" means an individual has a California Department of Justice clearance and an FBI clearance or evidence of compliance with FBI requirements as specified in Section 1522(d)(1)(D) of the Health and Safety Code.
- (d) (1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act commencing with Section 1500 of the Health and Safety Code and/or regulations adopted by the Department pursuant to the Act.
- (2) "Department" is defined in Section 1502(b) of the Health and Safety Code as the State Department of Social Services.
- (3) "Director" is defined in Section 1502(c) of the Health and Safety Code as the Director of the State Department of Social Services.
- (4) "Disability" means a condition that makes a child developmentally disabled, mentally disordered or physically handicapped, and for whom special care and supervision is required as a result of his/her condition.

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

- (5) "Documented Alternative Plan (DAP)" means a written plan, reviewed and approved by the licensing or approval worker on a case-by-case basis as a plan that is an alternative, but equally protective manner of meeting the intent of specified regulations in Article 3 of this chapter.
- (e) (1) "Evaluator" means any person who is a duly authorized officer, employee or agent of the Department, including any officer, employee or agent of a county or other public agency authorized by the Department to license homes.
- (2) "Evidence of Caregiver's Death" shall include, but is not limited to, a copy of the death certificate, obituary notice, certification of death from the decedent's mortuary or a letter from the attending physician or coroner's office verifying the caregiver's death.

89201 DEFINITIONS (Continued)**89201**

- (3) "Exception" means a child-specific, nontransferable, written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation(s) and which are based on documentation of the unique needs or circumstances of a specific child placed in the home. Exceptions are granted for a particular child and cannot be transferred or applied to other children or other homes or caregivers. Exception does not apply to Article 3 of this chapter.
- (4) "Exemption" means the granting of an exemption to the disqualification for a license, employment or presence in a home, as allowed under Section 1522(g) of the Health and Safety Code, for an individual who does not have a criminal records clearance. An exemption is not transferable, except as provided in Section 89219.1(g).

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- (A) Health and Safety Code Section 1522(g)(1) reads in part:

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

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- (f) (1) "Family Health Care" means health care which does not require the skills of qualified technical or professional personnel and is provided to a child by the foster parent in accordance with Section 89475, Health Related Services. When these requirements are met, the family health care that may be provided includes, but is not limited to the following:
- (A) Routine administration of medications such as the administration of suppositories, ointments, lotions, pills, enemas or medications given by liquid medication dispenser, puffer, dropper or nebulizer.
- (B) Changing ostomy or indwelling urinary catheter bags.
- (C) Urine and blood glucose testing using a monitoring kit approved for home use.
- (D) Heart and apnea monitoring when it is simply the case of providing stimulation to the infant/child when the cardiac or respiratory rate falls below a specified rate and not a matter of interpreting a monitor pattern with the intervention based on that interpretation.

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

- (E) Assistance with procedures self-administered by older children free of severe mental or physical disabilities such as insulin injection and oxygen administration.
- (F) Assistance with other procedures such as injections where not otherwise prohibited by law.
- (2) "Federal Bureau of Investigation (FBI) Clearance" means an individual has no felony or misdemeanor convictions, other than a minor traffic violation, reported by the FBI.
- (3) "Foster Family Home" means any home where the caregiver, in their own home, provides care and supervision for six or fewer foster children and the caregiver has control of the property. This also includes sibling care for up to eight children provided the requirements of Section 1505.2 of the Health and Safety Code are met.

HANDBOOK BEGINS HERE**(A) Health and Safety Code Section 1505.2**

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

- (A) The foster family is not a specialized foster care home as defined in subdivision (i) of Section 17710 of the Welfare and Institutions Code.
- (B) The home is sufficient in size to accommodate the needs of all children in the home.
- (C) For each child to be placed, the child's placement social worker has determined that the child's needs will be met and has documented that determination.

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

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- (g) (1) "Guardian" means a person appointed by the Superior Court pursuant to the provisions commencing with Section 1500 of the Probate Code or Section 360 of the Welfare and Institutions Code to care for the person, or estate, or the person and estate, of another.

