

TITLE 22, DIVISION 6, CHAPTER 9.5**Article 2 ADMINISTRATIVE****89228 CAPACITY DETERMINATION**

- (a) The number of children for whom the home is licensed to provide care and supervision shall be established on the basis of the application review by the licensing agency.
 - (1) For licenses granted after January 1, 2010, this number shall not exceed six children, including a "child" and biological, adoptive, and guardianship children.
 - (A) For existing homes in which the number of children exceeds six, including a "child," biological, adoptive, and guardianship children, no new placements shall be accepted until the number of children in the home does not exceed six, unless authorized by the licensing agency.
 - (2) If it is determined that the home can meet the needs of all children in the home, the licensing agency may grant a waiver or exception for the home to provide care to more than six children.
 - (3) Provided that all the conditions of Health and Safety Code section 1505.2 and the conditions for homes with a capacity of more than six children specified in Section 89420, subsection (b) are met, the licensing agency may authorize a home to care for up to eight children to accommodate a sibling group. A sibling group includes, but is not limited to, biological, step-siblings, and half-siblings.

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Health and Safety Code section 1505.2 provides:

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

- (A) The foster family home 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 listed conditions are met."

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89228 CAPACITY DETERMINATION (Continued)

- (b) When determining the capacity of the home, the licensing agency shall take into consideration the following:
- (1) The caregiver's ability to comply with applicable laws and regulations.
 - (2) How many children, in addition to the children already living in the home, the caregiver is capable of providing care and supervision to and that the home can accommodate.
 - (3) Any other household members, including but not limited to, children under guardianship or conservatorship, who already live in the home and their individual needs.
 - (4) Homes which accept a minor parent and his or her child(ren) shall have such child(ren) included in the home's licensed capacity.
 - (5) Physical features of the home, including available living space, which are necessary in order to comply with regulations.
- (c) The licensing agency may issue a license for fewer children than is requested when the licensing agency determines that the caregiver's responsibilities to other persons in the home, including persons under guardianship and conservatorship, would not allow the caregiver to provide the care and supervision required by these regulations.
- (d) When the licensing agency issues a license for fewer children than requested by the applicant, the licensing agency shall notify the applicant in writing of the reasons for the limitation and of the applicant's right to appeal the decision as specified in Section 89240, Denial of a License.
- (e) The licensing agency may decrease the existing licensed capacity of a foster family home, with the caregiver's agreement, when there is a change in any of the factors specified in subsection (b).
- (1) If the caregiver does not agree to the decrease in capacity, the licensing agency shall have the authority to initiate revocation action as specified in Section 89242, Revocation or Suspension of a License.
 - (2) If the licensing agency initiates revocation action, the caregiver has the right to request an administrative hearing.

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: Section 361.2(j)(1)(A), Welfare and Institutions Code; and Sections 1501, 1501.1, 1502, 1505.2, 1507, 1520, 1526.75, 1531, 1531.2, 1533, 1534, 1538, and 1562, Health and Safety Code.

89229 WITHDRAWAL OF APPLICATION

- (a) An applicant shall have the right to withdraw, in writing, an application.
- (b) The Department must consent in writing to the withdrawal.

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Health and Safety Code section 1553 provides in pertinent part:

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

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NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes 2001). Reference: Sections 1503, 1503.5, 1508, 1520, 1531, 1536.1, 1540, 1540.1, 1541, 1547, and 1553, Health and Safety Code.

89231 ISSUANCE OF LICENSE

- (a) The licensing agency shall issue a license to the applicant after an application has been completed, an in-home visit has been made pursuant to Section 89227, subsection (a)(1), and upon determination that all licensing requirements set forth in Article 3 of this chapter have been met.
- (b) The license shall be issued for a specific capacity consistent with Section 89228, subsections (a) and (c).
- (c) The licensing agency shall notify the applicant in writing of such issuance.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503, 1503.5, 1508, 1509, 1520, 1525, 1526, and 1531, Health and Safety Code.

89234 CHANGES TO LICENSE

- (a) Whenever there is a change in conditions or limitations described on the current license, the caregiver shall submit a new application to the licensing agency with updated information as required in Section 89218, Application for License.
- (b) Changes which require a new application to be filed include:
 - (1) Any change in the home licensing category.
 - (2) Any change that affects the capacity of the home.
 - (3) A permanent change in any "child" in the home from ambulatory to nonambulatory status.
- (c) A new application shall be submitted to the licensing agency within 30 days before or after there is a change in conditions that affect the license.
- (d) The caregiver shall provide the licensing agency with reasonable notice prior to any change in the location of the home as specified in Section 89361, subsection (d).

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A reasonable notice of 30 days should provide adequate time for the licensing agency to license the home.

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NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1520, 1525.25, and 1531, Health and Safety Code.

89235 CONDITIONS FOR FORFEITURE OF A FOSTER FAMILY HOME LICENSE

- (a) Conditions for forfeiture of a license are specified in Health and Safety Code section 1524.

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Health and Safety Code section 1524 provides in pertinent part:

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

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

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

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

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

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

"(f) The licensee abandons the facility."

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- (b) The caregiver abandons the home when:
- (1) The caregiver informs the licensing agency that the caregiver no longer accepts responsibility for the home, or
 - (2) The licensing agency is unable to determine the caregiver's whereabouts after the licensing agency has:

**89235 CONDITIONS FOR FORFEITURE OF A FOSTER FAMILY HOME LICENSE
(Continued)**

- (A) Requested information of the caregiver's whereabouts from an adult at the home if an adult can be contacted, and
 - (B) Made at least one phone call per day to the caregiver's last telephone number of record, for five consecutive workdays with no response, and
 - (C) Sent a certified letter to the caregiver's last mailing address of record requesting that the caregiver contact the licensing agency with no response within seven calendar days.
- (c) If the caregiver dies or abandons the home and a responsible adult with control of the property continues to operate the home, he or she shall file a new application and include evidence of the caregiver's death if applicable. The responsible adult shall be subject to Section 89206, Operation Without A License if a new license is not obtained.

NOTE: Authority cited: Sections 1524, 1530, and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1503, 1503.5, 1508, 1520, 1521.5, 1524, and 1531, Health and Safety Code.

89240 DENIAL OF A LICENSE

- (a) The licensing agency shall deny an application for a license if it is determined that the applicant is not in compliance with applicable laws and regulations.
 - (1) The licensing agency shall have the authority to deny an application for a license if the applicant has failed to pay any civil penalty for unlicensed operations assessed pursuant to Section 89255, Penalties for Unlicensed Homes, and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the licensing agency have been made.
 - (2) The Department may deny any license as specified in Health and Safety Code section 1550.

89240 DENIAL OF A LICENSE (Continued)

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Health and Safety Code section 1550 states:

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

"(a) Violation by the licensee or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

"(b) Aiding, abetting, or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.

"(c) Conduct which is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California.

"(d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.

"(e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.

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

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- (3) An application for a license shall not be denied solely on the basis that the applicant is a parent who has administered or will continue to administer corporal punishment that does not constitute child abuse as defined in Penal Code sections 11165.6, 273a, and 273d or Health and Safety Code section 1531.5, subsection (c) to his or her own child(ren).

89240 DENIAL OF A LICENSE (Continued)

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Penal Code section 11165.6 provides:

"As used in this article, the term 'child abuse or neglect' means a physical injury which is inflicted by other than accidental means on a child by another person, sexual abuse as defined in Section 11165.1, neglect as defined in Section 11165.2, willful cruelty or unjustifiable punishment as defined in Section 11165.3, and unlawful corporal punishment or injury as defined in Section 11165.4. 'Child abuse or neglect' does not include a mutual affray between minors. 'Child abuse or neglect' does not include an injury caused by reasonable and necessary force used by a peace officer acting within the course and scope of his or her employment as a peace officer."