89201 DEFINITIONS (Continued)**89201**

- (h) (1) "Health Care Professional" means a physician or an individual who is licensed or certified under Division 2 of the Business and Professions Code to perform the necessary client care procedures prescribed by a physician. Such health care professionals include the following: Registered Nurse, Public Health Nurse, Licensed Vocational Nurse, Psychiatric Technician, Physical Therapist, Occupational Therapist and Respiratory Therapist.
- (2) "Home" means for the purpose of this chapter a Foster Family Home.
- (i) (1) "Independent Living Program (ILP)" means the program authorized under 42 USC Section 677 of the Social Security Act for services and activities to assist children age 16 or older in foster care to make the transition from foster care to independent living.
- (2) "Individualized Health Care Plan" means the written plan developed by an individualized health care plan team and approved by the team physician, or other health care professional designated by the physician to serve on the team, for the provision of specialized in-home health care.
- (3) "Individualized Health Care Plan Team" means those individuals who develop an individualized health care plan for a child with special health care needs, which must include the child's primary care physician or other health care professional designated by the physician, any involved medical team, the county social worker or regional center caseworker, and any health care professional designated to monitor the specialized in-home health care provided to the child pursuant to the child's individualized health care plan. The individualized health care plan team may include, but shall not be limited to, a public health nurse, representatives from the California Children's Services Program or the Child Health and Disability Prevention Program, regional centers, the county mental health department and where reunification is the goal, the parent or parents, if available. In addition, the individualized health care plan team may include the prospective specialized caregiver, but that caregiver shall not participate in any team determination required by Sections 89510.1(a)(1)(C), and 89565.1(a)(1)(B).
- (4) "Infant" means a child under two years of age.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "Licensing Agency" means the State Department of Social Services or any state, county or other public agency authorized by the Department to assume specified licensing responsibilities pursuant to Section 1511 of the Health and Safety Code.
- (2) "Licensed Home" means a home that is licensed by Community Care Licensing in accordance with the standards set forth in Article 3 of this chapter. The license cannot be transferred to another person or location.
- (m) (1) "Medical Conditions Requiring Specialized In-Home Health Care" means provided that care may be safely and adequately administered in the home:

89201 DEFINITIONS (Continued)**89201**

- (A) A dependency upon one or more of the following when, but for the fact that trained foster parents may provide these services under Section 17736 of the Welfare and Institutions Code, the skills of qualified technical or professional personnel would be required: Enteral feeding tube, total parenteral feeding, a cardiorespiratory monitor, intravenous therapy, a ventilator, oxygen support, urinary catheterization, renal dialysis, ministrations imposed by tracheostomy, colostomy, ileostomy, ileal conduit or other medical or surgical procedures or special medication regimens, including injection and intravenous medication; or
- (B) Conditions such as AIDS, premature birth, congenital defects, severe seizure disorders, severe asthma, bronchopulmonary dysplasia, and severe gastroesophageal reflux when, because his/her condition could rapidly deteriorate causing permanent injury or death, the child requires in-home health care other than, or in addition to, family health care.
- (2) "Medical Professional" means a Health Care Professional.
- (n) (1) "Needs and Services Plan" means a time-limited, goal-oriented written plan which identifies the specific needs of an individual child. This plan shall contain at a minimum the information required in Section 89370 and information on the background and needs of the child that the placing social worker deems necessary for the effective care of the child. This may include a social work assessment, medical reports, educational assessment, and identification of special needs when necessary.
- (2) "Nonrelative Extended Family Member" means any adult caregiver who has an established familial or mentoring relationship with the child pursuant to Section 362.7 of the Welfare and Institutions Code.

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- (A) Welfare and Institutions Code Section 362.7 provides:

"When the home of a nonrelative extended family member is being considered for placement of a child, the home shall be evaluated, and approval of that home shall be granted or denied, pursuant to the same standards set forth in the regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

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

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89201 DEFINITIONS (Continued)**89201**

- (3) "Nonambulatory Person" means a person as defined in Section 13131 of the Health and Safety Code.
- (A) A person who uses postural supports as specified in Section 89372(a)(7), is nonambulatory.
- (B) A person is not deemed nonambulatory solely because he/she is deaf, blind or prefers to use a mechanical aid.

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- (C) Health and Safety Code Section 13131 provides:

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

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- (o) (Reserved)

- (p) (1) "Physical Restraining Device" means any physical or mechanical device, material, or equipment attached or adjacent to a child's body which the child cannot remove easily and which restricts the child's freedom of movement. Restraining devices include leg restraints, arm restraints, soft ties or vests, wheel chair safety bars, and full length bedrails.
- (2) "Physician" means a person licensed as a physician and surgeon by the California Board of Medical Examiners or by the California Board of Osteopathic Examiners.
- (3) "PRN Medication" (pro re nata) means any nonprescription or prescription medication which is to be taken as needed.

89201 DEFINITIONS (Continued)**89201**

- (4) "Provision" or "Provide" means whenever any regulation requires that provision be made for or that there be provided any service, personnel, or other requirement, the caregiver shall do so directly or present evidence to the licensing agency that the requirement has been met by some other means.

(q) (Reserved)

- (r) (1) "Rehabilitation" means that period of time, together with any education, counseling or therapy, training, stable employment, restitution, remorse, changes in lifestyle, or community service, which assist an individual in reestablishing good character.

(2) "Relative" means:

- (A) A person related to the child by birth or adoption within the fifth degree of kinship who, regardless of whether the parent's rights to the child have been terminated or relinquished, is one of the following:

1. Parent (mother, father) sibling (brother, sister), half-sibling (half-brother, half-sister), nephew, niece, uncle, aunt, first cousin, first cousin once removed, or any such person of a preceding generation denoted by the prefixes grand, great, great-great, or great-great-great.

(B) Stepfather, stepmother, stepbrother or stepsister; or

(C) The spouse of any person named in (A) or (B) above, even after the marriage has been terminated by death or dissolution.

- (s) (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of any child in a home.

(2) "Sexual Orientation" means, for the purpose of this chapter, the identification of any individual as heterosexual, gay, lesbian or bisexual.

(3) "Social Worker" means a person who has a graduate degree from an accredited school of social work.

(4) "Specialized Foster Family Home" means a licensed foster family home which provides specialized in-home health care to children pursuant to Section 1507 of the Health and Safety Code and Section 17710(i) of the Welfare and Institutions Code.

(5) "Specialized In-Home Health Care" means health care as defined in Section 17710(h) of the Welfare and Institutions Code, other than family health care, identified by the child's primary physician as appropriately administered in the home by a health care professional or by a foster parent trained by health care professionals.

89201 DEFINITIONS (Continued)**89201**

- (6) "SSI/SSP" means the Supplemental Security Income/State Supplemental Program which is a federal/state program that provides financial assistance to aged, blind and/or disabled residents of California.
- (t) (1) "Transitional Independent Living Plan (TILP)" means the portion of the child's case plan that describes the programs and services, including employment and savings, as appropriate, based on an assessment of the individual child's skills and abilities, that will help the child prepare for transition from foster care to independent living.
- (u) (1) "Unlicensed Community Care Facility" means a facility as defined in Section 1503.5 of the Health and Safety Code.

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- (A) Health and Safety Code Section 1503.5(a) provides in pertinent part:

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

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

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- (B) A home which is "providing care and supervision" as defined in Section 89201(c)(2) includes, but is not limited to, one in which an unemancipated minor has been placed for temporary or permanent care.
- (C) A home which is "held out as or represented as providing care and supervision" includes, but is not limited to:

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

- (1) A home which has been revoked or denied as follows:
 - a. a license, if licensed as a foster family home; or
 - b. an approval, if approved as a nonrelative extended family member home; or
 - c. a certificate, if certified by a Foster Family Agency as a foster home; and,
 - d. the individual continues to provide care for the same or different clients with similar needs.
- (2) A home where change of ownership has occurred and the same clients are retained.
- (3) A licensed home that moves to a new location.
- (4) A home which advertises as providing care and supervision.
- (D) A home which "accepts or retains residents who demonstrate the need for care and supervision" includes, but is not limit to a home which houses unemancipated minors, even though the home is providing board and room only, or board only, or room only.
- (v) (1) "Volunteer" means a person who provides gratuitous, non-essential services and does not replace required staff.

89201 DEFINITIONS (Continued)**89201**

- (w) (1) "Waiver" means a home-wide nontransferable written authorization issued by the licensing agency that approves an equally protective manner of complying with the intent of a specific regulation which is based on a demonstration of the unique needs or circumstances of the home. Waiver does not apply to Article 3 of this chapter.
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill 1695 (Chapter 653, Statutes of 2001). Reference: Sections 319(d), 362.7, 11400, 11403, 16522, 17710, 17710(a), (g), (h) and (i), 17731, 17731(c) and 17736(a), Welfare and Institutions Code; Sections 1337, 1500, 1501, 1502, 1503, 1503.5, 1505, 1505.2, 1507, 1507.5, 1520, 1522, 1522.1, 1524, 1524(e), 1526, 1526.5, 1527, 1530, 1530.5, 1530.6, 1531, 1531.5, 1533, 1534, 1536.1, 1537, 1550, 1551, 1558, 1558.1, 1559.110, 1727(c), 11834.11, and 13131, Health and Safety Code; Unruh Civil Rights Act, Civil Code Section 51; and California Fair Employment and Housing Act, Government Code Section 12921.

89202 DEFINITIONS - FORMS**89202**

The following forms, which are incorporated by reference, apply to the regulations in Title 22, Division 6, Chapter 9.5 (Foster Family Homes).

- (a) LIC 198 (2/01) – Child Abuse Central Index Check for County Licensed Facilities.
- (b) LIC 198A (3/99) – Child Abuse Central Index Check for State Licensed Facilities.
- (c) LIC 508 (3/02) – Criminal Record Statement.
- (d) LIC 9182 (4/02) – Criminal Background Clearance Transfer Request.
- (e) LIC 9188 (3/02) – Criminal Record Exemption Transfer Request.
- (f) PUB 396 (5/02) – Foster Youth Rights Poster

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

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

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

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, 1503.5, 1505, 1508, 1509, 1513, 1524, 1531, 1536.1, 1540, 1540.1, 1541, and 1547, Health and Safety Code.