Penal Code section 273a provides in part:

"(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 that child to be injured or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison for two, four or six 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 that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor...."

Penal Code section 273d provides in part:

"(a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four or six years, or in the county jail for not more than one year, by a fine of up to six thousand dollars (\$6,000), or by both that imprisonment and fine. . ."

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89240 DENIAL OF A LICENSE (Continued)

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Health and Safety Code section 1531.5(c) provides:

"As used in this section, 'child abuse' means a situation in which a child suffers from any one or more of the following:

- (1) Serious physical injury inflicted upon the child by other than accidental means.
- (2) Harm by reason of intentional neglect or malnutrition or sexual abuse.
- (3) Going without necessary and basic physical care.
- (4) Willful mental injury, negligent treatment, or maltreatment of a child under the age of 18 by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Director of Social Services.
- (5) Any condition which results in the violation of the rights or physical, mental, or moral welfare of a child or jeopardizes the child's present or future health, opportunity for normal development, or capacity for independence."

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- (b) If the application for a license is denied, the licensing agency shall mail the applicant a written notice of denial.
 - (1) The notification shall inform the applicant of the denial, set forth the reasons for the denial, and advise the applicant of the right to appeal.
- (c) An applicant shall have the right to appeal the denial of the application pursuant to Health and Safety Code section 1526 and in accordance with Health and Safety Code section 1551.

89240 DENIAL OF A LICENSE (Continued)

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Health and Safety Code section 1526 provides:

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

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- (d) Proceedings to hear an appeal of a denial shall be conducted pursuant to Health and Safety Code section 1551(a).

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Health and Safety Code section 1551(a) provides in part:

"Proceedings for the suspension, revocation, or denial of a license, registration, special permit, or any administrator certificate under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department shall have all the powers granted by those provisions. .
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- (e) Notwithstanding any appeal action, the home that has been denied a license is unlicensed and shall not operate pending adoption of a decision on the denial action by the Director.

NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1520, 1520.3, 1522, 1522.01, 1522.2, 1525, 1526, 1531, 1531.5, 1547, 1550, 1551, and 1558.1, Health and Safety Code; Sections 273a, 273d, 11165, 11165.1, 11165.2, 11165.3, 11165.4, and 11165.6, Penal Code; and Sections 11500, et seq., Government Code.

89242 REVOCATION OR SUSPENSION OF LICENSE

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

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Health and Safety Code section 1550 specifies the following grounds:

"(a) Violation by the licensee or holder of a special permit of this chapter or of the rules and regulations promulgated under this chapter.

"(b) Aiding, abetting or permitting the violation of this chapter or of the rules and regulations promulgated under this chapter.

"(c) Conduct which is inimical to the health, morals, welfare or safety of either an individual in, or receiving services from the facility

"(d) The conviction of a licensee, or other person mentioned in Section 1522, at any time before or during licensure, of a crime as defined in Section 1522.

"(e) The licensee of any facility or the person providing direct care or supervision knowingly allows any child to have illegal drugs or alcohol.

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

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

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Health and Safety Code section 1551(a) provides in part:

"Proceedings for the suspension, revocation, or denial of a license, registration, special permit, or any administrator certificate under this chapter shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the state department shall have all the powers granted by those provisions. .
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89242 REVOCATION OR SUSPENSION OF LICENSE (Continued)**HANDBOOK CONTINUES**

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

(A) When the director intends to seek revocation of a license, he/she shall notify the licensee of the proposed action, by serving the licensee with an accusation, and shall advise the licensee of the right to a hearing.

(B) The licensee shall have the right to a hearing prior to the revocation or suspension of a license, except as provided in (1) below.

(1) The director shall have the authority to temporarily suspend any license prior to any hearing when in his/her opinion such action is necessary to protect the children in the foster family home from any physical or mental abuse or any other substantial threat to health or safety.