89206 OPERATION WITHOUT A LICENSE**89206**

- (a) An unlicensed facility as defined in Section 89201(u)(1), is in violation of Sections 1503.5 and/or 1508 of the Health and Safety Code unless exempted from licensure pursuant to Section 1505 of the Health and Safety Code or Section 89207 of this chapter.
- (b) If the facility is alleged to be in violation of Sections 1503.5 and/or 1508 of the Health and Safety Code, the licensing agency shall conduct a site visit, and/or an evaluation of the home pursuant to Section 1533 of the Health and Safety Code.

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- (1) Health and Safety Code Section 1533 provides in pertinent part:

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

HANDBOOK ENDS HERE

- (c) If the home is operating without a license, the licensing agency shall issue a notice of operation in violation of law and shall refer the case for criminal prosecution and/or civil proceedings.

89206 OPERATION WITHOUT A LICENSE (Continued)**89206**

- (d) The licensing agency shall issue an immediate civil penalty pursuant to Section 89255 and Section 1547 of the Health and Safety Code.

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- (1) Section 1547 of the Health and Safety Code provides in part:

Notwithstanding any other provision of this chapter, any person who violates Section 1503.5 or 1508, or both, may be assessed by the department an immediate civil penalty in the amount of two hundred dollars (\$200) per day of violation.

The civil penalty ... shall be imposed if an unlicensed facility is operated and the operator refuses to seek licensure or the licensure application is denied and the operator continues to operate the unlicensed facility.

HANDBOOK ENDS HERE

- (e) Sections 89206(c) and (d) shall be applied pursuant to Section 1549 of the Health and Safety Code.

HANDBOOK BEGINS HERE

- (1) Section 1549 of the Health and Safety Code states:

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

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- (f) The licensing agency shall notify the appropriate placement or protective service agency if either of the following conditions exist:

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

- (2) The home does not submit an application for licensure within 15 calendar days of being served a notice of operation in violation of the law.

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503, 1503.5, 1505, 1508, 1524, 1533, 1536.1, 1538, 1540, 1540.1, 1541, 1547 and 1549, Health and Safety Code.

89207 EXEMPTION FROM LICENSURE**89207**

- (a) The provisions of this chapter shall not apply to those facilities and arrangements specified in Section 1505 of the Health and Safety Code.

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- (1) Health and Safety Code 1505 states in pertinent part:

This chapter does not apply to any of the following...

(a) ...

(b) ...

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

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

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

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

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

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

(i) Recovery houses or other similar facilities providing a group living arrangement for persons recovering from alcoholism or drug addiction which provides no care or supervision.

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

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

- (k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.
- (l)
 - (1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.
 - (2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probations department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.
- (m) ...
- (n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are place and that is one of the following:
 - (1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.
 - (2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.
- (o) ...
- (p) Any similar facility determined by the director.

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- (b) The provisions of this chapter shall not apply to any school dormitory or similar facility where all of the following conditions exist:
 - (1) The school is certificated/registered by the State Department of Education.
 - (2) The school and the school dormitory are on the same grounds.
 - (3) All children accepted by the school are six years of age or older.

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

- (4) The program operates only during normal school terms unless the academic program runs year-round.
 - (5) The school's function is educational only.
 - (6) The school program is not designated as providing rehabilitative or treatment services.
 - (7) The school's function does not promote intent to provide community care services, and the family does not accept children who are in need of such services, including but not limited to children with developmental disabilities, mental disorders or physical handicaps; juveniles declared dependents of the court under Welfare and Institutions Code Section 300; and juveniles declared wards of the court under Welfare and Institutions Code Sections 601 and 602.
 - (8) The facility does not receive any public funds designated for care including but not limited to AFDC-FC and SSI/SSP. The facility shall be permitted to receive public funds intended for educational programs.
 - (9) No public or private agency, including but not limited to county welfare departments and probation offices, provides social services to children in the facility.
- (c) The provisions of this chapter shall not apply to the following additional situations:
- (1) Any care and supervision of persons from only one family by a close friend of the parent, guardian or conservator, provided that such arrangement is not for financial profit and does not exceed 10 hours per week.
 - (A) Provision of longer hours of care shall not be precluded when provided for brief periods of time for reasons, including but not limited to family emergencies, vacation, and military leave.
 - (2) Any home exclusively used by a licensed or exempt Foster Family Agency and issued a certificate of approval by that agency.
 - (A) Such families shall not be required to obtain a license, but shall be in compliance with all other requirements set forth in this division. The home's compliance with requirements shall be monitored through and assured by the Foster Family Agency. For the purposes of this section, an exclusive-use facility shall mean a nonlicensed residential facility that has been approved by a licensed Foster Family Agency as conforming to the regulations pertaining to the Family Home Category. A home in the exclusive use of a licensed Foster Family Agency shall accept only those children placed by that agency which approved the home.

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

- (3) A home which meets all of the following criteria:
- (A) approved by a licensed adoption agency, or the Department, for the adoptive placement of a child, and
 - (B) the child is legally free for adoption, and
 - (C) the agency or the Department is providing supervision of the placement pending finalization of the adoption.
- (4) A home which meets all of the following criteria:
- (A) placement for adoption by a birth parent, and
 - (B) a petition for adoption has been filed by the prospective adoptive parents, and is pending, and
 - (C) a final decision on the petition has not been rendered by the court.
- (5) Any care and supervision of persons by a relative, guardian or conservator. A relative, for purposes of this section, shall include individuals as specified in Health and Safety Code Section 1505(k).

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; Section 17730, Welfare and Institutions Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503, 1503.5, 1505, 1505(k) and (l), 1506, 1508, 1524, 1530, 1530.5, 1531, 1536.1, 1540, 1540.1, 1541, and 1547, Health and Safety Code; Sections 226.2, 226.5 and 226.6, Civil Code; and Sections 319(d), 362, 727, 16100, 17710(i), 17736, and 17736(b), Welfare and Institutions Code.

89209 AVAILABILITY OF LICENSE**89209**

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

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

89218 APPLICATION FOR LICENSE**89218**

- (a) The licensing agency shall have the authority to require any applicant desiring to obtain a license to file, with the licensing agency, a verified application on forms furnished by the licensing agency and to provide verification and/or documentation as requested by the licensing agency.
- (b) The applicant/caregiver shall cooperate with the licensing agency in providing verification and/or documentation as requested by the licensing agency.
- (c) The application and supporting documents shall contain the following:
 - (1) Name and home address of the applicant.
 - (2) Name and address of owner of premises if applicant is leasing or renting.
 - (3) A copy of document(s) that establish that the applicant has control of the property to be licensed.
 - (4) Maximum number of children to be served.
 - (5) Age range, sex and the categories of children to be served, including but not limited to children with disabilities, if any.
 - (6) Information required by Section 1520(d) of the Health and Safety Code.
 - (7) Information required by Section 1520(e) of the Health and Safety Code.
 - (8) 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 home is located.
 - (9) Fingerprint cards and/or identifying information as specified in Section 89319.
 - (10) Information required by Section 1522.1 of the Health and Safety Code.
 - (11) Such other information as may be required pursuant to Section 1520(g) of the Health and Safety Code.
 - (12) A statement whether or not the caregiver will handle the children's money, personal property, and/or valuables.

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

- (d) The application shall be signed by the applicant.
- (e) The application shall be filed with the licensing agency which services the geographical area in which the home is located.
- (f) No application processing fee shall be charged to foster family homes.

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, 1503.5, 1508, 1520, 1520.3, 1521.5, 1522, 1522.1, 1523.1, 1524, 1525.25, 1525.3, 1530.91, 1531, 1531.4, 1536.1, 1540, 1540.1, 1541, 1547, and 1560, Health and Safety Code.

89219 CRIMINAL RECORD CLEARANCE**89219**

- (a) The licensing 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 foster family home license, or employment, residence, or presence in the home, based upon the results of such review.

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- (1) Section 1522(b) of the Health and Safety Code provides in part:

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

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained or contracted by the licensee, and who has been certified or re-certified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who fall under this exemption shall provide one copy of his or her current certification, prior to providing care, to the adult community care facility. Nothing in this paragraph restricts the right of the Department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

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

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

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

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

(A) The criminal record of the 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.

(C) The individual is providing care or services within the individual's scope of practice.

(D) The individual is not a foster family home caregiver or an employee of the home.

(2) A third-party repair person, or similar retained contractor, if all of the following apply:

(A) The individual is hired for a defined, time-limited job.

(B) The individual is not left alone with foster children.

(C) When foster children 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 for a foster child of the facility, and are in the home at the request of that foster child's legal decision maker.

(A) The exemption shall not apply to a person who is a foster home caregiver or an employee of the home.

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

- (4) Clergy and other spiritual caregivers who are performing services in common areas of the home, or who are advising an individual foster child at the request of, or with the permission of, the foster child or the child's legal decision maker.
- (A) This exemption shall not apply to a person who is a foster family home caregiver or an employee of the home.
- (5) Members of fraternal, service and similar organizations who conduct group activities for foster youth, if all of the following apply:
- (A) Members are not left alone with the foster children.
- (B) Members do not take foster children from the home.
- (C) The same group does not conduct such activities more often than once a month.
- (6) Adult friends and family of the caregiver who come into the home to visit, for a length of time no longer than one month, provided they are not left alone with the children.
- (7) Parents of a child's friends when the child is visiting the friend's home and the friend, caregiver or both are also present.
- (8) Nothing in this paragraph shall prevent a caregiver from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has foster child contact.
- (c) Prior to the Department issuing a license or special permit to any individual or individuals to operate or manage a foster family home, the applicant and any adults residing in the home shall, unless exempt under Section 89219(b), obtain a California criminal record clearance or exemption, and shall comply with FBI requirements as specified in Section 1522(d)(1)(D) of the Health and Safety Code.
- (d) Prior to presence in the home, the individuals specified in (a) shall, unless exempt under 89219(b), obtain a California criminal record clearance or exemption and shall comply with FBI requirements as specified in Section 1522(d)(1)(D) of the Health and Safety Code.