(2) When the director intends to temporarily suspend a license prior to a hearing, he/she shall notify the licensee of the temporary suspension and the effective date thereof, and shall concurrently serve the licensee with an accusation.

(C) The director shall, within 15 calendar days of receipt of notice of defense, request the Office of Administrative Hearings to set the matter for hearing.

(D) For a revocation and temporary suspension action, the director shall request the Office of Administrative Hearings to hold the hearing as soon as possible, but not later than 30 calendar days after receipt of the Notice of Defense.

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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, 1522, 1522.1, 1522.2, 1531, 1534, 1550, and 1551, Health and Safety Code; and Sections 11500, et seq., Government Code.

89244 INSPECTION AND EVALUATION AUTHORITY OF THE LICENSING AGENCY

- (a) The licensing agency shall have the authority to inspect and evaluate the home as specified in Health and Safety Code sections 1533, 1534, and 1538.

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Health and Safety Code section 1533 provides in part:

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

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

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

Health and Safety Code section 1534(a) provides in part:

"(a)(1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:

- (i) When a license is on probation.
- (ii) When the terms of agreement in a facility compliance plan require an annual evaluation.
- (iii) When an accusation against a licensee is pending.
- (iv) When a facility requires an annual visit as a condition of receiving federal financial participation.

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**89244 INSPECTION AND EVALUATION AUTHORITY OF THE LICENSING
AGENCY (Continued)**

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

(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...

(C) Under no circumstance shall the department visit a community care facility less often than once every five years.

(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.

(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection."

Health and Safety Code section 1538 provides in part:

"(a) Any person may request an inspection of any community care facility or certified family home in accordance with this chapter by transmitting to the state department notice of an alleged violation of applicable requirements prescribed by statutes or regulations of this state, including, but not limited to, a denial of access of any person authorized to enter the facility pursuant to Section 9701 of the Welfare and Institutions Code. A complaint may be made either orally or in writing.

"(b) The substance of the complaint shall be provided to the licensee or certified family home and foster family agency no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee or certified family home and foster family agency nor any copy of the complaint or any record published, released, or otherwise made available to the licensee or certified family home and foster family agency shall disclose the name of any person mentioned in the complaint except the name of any duly authorized officer, employee, or agent of the state department conducting the investigation or inspection pursuant to this chapter.

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89244 INSPECTION AND EVALUATION AUTHORITY OF THE LICENSING AGENCY (Continued)

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

"(d) Upon receipt of a complaint alleging denial of a statutory right of access to a community care facility or certified family home, the state department shall review the complaint. The complainant shall be notified promptly of the state department's proposed course of action."

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- (b) The licensing agency shall have the authority to interview any "child" in the home without prior consent.
 - (1) The caregiver shall make provisions for private interviews with any "child."
- (c) The licensing agency shall have the authority to inspect, audit, and copy records that pertain to a "child" or the home upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements in Sections 89370, subsection (b) and 89566, subsection (d).
 - (1) The caregiver shall make all records relating to the operation of the foster family home available for review.
- (d) The licensing agency shall have the authority to observe the physical condition of a "child," including conditions which could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the "child."
- (e) The licensing agency shall have the authority to make additional visits to the home in order to determine compliance with applicable laws and regulations.

NOTE: Authority cited: Section 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

89245 EVALUATION VISITS

Repealed by Manual Letter No. CCL-10-06, effective 4/3/10.

NOTE: Authority cited: Sections 1530, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1501.1, 1507.5, 1530.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

89246 EXCLUSIONS

- (a) A person can be prohibited from being employed, allowed in, and having contact with a "child" in a licensed home as specified in Health and Safety Code section 1558.

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Health and Safety Code section 1558 states:

"(a) The department may prohibit any person ... or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

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

"(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

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

"(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

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

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

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

"(2) If the department requires the immediate removal of ... or exclusion of an employee, prospective employee, or person who is not a client from a facility, the department shall serve an order of immediate exclusion upon the excluded person which shall notify the excluded person of the basis of the department's action and of the excluded person's right to a hearing.

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

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

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

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

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

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

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89246 EXCLUSIONS (Continued)

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

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

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

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

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

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

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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, 1501.1, 1522, 1522.2, 1531, 1558, and 1558.1, Health and Safety Code; and Sections 11500 et seq., 11506 and 11522, Government Code.

89252 DEFICIENCIES IN COMPLIANCE

- (a) When a licensing agency visits a home and determines that a deficiency exists, the licensing agency shall issue a notice of deficiency unless the deficiency is not serious and is corrected during the visit.

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The following are examples of regulations which, if not complied with, nearly always result in a serious deficiency.

- (1) Section 89410 relating to limitations on the capacity or ambulatory status of children.
- (2) Section 89510.1 relating to limitations on the capacity of specialized foster family homes.
- (3) Section 89510.2 relating to dual licensure of specialized foster family homes.
- (4) Section 89219 relating to criminal record clearance.
- (5) Section 89420 relating to fire clearance.
- (6) Section 89421 relating to water supply.
- (7) Section 89565.1 relating to specialized in-home health care training and health screenings for staff in specialized foster family homes.
- (8) Section 89372 relating to children's rights.
- (9) Section 89373 relating to telephone service.
- (10) Section 89475 relating to storing and dispensing medications.
- (11) Section 89376 relating to food preparation and service.
- (12) Section 89387 relating to safety of children's accommodations.
- (13) Section 89587.1 relating to safety of accommodations for children with special health care needs.
- (14) Section 89387, subsections (j) and (n) relating to toilet facilities and hot water temperature.
- (15) Section 89387, subsection (o) relating to storage and disposal of solid wastes.
- (16) Any other regulation, the violation of which is deemed by the licensing agency to constitute a serious deficiency as defined in Section 89201, subsection (s)(2).

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89252 DEFICIENCIES IN COMPLIANCE (Continued)

- (b) Prior to completion of a visit, the caregiver or other person in charge of the home shall meet with the licensing agency to discuss any deficiencies noted, jointly develop a plan for correcting each deficiency, and acknowledge receipt of the notice of deficiency.
- (c) The licensing agency shall provide a notice of deficiency to the caregiver by one of the following:
 - (1) Personal delivery to the caregiver at the completion of the visit.
 - (2) If the caregiver is not at the home, the notice shall be given to the person in charge at the completion of the visit, and mailed to the caregiver.
 - (3) If the caregiver refuses to accept the notice or the notice cannot be completed during the visit, the notice shall be mailed to the caregiver.
- (d) The notice of deficiency shall be in writing and shall include the following:
 - (1) Citation of the statute or regulation which has been violated.
 - (2) A description of the nature of the deficiency that states the manner in which the caregiver failed to comply with a specified statute or regulation, and the particular place or area of the home in which it occurred.
 - (3) The plan developed, as specified in subsection (b), for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
 - (A) In determining the date for correcting a deficiency, the licensing agency shall consider the following factors:
 - 1. The potential hazard presented by the deficiency.
 - 2. The number of children affected.
 - 3. The availability of equipment or personnel necessary to correct the deficiency.
 - 4. The estimated time necessary for delivery, and for any installation, of necessary equipment.
 - (B) The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the licensing agency determines that the deficiency cannot be completely corrected in 30 calendar days.