89219 CRIMINAL RECORD CLEARANCE (Continued)

89219

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- (1) Section 1522(d)(1)(D) of the Health and Safety Code states:

An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints 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 subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, 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 or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

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- (e) Prior to employment, residence or initial presence in a foster family home, all individuals subject to criminal record review, in order to meet the requirements of Section 89219(c) and (d), shall be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions and arrests for any crime against a child, spousal cohabitant abuse, or for any crime for which the Department cannot grant an exemption. The declaration shall acknowledge and explain criminal convictions and arrests. The declaration shall also acknowledge that his/her continued employment, residence, or presence in the home is subject to approval of the Department.
- (1) A foster family home applicant/caregiver shall submit the fingerprints to the California Department of Justice along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation and shall comply with Section 89219(e), prior to the individual's employment, residence, or initial presence in the home.
- (A) Fingerprints shall be submitted to the California Department of Justice by the caregiver or sent by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the Department.

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

- (B) A caregiver's failure to submit fingerprints to the California Department of Justice or to comply with Section 89219(e) shall result in the citation of a deficiency and an immediate assessment of civil penalties of one hundred dollars (\$100) per violation.
1. The caregiver shall then submit the fingerprints to the California Department of Justice for processing.
- (C) The Department shall notify the caregiver of criminal records clearances and where there is not a clearance, the Department shall notify both the caregiver and the affected individual associated with the facility, in concurrent, separate letters, that the affected individual has a criminal conviction and needs to obtain a criminal record exemption.
- (f) To continue to be employed, reside, or be present in a home, each individual shall continue to meet the requirements of Sections 89219(c) and (d).
- (g) 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 89219.1(a) has not been granted, the Department shall take the following actions:
- (1) For initial applicants, denial of the application.
 - (2) For current caregivers, the Department may institute an administrative action, including, but not limited to, revocation of the license.
 - (3) For other individuals, exclusion of the affected individual pursuant to Health and Safety Code Section 1558, and denial of the application or revocation of license, if the individual continues to provide service and/or reside in the home.

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- (4) Section 243.4 of the Penal Code provides in part:
- (A) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
 - (B) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, gratification, or abuse, is guilty of sexual battery. Such an act is punishable by either imprisonment in the county jail for not more than one year or in the state prison for two, three, or four years.
- (5) Section 273a of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 3 or 4 years.
 - (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor.
- (6) Section 273(d) of the Penal Code provides:
- Any person who willfully inflicts upon any child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for 2, 4 or 6 years, or in the county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both.

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- (7) Section 368 of the Penal Code provides:
- (A) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.
- (B) Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult, with knowledge that he or she is an elder or a dependent adult, to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured or willfully causes or permits the elder or dependent adult to be placed in a situation such that his or her person or health may be endangered, is guilty of a misdemeanor.
- (8) Section 1522(d) of the Health and Safety Code provides in part:
- If the applicant or other persons specified in this subdivision have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied. For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.
- (9) Section 1522(e) of the Health and Safety Code provides in part:
- The California Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident or arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client.

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

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

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

89219.1 CRIMINAL RECORD EXEMPTION**89219.1**

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

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- (A) Section 1522(c)(5) of the Health and Safety Code provides:

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

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- (4) The affected 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 home.
- (b) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime.
 - (2) Period of time since the crime was committed and number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate that repetition is not likely.
 - (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
 - (5) Granting by the Governor of a full and unconditional pardon.

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

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

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Section 1522(g) of the Health and Safety Code provides in part:

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

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89219.1 CRIMINAL RECORD EXEMPTION (Continued)

89219.1

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

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

1. Penal Code Sections 186.22 and 136.1 – Gang related/Intimidation of witnesses or victims.
2. Penal Code Sections 187, 190 through 190.4 and 192(a) – Any murder/Attempted murder/Voluntary manslaughter.
3. Penal Code Section 203 – Any mayhem.
4. Penal Code Section 206 – Felony torture.
5. Penal Code Sections 207, 208, 209, 209.5, 210 – Kidnapping.
6. Penal Code Sections 211, 212, 212.5, 213, 214 – Any robbery.
7. Penal Code Section 215 – Carjacking.
8. Penal Code Section 220 – Assault with intent to commit mayhem, rape, sodomy or oral copulation.
9. Penal Code Section 243.4 – Sexual battery.
10. Penal Code Section 261(a), (a)(1), (2), (3), (4) or (6) – Rape.
11. Penal Code Section 262(a)(1) or (4) – Rape of a spouse.
12. Penal Code Section 264.1 – Rape in concert.
13. Penal Code Section 266 – Enticing a minor into prostitution.
14. Penal Code Section 266c – Induce to sexual intercourse, etc. by fear or consent through fraud.