89252 DEFICIENCIES IN COMPLIANCE (Continued)

- (C) If the date for correcting the deficiency is more than 30 calendar days following service of the notice of deficiency, the notice shall specify corrective actions which must be taken within 30 calendar days to begin correction.
- (D) The licensing agency shall have the authority to require correction of a deficiency within 24 hours or less if there is an immediate threat to the health or safety of children.
- (5) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the home is located.
- (6) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
- (e) If the caregiver disagrees with a citation or civil penalty assessed by the licensing agency, the caregiver has the right to appeal.
 - (1) The caregiver shall begin their appeal with the Licensing Program Manager listed on the licensing report, or county first level manager, in writing within 10 days from the date the caregiver receives the report or penalty assessment notice.
 - (2) If the caregiver disagrees with the decision made by the Licensing Program Manager or county first level manager, the second level of appeal shall be made to the Regional Manager or county second level manager. The appeal shall be made in writing after the caregiver receives the written decision from the Licensing Program Manager or county first level manager.
 - (3) If the caregiver disagrees with the decision made by the Regional Manager or county second level manager, the third level of appeal shall be made to the Program Administrator or county third level manager. The appeal shall be made in writing after the caregiver receives the written decision from the Regional Manager or county second level manager.
 - (4) If the caregiver disagrees with the decision made by the Program Administrator or county third level manager, the fourth level of appeal shall be made to the Deputy Director, Community Care Licensing Division, California Department of Social Services. The appeal shall be made in writing after the caregiver receives the written decision from the Program Administrator or county third level manager.

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 1501, 1501.1, 1531, 1533, 1534, 1538, and 1553, Health and Safety Code; and Sections 17731 and 17732, Welfare and Institutions Code.

89254 CIVIL PENALTIES

- (a) The licensing agency shall assess civil penalties for the following deficiencies:
- (1) Not submitting an application for licensure required by Section 89218, Application for License, within 15 calendar days of being served a Notice of Operation in Violation of Law (LIC 195).
 - (2) Not obtaining the fingerprint clearances required for licensure by Health and Safety Code section 1522, subsection (b) as stated in Section 89219, Criminal Record Clearance. Civil penalties shall be assessed as specified in Health and Safety Code section 1522, subsection (c).
- (b) Repeat penalties for repeating the same violation as set forth in Health and Safety Code section 1548, subsections (d) and (e) shall not apply.

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

"(b)(1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

- (A) Adults responsible for administration or direct supervision of staff.
- (B) Any person, other than a client, residing in the facility.
- (C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.
- (D) Any staff person, volunteer, or employee who has contact with the clients.
- (E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

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89254 CIVIL PENALTIES (Continued)

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

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

"(c)(1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit fingerprint images and related information to the Department of Justice and the Federal Bureau of Investigation, through the Department of Justice, for a state and federal level criminal offender record information search, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the community care facility. These fingerprint images and related information shall be sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars (\$100) per violation per day for a maximum of five days, unless the violation is a second or subsequent violation within a 12-month period in which case the civil penalties shall be in the amount of one hundred dollars (\$100) per violation for a maximum of 30 days, and shall be grounds for disciplining the licensee pursuant to Section 1550..."

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- (c) Unless otherwise provided, all penalties are due and payable upon receipt of notice for payment, and shall be paid only by check or money order made payable to the agency indicated in the notice.

NOTE: Sections 1522, 1530, and 1530.5 Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1522, 1531, 1533, 1534, 1538, and 1548, Health and Safety Code.

89255 PENALTIES FOR UNLICENSED HOMES

- (a) A penalty of \$200 per day shall be assessed for the operation of an unlicensed home under either of the following conditions:
- (1) The operator has not submitted a completed application for licensure within 15 calendar days of issuance of the Notice of Operation in Violation of Law (LIC 195) and continues to operate.
 - (A) For purposes of this section, an application shall be deemed completed if it includes the information required in Section 89218, Application for License.
 - (B) The completed application shall be deemed to be submitted when received by the licensing agency.
 - (2) Unlicensed operation continues after denial of the initial application.
 - (A) Notwithstanding any appeal action, home operation must cease within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
- (b) The \$200 per day penalty shall be assessed for the continued operation of an unlicensed home as follows:
- (1) On the 16th calendar day after the operator has been issued the Notice of Operation in Violation of Law (LIC 195), and has not submitted a completed application as required.
 - (A) The \$200 per day penalty shall continue until the operator ceases operation or submits a completed application pursuant to subsections (a)(1)(A) and (B).
 - (2) Within 10 calendar days of the mailing of the notice of denial or upon receipt of the denial notice by the operator, whichever occurs first.
 - (A) The \$200 per day penalty shall continue until the operator ceases operation.
- (c) If the unlicensed operator or his/her representative reports to the licensing agency that unlicensed operation, as defined in Health and Safety Code section 1503.5 has ceased, the penalty shall cease as of the day the licensing agency receives the notification.
- (1) A site visit shall be made immediately or within five working days to verify that the unlicensed home operation has ceased.