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89219.1 CRIMINAL RECORD EXEMPTION (Continued)

89219.1

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15. Penal Code Section 266h(b) – Pimping a minor.
16. Penal Code Section 266i(b) – Pandering a minor.
17. Penal Code Section 266j – Providing a minor under 16 for lewd or lascivious act.
18. Penal Code Section 267 – Abduction for prostitution.
19. Penal Code Section 269 – Aggravated assault of a child.
20. Penal Code Section 272 – Contributing to the delinquency of a minor (must involve lewd or lascivious conduct).
21. Penal Code Sections 273a(a) [or 273a(1) if the conviction was prior to January 1, 1994] – Willfully causing or permitting any child to suffer under circumstances or conditions likely to produce great bodily harm or death.
22. Penal Code Section 273d – Willfully inflicting any cruel or inhuman corporal punishment or injury on a child.
23. Penal Code Section 285 – Incest.
24. Penal Code Section 286 – Sodomy.
25. Penal Code Section 288 – Lewd or lascivious act upon a child under 14.
26. Penal Code Section 288a – Oral copulation.
27. Penal Code Section 288.2 – Felony conviction for distributing lewd material to children.
28. Penal Code Section 288.5(a) – Continuous sexual abuse of a child.
29. Penal Code Section 289 – Genital or anal penetration or abuse by any foreign or unknown object.
30. Penal Code Section 290(a) – All crimes for which one must register as a sex offender including attempts and not guilty by insanity.

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89219.1 CRIMINAL RECORD EXEMPTION (Continued)

89219.1

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31. Penal Code Section 311.2(b), (c) or (d) – Transporting or distributing child-related pornography.
32. Penal Code Section 311.3 – Sexual exploitation of a child.
33. Penal Code Section 311.4 – Using a minor to assist in making or distributing child pornography.
34. Penal Code Section 311.10 – Advertising or distributing child pornography.
35. Penal Code Section 311.11 – Possessing child pornography.
36. Penal Code Sections 314(1) or (2) – Lewd or obscene exposure of private parts.
37. Penal Code Section 347(a) – Poisoning or adulterating food, drink, medicine, pharmaceutical products, spring, well, reservoir or public water supply.
38. Penal Code Section 368(b) or (c) if after January 1, 1999 – Elder or dependent adult abuse.
39. Penal Code Section 417(b) – Drawing, exhibiting or using a loaded firearm.
40. Penal Code Section 451(a) or (b) – Arson.
41. Penal Code Section 460(a) – First degree burglary.
42. Penal Code Sections 186.22 and 518 – Gang related/Extortion.
43. Penal Code Section 647.6 or prior to 1987 former Section 647a – Annoy or molest a child under 18.
44. Penal Code Section 653f(c) – Solicit another to commit rape, sodomy, etc.
45. Penal Code Sections 664/187 – Any attempted murder.
46. Penal Code Section 667.5(c)(7) – Any felony punishable by death or imprisonment in the state prison for life.

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

47. Penal Code Section 667.5(c)(8) – Enhancement for any felony which inflicts great bodily injury.
48. Penal Code Section 667.5(c)(13) – Enhancement for violation of Penal Code Section 12308, 12309 or 12310 – exploding or igniting or attempting to explode or ignite any destructive device or explosive with intent to commit murder.
49. Penal Code Section 667.5(c)(14) - Any kidnapping – Penal Code Sections 207, 208, 209, 209.5 and 210.
50. Penal Code Section 667.5(c)(22) - Any violation of Penal Code Section 12022.53 – Enhancement for listed felonies where use of a firearm.
51. Business and Professions Code Section 729 – Felony sexual exploitation by a physician, psychotherapist, counselor, etc.

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- (d) The Department may deny an exemption request if:
 - (1) The caregiver and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The caregiver and/or the affected individual fails to cooperate with the Department in the exemption process.
- (e) The reasons for any exemption granted or denied shall be in writing and kept by the Department.
- (f) The Department may grant a criminal record exemption that places conditions on the individual's continued licensure, and employment or presence in a licensed home.
- (g) An individual shall be permitted to transfer a current criminal record exemption from one state-licensed facility to another provided the exemption has been processed through a state licensing regional office and the following are met:
 - (1) A signed Criminal Background Exemption Transfer Request, LIC 9188.
 - (2) The request is in writing to the Department and includes:
 - (A) A copy of the individual's valid identification, such as:

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

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

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

89219.2 CHILD ABUSE CENTRAL INDEX**89219.2**

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

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

(3) The Department shall investigate any subsequent reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The Department shall not revoke a license or take any other administrative action based upon a report from the CACI unless the Department substantiates the allegation of child abuse.

(c) An individual shall be permitted to transfer a current CACI clearance from one state-licensed facility to another in the following manner:

(1) If the initial CACI (LIC 198A) was submitted prior to January 01,1999, the individual must submit a new CACI (LIC 198A) to be processed through a state licensing regional office; or

(2) If the CACI (LIC 198A) was submitted after January 01,1999 the individual's CACI clearance will be transferred along with the transfer of either the criminal record clearance or exemption in accordance with Sections 89219 or 89219.1.

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

89224 WAIVERS AND EXCEPTIONS**89224**

(a) Unless prior written licensing agency approval is received as specified in (c) below, a caregiver shall maintain continuous compliance with the licensing regulations.

(b) The licensing agency shall have the authority to waive or grant an exception to a specific regulation(s) if the request demonstrates how the intent of the regulation(s) will be met and under the following circumstances:

(1) Such waiver or exception shall in no instance be detrimental to the health and safety of any child.

(2) The applicant or caregiver shall submit to the licensing agency a written request for a waiver or exception, together with substantiating evidence supporting the request.

(3) No waiver or exception, pursuant to this section, shall be granted for any provision of Article 3, under this chapter.

(c) The caregiver shall retain the Department's written approval or denial of the request in its facility file.

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

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

- (a) Cash resources and personal property and valuables of each child shall be separate and intact.
- (b) The caregiver shall maintain accurate records of accounts of cash resources, personal property, and valuables entrusted to his/her care.
- (c) When a child leaves placement in the home, the caregiver shall surrender all of the child's cash resources, personal property, and valuables to the child's authorized representative.
 - (1) The caregiver shall obtain and retain a receipt signed by the authorized representative.

NOTE: Authority cited: Sections 1530, 1530.5, and 1531, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1520, 1558, and 1560, Health and Safety Code; and Section 11006.9, Welfare and Institutions Code.

89227 APPLICATION REVIEW 89227

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- (a) The licensing agency shall complete the following as part of the application review process:
 - (1) A site visit to the proposed foster family home and a determination that all of the requirements of Article 3 of this chapter have been satisfied, including but not limited to:
 - (A) Review of the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children.
 - 1. Health and Safety Code Section 1521.5 states:
 - (a) The county welfare director shall, prior to the issuance of any foster family home license, ensure that the county licensing staff, or the placement staff, conducts one or more in-home interviews with the prospective foster parent sufficient to collect information on caregiver qualifications that may be used by the placement agency to evaluate the ability, willingness, and readiness of the prospective foster parent to meet the varying needs of children. The inability of a prospective foster parent to meet the varying needs of children, shall not, in and of itself, preclude a prospective foster parent from obtaining a foster family home license. In counties in which the county has not contracted with the state to license foster family homes, the in-home interview shall be done by the placement agency.

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89227 APPLICATION REVIEW (Continued)

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

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

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

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

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

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

(D) A determination that the home complies with the provisions of the Community Care Facilities Act and the regulations in this chapter.

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(b) If the applicant has not submitted all materials specified in Section 89218 within 90 days of receipt of the application by the licensing agency, the licensing agency shall give written notice to the applicant that the application is incomplete.

(1) If the applicant does not complete the application within 30 days after such notice, the application shall be deemed withdrawn, provided that the licensing agency has not denied or taken action to deny the application.

(2) If the application has been deemed denied, the applicant shall file a new application as required by Section 89218.

(c) The licensing agency shall cease review of any application under the conditions specified in Section 1520.3 of the Health and Safety Code.

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(1) Health and Safety Code Section 1520.3 provides in part:

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

"(2) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant previously was issued a certificate of approval by a foster family agency that was revoked by the department pursuant to subdivision (b) of Section 1534 within the preceding two years, the department shall cease any further review of the application until two years shall have elapsed from the date of the revocation.

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

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

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

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- "(2) In cases where the department informed the applicant of his or her right to petition for a hearing as specified in Section 1526 and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.
- "(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions which either have been corrected or are no longer in existence.
- "(c) If an application for a license or special permit indicates, or the department determines during the application review process, that the applicant had previously applied for a certificate of approval with a foster family agency and the department ordered the foster family agency to deny the application pursuant to subdivision (b) of Section 1534, the department shall cease further review of the application as follows:
- "(1) In cases where the applicant petitioned for a hearing, the department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the department upholding a denial.
- "(2) In cases where the department informed the applicant of his or her right to petition for a hearing and the applicant did not petition for a hearing, the department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.
- "(3) The department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence."
- "(d) The cessation of review shall not constitute a denial of the application for purposes of Section 1526 or any other law.

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- (2) The circumstances and conditions in which the licensing agency may continue to review a previously denied application shall include, but are not limited to, the following:
- (A) A fire clearance previously denied, but now approved;