89255 PENALTIES FOR UNLICENSED HOMES (Continued)

- (2) Notwithstanding (c) above, if the unlicensed home operation has not ceased, penalties shall continue to accrue without interruption from the date of initial penalty assessment.
- (d) All penalties shall be due and payable upon receipt of the Notice for Payment from the licensing agency, and shall be paid by check or money order made payable to the agency indicated in the notice.
- (e) The licensing agency shall have the authority to file a claim in a court of competent jurisdiction to take other appropriate action for failure to pay penalties as specified in (d) above.
- (f) Payment of civil penalties or application for licensure in response to a citation under this section do not permit the operation of a foster family home without a license.

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Health and Safety Code section 1508 provides in part:

"No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct or maintain a community care facility in this state, without a current valid license therefore as provided in this chapter."

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NOTE: Authority cited: Sections 1530 and 1530.5, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1501, 1503, 1503.5, 1508, 1520, 1531, 1533, 1534, 1538, 1540, 1540.1, 1541, 1547 and 1549, Health and Safety Code.

89255.1 DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES

- (a) The caregiver shall be responsible for paying civil penalties.
 - (1) Unless otherwise provided, the transfer, surrender, forfeiture or revocation of a license shall not affect the caregiver's responsibility for paying any civil penalties that accrued while the license was in effect.
- (b) The Department shall have the authority to deny or revoke any license for failure to pay civil penalty assessments.
 - (1) The Department shall have the authority to approve payment arrangements acceptable to the Department.

89255.1 DENIAL OR REVOCATION OF LICENSE FOR FAILURE TO PAY CIVIL PENALTIES (Continued)

- (2) The Department shall have the authority to approve the form of payment.
- (3) The caregiver's failure to pay civil penalty assessments pursuant to a payment plan approved by the Department may result in the denial or revocation of any license, and/or any other appropriate action.
- (c) Any denial or revocation of the license for failure to pay civil penalties may be appealed as provided by Health and Safety Code section 1551.

NOTE: Authority cited: Sections 1530 and 1548, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1531, 1534, 1548, and 1551, Health and Safety Code.

89256 UNLICENSED HOME ADMINISTRATIVE APPEAL

- (a) An unlicensed home operator or his/her representative shall have the right to appeal the penalty assessment to the licensing agency within 10 working days of the mailing of the penalty assessment.
 - (1) If unlicensed operation has not ceased, the \$200 per day penalty shall continue to accrue during the appeal process.
- (b) The appeal review shall be conducted by a higher level staff person at the licensing agency than the staff person at the licensing agency who issued the penalty.
- (c) If the higher level staff person at the licensing agency who reviews the appeal determines that the penalty assessment was not issued in accordance with applicable statutes and regulations of the Department, he or she shall have the authority to amend or dismiss the penalty assessment.

NOTE: Authority cited: Sections 1530, 1530.5, and 1547, Health and Safety Code; and Section 21 of Assembly Bill (AB) 1695 (Chapter 653, Statutes of 2001). Reference: Sections 1503.5, 1508, 1531, 1536.1, 1540, 1541, 1541.1, and 1547, Health and Safety Code.

89261 REPORTING PROCEDURES

Repealed by Manual Letter No. CCL-10-06, effective 4/3/10.

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, 1501.1, 1507, 1530.6, 1531, 1538, 1550.5, and 1557.5, Health and Safety Code.